

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,))
))
v.))
))
RUBEN MARTÉ, in his official capacity as))
MONROE COUNTY SHERIFF and))
MONROE COUNTY SHERIFF'S OFFICE,))
))
Defendants.))

**FIRST AMENDED COMPLAINT TO COMPEL COMPLIANCE WITH
INDIANA CODE CHAPTER 5-2-18.2**

Plaintiff, State of Indiana, *ex rel.* Todd Rokita, Attorney General of Indiana, by counsel, brings this First Amended Complaint against Defendants, Monroe County Sheriff Ruben Marté and the Monroe County Sheriff's Office, to compel compliance with state laws prohibiting local government entities from limiting or restricting their or their agents' participation in immigration enforcement activities to less than the full extent allowed by federal law and prohibiting local government entities from restricting communication and cooperation between their employees and federal immigration authorities in certain situations.

INTRODUCTION

1. It is the policy of the State of Indiana to ensure that state and local law enforcement officers are allowed to cooperate with and participate in, to the fullest extent permitted by law, the enforcement of federal immigration laws.

2. Defendants Monroe County Sheriff Ruben Marté (“Sheriff Marté”) and the Monroe County Sheriff’s Office (“MCSO”) have promulgated a contrary policy—one that impermissibly restricts the discretion of Defendants and Defendants’ officers to cooperate and engage in the permissible enforcement of federal immigration laws. That policy clearly violates state law.

3. Attorney General Todd Rokita determined probable cause exists that, by implementing that policy, Sheriff Marté and the MCSO have committed multiple violations of Indiana Code chapter 5-2-18.2. The appropriate remedy is for this Court to enjoin the violations.

JURISDICTION AND VENUE

4. The State of Indiana seeks an order compelling Sheriff Marté and the MCSO to comply with Indiana law.

5. This Court has both subject matter jurisdiction over the claims and personal jurisdiction over the parties.

6. Venue is appropriate in Monroe County because the principal office of the MCSO is located in Monroe County and a substantial portion of the events giving rise to this complaint occurred in Monroe County.

PARTIES

7. The State of Indiana brings this lawsuit to protect its interests as a sovereign state to enact and enforce its laws. Todd Rokita is the Attorney General for the State of Indiana. The Office of Attorney General is established by Indiana Code § 4-6-1-2. As chief legal officer for the State of Indiana, Attorney General Rokita

vindicates the legal interests of the State and brings this lawsuit to redress injury to the sovereignty of the State inflicted by Defendants' lawless policy. Attorney General Rokita is empowered to pursue this cause of action under Indiana Code § 5-2-18.2-5.

8. Ruben Martí is the Monroe County Sheriff. Sheriff Martí is responsible for the policies implemented at the MCSO.

9. The Monroe County Sheriff's Office is a governmental body as defined by Indiana Code § 5-22-2-13.

FACTUAL AND LEGAL ALLEGATIONS

I. Attorney General Rokita Informs Defendants that Standard Operating Procedure MCSO-012 Violates Indiana Law.

10. On May 14, 2024, Attorney General Rokita sent a letter to the attention of Sheriff Martí regarding the MCSO's immigration-related policies. In his May 14 letter, the Attorney General informed the Defendants of the requirements of state law pertaining to immigration enforcement and asked the Defendants to rescind their policies that were inconsistent with state law if they were still in effect.

11. Through further communications with the MCSO, the Attorney General learned that Sheriff Martí intended to promulgate a revised policy concerning immigration and citizenship status. After reviewing a draft of the revised policy, the Attorney General determined that the revised policy would violate state law and informed the MCSO accordingly.

12. Despite the Attorney General's determination, the Defendants proceeded to promulgate the unlawful version of Standard Operating Procedure MCSO-012 ("MCSO-12") currently in effect.

II. Operating Procedure on Immigration and Citizenship Status.

13. On June 29, 2024, Sheriff Marté promulgated MCSO-12 to govern the actions of personnel of the MCSO on matters concerning immigration and citizenship status. MCSO-12 replaces a prior version of the MCSO's standard operating procedure. MCSO-12 is incorporated into this amended pleading and is attached as **Exhibit A**.

14. MCSO-12 prohibits the MCSO's employees and officers from communicating and cooperating with federal officials in the enforcement of federal immigration laws and restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law in several ways.

15. MCSO-12 states that the MCSO will not "engage in enforcement of immigration or citizenship status unless required to do so by law." MCSO-12 § II.

16. The policy prohibits personnel of the MCSO from "request[ing] or attempt[ing] to ascertain (i.e. run) immigration or citizenship status of an individual that they encounter related to their official duties for the [MCSO], unless required to do so in the execution of their official duties." MCSO-12 § IV.A.

