U.S. Department of Justice
Office of Information Policy
441 G Street, NW
Sixth Floor
Washington, DC 20530

Telephone: (202) 514-3642

October 16, 2019

Austin Evers
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005
FOIA@americanoversight.org

Re: DOJ-2019-000063
19-cv-1339 (D.D.C.)
TAZ:JMS

Dear Austin Evers:

This is an interim response to your Freedom of Information Act (FOIA) request dated and received in this Office on October 4, 2018, in which you requested email communications sent by Gene Hamilton, Counselor to the Attorney General, to any email address ending in .com/.net/.org/.edu/.mail, dating since October 26, 2017. This response is made on behalf of the Office of the Attorney General (OAG).

Please be advised that a search has been conducted on behalf of OAG. At this time, I have determined that fifty pages containing records responsive to your request are appropriate for release with excisions made pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), and copies are enclosed. Additionally, five pages containing records responsive to your request are being withheld in full pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Please be advised that duplicative material was not processed, and is marked accordingly.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Alan Burch of the U.S. Attorney's Office for the District of Columbia, at (202) 252-2550.

Sincerely,

Timothy Ziese
Senior Reviewing Attorney
for
Vanessa R. Brinkmann
Senior Counsel

Enclosures

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, November 29, 2017 9:24 AM
To: DOJCLE@lexisnexis.com
Subject: RE: Registration

Good morning,

I hope that y'all are well. Is there anyone I can talk to about my inquiry below?

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hamilton, Gene (OAG)
Sent: Tuesday, November 28, 2017 6:18 PM
To: 'DOJCLE@lexisnexis.com' <DOJCLE@lexisnexis.com>
Subject: Registration

Good evening,

I believe that I filled out a registration form for my CLE ID last week, but I haven't seen anything yet. I just filled it out again. Is there any way to get this as soon as possible?

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, December 18, 2017 8:39 AM
To: (b) (6)
Subject: RE:

Thanks very much, (b) (6) ! Likewise. Glad to hear your 3L year is going well. Really do hope to see you down there soon—our ability to travel has been somewhat diminished.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b) (6) [mailto (b) (6)
Sent: Sunday, December 17, 2017 1:38 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re:

Hey Gene,
Great catching up with you the other evening, sorry it couldn't be for longer. I'm glad to hear you've been happy with the move to DOJ.

I plan on staying in (b) (6) next summer while I study for the bar, so I'll be around for at least the next several months. If y'all ever decide to make the trip down, please let me know so we can get together for coffee.

Have a good Christmas and a happy New Year!
V/r,
(b) (6)

(b) (6)
Washington & Lee University
Juris Doctor candidate (2018)

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Friday, December 15, 2017 5:11:10 PM
To: (b) (6)
Subject:

Contact info

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, February 7, 2018 4:39 PM
To: Johnson, Steffen N.
Subject: RE:

Hi Steffen,

Sorry for the delayed reply. I was in a meeting. I can call you in the morning.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: Johnson, Steffen N. [mailto:SJohnson@winston.com]
Sent: Wednesday, February 7, 2018 3:16 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re:

Thank you. I am at the Dallas airport and could talk for a few minutes now if that would suffice. Otherwise, I could talk in the morning from the office. Happy to do either depending on what is more convenient for you. My mobile is (b) (6) .

Sent from my iPhone

On Feb 7, 2018, at 2:00 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov<mailto:Gene.Hamilton@usdoj.gov>> wrote:

Good afternoon, Steffen,

Do you have a few minutes today for a quick phone call?

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, February 12, 2018 9:45 PM
To: John Blount
Subject: RE: Detainer policy

Do you know if Stephen Tausend in Senator Cornyn's office has this language? And does he understand your position on this issue?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: John Blount [mailto:john.blount@ervinhillstrategy.com]
Sent: Monday, February 12, 2018 5:39 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Fwd: Detainer policy

Sheriffs support the House language below.

John Blount
SVP, Global Government Affairs
Ervin | Hill Strategy
410 First Street SE
Suite 300
Washington, DC 20001
C- (b) (6)

In re: sanctuary city and detainer sections of Goodlatte/McCaul.
>
>
>
> SEC. 2202. STATE NONCOMPLIANCE WITH ENFORCEMENT OF IMMIGRATION LAW.
> (a) In General- Section 642 of the Illegal Immigration Reform and
> Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended-- > (1) by striking subsection (a) and inserting the following:
> `(a) In General- Notwithstanding any other provision of Federal,
> State, or local law, no Federal, State, or local government entity,
> and no individual, may prohibit or in any way restrict, a Federal,
> State, or local government entity, official, or other personnel from

> State, or local government entity, official, or other personnel from
> complying with the immigration laws (as defined in section 101(a)(17)
> of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), or
> from assisting or cooperating with Federal law enforcement entities,
> officials, or other personnel regarding the enforcement of these
> laws.';
> (2) by striking subsection (b) and inserting the following:
> `(b) Law Enforcement Activities- Notwithstanding any other provision of Federal, State, or local law, no Federal, State, or local government entity, and no individual, may prohibit, or in any way restrict, a Federal, State, or local government entity, official, or other personnel from undertaking any of the following law enforcement activities as they relate to information regarding the citizenship or immigration status, lawful or unlawful, the inadmissibility or deportability, or the custody status, of any individual:
> `(1) Making inquiries to any individual in order to obtain such information regarding such individual or any other individuals.
> `(2) Notifying the Federal Government regarding the presence of individuals who are encountered by law enforcement officials or other personnel of a State or political subdivision of a State.
> `(3) Complying with requests for such information from Federal law
> enforcement entities, officials, or other personnel.'; > (3) in subsection (c), by striking `Immigration and Naturalization
> Service' and inserting `Department of Homeland Security'; and > (4) by adding at the end the following:
> `(d) Compliance-
> `(1) ELIGIBILITY FOR CERTAIN GRANT PROGRAMS- A State, or a political
> subdivision of a State, that is found not to be in compliance with
> subsection (a) or (b) shall not be eligible to receive-- > `(A) any of the funds that would otherwise be allocated to the State
> or political subdivision under section 241(i) of the Immigration and
> Nationality Act (8 U.S.C. 1231(i)), the `Cops on the Beat' program
> under part Q of title I of the Omnibus Crime Control and Safe Streets
> Act of 1968 (34 U.S.C. 10381 et seq.), or the Edward Byrne Memorial
> Justice Assistance Grant Program under subpart 1 of part E of title I
> of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C.
> 10151 et seq.); or
> `(B) any other grant administered by the Department of Justice that is substantially related to law enforcement (including enforcement of the immigration laws), immigration, enforcement of the immigration laws, or naturalization or administered by the Department of Homeland Security that is substantially related to immigration, the enforcement of the immigration laws, or naturalization.
> `(2) TRANSFER OF CUSTODY OF ALIENS PENDING REMOVAL PROCEEDINGS- The Secretary, at the Secretary's discretion, may decline to transfer an alien in the custody of the Department of Homeland Security to a State or political subdivision of a State found not to be in compliance with subsection (a) or (b), regardless of whether the State or political subdivision of the State has issued a writ or warrant.
> `(3) TRANSFER OF CUSTODY OF CERTAIN ALIENS PROHIBITED- The Secretary shall not transfer an alien with a final order of removal pursuant to paragraph (1)(A) or (5) of section 241(a) of the

Immigration and Nationality Act (8 U.S.C. 1231(a)) to a State or a political subdivision of a State that is found not to be in compliance with subsection (a) or (b).
> `(4) ANNUAL DETERMINATION- The Secretary shall determine for each calendar year which States or political subdivision of States are not in compliance with subsection (a) or (b) and shall report such determinations to Congress by March 1 of each succeeding calendar year.
> `(5) REPORTS- The Secretary of Homeland Security shall issue a report concerning the compliance with subsections (a) and (b) of any particular State or political subdivision of a State at the request of the House or the Senate Judiciary Committee. Any jurisdiction that is found not to be in compliance shall be ineligible to receive Federal financial assistance as provided in paragraph (1) for a minimum period of 1 year, and shall only become eligible again after the Secretary of Homeland Security certifies that the jurisdiction has come into compliance.
> `(6) REALLOCATION- Any funds that are not allocated to a State or to a political subdivision of a State due to the failure of the State or of the political subdivision of the State to comply with subsection (a) or (b) shall be reallocated to States or to political subdivisions of States that comply with both such subsections.
> `(e) Construction- Nothing in this section shall require law enforcement officials from States, or from political subdivisions of States, to report or arrest victims or witnesses of a criminal offense.'.
> (b) Effective Date- The amendments made by this section shall take effect on the date of the enactment of this Act, except that subsection (d) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373), as added by this section, shall apply only to prohibited acts committed on or after the date of the enactment of this Act.
> SEC. 2203. CLARIFYING THE AUTHORITY OF ICE DETAINERS.
> (a) In General- Section 287(d) of the Immigration and Nationality Act (8 U.S.C. 1357(d)) is amended to read as follows:
> `(d) Detainer of Inadmissible or Deportable Aliens- > `(1) IN GENERAL- In the case of an individual who is arrested by any Federal, State, or local law enforcement official or other personnel for the alleged violation of any criminal or motor vehicle law, the Secretary may issue a detainer regarding the individual to any Federal, State, or local law enforcement entity, official, or other personnel if the Secretary has probable cause to believe that the individual is an inadmissible or deportable alien.
> `(2) PROBABLE CAUSE- Probable cause is deemed to be established if-- > `(A) the individual who is the subject of the detainer matches,
> pursuant to biometric confirmation or other Federal database records,
> the identity of an alien who the Secretary has reasonable grounds to
> believe to be inadmissible or deportable; > `(B) the individual who is the subject of the detainer is the subject
> of ongoing removal proceedings, including matters where a charging
> document has already been served;
> `(C) the individual who is the subject of the detainer has previously
> been ordered removed from the United States and such an order is
> administratively final;
> `(D) the individual who is the subject of the detainer has made
> voluntary statements or provided reliable evidence that indicate that
> they are an inadmissible or deportable alien; or > `(E) the Secretary otherwise has reasonable

grounds to believe that the individual who is the subject of the detainer is an inadmissible or deportable alien.
> `(3) TRANSFER OF CUSTODY- If the Federal, State, or local law enforcement entity, official, or other personnel to whom a detainer is issued complies with the detainer and detains for purposes of transfer of custody to the Department of Homeland Security the individual who is the subject of the detainer, the Department may take custody of the individual within 48 hours (excluding weekends and holidays), but in no instance more than 96 hours, following the date that the individual is otherwise to be released from the custody of the relevant Federal, State, or local law enforcement entity.'.
> (b) Immunity-
> (1) IN GENERAL- A State or a political subdivision of a State (and the officials and personnel of the State or subdivision acting in their official capacities), and a nongovernmental entity (and its personnel) contracted by the State or political subdivision for the purpose of providing detention, acting in compliance with a Department of Homeland Security detainer issued pursuant to this section who temporarily holds an alien in its custody pursuant to the terms of a detainer so that the alien may be taken into the custody of the Department of Homeland Security, shall be considered to be acting under color of Federal authority for purposes of determining their liability and shall be held harmless for their compliance with the detainer in any suit seeking any punitive, compensatory, or other monetary damages.
> (2) FEDERAL GOVERNMENT AS DEFENDANT- In any civil action arising out of the compliance with a Department of Homeland Security detainer by a State or a political subdivision of a State (and the officials and personnel of the State or subdivision acting in their official capacities), or a nongovernmental entity (and its personnel) contracted by the State or political subdivision for the purpose of providing detention, the United States Government shall be the proper party named as the defendant in the suit in regard to the detention resulting from compliance with the detainer.
> (3) BAD FAITH EXCEPTION- Paragraphs (1) and (2) shall not apply to any mistreatment of an individual by a State or a political subdivision of a State (and the officials and personnel of the State or subdivision acting in their official capacities), or a nongovernmental entity (and its personnel) contracted by the State or political subdivision for the purpose of providing detention.
> (c) Private Right of Action-
> (1) CAUSE OF ACTION- Any individual, or a spouse, parent, or child of
> that individual (if the individual is deceased), who is the victim of
> a murder, rape, or any felony, as defined by the State, for which an
> alien (as defined in section 101(a)(3) of the Immigration and
> Nationality Act (8 U.S.C. 1101(a)(3))) has been convicted and
> sentenced to a term of imprisonment of at least 1 year, may bring an
> action against a State or political subdivision of a State or public
> official acting in an official capacity in the appropriate Federal
> court if the State or political subdivision, except as provided in
> paragraph (3)--
> (A) released the alien from custody prior to the commission of such
> crime as a consequence of the State or political subdivision's
> declining to honor a detainer issued pursuant to section 287(d)(1) of
> the Immigration and Nationality Act (8 U.S.C. 1357(d)(1)); > (B) has in effect a statute, policy, or practice not in compliance

> with section 642 of the Illegal Immigration Reform and Immigrant
> Responsibility Act of 1996 (8 U.S.C. 1373) as amended, and as a
> consequence of its statute, policy, or practice, released the alien
> from custody prior to the commission of such crime; or > (C) has in effect a statute, policy, or practice requiring a subordinate political subdivision to decline to honor any or all detainers issued pursuant to section 287(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(d)(1)), and, as a consequence of its statute, policy or practice, the subordinate political subdivision declined to honor a detainer issued pursuant to such section, and as a consequence released the alien from custody prior to the commission of such crime.
> (2) LIMITATIONS ON BRINGING ACTION- An action may not be brought under this subsection later than 10 years following the occurrence of the crime, or death of a person as a result of such crime, whichever occurs later.
> (3) PROPER DEFENDANT- If a political subdivision of a State declines
> to honor a detainer issued pursuant to section 287(d)(1) of the
> Immigration and Nationality Act (8 U.S.C. 1357(d)) as a consequence of
> the State or another political subdivision with jurisdiction over the
> subdivision prohibiting the subdivision through a statute or other
> legal requirement of the State or other political subdivision-- > (A) from honoring the detainer; or
> (B) fully complying with section 642 of the Illegal Immigration Reform
> and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373), and, as a consequence of the statute or other legal requirement of the State or other political subdivision, the subdivision released the alien referred to in paragraph (1) from custody prior to the commission of the crime referred to in that paragraph, the State or other political subdivision that enacted the statute or other legal requirement, shall be deemed to be the proper defendant in a cause of action under this subsection, and no such cause of action may be maintained against the political subdivision which declined to honor the detainer.
> (4) Attorney's FEE AND OTHER COSTS- In any action or proceeding under this subsection the court shall allow a prevailing plaintiff a reasonable attorneys` fee as part of the costs, and include expert fees as part of the attorneys' fee.
> (d) Eligibility for Certain Grant Programs- > (1) IN GENERAL- Except as provided in paragraph (2), a State or
> political subdivision of a State that has in effect a statute, policy
> or practice providing that it not comply with any or all Department of
> Homeland Security detainers issued pursuant to section 287(d)(1) of
> the Immigration and Nationality Act (8 U.S.C. 1357(d)) shall not be
> eligible to receive--
> (A) any of the funds that would otherwise be allocated to the State or
> political subdivision under section 241(i) of the Immigration and
> Nationality Act (8 U.S.C. 1231(i)), the `Cops on the Beat' program
> under part Q of title I of the Omnibus Crime Control and Safe Streets
> Act of 1968 (34 U.S.C. 10301 et seq.), or the Edward Byrne Memorial
> Justice Assistance Grant Program under subpart 1 of part E of title I
> of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C.
> 10151 et seq.); or

> (B) any other grant administered by the Department of Justice that is substantially related to law enforcement (including enforcement of the immigration laws), immigration, or naturalization or grant administered by the Department of Homeland Security that is substantially related to immigration, enforcement of the immigration laws, or naturalization.
> (2) EXCEPTION- A political subdivision described in subsection (c)(3) that declines to honor a detainer issued pursuant to section 287(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1357 (d)(1)) as a consequence of being required to comply with a statute or other legal requirement of a State or another political subdivision with jurisdiction over that political subdivision, shall remain eligible to receive grant funds described in paragraph (1). In the case described in the previous sentence, the State or political subdivision that enacted the statute or other legal requirement shall not be eligible to receive such funds.
>
> ---

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, April 11, 2018 1:30 PM
To: (b)(6) - Edmund Yazzie Email Address
Subject: Meeting today

Good morning, Edmund,

It was nice to meet you and your team today.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, April 23, 2018 2:33 PM
To: twheeler@fbtlaw.com

Hi Tom,

It was great to see you. My direct line is 202-514-4969, and mobile is (b) (6)

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, April 24, 2018 10:15 PM
To: Pendley, Julie
Subject: RE: Bio for the White House Correspondents dinner guests

Hi Julie,

Is this too long? Or is it comparable to what others have? I don't spend much time working on my bio or my resume:

> Gene Hamilton currently serves as Counselor to Attorney General Jeff Sessions at the United States Department of Justice. He previously served as Senior Counselor to then-Secretary John F. Kelly at the United States Department of Homeland Security, and subsequently to then-Acting Secretary Elaine C. Duke. Prior to his service in the Trump Administration, he served as a member of the President-elect's Transition Team; as General Counsel to then-Chairman Jeff Sessions on the Senate Committee on the Judiciary, Subcommittee on Immigration and the National Interest; as an Assistant Chief Counsel at U.S. Immigration and Customs Enforcement; and as an Attorney Advisor in the Secretary's Honors Program for Attorneys at the United States Department of Homeland Security—rotating through the Department and providing legal guidance at U.S. Customs and Border Protection, the Operations and Enforcement Law Division of the Office of the General Counsel, the Intelligence Law Division of the Office of the General Counsel, and at the Transportation Security Administration. Mr. Hamilton is a graduate of the Washington & Lee University School of Law, where he graduated magna cum laude and was inducted into the Order of the Coif, and received a Bachelor of Arts in International Affairs from the University of Georgia. He is married and resides with his family in the Commonwealth of Virginia.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Pendley, Julie <jpendley@mcclatchy.com>
Sent: Tuesday, April 24, 2018 1:38 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Bio for the White House Correspondents dinner guests

That would be great if you could send tonight and thank you!

Julie Pendley

Executive Assistant, McClatchy

916/321-1808, jpendley@mcclatchy.com

On Tue, Apr 24, 2018 at 10:22 AM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Sorry for the delay. I can send something tonight if it's not too late.
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> **From:** Pendley, Julie <jpendley@mcclatchy.com>
> **Sent:** Monday, April 23, 2018 6:17 PM
> **To:** Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> **Subject:** Re: Bio for the White House Correspondents dinner guests
>
> Hi Gene:
> I'm hoping you might be able to send something regarding the bio?
>
> Thank you,
>
> Julie Pendley
>
> *Executive Assistant,* McClatchy
>
> 916/321-1808, jpendley@mcclatchy.com

On Tue, Apr 17, 2018 at 7:17 AM, Pendley, Julie <jpendley@mcclatchy.com> wrote:

> Hi Gene:
> Completely understandable - if I could have something by the end of the week that would be great.
> Thank you,
>
> Julie Pendley
>
> *Executive Assistant,* McClatchy
>
> 916/321-1808, jpendley@mcclatchy.com

On Tue, Apr 17, 2018 at 3:58 AM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Hi Julie,
>
> I'm sorry for my delay—I'm out of town with the boss right now. I'll work on getting you an updated bio. When's the absolute latest you need it by?
>
> And I don't think I'll be attending the luncheon.

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Pendley, Julie <jpendley@mcclatchy.com>
Sent: Monday, April 16, 2018 5:18 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Fwd: Bio for the White House Correspondents dinner guests

Hi Mr. Hamilton:

So sorry to bother you again but I wanted to follow-up to be sure you received my earlier email? see below

Thank you,
Julie Pendley

Executive Assistant, McClatchy

916/321-1808, jpendley@mcclatchy.com

---------- Forwarded message ----------
From: **Pendley, Julie** <jpendley@mcclatchy.com>
Date: Tue, Apr 10, 2018 at 12:06 PM
Subject: Bio for the White House Correspondents dinner guests
To: gene.hamilton@usdoj.gov

Mr. Hamilton:
I am Andy Pergam's assistant at McClatchy and I am working on the Correspondent's dinner needs. We are putting together bios for all of our McClatchy guests for the event.

Could you forward me a short bio that I may use in the informational packet we will send to all of our guests closer to the event?

Also - may I inquire if you plan on attending the luncheon earlier in the day, Saturday, April 28?

Thank you

Julie Pendley

Executive Assistant, McClatchy

916/321-1808, jpendley@mcclatchy.com

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, April 30, 2018 10:15 AM
To: Jonathan F. Thompson
Subject: RE:

(b) (6)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Jonathan F. Thompson <jfthompson@sheriffs.org>
Sent: Monday, April 30, 2018 9:53 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re:

Call me on cell (b) (6)

Jonathan Thompson
703.838.5300

Please forgive any typos, errors or tonal shortcomings as this message is being done on my phone.

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Monday, April 30, 2018 9:51:25 AM
To: Jonathan F. Thompson
Subject:

Hi Jonathan,

I hope you're well. Danielle is out today. Can we chat?

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, May 3, 2018 10:39 AM
To: Jonathan F. Thompson

Saw you called. Try to call back soon. Crashing on some things for a meeting.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, May 23, 2018 9:26 AM
To: Gustus, Lauren
Subject: RE: Lauren from Sacramento

Hi Lauren,

Somehow I missed your email a few weeks ago. Thanks for the note, and for the kind words. I hope all is well.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Gustus, Lauren <lgustus@sacbee.com>
Sent: Tuesday, May 1, 2018 11:47 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Lauren from Sacramento

Hi Gene,

Following up with a quick note on the heels of our conversation at the WHCD.

I will always submit that we must listen and seek to understand the many perspectives in our local communities (though that diversity of opinion didn't present as a value during the dinner).

For me, this means from Fresno to Bellingham and places in between.

In an effort to broaden our reporting, I'm going to share your email with Anita Chabria, a reporter based in Sacramento who works on immigration policy reporting principally for California.

Respectfully,

--
Lauren Gustus
Regional Editor, West
lgustus@sacbee.com

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, June 3, 2018 9:23 PM
To: Jonathan F. Thompson

Sorry—been running around this weekend on work and (b) (6). Got your voicemail Friday. Can you talk in the AM?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, June 7, 2018 12:34 PM
To: Jonathan F. Thompson

On a plane right now. Call you later today. Let me find out about N.O.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, June 19, 2018 5:59 PM
To:	Lindsay Hoefer
Subject:	RE: Follow up from Tony Perkins

Hi Lindsay!

I'm so sorry to hear about his flight delay. Sure, what's his availability?

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Lindsay Hoefer <lmh@frc.org>
Sent: Tuesday, June 19, 2018 5:07 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Follow up from Tony Perkins

Hi Gene –

Thank you for meeting with Tony and the other evangelical leaders today. I understand it was a productive discussion, and we are delighted to have AG Sessions on our radio program here in a few minutes.

We did have one participant, Mike Alameda, of Corazon Ministries in Tucson, AZ whose flight was delayed and he didn't make it to the meeting. Given that he flew all the way to DC for this meeting, we were curious if there is someone on your team that would have time to meet with him either this evening or tomorrow. You can see from his bio, that he has valuable insights to share.

Thanks for considering this!

Lindsay Hoefer
Office of the President
Family Research Council

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, June 21, 2018 12:06 PM
To: Yeager, Demi (OAG); (b)(6) - Will Scharf Email Address
Subject: RE: Connecting y'all

Looking forward to it.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: Yeager, Demi (OAG)
Sent: Thursday, June 21, 2018 12:02 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; (b)(6) - Will Scharf Email Address
Subject: Connecting y'all

Gene/Will —

Wanted to connect y'all over email. Hope you two can link up next week when Will is in DC.

Best,
Demi

Sent from my iPhone

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, June 27, 2018 9:30 AM
To: William Scharf
Subject: RE: Connecting y'all

Hi Will,

So sorry for my lack of responsiveness. Been out with the boss, and things have been a little crazy over the last few days. Today doesn't look good, nor does tomorrow AM. Tomorrow AM may free up a bit, but it will be kind of a last minute thing.

Hope you are doing well!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: William Scharf (b)(6) - Will Scharf Email Address
Sent: Monday, June 25, 2018 4:53 PM
Cc: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Connecting y'all

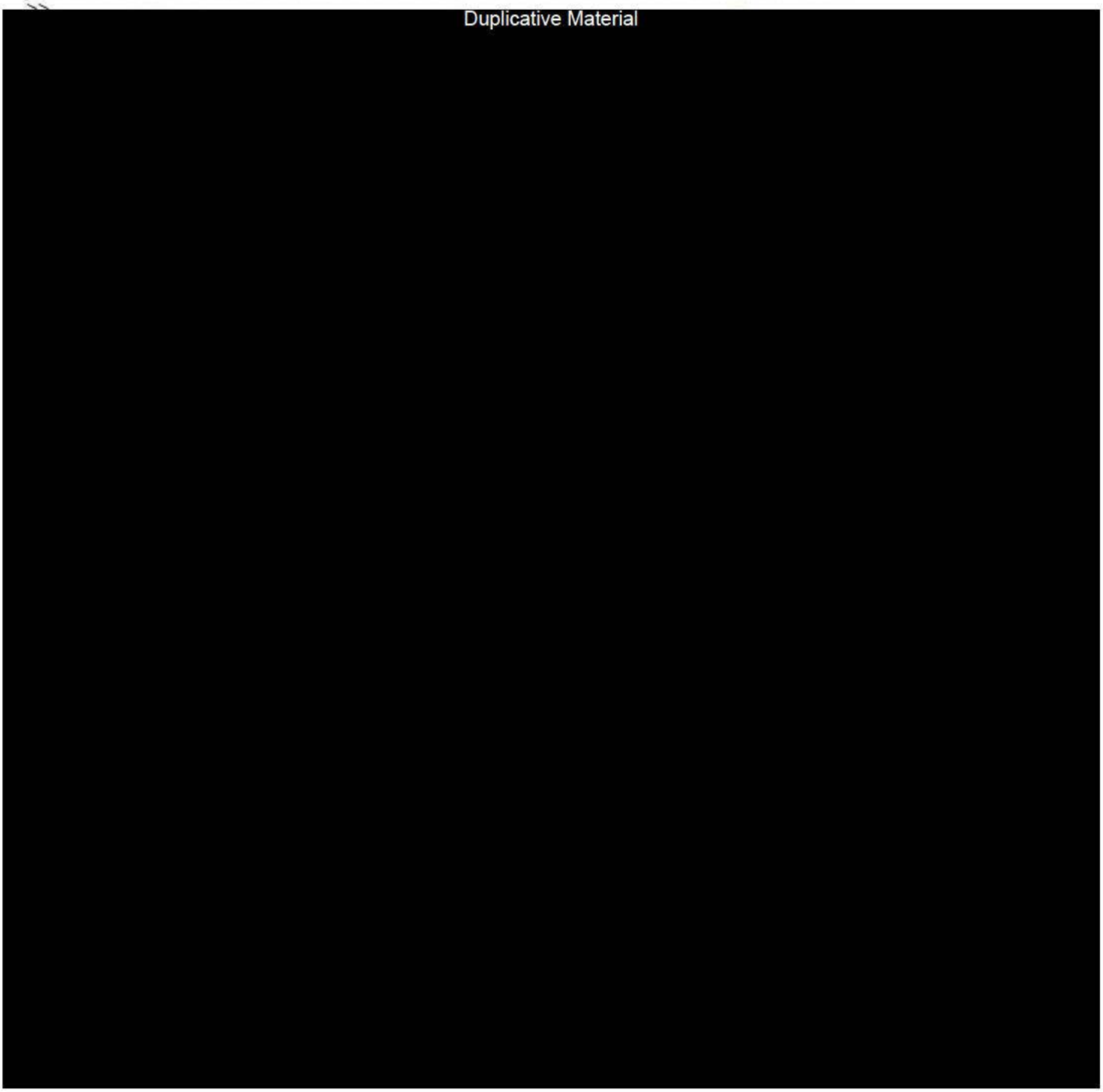
Gene,
I know you're a busy guy these days, but figured I'd follow up. Any chance you're free this Wednesday afternoon/evening? Also free Thursday morning.

Hope you're doing well,

Will

> On Jun 21, 2018, at 12:06 PM, William O. Scharf (b)(6) - Will Scharf Email Address wrote:
>
> Thanks Demi!
>
> Gene,
> How about dinner wednesday night? I have an RJC meeting but it should wrap by late afternoon.
>
> Hope you're doing well,

>
> Will
>
> Sent from my iPhone
>
>> On Jun 21, 2018, at 11:02 AM, Yeager, Demi (OAG) <Demi.Yeager@usdoj.gov> wrote:
>>



Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Sunday, July 8, 2018 9:27 AM
To:	Jonathan F. Thompson
Subject:	Decision
Attachments:	Tenorio-Serrano v. Driscoll (D. Ariz.).pdf

You'll find this decision useful (although it's not yet on the merits of the case).

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Guillermo Tenorio-Serrano,

Plaintiff,

v.

James Driscoll, et al.,

Defendants.

No. CV-18-08075-PCT-DGC (BSB)

ORDER

Plaintiff Guillermo Tenorio-Serrano is in custody on a DUI charge in Coconino County, Arizona. The United States Immigration and Customs Enforcement agency ("ICE") has determined that Plaintiff is not lawfully present in the United States and has issued a detainer and administrative warrant for his arrest, which could lead to his removal from the country. Plaintiff brings this lawsuit against Coconino County Sheriff James Driscoll, Coconino County Jail Commander Matt Figueroa, the Coconino County Jail District, and members of the Coconino County Board of Supervisors, challenging their policy of holding persons in state custody for up to 48 additional hours as requested in ICE detainers and warrants. Plaintiff asks the Court to preliminarily enjoin the Sheriff's Office and the Coconino County Detention Facility ("CCDF") from detaining him on the ICE warrant after he posts bail or resolves his state charges. Doc. 14. Plaintiff's preliminary injunction motion is fully briefed, and the Court heard oral

argument on June 28, 2018. Doc. 56. For the reasons that follow, the Court will deny the request for a preliminary injunction.

I. Facts.

On December 11, 2017, Plaintiff was arrested for allegedly driving under the influence in violation of Arizona misdemeanor statutes and was confined in CCDF as a pretrial detainee. Doc. 18 ¶ 2. On December 12, 2017, the Flagstaff Justice Court set Plaintiff's bail at $2,000. *Id.* ¶ 3. The bail was the only condition of Plaintiff's release. *Id.* ¶ 118. The same day, Plaintiff's sister visited CCDF to inquire whether Plaintiff would be released if the $2,000 bail was posted. *Id.* ¶ 120. A CCDF employee told her that payment of the bail would not result in Plaintiff's release because an ICE detainer had been lodged against him. *Id.* ¶ 121. On December 15, 2017, Joseph Breckinridge offered to post Plaintiff's bail with a personal credit card, and was told by a CCDF employee that while it typically takes pre-trial detainees one hour to be released after bail is posted, Plaintiff would be held for up to 48 hours due to an "ICE hold." *Id.* ¶¶ 122-28. Given this statement, Mr. Breckinridge did not tender Plaintiff's bail. *Id.* ¶ 130.

A Sheriff's Detention Facility Policy and Procedure effective since 2008, and revised on July 28, 2017, provides that upon reasonable suspicion that an inmate in the facility is unlawfully present in the United States, CCDF staff must notify the Detention Removal Office ("DRO"), a subsidiary of ICE, and have the inmate speak to the DRO over the telephone. Doc. 18-1 at 1. If the DRO determines that the inmate is in the country illegally, ICE will fax two forms to CCDF to be placed in the inmate's file: a Department of Homeland Security ("DHS") Form I-247A Notice of Action Immigration Detainer ("detainer"), and either a DHS Form I-200 Warrant for Arrest of Alien or a DHS Form I-205 Warrant of Removal/Deportation ("ICE warrant"). *Id.* A hold will then be placed in the inmate's file, and, when the inmate posts bail or resolves his state charges, detention staff will notify the DRO. *Id.* at 1-2.

The policy further provides that "the detainer will remain in effect and the inmate will remain in custody until" (1) the DRO or ICE sends a Form I-247A release notifying

CCDF to remove the detainer, (2) ICE takes custody of the inmate, or (3) the "detainer period" expires. *Id.* at 2. The detainer period "commences when the local or state criminal justice agency has no other legal basis for continuing the detention[,]" and "shall not exceed 48 hours." *Id.* "In the event DHS/ICE fails to assume actual physical custody of the detainee within 48 hours of the onset of the federal detainer (including Saturdays, Sundays and holidays) the detainee must be released." *Id.*

On December 12, 2017, ICE officials in Phoenix, Arizona became aware that Plaintiff was in the custody of the Sheriff and faxed two documents to CCDF: a Form I-247A detainer and a Form I-200 ICE warrant. Doc. 18 ¶¶ 82-83; Doc. 18-4. The detainer is signed by an ICE deportation officer and states that there exists probable cause to believe that Plaintiff is a removable alien based on "[s]tatements made by the alien to an immigration officer and/or other reliable evidence." Doc. 18-4 at 1. It is addressed to CCDF, and requests that CCDF maintain custody of Plaintiff for a period not to exceed 48 hours beyond the time he would otherwise be released. *Id.* The ICE warrant is signed by Barry Jansen, an authorized immigration officer, and is addressed to "any immigration officer authorized pursuant to Sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations." *Id.* at 2. Neither the Sheriff's Office nor CCDF has a written "287(g)" agreement with the federal government. Doc. 18 ¶ 98; *see* 8 U.S.C. § 1357(g).

Plaintiff argues that the Sheriff's policy of continuing to hold pre-trial detainees after they have satisfied all conditions for release on their state charges is unlawful because the Sheriff lacks authority under state and federal law to detain on the basis of an ICE warrant and detainer, and such detention violates the Fourth Amendment to the U.S. Constitution and Article II, § 8 of the Arizona Constitution. Doc. 14. Plaintiff seeks a preliminary injunction ordering Defendants to release him immediately upon posting of his $2,000 bail. *Id.* Defendants oppose the request for injunctive relief (Docs. 22, 28), as does the United States, which has filed a detailed statement of interest pursuant to 28 U.S.C. §§ 517 and 518 (Doc. 41).

II. Legal Standard.

"A preliminary injunction is an extraordinary remedy never awarded as a matter of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). To obtain a preliminary injunction, a plaintiff 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." *Id.* at 20; *see also All. For the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). "But if a plaintiff can only show that there are 'serious questions going to the merits' a lesser showing than likelihood of success on the merits then a preliminary injunction may still issue if the 'balance of hardships tips sharply in the plaintiff's favor,' and the other two *Winter* factors are satisfied." *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *All. For the Wild Rockies*, 632 F.3d at 1135). "Serious questions need not promise a certainty of success, nor even present a probability of success, but must involve a 'fair chance of success on the merits.'" *Cascadia Wildlands v. Scott Timber Co.*, 715 F. App'x 621, 624-25 (9th Cir. 2017) (quoting *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988)).

III. Article III Standing.

Defendants and the United States argue that Plaintiff lacks standing to challenge the Sheriff's detainer policy because he has not been injured by it. *See* Doc. 41 at 12-14. They argue that Plaintiff's current detention results from his DUI charge and his failure to post bail, not from Defendants' policy. They assert that any future detention under Defendants' policy is merely speculative. The Court does not agree.

"In order to invoke the jurisdiction of the federal courts, a plaintiff must establish 'the irreducible constitutional minimum of standing,' consisting of three elements: injury in fact, causation, and a likelihood that a favorable decision will redress the plaintiff's alleged injury." *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). The injury in fact must constitute "an invasion of a legally protected interest which is (a) concrete and particularized, and

(b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (citations omitted). At the preliminary injunction stage, a plaintiff must make "a clear showing of each element of standing." *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013).

The injury Plaintiff alleges is not his current detention it is the 48-hour detention he will face under the ICE detainer if he posts bail. The Supreme Court has explained that an "allegation of future injury may suffice if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (citation omitted). Plaintiff's future injury is "certainly impending." Defendants' written policy mandates that he be detained for up to 48 hours if CCDF has received an ICE detainer and warrant. Doc. 18-1. CCDF has received these documents and placed them in Plaintiff's file, and CCDF staff members have twice confirmed that CCDF will hold Plaintiff on the detainer if bail is posted.

At oral argument, Defendants relied on *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), and argued that Plaintiff's injury is dependent on a chain of speculative future events because ICE might withdraw the detainer request, choose not to act on it, or act quickly so that Plaintiff's detention is not extended beyond his state release time. In *Clapper*, there was no concrete indication that the challenged statute would actually be used against the plaintiffs. Rather, the plaintiffs' injury depended on a "highly attenuated chain of possibilities" that required multiple independent actors to take actions within their discretion. 568 U.S. at 410-14. Here, every action necessary to trigger Plaintiff's injury has been taken: ICE has submitted a detainer and warrant to CCDF, CCDF has placed the documents in Plaintiff's file, and CCDF has a written policy to detain Plaintiff if he posts bail. The mere possibility that ICE might somehow change its mind or act quickly does not render Plaintiff's imminent injury unduly speculative. As the Supreme Court has explained, when an individual is subject to threatened enforcement of a law, "an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Driehaus*, 134 S. Ct. at 2342. Other cases are in accord. *See, e.g.*, *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) ("[I]t is not necessary

that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights"); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007) ("[W]here threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat for example, the constitutionality of a law threatened to be enforced." (emphasis in original)).

Plaintiff has shown that his future injury is concrete, particularized, and imminent, not conjectural or hypothetical. Plaintiff presents undisputed evidence that he stands ready to post bail or have someone post bail on his behalf, and it is clear that he will be held under the ICE detainer when that occurs. The injury results from Defendants' detainer policy and is therefore fairly traceable to their conduct, and would be redressed by an injunction prohibiting Defendants from detaining him based on the ICE detainer and warrant. Plaintiff has standing.

IV. Likelihood of Success on the Merits.

Plaintiff makes three merits arguments. *See* Docs. 14, 51. First, he asserts that the Sheriff lacks authority under state law to make arrests for federal civil immigration violations. Second, he argues that federal law prohibits the Sheriff from complying with the ICE detainer. Third, he argues that detaining him under the federal detainer and warrant would violate the Fourth Amendment and a corresponding provision of the Arizona Constitution. In addressing these arguments on a preliminary injunction motion, the Court's task is to assess probabilities whether Plaintiff is *likely* to succeed on these claims. The Court is not making a final decision on the merits. That decision must await a more complete record and more thorough briefing.[1]

A. State Law Authority.

The parties present competing interpretations of Arizona law. Plaintiff argues that county sheriffs in Arizona may act only when expressly authorized by statute, and that no

[1] Plaintiff makes a lengthy preemption argument in his reply memorandum (Doc. 51), but the Court will not consider arguments raised for the first time in a reply brief. *Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 843 n. 6 (9th Cir. 2004).

statute authorizes the Sheriff to make civil immigration arrests. Defendants argue that Arizona sheriffs retain broad common law enforcement authority except where modified by statute, and that detaining Plaintiff under the federal detainer falls well within this power. Both sides rely on older Arizona cases to support their position.

1. Common Law.

Plaintiff argues that Arizona sheriffs lack common law powers and may act only when a statute expressly grants them authority. Article XII, § 4 of the Arizona Constitution states that the "duties, powers, and qualifications" of various county officers, including sheriffs, "shall be as prescribed by law." Plaintiff relies heavily on *Arizona State Land Dep't v. McFate*, 348 P.2d 912 (Ariz. 1960), which interpreted similar language in Article V, § 9 and held that "prescribed by law" means "the statutory law of the State and not the common law." *Id.* at 914.

McFate concerned the powers of the Arizona attorney general. The Arizona Supreme Court had previously held that "'in Arizona the Attorney General has no common-law power.'" *Id.* (quoting *Westover v. State*, 185 P.2d 315, 318 (Ariz. 1947)). In the absence of common law power, the Supreme Court in *McFate* held that the attorney general possesses only those powers conferred by the Arizona legislature. *Id.*; *see also Shute v. Frohmiller*, 90 P.2d 998, 1003 (Ariz. 1939), *overruled in part by Hudson v. Kelly*, 263 P.2d 362 (Ariz. 1953) ("no common-law powers or duties can attach to [the attorney general's] office but only those prescribed by statute"). Because Article XII, § 4 the portion of the Arizona Constitution that addresses sheriffs contains the same "prescribed by law" language as the attorney general provisions in Article V, § 9, Plaintiff argues that sheriffs also possess only powers prescribed by statute.

This is a credible argument, and it appears to be consistent with a number of Arizona cases. But it also appears to be contradicted by the Arizona Supreme Court's decision in *Merrill v. Phelps*, 84 P.2d 74 (Ariz. 1938). That case directly addressed the

power of county sheriffs in Arizona. The Supreme Court engaged in a fairly detailed discussion of the common law powers of sheriffs in England and reached this conclusion:

> The common law of England, so far as applicable to our circumstances and conditions, is the law of Arizona. The power exercised by the sheriff under the common law still pertains to our sheriff, except in so far as it has been modified by constitutional and statutory provisions.

Id. at 76 (citations omitted). This language clearly states that Arizona sheriffs possess common law powers, and that those powers can be "modified" by the legislature. *Merrill* goes on to discuss various Arizona statutes and finds that they impose on sheriffs the duties that were at issue in the case. *Id.* at 76-78.

Both sides cite *Merrill*. Defendants and the United States rely on its statement that sheriffs retain common law powers. They argue that this includes authority to arrest and detain for both criminal and civil offenses, and to cooperate with other sovereigns. Doc. 28 at 7-13 (citing, *e.g.*, 70 Am. Jur. 2d Sheriffs, Police, and Constables § 31 ("Common law duties are many and varied and encompass more than traditional law enforcement.")); Doc. 41 at 20-22. Plaintiff, by contrast, contends that *Merrill* ultimately looked to Arizona statutes for its decision, showing that the powers of sheriffs must be found in statutes. Both readings are plausible, but the Court notes that *Merrill*'s express statement that sheriffs retain common law powers stands in direct contrast to the statements in *McFate* and related cases that the Arizona attorney general does not possess common law powers. *McFate*, 348 P.2d at 914. This contrast suggests that there may be a difference between the sources of power for the attorney general and sheriffs, something the parties have not fully briefed.