17. It bars MCSO personnel from detaining individuals "solely based on a non-criminal/administrative ICE detainer" and it prohibits them from holding an individual "beyond their scheduled release date based on a non-criminal/administrative ICE detainer." MCSO-12 § IV.E(2)–(3).

18. And it states that the MCSO "shall not enter into any agreement, including the 287(g) program, with the Department of Homeland Security –

Immigration and Customs Enforcement (ICE) for enforcement of immigration or citizenship violations.” MCSO-12 § II.

19. Each of these provisions of the policy are directly contrary to Indiana law.

III. Indiana Law on Citizenship and Immigration Status Information and Enforcement of Federal Immigration Laws.

20. Indiana law bars state and local entities from preventing their officers and employees from cooperating and communicating with federal authorities in the enforcement of immigration laws and related criminal matters. Ind. Code ch. 5-2-18.2.

21. Ind. Code § 5-2-18.2-3 (“Section 3”) states that a governmental body “may not enact or implement an ordinance . . . or a policy that prohibits or in any way restricts another governmental body or employee . . . , including a law enforcement officer, a state or local official, or a state or local government employee, from taking” specified “actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual.”

22. The protected actions are: “(1) Communicating or cooperating with federal officials[;] (2) Sending to or receiving information from the United States Department of Homeland Security [(“DHS”)] [;] (3) Maintaining information [;] [and] (4) Exchanging information with another federal, state, or local government entity.”

Id.

23. Ind. Code § 5-2-18.2-4 (“Section 4”) states that a governmental body “may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.”

24. Section 3 and Section 4 were enacted in 2011.

25. Under Ind. Code § 5-2-18.2-5, “[i]f the attorney general determines that probable cause exists that a governmental body or a postsecondary educational institution has violated this chapter, the attorney general shall bring an action to compel the governmental body or postsecondary educational institution to comply with this chapter.”

26. Ind Code § 5-2-18.2-6 states that “[i]f a court finds by a preponderance of the evidence that a governmental body or postsecondary educational institution knowingly or intentionally violated this chapter, the court shall enjoin the violation.”

IV. The Specified Provisions of MCSO-12 Violate Section 3 and Section 4.

27. Each of MCSO-12’s provisions specified above is plainly inconsistent with state law and represents a substantial restriction on the ability of personnel of the MCSO to cooperate with federal agencies or otherwise assist or engage in the enforcement of federal immigration laws.

28. By promulgating and maintaining MCSO-12, Sheriff Marté and the MCSO violate Indiana law and injure the State of Indiana by violating the sovereignty of the State.

29. MCSO-12 violates Section 3 because it restricts communication and cooperation between MCSO’s officers and employees and federal immigration

authorities with regard to information of an individual's citizenship and immigration status. In particular, the policy bars officers and employees from requesting such information from ICE and limits their ability to gather such information in response to a request from ICE.

30. MCSO-12 also violates Section 4 because it restricts officers and employees from engaging in other immigration-related enforcement actions, such as detaining an individual in response to an ICE detainer or seeking to enter into an enforcement agreement with federal authorities, thereby restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law.

31. Defendants' policy thus cannot be reconciled with state law and must be enjoined under Ind. Code § 5-2-18.2-6.

A. MCSO-12 Section II Violates Indiana Law.

32. MCSO-12 Section II, titled "Policy," states that "it is the policy of this Department to not engage in enforcement of immigration or citizenship status unless required to do so by law" and that "MCSO shall not enter into any agreement, including the 287(g) program, with [ICE] for enforcement of immigration or citizenship violations." MCSO-12 § II. Both policies violate Indiana Code chapter 5-2-18.2.

33. Section II's policy *against* engaging in the enforcement of immigration law violates both Section 3 and Section 4.

34. It violates Section 3 because it bars MCSO officers and employees from taking the actions specified in Section 3 with regard to information of an individual's

citizenship or immigration status. For example, the policy would not allow MCSO employees to investigate voluntarily the citizenship or immigration status of an individual in response to an ICE request unless that investigation was *required* by law. But Section 3 bars any policy that “prohibits or in any way restricts” such cooperation, regardless of whether the cooperation is mandated by law.

35. It also violates Section 4 because it limits MCSO employees’ ability to engage in the enforcement of federal immigration laws to “the full extent permitted by federal law.” Ind. Code § 5-2-18.2-4. Among other things, federal law permits state and local law enforcement officers, as part of their “investigative duties,” to “conduct a status check during the course of an authorized, lawful detention or after a detainee has been released.” *Arizona v. United States*, 567 U.S. 387, 394, 414 (2012). Federal law also allows local law enforcement to assist in the lawful, constitutional enforcement of federal immigration laws in response to a federal official’s request, such as by detaining an individual in response to an ICE detainer request. Consequently, because MCSO-12 “limits or restricts” MCSO employees’ ability to engage in this conduct—conduct that is permitted by federal law—it violates Section 4.