Plaintiff cites an even older case, *Weidler v. Arizona Power Co.*, 7 P.2d 241 (Ariz. 1932), that addressed the duties of county treasurers. Those duties are set forth in the same constitutional article as county sheriffs Article XII, § 4. But *Weidler* devotes only two sentences to the issue, stating in conclusory language that because the treasurers' duties are "as prescribed by law," courts must "look to the statute for such duties, and

nothing not contained therein or reasonably to be implied from its terms can be held to be an official duty of the county treasurer." *Id.* at 242. *Weidler* does not discuss whether county sheriffs retain common law powers, and was decided six years before *Merrill*. If *Weidler* had announced a rule that Article XII, § 4 strips all county officers of their common law authority, *Merrill* presumably would have had no need to analyze this issue and would not have stated that the "power exercised by the sheriff under the common law still pertains to our sheriff[.]" *Merrill*, 84 P.2d at 76. The Court does not find *Weidler* to be persuasive authority in support of Plaintiff.

Plaintiff also points to a Ninth Circuit case, *Gonzales v. City of Peoria*, 722 F.2d 468, 477 (9th Cir. 1983), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999). *Gonzales* held that Arizona law enforcement officers could arrest persons for criminal violations of the federal Immigration and Nationality Act ("INA"). In dicta, and without citation to any Arizona authority, *Gonzales* also stated that "this authorization is limited to criminal violations" and the "[a]rrest of a person for illegal presence would exceed the authority granted [to the City of Peoria] police by state law." *Id.* at 476. The Court does not find this unsupported dicta to be persuasive authority for Plaintiff's position.

Both sides also attempt to invoke general principles. Plaintiff notes that "[t]he law is very jealous of the liberty of the individual, and while peace officers in the discharge of their duties must not be obstructed or interfered with, they may not lawfully deprive a citizen of his liberty except in the manner provided by law." *Platt v. Greenwood*, 69 P.2d 1032, 1036 (1937). Defendants note that "[p]rison administration is . . . a task that has been committed to the responsibility of [the legislative and executive] branches, and separation of powers concerns counsel a policy of judicial restraint." T*urner v. Safley*, 482 U.S. 78, 85 (1987); *see also Arpaio v. Baca*, 177 P.3d 312, 321 (Ariz. Ct. App. 2008) (courts have limited authority to interfere with a sheriff's duties to maintain and operate the county jails). These general provisions provide helpful context, but they do not,

without a more thorough exploration of the relevant common law, constitutional, and statutory provisions, provide a clear rule of decision at this stage of the litigation.

In short, both sides cite relevant authority, but the most salient cases are somewhat ambiguous and more than 50 years old. The parties have not briefed the history of the constitutional provisions at issue, the intent of the drafters, or the common law roots of the various offices covered by the provisions. Plaintiff's arguments clearly raise serious questions for the Court's consideration, but the Court cannot conclude that he is likely to succeed on the merits.

2. Statutory Authority.

Given the present uncertainty concerning the common law powers of Arizona sheriffs, the parties' statutory arguments are not of much help. Plaintiff cites no statute that expressly restricts a sheriff from cooperating with federal immigration authorities. To the contrary, the Arizona legislature has stated a preference for such cooperation in S.B. 1070, as will be discussed below. Thus, if *Merrill* is to be taken at its word that sheriffs possess common law powers except to the extent modified by the legislature Plaintiff has identified no express modification that would prevent Defendants from cooperating with the ICE detainer and warrant.

Plaintiff cites statutes that govern procedures for enforcing warrants issued by another county or state and notes that no statute addresses the procedure for responding to federal administrative warrants. *See* Doc. 14 at 4 (citing A.R.S. §§ 13-3964, 13-3841, et seq.; Ariz. R. Crim. P. 4.1(c)(2)). Plaintiff notes that Arizona statutes outline the sheriff's authority to make warrantless and unilateral arrests in the criminal context and in some civil contexts, but that no statute authorizes such arrests for civil immigration violations. Doc. 51 at 4-5 (citing A.R.S. § 13-3883(1), (2), (4) (warrantless criminal arrests); § 36-525(B) (psychiatric commitment); § 8-303(C) (juvenile delinquents and runaways); § 36-2026(A) (emergency intoxication commitment)). Again, however, these arguments are helpful only if the sheriff lacks common law power to detain Plaintiff.

Defendants and the United States argue that a number of Arizona statutes authorize the sheriff to comply with ICE detainers (*see* Doc. 28 at 9-13; Doc. 41 at 22-24), but none of the statutes appears to support this assertion. Defendants cite a statute requiring the sheriff to arrest for "public offenses." Doc. 28 at 9 (citing A.R.S. § 11-441(A)(2)). But the purpose of that duty is "the prompt and orderly administration of *criminal* justice." *State v. Monaco*, 83 P.3d 553, 558 (Ariz. Ct. App. 2004) (emphasis added). Defendants cite statutes authorizing the sheriff to "take charge of and keep the county jail," A.R.S. §§ 11-441(A)(5), "execute all process and orders regular on their face and issued by competent authority," A.R.S. § 11-447, "arrest a person who is already incarcerated" in the county jail, A.R.S. § 13-3907, and serve civil writs, A.R.S. § 12-1574. But these statutes do not expressly authorize the Sheriff to continue detention at the request of a federal agency.

Defendants cite A.R.S. § 31-122(A), which provides that "[t]he sheriff may receive and keep in the county jail any prisoner committed thereto by process or order issued under the authority of the United States." This appears to be the most relevant statute, but the Court needs further briefing on the scope of this statute and what is meant by "process or order."

Defendants argue that they are authorized to hold inmates on ICE detainers pursuant to their intergovernmental service agreement with the federal government ("IGSA"), on which ICE is an authorized rider. Doc. 28 at 10-11. The IGSA is an agreement for housing federal inmates and receiving reimbursement from the federal government, but Defendants point to nothing in it that purports to grant them authority to make arrests on behalf of the federal government. Indeed, Defendants and the United States appear to have different understandings of how the IGSA functions in the context of ICE detainers. *Compare* Doc. 28 at 10-11 ("[O]nce the ICE detention period begins, an inmate is no longer in Defendants' custody, but the custody of the federal government."), *with* Doc. 41 at 5-6 ("Until an immigration officer or a state or local officer who has been delegated immigration officer authority under a 287(g) agreement

arrests the detainee, the IGSA is not triggered, and the detainee remains in state custody.").

Defendants and the United States point to A.R.S. § 11-1051, commonly referred to as S.B. 1070, as supplying the sheriff's authority. Doc. 28 at 11-13; Doc. 41 at 22. The Arizona legislature enacted S.B. 1070 in 2010 to address the "compelling interest in the cooperative enforcement of federal immigration laws throughout all of Arizona." Laws 2010, Ch. 113, § 1. Its purpose is to "discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States." *Id.* Originally, S.B. 1070 authorized state and local officers to make unilateral warrantless arrests if they had probable cause to believe a person committed a public offense that made the person removable. In *Arizona v. United States*, 567 U.S. 387 (2012), the Supreme Court held that this portion of the statute was preempted. Defendants do not appear to dispute that even if this portion were still in effect, it would not authorize the detentions at issue in this case.

The statute states that "[n]o official or agency of this state or a county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law." A.R.S. § 11-1051(A). Defendants argue that this language expressly authorizes Arizona sheriffs "to comply with the enforcement of federal immigration law." Doc. 28 at 13. But the cited language is stated in terms of a prohibition: state and local officers may not limit the enforcement of federal immigration laws; it does not appear to be an affirmative grant of authority. The statute clearly establishes a strong state policy in favor of cooperating with federal immigration authorities, but it does not appear to supply the express authorization Plaintiff claims is necessary.[2]

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[2] The parties each rely on cases from other jurisdictions addressing the authority of state officials to comply with ICE detainers. *See, e.g.*, *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017); *City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 173 (5th Cir. 2018). But none is directly on point. In *City of El Cenizo*, Texas had enacted a statute that required local officers to cooperate with ICE detainers. 890 F.3d at 174. In *Lunn*, Massachusetts case law indicated that its law enforcement officers had no authority to arrest generally for civil matters. *Lunn*, 78 N.E.3d at 1154-56. Neither addresses

3. Serious Questions.

Plaintiff's arguments raise serious questions that require further litigation, but the Court cannot conclude that he is likely to succeed on his claim that Defendants lack authority under state law to detain individuals based on civil immigration offenses. The Court will consider below whether these serious questions are sufficient to support a preliminary injunction.

B. Federal Authority.

Plaintiff claims that Defendants' conduct is prohibited by the INA because Defendants have not entered into a § 287(g) agreement with the federal government. *See* Doc. 51 at 11-17. Section 287(g) of the INA, codified at 8 U.S.C. § 1357(g), allows DHS to enter into formal written agreements with state and local governments to "perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States." 8 U.S.C. § 1357(g)(1). State officials empowered under § 287(g) agreements are subject to DHS's supervision, and they must have knowledge of federal law and receive adequate training. § 1357(g)(2), (3). Citing these provisions, Plaintiff argues that the Sheriff cannot detain aliens for immigration violations a "function of an immigration officer" because the Sheriff has not entered into a § 287(g) agreement. Doc. 51 at 11-17.

Defendants argue that they have authority to comply with ICE detainers pursuant to § 1357(g)(10), which states:

> Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State--
>
> > (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

---

Arizona law.

> (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

8 U.S.C. § 1357(g)(10). Specifically, Defendants argue that complying with ICE detainers constitutes permissible "cooperation" with "detention" under § 1357(g)(10)(B). Doc. 28 at 7-8.

Both parties cite the United States Supreme Court's *Arizona* decision to support their respective interpretations of "cooperate." *Arizona* was a preemption case. In finding that the portion of S.B. 1070 granting state officers independent and warrantless arrest power was preempted as an obstacle to the federal scheme, the Supreme Court explained: "There may be some ambiguity as to what constitutes cooperation under the federal law; but no coherent understanding of the term would incorporate the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." 567 U.S. at 410. The Court also noted that DHS provided the following examples of activities that would constitute cooperation under § 1357(g)(10)(B): "situations where States participate in a joint task force with federal officers, provide operational support in executing a warrant, or allow federal immigration officials to gain access to detainees held in state facilities." *Id.* *Arizona* concerned unilateral arrests by state law enforcement officers arrests for immigration offenses made without a request, approval, or other instruction from the federal government. *Id.* It did not address the question presented in this case: whether the INA prohibits state officials from detaining an unauthorized immigrant at the request of federal immigration authorities.

In any event, the Court is not persuaded at this stage that § 1357(g) prohibits Defendants from complying with detainers. Defendants' policy does not authorize Sheriff officers to unilaterally investigate, apprehend, or detain persons for immigration violations. Rather, it authorizes the Sheriff to cooperate with a request from ICE to detain a specific inmate already in the Sheriff's custody, whom ICE has independently

determined is removable, for a short period to facilitate ICE's apprehension of the individual. This conduct appears to fall within § 1357(g)(10)(B). Plaintiff has not shown a likelihood of success on this claim.

The Court also has a general concern about the parties' arguments. Plaintiff argues that continuing to hold an individual on the basis of an immigration detainer after the state-law justification has expired constitutes a new arrest, and proceeds to address Defendants' actions entirely in the context of arrests. While the Court does not necessarily disagree with Plaintiff's premise that continued detention is tantamount to an arrest the Court sees at least some meaningful difference between a unilateral arrest by a sheriff's officer and continued detention on the basis of a federal warrant. In the former, the officer is acting entirely on his own authority and on the basis of his own judgment and investigation. In the latter, the officer is acting on the probable cause determination of a federal officer empowered and trained to make such determinations. The extent and significance of this distinction will need to be explored further in this litigation, but it is noteworthy that all of the authorities relied on by Plaintiff address unilateral arrests by state officers. These include the cases cited by Plaintiff, including *Gonzales*, Plaintiff's arguments regarding the need for training and supervision of state officers under § 287(g) agreements, and Plaintiff's arguments regarding 8 U.S.C. § 1252c. Defendants also primarily cite statutes and cases dealing with unilateral arrests. This focus undoubtedly is due to a lack of authority addressing the specific issue in this case, but future briefing should consider and address the differences between unilateral arrests and continued detentions on the basis of federal warrants.

C. Fourth Amendment.

Even if the Sheriff is authorized by state law to comply with ICE detainers, Plaintiff claims that such compliance would violate the Fourth Amendment. But Plaintiff cites no case holding that federal immigration officers violate the Fourth Amendment when they arrest persons based on probable cause to believe they are removable under federal law, and if such arrests do not violate the Fourth Amendment when made by

federal officers, they do not violate the Fourth Amendment when made by state officers. The same Fourth Amendment applies to both, and Plaintiff concedes that the parallel provision of the Arizona Constitution, Article II, § 8, is "coextensive with" the Fourth Amendment in all aspects relevant to this case. Doc. 14 at 5.

Plaintiff makes two specific arguments as to why his detention under the ICE detainer would violate the Fourth Amendment: (1) it is not supported by probable cause to believe a *criminal* violation has occurred, and (2) probable cause must be determined by a judge, not an ICE enforcement officer. Doc. 14 at 6-8, 12-13. Neither argument is likely to succeed or raises serious questions.

1. Probable Cause of Removability Is Sufficient.

Plaintiff asserts that all arrests must be "based on probable cause to believe that the individual has committed a crime." Doc. 14 at 6 (quoting *Bailey v. United States*, 568 U.S. 186, 192 (2013)). This certainly is the general rule in the criminal context, *Bailey*, 568 U.S. at 192, but arrests for civil reasons are also constitutionally permissible. *See, e.g.*, *Maag v. Wessler*, 960 F.2d 773, 776 (9th Cir. 1991), *as amended on denial of reh'g* (Apr. 1, 1992) (upholding arrest based on probable cause of danger due to serious mental illness); *United States v. Phillips*, 834 F.3d 1176, 1181 (11th Cir. 2016) ("The 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.") (collecting cases).

Arrests based on probable cause of removability a civil immigration violation have been long recognized in the courts. *See Abel v. United States*, 362 U.S. 217, 230 (1960) ("Statutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time."); *City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 187 (5th Cir. 2018) ("It is undisputed that *federal* immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability.") (emphasis in original). And Plaintiff does not dispute that his ICE warrant is based on probable cause to believe that he is a removable alien.

2. A Judicial Warrant Is Not Required.

The INA expressly authorizes ICE to arrest and detain aliens pending removal decisions "on a warrant issued by the Attorney General." *See* 8 U.S.C. § 1226. It does not require judicial approval of the warrant. The Supreme Court noted more than 50 years ago that there is "overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens." *Abel*, 362 U.S. at 233. Plaintiff cites no authority suggesting that ICE must seek judicial warrants in order to arrest individuals suspected of being removable.[3]

V. Injunctive Relief.

Because Plaintiff has raised serious questions about whether Defendants' actions are authorized under Arizona law, he may obtain a preliminary injunction if the balance of hardships tips sharply in his favor. *Shell Offshore, Inc.*, 709 F.3d at 1291. Forty-eight hours of unauthorized detention would impose a significant hardship on Plaintiff.[4] But Defendants would also face serious hardship if the Court ordered them to refrain from complying with ICE detainers. The injunction would interfere with their judgment as elected officials, would interfere with the Arizona legislature's policy determination in S.B. 1070 that Arizona should cooperate with federal immigration enforcement, and might interfere with Arizona's interest in preventing unlawful immigration, as recognized by the Supreme Court. *See Arizona*, 567 U.S. at 397-99.

Because both sides would face hardship if the Court ruled against them, the Court cannot find that the balance tips sharply in Plaintiff's favor. As a result, Plaintiff cannot

---

[3] The Court also notes that probable cause in a particular case can be established on the basis of the collective knowledge of all law enforcement officers involved, provided there is communication among the officers. *United States v. Villasenor*, 608 F.3d 467, 475 (9th Cir. 2010); *United States v. Ramirez*, 473 F.3d 1026, 1032-33 (9th Cir. 2007). Thus, state officers may act on valid probable cause determinations by federal officers. *See United States v. Martin Takatsy, et al.*, No. CR-17-08163-PCT-DGC, 2018 WL 3221598, at *6-8 (D. Ariz. July 2, 2018).

[4] Plaintiff claims that he will suffer irreparable harm from a violation of his constitutional rights, but, for reasons explained above, he has not raised serious questions on his Fourth Amendment claim.

obtain preliminary injunctive relief on the basis of the serious questions of state law he has raised.

IT IS ORDERED that Plaintiff's motion for a preliminary injunction (Doc. 14) is **denied**.

Dated this 5th day of July, 2018.

David G. Campbell
United States District Judge

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, August 24, 2018 8:53 AM
To: [redacted]
Subject: FW: Trump's immigration policy gives me hope I may see my daughter again
Attachments: ICE Letter.pdf; [redacted] Overview for Hill Drop (4).pdf
Importance: High

Good morning, Bob,

I hope you are well. I tried to call you yesterday about the below, but your voicemail would not accept any messages. Can you please let me know when a good time to talk might be over the next few business days?

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Lori Handrahan [redacted]
Sent: Tuesday, July 24, 2018 10:58 AM
To: Wiles, Morgan (OAG) <mwiles@jmd.usdoj.gov>
Subject: Trump's immigration policy gives me hope I may see my daughter again
Importance: High

Dear Ms. Wiles,

Thank you so much for your kindness.

As mentioned, I was told to contact AG Sessions' Chief of Staff Matthew Whitaker as AG Sessions is taking a personal interest in cases where the criminal alien has falsely claimed abuse (under VAWA) and illegally obtain a green card.

According to NBC White House staffers are also looking for VAWA fraud cases https://www.nbcwashington.com/investigations/White-House-Staffers-Meet-With-Citizens-Who-Say-They-Were-Victims-of-Marriage-Fraud-487699471.html

My case has to be one of the strongest examples of how broken VAWA is and why it must be repealed. I would gladly testify to this. Here is an article I published with a bit of background -- **Trump's immigration policy gives me hope I may see my daughter again** https://www.sundayguardianlive.com/news/trumps-immigration-policy-gives-hope-may-see-daughter

I'm also attaching two documents with broad overview of my case. In additions I have several neat binder of supporting documents, police records, etc. which I can also provide.

My hope and my prayer is that AG Sessions may take action on my case.

Kindest,

Lori Handrahan, Ph.D.
www.LoriHandrahan.com
Washington DC
(b) (6)

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, August 27, 2018 9:39 AM
To: Bob Flores
Subject: RE: Trump's immigration policy gives me hope I may see my daughter again

Let's plan on tomorrow afternoon. 2:00?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Bob Flores [redacted (b) (6)]
Sent: Friday, August 24, 2018 12:06 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Trump's immigration policy gives me hope I may see my daughter again
Importance: High

Gene, Good afternoon. Thanks for your efforts in making contact. I'm sorry I missed your call yesterday—([redacted (b) (6)] I am available next week, Monday morning or afternoon, Tuesday afternoon, after 2pm, and Wednesday anytime. I trust that your schedule will line up with one of those times. Again, many thanks, Bob Flores

J. Robert Flores, Esq.
[redacted (b) (6)]

On Aug 24, 2018, at 8:52 AM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

[redacted Duplicative Material]

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, September 4, 2018 10:24 PM
To: Dimple Gupta
Subject: RE: Hello from Dimple

Hi Dimple!

Thanks for the note. (b) (6) (b) (6) . Sure thing on the call. Let's connect on personal email: (b) (6)

Thanks for reaching out!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Dimple Gupta (b) (6)
Sent: Tuesday, September 4, 2018 2:45 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Hello from Dimple

Gene:

I hope you are well. I know you must be swamped. I don't know how much we talked after the election. (b) (6) and was hoping I could pick your brain for some advice.
If you have a few minutes to talk, I would be extremely grateful. My number is (b) (6)

Bes regards,
Dimple
(b) (6)

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, October 14, 2018 9:57 PM
To: Marguerite Telford
Subject: RE: Invitation to speak

Hi Marguerite!

Thank you so much for the emails, and for following up. Things have just been so busy—and I don't mean to leave you hanging. I don't think that I can make it at the moment, but what's the latest I can let you know?

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Marguerite Telford <mrt@cis.org>
Sent: Thursday, October 11, 2018 10:07 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Gene Hamilton [redacted (b) (6)]; [redacted (b) (6)]
Subject: Re: Invitation to speak

Gene -
I am bringing this invitation to the top of your mailbox! We would love to have you participate in our October 30 immigration bootcamp at the NPC. The audience is primarily immigration LAs and LDs from the House and Senate. But we have a handful of political appointees coming as well. Asylum and sanctuaries are two areas these indiviudals need to understand. I hope you will be able to spend some time with us - you choose the time slot!
Marguerite

The Center for Immigration Studies is pleased to invite you to a day-long seminar on immigration to be held at the National Press Club.

This invitation-only event is designed to provide legislative staffers and agency personnel with an opportunity to delve into current immigration impacts and trends, as well as the deeper policy issues. Our experts will go beyond the clichés, providing data, context, and resources to equip individuals involved in immigration policy.

The interactive sessions will cover current legislation, visa programs, national security, law enforcement, labor markets, fiscal costs, and the most recent statistics.

Speaking at the **Tuesday, October 30**, event will be the following CIS experts:

- **Todd Bensman,** Senior National Security Fellow
- **Dan Cadman,** Fellow
- **Andrew Arthur,** Resident Fellow in Law and Policy
- **Jessica Vaughan**, Director of Policy Studies
- **Steve Camarota**, Director of Research
- **Mark Krikorian**, Executive Director

The sessions will be off the record. Breakfast and lunch will be provided.

Immigration is voters' top political issue for the mid-terms and will undoubtedly remain at the center of the national discussion for the foreseeable future. We would like this seminar to help inform those engaged in that discussion. I hope you will join us.

- Mark Krikorian

To RSVP please contact:
Marguerite Telford
Director of Communications, Center for Immigration Studies
mrt@cis.org
(202) 466-8185

On Mon, Oct 8, 2018 at 12:31 PM Marguerite Telford <mrt@cis.org> wrote:

> Gene -
>
> The Center is planning an immigration seminar for October 30th at the NPC. As those informed on immigration leave the Hill to work for the Adminsitration, we have found a need for immigration education for staffers. Also, as political appointees have started leaving the Administration to work outside the government, we have found a need to educate those at the agencies. We would love to have you speak at this event and speak about asylum reform, sanctuaries, immigration court . . . or anything you think is important.
>
> Interested????? I would love to have you speak near the end of the day, but I am open to whatever works best for you.
>
> Below is a draft invitation.
>
> Marguerite
>
> The Center for Immigration Studies is pleased to invite you to a day-long teaching seminar on immigration to be held at the National Press Club.
>
> This invitation-only event is designed to provide legislative staffers and agency personnel with in-depth background in immigration issues. Our experts will go beyond the clichés, providing data, context, and

resources to equip individuals involved in immigration policy.

The interactive sessions will cover current legislation, national security, law enforcement, labor markets, fiscal costs, and the most recent statistics.

Speaking at the **Tuesday, October 30**, event will be:

- **Todd Bensman,** Senior National Security Fellow, Center for Immigration Studies
- **Dan Cadman,** Fellow, Center for Immigration Studies
- **Andrew Arthur,** Resident Fellow in Law and Policy
- **Jessica Vaughan**, Director of Policy Studies, Center for Immigration Studies
- **Steve Camarota**, Director of Research, Center for Immigration Studies
- **Mark Krikorian**, Executive Director, Center for Immigration Studies

The sessions will be off the record. Breakfast and lunch will be provided.

Immigration is voter's top political issue for the mid-terms and will undoubtedly remain at the center of the national discussion for the foreseeable future. We would like this seminar to help inform those engaged in that discussion. I hope you will join us.

To RSVP or for more information, contact Marguerite Telford, our Director of Communications, at mrt@cis.org.

--
Marguerite Telford
Director of Communications
Center for Immigration Studies
1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org www.cis.org

--
Marguerite Telford
Director of Communications
Center for Immigration Studies
1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org www.cis.org

U.S. Department of Justice
Office of Information Policy
441 G Street, NW
Sixth Floor
Washington, DC 20530

Telephone: (202) 514-3642

November 21, 2019

Austin Evers
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005
FOIA@americanoversight.org

Re: DOJ-2019-000063
19-cv-1339 (D.D.C.)
TAZ:JMS

Dear Austin Evers:

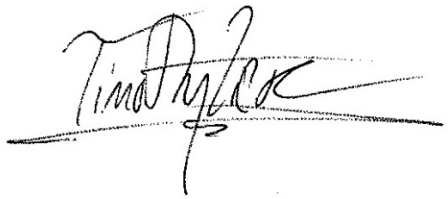
This is the final response to your Freedom of Information Act (FOIA) request dated and received in this Office on October 4, 2018, in which you requested email communications sent by Gene Hamilton, Counselor to the Attorney General, to any email address ending in .com/.net/.org/.edu/.mail, dating since October 26, 2017. This response is made on behalf of the Office of the Attorney General (OAG).

Please be advised that a search has been conducted on behalf of OAG. I have determined that 156 pages containing records responsive to your request are appropriate for release with excisions made, some on behalf of the Department of Homeland Security and Immigration and Customs Enforcement, pursuant to Exemptions 5, 6, and 7(C) of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6), and (b)(7)(C), and copies are enclosed. Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption 7(C) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Please be advised that duplicative material was not processed, and is marked accordingly.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Alan Burch of the U.S. Attorney's Office for the District of Columbia, at (202) 252-2550.

Sincerely,



Timothy Ziese
Senior Reviewing Attorney
for
Vanessa R. Brinkmann
Senior Counsel

Enclosures

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, December 18, 2017 2:45 PM
To:	Ted Hesson
Subject:	RE: DOJ

Hi Ted,

Hope all is well. Please reach out to Devin in OPA, who can probably assist.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Ted Hesson [mailto:thesson@politico.com]
Sent: Monday, December 18, 2017 2:38 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: DOJ

Hi Gene – I'm following up on this request. I'm hoping to get some feedback related to a story I'm working on.

From: Ted Hesson <thesson@politico.com>
Date: Friday, December 1, 2017 at 2:33 PM
To: "gene.hamilton@usdoj.gov" <gene.hamilton@usdoj.gov>
Subject: DOJ

Hi Gene – do you have time to touch base later today or early next week? This isn't about a particular story, I'd just like to hear what's happening at DOJ on the immigration front. I'm at (b) (6) .

Best,

Ted

--
Ted Hesson
Employment and Immigration Reporter
POLITICO Pro
703-672-2806 (w) | (b) (6) (c)
thesson@politico.com

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, January 3, 2018 4:50 PM
To:	Nancy Cook
Cc:	O'Malley, Devin (OPA)
Subject:	Re: DACA negotiations out of WH

Hi Nancy,

Thanks very much for the note, and happy New Year! I am copying Devin from OPA.

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jan 3, 2018, at 2:11 PM, Nancy Cook <ncook@politico.com> wrote:

> Hi Gene,
>
> I'm a White House reporter at Politico, covering policy out of the administration. I'm working on a piece about the White House's approach to DACA and other immigration questions as part of the spending package negotiations and would be curious to hear your thoughts, since you've worked so closely on immigration policy at DOJ, DHS, and Sen. Session's office. I'd also be curious to learn more about the role Stephen Miller is playing in the negotiations, alongside Gen. Kelly and Marc Short.
>
> Happy to talk on background. My cell is (b) (6)
>
> Thanks,
> Nancy
> --
> Nancy Cook
> White House reporter
> POLITICO
> (b) (6) (m)
> 703-341-4644 (w)
> Email: ncook@politico.com
> Twitter: nancook

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, January 9, 2018 10:34 AM
To:	steve.hamilton@westrock.com
Subject:	POCs

Here are the POCs for ICE in Georgia, who would be good contacts for anyone interested in partnering to combat human trafficking. I would imagine that SAC [redacted] and the Acting Community Relations Officer, Ms. [redacted] will be the primary points of contact, but FOD [redacted] can certainly be helpful also.

FOD [redacted]
[redacted]@ice.dhs.gov
Office: 404-89[redacted]
Mobile: 716-270-[redacted]

SAC [redacted]
[redacted]@ice.dhs.gov
Office: 404-346-[redacted]
Mobile: 202-25[redacted]

NOTE: Atlanta Community Relations Officer position is currently vacant. The position is remotely covered by Acting Regional Director [redacted], who sits in the Tampa office.

Community Relations Officer/Acting Regional Director [redacted]
[redacted]@ice.dhs.gov
Office: 813-357[redacted]
Mobile: 813-539[redacted]

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, January 23, 2018 10:05 PM
To:	Johnson, Steffen N.
Cc:	Starr, Ken; McHenry, James (EOIR); Catherine T Bennett (OAG) (cbennett@jmd.usdoj.gov)
Subject:	RE: Invitation to the Attorney General Jefferson B. Sessions, III

Thank you, Steffen. I'm copying Cathy Bennett, who can make arrangements for our meeting on the 8th.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Johnson, Steffen N. [mailto:SJohnson@winston.com]
Sent: Monday, January 22, 2018 2:01 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Starr, Ken <Ken_Starr@baylor.edu>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>
Subject: RE: Invitation to the Attorney General Jefferson B. Sessions, III

Thank you—that's great to hear. We would propose that we meet on 3 p.m. on Thursday February 8. Please let us know if that works.

Thank you again.

Best,
Steffen

From: Hamilton, Gene (OAG) [mailto:Gene.Hamilton@usdoj.gov]
Sent: Monday, January 22, 2018 1:27 PM
To: Johnson, Steffen N. <SJohnson@winston.com>
Cc: Starr, Ken <Ken_Starr@baylor.edu>; McHenry, James (EOIR) <James.McHenry@usdoj.gov>
Subject: RE: Invitation to the Attorney General Jefferson B. Sessions, III

Hi Steffen,

Thanks for the reply, and apologies for my delay. James McHenry—the Director of the Executive Office for Immigration Review—and I would be happy to meet or speak with you on either day. Perhaps after 2:00 on the 8th, if that still works on y'all's end?

Best regards,

Gene P. Hamilton
Counselor to the Attorney General

U.S. Department of Justice

From: Johnson, Steffen N. [mailto:SJohnson@winston.com]
Sent: Wednesday, January 17, 2018 10:32 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Starr, Ken <Ken_Starr@baylor.edu>
Subject: RE: Invitation to the Attorney General Jefferson B. Sessions, III

Mr. Hamilton,

If convenient for those attending from the Department, we would propose to meet either anytime on Friday, February 9, or sometime after 2:00 p.m. on Thursday, February 8. If those times are infeasible, we'll work to accommodate your schedule.

Thank you again for your willingness to meet with us.

Best regards,
Steffen

From: Hamilton, Gene (OAG) [mailto:Gene.Hamilton@usdoj.gov]
Sent: Tuesday, January 16, 2018 3:34 PM
To: Johnson, Steffen N. <SJohnson@winston.com>
Subject: RE: Invitation to the Attorney General Jefferson B. Sessions, III

Good afternoon, Steffen,

I hope that this note finds you well. Please let me know if you would like to discuss the matter referenced in the invitation to the Attorney General.

Thank you,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Schedule, AG84 (OAG)
Sent: Friday, January 5, 2018 2:21 PM
To: sjohnson@winston.com
Cc: Schedule, AG84 (OAG) <AG84Schedule@jmd.usdoj.gov>; Bryant, Errical (OAG) <ebryant@jmd.usdoj.gov>
Subject: Invitation to the Attorney General Jefferson B. Sessions, III

Dear Steffen Johnson:

Thank you for inviting the Attorney General to meet with Mr. Ken Starr. Unfortunately, the Attorney General has to decline your gracious offer. However, your request has been forwarded to our staff, someone from this office will reach out to you. Thank you for thinking of Attorney General Sessions.

Office of the Attorney General | U.S. Department of Justice
950 Pennsylvania Avenue, NW | Washington, DC 20530

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, January 24, 2018 11:24 AM
To:	McHenry, James (EOIR); Johnson, Steffen N.; Ken_Starr@baylor.edu
Subject:	Invitation to Attorney General Sessions

POC: Gene Hamilton, 202-514-4969
U.S. Department of Justice
For entry: 950 Constitution Avenue, NW – Visitor Center

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, January 24, 2018 11:28 AM
To: McHenry, James (EOIR); Johnson, Steffen N.; Ken_Starr@baylor.edu
Subject: Invitation to Attorney General Sessions

POC: Gene Hamilton, 202-514-4969
U.S. Department of Justice
For entry: 950 Constitution Avenue, NW – Visitor Center

ENTRY CORRECTION: 10th & Constitution Avenue, NW – Visitor Center

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, January 30, 2018 2:28 PM
To:	Art Arthur; McHenry, James (EOIR)
Cc:	O'Malley, Devin (OPA)
Subject:	RE: Introduction

How about 4:00 here at Main Justice? If that works for you, I'll put you in touch with someone who will coordinate logistics.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Art Arthur [mailto:ara@cis.org]
Sent: Tuesday, January 30, 2018 12:47 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>
Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Introduction

If that works for everyone else, it will work for us. Or, we can punt to next week. Please advise what works best for you.

Sent from Mail for Windows 10

From: Hamilton, Gene (OAG)
Sent: Tuesday, January 30, 2018 10:45 AM
To: Art Arthur; McHenry, James (EOIR)
Cc: O'Malley, Devin (OPA)
Subject: RE: Introduction

I hate to say it, but I'm now slammed Thursday morning. Thursday afternoon might work, maybe 4:30?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Art Arthur [mailto:ara@cis.org]
Sent: Tuesday, January 30, 2018 10:33 AM
To: McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Introduction

I will be accompanied by our Executive Director, Mark Krikorian, if that is acceptable to you.

What time works best for each of you? Also, will we be meeting at 5107 Leesburg Pike, Main Justice, or some third location? We are flexible.

Sent from Mail for Windows 10

From: McHenry, James (EOIR)
Sent: Friday, January 26, 2018 5:38 PM
To: Hamilton, Gene (OAG); Art Arthur
Cc: O'Malley, Devin (OPA)
Subject: RE: Introduction

Thursday morning is fine with me.

From: Hamilton, Gene (OAG)
Sent: Friday, January 26, 2018 1:09 PM
To: Art Arthur <ara@cis.org>
Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>
Subject: Re: Introduction

Thursday morning might be best for me

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jan 26, 2018, at 10:50 AM, Art Arthur <ara@cis.org> wrote:

> Devin-
>
> Thank you.
>
> James/Gene-
>
> Would you gentlemen be available on Thursday or Friday next week?
>
> Thanks,
> Art

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Friday, January 26, 2018 10:30 AM
To: Andrew Arthur <ara@cis.org>
Cc: McHenry, James (EOIR) <James.McHenry@usdoj.gov>; Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Subject: Introduction

Hi Art-

Per your request, I reached out to James McHenry, who would appreciate the opportunity to meet. I've copied both James and Gene Hamilton (whom I think you know) in order to coordinate schedules. Keep me apprised of meeting times, as I'd like to either join or stop by to introduce myself to you.

Thanks

Devin

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353-8763
Cell: (b) (6)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, January 30, 2018 2:45 PM
To:	Catherine T Bennett (OAG) (cbennett@jmd.usdoj.gov); Tracy T Washington (OAG) (twashington@jmd.usdoj.gov)
Cc:	Art Arthur
Subject:	Thursday Meeting

Good afternoon, Cathy and Tracy,

I've CC'd Art Arthur to this email. Art and his colleague, Mark Krikorian, will be meeting with me, James McHenry, and Devin O'Malley at 4:00 on Thursday afternoon in 5228 (assuming it's available). Could you please help them with information about how to access the building on Thursday?

Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, February 12, 2018 5:21 PM
To:	John Blount
Subject:	RE: Secure Act Negotiations

Do you have language that NSA would like to see?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: John Blount [mailto:john.blount@ervinhillstrategy.com]
Sent: Monday, February 12, 2018 4:50 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Secure Act Negotiations

Thanks. We meet w POTUS tomorrow on this subject. I will be around Thursday tho.

John Blount
SVP, Global Government Affairs
Ervin | Hill Strategy
410 First Street SE
Suite 300
Washington, DC 20001
C- (b) (6)

On Feb 12, 2018, at 4:30 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Hi John,
>
> Sorry for the delay. Today has been a mess with everything else going on. I'll probably be here on the Hill most of the week. Any chance you'll be over this way?
>
> Thanks,
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> ---
>
> **From:** John Blount [mailto:john.blount@ervinhillstrategy.com]
> **Sent:** Monday, February 12, 2018 8:57 AM
> **To:** Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> **Subject:** Re: Secure Act Negotiations
>
> Gene. Do you have some time to meet today before noon?
>
> John Blount

John Blount
SVP, Global Government Affairs
Ervin | Hill Strategy
410 First Street SE
Suite 300
Washington, DC 20001
C- (b) (6)

On Feb 11, 2018, at 12:06 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Thanks very much, Jonathan. I'd be happy to sync sometime tomorrow in person. Please let me know what windows might work for y'all. My schedule is going to be somewhat in flux for the next few days so it's probably easier to try to work with your schedules.
>
> Thanks!
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> ---
>
> **From:** Jonathan F. Thompson [mailto:jfthompson@sheriffs.org]
> **Sent:** Sunday, February 11, 2018 11:40 AM
> **To:** Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; John Blount - Global Government Affairs (john.blount@ervinhillstrategy.com) <john.blount@ervinhillstrategy.com>; Robert Gualtieri <rgualtieri@pcsonet.com>
> **Subject:** Secure Act Negotiations
>
> Gene,
> Want to offer Sheriff Gualtieri as a technical asset for the next few days.
>
> John can you please work with Gene to sit down to coordinate our inputs. Gene is DOJ lead on this week's talks with Hill.
>
> Thank you!
>
> Jonathan Thompson
> 703.838.5300
>
> Please forgive any typos, errors or tonal shortcomings as this message is being done on my phone.
>
> ---
>
> **From:** Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
> **Sent:** Sunday, February 11, 2018 11:23:08 AM
> **To:** Cook, Steven H. (ODAG); John Blount - Global Government Affairs (john.blount@ervinhillstrategy.com)
> **Cc:** Jonathan F. Thompson
> **Subject:** RE: contact email for Gene Hamilton
>
> Hey y'all,

Thanks for the connection with my new contact info, Steve. Jonathan and John, I look forward to speaking with y'all soon.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Cook, Steven H. (ODAG)
Sent: Sunday, February 11, 2018 11:22 AM
To: John Blount - Global Government Affairs (john.blount@ervinhillstrategy.com) <john.blount@ervinhillstrategy.com>
Cc: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Jonathan Thompson (jfthompson@sheriffs.org) <jfthompson@sheriffs.org>
Subject: contact email for Gene Hamilton

John,

Jonathan called me earlier about connecting you with Gene Hamilton via email. I have copied Gene on this email to facilitate your contact.

Steve

Steven H. Cook
Associate Deputy Attorney General
950 Pennsylvania Ave. NW
Washington D.C. 20530-0001

Steven.H.Cook@usdoj.gov

Office: 202.305.0180
Cell: (b) (6)
Cell: (b) (6)

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, March 2, 2018 4:28 PM
To: August Flentje
Subject: RE: Call

Got it

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: August Flentje [mailto:[redacted (b) (6)]]
Sent: Friday, March 2, 2018 4:28 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Call

Us Atty wanted to hear about the case and i think Chad looped in Rachael.

On Mar 2, 2018 1:56 PM, "Hamilton, Gene (OAG)" <Gene.Hamilton@usdoj.gov> wrote:

> Who organized?
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> **From:** August Flentje [mailto:[redacted (b) (6)]]
> **Sent:** Friday, March 2, 2018 3:55 PM
> **To:** Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> **Subject:** RE: Call
>
> With us atty.
>
> On Mar 2, 2018 1:54 PM, "August Flentje" [redacted (b) (6)] > wrote:
>
> > No calif.
> >
> > On Mar 2, 2018 1:13 PM, "Hamilton, Gene (OAG)" <Gene.Hamilton@usdoj.gov> wrote:
> >
> > > Is it Garza?
> > >
> > > Gene P. Hamilton
> > > Counselor to the Attorney General
> > > U.S. Department of Justice
> > >
> > > **From:** August Flentje [mailto:[redacted (b) (6)]]
> > > **Sent:** Friday, March 2, 2018 3:12 PM

To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Call

Hmm..rachael is. You should be on probably

On Mar 2, 2018 1:09 PM, "Hamilton, Gene (OAG)" <Gene.Hamilton@usdoj.gov> wrote:

I'm not aware of a 4:30 call.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: August Flentje [mailto: (b) (6)]
Sent: Friday, March 2, 2018 2:41 PM

To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Call

Also...do you have the number for the 430 call? Sorry to bug you.

On Mar 2, 2018 11:28 AM, "Hamilton, Gene (OAG)" <Gene.Hamilton@usdoj.gov> wrote:

Certainly. (b) (6) Pin: (b) (6)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: August Flentje [mailto (b) (6)]
Sent: Friday, March 2, 2018 1:26 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Call

Gene my phone just Stopped working can you send me the call in for the 130?

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, March 14, 2018 9:48 AM
To:	Fetzer, Chris W.K.
Cc:	(b)(6) per DHS
Subject:	RE: Canadian Electricity Association Keynote Invitation

Hi Chris,

Thanks for the note and the kind words. Secretary Nielsen's scheduler is (b)(6) per DHS (b)(6) per DHS and she should be able to receive the invitation and run it through the appropriate channels for their consideration.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Fetzer, Chris W.K. [mailto:chris.fetzer@dentons.com]
Sent: Tuesday, March 13, 2018 4:09 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Canadian Electricity Association Keynote Invitation

Gene:

I hope all is well, and a rather belated congrats on your move to DOJ. The President and CEO of the Canadian Electricity Association (CEA) would like to invite Secretary Nielsen to keynote a dinner that he's hosting with a delegation of CEA member company CEOs at the Canadian Embassy on April 12. More details are available in the attached invitation letter.