36. For similar reasons, MCSO-12 Section II’s statement that “MCSO shall not enter into any agreement, including the 287(g) program, with [ICE] for enforcement of immigration or citizenship violations” also violates Section 4.

37. This provision limits Defendants’ and their officers’ ability to engage in the enforcement of federal immigration laws by prohibiting, through an office-wide policy, an action that is clearly permitted under federal law.

38. In addition to allowing many informal methods of state cooperation in federal immigration enforcement, federal law permits the Secretary of DHS to delegate authority to state and local officers and employees to discharge directly the functions of federal immigration officers through what is colloquially known as a “287(g) agreement.” *See* 8 U.S.C. § 1357(g).

39. Although Section 4 does not *require* local authorities to enter into 287(g) agreements with ICE, it does prohibit them from *limiting* through an official policy their own or their agents’ ability to enter into such agreements.

40. Defendants are thus free to decide whether to pursue a 287(g) agreement with ICE, but under Section 4, they cannot foreclose the possibility of entering into such an agreement and limit their own discretion to do so by adopting a policy affirmatively rejecting the option of entering into a 287(g) agreement. That is just what Section II of MCSO-12 does. It thus violates Indiana law.

41. Moreover, by its terms the policy statement encompasses “*any* agreement” with federal authorities “for enforcement of immigration or citizenship violations”—not just a 287(g) agreement. MCSO-12 § II. That expansive prohibition by its terms prevents the enforcement of federal immigration law to the full extent permitted by federal law by precluding the MCSO from entering into any kind of formal cooperative arrangement with federal authorities.

B. MCSO-12 Section IV(A) Violates Indiana Law.

42. In a clear violation of Section 3 and Section 4, MCSO-12 Section IV(A) states that Defendants' "[e]mployees . . . will not request or attempt to ascertain (i.e. run) immigration or citizenship status of an individual that they encounter related to their official duties for the Department, unless required to do so in the execution of their official duties." MCSO-12 § IV(A).

43. By its terms, this provision prohibits MCSO employees both from affirmatively attempting to ascertain the immigration or citizenship status of an individual on their own initiative and from doing so in response to a request from federal officials.

44. That prohibition violates Section 3. Specifically, the provision bars communicating or cooperating with federal officials with regard to information of an individual's citizenship or immigration status, sending to or receiving information from DHS, and exchanging information with another federal, state, or local government entity.

45. The prohibition also violates Section 4. As explained above, federal law permits state and local law enforcement officers to conduct status checks during the course of an authorized, lawful detention and it also permits state and local law enforcement officers to assist in the lawful, constitutional enforcement of federal immigration laws in response to a federal official's request. Because MCSO-12 Section IV(A) limits MCSO employees' ability to engage in these enforcement

activities—enforcement activities that are permitted by federal law—it violates Section 4.

C. MCSO-12 Section IV(E) Violates Indiana Law.

46. MCSO-12 Section IV(E) provides, as relevant here, that “MCSO employees shall not detain individual(s) solely based on a non-criminal/administrative ICE detainer” and that “MCSO employees shall not hold an individual(s) beyond their scheduled release date based on a non-criminal/administrative ICE detainer.”

47. But Section 4 prohibits governmental bodies from restricting their employees’ cooperation with federal immigration enforcement to less than the full extent permitted by federal law. And federal law authorizes local cooperation with immigration detainers.

48. Therefore, MCSO-12 Section IV(E) violates Section 4 because it restricts local officers’ participation in the enforcement of immigration law to the full extent permitted by federal law.

49. One critical mechanism that federal immigration authorities use to request local assistance with the enforcement of federal immigration law is an immigration “detainer,” a document issued by DHS to advise another law enforcement agency “that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien.” 8 C.F.R. § 287.7(a).

50. A detainer asks the custodial agency to advise DHS, “prior to release of the alien, in order for [DHS] to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.” *Id.*

51. If DHS issues a detainer, federal regulations direct the custodial agency to hold an alien for up to 48 hours after his scheduled release “in order to permit assumption of custody by [DHS].” *Id.* § 287.7(d).

52. To issue a detainer, an ICE officer must have “probable cause to believe that the subject is an alien who is removable from the United States.” *Policy No. 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers* § 2.4, U.S. IMMIGR. & CUSTOMS ENFT (Mar. 24, 2017), <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>. In addition, a detainer must be accompanied by an administrative arrest warrant signed by an authorized ICE immigration officer. *Id.*

53. Local compliance with detainer requests is authorized by federal law. *See* 8 U.S.C. § 1357(g)(10)(B); 8 C.F.R. §§ 287.7, 241.2. Federal law expressly permits state and local officials “to cooperate with [DHS] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” 8 U.S.C. § 1357(g)(10)(B).