I'm wondering whether you'd be willing to point me toward the best POC at your old agency to whom I should direct this invitation. Thanks very much for any guidance you're willing to provide.

Best,

Chris

DENTONS
Chris W.K. Fetzer
Senior Advisor

D +1 202 408 9192 | US Internal 29192
chris.fetzer@dentons.com
Bio | Website

Dentons US LLP
1900 K Street, NW, Washington, DC 20006

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, April 2, 2018 9:45 PM
To:	Ordonez, Franco
Cc:	Anita Kumar
Subject:	RE: McClatchy invitation to White House Correspondents' Association Dinner

Thanks very much, Franco. I'll get back with you tomorrow afternoon on the inclusion of the submission to WHCA.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Ordonez, Franco <fordonez@mcclatchydc.com>
Sent: Monday, April 2, 2018 4:45 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Anita Kumar <akumar@mcclatchydc.com>
Subject: Re: McClatchy invitation to White House Correspondents' Association Dinner

Gene,
This is great. Very helpful. We'll follow up soon with some more details as we get closer. We're going to have a luncheon and pre-reception event that you'll be invited too as well, but not a problem if you can't make those. We're sending some attendee names to WHCA on Wednesday for the program. If you'd like us to include yours, please forward how you prefer it being printed, including title. We look forward to having you join us at our table.
Franco

On Mon, Apr 2, 2018 at 4:23 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Hi Franco,
>
> I do not have final clearance, but have been informed that I can likely say yes for planning purposes. It would be unexpected for it to not be okay at this point.
>
> Is that helpful? Can I provide any additional information?
>
> Thanks,
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> ---
> From: Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, April 2, 2018 10:50 AM
To: 'Ordonez, Franco' <fordonez@mcclatchydc.com>
Cc: Anita Kumar <akumar@mcclatchydc.com>
Subject: RE: McClatchy invitation to White House Correspondents' Association Dinner

Hi Franco,

Thanks for checking in. I just pinged ethics again and will hope to get you an update later.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Ordonez, Franco <fordonez@mcclatchydc.com>
Sent: Monday, April 2, 2018 10:48 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Anita Kumar <akumar@mcclatchydc.com>
Subject: Re: McClatchy invitation to White House Correspondents' Association Dinner

Hi Gene,
I'm just circling back about this. I know a lot of things are still flux about the dinner, but our bosses are finalizing the details. They have told us we need a final list of guests by the end of the day. Please let us know where things stand. We hope you can make it.
My cell is (b) (6) .
Franco

On Wed, Mar 21, 2018 at 10:45 AM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Hi Franco,
>
> Thank you for the kind invitation. I'd be happy to attend with y'all. Running it through ethics and will have a final answer soon.
>
> Thank you again!
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> **From:** Ordonez, Franco [mailto:fordonez@mcclatchydc.com]
> **Sent:** Monday, March 19, 2018 12:32 PM
> **To:** Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> **Cc:** Anita Kumar <akumar@mcclatchydc.com>
> **Subject:** Re: McClatchy invitation to White House Correspondents' Association Dinner
>
> Hi Gene,
> I wanted to circle back about this invitation to the White House Correspondents' Dinner. If possible, please let us know by March 30. Let me know if you need any additional information.

Thanks,
Franco

On Mon, Feb 26, 2018 at 5:50 PM, Ordonez, Franco <fordonez@mcclatchydc.com> wrote:

> Hi Gene,
>
> On behalf of all the McClatchy papers and websites, we wanted to invite you to be our guest at the White House Correspondents' Association dinner on Saturday April 28.
>
> We will be joined by members of the administration, Congress and editors and reporters from our Washington bureau and some of our 30 newsrooms as well as members of the McClatchy board.
>
> We hope you can join us. Please let us know as soon as you can.
>
> My cell phone is (b) (6) if you have any questions.
>
> Franco Ordoñez
>
> Anita Kumar
>
> --
> Franco Ordoñez
> White House Correspondent
> McClatchy Washington Bureau
> The Miami Herald & El Nuevo Herald
> fordonez@mcclatchydc.com
> 202-383-6155
> (b) (6) cell/Signal
> Twitter: @francoordonez
>
> Anita Kumar
> White House Correspondent
> McClatchy Newspapers
> 202-383-6017 (office)
> (b) (6) (cell)
> akumar@mcclatchydc.com
> Twitter: @anitakumar01

--
Franco Ordoñez
White House Correspondent
McClatchy Washington Bureau
The Miami Herald & El Nuevo Herald
fordonez@mcclatchydc.com
202-383-6155
(b) (6) cell/Signal
Twitter: @francoordonez

--
Franco Ordoñez
White House Correspondent
McClatchy Washington Bureau
The Miami Herald & El Nuevo Herald
fordonez@mcclatchydc.com
202-383-6155
(b) (6) cell/Signal
Twitter: @francoordonez

--

Franco Ordoñez
White House Correspondent
McClatchy Washington Bureau
The Miami Herald & El Nuevo Herald
fordonez@mcclatchydc.com
202-383-6155
(b) (6) cell/Signal
Twitter: @francoordonez

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, May 15, 2018 2:19 PM
To:	laura.meckler@wsj.com
Cc:	O'Malley, Devin (OPA)

Hi Laura,

I hope all is well. Not trying to ignore you, things have just been hectic over the last week or two, as I am sure you can imagine. Copying Devin to see if we can get something set up soon to talk.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, May 22, 2018 2:41 PM
To: Marcia Faulkner; Cook, Steven H. (ODAG)
Subject: RE: Call tomorrow

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Marcia Faulkner <mfaulkner@sheriffs.org>
Sent: Tuesday, May 22, 2018 2:39 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>
Subject: RE: Call tomorrow

Meeting invite has been sent. Please let me know if anything needs to change.

Marcia

From: Hamilton, Gene (OAG) [mailto:Gene.Hamilton@usdoj.gov]
Sent: Tuesday, May 22, 2018 2:32 PM
To: Marcia Faulkner; Cook, Steven H. (ODAG)
Subject: RE: Call tomorrow

That might be ideal, if y'all don't mind. Thank you!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Marcia Faulkner <mfaulkner@sheriffs.org>
Sent: Tuesday, May 22, 2018 2:24 PM
To: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Call tomorrow

The 10:30 time will work. Shall I set up a conference line?

Marcia Faulkner
Executive Assistant to the Executive Director
National Sheriffs' Association
1450 Duke Street
Alexandria, VA 22314
O 703.838.5312
C (b) (6)

- (b) (6)
mfaulkner@sheriffs.org

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, May 22, 2018 2:41 PM
To:	Jonathan F. Thompson; Cook, Steven H. (ODAG)
Subject:	Canceled: Conference call
Importance:	High

From: Jonathan F. Thompson <jfthompson@sheriffs.org>
Sent: Tuesday, May 22, 2018 2:03 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>
Subject: Re: Conference call

Am avail before 1130 and after 2

Jonathan Thompson
703.838.5300

Please forgive any typos, errors or tonal shortcomings as this message is being done on my phone.

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Tuesday, May 22, 2018 2:01:09 PM
To: Cook, Steven H. (ODAG)
Cc: Jonathan F. Thompson
Subject: RE: Conference call

I now have a DAG meeting at 5 and a call at 5:30. Can we try tomorrow? I am fairly flexible.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: Cook, Steven H. (ODAG)
Sent: Tuesday, May 22, 2018 10:14 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Thompson Jonathan <jfthompson@sheriffs.org>
Subject: Re: Conference call

I am available this evening and it would actually be better for me. By copy of this email I will ask Jonathan what time works for him. I propose 5:00 to open bidding.

> On May 22, 2018, at 09:10, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:
>

> What about this evening?
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
>
> -----Original Message-----
> From: Cook, Steven H. (ODAG)
> Sent: Tuesday, May 22, 2018 10:08 AM
> To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> Subject: Re: Conference call
>
> Of course and now Jonathan has a meeting with Cornyn and wants to move to 1:30. Is that possible? If not how about later?
>
>> On May 22, 2018, at 07:36, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:
>>
>> I have a window right at 2:00. Sounds good. Thanks!
>>
>> Gene P. Hamilton
>> Counselor to the Attorney General
>> U.S. Department of Justice
>>
>>
>> -----Original Message-----
>> From: Cook, Steven H. (ODAG)
>> Sent: Tuesday, May 22, 2018 6:58 AM
>> To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
>> Subject: Conference call
>>
>> Gene,
>> Jonathan is available at 2:00. Will that work for you? If so, I will be on a cell phone, could you call us both from your desk phone and connect us?
>> Steve

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, May 22, 2018 5:26 PM
To:	Troy Edgar
Cc:	Troy Edgar; Michael Daudt; Bret Plumlee; Whitaker, Matthew (OAG)
Subject:	Re: President's Sanctuary Roundtable Follow-up - Los Alamitos Assistance

So sorry. Can we push to 6 eastern?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

> On May 22, 2018, at 5:17 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:
>
> Stuck on a call with the WH. Might be ten minutes late to call. Is that okay?
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
>> On May 22, 2018, at 11:26 AM, Troy Edgar <tedgar@globalconductor.com> wrote:
>>
>> Thank you! I have moved the meeting.
>>
>> Michael - please send me a bridge number and I will add to the meeting notice. Thanks.
>>
>> Troy Edgar
>> Sent from my iPhone
>>
>>> On May 22, 2018, at 10:11 AM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:
>>>
>>> Works well. Thanks!
>>>
>>> Gene P. Hamilton
>>> Counselor to the Attorney General
>>> U.S. Department of Justice
>>>
>>>
>>> -----Original Message-----

>>> From: Troy Edgar <tedgar@globalconductor.com>
>>> Sent: Tuesday, May 22, 2018 10:31 AM
>>> To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Troy Edgar [redacted (b) (6)]
[redacted (b) (6)]
>>> Cc: Michael Daudt <mdaudt@wss-law.com>; Bret Plumlee <BPlumlee@cityoflosalamitos.org>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>
>>> Subject: RE: President's Sanctuary Roundtable Follow-up - Los Alamitos Assistance
>>>
>>> Hi Gene,
>>> Thanks. I have verified everyone's schedule and we can all be available after 530PM EST (230PM PST). Can I propose 530PM EST? Should I have Michael set up a bridge line?
>>>
>>> Thanks,
>>>
>>> Troy
>>>
>>> -----Original Message-----
>>> From: Hamilton, Gene (OAG) [mailto:Gene.Hamilton@usdoj.gov]
>>> Sent: Tuesday, May 22, 2018 7:35 AM
>>> To: Troy Edgar [redacted (b) (6)]
>>> Cc: Michael Daudt <mdaudt@wss-law.com>; Bret Plumlee <BPlumlee@cityoflosalamitos.org>; Whitaker, Matthew (OAG) <Matthew.Whitaker@usdoj.gov>
>>> Subject: RE: President's Sanctuary Roundtable Follow-up - Los Alamitos Assistance
>>>
>>> Thanks for the quick reply, Troy. Unfortunately, I have conflicting meetings at that time with the DAG and the White House. By chance, are y'all free at any point after 5:15 eastern today? I'll circle up with our team internally, also.
>>>
>>> Thank you,
>>>
>>> Gene P. Hamilton
>>> Counselor to the Attorney General
>>> U.S. Department of Justice
>>>
>>> -----Original Message-----
>>> From: Troy Edgar <[redacted (b) (6)]
>>> Sent: Tuesday, May 22, 2018 2:13 AM
>>> To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
>>> Cc: Michael Daudt <mdaudt@wss-law.com>; Bret Plumlee <BPlumlee@cityoflosalamitos.org>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>
>>> Subject: Re: President's Sanctuary Roundtable Follow-up - Los Alamitos Assistance
>>>
>>> Hi Gene,
>>> Thanks for the response. I have checked with our City Attorney and we are both available between 1130-1pm PST (230-4pm EST). Could we find a meeting time during that window?

>>>
>>> Thank you so much. In addition to the discussion of support, we would like to talk with you of current status and latest developments of our ACLU lawsuit. We are in a very tight timeline with our legal defense strategy and our council would like to urgently understand federal support we can depend on.
>>>
>>> Sincerely,
>>>
>>> Troy Edgar
>>> Mayor, City of Los Alamitos
>>> [redacted]
>>> Sent from my iPhone
>>>
>>> On May 21, 2018, at 6:21 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov<mailto:Gene.Hamilton@usdoj.gov>> wrote:
>>>
>>> Hi Troy,
>>>
>>> Thanks for reaching out. Matt is traveling internationally at the moment, but I'd enjoy speaking with you. Do you have any windows available tomorrow?
>>>
>>> Thanks again,
>>>
>>> Gene P. Hamilton
>>> Counselor to the Attorney General
>>> U.S. Department of Justice
>>>
>>>
>>>
>>> Begin forwarded message:
>>> From: Troy Edgar [redacted] mailto [redacted]>>
>>> Date: May 21, 2018 at 4:39:12 PM GMT+3
>>> To: "Matthew.Whitaker@usdoj.gov<mailto:Matthew.Whitaker@usdoj.gov>" <Matthew.Whitaker@usdoj.gov<mailto:Matthew.Whitaker@usdoj.gov>>
>>> Cc: Michael Daudt <mdaudt@wss-law.com<mailto:mdaudt@wss-law.com>>, Bret Plumlee <BPlumlee@cityoflosalamitos.org<mailto:BPlumlee@cityoflosalamitos.org>>
>>> Subject: President's Sanctuary Roundtable Follow-up - Los Alamitos Assistance Hi Matthew, It was nice meeting with you and Attorney General Sessions after the roundtable. I met Friday with our City Attorney Michael Daudt and City Manager Bret Plumlee and I have asked Michael to reach out so we can work together and providing support to Los Alamitos in our Sanctuary legal challenges.
>>>
>>> We will also send you a copy of the current ACLU lawsuit. As we discussed, there is no case law established on this constitutional matter in bringing clarity between the checks and balances of

Federal, State and local rights.
>>>
>>> I have a City Council meeting tonight where we are going in to closed session to discuss a development with the plaintiff and next steps. It is critical for us to connect and discuss next steps.
>>>
>>> Sincerely,
>>>
>>> Troy Edgar
>>> Mayor, City of Los Alamitos
>>> Mobile (b) (6)
>>> Sent from my iPhone

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, May 23, 2018 9:22 AM
To: (b) (6) (OLP)
Cc: (b) (6)
Subject: RE: Thank You Note

Fantastic! Congratulations on the semester, and we'll hope to see you in June at some point.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b) (6) (OLP)
Sent: Wednesday, May 23, 2018 9:16 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: (b) (6)
Subject: RE: Thank You Note

Good morning Gene,

This is actually my last day! (b) (6) . I have CC'd my personal email here.

I hope all is well!!

Best regards,
(b) (6)

From: Hamilton, Gene (OAG)
Sent: Wednesday, May 23, 2018 9:14 AM
To: (b) (6) (OLP) (b) (6) >
Subject: RE: Thank You Note

Sorry for the delay, (b) (6) ! It's been a crazy week or so. Thanks very much for the note. How much longer are y'all here? Semester is over soon, right?

Best.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b) (6) (OLP)
Sent: Wednesday, May 16, 2018 4:13 PM

Sent: Wednesday, May 16, 2018 4:13 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Thank You Note

Hi Gene,

Thank you so much for taking time out of your incredibly busy schedule to have lunch with us last month. It was great to meet you. I really appreciated hearing about the functions of the AG's office and your instrumental role in moving the nation's immigration policies forward.

I hope to see you again sometime soon. Have a wonderful rest of your day!

Best regards,

(b) (6)
Legal Intern
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530
P: (202) 307-3311
E: (b) (6)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, May 23, 2018 8:45 PM
To:	Troy Edgar; Michael Daudt; Bret Plumlee; Whitaker, Matthew (OAG)
Subject:	RE: Los Al/USAG Follow-up Meeting

Hi Troy,

The invite you sent should work for us. I'll make sure representatives from our litigation team are on the line.

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: Troy Edgar <[redacted] (b) (6)
Sent: Wednesday, May 23, 2018 3:32 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Michael Daudt <mdaudt@wss-law.com>; Bret Plumlee <BPlumlee@cityoflosalamitos.org>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>
Subject: Los Al/USAG Follow-up Meeting

Hi Gene and Matthew,
Thanks again for the meeting yesterday with your team. Would one of these times work for you and your team:

11-12p EST
2-3p EST
Anytime after 5pm EST

I'll propose a preliminary time of 2-3p EST and adjust as required.

Thanks,

Troy Edgar
Mayor, City of Los Alamitos
Mobile: [redacted] (b) (6)

Mobile: (b) (6)
Sent from my iPhone

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, May 24, 2018 3:12 PM
To:	Troy Edgar; Hahn, Julia A. EOP/WHO
Subject:	Connection

Troy,

Connecting you with Julia Hahn at the White House, as discussed.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Friday, May 25, 2018 1:58 PM
To:	Bret Plumlee
Cc:	Troy Edgar; Michael S. Daudt
Subject:	RE: Thanks - Press Release

[redacted] Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Bret Plumlee <BPlumlee@cityoflosalamitos.org>
Sent: Friday, May 25, 2018 1:36 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Troy Edgar [redacted]; Michael S. Daudt <[redacted]
Subject: RE: Thanks - Press Release

Ok thanks Gene. Mayor Edgar can call you directly. What is the best phone number he should call to reach you?

From: Hamilton, Gene (OAG) [mailto:Gene.Hamilton@usdoj.gov]
Sent: Friday, May 25, 2018 10:28 AM
To: Bret Plumlee <BPlumlee@cityoflosalamitos.org>
Cc: Troy Edgar [redacted]; Michael S. Daudt [redacted]
Subject: Re: Thanks - Press Release

Thanks, Brett. I don't think a conference call is necessary unless y'all do, but I am fine either way.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On May 25, 2018, at 1:14 PM, Bret Plumlee <BPlumlee@cityoflosalamitos.org> wrote:

> Gene,
>
> I just want to clarify if you want to continue with the conference call with the entire group at 11:00 a.m. or if you are just wanting to talk to Mayor Edgar directly then or at a later time? The Mayor told me that he had sent you a request to talk about 2:15 eastern time, but we are trying to determine if we need to set up the conference call. Thanks.
>
> Bret M. Plumlee
> City Manager
> City of Los Alamitos

(b) (6)

From: Hamilton, Gene (OAG) [mailto:Gene.Hamilton@usdoj.gov]
Sent: Friday, May 25, 2018 6:13 AM
To: Troy Edgar <troy@troyedgar.com>
Cc: Percival, James (OASG) <James.Percival@usdoj.gov>; Whitaker, Matthew (OAG) <Matthew.Whitaker@usdoj.gov>; Bret Plumlee <BPlumlee@cityoflosalamitos.org>; Michael Daudt <mdaudt@wss-law.com>; Troy Edgar (b) (6) >; Hahn, Julia A. EOP/WHO <(b) (6)
Subject: Re: Thanks - Press Release

Hi Troy,

Thanks for the note. We certainly support your efforts to keep fighting—if you are able to do so. I will loop in our press shop later today, and already had some preliminary discussions with them.

Can we push this call to 2:00 eastern? I don't think it will take more than a couple of minutes, so it may be easier to simply connect later today outside of the conference call setting.

Thanks again,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On May 25, 2018, at 12:47 AM, Troy Edgar <troy@troyedgar.com> wrote:

> Hi Gene,
> Thanks again for your time earlier today. We really hoped there would be a way to figure on some sort of monetary support that would allow us to vigorously fight the ACLU and create case law. As a team, I am still not sure about whether the right things for Los Al to do would be to settle with the ACLU and stay the litigation and the enforcement. I am very concerned that that I will not be able to get the votes due to the fear the ACLU will paint this as a huge victory. That being said, as we discussed that we would work together to create press release to be released possibly as early as next week.
>
> Here is the draft press release as a start for your consideration and refinement.
> We look forward to meeting tomorrow.
>
> Troy Edgar
> ***Mayor, City of Los Alamitos***
> Mobile: (b) (6)
>
> <Press Release_Attorney General_24 May 18_Rev 2.docx>

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Saturday, May 26, 2018 9:10 AM
To:	Troy Edgar; Percival, James (OASG); Whitaker, Matthew (OAG); Flores, Sarah Isgur (OPA); O'Malley, Devin (OPA)
Cc:	'Bret Plumlee'; mdaudt@wss-law.com; Troy Edgar; Hahn, Julia A. EOP/WHO
Subject:	RE: Thanks - Press Release
Attachments:	Press Release_Attorney General_24 May 18_Rev 2.docx

Actually adding Sarah and Devin this time…

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hamilton, Gene (OAG)
Sent: Friday, May 25, 2018 2:41 PM
To: 'Troy Edgar' <troy@troyedgar.com>; Percival, James (OASG) <jpercival@jmd.usdoj.gov>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>
Cc: 'Bret Plumlee' <BPlumlee@cityoflosalamitos.org>; mdaudt@wss-law.com; Troy Edgar [redacted (b) (6)]; Hahn, Julia A. EOP/WHO [redacted (b) (6)]>
Subject: RE: Thanks - Press Release

Thanks very much Troy. I'm adding Sarah Flores and Devin O'Malley from DOJ OPA to this email. They can help coordinate on any statements from us on this matter if y'all choose to stay the litigation.

Thanks again for standing with us. Please keep us posted, and have a great weekend.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Troy Edgar <troy@troyedgar.com>
Sent: Friday, May 25, 2018 12:45 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Percival, James (OASG) <jpercival@jmd.usdoj.gov>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>
Cc: 'Bret Plumlee' <BPlumlee@cityoflosalamitos.org>; mdaudt@wss-law.com; Troy Edgar <[redacted (b) (6)]; Hahn, Julia A. EOP/WHO [redacted (b) (6)]
Subject: Thanks - Press Release

[redacted] Duplicative Material

PRESS RELEASE

On April 16, 2018, the Los Alamitos City Council voted to adopt Ordinance 2018-03 to exempt the City of Los Alamitos from the California Values Act (SB 54) and instead comply with the appropriate Federal Laws and the Constitution of the United States.

The City of Los Alamitos was the first municipality in the State to formally oppose SB 54, and is the only municipality to adopt an ordinance. Many other cities and counties in the State followed their lead, enacting resolutions opposing California's Sanctuary State Laws.

In the face of a lawsuit brought on with the assistance by the ACLU, Mayor Edgar reached out to President Trump and Attorney General Sessions for assistance.

President Trump recognized the brave action taken by the City of Los Alamitos, and invited Mayor Edgar, Mayor Pro Tem Kusumoto, and 13 other elected officials and members of law enforcement to the White House for a roundtable discussion on Immigration and California's Sanctuary State Laws. Attorney General Jeff Sessions and other key members of Trump's staff also participated in this discussion.

The United States Attorney General's office applauds the Los Alamitos City Council for being the first municipality to take action on this important issue, for igniting widespread opposition to California's Sanctuary State laws, and for advancing the national dialogue on immigration enforcement.

Attorney General Sessions states, "President Trump and I greatly appreciate the leadership that the Los Alamitos City Council exhibited by taking on the California Values Act. Thanks to these leaders, we are in an even stronger position to work together in our battle with the State."

Mayor Troy Edgar states "We are honored to be a part of this joint effort to protect local control and our ability to comply with the United States Constitution. We want to eliminate any barriers SB 54 has created for our Police Department to assist with the enforcement of federal immigration law. We anxiously await the outcome of the Justice Department's lawsuit against the State of California to stop interference with federal immigration authorities."

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, June 25, 2018 10:41 AM
To: Starr, Ken
Subject: RE: Connecting

Thank you, sir.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Starr, Ken <Ken_Starr@baylor.edu>
Sent: Monday, June 25, 2018 10:40 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Connecting

Gene:

With thanks for your outreach, I would be delighted to speak with Kerri.

Warm regards, Ken

Sent from my iPhone

On Jun 25, 2018, at 10:26 AM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Good morning, General Starr,
>
> I hope that you have been well. Thank you again for everything you have done and continue to do for the Department of Justice. Kerri Kupec, in our Office of Public Affairs, would like to discuss a potential matter with you. Would you mind me connecting you with her?
>
> Thank you again,
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, June 25, 2018 10:42 AM
To:	Starr, Ken
Cc:	Kerri Kupec (JMD) (kkupec@jmd.usdoj.gov)
Subject:	Connecting

Good morning, y'all,

Kerri, connecting you with Ken Starr.

Thank you both for your work.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, June 25, 2018 2:11 PM
To:	Harmer, Miriam
Cc:	O'Malley, Devin (OPA)
Subject:	Re: Thanks and ?

So sorry for the delay, Miriam. Adding Devin to this chain. Devin, was Gary in here with us?

Thanks again!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

> On Jun 22, 2018, at 7:38 AM, Harmer, Miriam <HarmerM@ou.org> wrote:
>
> Hi Gene,
>
> Thanks for your time this morning—we appreciate the Attorney General's willingness to meet with us.
>
> Quick question: was today's meeting off the record? (Or just the contents?)
>
> Also, I didn't catch the third staffer's name (in addition to you and Devin). Could you please send that?
>
> Thanks,
>
> Miriam Harmer
> Orthodox Union
>
> Sent from my iPhone

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, July 16, 2018 8:53 AM
To: (b)(6) per DHS
Subject: RE: Visa issue

Hi (b)(6) per D

Sorry for my delay. Sure. I'm at (b) (6)

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b)(6) per DHS
Sent: Friday, July 13, 2018 8:37 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: (b)(6) per DHS
Subject: Visa issue

Hi, Gene. Hope you're doing well! Could I call you for some advice on a visa issue I am working. It's about status. Glad to call whenever convenient. Thanks so much. (b)(6) per

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, July 31, 2018 9:44 AM
To: (b) (6)
Cc: Jennifer Lichter (OLP) (jlichter@jmd.usdoj.gov)
Subject: RE:

Hi(b) (6)

Let me reach out to someone and I'll be back in touch.

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Lichter, Jennifer (OLP)
Sent: Tuesday, July 31, 2018 9:17 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: (b) (6)
Subject: RE:

Thanks for remembering. (b) (6) from (b) (6) She's left OLP; her school email is (b) (6)

From: Hamilton, Gene (OAG)
Sent: Tuesday, July 31, 2018 8:49 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject:

Which intern wanted to be connected with an asylum officer?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, August 16, 2018 3:25 PM
To: (b) (6)
Subject: RE: Connection

No problem, (b) !! Glad it worked out.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: (b) (6)
Sent: Thursday, August 16, 2018 3:23 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Connection

Hi Mr. Hamilton,

Thanks so much for connecting me with Jennifer Higgins. I was able to speak with her and found the conversation informative.

Best,
(b) (6)

From: Hamilton, Gene (OAG) [Gene.Hamilton@usdoj.gov]
Sent: Saturday, August 04, 2018 8:25 PM
To: (b) (6)
Subject: RE: Connection

Hi (b) (6) -- quick suggestion. (b) (6) ?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: (b) (6)
Sent: Saturday, August 4, 2018 4:22 PM

Sent: Saturday, August 4, 2018 4:32 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Jennifer Higgins <Jennifer.B.Higgins@uscis.dhs.gov>
Subject: RE: Connection

Hi Ms. Higgins,

I just wanted to follow up on Mr. Hamilton's email. I look forward to hearing from you!

(b) (6)

From: Hamilton, Gene (OAG) [Gene.Hamilton@usdoj.gov]
Sent: Tuesday, July 31, 2018 9:06 PM
To: (b) (6)
Cc: Jennifer Higgins
Subject: Connection

Hi (b) (6),

I hope your summer is going well-thanks again for your work at DOJ. I am connecting you with Jennifer Higgins, Associate Director for Refugees, Asylum, and International Organizations at USCIS.

Jennifer, (b) (6) is a law student at (b) (6) and is interested in learning more about life as an asylum officer. Any chance you or someone on your team has time to talk to her sometime about what day-to-day life is like? Good things? Challenges?

Thanks in advance!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, August 20, 2018 4:35 PM
To:	Munson, Len (Legal); Sullivan, Annemarie (USANAC)
Cc:	Yancey, Mark (USANAC); Swift, Betsy (USANAC)
Subject:	RE: DOJ -- WLEc

Thank you, everyone!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Munson, Len (Legal) <leonard.munson@thomsonreuters.com>
Sent: Monday, August 20, 2018 4:30 PM
To: Sullivan, Annemarie (USANAC) <Annemarie.Sullivan@usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Yancey, Mark (USANAC) <Mark.Yancey@usdoj.gov>; Swift, Betsy (USANAC) <Betsy.Swift@usdoj.gov>
Subject: RE: DOJ -- WLEc

Thanks Annemarie!

Hi Mr. Hamilton,

Your West LegalEdcenter profile has been tied to the DOJ/OLE subscription. To login to **West LegalEdcenter**, please do the following:

- Go to www.westlegaledcenter.com and click on the orange **SIGN IN** button
- Enter your OnePass Username and Password (same login used to access Westlaw) on the right side of the next screen to login to WLEc. ***Note: Username and Password are case sensitive.***

If you need help resetting your password, click on the Forgot Username/Password link below the **SIGN IN** button and then on the Forgot Password link at the next screen.

To view our new short videos (each are about 3-4 minutes long) on how to use specific functions on West LegalEdcenter, please click on the Help link on the upper right of the welcome page.

Also, please feel free to contact our technical support group directly at **800-495-9378, ext. 4** with any questions. They are staffed 24 x 7 and are happy to assist.

Thanks!
Len

Len Munson
Specialist, Government - West LegalEdcenter

Thomson Reuters
the answer company

610 Opperman Drive
Eagan, MN 55123

Phone: 651-244-6445
Toll Free: 800-328-0109 ext. 46445

-
leonard.munson@tr.com

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From: Sullivan, Annemarie (USANAC) [mailto:Annemarie.Sullivan@usdoj.gov]
Sent: Monday, August 20, 2018 3:25 PM
To: Munson, Len (Legal) <leonard.munson@thomsonreuters.com>
Cc: Yancey, Mark (USANAC) <Mark.Yancey@usdoj.gov>; Swift, Betsy (USANAC) <Betsy.Swift@usdoj.gov>; Hamilton, Gene (OAG) (JMD) <Gene.Hamilton@usdoj.gov>
Subject: DOJ -- WLEc

Good afternoon, Len:

I approve the enrollment of the following DOJ attorney under our OLE subscription. Please follow up with us once this has been completed:

Gene Hamilton (gene.hamilton@usdoj.gov, DOJ/OAG, VA Bar member)

Many thanks!

Annemarie Sullivan
Continuing Education Licensing Coordinator
U.S. Department of Justice
Office of Legal Education
National Advocacy Center
1620 Pendleton Street
Columbia, SC 29201
Telephone: (803)705-5121
Fax: (803)705-5110
Email: annemarie.sullivan@usdoj.gov
Website: http://www.justice.gov/usao/training/

"Laughter is the sun that drives winter from the human face."
Victor Hugo

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, September 10, 2018 2:56 PM
To:	Troy Edgar; O'Malley, Devin (OPA); Whitaker, Matthew (OAG)
Subject:	RE: CA Sanctuary Update: Latest Media Supporting ICE and ACLU vs Los Alamitos Sanctuary Lawsuit

Thanks, Troy.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Troy Edgar <troy@troyedgar.com>
Sent: Monday, September 10, 2018 2:18 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: CA Sanctuary Update: Latest Media Supporting ICE and ACLU vs Los Alamitos Sanctuary Lawsuit

Hello Devin and Gene,
I hope you are doing well. We are working on our amicus brief and will decide next Monday whether we will file with the IRLI team with the US V CA Sanctuary lawsuit. We saw that the case schedule has changed. Please go hard on your appeal. California is depending on it!!! Please let me know if there is anything else we can do to assist.

I also wanted to keep you informed of my efforts to continue supporting Los Alamitos, the White House, USAG, Homeland Security and the heroes of ICE after my 8/26/18 OpEd in the Orange County Register. I am continuing to focus on finding direct and indirect funding to cover or offset our legal fees. As you can see in the article below, I am on the edge of losing my 4th vote to stay in the ACLU lawsuit. May be down to three.

Shannon Bream – Fox News at Night – Sept 7th
http://video.foxnews.com/v/5832534998001/

- Discussing Oregon Sanctuary Law on the November Ballot
- Atlanta Mayor's action to abolish ICE
-

KRLA Radio (LA/Orange County) – August 27th

- Discussing OpEd supporting ICE and the impacts of Sanctuary Laws

Graham Ledger – One America News - The Daily Ledger – Sept 5th

- Discussing OpEd supporting ICE and the impacts of Sanctuary Laws

ACLU Lawsuit versus Los Al – Sept 7th

Court held case conference with the following update last Friday:
Plaintiffs (ACLU) has opted not to amend their complaint following Judge Claster's ruling on our demurer and motion to strike. Therefore, we will now finalize and submit our answer to the complaint. We expect to receive a notice of status conference with newly assigned Judge Crandall within the next 2-3 weeks. A briefing schedule and trial date will be determined at that status conference. I will inform you of new information as it becomes available.

Los Al Councilmember Rich Murphy Changes Positions on Sanctuary Ordinance Due to Lawsuit Costs – Aug 30th

Councilmember Murphy has stated that he will be switching his support position of opting out of CA Sanctuary Law due to financial concerns. Explained in article.

http://www.oc-breeze.com/2018/08/30/126388_los-alamitos-councilman-murphy-changes-position-on-city-ordinance/

Please let me know if you have any questions or I can be of assistance.

Troy Edgar
Mayor, City of Los Alamitos
Mobile: (b) (6)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, September 12, 2018 9:06 PM
To:	Reuss, Andy (OPA)
Cc:	Andy Reuss; Allen, Alexis (OAG)
Subject:	RE: Goodbye for now

Thanks for all of your great work, Andy! Look forward to working with you more in the future.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Reuss, Andy (OPA)
Sent: Wednesday, September 12, 2018 6:48 PM
Cc: Andy Reuss (b) (6); Allen, Alexis (OAG) <aallen@jmd.usdoj.gov>
Subject: Goodbye for now

Hi all,

Today is my last day at the Department of Justice—for now, anyway. This is an exceptional place full of exceptional people doing the most important secular work that one can do: administering the law in order to protect the spaces where human life flourishes. I count it as one of the greatest honors of my life to have worked here alongside each of you here in service to that goal.

I would love to keep in touch with all of you, however unlikely that may be. But fear not! (b) (6) (b) (6) (b) (6) look forward to seeing you all at holiday parties, happy hours, or chance encounters.

Otherwise, my personal contact information is below, and I hope to hear from all of you.

Thank you!
Andy

(b) (6)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Friday, September 14, 2018 10:04 AM
To:	Jonathan F. Thompson
Subject:	Statements of Interest
Attachments:	Marion County Amicus Brief.pdf; Canseco Salinas Statement of Interest.pdf

Good morning, Jonathan,

I hope that you are well. I thought it might be helpful to share with you (for handling as you deem appropriate with your team) examples of two statements of interest we have filed in cases involving detainers and cooperation with the federal government. Y'all are well aware of our position on these matters, but sometime it is helpful to see it in writing.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

DISTRICT COURT, TELLER COUNTY, COLORADO 270 S. Tejon Street Colorado Springs, Colorado 80901	
Plaintiff: Leonardo Canseco Salinas, v. **Defendant:** Jason Mikesell, in his official capacity as Sheriff of Teller County, Colorado	▲ COURT USE ONLY ▲
Chad A. Readler, Acting Assistant Attorney General William C. Peachey, Director Erez Reuveni, Assistant Director Lauren C. Bingham, Trial Attorney Francesca M. Genova, Trial Attorney U.S. Department of Justice, Civil Division Office of Immigration Litigation, District Court Section P.O. Box 868, Ben Franklin Station Washington, D.C. 20044 (202) 305-1062, Fax (202) 305-7000 Francesca.M.Genova@usdoj.gov	Case Number: 2018CV030057 Division: Courtroom: S514
STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA	

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INTRODUCTION

The United States respectfully submits this statement of interest in accordance with federal statutes that authorize the United States Department of Justice "to attend to the interests of the United States" by "argu[ing] any case in a court of the United States in which the United States is interested." 28 U.S.C. §§ 517, 518.[1]

This memorandum of law explains why the Teller County Sheriff's Office's (the County) cooperation with federal immigration detainers and federal immigration arrest warrants issued by U.S. Immigration and Customs Enforcement (ICE) is lawful. A detainer asks local law enforcement to aid federal immigration-enforcement efforts by notifying ICE prior to the release of an individual for whom there is probable cause to believe that he or she is a removable alien, and maintaining custody of that alien briefly (up to 48 hours beyond when the alien would otherwise be released) so that ICE can take custody of the alien in an orderly way. Without such cooperation, removable aliens, including individuals who have committed crimes, would be released into local communities, where it is harder and more dangerous for ICE to take custody of them and where they may commit more crimes.

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[1] Under 28 U.S.C. § 517, "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." Under 28 U.S.C. § 518, "[w]hen the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so." These statutes provide a mechanism for the United States to submit its views in cases in which the United States is not a party. *See, e.g.*, *SEC v. Nacchio*, No. 05-cv-480-MSK-CBS, 2008 WL 2756941, *2 (D. Colo. July 14, 2008); *Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*, 49 N.Y.2d 771, 773 (1980) (per curiam); it is not intended to "subject[] it to the general jurisdiction of this Court," *Flatow v. Islamic Republic of Iran*, 305 F.3d 1249, 1252-53 & n.5 (D.C. Cir. 2002).

ICE's use of and the County's cooperation with detainers and administrative arrest warrants is consistent with federal and Colorado law. Federal statutes authorize ICE to use detainers and warrants, and allow States and localities such as the County to cooperate with them. Colorado law permits such cooperation, and it is consistent with both the Fourth Amendment to the U.S. Constitution and Article II, Sections 7 and 25 of the Colorado Constitution.

With this background in mind, the United States respectfully submits that this Court should deny the motion for preliminary injunction.

BACKGROUND

Legal Background. The federal government has "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012). This includes authority to interview, arrest, and detain removable aliens. *See, e.g.*, 8 U.S.C. § 1226(a) (Secretary of Homeland Security may issue administrative arrest warrants and may arrest and detain aliens pending a decision on removal); *id.* § 1226(c)(1) (Secretary "shall take into custody" aliens who have committed certain crimes when "released"); *id.* § 1231(a)(1)(A), (2) (Secretary may detain and remove aliens ordered removed); *id.* § 1357(a)(1), (2) (authorizing certain warrantless interrogations and arrests).[2]

In enforcing the immigration laws, the federal government works closely with state and local governments. The Immigration and Nationality Act (INA), 8 U.S.C. § 1101, *et seq.*, contemplates these cooperative efforts, which are critical to enabling the federal government to identify and remove the hundreds of thousands of aliens who violate immigration laws each year.

[2] Following the Homeland Security Act of 2002, many references in the Immigration and Nationality Act to the "Attorney General" are now read to mean the Secretary. *Clark v. Suarez Martinez*, 543 U.S. 371, 374 n.1 (2005).

There are three such categories of cooperation.

First, the INA specifically authorizes the Department of Homeland Security (DHS) to enter into cooperative agreements with States and localities, *see* 8 U.S.C. § 1357(g), also known as 287(g) agreements, under which state and local officers may, "subject to the direction and supervision of the [Secretary]," *id.* § 1357(g)(3), perform the "functions of an immigration officer in relation to the investigation, apprehension, or detention aliens." *Id.* § 1357(g)(1). Teller County currently has no such agreement with ICE.

Second, Congress has authorized DHS to enter into agreements, referred to as intergovernmental services agreements (IGSAs), with localities for the "housing, care, and security of persons detained by [DHS] pursuant to Federal law." *Id.* § 1103(a)(11)(A). In such circumstances, a detainee has been arrested by ICE, and the alien is in ICE's custody, but ICE utilizes the IGSA facility to house the alien temporarily in a state or local facility, pursuant to federal custody. *See, e.g.*, *Roman v. Ashcroft*, 340 F.3d 314, 320-21 (6th Cir. 2003). Until an immigration officer[3] arrests the detainee, a detainee cannot be held under an IGSA. Teller County has an IGSA from which ICE orders detention services as needed.

Third, even without a formal 287(g) agreement or IGSA detention contract, States and localities such as the County may "communicate with the [Secretary] regarding the immigration status of any individual" or "cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States," 8 U.S.C. § 1357(g)(10), when that cooperation is pursuant to a "request, approval, or other instruction

[3] An IGSA does not deputize state law enforcement to unilaterally perform the functions of a federal immigration officer. Rather, it governs the housing, at federal request and cost, of federal detainees in state facilities. Therefore, an IGSA is distinct from a 287(g) agreement. *Compare* 8 U.S.C. § 1103(a)(11)(A) (authority for IGSAs), *with id.* § 1357(g)(1)-(9) (authority for 287(g) agreements).

from the Federal Government," *Arizona*, 567 U.S. at 410. Such cooperation may include: "participat[ing] in a joint task force with federal officers"; "provid[ing] operational support in executing a warrant"; "allow[ing] federal immigration officials to gain access to detainees held in state facilities"; "arrest[ing] an alien for being removable" when the federal government requests such cooperation; and "responding to requests for information about when an alien will be released from their custody." *Id.* The INA permits such cooperation whether it is directed by state statute or is implemented *ad hoc* by a local sheriff. *See id.* at 413. To comply with the Supremacy Clause, which invalidates undesired intrusions on the federal government's expansive immigration authority, a state or local government may not cooperate beyond the terms of the federal government's "request, approval, or other instruction." *Arizona*, 567 U.S. at 403. Thus, compliance with ICE policy, as expressed in the detainer request, is essential to the lawfulness of the local action.

States and localities frequently cooperate with federal immigration enforcement by responding to federal requests for assistance, often contained in federal immigration detainers, including those issued by ICE, a component of DHS responsible for immigration enforcement in the interior of the country.[4] An immigration detainer notifies a State or locality that ICE intends to take custody of a removable alien who is detained in state or local criminal custody, and asks the State or locality to cooperate with ICE in that effort. A detainer asks a State or locality to cooperate in two main respects: (1) by providing ICE with advance notification of the alien's release date; and (2) when probable cause of removability exists, by maintaining custody of the

[4] U.S. Customs and Border Protection, another DHS component, also issues detainers in certain situations. 6 U.S.C. § 211. This brief addresses only ICE detainers. ICE always requires probable cause to believe that an alien is removable from the United States to issue a detainer for that alien.

alien for up to 48 hours, based on ICE's determination that it has probable cause to believe that the alien is removable, until DHS can take custody. *See* 8 C.F.R. § 287.7(a) (describing notification of release), (d) (describing request for continued detention).[5]

DHS's detainer form, Form I-247A sets forth the basis for DHS's determination that it has probable cause to believe that the subject is a removable alien. The form states that DHS's probable cause is based on: (1) a final order of removal against the alien; (2) the pendency of removal proceedings against the alien; (3) biometric confirmation of the alien's identity and a records match in federal databases that indicate, by themselves or with other reliable information, that the alien either lacks lawful immigration status or, despite such status, is removable; or (4) the alien's voluntary statements to an immigration officer, or other reliable evidence that the alien either lacks lawful immigration status or, despite such status, is removable. Form I-247A at 1, https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf.

Specifically, the current detainer form requests that the State or locality "[m]aintain custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody." *Id.* The form clarifies that, "[t]his detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters." *Id.* The I-247A detainer form also says that the "alien must be served with a copy of this form for the detainer to take effect." *Id.* The form encourages local law enforcement and the alien to contact ICE with "any questions or concerns" about a detainer. *Id.*

[5] Statutes authorizing such action include 8 U.S.C. §§ 1103(a)(3), 1226(a) and (c), 1231(a), and 1357(d).

As of April 2, 2017, ICE policy requires that detainers be accompanied by a signed administrative warrant issued under 8 U.S.C. §§ 1226 or 1231(a). *See* ICE Policy No. 10074.2 ¶¶ 2.4, 2.5, https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf. That warrant either a Form I-200, Warrant for Arrest of Alien (issued for aliens not yet subject to a removal order under 8 U.S.C. § 1226) or a Form I-205, Warrant of Removal/Deportation (issued for aliens subject to a final removal order under 8 U.S.C. § 1231) is issued by an executive immigration officer and sets forth the basis for that officer's probable-cause determination. *See* 8 C.F.R. §§ 236.1, 241.2, 287.5 (describing officers who may issue such warrants and when). It is this detainer and warrant which authorize a county to detain inmates who are otherwise scheduled for release.

In sum, a state or local law enforcement agency may generally physically detain an alien suspected of being removable in three scenarios: (1) the jurisdiction has a 287(g) agreement with ICE, under which "state and local officials become de facto immigration officers, competent to act on their own initiative," *City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 180 (5th Cir. 2018); (2) the jurisdiction has an IGSA with ICE, which authorizes local law enforcement to house aliens at the request of ICE, after ICE initially takes custody of those aliens and then decides to book those aliens into the local facility as ICE detainees, *see Roman*, 340 F.3d at 320-21; or (3) ICE requests cooperation from the law enforcement agency through a detainer, accompanied by an administrative warrant, thereby authorizing the locality to maintain custody of the alien for up to 48 hours, "under color of Federal authority." *See* 8 U.S.C. § 1357(g)(8), (10)(B). Outside of such scenarios or absent a "predicate federal request" to detain, *see El Cenizo*, 890 F.3d at 189, a local government's seizure based on suspected removability is unilateral and thus in many cases unlawful as state action preempted by federal law. *Arizona*, 567 U.S. at 410.

Factual Background. Teller County has long had a practice of cooperating with ICE's immigration enforcement efforts. Under the County's current practice, the County cooperates with ICE's immigration detainers and warrants. The County thus routinely cooperates with ICE requests to temporarily maintain custody of an alien upon release from state charges to facilitate the orderly transfer of the alien to ICE custody.

Pursuant to ICE policy, if ICE wishes to be notified of the impending release of an alien whom ICE has probable cause to believe is removable from the United States, it will lodge a detainer and administrative warrant with the alien's state or local custodian. *See* ICE Policy No. 10074.2 ¶¶ 2.3-2.7. Assuming ICE is given prior notice of a release date, once grounds for state custody lapse that is, once the state charge does not authorize further detention ICE will arrest the alien in question "as soon as practicable," but in no case more than 48 hours after the scheduled release. *Id.* ¶ 2.7.

According to the complaint, Plaintiff Leonardo Canseco Salinas was booked into the Teller County Jail for committing two state crimes, for a gaming-related offense and providing an officer a false identification card. Compl. ¶ 47. Canseco Salinas is a foreign national who is subject to an ICE detainer and administrative warrant. The complaint alleges that Canseco Salinas refuses to post bond because he subsequently would be subject to a detainer. *Id.* ¶ 49. He alleges that he is still detained. *Id.* ¶ 53. As a result, he remains in state custody. He is not being detained pursuant to the pending ICE detainer, has not been arrested by ICE, and is not in ICE custody pursuant to the IGSA.

On July 23, 2018, Canseco Salinas filed suit claiming that the County lacks authority to detain aliens beyond the point at which they are entitled to release under state law. His complaint centers on Colorado state law. He contends that the County, by holding and housing aliens at the

request of ICE, is acting ultra vires of Colorado law and violating the Colorado Constitution's unreasonable seizure, due process, and right-to-bail provisions. Canseco Salinas moved for a temporary injunction, which the court will hear at 1:45 p.m. on August 15, 2018.

ARGUMENT

To the extent that the Court wishes to reach the issue at all, this Court should hold that a locality's cooperation with ICE detainers accompanied by federal administrative arrest warrants is lawful under federal and Colorado law. The United States therefore asks the Court to deny Canseco Salinas's request for preliminary relief.

To start, Canseco Salinas has no basis for challenging the County's cooperation with ICE. Canseco Salinas elected not to post bond and remains in County custody. He thus is not now subject to any restraint caused by an ICE detainer or administrative warrant, and so lacks any basis to challenge cooperation with a detainer and warrant by the County. Even if he could challenge cooperation, this challenge should fail, because such cooperation is fully consistent with federal and Colorado law, the Fourth Amendment, and its Colorado analogue. This Court, should therefore conclude that the County acts lawfully when it cooperates with ICE pursuant to a detainer request once Canseco Salinas posts bond.

I. Canseco Salinas Has No Grounds for Challenging the Legality of the County's Cooperation with ICE because Canseco Salinas is not Subject to Any Restraint Caused by an ICE Detainer or Warrant

At the threshold, the Court should hold that an individual who has elected not to post bond in order to avoid being transferred into federal immigration custody lacks any basis to challenge the legality of cooperation with a federal immigration detainer or warrant.

Where an individual is in state custody on state charges based on his own decision to not post bond, that individual lacks any basis to challenge cooperation with federal detainer requests. That is because the mere existence of a detainer does not itself cause any seizure, and any

possible seizure based on the detainer instead requires a further, intentional act. *See Nasious v. Two Unknown B.I.C.E. Agents*, 657 F. Supp. 2d 1218, 1223, 1225 (D. Colo. 2009), *aff'd*, 366 F. App'x 894 (10th Cir. 2010) ("Plaintiff's detention was imposed by the state of Colorado based on Plaintiff's pending criminal charges; it was not imposed by or in any way impacted by the ICE detainer," and "could not, as a matter of law, constitute a restraint on or deprivation of a liberty"); *Keil v. Spinella*, No. 09-cv-3417, 2011 U.S. Dist. LEXIS 1075, *8-9 (W.D. Mo. Jan. 6, 2011) ("[D]etainer alone does not cause imprisonment or a seizure by ICE. Rather, a seizure only occurs when the agency to which the detainer was issued turns custody over to ICE."). Indeed, a federal detainer request, without more, is "simply an administrative mechanism that ensure[s] that upon the completion of his state criminal matter, [the alien] [will] be transferred to federal custody." *United States v. Juarez-Velasquez*, 763 F.3d 430, 436 (5th Cir. 2014). Such requests "do not limit [the receiving agency's] discretion" in any way. *Garcia v. Taylor*, 40 F.3d 299, 303 (9th Cir. 1994). "[S]tate charges [remain] the impetus for the entire duration of [any] pretrial detention" in such circumstances. *Juarez-Velasquez*, 763 F.3d at 436.

Because state charges remain the source of the County's ongoing authority to detain Canseco Salinas at this time, Canseco Salinas cannot manufacture standing by his refusing to post bond and thereby prolonging his own stay in state custody. *See Hickenlooper v. Freedom from Religion Found., Inc.*, 338 P.3d 1002, 1007 (Colo. 2014) (stating that "an injury that is overly indirect and incidental to the defendant's action will not convey standing, nor will the remote possibility of a future injury") (internal quotation marks and citation omitted). The Court should therefore conclude that Canseco Salinas's election to prolong his own state custody in order to avoid transfer to federal custody provides no cognizable basis to prematurely challenge the legality of cooperation with federal detainers.

II. Cooperation with ICE Detainers Is Consistent with Federal Statutory Law.

The INA provides that state and local officers may "cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(B). Such cooperation is consistent with the INA so long as it is undertaken pursuant to a "request, approval, or other instruction from the Federal Government" and follows the specifications of that direction. *Arizona*, 567 U.S. at 410.

Cooperation with a detainer satisfies that test. *First*, detainers are "request[s] . . . from the Federal Government" to a State or locality to assist its efforts to detain a particular alien, so complying with those requests is necessarily permissible cooperation at the federal government's "request, approval, or other instruction." *Id.*; *accord El Cenizo*, 890 F.3d at 189 (assistance with detainers occurs "only when there is already federal direction namely, an ICE-detainer *request*") (emphasis added); *accord Lopez-Lopez v. Cty. of Allegan*, No. 1:17-cv-786, 2018 WL 3407695, *3 (W.D. Mich. July 13, 2018) (similar); *Tenorio-Serrano v. Driscoll*, 3:18-cv-09075, -- F. Supp. 3d --, 2018 WL 3329661, *9 (D. Ariz. July 6, 2018) (similar); *Perez-Ramirez v. Norwood*, No. 18-4043-JWL, -- F. Supp. 3d --, 2018 WL 3524606, *2 (D. Kan. July 18, 2018) (holding that compliance with ICE detainer was lawful).

Second, the INA authorizes DHS to request cooperation "either to hold the prisoner for the agency or to notify the agency when release [] is imminent." *McLean v. Crabtree*, 173 F.3d 1176, 1185 n.12 (9th Cir. 1998); *see id.* (defining detainer as a request "to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent" and holding that DHS "has authority to lodge a detainer against a prisoner"); *accord El Cenizo*, 890 F.3d at 188 (similar). This detainer "authority," formalized by 8 U.S.C. §§ 1103(a)(3), 1226(a) and (c), 1231(a), and 1357(d), "predates the INA and has long been viewed as implied by federal

immigration enforcers' authority to arrest those suspected of being removable." *Santoyo v. United States*, No. 5:16-cv-855, 2017 WL 6033861, *3 (W.D. Tex. Oct. 18, 2017); *see United States v. Gomez-Robles*, No. 17-730, 2017 WL 6558595, *3 (D. Ariz. Nov. 28, 2017) (similar); *Mendez v. United States*, No. 02 CR 745 (RPP), 2009 WL 4857490, *1 n.2 (S.D.N.Y. Dec. 11, 2009) (similar); *Comm. for Immigrant Rights of Sonoma Cty. v. Cty. of Sonoma*, 644 F. Supp. 2d 1177, 1199 (N.D. Cal. 2009) (similar); *see also Akande v. U.S. Marshals Serv*., 659 F. App'x 681, 684 (2d Cir. 2016) ("[T]he immigration detainer would appear . . . to justify an additional 48 hours of detention beyond the expiration of the prisoner's term."); *Rosario v. New York City*, No. 12 Civ. 4795 (PAE), 2013 WL 2099254, *3 (S.D.N.Y. May 15, 2013) (noting the INA's "authority to detain [alien] under [a] detainer").

Third, such cooperation is permitted even if the County lacks a formal 287(g) agreement or does not satisfy the training and certification requirements that accompany such agreements. As the U.S. Court of Appeals for the Fifth Circuit recently explained, the INA, through section 1357(g)(10)(B), "indicates that Congress intended local cooperation without a formal agreement," and without "a written agreement, training, and direct supervision by DHS . . . in a range of key enforcement functions." *El Cenizo*, 890 F.3d at 179. That is, cooperation with immigration detainers is permitted and envisioned by the INA without any of the formal training and certification requirements necessary for "state and local officials [to] become de facto immigration officers, competent to act on their own initiative" under a formal 287(g) agreement. *Id.* And as a panel (at the stay stage) of the Fifth Circuit held with respect to Texas law requiring cooperation with immigration detainers, "nothing in *Arizona v. United States*, 567 U.S. 387 (2012), prohibits such assistance" and "8 U.S.C. § 1357(g), provides for such assistance." *El Cenizo*, 2017 WL 4250186, *1-2 (5th Cir. Sept. 25, 2017).

Indeed, the U.S. Supreme Court in *Arizona* did not purport to define the outer limits of cooperation permitted by section 1357(g)(10). Instead, it listed a number of examples of permissible cooperation that states and localities may partake in without the training and certification requirements of a formal agreement under 8 U.S.C. § 1357(g)(1), including "arrest[ing] an alien for being removable" if that arrest is made in response to a "request" from the federal government. 567 U.S. at 410. *Arizona* distinguished between such a scenario which is permissible under section 1357(g)(10)(B) and the scenario authorized by the law at issue in *Arizona*: "unilateral state action to detain . . . aliens in custody for possible unlawful presence without federal direction and supervision" and without any federal "request" to do so. *Id.* at 410, 413; *accord El Cenizo*, 890 F.3d at 179-80 (state law requiring cooperation with federal detainers "permit[s] no unilateral enforcement activity" because cooperation only occurs following "a predicate federal request for assistance").

Moreover, there is no requirement under the INA that a State or locality may only cooperate if it has a formal cooperation agreement under 8 U.S.C. § 1357(g)(1) and its officers are trained and certified under that provision. *See* 8 U.S.C. § 1357(g)(10)(B). Indeed, the Fifth Circuit recently rejected that assertion, *El Cenizo*, 890 F.3d at 179-80, and rightly so: Section 1357(g)(10) says that *no* formal "agreement under" section 1357(g) is required for local officers to "cooperate with" federal immigration officers. Formal agreements are quite different from informal cooperation. Under formal agreements, local officers undergo the training necessary to "perform [the] function of an immigration officer," 8 U.S.C. § 1357(g)(1) allowing them to enforce immigration law without any triggering request from the federal government to do so. *See Arizona*, 567 U.S. at 409-10 (explaining when DHS "grant[s] that authority to specific officers" through formal agreement). Under section 1357(g)(10), officers not subject to such

agreements may still cooperate absent any formal training, so long as such cooperation is not "unilateral," but at the "request, approval, or other instruction from the Federal Government." *Id.* at 410; *see United States v. Ovando-Garzo*, 752 F.3d 1161, 1164 (8th Cir. 2014) (argument to the contrary is "meritless"). The County's cooperation with federal immigration detainers thus presumes that such cooperation will occur *consistent with* federal law, because a detainer "always requires a predicate federal *request* before local officers may detain aliens for the additional 48 hours." *El Cenizo*, 890 F.3d at 189 (emphasis added); *Tenorio-Serrano*, 2018 WL 3329661, *9 (similar); *Lopez-Lopez*, 2018 WL 3407695, *2 (same).

Cooperation is thus permitted irrespective of whether it is directed by a state statute or by a local sheriff: in neither case does it exceed the bounds of the cooperation permitted by Congress. *See Arizona*, 567 U.S. at 410, 413 (affirming state legislative mandate "requiring state officials to contact ICE as a routine matter"). The only limitation is that such state-mandated cooperation may not "authorize state and local officers to engage in [] enforcement activities as a general matter" without "any input from the Federal Government." *Id.* at 408, 410. While "unilateral decision[s] of state officers to arrest an alien for being removable" are preempted, cooperation under a "request, approval, or other instruction from the Federal Government" is not. *Id*. at 410. Courts have thus recognized that federal law permits States and localities to cooperate, without formal training or certification, with federal requests to detain a removable alien. *See, e.g.*, *El Cenizo*, 890 F.3d at 180 (finding "[s]tate action under" the state-law provision requiring local cooperation with federal immigration enforcement does "not conflict with federal priorities or limit federal discretion [] because it requires a predicate federal request," and therefore "does not permit local officials to act without federal direction and supervision"); *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 467 (4th Cir. 2013) (detention by state officer lawful when

"at ICE's express direction"); *Ovando-Garzo*, 752 F.3d at 1164 (cooperation without "written agreement" is lawful if "not unilateral"); *Lopez-Lopez*, 2018 WL 3407695, *2 (same). Federal statutory law thus permits the County's cooperation with detainers here because that cooperation is not unilateral and occurs pursuant to a request or direction from the federal government.

III. Cooperation with ICE Detainers and Warrants is Consistent with Colorado Law.

Canseco Salinas argues that the County's power to cooperate with federal immigration detainers is constrained by Colorado law. Pl.'s Mot. for Prelim. Inj. at 6. He is wrong: Colorado law authorizes such cooperation.

To start, Canseco Salinas's potential future detention pursuant to an ICE detainer and federal arrest warrant would not be a new arrest but a continued detention. The difference between a new arrest and a continuation of custody is clear under Colorado law. An arrest is a *process* by which a person is taken into custody. *See, e.g.*, Colo. Rev. Stat. § 16-3-101 (an arrest "may be made"); *id.* § 16-3-106 (discussing authority to "make the arrest"). "Custody," meanwhile, is "the restraint of a person's freedom in any significant way" that *results from* a prior arrest. Colo. Rev. Stat. § 16-1-104(9); § 16-3-107 (emphasis added) (discussing "custody . . . *following* an arrest"); *see id.* § 16-3-104 (discussing a peace officer's ability to "arrest and hold a person in custody"); *id.* § 16-3-401 (emphasis added) (describing the rights of those "arrested *or* in custody"). The continuing of a prior detention is not an arrest, as no new process of restraint has occurred.[6] Unless a peace officer begins a period of physical confinement of the

[6] Even the case that Canseco Salinas cites in support of his proposition that a detention based on an ICE detainer is a new arrest recognizes that "a detainer is distinct from an arrest." *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015). A Fourth Amendment "seizure" is not synonymous with a statutory "arrest," and the test for determining whether a new Fourth Amendment "seizure" has occurred is unrelated to whether the state statutory definition of "arrest" has been met. The sheriff in *Cisneros* incorrectly conceded this point, and thus that question was not properly before that court. *Cisneros*, slip op. at 4.

defendant, the officer has not executed an arrest. Canseco Salinas's citation of arrest statutes is thus irrelevant to the analysis of whether sheriffs in Colorado may cooperate with ICE detainers when a removable alien is in their custody. Instead, any compliance with ICE's detainer and warrant here is merely a temporary extension of current custody in order to assist ICE in effecting its own valid warrant pursuant to its sovereign, constitutionally recognized authority.

In continuing to detain a person pursuant to an ICE warrant and detainer, the sheriff acts at the request of the federal government. Cooperation with an ICE detainer "provide[s] operational support" to the federal government "by executing a warrant." 8 U.S.C. § 1357(g)(10); *Lopez-Lopez v. Cty. of Allegan*, No. 1:17-cv-786, 2018 WL 3407695, *3 (W.D. Mich. July 13, 2018) ("Allegan County can choose to cooperate, or it can refuse. If it chooses to cooperate, it has no discretion at all . . . ."). That action is taken at the "request, approval, or other instruction from the Federal Government." *Arizona*, 567 U.S. at 410. This authority is explicit: "[a]n *officer* or *employee* of a State or political subdivision of a State acting *under color of authority* under this subsection . . . shall be considered to be acting under *color of Federal authority* [for certain purposes]." 8 U.S.C. § 1357(g)(8) (emphases added); *see, e.g.*, *Davila v. United States*, 247 F. Supp. 3d 650, 660 n.17 (W.D. Pa. 2017); *see also Santos v. Frederick County Bd. of Comm'rs*, 2010 U.S. Dist. LEXIS 88449, *9-12 (D. Md. Aug. 25, 2012), *rev'd on other grounds*, 725 F.3d 451 (4th Cir. 2013) (arrest at ICE request); *Arias*, 2008 U.S. Dist. LEXIS 34072, *41-44 (joint immigration task force resulting in arrests). The sheriff acts under *federal* authority when continuing to detain a person at the request of the federal government. 8 U.S.C. § 1357(g)(8).

Even were that not so, Colorado sheriffs may lawfully assist other sovereigns in the

execution of their lawful warrants under their *own* authority. Like any other State, Colorado wields broad "police powers," which are "an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people." *Manigault v. Springs*, 199 U.S. 473, 480 (1905). As the Supreme Court has recognized, States did not give up their common law police powers by joining the Union. *See Arizona*, 567 U.S. at 400. The States' status as separate sovereigns means that they possess all residual powers not abridged or superseded by the United States Constitution. *Mayor of New York v. Miln,* 36 U.S. (11 Pet.) 102, 139 (1838). This residual authority exists regardless of any statutory invocation or clarification of that authority by a State's legislature. *See Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819) (Marshall, C.J.). Thus, absent evidence that it "was the clear and manifest purpose of Congress to abridge [a State's police] powers," *Arizona*, 567 U.S. at 400, States and their subdivisions retain whatever common-law police powers they had when joining the Union. *Id.* Far from abridging state power, Congress has authorized cooperation with detainers and federal immigration warrants through the INA. *See* 8 U.S.C. § 1357(g)(10)(B).

As to Colorado's or its localities' exercise of its police powers, there is no requirement that, "before a state law enforcement officer may arrest a suspect for violating federal immigration law, state law must *affirmatively* authorize the officer to do so." *United States v. Santana-Garcia*, 264 F.3d 1188, 1193-94 (10th Cir. 2001) (collecting cases). Rather, "state and local law enforcement officers are empowered to arrest for violations of federal law, as long as such arrest is authorized by state law." *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1296 (10th Cir. 1999); *see id.* (noting the general state authority for officers to arrest for immigration

laws).[7] The overwhelming consensus is that, at common law, a State's inherent police powers are not diminished absent explicit legislative action cabining a state or local peace officer's arrest authority. *See id.*; *Tenorio-Serrano v. Driscoll*, 3:18-cv-09075, -- F. Supp. 3d --, 2018 WL 3329661, *4 7 (D. Ariz. July 6, 2018) (recognizing that "sheriffs retain common law powers") (citing 70 Am. Jur. 2d Sheriffs, Police, and Constables § 31); *United States v. Bowdach*, 561 F.2d 1160, 1167 68 (5th Cir. 1977) (state officers may make arrests based on federal statutes or arrest warrants despite absence of state statute explicitly and specifically so permitting); *United States v. Janik*, 723 F.2d 537, 548 (7th Cir. 1983) (recognizing state law enforcement officers' implicit authority to arrest suspects for federal offenses, even though "no Illinois statute explicitly authorized an Illinois officer to arrest"); *cf. Marsh v. United States*, 29 F.2d 172, 174 (2d Cir. 1928) (L. Hand, J.) (the fact that state statute governing arrest authority does not explicitly authorize a specific arrest does not mean that arrest is not authorized, because it is inappropriate to infer in such circumstances an intent to restrict pre-existing authority to arrest for other offenses); *see also Commonwealth v. Leet*, 641 A.2d 299, 303 (Pa. 1994) (holding common-law authority not abrogated absent explicit statutory provision to that effect); *Christopher v. Sussex Cty.*, 77 A.3d 951, 959 (Del. 2013) (similar); *Dep't of Pub. Safety & Corr. Servs. v. Berg*, 342 Md. 126, 137-39 (1996); *Southern R. Co. v. Mecklenburg County*, 231 N.C. 148, 150-51 (1949) (similar). That is the law in Colorado too. *Douglass v. Kelton*, 199 Colo. 446, 448 (Colo. 1980) ("The scope of his power and authority is limited to that inherent in the office" and those additional powers "derived from legislation").[8]

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[7] Cooperation without a federal request is merely preempted; that cooperation would not violate the Fourth Amendment or contravene state common law.

[8] To the extent that Canseco Salinas and the court in *Cisneros* relied on *Lunn v. Commonwealth*, 477 Mass. 517, 528-33 (2017), *Lunn* represents the minority view, rests on Massachusetts law, and conflicts with the authorities cited herein.

Pursuant to Colorado common law, sheriffs in particular retain broad residual authority to cooperate with other federal and state authorities in the enforcement of their laws, including the ability to effect writs of arrest both criminal and civil and detain prisoners pursuant to outstanding warrants. Colorado common law permits the holding of prisoners beyond the length of their sentence "to answer to other writs upon which [they have] not been arrested." 1 WALTER H. ANDERSON, TREATISE ON THE LAW OF SHERIFFS, CORONERS, AND CONSTABLES § 146 (1941). The reasoning for this detainer authority is clear: "It would be a useless and idle ceremony to discharge [a prisoner] and immediately arrest him upon the other process held by the officer." *Id.* These common-law duties have existed throughout Colorado's history, even as some provisions of Colorado law have been codified. *See Douglass*, 199 Colo. at 448; Colorado Const. art. 14 § 8 (recognizing the position of sheriff); *Jackson v. State*, 966 P.2d 1046, 1050 (Colo. 1998) (holding that qualifications for sheriff are constitutionally created); *see also Tenorio-Serrano*, 2018 WL 3329661, *4-7 (noting the same in Arizona law).

Indeed, the Supreme Court of Colorado in *Douglass v. Kelton* explicitly acknowledged that "the scope of [a sheriff's] power and authority is limited to that inherent in the office" and those additionally "derived from legislation." 199 Colo. at 448. It held that "[t[he issuance of permits for concealed weapons does not fall within that category of inherent powers" because "a police chief or sheriff can fully perform his functions without this power." *Id.* (emphasis added). Thus, the operative question is whether the sheriff had that power at common law as an inherent power. Only once the court has made a negative determination should it look for enabling legislation as an additional source of authority.[9] Here, the sheriff at common law had the inherent

[9] The court in *Cisneros* misread *Douglass*, holding that it meant that "Colorado sheriffs are limited to the express powers granted to them by the Legislature." *Cisneros*, slip op. at 9.

power to continue to detain a prisoner to answer other valid writs from other sovereigns and continues to maintain that power to cooperate with lawful federal authority under Colorado law to this day.[10] Therefore, because a sheriff has that inherent authority to assist in the lawful execution of federal law, the Court need not examine whether the state legislature delegated any additional powers to the sheriff.[11]

Canseco Salinas maintains that, because an ICE warrant is not issued by a judge, a sheriff cannot comply with it. Pl.'s Mot. for Prelim. Inj. at 9 (citing Colo. Rev. Stat. § 16-1-104(18)). However, under the common law, an ICE detainer and warrant is a valid civil "writ" with which a sheriff may comply in comity. Contrary to Canseco Salinas's argument, as further explained in Section II, an ICE warrant signed by an executive immigration officer is a valid warrant pursuant to federal law. *See, e.g.*, *Abel v. United States*, 362 U.S. 217, 233 (1960); *Lopez v. INS*, 758 F.2d 1390, 1393 (10th Cir. 1985) (aliens "may be arrested [by] administrative warrant issued without

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[10] Further, the Supreme Court of Colorado recognized that legislation is required to *expand* the sheriff's powers and thereby indicated that the codification of powers legislatively does not abridge those residual common law powers left uncodified. *Douglass*, 199 Colo. at 448. In *Douglass*, the power to issue concealed-carry permits resided in the legislature and could not be delegated to sheriffs without "appropriate enabling legislation." *Id.* at 449. Conversely here, the sheriff retains the constitutional authority to cooperate with other law enforcement agencies acting pursuant to valid authority under the Constitution and laws of the United States.

[11] The Supreme Court of Colorado reaffirmed *Douglass*'s salience in *People v. Buckallew*, citing it for the proposition in dicta on which Canseco Salinas relies: "[a]lthough a sheriff's authority is generally created by legislative enactment, a sheriff also has those implied powers which are reasonably necessary to execute those express powers." *People v. Buckallew*, 848 P.2d 904, 908 (Colo. 1993). In that case, the Supreme Court of Colorado had no need to consider the sheriff's residual common law authority because statutes clearly indicated an "implied power to make official certificates." *Id.* Because *Buckallew* positively cited *Douglass* and did not abrogate it, *Douglass* remains operative. Additionally, *Buckallew*'s brief analysis does not contend with the constitutional delegation-of-power concerns that *Douglass* addresses. And by recognizing that "a sheriff's authority is *generally* created by legislative enactment," it did not contradict *Douglass*' implied-powers holding. *Buckallew*, 848 P.2d at 908 (emphasis added). If this court were to hold that a statute were indeed required for every act of a sheriff, innumerable acts of positive cooperation with the federal government, not just in immigration, would fall outside of a sheriff's lawful authority.

an order of a magistrate"). The Sherriff has authority to answer to other "writs," civil or criminal, so long as they are regular on their face. Regardless, under common law, the Sheriff's cooperation with a federal administrative warrant is permissible because it constitutes a warrant under State law.[12]

Canseco Salinas argues that a federal administrative arrest warrant is not a warrant for purposes of Colorado law because such warrants must be issued by a "judge." Pl.'s Mot. for Prelim. Inj. at 9. That argument relies on an incorrect understanding of who may be a "judge" or "magistrate" for purposes of issuing a warrant. It is well-settled that the term "magistrate" as it is understood in the arrest and presentment context is not limited to *judicial* officers, but in fact encompasses any "public civil officer, possessing such power legislative, executive, or judicial as the government appointing him may ordain." *Shadwick v. City of Tampa*, 407 U.S. 345, 349 (1972); *see Compton v. State of Alabama*, 214 U.S. 1, 7 (1909) ("the appellation of magistrate is not confined to justices of the peace, and other persons, *ejusdem generis*, who exercise general judicial powers; but it includes others *whose duties are strictly executive*") (emphasis added). Indeed, it has long been the case that federal immigration officials in the Executive Branch may function as magistrates by issuing administrative warrants pursuant to federal statutes authorizing them to do so. *See, e.g.*, *Abel*, 362 U.S. at 234; *El Cenizo*, 890 F.3d at 187; *Lopez-Lopez*, 2018 WL 3407695, *3; *Roy v. Cty. of Los Angeles*, No. CV1209012BROFFMX, 2017 WL 2559616, *8 (C.D. Cal. June 12, 2017) ("[C]ourts have recognized that the executive and the Legislature have the authority to permit executive rather than judicial officers to make probable cause determinations regarding an individual's

[12] Other types of warrants, including administrative parole violator warrants, are also considered valid warrants although they are not issued through the same process as criminal arrest warrants.

deportability."); *accord Sherman v. U.S. Parole Comm'n*, 502 F.3d 869, 876-80 (9th Cir. 2007) (in immigration context, warrants may be issued "outside the scope of the Fourth Amendment's Warrant Clause"); *Lopez*, 758 F.2d at 1393 (recognizing the validity of an "administrative warrant issued without an order of a magistrate"). And if and when Canseco Salinas actually posts bond and ICE takes custody of him, he may challenge his custody or removal proceedings before the "magistrate," *i.e.* ICE, as well as the immigration courts. *See* 8 U.S.C. § 1226; 8 U.S.C. § 1229(b)(1); 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 287.3(d). Because the federal government's detainer and warrant are lawful on their face, the sheriff can assist the federal government in its lawful execution of its authority.

Canseco Salinas relies on *Cisneros v. Elder* to maintain that his current detention is unlawful under Colorado law. *Cisneros v. Elder*, No. 18CV30549, slip. op. (Colo. 4th Dist. Ct. Mar. 19, 2018) (Order Granting Preliminary Injunction). However, *Cisneros* involved a county's unilateral, continued detention of persons after those persons had attempted to post bond and before ICE had issued a detainer. *Id.* at 2. In that case, the county operated independent from and without direction of ICE in continuing to detain those persons after they posted bond, without having received a detainer request from ICE at the time the County refused to release the alien. Because the county lacked federal authorization, its actions were not pursuant to the federal government's sovereign direction. Crucially here, Canseco Salinas has not attempted to post bond and remains subject to his state pretrial detention unilaterally extending his own pre-trial detention in an effort to avoid the immigration consequences of his actions. Further, unlike the *Cisneros* plaintiffs, he is subject to a valid ICE detainer and warrant, served prior to his posting bond on his state charges, that gives the County the authority to detain him under federal direction for a period of up to 48 hours. Thus, *Cisneros* is distinguishable from the present

case.[13] *See, e.g.*, *Roy*, 2017 WL 2559616, *10 (upholding cooperation with detainers and noting that "a different analysis [would apply] if Plaintiffs were alleging that Defendants have failed to provide any probable cause determination within forty-eight hours and Plaintiffs . . . were being detained without any authorization at all"). And indeed, every other court that has considered cooperation with ICE after ICE's 2017 policy change has held it to be lawful. *See El Cenizo*, 890 F.3d 164; *Lopez-Lopez*, 2018 WL 3407695; *Perez-Ramirez*, 2018 WL 3524606; *Tenorio-Serrano*, 2018 WL 3329661; *Rojas v. Suffolk Cty. Sheriff's Office*, 73 N.Y.S.3d 860, 865 (N.Y. Sup. Ct. 2018).[14]

Additionally, Colorado statutory law does not withdraw localities' retained authority to cooperate with federal immigration enforcement. In fact, Canseco Salinas's argument fails on its own terms, even if this Court were to accept the mischaracterization of the continued detention as an arrest.

First, Colorado law permits a peace officer to arrest a person when the officer "has probable cause to believe that an offense was committed and has probable cause to believe that the offense was committed by the person to be arrested." Colo. Rev. Stat. § 16-3-102(1)(c). That provision appears in the statute that separately authorizes a peace officer to effect arrests where any "crime has been or is being committed by such person in his presence." *Id.* § 16-3-102(1)(b).

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[13] *Cisneros* has no binding authority on this Court. *People ex rel. Gallagher, In & For Eighteenth Judicial Dist. v. Dist. Court In & For Arapahoe Cty.*, 666 P.2d 550, 553 (Colo. 1983) (noting that "a trial court is not inexorably bound by its own precedents").

[14] Although decided after the policy change, an order in *Roy v. County of Los Angeles* addressed the prior 2012 policy and so is not relevant here. *Roy v. Cty. of Los Angeles*, No. CV1209012ABFFMX, 2018 WL 914773, at *18 (C.D. Cal. Feb. 7, 2018), *reconsideration denied*, No. CV1209012ABFFMX, 2018 WL 3439168 (C.D. Cal. July 11, 2018). Also, the United States disagrees with *Roy*'s legal determinations about that prior policy.

By distinguishing between the term "offense" and the term "crime," Colorado law supports the common law authority of peace officers to effect arrests not just for crimes, but for the far broader category of "offenses," so long as the peace officer has probable cause to believe the person being arrested in fact committed the offense.

That would provide the needed authority in this context, even if this Court were to consider continuing to hold a detainee for ICE pursuant to a detainer to be a new arrest. A detainer and warrant demonstrate that there is probable cause to believe that an alien is subject to removal, a federal civil *offense*. 8 C.F.R. § 287.7. An alien is subject to removal if he or she has violated federal immigration law in any number of specified ways. *See generally* 8 U.S.C. §§ 1182, 1227. Therefore, an ICE officer issuing a detainer and warrant has probable cause to believe that the alien has committed the "offense" of being unlawfully present or being otherwise removable from the United States.

Indeed, Colo. Rev. Stat. § 16-3-102(1)(c) reflects the general principle of the well-established collective knowledge doctrine, *People v. Anaya*, 545 P.2d 1053, 1056 (Colo. App. 1975). Under the collective knowledge doctrine as applied in Colorado, "probable cause can be measured by the knowledge of the fellow officers who ordered the arrest." *Id.* (interpreting Colo. Rev. Stat. § 16-3-102(1)(c) and applying the collective knowledge doctrine). Thus "an arresting officer who does not personally possess sufficient information to constitute probable cause may still make a warrantless arrest if (1) he acts upon the direction or as a result of a communication from a fellow officer, and (2) the police, as a whole, possess sufficient information to constitute probable cause." *People v. Baca*, 600 P.2d 770, 771 (Colo. 1979). The arresting officer need not check the other officer's work; the arresting officer is "entitled to presume that an outstanding warrant is based upon probable cause, and [is] not required to conclusively establish the validity

of the warrant at the time of the arrest." *People v. Thompson*, 793 P.2d 1173, 1176 (Colo. 1990); *see also El Cenizo*, 890 F.3d at 188 ("Compliance with an ICE detainer . . . constitutes a paradigmatic instance of the collective-knowledge doctrine, where the detainer request itself provides the required communication between the arresting officer and an officer who has knowledge of all the necessary facts.").

Thus, so long as a Colorado peace officer has actual or constructive knowledge of the fact of an immigration detainer and warrant, Colorado law authorizes the peace officer to cooperate with a detainer. Indeed, under the current ICE policy, where detainers are accompanied by administrative warrants, "an ICE-detainer request evidences probable cause of removability in every instance." *El Cenizo*, 890 F.3d at 187. Colo. Rev. Stat. § 16-3-102(1)(c) therefore affirmatively authorizes local cooperation with detainers and warrants.

Contrary to the court's holding in *Cisneros*, under Colorado law, "offense" does not always mean "crime." *See Cisneros*, slip op. at 5. Although Title 16 the title containing the warrantless arrest statute, § 16-3-102(1)(c) contains a definitions provision, it does not define "offense." *Id.* § 16-1-104. Instead, the Court relied on § 18-1-104(1) for the proposition that "the terms 'offense' and 'crime' are synonymous." *Id.* That section is housed in Title 18 of the Colorado Revised Statutes, entitled "Criminal Code." Neither § 18-1-104(1) nor its surrounding provisions give any indication that the statute's definition of offense applies anywhere outside Title 18. When the Colorado General Assembly intends for a definition used in one title to apply in Title 16, it often explicitly says so. *E.g.*, Colo. Rev. Stat. § 16-11.8-102(3) (in Title 16, specifically adopting Title 18's definition of "domestic violence offense," which is explicitly defined there as a "crime"); *id.* § 16-13-303(1) (in Title 16, adopting several particular definitions from Title 18, such as "controlled substance," "prostitution," and "human

trafficking"); *see also id.* § 17-2-103.5(1)(a)(II)(B) (in Title 17, adopting a Title 16's definition of "crime of violence"). Therefore, the Title 18-specific definition equating "offense" to "crime" does not apply in Title 16, which has its own definitions section and does not so limit "offense."

The § 18-1-104(1) definition of "offense" does apply outside Title 18 in a limited circumstance: when "construction of . . . any offense defined in any statute of this state" is at issue. Colo. Rev. Stat. § 18-1-103(1). But there is no particular "offense" that needs defining here; the Colorado Revised Statutes do not "define[]" the federal immigration offenses that may give rise to a warrantless arrest under § 16-3-102(1)(c); thus there is no cause to use § 18-3-104(1)'s definition of "offense." Because the § 18-1-104(1) definition does not apply to § 16-3-102(1)(c), the former statute does not displace the latter's plain meaning of "offense": a violation of the law, whether criminal or civil.

Second, even if this Court were to ignore the sheriff's inherent power under the common law, sheriffs may exercise the express powers granted to them by the legislature and the implied powers "reasonably necessary to execute those express powers." *Buckallew*, 848 P.2d at 908. Colorado law expressly empowers a sheriff to detain "every person duly committed" to a county jail by a federal official "for any offense against the United States." Colo. Rev. Stat. § 17-26-123.

This statute authorizes local jails to temporarily hold individuals subject to federal civil process, such as a charge by a federal official for a federal immigration violation. For individuals who will be subject to federal detention for federal immigration violations and who are currently in state custody, the easiest and safest way (albeit not the only way) to transition those individuals from state custody to federal custody is to keep them in the same place: state jail. A detainer, requesting that the jail maintain custody not to exceed 48 hours, is a mechanism to

accomplish that transition. Therefore, for a sheriff to execute his or her express power to detain federal immigration violators in the county jail, in the case of aliens already in the jail on state-law grounds, it is reasonable for the sheriff to temporarily hold those aliens for the length of time contemplated by the detainer.

Thus, cooperation with ICE detainers supported by federal warrants is not forbidden, and, in fact, are affirmatively authorized by Colorado common and statutory law. *See* Colo. Rev. Stat. §§ 16-3-102(1)(c), 17-26-123.

IV. Cooperation with ICE Detainers is Consistent with the U.S. Constitution and the Colorado Constitution.

Canseco Salinas further alleges that the County's practice of complying with detainers violates the Colorado Constitution's unreasonable seizure and due process provisions. Compl. ¶¶ 79-84.

A. By cooperating with ICE detainers, the County does not commit an unreasonable seizure

Canseco Salinas alleges that cooperation with ICE detainers violates Article II, Section 7 of the Constitution of the State of Colorado, which prohibits unreasonable seizures, because the arrests are without legal authority. Compl. ¶¶ 79-82. This claim is meritless.

At the outset, as the Colorado Supreme Court has explained, Article II, Section 7 of the Colorado Constitution is frequently interpreted co-extensively with the Fourth Amendment to the U.S. Constitution. *E.g.*, *People v. Brunsting*, 307 P.3d 1073, 1078 (Colo. 2013). "However, in every case in which our supreme court has recognized a greater protection under the state constitution than that afforded by the federal constitution, it has identified a privacy interest deserving of greater protection than that available under the Fourth Amendment." *People v. Rossman*, 140 P.3d 172, 176 (Colo. Ct. App. 2006); *see id.* (holding that probationers do not hold a greater expectation of privacy than that afforded by the Fourth Amendment). Aliens for whom

ICE has probable cause to conclude are removable do not have special privacy interests that warrant heightened protection under the Colorado Constitution. To the contrary, "aliens, even those lawfully within the country, do not have most of the constitutional rights afforded to citizens," including that "[t]hey may be arrested [by] administrative warrant issued without an order of a magistrate and held without bail." *Lopez*, 758 F.2d at 1393 (internal citation omitted). Accordingly, the Court should construe the Colorado Constitution to provide no greater protection than does the Fourth Amendment in this context.