54. Section 4 states that a governmental body “may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.” Local cooperation with ICE detainers is an enforcement activity that is fully permitted by federal law. Accordingly, MCSO-12 Section IV(E), by prohibiting

MCSO employees from voluntarily cooperating with those detainees, “restrict[s] the enforcement of federal immigration laws to less than the full extent permitted by federal law” and therefore violates Section 4.

D. MCSO-12 Section IV(C) Does Not Save MCSO-12 from Invalidity.

55. MCSO-12 Section IV(C) states that “[m]embers of the MSCO *[sic]* will not prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual: 1. Communicating or cooperating with federal officials. 2. Sending to or receiving information from [DHS]. 3. Maintaining information. 4. Exchanging information with another federal, state, or local government entity.” MCSO-12 § IV(C).

56. This transparent attempt to circumvent state law fails to bring MCSO-12 into compliance with state law.

57. Critically, this language does not fully incorporate Section 3 into MCSO-12.

58. While Section 3 prohibits a governmental entity from prohibiting, or in any way restricting, its employees from taking certain actions “*with regard to information of the citizenship or immigration status*” of an individual, MCSO-12 omits the “information of” phrase, stating only that MCSO will not prohibit, or in any way restrict, its employees from taking certain actions “regarding the citizenship or immigration status” of an individual.

59. Because it omits the “information of” phrase, MCSO-12 Section IV(C) on its face does not protect the full range of conduct protected by Section 3.

60. Section 3 covers more than just communications or cooperation about an individual's citizenship or immigration status; it also covers information *about* or *having a direct impact on* an individual's citizenship or immigration status.

61. And because Section IV(C) does not *even attempt* to incorporate the protections provided by *Section 4* of Ind. Code chapter 5-2-18.2, the provision does nothing to eliminate all of the ways in which MCSO-12 conflicts with that provision of Indiana law.

62. Moreover, Defendants' generic disclaimer provision in MCSO-12 § IV(C) does not change the fact that many specific provisions of MCSO-12, discussed above, directly violate Indiana Code chapter 5-2-18.2. Plainly, the fact that MCSO-12 includes those unlawful provisions in the first place means that Defendants do not believe that restricting the conduct of MCSO employees in those specific ways is in any tension with the assurance Section IV(C) purports to provide, even though they clearly are under a proper interpretation of state law.

63. Indeed, though the language of Section 3 and MCSO-12 § IV(C) may be largely the same (with an important omission), MCSO clearly interprets this language differently than what a proper interpretation of state law requires. The MCSO, by implementing MCSO-12 under a mistaken interpretation of Section 3, still violates Section 3 even if the policy *did* exactly incorporate the language of Section 3.

64. Defendants cannot have it both ways. If their position is that MCSO-12 cannot violate Section 3 because it supposedly incorporates Section 3 into itself, then Defendants must implement MCSO-12 according to the *proper* interpretation of

Section 3. But they cannot insist that they are abiding by Section 3 and have incorporated it into MCSO-12 yet implement it according to an incorrect interpretation of state law.

CAUSES OF ACTION

Count I – Action to Compel for Violation of Indiana Code § 5-2-18.2-3

65. Plaintiff repeats and re-alleges each of the foregoing allegations as if fully set forth herein.

66. MCSO-12 violates Indiana Code § 5-2-18.2-3 including but not limited to for the reasons explained above.

67. Attorney General Rokita has determined that probable cause exists that the Defendants have violated Indiana Code § 5-2-18.2-3.

68. The Defendants knowingly or intentionally violated Indiana Code § 5-2-18.2-3 by promulgating MCSO-12 on June 29, 2024, after Attorney General Rokita informed them that the policy was not compliant with state law. The Defendants continue to knowingly or intentionally violate state law by maintaining and implementing MCSO-12.

Count II – Action to Compel for Violation of Indiana Code § 5-2-18.2-4

69. Plaintiff repeats and re-alleges each of the foregoing allegations as if fully set forth herein.

70. MCSO-12 violates Indiana Code § 5-2-18.2-4 including but not limited to for the reasons explained above.

71. Attorney General Rokita has determined that probable cause exists that the Defendants have violated Indiana Code § 5-2-18.2-4.

72. The Defendants knowingly or intentionally violated Indiana Code § 5-2-18.2-4 by promulgating MCSO-12 on June 29, 2024, after Attorney General Rokita informed them that the policy was not compliant with state law. The Defendants continue to knowingly or intentionally violate state law by maintaining and implementing MCSO-12.

RELIEF REQUESTED

WHEREFORE, the Plaintiff, State of Indiana, *ex rel.* Todd Rokita, Attorney General of Indiana, respectfully requests that the Court enter an order enjoining Defendants from violating Indiana Code chapter 5-2-18.2.

Respectfully submitted,

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Date: January 9, 2025

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CERTIFICATE OF SERVICE

I certify that on January 9, 2025, 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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