Three points establish that local cooperation with detainers accords with both the Fourth Amendment and its Colorado equivalent: (1) federal officials can (as Canseco Salinas does not dispute) constitutionally arrest aliens under a federal administrative warrant (which accompanies each ICE detainer); (2) the lawfulness of that practice does not change when local officials help effectuate such an arrest at ICE's request; and (3) local officials may constitutionally rely upon federal officials' probable-cause determinations.

First, there is no dispute that the Fourth Amendment permits *federal* officers to make civil arrests of aliens based on probable cause of removability contained in a detainer or administrative warrant. To start, the "Fourth Amendment does not require warrants to be based on probable cause of a crime, as opposed to a civil offense." *United States v. Phillips*, 834 F.3d 1176, 1181 (11th Cir. 2016); *see id.* (collecting examples, including bench warrants for civil contempt and writs of replevin). Arrests may be premised on probable cause of any legal violation, whether civil or criminal. *See, e.g.*, *El Cenizo*, 890 F.3d at 188 (collecting other constitutionally valid examples, including seizures of the mentally ill, those who pose a danger to themselves, and juvenile runaways); *Tenorio-Serrano*, 2018 WL 3329661, *6 (providing a similar list of civil arrests); *Lopez-Lopez*, 2018 WL 3407695, *3 ("In fact, individuals may be

arrested for any violation of law civil or criminal."); *Perez-Ramirez*, 2018 WL 3524606, *2 ("[T]he legality of an arrest of an alien based upon a civil immigration violation is well-established."); *see also United States ex rel. Randazzo v. Follette*, 418 F.2d 1319, 1322 (2d Cir. 1969) (holding that a parole violator warrant designated as "administrative" under New York law was not subject to ordinary Fourth Amendment safeguards and thus did "not depend upon a showing of probable cause"), *cited in People v. Tafoya*, 985 P.2d 26, 29 (Colo. Ct. App. 1999) (declining to hold that the Colorado Constitution requires, for a warrantless search of a parolee, a showing that the parolee has committed a parole violation or crime). Indeed, given that "[i]n determining whether a search or seizure is unreasonable, [courts] begin with history," including "statutes and common law of the founding era," *Virginia v. Moore*, 553 U.S. 164, 168 (2008), that understanding is especially settled in the immigration context. There is "overwhelming historical legislative recognition of the propriety of administrative arrest[s] for deportable aliens." *Abel*, 362 U.S. at 233 (noting "impressive historical evidence" of validity of "administrative deportation arrest[s] from almost the beginning of the Nation"). Therefore, aliens "may be arrested by administrative warrant issued without order of a magistrate." *Lopez*, 758 F.2d at 1393.

Nor do warrants accompanying detainers violate the Fourth Amendment or the Colorado Constitution just because they are issued by an ICE official rather than through a warrant signed by a judge. Given the civil context of federal immigration detainers, an executive immigration officer can constitutionally make the necessary probable-cause determination. "[L]egislation giving authority to the Attorney General or his delegate to arrest aliens pending deportation proceedings under an administrative warrant, not a judicial warrant within the scope of the Fourth Amendment," has existed "from almost the beginning of the Nation." *Abel*, 362 U.S. at

234. "It is undisputed that federal immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability." *El Cenizo*, 890 F.3d at 186; *see Tenorio-Serrano*, 2018 WL 3329661, *10 ("Arrests based on probable cause of removability a civil immigration violation have been long recognized in the courts."). So "it is not unconstitutional under the Fourth Amendment for the Legislature to delegate a probable cause determination to an executive officer, such as an ICE agent, rather than to an immigration, magistrate, or federal district court judge." *Roy*, 2017 WL 2559616, *10; *see also Sherman v. U.S. Parole Comm'n*, 502 F.3d 869, 876-80 (9th Cir. 2007) (in immigration context, warrants may be issued "outside the scope of the Fourth Amendment's Warrant Clause"); *United States v. Lucas*, 499 F.3d 769, 776 (8th Cir. 2007) (en banc) (plurality) (similar).

Second, because the Fourth Amendment allows federal immigration officers to arrest and detain based on an administrative warrant attesting to probable cause of removability, state and local officials can do the same when they act at the request or direction of the federal government. The Fourth Amendment does not apply differently when a local official rather than a federal official is arresting or detaining. "The Fourth Amendment's meaning [does] not change with local law enforcement practices." *Virginia*, 553 U.S. at 172. To hold otherwise would cause Fourth Amendment "protections [to] vary if federal officers were not subject to the same statutory constraints as state officers." *Id.* at 176.

Thus, if a seizure is legal under the Fourth Amendment when a federal officer effectuates it, then so too when a state or local officer does, even where state law does not authorize the arrest. A police officer's "violation of [state] law [in arresting an alien based on a violation of federal immigration law] does not constitute a violation of the Fourth Amendment." *Martinez-Medina v. Holder*, 673 F.3d 1029, 1037 (9th Cir. 2011). And the legality of an arrest made by a

state officer is especially apparent where a local officer is not just arresting for a federal offense, but doing so at and after the express request of the federal government supported by a federal administrative warrant, and consistent with state law authorizing the arrest and requiring compliance with federal detainers requesting such arrests. Under detainer requests, County sheriff's deputies do not act unilaterally they act at ICE's request, within the parameters of ICE's request. *See El Cenizo*, 890 F.3d at 189 ("[T]he ICE-detainer mandate, [] always requires a predicate federal request before local officers may detain"); *Santos*, 725 F.3d at 467 (cooperation lawful when "at ICE's express direction"); *Ovando-Garzo*, 752 F.3d at 1164 (cooperation without "written agreement" lawful if "not unilateral"); *cf. Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012) (detention of removable aliens is unilateral absent a formal agreement or request for cooperation).

Third, similar to the statutory collective-knowledge doctrine discussed above, *see* Colo. Rev. Stat. § 16-3-102(1)(c), arrests or detentions based on probable cause may constitutionally be made where the probable-cause determination is made by one official (here, a federal ICE officer) and relied on by another official who serves under a different sovereign (here, a local official). Put differently, state and local officers may rely on ICE's findings of probable cause, as articulated in a detainer and administrative warrant, to detain the subject of a detainer when the federal government so requests. Where one officer obtains an arrest warrant based on probable cause, other officers can make the arrest even if they are "unaware of the specific facts that established probable cause." *United States v. Hensley*, 469 U.S. 221, 231 (1985). An officer may thus arrest someone, even when the officer does not know the facts establishing probable cause, so long as "one officer knows facts constituting reasonable suspicion or probable cause . . . and he communicates an appropriate order or request." *United States v. Chavez*, 534 F.3d 1338, 1347

(10th Cir. 2008) (internal quotation marks and citation omitted).

This rule of collective law-enforcement knowledge applies when "the communication [is] between federal and state or local authorities," 3 Wayne R. LaFave, *Search and Seizure* § 3.5(b) (2016) (collecting cases), including when a state or local officer arrests someone based upon probable cause from information received from an immigration officer. *See, e.g.*, *El Cenizo*, 890 F.3d at 188 ("Compliance with an ICE detainer [] constitutes a paradigmatic instance of the collective-knowledge doctrine, where the detainer request itself provides the required communication between the arresting officer and an officer who has knowledge of all the necessary facts."); *Mendoza v. U.S. ICE*, 849 F.3d 408, 419 (8th Cir. 2017) ("County employees . . . reasonably relied on [an ICE agent's] probable cause determination for the detainer"); *Tenorio-Serrano*, 2018 WL 3329661, *9 ("[T]he [local] officer is acting on the probable cause determination of a federal officer empowered and trained to make such determinations."). And "an ICE-detainer request evidences probable cause of removability in every instance." *El Cenizo*, 890 F.3d at 187.

B. Cooperation with ICE Detainers is consistent with the Due Process Clause of Article II, Section 25 of the Colorado Constitution

Canseco Salinas suggests that when the County maintains custody of an alien pursuant to a detainer, the alien does not receive "meaningful notice and opportunity to be heard to contest the unreasonable detentions." Compl. ¶ 84. Ignoring the process afforded by the removal proceedings that generally follows the initial detainer-based detention, *see generally* 8 U.S.C. § 1229a, Canseco Salinas claims that detainers violate the procedural due process provision in Article II, Section 25 of the Colorado Constitution.

For the purposes of this case, whether the County is violating the Due Process Clause of the Colorado Constitution may be determined by analyzing case law under its federal

counterpart, the Fifth and Fourteenth Amendments. *See Nat'l Prohibition Party v. State*, 752 P.2d 80, 83 n.4 (Colo. 1988) ("[Because] Article II, section 25, of the Colorado Constitution provides a guarantee similar to that under the fourteenth amendment of the United States Constitution . . . , we apply the requirements of federal law."). Because cooperation is perfectly consistent with the demands of the federal Constitution, it is equally consistent with the Colorado Constitution. As explained below, the claim is not viable.

First, where a party raises both Fourth and Fifth Amendment challenges to the same nexus of events, as here, the "independent" Fifth or Fourteenth Amendment due process claim collapses into the Fourth Amendment claim and cannot serve as a separate, freestanding claim. *See, e.g.*, *Bryant v. City of New York*, 404 F.3d 128, 135-36 (2d Cir. 2005); *Becker v. Kroll*, 494 F.3d 904, 920 (10th Cir. 2007) ("[T]he Fourth Amendment adequately protected [the detainee's] constitutional liberty interests, and she therefore has no procedural due process claim based on pre-trial deprivations of physical liberty."). Indeed, as the Supreme Court recently explained, "[i]f the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment," and not the "due process clause." *Manuel v. City of Joliet*, 137 S. Ct. 911, 919 (2017).

Second, a prerequisite to any due process claim, whether procedural or substantive, is an assertion of a cognizable liberty interest. *E.g.*, *Watso v. Colo. Dep't of Soc. Servs.*, 841 P.2d 299, 304 (Colo. 1992). But the lodging of any detainer generally has no "immediate effect upon protected liberty interests," because the subject of a detainer is "not entitled to a hearing prior to the execution of the warrant or to compelled execution of the warrant" on which the detainer relies. *Heath v. U.S. Parole Comm'n*, 788 F.2d 85, 91 (2d Cir. 1986); *see Nasious*, 657 F. Supp. 2d at 1223, 1225, *aff'd*, 366 F. App'x 894 ("Plaintiff's detention was imposed by the state of

Colorado based on Plaintiff's pending criminal charges; it was not imposed by or in any way impacted by the ICE detainer," and "the ICE detainer could not, as a matter of law, constitute a restraint on or deprivation of a liberty"); *Keil*, 2011 WL 43491, *8-9 ("[A] detainer alone does not cause imprisonment or a seizure by ICE. Rather, a seizure only occurs when the agency to which the detainer was issued turns custody over to ICE."); *Escobar v. Holder*, Civ. No. 09-3717 (PAM/JJK), 2010 WL 1389608, *4 (D. Minn. Mar. 9, 2010) (finding "no support for the proposition that" an alien "is entitled to a hearing before immigration officials send . . . a detainer").

This is especially true in the immigration context. Removable aliens generally lack any due process right to be free from detention pending resolution of their removal proceedings until such detention becomes *prolonged*. *See Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004). Until it does, detention remains "a constitutionally valid aspect of the deportation process," and impinges on no cognizable liberty interest. *Demore v. Kim*, 538 U.S. 510, 523 (2003). That is true whether the custodian of that detention is the federal government or a state or locality. *See, e.g.*, *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 832-33 (11th Cir. 2016). To be sure, aliens who are not subject to mandatory detention may challenge their ongoing detention in their removal proceedings and seek release on bond. *See, e.g.*, 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 287.3(d). They may also, as Canseco Salinas would be fully capable of doing in removal proceedings, seek to terminate their removal proceedings based on a pre-removal proceeding "deprivation of fundamental rights," including Fourth and Fifth Amendment rights. *Rajah v. Mukasey*, 544 F.3d 427, 446-47 (2d Cir. 2008). But the remedies available in removal proceedings do not create a freestanding due process right to avoid immigration detention. *See Demore*, 538 U.S. at 523. And absent such a cognizable liberty interest, there can

be no procedural due process violation in the first place. *See Watso*, 841 P.2d at 304.

Finally, even assuming both a freestanding due process claim and that Canseco Salinas's detention affects a cognizable liberty interest, he has been accorded procedural due process as a matter of law. Procedural due process requires only notice and some opportunity to be heard before deprivation of a protected interest. *Whiteside v. Smith*, 67 P.3d 1240, 1258-59 (Colo. 2003). Detainers constitute such notice. Those forms provide that the "alien must be served with a copy of this form for the detainer to take effect," encourage local law enforcement and the alien to contact ICE's Law Enforcement Support Center with "any questions or concerns" about a detainer request, and clearly provide a means for contacting ICE to correct any errors. Form I-247A at 1. No more is required. Therefore, the United States asks the Court to hold that when a detainer is served, the recipient alien receives all the notice and opportunity to be heard that he or she is due.

For these reasons, the U.S. and Colorado Constitutions allow local officials to detain aliens in response to, and in accordance with, ICE detainers.[15]

CONCLUSION

When the County cooperates with federal immigration enforcement by detaining an alien in response to an ICE detainer, that cooperation is permitted by federal law. Because the County does not act unilaterally when it cooperates with ICE detainers and ICE housing requests, that cooperation is facially lawful under federal and State law. Accordingly, this Court should deny Canseco Salinas's motion.

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[15] Canseco Salinas also claims that the detainer scheme violates the "right to bail" provision of the Colorado Constitution, Article II, Section 19. Compl. ¶¶ 90-93. This provision does not implicate the detainer scheme, because Canseco Salinas could post bail and be released from his current state custody, his immigration detention notwithstanding. He is not yet in federal custody, but once that happens he will be subject to federal jurisdiction as discussed above.

Dated: August 6, 2018

Respectfully submitted,

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No. 18-1050

ANTONIO LOPEZ-AGUILAR,

Plaintiff–Appellee

v.

MARION COUNTY SHERIFF'S DEPARTMENT, *et al.*,

Defendants–Appellees

STATE OF INDIANA

Proposed Intervenor–Appellant

On Appeal from the United States District Court for the
Southern District of Indiana, No. 1:16-cv-02457-SEB-TAB,
The Honorable Sarah Evans Barker, Judge

BRIEF OF AMICUS CURIAE THE UNITED STATES OF AMERICA IN SUPPORT OF INDIANA

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INTRODUCTION AND STATEMENT OF INTEREST OF THE UNITED STATES

This Court should vacate the district court's permanent injunction barring Marion County from cooperating with the United States' immigration enforcement efforts. The decision below conflicts with federal law and undermines "the interests of the United States" in cooperation with state and local governments on immigration enforcement. 28 U.S.C. § 517.

Indiana has exercised its sovereign authority to require that all governmental entities in the State cooperate with federal immigration enforcement. *See* Ind. Code § 5-2-18.2-3(1), -2-4, -2-7. These provisions require local law enforcement to cooperate with federal officials' requests—contained in federal "detainers"—to notify them of the release date of a removable alien in local custody and to detain that alien (for up to 48 hours) until federal officials can take custody of the alien in an orderly manner. These requests are accompanied by a federal administrative arrest warrant supported by probable cause to believe that the alien is removable from this country.

The district court did not dispute that, consistent with the Fourth Amendment, federal officers can arrest and detain an alien under such a warrant. Yet the court ruled that reading Indiana law to require cooperation with detainers would mean that Indiana law would: (1) be preempted by the Immigration and Nationality Act (INA), because the INA does not authorize the federal government to request, through detainers, cooperation from local law enforcement in apprehending and detaining

removable aliens, and therefore Indiana cannot require its subdivisions to cooperate with such requests, S.A. 22-26;[1] and (2) violate the Fourth Amendment, because detainers rest on probable cause that an alien is removable—not probable cause that the alien committed a crime. S.A. 27-33. Based on those holdings, the Court permanently enjoined any cooperation by Marion County with federal immigration detainers. S.A 1-2.

The district court's decision is manifestly erroneous. The INA authorizes the Department of Homeland Security (DHS) to issue detainers requesting that local law enforcement notify DHS of an alien's impending release and detain such aliens for up to 48 hours so that DHS may take custody of a potentially removable alien in an orderly way. *See* 8 U.S.C. §§ 1103, 1226, 1357; 8 C.F.R. § 287.7. The district court suggested that if Indiana law were read to require cooperation with detainers, it would be preempted because state law would direct local law enforcement assistance with federal immigration enforcement even when a locality has not satisfied the federal-law training, certification, and supervision requirements that would apply under a *formal* cooperation agreement between the federal government and the locality. S.A. 22-26. That reasoning is baseless—and was recently rejected by the Fifth Circuit. *See City of El Cenizo v. Texas*, — F. 3d. —, 2018 WL 1282035, *6 (5th Cir. Mar. 13, 2018). The INA authorizes local officers to "cooperate" with federal officials "in the

[1] "App." refers to the Appendix; "S.A." refers to the Short Appendix.

identification, apprehension, detention, or removal of aliens." 8 U.S.C. § 1357(g)(10)(B). That cooperation expressly does "not[]" "require" a formal "agreement," nor does it require formal training. *Id.* § 1357(g)(10).

The district court's Fourth Amendment ruling was also wrong. Just as the Fourth Amendment permits federal officials to detain an alien based on an administrative warrant backed by probable cause to believe that the alien is removable, it permits local officials to detain the same alien based on the same determination of probable cause at the federal government's request. *See, e.g.*, *El Cenizo*, 2018 WL 1282035, *13. The district court concluded that only federal officers may effect civil immigration seizures, and that the concept of "civil" probable cause does not exist for state or local officials, such that local officers violate the Fourth Amendment if they detain a removable alien at the federal government's request without probable cause of a crime. S.A. 28-29. That conclusion, as the Fifth Circuit recently held, is reversible error. *See El Cenizo*, 2018 WL 1282035, *13.

The Court should vacate the injunction and reverse the decision below.

BACKGROUND

A. Federal law authorizes States and localities to aid federal immigration enforcement, including by cooperating with federal detainer requests

The federal government has "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012). This includes authority to interview, arrest, and detain removable aliens. *See*

8 U.S.C. § 1226(a) (Secretary of Homeland Security may issue administrative arrest warrants and may arrest and detain aliens pending removal decision); *id.* § 1226(c)(1) (Secretary "shall take into custody" aliens who have committed certain crimes when "released"); *id.* § 1231(a)(1)(A), (2) (Secretary may detain and remove aliens ordered removed); *id.* § 1357(a)(1), (2) (authorizing certain warrantless interrogations and arrests).[2]

Although the federal government possesses broad power over immigration, enforcing the laws concerning removable aliens is a formidable challenge. To meet that challenge, the federal government works with state and local governments. These cooperative efforts are critical to enabling the federal government to identify and remove the hundreds of thousands of aliens who violate immigration laws each year.

Federal law contemplates and authorizes these cooperative efforts. Congress has authorized the Department of Homeland Security to enter into formal cooperative agreements with States and localities. *See* 8 U.S.C. § 1357(g). Under these agreements, trained and qualified state and local officers may, "subject to the direction and supervision of the [Secretary]," *id.* § 1357(g)(3), perform specified immigration enforcement functions relating to investigating, apprehending, and detaining aliens. *Id.* § 1357(g)(1)-(9). Even without such a formal agreement, however, States and localities

[2] Following the Homeland Security Act of 2002, many references in the INA to the "Attorney General" are now read to mean the Secretary. *Clark v. Suarez Martinez*, 543 U.S. 371, 374 n.1 (2005).

may "communicate with the [Secretary] regarding the immigration status of any individual" or "cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States," *id.* § 1357(g)(10), when that cooperation is pursuant to a "request, approval, or other instruction from the Federal Government," *Arizona*, 567 U.S. at 410. Such cooperation may include: "participat[ion] in a joint task force with federal officers"; "provid[ing] operational support in executing a warrant"; "allow[ing] federal immigration officials to gain access to detainees held in state facilities"; "arrest[ing] an alien for being removable" when the federal government requests such cooperation; and "responding to requests for information about when an alien will be released from their custody." *Id.* The INA permits such cooperation whether it is directed by state statute or is implemented *ad hoc* by a local sheriff. *See id.* at 413.

States and localities frequently cooperate with federal immigration enforcement by responding to federal requests for assistance, often contained in federal immigration detainers issued by Immigration and Customs Enforcement (ICE), a component of DHS responsible for immigration enforcement in the interior of the country.[3] An immigration detainer notifies a State or locality that ICE intends to take custody of a removable alien who is detained in state or local criminal custody, and

[3] U.S. Customs and Border Protection, another DHS component, also issues detainers in certain situations, not all of which require probable cause. 6 U.S.C. § 211. This brief addresses only ICE detainers, which do.

asks the State or locality to cooperate with ICE in that effort. A detainer asks a State or locality to cooperate in two main respects: (1) by notifying ICE of the alien's release date; and (2) by maintaining custody of the alien for up to 48 hours, based on ICE's determination that it has probable cause to believe that the alien is removable, until DHS can take custody. *See* 8 C.F.R. § 287.7(a) (describing notification of release), (d) (describing request for temporary detention).[4]

DHS's detainer form, Form I-247A, sets forth the basis for DHS's determination that it has probable cause to believe that the subject is a removable alien. The form states that DHS's probable-cause finding is based on: (1) a final order of removal against the alien; (2) the pendency of removal proceedings against the alien; (3) biometric confirmation of the alien's identity and a records match in federal databases that indicate, by themselves or with other reliable information, that the alien either lacks lawful immigration status or, despite such status, is removable; or (4) the alien's voluntary statements to an immigration officer, or other reliable evidence that the alien either lacks lawful immigration status or, despite such status, is removable. Form I-247A at 1, https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf.

As of April 2, 2017, ICE detainers must be accompanied by a signed administrative arrest warrant issued under 8 U.S.C. §§ 1226 or 1231(a). *See* ICE Policy

[4] Statutes authorizing such action include 8 U.S.C. §§ 1103(a)(3), 1226(a) and (c), 1231(a), and 1357(d).

No. 10074.2 ¶¶ 2.4, 2.5, https://www.ice.gov/detainer-policy. That warrant—either a Form I-200, Warrant for Arrest of Alien (issued for aliens not yet subject to a removal order) or a Form I-205, Warrant of Removal/Deportation (issued for aliens subject to a final removal order)—is issued by an executive immigration officer and sets forth the basis for that officer's probable-cause determination. *See* 8 C.F.R. §§ 236.1, 241.2, 287.5(e)(2) (describing officers who may issue such warrants and when).

B. To aid federal immigration enforcement, Indiana requires local cooperation with federal immigration enforcement

This case involves provisions of Senate Bill 590, which allow and require Indiana's local officials to cooperate with federal immigration enforcement and prevents local actions impeding such efforts. The bill added to the Indiana Code a chapter titled "Citizenship and Immigration Status Information and Enforcement of Federal Immigration Laws," *see* Ind. Code § 5-2-18.2, and established obligations for the State's political subdivisions and law enforcement officers concerning the enforcement of immigration law. *See id.* § 5-2-18.2-1, -2.

Three provisions are relevant to resolution of this appeal. Section 3, titled "Restrictions on information of citizenship or immigration status prohibited," provides that "[a] governmental body"—which includes an agency or department of a political subdivision, such as a sheriff's department, Ind. Code §§ 5-2-18.2-1, 5-22-2-13(4)—"may not enact or implement . . . a policy that prohibits or in any way restricts . . . a law enforcement officer . . . from taking" certain "actions with regard to

information of the citizenship or immigration status, lawful or unlawful, of an individual," including "[c]ommunicating or *cooperating* with federal officials." *Id.* § 5-2-18.2-3(1) (emphasis added). Section 4, titled "Restrictions on enforcement of federal immigration laws prohibited," provides 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*." *Id.* § 5-2-18.2-4 (emphasis added). And Section 7, titled "Notice of duty of cooperation," provides that "[e]very law enforcement agency . . . shall provide each law enforcement officer with a written notice that the law enforcement officer *has a duty to cooperate* with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration." *Id.* § 5-2-18.2-7 (emphasis added).

Taken together, these provisions bar "prohibitions" on cooperation with federal immigration enforcement, forbid restrictions that call for less cooperation with federal authorities than the cooperation authorized by the INA, and establish an explicit "duty to cooperate" with federal immigration enforcement efforts.

C. Plaintiff sues the County, the parties propose a stipulated judgment declaring unconstitutional certain immigration-enforcement cooperation, and the United States files a brief contesting the proposed judgment

In September 2016, Plaintiff Antonio Lopez-Aguilar filed this suit under 42 U.S.C. § 1983, alleging in a four-page complaint a Fourth Amendment claim for unlawful seizure against Defendants the Marion County Sheriff's Office, the County's

Sheriff, and an unidentified sergeant of the Sheriff's Office. Plaintiff alleged that in 2014, Defendants illegally detained him at ICE's request. App. 1. He alleged that, following a hearing at Marion County Traffic Court, he "was again taken into custody by [Defendants] and was informed by [Defendants] that he was being taken into custody and held until he could be transferred into ICE custody." App. 4, ¶ 17. He alleged that "at no point prior to or after [he] was taken into custody did [Defendants] have any cause to arrest or hold [him] in custody." *Id.* ¶ 18. Plaintiff thus claimed that "defendants arrested and held [him] in custody, without cause, in violation of the Fourth Amendment," and sought a declaration "that the defendants violated [his] rights." App. 5, ¶ 26; Prayer for relief. Defendants' answer denied all allegations about Plaintiff's alleged seizure on behalf of ICE. App. 10-13, ¶¶ 13-25.

The complaint and answer were the only substantive documents filed in the district court before judgment. No motion to dismiss was filed and there was no discovery. And, as the parties conceded, ICE never in fact issued a detainer directed at Plaintiff, and the County did not detain Plaintiff based on any ICE detainer. Yet on July 10, 2017, the parties filed a "Stipulation [for] Final Judgment and Order for Permanent Injunction." App. 18. The parties purported to stipulate "that seizing someone based solely on a request from [ICE] officials"—including a request from the federal government premised on "a removal order from an immigration court [or] a detainer request from ICE"—would "violate the Fourth Amendment absent probable cause that the person has committed a crime." *Id.* The parties asked for a

permanent injunction enjoining such cooperation as violating the Fourth Amendment. *Id.*

The parties did not inform the United States of the proposed Stipulated Final Judgment seeking to declare unconstitutional local cooperation with federal immigration enforcement efforts in Marion County. After learning of the proposed judgment, the United States filed a statement of interest objecting to it, arguing: (1) that because no detainer had ever been issued, the district court lacked jurisdiction to enter prospective injunctive relief barring cooperation with detainers; and (2) that if the district court had jurisdiction, cooperation with detainers is permitted by federal statutory law, Indiana state law, and the Fourth Amendment.

D. The district court permanently enjoins Marion County from cooperating with federal immigration enforcement efforts

On November 7, 2017, the district court issued an order approving the parties' stipulated judgment and permanently enjoining Marion County's cooperation with immigration detainers. S.A. 1-38. To adopt the stipulated judgment consistent with Seventh Circuit law, the district court needed to assess whether the stipulation: (1) "require[d] a state- or local-government defendant to violate state law"; and (2) whether any such violation was "necessary to remedy a probable violation of federal law." S.A. 13 (collecting cases). Addressing the first requirement, the court concluded that the stipulated judgment's prohibition on seizing and detaining potentially removable aliens did not require the County to violate any Indiana law

requirement "to cooperate with federal immigration officials." S.A. 19; *see* S.A. 19-33. Having concluded that the stipulated judgment would not cause a state-law violation, the court did not address whether any such violation was "necessary to remedy a probable violation of federal law." S.A. 34.

The court reached its critical conclusion—that the judgment would not cause the County to violate a state-law duty of cooperation—in three main steps.

To start, the district court believed that Indiana law does not clearly require cooperation with ICE detainers. *See* S.A. 19-21. The court reasoned that Section 3 of SB 590—which bars prohibitions on "[c]ommunicating or *cooperating* with federal officials," Ind. Code § 5-2-18.2-3(1) (emphasis added)—did not require cooperation with federal immigration detainers because "the Stipulated Judgment prohibits Marion County only from 'seizing' and 'detaining'" aliens subject to a detainer request, "not from communicating with or about them" to the federal government. S.A. 19-20. The court then concluded that it was "far from clear" what Section 4—which prohibits a governmental body from "limit[ing] or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law," Ind. Code § 5-2-18.2-4—requires. S.A. 20; *see also* S.A. 20-21. The court did not address Section 7, which concerns "each law enforcement officer['s]" "duty to cooperate" with "federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration." Ind. Code § 5-2-18.2-7 (emphasis added). The court recognized, however, that Section 4 bars restrictions on cooperation to "less than the

full extent permitted by federal law." S.A. 20-21.

Next, having recognized that Indiana law requires cooperation to the extent permitted by federal law, the district court concluded that federal preemption principles bar localities from cooperating with federal immigration enforcement by detaining or seizing in response to federal detainer requests. *See* S.A. 22-26. The court reasoned that "the full extent of federal permission for state-federal cooperation in immigration enforcement does not embrace detention of a person based solely on either a removal order or an ICE detainer," S.A. 24, unless the state or local officer cooperating with a detainer has satisfied the "training or certification require[ments]" applicable to state or local officers performing the functions of an "immigration officer" pursuant to a formal agreement under 8 U.S.C. § 1357(g)(1), S.A. 25-26; *see* S.A. 26-27. In reaching that conclusion, the court emphasized that in listing possible forms of federal-state cooperation in *Arizona v. United States*, 567 U.S. at 410, the Supreme Court endorsed state officials' communicating with federal officials, but not state officials' detaining for federal officials. *See* S.A. 20. The court also relied on a Texas district court decision ruling against the validity of local cooperation with detainer requests. *See* S.A. 25-26 (relying on *City of El Cenizo v. Texas*, 264 F. Supp. 3d 744 (W.D. Tex. 2017), *vacated in relevant part by City of El Cenizo v. Texas*, — F. 3d. —, 2018 WL 1282035 (5th Cir. Mar. 13, 2018)).

Finally, the district court concluded that the Fourth Amendment bars localities from cooperating with federal immigration enforcement efforts by detaining or

seizing in response to federal detainer requests. *See* S.A. 26-33. The court held in particular that seizing in response to ICE detainers could not be permissible cooperation under state law because "seizures conducted solely on the basis of known or suspected civil immigration violations violate the Fourth Amendment when conducted under color of state law." S.A. 27. The court did not contest that federal officials can arrest based on civil immigration violations. But the court held that state officers cannot arrest based on probable cause to believe that an alien is removable from the United States, communicated through a detainer or an administrative warrant issued under federal law, because "civil matters do not justify arrests or custodial seizures amounting to arrests" by state officials, S.A. 28, unless the seizures are "under writs of bodily attachment or bench warrants for civil contempt of court," S.A. 29, or "effect involuntary commitments, or 'mental-health seizures,'" *id.* "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," and "detainers, standing alone, do not supply the necessary direction and supervision." S.A. 31.

Having concluded that federal law "does not permit a state to require its law enforcement officers to comply with removal orders, standing alone, or ICE detainers, standing alone," S.A. 33, and that "seizures conducted solely on the basis of known or suspected immigration violations [therefore] violate the Fourth Amendment," *id.*, the court ruled that the proposed consent decree did not require

action prohibited by Indiana law, S.A. 34, and issued a final judgment approving the stipulation. The judgment: (1) declares that seizures "based solely on detention requests from [ICE], in whatever form, or on removal orders from an immigration court, violate the Fourth Amendment," unless "ICE supplies, or the defendants otherwise possess, probable cause to believe that the individual to be detained has committed a criminal offense"; (2) declares that "an ICE request that defendants seize or hold an individual in custody based solely on a civil immigration violation does not justify a Fourth Amendment seizure"; and (3) permanently enjoins Defendants "from seizing or detaining any person based solely on detention requests from ICE, in whatever form," including detainers, "unless ICE supplies a warrant signed by a judge or otherwise supplies probable cause that the individual to be detained has committed a criminal offense." S.A. 1-2.

After the court entered judgment, the State of Indiana sought to intervene for purposes of appealing from the consent decree and defending its statutes on appeal. App. 34. The district court denied that motion. S.A. 43-57.

THE COURT SHOULD VACATE THE INJUNCTION PROHIBTING MARION COUNTY FROM COMPLYING WITH INDIANA LAW AND COOPERATING WITH FEDERAL IMMIGRATION ENFORCEMENT

The district court manifestly erred in enjoining Marion County's cooperation with federal immigration enforcement efforts, including cooperation with ICE detainers. The decision holds that a State cannot require its subdivisions to cooperate with federal immigration enforcement—including cooperation with detention

requests contained in immigration detainers—because such cooperation would be preempted by federal law and would violate the Fourth Amendment. Federal law, however, allows for such cooperation, and that cooperation is fully consistent with the Fourth Amendment. The permanent injunction should be vacated.

I. The District Court Erred in Concluding that State Law Authorization to Cooperate with Detainers is Preempted by Federal law

The district court held that Indiana law did not explicitly authorize cooperation with detainers and that federal law would preempt such cooperation. S.A. 18-33. The district court was wrong on both scores.

To start, the district court was wrong to believe that "it is far from clear" whether Indiana law requires cooperation with detainers. S.A. 19; *see id.* at 19-21. Indiana law could hardly be clearer: "A governmental body"—including a sheriff's department, *see* Ind. Code §§ 5-2-18.2-1, 5-22-2-13(4)—"may not enact or implement . . . a policy that prohibits or in any way restricts . . . a law enforcement officer . . . from taking" certain "actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual," including "[c]ommunicating or *cooperating* with federal officials," *id.* § 5-2-18.2-3(1) (emphasis added), and "may not limit or restrict the enforcement of federal immigration laws *to less than the full extent permitted by federal law*," *id.* § 5-2-18.2-4 (emphasis added). And in a provision that the district court did not address, Indiana law states that "[e]very law enforcement agency . . . shall provide each law enforcement officer with a written notice that the law

enforcement officer *has a duty to cooperate* with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration. *Id.* § 5-2-18.2-7 (emphasis added). Indiana law thus affirmatively authorizes cooperation with federal immigration detainers: it requires local law enforcement "*to cooperate* with . . . federal agencies and officials on matters pertaining to enforcement of . . . federal laws governing immigration," *id.* (emphasis added), and prohibits any limitations on such cooperation "*to less than the full extent permitted by federal law*." *Id.* § 5-2-18.2-4 (emphasis added). The district court erred in concluding otherwise.

The district court was also wrong to conclude that, if Indiana law conferred authority on local law enforcement to cooperate with detainers, that conferral of authority would be preempted by federal law because "full extent of federal permission for state-federal cooperation in immigration enforcement does not embrace detention of a person based solely on either a removal order or an ICE detainer." S.A. 24; *see id.* 22-26. The INA provides that state and local officers may "cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(B). Such cooperation is consistent with the INA when it is undertaken pursuant to a "request, approval, or other instruction from the Federal Government." *Arizona*, 567 U.S. at 410. The detainer mechanism satisfies that test. Detainers are "request[s] . . . from the Federal Government" to a State or locality to assist its efforts to detain a particular alien, so complying with those requests is necessarily permissible

cooperation at the federal government's "request, approval, or other instruction." *Id.*; *accord El Cenizo*, 2018 WL 1282035, *14 (5th Cir.) (assistance with detainers occurs "only when there is already federal direction—namely, an ICE-detainer *request*") (emphasis added).

Moreover, the INA authorizes DHS to request cooperation "either to hold the prisoner for the agency or to notify the agency when release [] is imminent." *McLean v. Crabtree*, 173 F.3d 1176, 1185 n.12 (9th Cir. 1998) (defining detainer as a request "to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent" and holding that DHS "has authority to lodge a detainer against a prisoner"); *accord El Cenizo*, 2018 WL 1282035, *2 (similar). This detainer "authority"—now codified in 8 U.S.C. §§ 1103(a)(3), 1226(a) and (c), 1231(a), and 1357(d)—"predates the INA and has long been viewed as implied by federal immigration enforcers' authority to arrest those suspected of being removable." *Santoyo v. United States*, No. 16-855, 2017 WL 6033861, *3 (W.D. Tex. Oct. 18, 2017); *see, e.g.*, *United States v. Carlos Gomez-Robles*, No. 17-730, 2017 WL 6558595, *3 (D. Ariz. Nov. 28, 2017) ("federal law provides both the authority for DHS to issue immigration detainers"); *Rosario v. New York City*, 2013 U.S. Dist. LEXIS 69410, *12 (S.D.N.Y. 2013) (noting INA "authority to detain [alien] under [] detainer").

The district court, relying on an out-of-circuit district court decision, concluded that under *United States v. Arizona*, 567 U.S. 387 (2012), States and localities lack authority to cooperate with the United States by detaining an alien in response to a

request or direction to do so, because only state or local officers who "receive[] training in the 'significant complexities involved in enforcing federal immigration law," and have received "written certification that adequate training has been completed," may do so. S.A. 22 (citing *City of El Cenizo v. Texas*, 264 F. Supp. 3d 744 (W.D. Tex. 2017)). As the district court saw matters, because *Arizona* only "cited the detainer statute," 8 U.S.C. § 1357(d), which refers to information sharing, "but not the detainer regulation," 8 C.F.R. § 287.7, which authorizes the detention requests contained in detainers, as an example of cooperation under section 1357(g)(10), that "mark[ed] a clear line between communication authorized by statute and detention not authorized by statute." S.A. 23.

That was error. To start, the decision on which the district court relied for this interpretation has since been rejected on appeal and its reasoning "disavow[ed]." *El Cenizo*, 2018 WL 1282035, *13 n.21. The Fifth Circuit in that case rejected a challenge to a Texas statute that, similarly to Indiana's SB 590, requires cooperation with federal detainers and prohibits limitations on cooperation with federal immigration enforcement. The Fifth Circuit explained that the INA, through section 1357(g)(10)(B), "indicates that Congress intended local cooperation without a formal agreement," and without "a written agreement, training, and direct supervision by DHS . . . in a range of key enforcement functions." *Id.* at *6. That is, cooperation with immigration detainers is permitted and encouraged by the INA without the formal agreement, training, and certification requirements necessary for "state and local

officials [to] become de facto immigration officers, competent to act on their own initiative," under 8 U.S.C. § 1357(g)(1). *Id.* And as a prior panel (at the stay stage) of the Fifth Circuit held with respect to Texas's mandate on cooperation with immigration detainers, "nothing in *Arizona v. United States*, 567 U.S. 387 (2012), prohibits such assistance" and section 1357(g) "provides for such assistance." *City of El Cenizo, Texas v. Texas*, 2017 WL 4250186, *2 (5th Cir. Sept. 25, 2017).

Indeed, *Arizona* did not purport to define the limits of cooperation permitted by section 1357(g)(10). Instead, it listed examples of permissible cooperation that States and localities may provide without the training and certification required for a formal agreement under section 1357(g)(1). One example of permissible cooperation is "arrest[ing] an alien for being removable" if that arrest is made in response to a "request" from the federal government. 567 U.S. at 410. *Arizona* distinguished that scenario—which is permissible under section 1357(g)(10)(B)—from the scenario authorized by the state law at issue in *Arizona*: "unilateral state action to detain . . . aliens in custody for possible unlawful presence without federal direction and supervision" and without any federal "request" to do so. *Id.* at 410, 413; *accord El Cenizo*, 2018 WL 1282035, *6 ("no unilateral enforcement activity" where cooperation only occurs following "a predicate federal request for assistance").

Moreover, there is no requirement under the INA that a State or locality may cooperate only if it has a formal cooperation agreement under 8 U.S.C. § 1357(g)(1) and its officers are trained and certified under that provision. *See* 8 U.S.C.

§ 1357(g)(10)(B). Indeed, the Fifth Circuit recently rejected such a view, *El Cenizo*, 2018 WL 1282035, *6, and rightly so: Section 1357(g)(10) says that *no* formal "agreement under" section 1357(g) is required for local officers to "cooperate with" federal immigration officers. Formal agreements are quite different from informal cooperation. Under such agreements, local officers undergo the training necessary to "perform [the] function of an immigration officer," 8 U.S.C. § 1357(g)(1)—allowing them to enforce immigration law without any triggering request from the federal government to do so. *See Arizona*, 567 U.S. at 409-10 (explaining when DHS "grant[s] that authority to specific officers" through formal agreement).

Under section 1357(g)(10), officers not subject to such formal agreements and formal training may still cooperate, so long as such cooperation is not "unilateral," but at the "request, approval, or other instruction from the Federal Government." *Id.* at 410; *see United States v. Ovando-Garzo*, 752 F.3d 1161, 1164 (8th Cir. 2014) (argument to the contrary is "meritless"). Indiana's requirement that state and local law enforcement cooperate with federal immigration enforcement "to the full extent permitted by federal law" thus presumes that such cooperation will occur consistent *with* federal law, which "always requires a predicate federal request before local officers may detain aliens for the additional 48 hours." *El Cenizo*, 2018 WL 1282035, *15. The only limitation is that such state-mandated cooperation may not "authorize state and local officers to engage in [] enforcement activities as a general matter" without "any input from the Federal Government." *Arizona*, 567 U.S. at 408, 410.

While "unilateral decision[s] of state officers to arrest an alien for being removable" are preempted, cooperation under a "request, approval, or other instruction from the Federal Government" is not. *Id.* at 410.

Courts have thus recognized that federal law permits States and localities to cooperate, without formal training or certification, with federal detention requests. *See, e.g.*, *El Cenizo*, 2018 WL 4250186, *6 (holding that "[s]tate action under" provision similar to SB 590 does "not conflict with federal priorities or limit federal discretion []because it requires a predicate federal request," and therefore "does not permit local officials to act without federal direction and supervision"); *Santos v. Frederick Cnty. Bd. of Comm'rs*, 725 F.3d 451, 467 (4th Cir. 2013) (detention by state officer lawful when "at ICE's express direction"); *Ovando-Garzo*, 752 F.3d at 1164 (cooperation without "written agreement" is lawful if "not unilateral"). Federal law thus does not preempt Indiana's conferral of authority and directive to Indiana law enforcement to cooperate with federal detainer requests, and the district court was wrong to conclude otherwise.[5] *See El Cenizo*, 2018 WL 4250186, *7 (so holding for similar Texas law).

Finally, though federal law deems detainer requests voluntary, Indiana may require state-wide cooperation with them without raising preemption concerns. *See id.*

[5] Decisions deeming unlawful certain state and local immigration arrests have—unlike here—either involved the absence of state-law authority to cooperate with detainers, *see Lunn v. Commonwealth*, 477 Mass. 517, 528-33 (2017), or unilateral state or local action without a federal request or direction, *see, e.g.*, *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012).

(explaining that state law may "make[] mandatory what Congress intended to be voluntary"). For example, while 8 U.S.C. § 1373 does not require local officers to ask the federal government about an individual's immigration status, a state law mandating such inquiries is not preempted. *See Arizona*, 567 U.S. at 411-13. Similarly, while 8 U.S.C. § 1324a(d) makes an employers' reliance on the federal E-Verify system voluntary, a state law mandating use of E-Verify is not preempted. *See Chamber of Commerce v. Whiting*, 563 U.S. 582, 608-09 (2011). In short, even where the federal government may lack authority to mandate state action, States may still use the "powers . . . reserved to the[m]," U.S. Const. amend. X, to accomplish the same end. *See El Cenizo*, 2018 WL 1282035, *7.

II. The District Court Erred in Ruling that the Fourth Amendment Bars Local Law Enforcement From Detaining an Alien Based on a Federal Detainer Request

The district court also held that SB 590's provisions violated the Fourth Amendment to the extent that they required "seizures conducted solely on the basis of known or suspected civil immigration violations [] when conducted under color of state law." S.A. 27. That conclusion relied on the court's determination that cooperation with immigration detainers would be preempted, and therefore not authorized, by federal law. S.A. 24-27. As explained above, that holding was error. Indeed, as the district court recognized, when a state or local officer cooperates with a federal detainer request pursuant to 8 U.S.C. § 1357(g)(10)(B), that officer "shall be considered to be acting under color of Federal authority for purposes of determining

[] liability[] and immunity from suit." 8 U.S.C. § 1357(g)(8); *see* S.A. 27 (recognizing that "state officer acting under color of authority under [section 1357(g)(10)] acts under color of Federal authority"). Because such cooperation is authorized by federal law, the district court was wrong that such cooperation is unlawful because it occurs under color of state authority.

In any event, three points show that the Fourth Amendment permits cooperation with detainers: (1) federal officials can (as the district court did not dispute) constitutionally arrest aliens under a federal administrative warrant; (2) the lawfulness of that practice does not change when state or local officials make such an arrest at the federal government's request; and (3) there is no constitutional problem when local officials rely on federal officials' probable-cause determinations.

First, there is no dispute that the Fourth Amendment permits *federal* officers to make civil arrests of aliens based only on probable cause of removability contained in a detainer or administrative warrant. To start, the "Fourth Amendment does not require warrants to be based on probable cause of a crime, as opposed to a civil offense." *United States v. Phillips*, 834 F.3d 1176, 1181 (11th Cir. 2016) (collecting examples, including bench warrants for civil contempt and writs of replevin); *see* Fed. R. Civ. P. 4.1(b) (allowing "order[s] committing a person for civil contempt"). Arrests may rest on probable cause of any legal violation, civil or criminal. *See, e.g.*, *El Cenizo,* 2018 WL 1282035, *13 (collecting cases). Indeed, given that "[i]n determining whether a search or seizure is unreasonable, [courts] begin with history," including

"statutes and common law of the founding era," *Virginia v. Moore*, 553 U.S. 164, 168 (2008), that understanding is especially settled in the immigration context. There is "overwhelming historical legislative recognition of the propriety of administrative arrest[s] for deportable aliens." *Abel v. United States*, 362 U.S. 217, 233 (1960) (noting "impressive historical evidence" of validity of "administrative deportation arrest from almost the beginning of the Nation").

The district court did not contest that federal immigration officers can detain an alien based on a civil administrative warrant attesting to probable cause of removability. The court did suggest that Fourth Amendment problems arise when a state or local officer effects an arrest based on probable cause of a civil—as opposed to a criminal—violation on the theory that "civil matters do not justify arrests or custodial seizures amounting to arrests." S.A. 28. The authorities discussed above refute that suggestion. Indeed, the district court's suggestion cannot be squared with decisions upholding seizures for civil matters in a variety of circumstances. *See* Br. of Indiana 47-48 (citing Seventh Circuit cases on civil arrests for parking violations, involuntary mental health commitment, civil commitment of a sexually violent person, civil contempt, and walking in the street if a sidewalk is available); *accord Thomas v. City of Peoria*, 580 F.3d 633, 638 (7th Cir. 2009) ("arrests for violations of purely civil laws are common enough."). Nor can it be squared with textbook "immigration law and procedure; civil removal proceedings necessarily contemplate detention absent proof of criminality." *El Cenizo,* 2018 WL 1282035, *13.

The district court also suggested that warrants accompanying detainers are problematic because they are issued by an ICE official rather than through a "warrant signed by a judge." S.A. 2. But given the civil context of federal immigration detainers, an executive immigration officer can constitutionally make the necessary probable-cause determination. "[L]egislation giving authority to the Attorney General or his delegate to arrest aliens pending deportation proceedings under an administrative warrant, not a judicial warrant within the scope of the Fourth Amendment," has existed "from almost the beginning of the Nation." *Abel*, 362 U.S. at 234. "It is undisputed that federal immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability." *El Cenizo*, 2018 WL 1282035, *13; *see Sherman v. U.S. Parole Comm'n*, 502 F.3d 869, 876-80 (9th Cir. 2007) (in immigration context, warrants may be issued "outside the scope of the Fourth Amendment's Warrant Clause").

Second, because the Fourth Amendment allows federal immigration officers to arrest and detain based on an administrative warrant attesting to probable cause of removability, state and local officials can do the same when they act at the request or direction of the federal government. The Fourth Amendment does not apply differently when a local official rather than a federal official is arresting or detaining. "The Fourth Amendment's meaning [does] not change with local law enforcement practices." *Virginia*, 553 U.S. at 172. To hold otherwise would cause Fourth Amendment "protections [to] vary if federal officers were not subject to the same

statutory constraints as state officers." *Id.* at 176.

Thus, if a seizure is legal under the Fourth Amendment when a federal officer effectuates it, then so too when a state or local officer does so, even where state law does not authorize the arrest. A police officer's "violation of [state] law [in arresting alien based on a violation of federal immigration law] does not constitute a violation of the Fourth Amendment." *Martinez-Medina v. Holder*, 673 F.3d 1029, 1037 (9th Cir. 2011). And the legality of an arrest made by a state officer is especially apparent where, as here, a local officer is not just arresting for a federal offense, but doing so at and after the express request of the federal government supported by a federal administrative warrant, and consistent with state law authorizing the arrest and requiring compliance with federal detainers requesting such arrests. Thus, the district court was wrong to conclude that the Fourth Amendment bars local officials—but not federal officials—from effecting "seizures conducted solely on the basis of known or suspected civil immigration violations." S.A. 27. Such arrests are lawful if the local officer does not act unilaterally. *See supra* at p. 21 (citing Fourth, Fifth, and Eighth Circuit cases affirming that point). Under SB 590, local officers do not act unilaterally—because detainers "always require[] a predicate federal request before local officers may detain." *El Cenizo*, 2018 WL 1282035, *15.

Third, arrests or detentions based on probable cause may lawfully be made where the probable-cause determination is made by one official (here, a federal ICE officer) and relied on by another official who serves under a different sovereign (here,

a local official). Put differently, state and local officers may rely on ICE's findings of probable cause, as articulated in a detainer and administrative warrant, to detain the subject of a detainer when the federal government so requests. Where one officer obtains an arrest warrant based on probable cause, other officers can make the arrest even if they are "unaware of the specific facts that established probable cause." *United States v. Hensley*, 469 U.S. 221, 231 (1985). An officer may thus arrest someone, even when the officer does not know the facts establishing probable cause, "so long as the knowledge of the officer directing the arrest, or the collective knowledge of the agency he works for, is sufficient to constitute probable cause." *Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998); *United States v. Nafzger*, 974 F.2d 906, 911 (7th Cir. 1992) (when the arrest "would have been permissible for the officer requesting it," it is permissible for the officer effectuating it).

This rule of collective law-enforcement knowledge applies when "the communication [is] between federal and state or local authorities," 3 Wayne R. LaFave, SEARCH AND SEIZURE, § 3.5(b) (2016) (collecting cases), including when a state or local officer arrests someone based upon probable cause from information received from an immigration officer. *See, e.g.*, *El Cenizo*, 2018 WL 1282035, *13 ("Compliance with an ICE detainer [] constitutes a paradigmatic instance of the collective-knowledge doctrine, where the detainer request itself provides the required communication between the arresting officer and an officer who has knowledge of all the necessary facts."). And "an ICE-detainer request evidences probable cause of

removability in every instance." *Id.*

In sum, the Fourth Amendment allows local officials to detain aliens in response to federal detainer requests when the United States presents probable cause of civil removability through a detainer and arrest warrant. The district court erred in ruling that "the Fourth Amendment[] does not permit a state to require its law enforcement officers to comply with removal orders, standing alone, or ICE detainers, standing alone." S.A. 33.

CONCLUSION

The district court's permanent injunction prohibiting cooperation with federal immigration detainers should be vacated and the decision below reversed.

Dated: March 16, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

WILLIAM C. PEACHEY
Director, District Court Section
Office of Immigration Litigation

/s/ Erez Reuveni
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Counsel for United States of America

CERTIFICATE OF SERVICE

I certify that on March 16, 2018, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to the attorneys of record for all parties.

/s/ Erez Reuveni
EREZ REUVENI
Assistant Director
U.S. Department of Justice

CERTIFICATE OF COMPLIANCE

1. I certify that brief complies with the type-volume requirement of Federal Rule of Appellate Procedure 29 and 32 because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it is not more 6,965 words and complies with the typeface requirements of Rule 32(a)(5) and (6) because it was prepared using 14-point Garamond typeface.

/s/ Erez Reuveni
EREZ REUVENI
Assistant Director
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Friday, September 14, 2018 10:09 AM
To:	kdonahue@canyonco.org
Subject:	Detainers
Attachments:	Marion County Amicus Brief.pdf; Canseco Salinas Statement of Interest.pdf

Good morning, Sheriff Donahue,

It was nice to meet you at the White House a couple of weeks ago. Attached, please see two examples of statements of interest we have filed in cases—one at the state level in Colorado, and the other in federal court. I hope these are helpful to you in explaining our position on detainers and the cooperation between federal and state law enforcement.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Friday, September 14, 2018 10:14 AM
To:	wheeler@fbtlaw.com
Subject:	Detainers
Attachments:	Marion County Amicus Brief.pdf; Canseco Salinas Statement of Interest.pdf

Good morning, Tom,

I was sharing some documents with some folks recently, and realized that I may not have forwarded copies of statements of interest/amicus briefs that we have filed in some recent detainer cases. One is from the Marion County case in the Seventh Circuit—the other is from a Colorado state case.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Friday, September 28, 2018 8:30 AM
To:	Troy Edgar; O'Malley, Devin (OPA); Whitaker, Matthew (OAG)
Subject:	RE: Huntington Beach - Ruling Issued on Petition for Writ of Mandate

Thank you, Troy. That's great news to hear!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Troy Edgar <troy@troyedgar.com>
Sent: Friday, September 28, 2018 2:10 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>
Subject: RE: Huntington Beach - Ruling Issued on Petition for Writ of Mandate

Here is the article.

https://www.ocregister.com/2018/09/27/judge-rules-huntington-beach-can-defy-californias-sanctuary-law/

From: Troy Edgar
Sent: Thursday, September 27, 2018 7:19 PM
To: Devin O'Malley <Devin.O'Malley@usdoj.gov>; Gene Hamilton <Gene.Hamilton@usdoj.gov>; Matthew Whitaker <Matthew.Whitaker@usdoj.gov>
Subject: Fwd: Huntington Beach - Ruling Issued on Petition for Writ of Mandate

Great news for our fight against CA Sanctuary Law!!

I just congratulated Mayor Posey if Huntington Beach!!

Our cases were recently assigned to the same judge due to be related. Judge rules CA has overstepped its authority.

Next Steps
The court had set a future hearing date of 11/15/18. We think the ACLU will request to withdraw the request, because the motion to consolidate would now be heard *after* the Huntington Beach petition is decided.

Troy Edgar
Mayor, City of Los Alamitos
(b) (6)
Sent from my iPhone

Begin forwarded message:

> **From:** "Michael S. Daudt" <mdaudt@wss-law.com>
> **Date:** September 27, 2018 at 5:29:28 PM PDT
> **Cc:** Bret Plumlee <BPlumlee@cityoflosalamitos.org>, Chelsi Wilson <CWilson@cityoflosalamitos.org>
> **Subject: Huntington Beach - Ruling Issued on Petition for Writ of Mandate**
>
> Dear Mayor Edgar, Mayor Pro Tem Kusumoto, and honorable Council Members,

I just received word that Judge Crandall has issued a ruling in favor of the City of Huntington Beach. He is granting the City's requested writ to enjoin the state from enforcing Government Code section 7284.6. He ruled that that government code section is an unconstitutional infringement of charter city's authority over municipal affairs guaranteed by California constitution art. XI section 5(b) and 5(a).

I will work with my colleague(s) to prepare a thorough evaluation of how this decision impacts our litigation.

Regards,

Michael

Michael S. Daudt
Woodruff, Spradlin & Smart
714.415.1059 (Direct)
714.415.1159 (Facsimile)
mdaudt@wss-law.com

From: Michael S. Daudt
Sent: Thursday, September 27, 2018 9:35 AM
Cc: 'Bret Plumlee' <BPlumlee@cityoflosalamitos.org>; Chelsi Wilson <CWilson@cityoflosalamitos.org>
Subject: Huntington Beach - Tentative Ruling on Petition for Writ of Mandate

Dear Mayor Edgar, Mayor Pro Tem Kusumoto, and honorable Council Members,

Judge Crandall will hear oral argument in the Huntington Beach case this afternoon. Pasted below is a tentative ruling that was issued yesterday. The tentative ruling directs both parties to be prepared to respond to a number of questions, but does not provide a clear indication of what the ultimate ruling might be. I suspect Judge Crandall will take the matter under consideration following oral argument, but it is possible that a ruling could be released today. We are monitoring the hearing and will provide you all with updates as appropriate.

Regards,

Michael

13	*City of Huntington Beach v. The State of California* 30-2018-00984280	**Petition for Writ of Mandamus:** The court will hear oral argument. The court requests the parties to be prepared to answer the following questions. 1. Is petitioner City of Huntington Beach limiting this petition to Constitutio Art. XI, Section 5(b), or also contending that Section 5(a) applies? [Reply, p. 2, lines 2 to 5.] 2. The City of Huntington Beach is also requested to identify the ordinance (s) that constitute "municipal affairs."

3. Which particular governmental code sections does the City of Huntingto Beach seek to enjoin respondents from enforcing?

The court notes that *Gov't Code* § 7284.12 provides for severance if some provisions of the California Values Act are held invalid and others not.

4. Both parties should be prepared to discuss the case law that was decid on the basis of a "core municipal affair" listed in California Constitution Art. XI, Section 5(b).

The court notes that only the writ of mandate was set for hearing at this time. (7-19-18 Minute Order.) Petitioner City of Huntington Beach filed a combined petition for writ of mandate and complaint. The writ of mandate governed by C.C.P. § 1085.

Plaintiff's causes of action for declaratory relief and intentional interferenc with contract are not resolvable as part of this writ of mandate and will be set for trial at the conclusion of the hearing.

Respondents Edmund G. Brown, Jr. Governor, and Xavier Beccera, California Attorney General's Request for Judicial Notice:

Respondents Edmund G. Brown, Governor, et al. requested that the court take judicial notice of the following documents or facts:
Exhibit 1, SB 54,
Exhibit 2, Legislative History of SB 54,
Exhibit 3, Department of Justice's Division of Law Enforcement's Informatio Bulletin, No. DLE-02018-01,
Exhibit 4, August 14, 2018 Minute Order of the Orange County Board of Supervisors Approving Application by Orange County for a Edward Byrne Memorial Justice Assistance Grant (JAG) Program,
Exhibit 5, Fact that City of Huntington Beach has Millions of Visitors Each Year based on Huntington Beach Police Department 2017 Annual Report, Exhibit 6, June 14, 2018 Court Pleading by U.S. Department of Justice in *City of Chicago v. Sessions*, U.S. Court of Appeals, Seventh Circuit, Case No. 17-2991,
Exhibit 7, Fact that the Orange County Sheriff's Department Posts on the Internet a Searchable Database including the Release Dates for County Jail Inmates,
Exhibit 8, that the Cities of Los Angeles, San Diego, San Jose, San Francisco, Fresno, Sacramento, Long Beach, Oakland, Bakersfield, Anaheim Santa Ana, Riverside, Stockton, Chula Vista, Irvine, and over 100 other Cities are Charter Cities in the State of California.

GRANTED as to Exhibits 1, 2, 3 and 4. *Evidence Code* § 452(c). GRANTED a to Exhibits 5, 6, 7 and 8, but limited to the existence of these pleadings or internet sites and not as to the truth of any of the claims or contentions s forth therein., *Evidence Code* § 452(c) or (d) and *Conlan v. Shewry* (2005) 131 Cal.App.4th 1354, 1364, fn. 5.

City of Huntington Beach's Request for Judicial Notice:

Petitioner CHB requests the court take judicial notice of the following documents in support of its petition:

Exhibit A, City Charter for the City of Huntington Beach and
Exhibit B, City of Huntington Beach Municipal Code §§ 2.52.010 and 2.52.0

GRANTED as to Exhibits A and B. *Evidence Code* § 451(a) as to Exhibit A and *Evidence Code* § 452(c) as to Exhibit B.

City of Huntington Beach's Evidentiary Objections: Declaration of Deputy Attorney General Jonathan Eisenberg:

		SUSTAINED as to Objection Nos. 1, 2, 3, 4 and 5 based on lack of persona knowledge and/or lack of foundation. **Declaration of Tom K. Wong, Ph.D.:** SUSTAINED as to Objection No. 1. OVERRULED as to Objection Nos. 2 and 3. As to Objection No. 3, the court cannot determine what words or phrases that petitioner contends constitute hearsay repeated by Dr. Wong. **Future Hearing:** Motion to Consolidate: 11/15/18

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mdaudt@wss-law.com

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, October 1, 2018 10:30 AM
To: (b) (6)
Subject: RE: Another opportunity to serve

Thanks for checking in, (b) (6). And sorry for the delayed reply. I've been looking into things and possibilities, consistent with what we're permitted to do. We're still evaluating those possibilities and will get back with you soon.

All the best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b) (6)
Sent: Monday, September 17, 2018 6:14 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Another opportunity to serve

Gene, (b) (6) e? I would welcome the opportunity. You haven't responded to my two prior emails, which I take to mean that at the time (s) of those emails there was nothing to report. But even if that's still the case, I'd really appreciate hearing from you on the current status. I know this is a minor matter for you and the AG, but (b) (6) Thanks for all your support. (b)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, October 3, 2018 10:05 PM
To:	Devin M. O'Malley
Cc:	Percival, James (OASG); Shumate, Brett A. (CIV); O'Malley, Devin (OPA); Hunt, Jody (CIV); Wetmore, David H. (ODAG); Readler, Chad A. (CIV)
Subject:	Re: REVIEW: TPS statement

No objection, defer to others

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Oct 3, 2018, at 10:03 PM, Devin M. O'Malley [redacted (b) (6)] > wrote:

> Here's what Corey Ellis sent back:
>
> [redacted (b) (5)]
>
> Sent from my iPhone
>
> On Oct 3, 2018, at 9:59 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:
>
> > I am fine with this
> >
> > Gene P. Hamilton
> > Counselor to the Attorney General
> > U.S. Department of Justice
> >
> > On Oct 3, 2018, at 9:58 PM, Devin M. O'Malley
> > [redacted (b) (6)] wrote:
> >
> > > [redacted (b) (5)]
> > >
> > > [redacted (b) (5)]
> > >
> > > This is where we are at:
> > >
> > > [redacted (b) (5)]

[redacted]

Sent from my iPhone

On Oct 3, 2018, at 9:55 PM, Percival, James (OASG) <James.Percival@usdoj.gov> wrote:

[redacted]

[redacted]

[redacted]

On Oct 3, 2018, at 9:51 PM, Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> wrote:

Stellar addition

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Oct 3, 2018, at 9:49 PM, Shumate, Brett A. (CIV) [redacted] wrote:

Fine with me. Here is a suggestion [redacted]

(b) (5)

Brett A. Shumate
Deputy Assistant Attorney General
(b) (6)

-------- Original message --------
From: "Hamilton, Gene (OAG)" <ghamilton@jmd.usdoj.gov>
Date: 10/3/18 9:45 PM (GMT-05:00)
To: "Devin M. O'Malley" (b) (6)
Cc: "O'Malley, Devin (OPA)" <domalley@jmd.usdoj.gov>, "Shumate, Brett A. (CIV)" (b) (6), "Hunt, Jody (CIV)" (b) (6), "Percival, James (OASG)" <jpercival@jmd.usdoj.gov>, "Wetmore, David H. (ODAG)" <dhwetmore@jmd.usdoj.gov>, "Readler, Chad A. (CIV)" (b) (6)
Subject: Re: REVIEW: TPS statement

(b) (5)

(b) (5)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

> On Oct 3, 2018, at 9:40 PM, Devin M. O'Malley (b) (6) > wrote:
>
> (b) (5)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Friday, October 5, 2018 8:03 AM
To:	Troy Edgar; O'Malley, Devin (OPA); Whitaker, Matthew (OAG)
Subject:	RE: CA Sanctuary Law Update (Los Alamitos)

Thanks very much, Troy, for your continued leadership on this issue.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Troy Edgar <troy@troyedgar.com>
Sent: Friday, October 5, 2018 2:18 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: CA Sanctuary Law Update (Los Alamitos)

Hi Devin, Gene and Matthew,
Here are a couple of media activities I participated in regarding California Sanctuary Law. Please pass this on to the USAG team.

A court decision in favor of an Orange County city seeking to exempt itself from the California Values Act likely marks the escalation of a protracted legal standoff. (Interview - Pacific Standard)
https://psmag.com/social-justice/inside-californias-ongoing-sanctuary-state-battle

Mayor Edgar raises $30,000 in GoFundMe for Los Alamitos in their fight against Sanctuary Law and the ACLU. (GoFundMe Site)
https://www.gofundme.com/HelpLosAlamitos

Los Alamitos, CA Mayor Troy Edgar on Illegal Immigration (Interview) The Daily Ledger, One America News Network)
https://www.youtube.com/watch?v=tciHTuwuLC0&t=5s

- Los Alamitos has now filed our amicus brief with IRLI in support of the US vs. California. The IRLI saved the city $10,000

- I will be participating on the NPR show ***Here and Now*** with Southern California ICE leaders this Monday October 8th at Los Al City Hall.

Thanks,

Troy Edgar
Mayor, City of Los Alamitos
Mobile: [redacted] (b) (6)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, October 22, 2018 9:14 AM
To:	Troy Edgar
Cc:	David H. Wetmore (ODAG) (dhwetmore@jmd.usdoj.gov)
Subject:	RE: Visit and Check-in Next Week with Your Office (Los Alamitos and Huntington Beach - Sanctuary Lawsuit Update)

Hi Troy,

Tomorrow is a very rough day for nearly everyone in DOJ, but Dave Wetmore in ODAG (CC'd here) might have a window available in the morning. I'll leave it to the two of y'all to connect.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Troy Edgar <troy@troyedgar.com>
Sent: Monday, October 22, 2018 12:35 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Visit and Check-in Next Week with Your Office (Los Alamitos and Huntington Beach - Sanctuary Lawsuit Update)

Hi Gene,
Thanks HB Mayor gets in late Monday. I was hoping to connect around 8am or 9am Tuesday if possible.
Sincerely, Troy

Troy Edgar
Sent from my iPhone

On Oct 19, 2018, at 9:12 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Hi Troy,
>
> Thanks for the note. Unfortunately, Tuesday morning is slammed with AG activities. So we (Matt and I) won't be able to meet, but I will check on some others within DOJ.
>
> Thanks!
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> On Oct 18, 2018, at 3:16 PM, Troy Edgar <troy@troyedgar.com> wrote:
>
> > Hi Gene and Matt,

I see Devin has moved to Treasury. Could you help me organize a the check-in meeting for next Tuesday?

Thanks,

Troy Edgar
Mayor, City of Los Alamitos
(b) (6)
Sent from my iPhone

Begin forwarded message:

> **From:** Troy Edgar <troy@troyedgar.com>
> **Date:** October 17, 2018 at 3:27:58 PM CDT
> **To:** Devin O'Malley <Devin.O'Malley@usdoj.gov>, "Hamilton, Gene (OAG)" <Gene.Hamilton@usdoj.gov>, "Whitaker, Matthew (OAG)" <Matthew.Whitaker@usdoj.gov>
> **Subject: Visit and Check-in Next Week with Your Office (Los Alamitos and Huntington Beach - Sanctuary Lawsuit Update)**
>
> Hi Devin, Gene, and Matt,
> The Mayor of Huntington Beach (Mike Posey) and I are traveling to Washington D.C. Monday (10/22) and Tuesday (10/23) for a meeting at the White House.
>
> We were hoping to organize a meeting with you provide updates on the following:
> - Huntington Beach v. State of CA
> - Los Alamitos v ACLU lawsuits
> - US v. State of CA -
>
> Would it be possible to meet next Tuesday (10/23) morning between 8AM-10AM? Our other meetings start at 1030AM-11AM and 1PM-4PM.
>
> Troy Edgar
> **Mayor, City of Los Alamitos**
> Mobile: (b) (6)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, October 25, 2018 9:19 AM
To:	(b)(6) - Bruce Assad Email Address
Cc:	Reuveni, Erez R. (CIV)
Subject:	RE: Massachusetts Supreme Judicial Court entertaining legality of 287(g) program

Hi Bruce,

Sorry for my delay—been dealing with issues related to the situation at the SWB nonstop. Are y'all available later today? I'm CCing Erez from our team, who is our resident expert.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b)(6) - Bruce Assad Email Address
Sent: Tuesday, October 23, 2018 1:03 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Massachusetts Supreme Judicial Court entertaining legality of 287(g) program

Gene,

Bob Novack and I are available to discuss the SJC case and its ramifications with you today at your convenience.

Regards

Bruce Assad
508-673-2004

In a message dated 10/19/2018 9:16:29 PM Eastern Standard Time, Gene.Hamilton@usdoj.gov writes:

> Good evening, y'all,
>
> Thank you very much for the note, and my apologies on the delay in replying. I am adding Erez from our Office of Immigration Litigation, who is well versed on this entire issue. Let's talk early next week? Monday or Tuesday?
>
> Thank you again,
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> On Oct 16, 2018, at 3:07 PM, Robert Novack (b)(6) - Bob Novack Email Address wrote:

(b)(6) - Bob Novack Email Address

Dear Mr. Hamiliton:

Sheriff Thomas Hodgson of Bristol County, MA requested us to touch bases with you regarding a lawsuit currently pending at the Supreme Judicial Court of Massachusetts. As you may know we have entered into a 287(g) agreement with ICE regarding our House of Correction which went into operation in September of 2017. We currently have 6 trained DIOs and under a separate IGSA we have maintained an ICE detention center for years.

Prior to September of 2017, before we were authorized to go forward with the 287(g) program, we held a pre-trial inmate (illegal alien) on bail. When ICE became aware of the illegal, they sent us a form 200 and form 203 which was placed in the inmate's file. When the court clerks came to bail inmates they told the inmates family that they could not bail him due to the fact that the ICE forms were in his file. The inmate's attorney filed a Habeas with the Supreme Judicial Court based on the Lunn just issued by them several weeks ago holding that Mass. State law enforcement cannot arrest under civil immigration law (form 200). When the confusion ended and everyone agreed that the inmate was not held on ICE paperwork, he paid the bail and was released. He is now suing us for unlawful detention.

Rather than dismiss the Habeas petition, the Supreme Judicial Court is entertaining the inmate's request to "Reserve and Report" to the full bench whether the 287(g) program is lawful in Massachusetts. This is despite the fact that the 287(g) program was not in effect during the time of the inmate's incarceration. The inmate is arguing that with the 287(g) the issue not "moot" and can recur.

We have enclosed the Motion to Reserve and Report along with the SJC's request for recent 'status report" which we think is a clear indication that the SJC wants to seize on and decide the issue. As you know, the statute authorizing 287(g) programs contains the caveat " as authorized by state law." Accordingly, we believe this will be a direct attack on the 287(g) programs in a jurisdiction that is not ICE friendly.

Would you please contact us to set up a time when we can discuss the matter.

Bruce Assad, Esq.
Bob Novack, Esq.
Tel: 508-673-2004 or 508-995-1311
Emails (b)(6) - Bob Novack Email Address (b)(6) - Bruce Assad Email Address

<Rivas status order.pdf>

<Rivas mot res rep.pdf>

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, November 1, 2018 8:40 AM
To: Marguerite Telford
Subject: RE: Invitation for AG Sessions

Thank you! And glad to hear it.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Marguerite Telford <mrt@cis.org>
Sent: Thursday, November 1, 2018 8:37 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Invitation for AG Sessions

Of course. I just don't want you to forget us! By the way, thank you for considering speaking at our immigration bootcamp . . . Feere felt the same way. But, all went really well!

MRT

On Thu, Nov 1, 2018 at 8:29 AM Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Hi Marguerite,
>
> Thanks for the note. We are slammed with some things going on right now in the immigration world and otherwise, but can we touch base in a couple weeks?
>
> Thanks!
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> On Oct 29, 2018, at 3:37 AM, Marguerite Telford <mrt@cis.org> wrote:
>
> > Gene,
> > I just wanted to check in about setting a date for AG Sessions to partiicpate in our Newsmaker Series. Any feedback from OPA? Would it help for Mark to speak directly with Sessions?
> > Hope life isn't too stressful at DOJ!
> > Marguerite
> >
> > On Mon, Oct 1, 2018 at 9:49 AM Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

Thanks, Marguerite. I've pinged our OPA and we will be in touch.

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Marguerite Telford <mrt@cis.org>
Sent: Sunday, September 30, 2018 8:43 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Invitation for AG Sessions

Gene,

The Center for Immigration Studies launched a new speaker series this past spring, *Immigration Newsmaker Series*. I am pleased to extend an invitation to Attorney General Sessions to participate in our December or January event.

Guests are government agency leaders (USCIS, EOIR, PRM, DOJ) and members of Congress; our first four guests were James McHenry, Director of EOIR, Tom Homan, acting Director of ICE, and Francis Cissna, Director of USCIS, and Rep. Lamar Smith.

The one-hour event with AG Sessions, to be held at the National Press Club, would be a seated, casual conversation between Sessions and our executive director, Mark Krikorian. This is meant to be a friendly sit down - an opportunity for him to talk about immigration challenges and priorities.

As to format, I am planning a 45 minute conversation, with Q & A to follow, which would come from the audience and CIS staff. Attendees will not be able to ask questions from the floor, questions will be passed to staff who will select questions to be asked.

The event audience includes media, legislative staff, academia and some non-profits. C-SPAN covers most of these events. The event will be videotaped and posted online, along with a transcript.

There is some flexibility in the format and the attendee list, if you have any concerns. We are also flexible on the date; we prefer a Tuesday or Wednesday. The best time slot would be 9:00 or 9:30 because reporters can write up the story before lunch and before the WH press briefing. But once again, we are flexible. We would even be open to an evening event.

Thank you for your assistance,
Marguerite Telford

--
Marguerite Telford
Director of Communications
Center for Immigration Studies
1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org www.cis.org

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Marguerite Telford
Director of Communications
Center for Immigration Studies
1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org www.cis.org

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Marguerite Telford
Director of Communications
Center for Immigration Studies
1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org www.cis.org

U.S. Department of Justice
Office of Information Policy
441 G Street, NW
Sixth Floor
Washington, DC 20530

Telephone: (202) 514-3642

May 15, 2020

Austin Evers
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005
FOIA@americanoversight.org

Re: DOJ-2019-000063
19-cv-1339 (D.D.C.)
TAZ:JMS

Dear Austin Evers:

This is the first supplemental response to your Freedom of Information Act (FOIA) request dated and received in this Office on October 4, 2018, in which you requested email communications sent by Gene Hamilton, Counselor to the Attorney General, to any email address ending in .com/.net/.org/.edu/.mail, dating since October 26, 2017. This response is made on behalf of the Office of the Attorney General (OAG).

Please be advised that a supplemental search has been conducted on behalf of OAG. I have determined that thirty-eight pages containing records responsive to your request are appropriate for release with excisions made pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6) and copies are enclosed. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Please be advised that duplicative material was not processed, and is marked accordingly.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Alan Burch of the U.S. Attorney's Office for the District of Columbia, at (202) 252-2550.

Sincerely,

Timothy Ziese
Senior Reviewing Attorney
for
Vanessa R. Brinkmann
Senior Counsel

Enclosures

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Sunday, November 18, 2018 7:59 PM
To:	Marguerite Telford
Subject:	RE: Immigration Newsmaker

Hi Marguerite,

Thanks for the note. Given that he has now left DOJ, please send me an email to my personal account on this at [redacted (b) (6)]. Please include a description of what y'all would be seeking from him (speaking at the event, where/when, etc.), and I'll happily provide it to him. I know you did before, but it will be easiest in a clean email.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Marguerite Telford <mrt@cis.org>
Sent: Friday, November 16, 2018 10:18 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Immigration Newsmaker

Gene -
We still very much want Session to participate in our Newsmaker series. How can we contact him and try to make that happen?
MRT

--
Marguerite Telford
Director of Communications
Center for Immigration Studies
1629 K Street NW, Suite 600
Washington, DC 20006
(202) 466-8185 fax: (202) 466-8076
mrt@cis.org www.cis.org

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Sunday, December 2, 2018 5:21 PM
To:	Sheehan, Matthew (ODAG)
Cc:	(b)(6) - Matthew Sheehan Email Address
Subject:	RE: Farewell for now

Matt!

I am sorry I didn't get a chance to say good luck in person this week. I hope you stay in close contact! You are doing to do great things over there (and you were here, too).

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Sheehan, Matthew (ODAG) <msheehan@jmd.usdoj.gov>
Sent: Friday, November 30, 2018 4:49 PM
To: Sheehan, Matthew (ODAG) <msheehan@jmd.usdoj.gov>
Cc: (b)(6) - Matthew Sheehan Email Address
Subject: Farewell for now

All,

It has been a pleasure serving alongside you for the past several months. This has been an opportunity of a lifetime, and I am very grateful for the experience. Next week, I start a detail in the Counsel's Office at the Office of the Vice President.

I do not have my new contact information yet, but my personal cell is (b) (6) and my e-mail is (b)(6) - Matthew Sheehan Email Address

Best,

Matt

Matthew J. Sheehan
Senior Counsel to the Deputy Attorney General
Office of the Deputy Attorney General
Matthew.Sheehan@usdoj.gov
(202) 514-4945 (Desk)
(b) (6) (Mobile)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Friday, December 7, 2018 2:17 PM
To:	Troy Edgar
Subject:	RE: Checking-in - My Outgoing Ceremony - Mayor of Los Alamitos
Attachments:	AG Retirement Letter for Mayor Troy D. Edgar.pdf

Hi Troy,

The attached is in the mail on its way to you.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Troy Edgar <troy@troyedgar.com>
Sent: Thursday, December 6, 2018 4:49 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Checking-in - My Outgoing Ceremony - Mayor of Los Alamitos

Hi Gene,
Just checking in. Please let me know if you would be able to send a certificate/other to the City for the presentations. I know the time is running down.

Thanks, Troy

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Friday, November 30, 2018 2:12 PM
To: Troy Edgar <troy@troyedgar.com>
Subject: RE: Checking-in - My Outgoing Ceremony - Mayor of Los Alamitos

Hi Troy,

We'll be in touch shortly.

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Troy Edgar <troy@troyedgar.com>
Sent: Wednesday, November 28, 2018 9:34 AM
To: Wetmore, David H. (ODAG) <dhwetmore@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>

[redacted]@jmd.usdoj.gov>
Cc: Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>
Subject: Checking-in - My Outgoing Ceremony - Mayor of Los Alamitos

Hi David, Gene and Matt,
I hope you are all doing well and had a great Thanksgiving.

Thanks again for all of your support and assistance through the California Sanctuary law issue since March.

As I had discussed with you on my last visit to your office, after 12 years on the City Council I am termed out and my outgoing Mayor ceremony and last day on the Los Alamitos City Council is December 10th, 2018 at 6PM. I would love to have one of you come out and represent the USAG if you would happen to be in Southern California or possibly send in a recognition if possible. Please let me know if either is possible. It would mean a lot to me as I put this part of public service to rest.

Either way, I am very proud to have worked with you and our City and State are very appreciative of your service.

Sincerely,

Troy Edgar
Mayor, City of Los Alamitos
Mobile [redacted] (b) (6)

Office of the Attorney General
Washington, D. C. 20530

December 7, 2018

The Honorable Troy D. Edgar
Mayor
City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90702

Dear Mayor Edgar:

On behalf of the United States Department of Justice, it is my great honor to congratulate you on your upcoming retirement from the Los Alamitos City Council. As you mark this milestone, I trust that you will look back on your twelve years of dedicated service to the people of Los Alamitos with pride. You have truly served your community well and with the utmost distinction.

As you complete your service as a member of the city council and mayor, you will leave a legacy of commitment to the rule of law. Your tenure was marked by progress for the City of Los Alamitos but also by the courage to stand up for the law in the face of overwhelming opposition. The decisions made during your tenure to push back against unlawful, unjust, and unsafe policies demonstrate true stewardship for those that you serve. My staff and I have enjoyed the opportunity to work with you on this critical issue and are truly sorry to be losing such a stalwart ally.

While out of the public eye, I am sure that you will find other opportunities to serve your community and our nation. I wish you, Betty, and your entire family the best as you move forward to new endeavors. The Department of Justice thanks you for your great service to the City of Los Alamitos and to the United States of America.

Sincerely,

Matthew G. Whitaker
Acting Attorney General

Proud to know you!
MW

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, December 17, 2018 10:10 AM
To: (b) (6)
Subject: RE:

Thanks! Likewise!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b) (6)
Sent: Sunday, December 16, 2018 2:30 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject:

Hey Gene,
Great seeing you and catching up last night. Thanks for taking an interest in my weird predicament / limbo with the (b) (6).

I understand that the Department is in a bit of a state of flux right now, and also that there might not be any kind of temporary work even if it weren't. But I appreciate your willingness to take some time to think about it. (b) (6) (b) (6) I'm going to send my resume to some of the document-review companies, but it would obviously be much more fulfilling to do some similar kind of work for a cause I believe in.

I've attached my resume here. If anything occurs to you in your area of operations, or if you hear from anyone else that they could use help getting ready for subpoenas from the new Dem House, etc., please let me know. Hope y'all have a Merry Christmas!
V/r,
(b) (6)

(b) (6)
(b) (6)
(b) (6)

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, January 1, 2019 6:52 PM
To: Kory Langhofer
Subject: Re: NDA

Excellent. Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jan 1, 2019, at 6:51 PM, Kory Langhofer <kory@statecraftlaw.com> wrote:

> Yes, that work. Please call my cell when you free up.
>
> ---
>
> **Kory Langhofer**
> **STATECRAFT PLLC**
> 649 North Fourth Avenue, First Floor
> Phoenix, Arizona 85003
> Desk: (602) 382-4078
> Cell: (602) 571-4275
>
> This transmission may be protected by the attorney-client privilege or the attorney work product doctrine. If you are not the intended recipient, please delete all copies of the transmission and advise the sender immediately.
>
> On Jan 1, 2019, at 3:39 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:
>
> > Absolutely. I have deposition prep most of the day, but maybe in the later PM?
> >
> > Thank you!
> >
> > Gene P. Hamilton
> > Counselor to the Attorney General
> > U.S. Department of Justice
> >
> > On Jan 1, 2019, at 4:42 PM, Kory Langhofer <kory@statecraftlaw.com> wrote:
> >
> > > Gene: Are you available tomorrow for a call to discuss the cases? In the meantime, I will ask someone in my office to track down your NDA. -Kory
> > >
> > > ---
> > >
> > > **Kory Langhofer**
> > > **STATECRAFT PLLC**

649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
Desk: (602) 382-4078
Cell: (602) 571-4275

On Jan 1, 2019, at 11:05 AM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Hi Kory,
>
> I hope you have been well. I am being deposed in a case this week, and the plaintiffs desire to see a copy of the NDA I signed on transition. During a prior deposition, I refused to testify as to matters pertaining to the transition on the basis of the NDA, and it sounds like they have an interest in exploring that issue.
>
> Do you happen to have a copy of the NDA I signed?
>
> Thank you!
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, January 17, 2019 1:48 PM
To:	Lori Handrahan
Cc:	jrf@gg-law.com
Subject:	RE: Meeting next week?

Thank you for the email, Lori. I sent a note to your attorney, Bob Flores, the other day.

Bob, can you please give me a call?

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Lori Handrahan [redacted (b) (6)]
Sent: Wednesday, January 16, 2019 9:56 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: jrf@gg-law.com; Wiles, Morgan (OAG) <mwiles@jmd.usdoj.gov>; Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>
Subject: Meeting next week?
Importance: High

Dear Gene,

Is there a day next week to meet with Bob Flores and I?

Just to re-cap – green card, marriage and citizenship fraud. All areas that the Trump Administration has said are top priorities.

In addition, confirmed by the top forensic medical examiner team for [redacted (b) (6)] and a long list of other crimes such as domestic assault, shop-lifting, etc.

Looking forwarding to the possibility of meeting with you next week.

Kindest,

Lori Handrahan, Ph.D.
www.LoriHandrahan.com
Washington DC

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, February 19, 2019 3:07 PM
To: Clark, Maiya
Subject: RE: If you have any free time would love to catch up

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Tuesday, February 19, 2019 3:04 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: If you have any free time would love to catch up

That works just fine! No special instructions to get in the building - our address is 214 Massachusetts Ave NE. Just tell the receptionists you have a meeting with Jim. Please feel free to contact me if you have any questions.

Best,
Maiya

Maiya Clark
Research and Administrative Assistant, Foreign Policy and National Security The Heritage Foundation 214 Massachusetts Avenue, NE Washington, DC 20002 202-608-6071
heritage.org

-----Original Message-----
From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Tuesday, February 19, 2019 2:23 PM
To: Clark, Maiya <Maiya.Clark@heritage.org>
Subject: RE: If you have any free time would love to catch up

Thanks very much, Maiya. I'll plan to meet him at his office if that works for y'all. Do I need to know anything special to get in the building?

anything special to get in the building?

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Tuesday, February 19, 2019 1:20 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: If you have any free time would love to catch up

Dear Gene,

Excellent - I have you on Jim's calendar for this Friday at 8am. He would be happy to meet with you at Bistro Bis for coffee and some breakfast, or just in his office at Heritage if you would prefer. I will let you decide.

Best,
Maiya

Maiya Clark
Research and Administrative Assistant, Foreign Policy and National Security The Heritage Foundation 214 Massachusetts Avenue, NE Washington, DC 20002 202-608-6071
heritage.org

-----Original Message-----
From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Tuesday, February 19, 2019 11:28 AM
To: Clark, Maiya <Maiya.Clark@heritage.org>
Subject: RE: If you have any free time would love to catch up

Hi Maiya,

Thanks very much. Sure, how about Friday the 22 at 8:00 AM? Does he have a preference as to location?

Thank you,

Gene P. Hamilton

Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Tuesday, February 19, 2019 10:31 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: If you have any free time would love to catch up

Dear Gene,

Would you be available for coffee with Jim on one of the following dates/times?

Thursday, Feb 21, 9am
Friday, Feb 22, 8am
Wednesday, Feb 27, 2:30pm

Best,
Maiya

Maiya Clark
Research and Administrative Assistant, Foreign Policy and National Security The Heritage Foundation 214 Massachusetts Avenue, NE Washington, DC 20002 202-608-6071
heritage.org

-----Original Message-----
From: Carafano, James <James.Carafano@Heritage.org>
Sent: Monday, February 18, 2019 5:05 PM
To: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Cc: Clark, Maiya <Maiya.Clark@heritage.org>
Subject: Re: If you have any free time would love to catch up

Will ask maiya to look. Let's not plan Wednesday might be snow out day

Sent from my iPhone

> On Feb 18, 2019, at 4:38 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:
>
> Sounds great. What does your schedule look like this week and next? Coffee? Hope all is well!
>
> Best,

>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
>>

James Jay Carafano
Vice President for the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, and the E. W. Richardson Fellow
Davis Institute for National Security and Foreign Policy
x6161

On Feb 18, 2019, at 4:04 PM, Carafano, James <James.Carafano@heritage.org> wrote:
>>
>> Lots going on
>>
>> Sent from my iPhone
>>
>>
>> James Jay Carafano
>> Vice President for the Kathryn and Shelby Cullom Davis Institute for
>> National Security and Foreign Policy, and the E. W. Richardson Fellow
>> Davis Institute for National Security and Foreign Policy The Heritage
>> Foundation
>> 214 Massachusetts Avenue, NE
>> Washington, DC 20002
>> 202-608-6161
>> heritage.org
>>
>

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, March 6, 2019 3:22 PM
To:	Hahn, Julia A. EOP/WHO; (b) (6)
Subject:	RE: connecting you

Hey y'all,

Sorry, I was in a meeting. Sure. Can y'all talk between now and 4:00? I'm at (b) (6) and am free from now until 4, and then again from 4:30 onwards.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Hahn, Julia A. EOP/WHO (b) (6)
Sent: Wednesday, March 6, 2019 2:55 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; (b) (6)
Subject: connecting you

Gene— just tried calling you. Rich (cc'ed here) is working on a story on the latest apprehension numbers and the current border crisis as it relates to TVPRA/Flores/Asylum loopholes. Any chance you can give him a call today to talk **on deep background** and walk him through any questions he may have. His number (b) (6) (b) He's on 6pm deadline, so if you could call him asap, it would be greatly appreciated!

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, March 13, 2019 2:28 PM
To: Erica Munkwitz
Subject: RE: Lunch?

Thank you for setting that up, Erica.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Erica Munkwitz <erica.munkwitz@fed-soc.org>
Sent: Wednesday, March 13, 2019 2:26 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Lunch?

Excellent. The reservations are in Dean's name for March 28 at 12pm.

Thank you,
Erica

On Wed, Mar 13, 2019 at 2:18 PM Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Quite convenient—let's book it. Thank you!
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> **From:** Erica Munkwitz <erica.munkwitz@fed-soc.org>
> **Sent:** Wednesday, March 13, 2019 2:00 PM
> **To:** Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> **Cc:** Dean Reuter <dean.reuter@fed-soc.org>
> **Subject:** Re: Lunch?
>
> Wonderful, how about March 28, noon at Central Michel Richard? I can make the reservations.
>
> Thank you,
> Erica
>
> On Tue, Mar 12, 2019 at 5:27 PM Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:
>
> > How about March 28?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Erica Munkwitz <erica.munkwitz@fed-soc.org>
Sent: Tuesday, March 12, 2019 5:23 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Dean Reuter <dean.reuter@fed-soc.org>
Subject: Re: Lunch?

Dear Gene,

I'm delighted to help schedule a lunch for you and Dean.

Would you be free on March 28, April 3, or April 4?

If not, I can send additional dates.

Thank you,
Erica

On Tue, Mar 12, 2019 at 5:16 PM Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Hi Dean,
>
> Thanks very much for the note. I'd be happy to get together for lunch. Are there any dates/times that work better on your end?
>
> Thanks!
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> **From:** Dean Reuter <dean.reuter@fed-soc.org>
> **Sent:** Tuesday, March 12, 2019 4:56 PM
> **To:** Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> **Cc:** Erica Munkwitz <erica.munkwitz@fed-soc.org>
> **Subject:** Lunch?
>
> Dear Gene,
>
> It was suggested that we should get to know each other better and I'd value a chance to discuss some immigration issues with you. Would you be interested in getting lunch soon? I'm copying my deputy Erica to get this on our calendars.
>
> Best,
> Dean

Dean Reuter

General Counsel | Vice President & Director, Practice Groups, The Federalist Society
(202) 822-8138
fedsoc.org

--

Erica Munkwitz
Deputy Director, Practice Groups, The Federalist Society
(202) 822-8138
fedsoc.org

--

Erica Munkwitz
Deputy Director, Practice Groups, The Federalist Society
(202) 822-8138
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--

Erica Munkwitz
Deputy Director, Practice Groups, The Federalist Society
(202) 822-8138
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Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, March 18, 2019 3:35 PM
To: Clark, Maiya
Subject: RE: Discussion at Heritage

Thank you, Maiya.

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Monday, March 18, 2019 3:33 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Discussion at Heritage

Gene,

Wonderful! I will get that on the books. We look forward to hosting you!

Best,
Maiya

Maiya Clark
Research and Administrative Assistant, Foreign Policy and National Security
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6071
heritage.org

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Monday, March 18, 2019 3:31 PM
To: Clark, Maiya <Maiya.Clark@heritage.org>
Subject: RE: Discussion at Heritage

Hi Maiya!

Let's book 10:00 on the 4th. I'll holler if anything changes, but that should be great.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Monday, March 18, 2019 3:28 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Discussion at Heritage

Dear Gene,

Not to worry. Would you be available at 10am on either Thursday, April 4 or Friday, April 5?

Thanks!
Maiya

Maiya Clark
Research and Administrative Assistant, Foreign Policy and National Security
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6071
heritage.org

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Friday, March 15, 2019 3:45 PM
To: Clark, Maiya <Maiya.Clark@heritage.org>
Subject: RE: Discussion at Heritage

Unfortunately, I'm going to have to stick to AM time slots. Sorry for the difficulty!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Friday, March 15, 2019 3:23 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Discussion at Heritage

Not to worry. Could you possibly do 2pm on Wednesday, March 27?

Thanks,
Maiya

Maiya Clark
Research and Administrative Assistant, Foreign Policy and National Security
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6071
heritage.org

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Friday, March 15, 2019 3:14 PM
To: Clark, Maiya <Maiya.Clark@heritage.org>
Subject: RE: Discussion at Heritage

Unfortunately, I have a conflict that particular morning. Bummer! One of the few unmovable things at the moment. Any other days?

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Friday, March 15, 2019 2:56 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Discussion at Heritage

Hi Gene,

Could you do Tuesday, March 26 at 11:00am? If 11:00am is too late in the day, could you do 9:00am that day?

Thanks,
Maiya

Maiya Clark
Research and Administrative Assistant, Foreign Policy and National Security
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6071
heritage.org

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Friday, March 15, 2019 12:49 PM
To: Clark, Maiya <Maiya.Clark@heritage.org>
Subject: RE: Discussion at Heritage

Hi Maiya,

Thanks for the note! Early mornings are probably best on my end. Next week I could probably do Tuesday morning or Friday morning, and the week after is fairly flexible.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Friday, March 15, 2019 10:09 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Discussion at Heritage

Dear Gene,

Jim and the rest of our team are greatly looking forward to hosting you for an off-the-record discussion at Heritage. Could you please let me know your availability for a meeting in the next few weeks? I am happy to

Heritage. Could you please let me know your availability for a meeting in the next few weeks? I am happy to work to find a time that is convenient for you and works for our team as well.

Best wishes,
Maiya

Maiya Clark
Research and Administrative Assistant, Foreign Policy and National Security
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6071
heritage.org

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Friday, February 22, 2019 11:06 AM
To: Carafano, James <James.Carafano@Heritage.org>; Clark, Maiya <Maiya.Clark@heritage.org>
Cc: Stimson, Charles <Cully.Stimson@heritage.org>; von Spakovsky, Hans <Hans.VonSpakovsky@heritage.org>; Winfree, Paul <Paul.Winfree@heritage.org>; Spencer, Jack <Jack.Spencer@heritage.org>; Inserra, David <David.Inserra@heritage.org>; Quintana, Ana <Ana.Quintana@heritage.org>; Shedd, David <David.Shedd@heritage.org>; Spoehr, Thomas <Thomas.Spoehr@heritage.org>; Swearer , Amy <Amy.Swearer@heritage.org>; Binion, Thomas <Thomas.Binion@heritage.org>; Garrett Bess (Heritage Action) <Garrett.Bess@heritageaction.com>; Jessica Anderson (Heritage Action) <Jessica.Anderson@heritageaction.com>; Wagner, Bridgett <bridgett.wagner@heritage.org>
Subject: RE: Discussion at Heritage

It would be my pleasure. Looking forward to speaking with y'all.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Carafano, James <James.Carafano@Heritage.org>
Sent: Friday, February 22, 2019 10:36 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Clark, Maiya <Maiya.Clark@heritage.org>
Cc: Stimson, Charles <Cully.Stimson@heritage.org>; von Spakovsky, Hans <Hans.VonSpakovsky@heritage.org>; Winfree, Paul <Paul.Winfree@heritage.org>; Spencer, Jack <Jack.Spencer@heritage.org>; Inserra, David <David.Inserra@heritage.org>; Quintana, Ana <Ana.Quintana@heritage.org>; Shedd, David <David.Shedd@heritage.org>; Spoehr, Thomas <Thomas.Spoehr@heritage.org>; Swearer , Amy <Amy.Swearer@heritage.org>; Binion, Thomas <Thomas.Binion@heritage.org>; Garrett Bess (Heritage Action) <Garrett.Bess@heritageaction.com>; Jessica Anderson (Heritage Action) <Jessica.Anderson@heritageaction.com>; Wagner, Bridgett <bridgett.wagner@heritage.org>
Subject: Discussion at Heritage

Gene, I would love to invite you back over to sit down with our team that works on immigration and border security issues and just have an open off-the-record discussion. Maiya can help set a good time.

James Jay Carafano
Vice President for the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, and the E. W. Richardson Fellow

Davis Institute for National Security and Foreign Policy
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6161
heritage.org

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, April 4, 2019 8:45 AM
To:	Clark, Maiya
Subject:	RE: Discussion at Heritage

Hi Maiya,

Looking forward to seeing y'all soon.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Clark, Maiya <Maiya.Clark@heritage.org>
Sent: Monday, March 18, 2019 3:33 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Discussion at Heritage

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, April 4, 2019 8:57 AM
To: Alexei Woltornist
Subject: RE: OIL Appellate head?

OIL Appellate is Dave McConnell.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Message-----
From: Alexei Woltornist [redacted (b) (6)]
Sent: Thursday, April 4, 2019 8:54 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: OIL Appellate head?

Hey Gene,

Still haven't gotten my work phone, so I have to send from my gmail. Who's the head of the appellate section of oil. Thanks Alexei

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, April 9, 2019 9:09 AM
To: Alexei Woltornist
Subject: RE: FOX NEWS / URGENT REQ: MPP Ruling

Great. Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Alexei Woltornist [redacted (b) (6)]
Sent: Tuesday, April 9, 2019 9:05 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: FOX NEWS / URGENT REQ: MPP Ruling

Chatted with him this morning. All handled

On Apr 9, 2019, at 8:53 AM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Do you want to discuss this inquiry or do you have it?
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice
>
> ---
>
> **From:** Kupec, Kerri (OPA) <[redacted (b) (6)]
> **Sent:** Tuesday, April 9, 2019 7:37 AM
> **To:** Woltornist, Alexei (PAO) <awoltornist@jmd.usdoj.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> **Subject:** Fwd: FOX NEWS / URGENT REQ: MPP Ruling
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Jenkins, Griff" <Griff.Jenkins@FOXNEWS.COM>
> > **Date:** April 9, 2019 at 7:13:58 AM EDT
> > **To:** [redacted (b)(6) - Kerri Kupec Email Address]
> > **Subject: FOX NEWS / URGENT REQ: MPP Ruling**
> >
> > Hi Kerri –
> >
> > I'm doing the Seeborg ruling on MPP this AM... Can you give us any statement or guidance on the ruling?

I see that Seeborg gave you until Fri to respond... and assume you will appeal (which would be 9th circuit court of appeals, correct?)

Thanks,
Griff

Griff Jenkins
Correspondent
FOX News Channel
(b) (6) cell
@griffjenkins on Twitter

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, April 10, 2019 3:28 PM
To: Alexei Woltornist

You may have left a notebook in my office. I'm not sure, but I don't recall anyone else walking in here with a notebook recently

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, April 10, 2019 4:58 PM
To:	Alexei Woltornist; Woltornist, Alexei (PAO)
Subject:	RE: Re:

Weird. Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Alexei Woltornist [redacted (b) (6)]
Sent: Wednesday, April 10, 2019 4:56 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Woltornist, Alexei (PAO) <awoltornist@jmd.usdoj.gov>
Subject: Re:

Thanks for the heads up. Just sent the notice to appeal to reporters. Also, my personal email is coming up in your address book. Adding my official.

On Wed, Apr 10, 2019 at 4:41 PM Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> We're likely filing papers tomorrow seeking a stay of the MPP injunction pending appeal. FYI
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, April 24, 2019 2:51 PM
To: Carafano, James
Subject: RE: FYI

Likewise!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Carafano, James <James.Carafano@Heritage.org>
Sent: Wednesday, April 24, 2019 1:56 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: FYI

Hope all is well

James Jay Carafano
Vice President for the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, and the E. W. Richardson Fellow
Davis Institute for National Security and Foreign Policy
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6161
heritage.org

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Wednesday, April 24, 2019 12:30 PM
To: Carafano, James <James.Carafano@Heritage.org>
Subject: RE: FYI

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Carafano, James <James.Carafano@Heritage.org>
Sent: Wednesday, April 24, 2019 11:37 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: FYI

https://www.foxnews.com/opinion/carafano-trump-immigration

Sent from my iPhone

James Jay Carafano
Vice President for the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, and the E. W. Richardson Fellow
Davis Institute for National Security and Foreign Policy
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214 Massachusetts Avenue, NE
Washington, DC 20002
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heritage.org

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Thursday, June 6, 2019 5:37 PM
To: (b) (6)
Subject: RE: Any update?

Thanks (b) (6) Hope you are well.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b) (6) (b) (6)
Sent: Thursday, June 6, 2019 2:16 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Any update?

Gene, please still keep me in mind for any opportunities to serve part-time. Thanks. (b) (6)

-----Original Message-----
From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
To: (b) (6) < (b) (6)
Sent: Tue, Apr 2, 2019 10:12 pm
Subject: Re: Any update?

Hi (b) (6)

Thanks for the note, and hope you are well. I don't know much about the search, but will relay your interest if I find out more.

Thanks again!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Apr 2, 2019, at 10:58 AM, (b) (6) < (b) (6) > wrote:

> Gene, I just read that the President intends to appoint an immigration "czar." I'd be interested in serving on that person's staff, where I think I could make a real contribution. If you know anyone to contact in that regard, I'd appreciate your doing so, or putting me in touch. Thanks, and hope all is going as well as possible. (b) (6)
>
> -----Original Message-----
> From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
> To: (b) (6) < (b) (6)
> Sent: Fri, Feb 22, 2019 7:09 pm
> Subject: Re: Any update?
>
> Hi (b) (6)

Hope all is well, and thanks for following up. Nothing on our end right now. Lots of things are changing, but I will let you know if anything develops.

Thanks again,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Feb 18, 2019, at 7:32 PM, [redacted] (b) (6) [redacted] (b) (6) [redacted] > wrote:

> Gene, haven't heard from you in quite a while. Is there any chance the new AG might be favorably disposed to finding me a part-time position as was AG Sessions? If you think that's a real possibility, please bring my situation to his attention, including forwarding him the materials I emailed you about my prior service (it's possible he'd remember me from when he was AG before). I look forward to any updates you can provide. Thanks.
> [redacted] (b)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, July 15, 2019 10:42 PM
To:	Chris Landau
Subject:	RE: Good to meet you!

Thank you very much, Chris. It was very nice to meet you. I look forward to working together with you upon your confirmation! Tremendous opportunities await you in Mexico City!

Best regards,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Chris Landau <chrislandau@quinnemanuel.com>
Sent: Monday, July 15, 2019 4:16 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Good to meet you!

Gene,
I just wanted to drop you a line to say that I enjoyed meeting you today, and look forward to working closely if and when I'm confirmed (hopefully by the end of the month!).
As I said, these issues are my top priority, and I think the two of us will be well positioned to work together to try to drive change.
Hope to see you in Mexico soon!
Cheers,
Chris

Chris Landau
Partner,
Quinn Emanuel Urquhart & Sullivan, LLP

1300 I Street, NW, Suite 900
Washington, D.C. 20005
202-538-8330 Direct
202.538.8000 Main Office Number
202.538.8100 FAX
chrislandau@quinnemanuel.com
www.quinnemanuel.com

Hamilton, Gene (OAG)

Subject:	Call
Start:	Tuesday, August 13, 2019 10:00 AM
End:	Tuesday, August 13, 2019 10:15 AM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Hamilton, Gene (OAG)
Required Attendees:	Michel, Norbert

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Friday, August 9, 2019 12:09 PM
To:	Michel, Norbert
Subject:	RE: Visa Information

Great.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Michel, Norbert <Norbert.Michel@heritage.org>
Sent: Friday, August 9, 2019 10:49 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: Visa Information

Hi Gene – Tuesday morning (the 13th) is good. Say.....10:00 am?

Norbert Michel
Director, Center for Data Analysis
Institute for Economic Freedom
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6201
heritage.org

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Friday, August 9, 2019 8:37 AM
To: Michel, Norbert <Norbert.Michel@heritage.org>
Cc: Winfree, Paul <Paul.Winfree@heritage.org>
Subject: RE: Visa Information

Thanks, Norbert. Can we try Tuesday morning of next week? Sorry if that's too delayed. If not, then I'll try to work out something this afternoon (it's just a little jammed up)

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Michel, Norbert <Norbert.Michel@heritage.org>
Sent: Thursday, August 8, 2019 4:15 PM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Winfree, Paul <Paul.Winfree@heritage.org>
Subject: Re: Visa Information

Gene, thank you for responding so quickly.

Would tomorrow afternoon work for you?

Norbert

Sent from my iPhone

On Aug 8, 2019, at 3:59 PM, Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov> wrote:

> Great, thanks, Paul. I hope you've been doing well!
>
> Please let me know when might be a good time to talk.
>
> And Paul, let's plan on catching up soon.
>
> Best,
>
> Gene P. Hamilton
> Counselor to the Attorney General
> U.S. Department of Justice

Norbert Michel
Director, Center for Data Analysis
Institute for Economic Freedom
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6201
heritage.org

> **From:** Winfree, Paul <Paul.Winfree@heritage.org>
> **Sent:** Thursday, August 8, 2019 10:58 AM
> **To:** Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
> **Cc:** Michel, Norbert <Norbert.Michel@heritage.org>
> **Subject:** Visa Information
>
> Hey Gene –
>
> Hope you're doing well and having a nice summer. I'm copying my colleague, Norbert Michel, who has some questions about data regarding visas.
>
> I suspect you'll know the answers.
>
> Best always,
> Paul

Paul Winfree
Director, Roe Institute for Economic Policy Studies and Richard F. Aster Fellow
Institute for Economic Freedom
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6197
heritage.org

Hamilton, Gene (OAG)

Subject:	Call
Start:	Tuesday, August 13, 2019 10:00 AM
End:	Tuesday, August 13, 2019 10:15 AM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Hamilton, Gene (OAG)
Required Attendees:	Michel, Norbert

U.S. Department of Justice
Office of Information Policy
441 G Street, NW
Sixth Floor
Washington, DC 20530

Telephone: (202) 514-3642

August 7, 2020

Austin Evers
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005
FOIA@americanoversight.org

Re: DOJ-2019-000063
19-cv-1339 (D.D.C.)
VRB:TAZ:JMS

Dear Austin Evers:

This is the second supplemental response to your Freedom of Information Act (FOIA) request dated and received in this Office on October 4, 2018, in which you requested email communications sent by Gene Hamilton, Counselor to the Attorney General, to any email address ending in .com/.net/.org/.edu/.mail, dating since October 26, 2017. This response is made on behalf of the Office of the Attorney General (OAG).

Please be advised that a supplemental search has been conducted on behalf of OAG. I have determined that 112 pages containing records responsive to your request are appropriate for release with excisions, some on behalf of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Homeland Security (DHS), and United States Immigration and Customs Enforcement (ICE), made pursuant to Exemptions 5, 6 and 7(C) of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6), and (b)(7)(C), and copies are enclosed. Exemption 5 pertains to certain inter- and intra- agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of individuals. Exemption 7(C) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of individuals. Please be advised that certain page(s) within this production contain highlighting. This highlighting was present on these pages as located by OIP and was not made as part of our FOIA review process.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Alan Burch of the U.S. Attorney's Office for the District of Columbia, at (202) 252-2550.

Sincerely,

Vanessa R. Brinkmann
Senior Counsel

Enclosures

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, November 6, 2018 11:41 AM
To:	Jonathan F. Thompson
Subject:	18-317-1.pdf
Attachments:	18-317-1.pdf

Another detainer win for a sheriff with our participation as amicus

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-317

Filed: 6 November 2018

Mecklenburg County, No. 17 CR 230629-30

CARLOS CHAVEZ, Petitioner,

v.

IRWIN CARMICHAEL, SHERIFF, MECKLENBURG COUNTY, Respondent.

Mecklenburg County, No. 16 CR 244165

LUIS LOPEZ, Petitioner,

v.

IRWIN CARMICHAEL, SHERIFF, MECKLENBURG COUNTY, Respondent.

Appeal by respondent from orders entered 13 October 2017 by Judge Yvonne Mims-Evans in Mecklenburg County Superior Court. Heard in the Court of Appeals 2 October 2017.

National Immigration Project of the National Lawyers Guild, by Sejal Zota, and Goodman Carr, PLLC, by Rob Heroy, for petitioners Luis Lopez and Carlos Chavez.

Womble Bond Dickenson (US) LLP, by Sean F. Perrin, for respondent.

U.S. Department of Justice Civil Division, by Trial Attorney Joshua S. Press, for amicus curiae United States Department of Justice.

TYSON, Judge.

Mecklenburg County Sheriff Irwin Carmichael ("the Sheriff") appeals, in his official capacity, from two orders of the superior court ordering the Sheriff to release two individuals from his custody. We vacate the superior court's orders and remand to the superior court to dismiss the *habeas corpus* petitions for lack of subject matter jurisdiction.

I. Background

A. *287(g) Agreement and ICE Detainer Requests*

The Sheriff and Immigration and Customs Enforcement ("ICE"), an agency under the jurisdiction and authority of the United States Department of Homeland Security ("DHS"), entered into a written agreement (the "287(g) Agreement") on 28 February 2017 pursuant to 8 U.S.C. § 1357(g)(1).

The federal Immigration and Nationality Act ("INA") authorizes DHS to enter into formal cooperative agreements, like the 287(g) Agreement, with state and local law enforcement agencies and officials. *See* 8 U.S.C. § 1357(g). Under these agreements, state and local authorities and their officers are subject to the supervision of the Secretary of Homeland Security and are authorized to perform specific immigration enforcement functions, including, in part, investigating, apprehending, and detaining illegal aliens. 8 U.S.C. §§ 1357(g)(1)-(9). In the absence of a formal cooperative agreement, the United States Code additionally provides local authorities may still "communicate with [ICE] regarding the immigration status of

any individual . . . or otherwise cooperate with [ICE] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(A)-(B).

Upon request from DHS, state and local law enforcement may "participate in a joint task force with federal officers, provide operational support in executing a warrant, or allow federal immigration officials to gain access to detainees held in state facilities." *Id.* However, state and local officers may not make unilateral decisions concerning immigration enforcement under the INA. *Id.*

Federal agencies and officers issue a Form I-247 detainer regarding an alien to request the cooperation and assistance of state and local authorities. 8 C.F.R. § 287.7(a), (d). An immigration detainer notifies a state or locality that ICE intends to take custody of an alien when the alien is released from that jurisdiction's custody. *Id.* ICE requests the state or local authority's cooperate by notifying ICE of the alien's release date and by holding the alien for up to 48 hours thereafter for ICE to take custody. *Id.* In addition to detainers, ICE officers may also issue administrative warrants based upon ICE's determination that probable cause exists to remove the alien from the United States. *Lopez-Lopez v. Cty. of Allegan*, 321 F. Supp. 3d 794, 799 (W.D. Mich. 2018) (citing *Abel v. United States*, 362 U.S. 217, 233-34, 4 L. Ed. 2d 668 (1960) and 8 U.S.C. § 1226(a)).

B. *Chavez and Lopez' Habeas Petitions*

1. Luiz Lopez

On 5 June 2017, Luiz Lopez ("Lopez") was arrested for common law robbery, felony conspiracy, resisting a public officer, and misdemeanor breaking and entering. Lopez was incarcerated at the Mecklenburg County Jail under the Sheriff's custody. Later that day, following his arrest, Lopez was served with a Form I-200 administrative immigration arrest warrant issued by DHS. Also the same day, the Sheriff's office was served with a Form I-247A immigration detainer issued by DHS. The Form I-247A requested the Sheriff to maintain custody of Lopez for up 48 hours after he would otherwise be released from the state's jurisdiction to allow DHS to take physical custody of Lopez. Lopez was held in jail on the state charges under a $400 secured bond.

2. Carlos Chavez

On 13 August 2017, Carlos Chavez ("Chavez") was arrested for driving while impaired, no operator's license, interfering with emergency communications, and assault on a female, and was detained at the Mecklenburg County Jail. That same day, Chavez, under his name "Carlos Perez-Mendez," was served with a Form I-200 administrative immigration warrant issued by DHS.

The Sheriff's office was served with a Form I-247A immigration detainer, issued by DHS, requesting the Sheriff to detain "Carlos Perez-Mendez" for up to 48 hours after he would otherwise be released from the state's jurisdiction to allow DHS

to take physical custody of him. Chavez was held in jail for the state charges on a $100 cash bond.

At approximately 9:00 a.m., on 13 October 2017, Lopez' release from jail on state criminal matters was resolved when his $400 secured bond was purportedly made unsecured by a bond modification form. That same day, Chavez posted bond on his state criminal charges. The Sheriff continued to detain Lopez and Chavez ("Petitioners") at the county jail pursuant to the Form I-247A immigration detainers and I-200 arrest warrants issued by DHS.

At 9:13 a.m. on 13 October 2017, Chavez and Lopez filed petitions for writs of *habeas corpus* in the Mecklenburg County Superior Court. Petitioners recited three identical grounds to assert their continued detention was unlawful: (1) "the detainer lacks probable cause, is not a warrant, and has not been reviewed by a judicial official therefore violating [Petitioners'] Fourth Amendment rights under the United States Constitution and . . . North Carolina Constitution"; (2) "[the Sheriff] lacks authority under North Carolina General Statutes to continue to detain [Petitioners] after all warrants and sentences have been served"; and (3) "[the Sheriff's] honoring of ICE's request for detention violates the anti-commandeering principles of the Tenth Amendment . . . ." In his petition for writ of *habeas corpus,* Chavez alleged that he was held at the county jail pursuant to the immigration detainer and administrative warrant listing his name as "Carlos Perez-Mendez."

Later that morning, the superior court granted both Petitioners' petitions for writs of *habeas corpus*, and entered return orders, which ordered that the Petitioners "be immediately brought before a judge of Superior Court for a return hearing pursuant to N.C.G.S. 17-32 to determine the legality of [their] confinement." The trial court also ordered the Sheriff to "immediately appear and file [returns] in writing pursuant to N.C.G.S. 17-14."

Based upon our review of a chain of emails included in the record on appeal, Mecklenburg County Public Defender's Office Investigator, Joe Carter, notified Marilyn Porter, in-house legal counsel for the Sheriff's office, the petitions for writs of *habeas corpus* had been filed. At 9:30 a.m. on October 13, Porter forwarded Carter's email to the Sheriff; Sean Perrin, outside legal counsel for the Sheriff; and eight other individuals affiliated with the Sheriff's office. Porter stated in her email that "I do not acknowledge receipt of any of [Carter's] emails on this topic. We will see who is the subject of this Writ – and what Judge signed."

In the same chain of emails, Sheriff's Captain Donald Belk responded he had received notice from the clerk of court that Petitioners' "cases are on in 5350 this morning." Belk also wrote, "CHAVEZ, CARLOS 451450, he was put in ICE custody this morning. I have informed Lock Up that Chavez is in ICE custody and should not go to court." Belk's email also stated, "LOPEZ, LUIS 346623, he is in STATE custody."

After the superior court signed its return orders, Public Defender Investigator Carter went to the Sheriff's office. An employee at the front desk informed him that neither the Sheriff nor his in-house counsel, Porter, were present at the office. The front desk receptionist refused to accept service of the superior court's return orders and the Petitioners' *habeas* petitions. Carter left copies of the orders and petitions on the Sheriff's front desk at 10:23 a.m. Carter then went to the county jail and left copies of the orders and petitions with a sheriff's deputy at 10:26 a.m.

At 11:57 a.m. that morning and without notice of the hearing to the Sheriff, the superior court began a purported return hearing on Petitioners' *habeas* petitions. The Sheriff did not appear at the hearing, did not produce Petitioners before the court, and had not yet filed returns pursuant to N.C. Gen. Stat. § 17-14 (2017).

During the return hearing, Petitioners' counsel provided the court with Carter's certificates of service of the Petitioners' *habeas* petitions and the court's return orders. Petitioners' counsel informed the court about the email sent by Carter to the Sheriff's in-house counsel, Porter, earlier that day. The court ruled Petitioners' continued detention was unlawful and ordered the Sheriff to immediately release Petitioners.

Later that day, after the superior court had ordered Petitioners to be released, counsel for the Sheriff timely filed written returns for both Petitioners' cases within the limits allowed by N.C. Gen. Stat. § 17-26 (2017). Before the superior court issued

its orders to release Petitioners, the Sheriff's office had turned physical custody of both Petitioners over to ICE officers.

On 6 November 2017, the Sheriff filed petitions for writs of certiorari with this Court to seek review of the superior court's 13 October 2017 orders. The Sheriff also filed petitions for a writ of prohibition to prevent the superior court from ruling on *habeas corpus* petitions filed in state court, premised upon the Sheriff's alleged lack of authority to detain alien inmates subject to federal immigration warrants and detainer requests. On 22 December 2017, this Court allowed the Sheriff's petitions for writs of certiorari and writ of prohibition.

On 22 January 2018, the Sheriff served a proposed record on appeal. Petitioners objected to inclusion of two documents, a version of the Form I-200 immigration arrest warrant for Lopez signed by a DHS immigration officer and the 287(g) Agreement between ICE and the Sheriff's office. The trial court held a hearing to settle the record on appeal. The trial court ordered the 287(g) Agreement to be included in the record on appeal and the signed Form I-200 warrant for Lopez not to be included.

The record on appeal was filed and docketed with this Court on 27 March 2018. Prior to the Sheriff submitting his brief, Petitioners filed a motion to strike the 287(g) Agreement and a petition for writ of certiorari challenging the trial court's order, which had settled the record on appeal. By an order issued 4 May 2018, this Court

denied Petitioners' petition for writ of certiorari "without prejudice to assert argument in direct appeal." Petitioners' motion to strike the 287(g) Agreement from the record on appeal was dismissed by an order of this Court entered 12 September 2018.

On 27 April 2018, the United States filed a motion for leave to file an *amicus curiae* brief. By an order dated 1 May 2018, this Court allowed the United States' ("*Amicus")* motion.

On 27 April 2018, the Sheriff filed his appellate brief. Included in the appendix to the brief was a copy of the ICE Operations Manual. On 2 July 2018, Petitioners filed a motion to strike the ICE Operations Manual from the Sheriff's brief. This Court denied Petitioners' motion to strike the ICE Operations Manual by an order entered 12 September 2018.

II. Jurisdiction

Jurisdiction to review this appeal lies with this Court pursuant to the Court's order granting the Sheriff's petitions for writs of certiorari and prohibition entered 22 December 2017. N.C. Gen. Stat. § 1-269 (2017).

III. Analysis

The Sheriff, Petitioners, and *Amicus* all present the same arguments with regard to both Petitioners. We review the parties' arguments as applying to both of the superior court's orders.

The Sheriff argues the superior court was without jurisdiction to consider Petitioners' petitions for writs of *habeas corpus*, or to issue the writs, because of the federal government's exclusive control over immigration under the United States Constitution, the authority delegated to him under the 287(g) Agreement, and under the administrative warrants and immigration detainers issued against Petitioners. *See* 8 U.S.C. § 1357(g)(10)(A)-(B).

A. Mootness

Petitioners initially argue the cases are moot, because the Sheriff has turned Petitioners over to the physical custody of ICE. The Sheriff argues that even if the cases are moot, the issues fall within an exception to the mootness doctrine.

"Whenever, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed [as moot.]" *In re Peoples,* 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978). "A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Roberts v. Madison Cty. Realtors Ass'n*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996) (citation omitted).

The issues in the case before us are justiciable where the question involves is a "matter of public interest." *Matthews v. Dep't of Transportation*, 35 N.C. App. 768,

770, 242 S.E.2d 653, 654 (1978). "In such cases the courts have a duty to make a determination." *Id.* (citation omitted).

Even if the Sheriff is not likely to be subject to further *habeas* petitions filed by Chavez and Lopez or orders issued thereon, this matter involves an issue of federal and state jurisdiction to invoke the "public interest" exception to mootness. Under the "public interest" exception to mootness, an appellate court may consider a case, even if technically moot, if it "involves a matter of public interest, is of general importance, and deserves prompt resolution." *N.C. State Bar v. Randolph*, 325 N.C. 699, 701, 386 S.E.2d 185, 186 (1989). Our appellate courts have previously applied the "public interest" exception to otherwise moot cases of clear and far-reaching significance, for members of the public beyond just the parties in the immediate case. *See, e.g.*, *Granville Cty. Bd. of Comm'rs v. N.C. Hazardous Waste Mgmt. Comm'n*, 329 N.C. 615, 623, 407 S.E.2d 785, 790 (1991) (applying the "public interest" exception to review case involving location of hazardous waste facilities); *In re Brooks*, 143 N.C. App. at 605-06, 548 S.E.2d at 751-52 (applying the "public interest" exception to police officers' challenge of a State Bureau of Investigation procedure for handling personnel files containing "highly personal information" and recognizing that "the issues presented . . . could have implications reaching far beyond the law enforcement community").

Similar to the procedural posture of the Sheriff's appeal, this Court applied the "capable of repetition, but evading review" as well as the "public interest" exception in *State v. Corkum* to review a defendant's otherwise moot appeal, which was before this Court on a writ of certiorari. *State v. Corkum*, 224 N.C. App. 129, 132, 735 S.E.2d 420, 423 (2012) (holding that an issue of felon's confinement credit under structured sentencing under the Justice Reinvestment Act of 2011 required review because "all felons seeking confinement credit following revocation of post-release supervision will face similar time constraints when appealing a denial of confinement credit effectively preventing the issue regarding the trial judge's discretion from being resolved").

The Sheriff's appeal presents significant issues of public interest because it involves the question of whether our state courts possess jurisdiction to review *habeas* petitions of alien detainees ostensibly held under the authority of the federal government. This issue potentially impacts *habeas* petitions filed by suspected illegal aliens held under 48-hour ICE detainers directed towards the Sheriff and the many other court and local law enforcement officials across the state. The Sheriff's filings show that several other *habeas* petitions have been filed against him by ICE detainees, including one that was filed and ruled upon after a writ of prohibition was issued by this Court. Prompt resolution of this issue is essential because it is likely

other *habeas* petitions will be filed in our state courts, which impacts ICE's ability to enforce federal immigration law.

Resolution of the Sheriff's appeal potentially affects many other detainees, local law enforcement agencies, ICE, and other court and public officers and employees. For the reasons above and in the interest of the public, we review the Sheriff's appeal. *See Randolph*, 325 N.C. at 701, 386 S.E.2d at 186; *Corkum*, 224 N.C. App. at 132, 735 S.E.2d at 423.

B. *Judicial Notice of 287(g) Agreement*

The Sheriff included the 287(g) Agreement between his office and ICE in the record to this Court to support his arguments on appeal. Notwithstanding the multiple prior rulings on this issue, Petitioners argue this Court should not consider the 287(g) Agreement between the Sheriff and ICE in deciding the matter because the 287(g) Agreement was not submitted to the superior court.

As previously ruled upon by the superior court and this Court, the 287(g) Agreement is properly in the record on appeal and bears upon the issue of whether the superior court possessed subject matter jurisdiction to consider the petitions and issue these writs of *habeas corpus*. An appellate court may also consider materials that were not before the lower tribunal to determine whether subject matter jurisdiction exists. *See N.C. ex rel Utils. Comm'n. v. S. Bell Tel.*, 289 N.C. 286, 288,

221 S.E.2d 322, 323-24 (1976); N.C. Gen. Stat. § 8C-1, Rule 201(c) (2017) ("A court may take judicial notice, whether requested or not").

> The device of judicial notice is available to an appellate court as well as a trial court. This Court has recognized in the past that important public documents will be judicially noticed. Consideration of matters outside the record is especially appropriate where it would disclose that the question presented has become moot, or academic[.]

S. Bell, 289 N.C. at 288, 221 S.E.2d at 323-24 (internal quotation and citations omitted).

In *Bell*, the Supreme Court of North Carolina judicially noticed an order from the Utilities Commission to assess whether an appeal by a telephone company was moot. *Id.*; *see also State ex rel. Comm'r of Ins. v. N.C. Auto. Rate Admin. Office*, 293 N.C. 365, 381, 239 S.E.2d 48, 58 (1977) (taking judicial notice of the North Carolina Rate Bureau's filing with the Commissioner of Insurance).

The 287(g) Agreement between the Sheriff and ICE is a controlling public document. ICE maintains listings and links to all the current 287(g) agreements it has entered into with local law enforcement entities across the United States on its website, including the 28 February 2017 Agreement with the Sheriff. *See* U.S. Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, https://www.ice.gov/287g (last visited Oct. 18, 2018).

As part of the record on appeal and as verified above, we review the 287(g) Agreement, as an applicable public document, for the purpose of considering the trial court's subject matter jurisdiction to rule upon Petitioners' *habeas* petitions. *See S. Bell*, 289 N.C. at 288, 221 S.E.2d at 323-24. Petitioners' argument that we should not consider the 287(g) Agreement because it was not presented to the superior court is wholly without merit and is dismissed.

C. *Superior Court Lacked Subject-Matter Jurisdiction*

The Sheriff and *Amicus* assert the superior court lacked subject matter jurisdiction to review Petitioners' *habeas* petitions, issue writs of *habeas corpus*, and order Petitioners' release. The Sheriff' argues the superior court "had no jurisdiction to rule on immigration matters under the guise of using this state's habeas corpus statutes, because immigration matters are exclusively federal in nature." Petitioners respond and assert the superior court had jurisdiction to issue the writs of *habeas corpus* because "the Sheriff and his deputies did not act under color of federal law."

"Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question[, and] . . . is conferred upon the courts by either the North Carolina Constitution or by statute." *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987) (citation omitted). Whether subject matter jurisdiction exists over a matter is firmly established:

> Subject matter jurisdiction cannot be conferred upon a court by consent, waiver or estoppel, and failure to demur

> or object to the jurisdiction is immaterial. The issue of subject matter jurisdiction may be considered by the court at any time, and may be raised for the first time on appeal.

In re T.B., 177 N.C. App. 790, 791, 629 S.E.2d 895, 896-97 (2006) (citations and internal quotation marks omitted).

"The standard of review for lack of subject matter jurisdiction is *de novo*." *Keith v. Wallerich*, 201 N.C. App. 550, 554, 687 S.E.2d 299, 302 (2009). "In determining whether subject matter jurisdiction exists, a court may consider matters outside of the pleadings." *Id.*

Before addressing the Sheriff's argument, we initially address Petitioners' contention that the superior court could exercise subject matter jurisdiction on these matters. Petitioners argue "North Carolina law does not permit civil immigration detention, even where there is a 287(g) agreement[.]"

Pursuant to 8 U.S.C. § 1357(g)(1):

> [T]he Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer . . . of the State . . ., who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or *detention of aliens* in the United States . . . may carry out such function at the expense of the State . . . *to the extent consistent with State and local law*. (emphasis supplied).

The General Assembly of North Carolina expressly enacted statutory authority for state and local law enforcement agencies and officials to enter into 287(g) agreements with federal agencies. The applicable statute states:

> *Where authorized by federal law*, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. *State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency* required to perform the described functions. (emphasis supplied).

N.C. Gen. Stat. § 128-1.1(c1) (2017). 8 U.S.C. § 1357(g)(1) permits the Attorney General to enter into agreements with local law enforcement officers to authorize them to "perform a function of an immigration officer" to the extent consistent with state law.

Petitioners contend N.C. Gen. Stat. § 162-62 prevents local law enforcement officers from performing the functions of immigration officers or to assist DHS in civil immigration detentions. N.C. Gen. Stat. § 162-62 (2017) provides:

> (a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail . . . the administrator . . . shall attempt to determine if the prisoner is a legal resident of the United States by an inquiry of the prisoner, or by examination of any relevant documents, or both.
>
> (b) *If the administrator . . . is unable to determine if that prisoner is a legal resident or citizen of the United States*

> *. . . the administrator . . .* ***shall*** *make a query of Immigration and Customs Enforcement of the United States Department of Homeland Security.* If the prisoner has not been lawfully admitted to the United States, the United States Department of Homeland Security will have been notified of the prisoner's status and confinement at the facility by its receipt of the query from the facility.
>
> (c) Nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement *when that prisoner is otherwise eligible for release.* (Emphasis supplied).

Petitioners purport to characterize N.C. Gen. Stat. § 162-62(c) as forbidding sheriffs from detaining prisoners who are subject to immigration detainers and administrative warrants beyond the time they would otherwise be released from custody or jail under state law. Petitioners' assertion of the applicability of this statute is incorrect.

N.C. Gen. Stat. § 162-62 specifically refers to a sheriff's *duty to inquire* into a prisoner's immigration status and, if that prisoner is within the country unlawfully, mandates the sheriff "shall" notify DHS of the prisoner's "status and confinement." *Id.* N.C. Gen. Stat. § 162-62 does not refer to a 287(g) agreement, federal immigration detainer requests, administrative warrants or prevent a sheriff from performing immigration functions pursuant to a 287(g) agreement, or under color of federal law. *See id.*

N.C. Gen. Stat. § 162-62(c) only provides that "*[n]othing in this section* shall be construed . . . to prevent a prisoner from being released from confinement when that

prisoner *is otherwise eligible for release*." (Emphasis supplied). This statute does not mandate a prisoner must be released from confinement, only that nothing in that specific section dealing with reporting a prisoner's immigration status shall prevent a prisoner from being released when they are "otherwise eligible." *Id.*

N.C. Gen. Stat. § 128-1.1 specifically authorizes state and local law enforcement officers to enter into 287(g) agreements under 8 U.S.C. § 1357(g) and perform the functions of immigration officers, including detention of aliens. No conflict exists in the statutes between N.C. Gen. Stat. §§ 162-62 and 128-1.1.

Even though Petitioners assert these two statutes are inconsistent, N.C. Gen. Stat. § 128-1.1 controls over N.C. Gen. Stat. § 162-62, as the more specific statute. "[W]here two statutory provisions conflict, one of which is specific or 'particular' and the other 'general,' the more specific statute controls in resolving any apparent conflict." *Furr v. Noland*, 103 N.C. App. 279, 281, 404 S.E.2d 885, 886 (1991).

N.C. Gen. Stat. § 128-1.1 specifically authorizes state and local law enforcement agencies to enter into agreements with the federal government to perform the functions of immigration officers under 8 U.S.C. § 1357(g), as present here. The express language of 8 U.S.C. § 1357(g)(1) lists the "detention of aliens within the United States" as one of the "function[s] of an immigration officer."

N.C. Gen. Stat. § 162-62 does not specifically regulate the conduct of sheriffs acting as immigration officers pursuant to a 287(g) agreement under 8 U.S.C. §

1357(g), or under color of federal law. Instead, N.C. Gen. Stat. § 162-62 imposes a specific and mandatory duty upon North Carolina sheriffs, as administrators of county jails, to inquire, verify, and report a detained prisoner's immigration status. N.C. Gen. Stat. § 162-62.

Contrary to Petitioners' argument, North Carolina law does not forbid state and local law enforcement officers from performing the functions of federal immigration officers, but the policy of North Carolina as enacted by the General Assembly, expressly authorizes sheriffs to enter into 287(g) agreements to permit them to perform such functions. *See* N.C. Gen. Stat. § 128-1.1. We reject and overrule their contention that "North Carolina law does not permit civil immigration detention, even where there is a 287(g) agreement[.]"

D. *Federal Government's Supreme and Exclusive Authority over Immigration*

The Sheriff contends the superior court did not possess subject matter jurisdiction in these cases. We agree.

The Supremacy Clause of the Constitution of the United States establishes that the Constitution and laws of the United States "shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. Nearly 200 years ago, the Supreme Court of the United States held the Supremacy Clause prevents state and local officials from taking actions or passing laws to "retard, impede, burden, or in any manner control"

the execution of federal law. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436, 4 L. Ed. 579 (1819).

"The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394, 183 L. Ed. 2d 351, 366 (2012). This broad authority derives from the federal government's delegated and enumerated constitutional power "[t]o establish an uniform Rule of Naturalization[.]" U.S. Const. art. I, § 8, cl. 4. "Power to regulate immigration is unquestionably exclusively a federal power." *DeCanas v. Bica*, 424 U.S. 351, 354, 47 L. Ed. 2d 43 (1976*), superseded by statute on other grounds as recognized in Arizona*, 567 U.S. at 404, 183 L. Ed. 2d at 372.

The Sheriff cites several other states' appellate court decisions, which hold state courts lack jurisdiction to consider petitions for writs of *habeas corpus* and other challenges to a detainee's detention pursuant to the federal immigration authority. *See Ricketts v. Palm Beach County Sheriff*, 985 So. 2d 591 (Fla. Dist. Ct. App. 2008); *State v. Chavez-Juarez,* 185 Ohio App. 3d 189, 192, 923 N.E.2d 670, 673 (2009).

In *Ricketts*, the Court of Appeals of Florida addressed a similar situation to the instant case. Ricketts was arrested on a state criminal charge and detained by the sheriff. *Ricketts*, 985 So. 2d at 591. His bond was set at $1,000; however, the sheriff refused to accept the bond and release Ricketts, due to a federal immigration hold issued by ICE. *Id*. As in the present case, Ricketts first sought *habeas corpus* relief

in state court. *Id.* at 592. The trial court denied all relief, reasoning that the issues were within the exclusive jurisdiction of the federal government. *Id.*

On appeal, the Court of Appeals of Florida agreed with the trial court "that appellant cannot secure *habeas corpus* relief from the state court on the legality of his federal detainer." *Id.* The court reasoned that the constitutionality of his detention pursuant to the immigration hold "is a question of law for the federal courts." *Id.* at 592-93. The court further explained that "a state court cannot adjudicate the validity of the federal detainer, as the area of immigration and naturalization is within the exclusive jurisdiction of the federal government." *Id.* at 593 (citing *Plyler v. Doe*, 457 U.S. 202, 225, 72 L. Ed. 2d. 786, 804 (1982); and *DeCanas*, 424 U.S. at 354, 47 L. Ed. 2d at 43 ("Power to regulate immigration is unquestionably exclusively a federal power")).

The Court of Appeals of Ohio followed the Florida Court of Appeals' decision in *Ricketts* and reached a similar conclusion in *Chavez-Juarez*. Chavez was arrested for operating a vehicle under the influence of alcohol. *Chavez-Juarez*, 185 Ohio App. at at 193, 923 N.E.2d at 673. After arraignment, the state court ordered Chavez released; however, he was held pursuant to a federal immigration detainer, was turned over to ICE, and deported to Mexico. *Id.* at 193-94, 923 N.E.2d at 674. His attorney filed a motion to have ICE officers held in contempt for violating the state court's release order. *Id.* at 194, 923 N.E.2d at 674.

The trial court concluded that it lacked jurisdiction over ICE and denied the contempt motion, because the federal courts have pre-emptive jurisdiction over immigration issues. *Id.* at 199, 923 N.E.2d at 679. The Ohio Court of Appeals recognized "Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere." *Id.* (quoting *Nyquist v. Mauclet*, 432 U.S. 1, 10, 53 L. Ed. 2d 63 (1977)).

The Ohio Court of Appeals affirmed the trial court's denial of the contempt motion, and stated:

> Under federal regulation, the Clark County Sheriff's Office was required to hold Chavez for 48 hours to allow ICE to assume custody. Chavez's affidavit indicates that he was held in state custody for approximately 48 hours after the trial court released him on his own recognizance. If Chavez wished to challenge his detention, the proper avenue at that point would have been to file a petition in the federal courts, not an action in contempt with the state court, which did not have the power to adjudicate federal immigration issues.

Id. at 202, 923 N.E.2d at 680.

We find the reasoning in both *Ricketts* and *Chavez-Juarez* persuasive and their applications of federal immigration law to state proceedings to be correct.

A state court's purported exercise of jurisdiction to review the validity of federal detainer requests and immigration warrants infringes upon the federal government's exclusive federal authority over immigration matters. *See Plyler,* 457 U.S. at 225, 72 L. Ed. 2d. at 804; *DeCanas*, 424 U.S. at 354, 47 L. Ed. 2d at 43. The

superior court did not possess subject matter jurisdiction, or any other basis, to receive and review the merits of Petitioners' *habeas* petitions, or issue orders other than to dismiss for lack of jurisdiction, as it necessarily involved reviewing and ruling on the legality of ICE's immigration warrants and detainer requests.

E. *State Court Lacks Jurisdiction Even Without Formal Agreement*

Even if the express 287(g) Agreement between the Sheriff and ICE did not exist or was invalid, federal law permits and empowers state and local authorities and officers to "communicate with [ICE] regarding the immigration status of any individual . . . or otherwise to cooperate with [ICE] in the identification, apprehension, *detention*, or removal of aliens not lawfully present in the United States" in the absence of a formal agreement. 8 U.S.C. § 1357(g)(10)(A)-(B) (emphasis supplied).

A state court's purported exercise of jurisdiction to review petitions challenging the validity of federal detainers and administrative warrants issued by ICE, and to potentially order alien detainees released, constitutes prohibited interference with the federal government's supremacy and exclusive control over matters of immigration. *See* U.S. Const. art. I, § 8, cl. 4; U.S. Const. art. VI, cl. 2.; *Nyquist*, 432 U.S. at 10, 53 L. Ed. 2d at 63; *Plyler,* 457 U.S. at 225, 72 L. Ed. 2d. at 804; *DeCanas*, 424 U.S. at 354, 47 L. Ed. 2d at 43.

F. *State Court Lacks Jurisdiction to Order Release of Federal Detainees*

An additional compelling reason that prohibits the superior court from exercising jurisdiction to issue *habeas* writs to alien petitioners, is a state court's inability to grant *habeas* relief to individuals detained by federal officers acting under federal authority.

Nearly 160 years ago, the Supreme Court of the United States held in *Ableman v. Booth* that "No state judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to require him to be brought before them." *Ableman v. Booth*, 62 U.S. (21 How.) 506, 524, 6 L. Ed. 169, 176 (1859).

The Supreme Court of the United States reaffirmed this principle in *In re Tarble*, in which the Court stated:

> State judges and state courts, authorized by laws of their states to issue writs of *habeas corpus*, have, undoubtedly, a right to issue the writ in any case where a party is alleged to be illegally confined within their limits, *unless it appear upon his application that he is confined under the authority, or claim and color of the authority, of the United States, by an officer of that government. If such fact appear upon the application, the writ should be refused.*
> . . .
>
> *But, after the return is made, and the state judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further.* They then know that the prisoner is within the dominion and jurisdiction of another government, and that neither the writ of *habeas corpus* nor any other process issued under state authority can pass over the line of division between the two sovereignties. He is then within the

> dominion and exclusive jurisdiction of the United States. If he has committed an offence against their laws, *their tribunals alone* can punish him. If he is wrongfully imprisoned, *their judicial tribunals can release* him and afford him redress.
> . . .
>
> [*T*]*hat the state judge or state court should proceed no further when it appears, from the application of the party, or the return made, that the prisoner is held by an officer of the United States under what, in truth, purports to be the authority of the United States;* that is, an authority the validity of which is to be determined by the Constitution and laws of the United States. If a party thus held be illegally imprisoned, *it is for the courts or judicial officers of the United States, and those courts or officers alone, to grant him release.*

In re Tarble, 80 U.S. (13 Wall) 397, 409-11, 20 L. Ed. 597, 601-02 (1871) (emphasis supplied) (citations omitted).

In sum, if a prisoner's *habeas* petition indicates the prisoner is held: (1) under the authority, or color of authority, of the federal government; and, (2) by an officer of the federal government under the asserted "authority of the United States", the state court must refuse to issue a writ of *habeas corpus*. *See id.*

It is undisputed the Sheriff's continued detention of Petitioners, after they were otherwise released from state custody, was pursuant to the federal authority delegated to his office under the 287(g) Agreement. Appendix B of the 287(g) Agreement states, in relevant part:

> This Memorandum of Agreement (MOA) is between the U.S. Department of Homeland Security's U.S. Immigration

> and Customs Enforcement (ICE) and the Law Enforcement [Mecklenburg County Sheriff's Office] (MCSO), pursuant to which selected MCSO personnel are authorized to perform immigration enforcement duties in specific situations *under Federal authority*. (Emphasis supplied).

Although the 287(g) Agreement was not attached to Petitioners' *habeas* petitions, the petitions indicated to the court the Sheriff was acting under color of federal authority, if not actual federal authority. Petitioners' petitions acknowledge and specifically assert the Sheriff was purporting to act under the authority of the United States by detaining them after they would have otherwise been released from custody for their state criminal charges.

Petitioners' petitions both acknowledge and assert the Sheriff was detaining them "at the behest of the federal government." Petitioners' *habeas* petitions refer to the 287(g) Agreement. Copies of the Form I-200 immigration arrest warrant and Form I-247A detainer request were attached to Chavez's *habeas* petition submitted to the superior court.

A copy of the Form I-200 warrant was attached to Lopez's *habeas* petition, and the petition itself refers to the existence of the Form I-247A detainer, stating: "the jail records, which have been viewed by counsel, indicate that there is an immigration detainer lodged against [Lopez] pursuant to a Form I-247[.]"

Additionally, 8 U.S.C. § 1357(g)(3) indicates state and local law enforcement officers act under color of federal authority when performing immigration functions

authorized under a 287(g) agreement. The statute provides: "In performing a function under this subsection [§ 1357(g)], an officer or employee of a State or political subdivision of a State *shall be subject to the direction and supervision of the Attorney General* [*of the United States*.]*"* 8 U.S.C. § 1357(g)(3) (emphasis supplied).

The Sheriff was acting under the actual authority of the United States by detaining Petitioners under the immigration enforcement authority delegated to him under the 287(g) Agreement, and under color of federal authority provided by the administrative warrants and Form I-247A detainer requests for Petitioners issued by ICE. Petitioners' own *habeas* petitions also indicate the Sheriff was acting under color of federal authority for purposes of the prohibitions against interference by state courts and state and local officials. *See Tarble*, 80 U.S. (13 Wall) at 409, 20 L. Ed. at 601.

The next issue is whether the Sheriff was acting as a federal officer under the 287(g) Agreement by detaining Petitioners pursuant to the detainer requests and administrative warrants. *See id.* After careful review of state and federal authorities, no court has apparently decided the issue of whether a state or local law enforcement officer is considered a federal officer when they are performing immigration functions authorized under a 287(g) Agreement.

In contexts other than immigration enforcement, several federal district courts and United States courts of appeal for various circuits have held state and local law

enforcement officers are "federal officers" when they have been authorized or deputized by federal law enforcement agencies, such as the Drug Enforcement Agency, Federal Bureau of Investigation, and the United States Marshals Service. *United States v. Martin*, 163 F. 3d 1212, 1214-15 (10th Cir. 1998) (holding that local police officer deputized to participate in a FBI narcotics investigation is a federal officer within the meaning of 18 U.S.C. § 115(a)(1)(B) [defining the crime of threatening to murder a federal law enforcement officer]); *United States v. Torres*, 862 F.2d 1025, 1030 (3d Cir. 1988) (holding that local police officer deputized to participate in a DEA investigation is a federal officer within the meaning of 18 U.S.C. § 111 [defining the crime of assault on a federal official]); *United States v. Diamond*, 53 F.3d 249, 251-52 (9th Cir. 1995) (holding that a state official specially deputized as a U.S. Marshal was an officer of the United States even though he was not technically a federal employee); *DeMayo v. Nugent*, 475 F. Supp. 2d 110, 115 (D. Mass. 2007) ("State police officers deputized as federal agents under the DEA constitute federal agents acting under federal law"), *rev'd on other grounds*, 517 F. 3d 11 (1st Cir. 2008).

The United States Court of Appeals for the Fourth Circuit specifically recognized an employee of the State of North Carolina as being a federal officer for purposes of the assault on an federal officer statute, when the state employee was assisting the Internal Revenue Service. *United States v. Chunn*, 347 F. 2d 717, 721

(4th Cir. 1965). The Fourth Circuit has also held that under a 287(g) Agreement, local law enforcement officers effectively become federal officers of ICE, as they are deputized to perform immigration-related enforcement functions. *United States v. Sosa-Carabantes,* 561 F. 3d 256, 257 (4th Cir. 2009) ("The 287(g) Program permits ICE to deputize local law enforcement officers to perform immigration enforcement activities pursuant to a written agreement." (citing 8 U.S.C. § 1357(g)(1))).

The United States Court of Appeals for the Fifth Circuit recently stated, "Under [287(g) agreements], state and local officials become de facto immigration officers[.]" *City of El Cenizo v. Texas*, 890 F. 3d 164, 180 (5th Cir. 2018); *see also People ex rel. Norfleet v. Staton*, 73 N.C. 546, 550 (1875) ("[T]here is no difference between the acts of *de facto* and *de jure* officers so far as the public and third persons are concerned").

To the extent personnel of the Sheriff's office were deputized or empowered by DHS or ICE to perform immigration functions, including detention and turnover of physical custody, pursuant to the 287(g) Agreement, we find these federal cases persuasive to conclude the Sheriff was empowered and acting as a federal officer by detaining Petitioners under the detainer requests and administrative warrants. *See Martin*, 163 F.3d at 1214-15; *Torres*, 862 F. 2d at 1030; *Sosa-Carabantes*, 561 F. 3d at 257; *El Cenizo*, 890 F.3d at 180.

Petitioners' *habeas* petitions clearly disclosed Petitioners were being detained under express, and color of, federal authority by the Sheriff, who was acting as a *de facto* federal officer. *See El Cenizo*, 890 F. 3d at 180. Under the rule enunciated by the Supreme Court of the United States in *Ableman* and expanded upon in *Tarble*, the superior court was without jurisdiction, or any other basis, to receive, review, or consider Petitioners' *habeas* petitions, other than to dismiss for want of jurisdiction, to hear or issue writs of *habeas corpus*, or intervene or interfere with Petitioner's detention in any capacity. *Ableman,* 62 U.S. (21 How.) at 524, 6 L. Ed. at 176; *Tarble*, 80 U.S. (13 Wall.) at 409. 20 L. Ed. at 607.

The superior court should have dismissed Petitioners' petitions for writs of *habeas corpus. See* N.C. Gen. Stat. § 17-4(4) (2017) ("Application to prosecute the writ [of *habeas corpus*] shall be denied . . . [w]here no probable ground for relief is shown in the application."). "When the record shows a lack of jurisdiction in the lower court, the appropriate action on the part of the appellate court is to arrest judgment or vacate any order entered without authority." *State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981). The orders of the superior court, which purported to order the release of Petitioners, are vacated. *Id.*

The proper jurisdiction and venues where Petitioners may file their *habeas* petitions is in the appropriate federal tribunal. *See* 28 U.S.C. §2241(a); *Tarble*, 80 U.S. (13 Wall.) at 411, 20 L. Ed. at 602 ("If a party thus held be illegally imprisoned,

it is for the courts or judicial officers of the United States, and those courts or officers alone, to grant him release").

IV. Conclusion

The superior court lacked any legitimate basis and was without jurisdiction to review, consider, or issue writs of *habeas corpus* for alien Petitioners not in state custody and held under federal authority, or to issue any orders related thereon to the Sheriff. State or local officials and employees purporting to intervene or act constitutes a prohibited interference with the federal government's supreme and exclusive authority over the regulation of immigration and alienage. *See* U.S. Const. art. I, § 8, cl. 4; *Ableman,* 62 U.S. (21 How.) at 524, 6 L. Ed. at 176; *Tarble*, 80 U.S. at 409. 20 L. Ed. at 607.

The superior court was on notice the Petitioners were detained under the express, and color of, exclusive federal authority. The Sheriff was acting as a federal officer under the statutorily authorized and executed 287(g) Agreement. The orders appealed from are vacated for lack of jurisdiction and remanded to the trial court with instructions to dismiss Petitioners' *habeas* petitions.

A certified copy of this opinion and order shall be delivered to the Judicial Standards Commission and to the Disciplinary Hearing Commission of the North Carolina State Bar. *It is so ordered.*

VACATED and REMANDED.

Judges DIETZ and BERGER concur.

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Tuesday, November 27, 2018 12:48 PM
To:	Jonathan F. Thompson

I have a conflicting meeting so will miss you today at 2:00. Hope all is well!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

Subject:	Tentative: N.J. AG Directive 20180-6
Location:	(b) (6)
Start:	Tuesday, December 4, 2018 3:30 PM
End:	Tuesday, December 4, 2018 4:30 PM
Recurrence:	(none)
Organizer:	Hamilton, Gene (OAG)
Required Attendees:	Executive Director

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, December 4, 2018 1:04 PM
To: Jonathan F. Thompson
Subject: RE: N.J. AG Directive 20180-6

Hi Jonathan,

Unfortunately, I won't be able to be on the call that is scheduled for this afternoon. Our team is aware of the case and is assessing it. Can we connect later today?

Thank you,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

-----Original Appointment-----
From: Executive Director <ed@sheriffs.org>
Sent: Tuesday, December 4, 2018 11:45 AM
To: Executive Director; Gualtieri,Robert; Albence, Matthew; Greg Champagne; Carrie Hill; Hamilton, Gene (OAG); Cook, Steven H. (ODAG); Maddie Colaiezzi
Subject: N.J. AG Directive 20180-6
When: Tuesday, December 4, 2018 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: [redacted] (b) (6)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, December 10, 2018 3:51 PM
To:	Bruce Jolly; Patrick McCullah; 'Executive Director'; Cook, Steven H. (ODAG); Robert A.Gualtieri; Greg Champagne
Cc:	Rick Ramsay
Subject:	Call

Hey y'all,

Our team has been looking into this—it's obviously an important matter for this administration. As you know, there are a lot of complexities at this stage, but we understand the importance of this case to everyone on this email (and folks not on this email, too).

My plan is to have someone for our Civil Division reach out very soon—and we'll obviously have to loop in ICE. I'll check with him now.

Thank you,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Bruce Jolly <bruce@purdylaw.com>
Sent: Friday, December 7, 2018 8:46 AM
To: Patrick McCullah <PMcCullah@keysso.net>; 'Executive Director' <ed@sheriffs.org>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Robert A.Gualtieri <rgualtieri@pcsonet.com>; Greg Champagne <gchamp@stcharlessheriff.org>
Cc: Rick Ramsay <rramsay@keysso.net>
Subject: RE: IMPORTANT: Legally Privileged Communication

Patrick:

I am in the office all morning, today, and all day on Monday although I am preparing for oral argument in the 11th Circuit for Tuesday. I will be back in the office after 2PM on Tuesday and all day on Wednesday.

From: Patrick McCullah <PMcCullah@keysso.net>
Sent: Thursday, December 06, 2018 9:52 PM
To: 'Executive Director' <ed@sheriffs.org>; Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>; Steven H. Cook <Steven.H.Cook@usdoj.gov>; Robert A.Gualtieri <rgualtieri@pcsonet.com>; Greg Champagne <gchamp@stcharlessheriff.org>
Cc: Bruce Jolly <bruce@purdylaw.com>; Rick Ramsay <rramsay@keysso.net>
Subject: RE: IMPORTANT: Legally Privileged Communication

Good evening all,

I am looping our outside counsel, Bruce Jolly, in as well. I have copied him and Sheriff Ramsay on this email. Please let me know when a conference call would be possible.

Thank you all again for your assistance on this,

Patrick McCullah
General Counsel,
Monroe County Sheriff's Office
5525 College Road
Key West, Florida 33040
Telephone: 305.292.7020
Fax: 305.292.7070
E-mail: pmccullah@keysso.net

From: Executive Director [mailto:ed@sheriffs.org]
Sent: Wednesday, December 05, 2018 12:28 PM
To: Patrick McCullah <PMcCullah@keysso.net>; Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>; Steven H. Cook <Steven.H.Cook@usdoj.gov>; Robert A.Gualtieri <rgualtieri@pcsonet.com>; Greg Champagne <gchamp@stcharlessheriff.org>
Subject: Re: IMPORTANT: Legally Privileged Communication

Gene,
We need to collectively discuss the strategy of how to put this case back into a proper federal box.

Patrick, Monroe County Sheriff Ramsay' Counsel, is copied here.

We should move this discussion to telephonic soonest.

J

Jonathan Thompson
(b) (6)

Please forgive any typos, errors or tonal shortcomings as this message is being done on my phone.

From: Patrick McCullah <PMcCullah@keysso.net>

Sent: Wednesday, December 5, 2018 12:04:09 PM
To: Executive Director
Subject: IMPORTANT: Legally Privileged Communication

Good afternoon,

Thank you for your time this morning. The documents we discussed are attached. Please advise if there is anything else I can do to assist. I am available 24/7 at (b) (6).

Best regards,

Patrick McCullah
General Counsel,
Monroe County Sheriff's Office
5525 College Road
Key West, Florida 33040
Telephone: 305.292.7020
Fax: 305.292.7070
E-mail: pmccullah@keysso.net

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, December 13, 2018 11:31 AM
To:	Stransky, Steve
Subject:	Re: Old Ebbitt tonight (12.13.18)

Thanks very much for the invite, Steve. Unfortunately, I will be caught up with some work things. I don't know (b) (6) — (b) (6)

Good luck hitting that target!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Dec 13, 2018, at 9:58 AM, Stransky, Steve <Steve.Stransky@thompsonhine.com> wrote:

> Gene,
>
> I hope you don't mind, but I got your email from (b)(6) per DHS. I am tentatively scheduled to (b) (6) with (b) (6) (from Senate Judiciary). I never met (b) (6) before, (b) (6) If you have time you should come join us. We will not be staying too long because I have to head back to work to (b) (6)
>
> Best,
>
> Steve

Hamilton, Gene (OAG)

Subject:	Happy Hour
Start:	Friday, January 11, 2019 5:00 PM
End:	Friday, January 11, 2019 6:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	No response required
Organizer:	Hamilton, Gene (OAG)
Required Attendees:	(b)(6) per DHS
Optional Attendees:	(b)(6) per DHS; (b)(6), (b)(7)(C) per ICE

From: (b)(6) per DHS (b)(6) per DHS >
Sent: Tuesday, January 8, 2019 1:06 PM
To: (b)(6) per DHS; (b)(6) per DHS
Cc: (b)(6) per DHS; (b)(6), (b)(7)(C) per ICE
Subject: A Toast to (b)(6) p

Fellow Patriots,

Last week marked the end of an era, no I'm not talking about the 115th Congress. Sadly, Friday was (b)(6) p last day serving with the 20,000 American patriots at ICE.

Therefore, your presence is formally requested at **The Brighton this Friday, January 11 at 5PM.**

Disclaimer: This invitation was not cleared by the SAG (which is currently furloughed).

**This will be a mandatory in-person briefing, no dial in number provided.

See you there!

—

(b)(6) per DHS
Department of Homeland Security
Office of Public Affairs
(b)(6) per DHS

(b)(6) per DHS

From: (b)(6) per DHS (b)(6) per DHS; (b)(6), (b)(7)(C) per ICE
Sent: Sunday, January 6, 2019 10:57 PM
To: (b)(6) per DHS (b)(6) per DHS; (b)(6), (b)(7)(C) per ICE
Cc: (b)(6) per DHS; (b)(6), (b)(7)(C) per ICE
Subject: Signing Off

Hey all,

As most of you know, tomorrow I head back to the Senate where I'll be serving as Senator Romney's Communications Director. Before I officially sign off, I want to express my deepest appreciation for all that you have done to support me and the Office of Public Affairs during my time at ICE.

I've worked with some incredible people throughout my career, but no one has ever matched the commitment, talent, and esprit de corps at ICE. That's especially true of my OPA family, who have taught me so much. This agency is lucky to have such an outstanding public affairs team - please take good care of them! (I'll be watching…)

While the past two years have not been without their challenges, it's been a true privilege to promote and defend the important work this agency does. That experience and the many amazing friendships I have here made moving on a difficult and bittersweet decision for me. I will miss you all very much. Please stay in touch (contact info below) and let me know how I can be helpful going forward. And if you find yourself on the Hill, stop by my very glamorous temp office in (b)(6) per DHS

(b)(6) per DHS; (b)(6), (b)(7)(C) p will be acting head of OPA starting tomorrow – please be sure to keep him looped in on any public affairs matters, especially as the rest of our team remains furloughed.

Stay tuned for an invite to happy hour this **Friday, January 11th!** See you all soon.

Best,
(b)(6) p

(b)(6) per DHS
Assistant Director
Office of Public Affairs
U.S. Immigration and Customs Enforcement (ICE)
(b)(6) per DHS; (b)(6), (b)(7)(C) per ICE

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, January 14, 2019 10:37 AM
To:	Bob Flores
Subject:	RE: Requests to bring in child brides legal under US laws

Hi Bob,

I hope that you are well. I understand that Homeland Security Investigations has reached out to y'all, as recently as January 4, and they haven't heard anything back. Can you give them a call to discuss your client's case?

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Lori Handrahan [redacted (b) (6)]
Sent: Monday, January 14, 2019 7:23 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>; Wiles, Morgan (OAG) <mwiles@jmd.usdoj.gov>; 'J. Robert Flores' [redacted (b) (6)] jrf@gg-law.com
Subject: Requests to bring in child brides legal under US laws
Importance: High

Gene,

Are you able to schedule some time to meet with Bob Flores and I this week to review my case?

I'm sure you've seen this recent AP article. All under the Obama Administration. Of course.

In addition, there is [redacted (b) (6)], where criminal aliens, who should have been deported for the crimes they are committing against US citizens and the US government are instead protected and allowed to rape, sexually abuse and destroy the lives of law-abiding US citizen children and mothers.

[redacted (b) (6)].

Hoping and praying you will take action on my case.

Kindest,

Lori Handrahan, Ph.D.
www.LoriHandrahan.com
Washington DC

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https://apnews.com/19e43295c76d4d249aa51c9f643eb377?utm_medium=AP_Politics&utm_campaign=SocialFlow&utm_source=Twitter&utm_campaign=SocialFlow&utm_medium=AP_Politics&utm_source=Twitter

Requests to bring in child brides OK'd; legal under US laws

By COLLEEN LONG

January 11, 2019

WASHINGTON (AP) — Thousands of requests by men to bring in child and adolescent brides to live in the United States were approved over the past decade, according to government data obtained by The Associated Press. In one case, a 49-year-old man applied for admission for a 15-year-old girl.

The approvals are legal: The Immigration and Nationality Act does not set minimum age requirements for the person making the request or for that person's spouse or fiancee. By contrast, to bring in a parent from overseas, a petitioner has to be at least 21 years old.

And in weighing petitions, U.S. Citizenship and Immigration Services goes by whether the marriage is legal in the spouse or fiancee's home country and then whether the marriage would be legal in the state where the petitioner lives.

The data raises questions about whether the immigration system may be enabling forced marriage and about how U.S. laws may be compounding the problem despite efforts to limit child and forced marriage. Marriage between adults and minors is not uncommon in the U.S., and most states allow children to marry with some restrictions.

There were more than 5,000 cases of adults petitioning on behalf of minors and nearly 3,000 examples of minors seeking to bring in older spouses or fiances, according to the data requested by the Senate Homeland Security Committee in 2017 and compiled into a report. The approval is the first of a two-step visa process, and USCIS said it has taken steps to better flag and vet the petitions.

Some victims of forced marriage say the lure of a U.S. passport combined with lax U.S. marriage laws are partly fueling the petitions.

"My sunshine was snatched from my life," said Naila Amin, a dual citizen born in Pakistan who grew up in New York City. She was forcibly married at 13 in Pakistan and later applied for papers for her 26-year-old husband to come to the U.S. at

for papers for her 20-year-old husband to come to the U.S. at the behest of her family. She was forced for a time to live in Pakistan with him, where, she said, she was sexually assaulted and beaten. She came back to the U.S., and he was to follow.

"People die to come to America," she said. "I was a passport to him. They all wanted him here, and that was the way to do it."

Amin, now 29, said she was betrothed when she was just 8 and he was 21. The petition she submitted after her marriage was approved by immigration officials, but he never came to the country, in part because she ran away from home. She said the ordeal cost her a childhood. She was in and out of foster care and group homes, and it took a while to get her life on track.

"I was a child. I want to know: Why weren't any red flags raised? Whoever was processing this application, they don't look at it? They don't think?" Amin asked.

Fraidy Reiss, who campaigns against coerced marriage as head of a group called Unchained at Last, has scores of similar anecdotes: An underage girl was brought to the U.S. as part of an arranged marriage and eventually was dropped at the airport and left there after she miscarried. Another was married at 16 overseas and was forced to bring an abusive husband.

Reiss said immigration status is often held over their heads as a tool to keep them in line.

There is a two-step process for obtaining U.S. immigration visas and green cards. Petitions are first considered by U.S. Citizenship and Immigration Services, or USCIS. If granted, they must be approved by the State Department. Overall, there were 3.5 million petitions received from budget years 2007 through 2017.

Over that period, there were 5,556 approvals for those seeking to bring minor spouses or fiancees, and 2,926 approvals by minors seeking to bring in older spouses, according to the data. Additionally, there were 204 for minors by minors. Petitions can be filed by U.S. citizens or permanent residents.

"It indicates a problem. It indicates a loophole that we need to close," Republican Sen. Ron Johnson of Wisconsin, the chairman of the Senate Homeland Security Committee, told the AP.

In nearly all the cases, the girls were the younger person in the relationship. In 149 instances, the adult was older than 40, and in 28 cases the adult was over 50, the committee found. In 2011, immigration officials approved a 14-year-old's

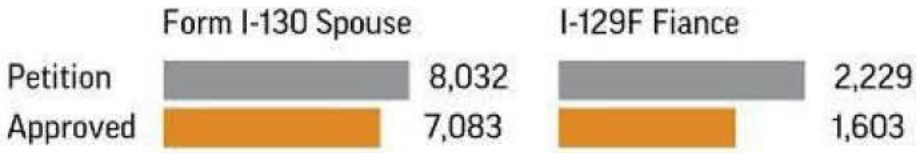
petition for a 48-year-old spouse in Jamaica. A petition from a 71-year-old man was approved in 2013 for his 17-year-old wife in Guatemala.

There are no nationwide statistics on child marriage, but data from a few states suggests it is far from rare. State laws generally set 18 as the minimum age for marriage, yet every state allows exceptions. Most states let 16- and 17-year-olds marry if they have parental consent, and several states — including New York, Virginia and Maryland — allow children under 16 to marry with court permission.

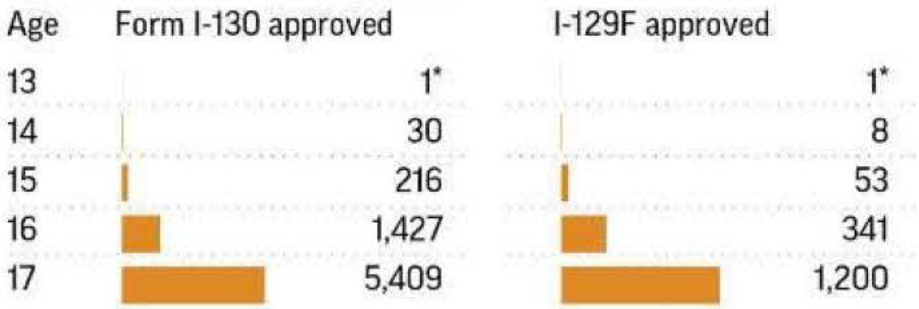
An adult can obtain a visa for a child spouse

U.S. laws allow adults to petition for a visa for a minor spouse or fiancé living abroad.

Petitions and approvals involving minors 2007-2017



Age of minor involved in approval



Age ranges of adult petitioners for minor beneficiaries

*Department of State terminated or refused the petition

SOURCE: Committee on Homeland Security and Governmental Affairs AP

Reiss researched data from her home state, New Jersey. She determined that nearly 4,000 minors, mostly girls, were married in the state from 1995 to 2012, including 178 who were under 15

were under 15.

"This is a problem both domestically and in terms of immigration," she said.

Reiss, who says she was forced into an abusive marriage by her Orthodox Jewish family when she was 19, said that often cases of child marriage via parental consent involve coercion, with a girl forced to marry against her will.

"They are subjected to a lifetime of domestic servitude and rape," she said. "And the government is not only complicit; they're stamping this and saying: Go ahead."

The data was requested in 2017 by Johnson and then-Missouri Sen. Claire McCaskill, the committee's top Democrat. Johnson said it took a year to get the information, showing there needs to be a better system to track and vet the petitions.

"Our immigration system may unintentionally shield the abuse of women and children," the senators said in the letter requesting the information.

USCIS didn't know how many of the approvals were granted by the State Department, but overall only about 2.6 percent of spousal or fiance claims are rejected. A State Department representative said the department is committed to protecting the rights of children and combatting forced marriage.

Separately, the data show some 4,749 minor spouses or fiancees received green cards to live in the U.S. over that 10-year period.

The head of USCIS said in a letter to the committee that its request had raised questions and discussion within the agency on what it can do to prevent forced minor marriages. USCIS created a flagging system when a minor spouse or fiance is detected. After the initial flag, it is sent to a special unit that verifies the age and relationship are correct before the petition is accepted. Another flag requires verification of the birthdate whenever a minor is detected. Officials note an approval doesn't mean the visa is immediately issued.

"USCIS has taken steps to improve data integrity and has implemented a range of solutions that require the verification of a birthdate whenever a minor spouse or fiance is detected," USCIS spokesman Michael Bars said. "Ultimately, it is up to Congress to bring more certainty and legal clarity to this process for both petitioners and USCIS officers."

The country where most requests came from was Mexico, followed by Pakistan, Jordan, the Dominican Republic and Yemen. Middle Eastern nationals had the highest percentage of overall approved petitions.

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, January 24, 2019 1:35 PM
To:	jrf@gg-law.com; (b)(6) - Bob Flores Email Address
Cc:	(b)(6); (b)(7)(C) per ICE
Subject:	Connecting

Good afternoon, Bob,

I'm connecting you via email to (b)(6); (b)(7)(C) per ICE Acting Chief of Staff at HSI. Please let (b)(6); (b)(7)(C) pe know when a convenient time might be for y'all to talk.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, February 22, 2019 11:07 AM
To: (b)(6) per DHS; Carafano, James
Subject: RE: Introduction

Thanks for the introduction, Jim. (b)(6) per DHS great to be connected. Let's plan to connect sometime in the next couple of weeks.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b)(6) per DHS
Sent: Friday, February 22, 2019 10:32 AM
To: Carafano, James <james.carafano@heritage.org>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Introduction

Jim, thanks for the introduction!

Gene, I've heard your name many times here at DHS since I work with many of the folks that you were working with while over here. Glad to make your acquaintance. I am S1's LE Advisor and handle TOC, opioids, HT, etc. Happy to connect over coffee sometime.

(b)(6) per DHS

(b)(6) per DHS
Law Enforcement Advisor to the Secretary
U.S. Department of Homeland Security
(b)(6) per DHS

From: Carafano, James <James.Carafano@Heritage.org>
Sent: Friday, February 22, 2019 10:22:16 AM
To: gene.hamilton@usdoj.gov; (b)(6) per DHS
Subject: Introduction

(b)(6) per DHS Gene is at DOJ, a good friend from transition team days, you guys should hook up

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James Jay Carafano
Vice President for the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, and the E. W. Richardson Fellow
Davis Institute for National Security and Foreign Policy
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002

202-608-6161
heritage.org

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, April 4, 2019 2:14 PM
To:	Media Inquiry; Hoffman, Jonathan; Gountanis, John
Cc:	Houlton, Tyler; McHenry, James (EOIR); Alexei Woltornist
Subject:	RE: NYT Remain In Mexico Story

I'm adding Alexei to this to run point for DOJ.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: (b)(6) per DHS > **On Behalf Of** Media Inquiry
Sent: Thursday, April 4, 2019 1:15 PM
To: Media Inquiry (b)(6) per DHS >; Hoffman, Jonathan (b)(6) per DHS ; Gountanis, John (b)(6) per DHS >
Cc: Houlton, Tyler (b)(6) per DHS >; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: NYT Remain In Mexico Story

Adding EOIR. Please review the following responses to NYT query and advise:

(b)(5) per DHS

Thank you,

(b)(6) per DHS

(b)(6) per DHS

From: Kanno-Youngs, Zolan (b)(6) per DHS
Sent: Wednesday, April 3, 2019 9:06 PM
To: Houlton, Tyler (b)(6) per DHS >; Media Inquiry (b)(6) per DHS
Subject: Re: NYT Remain In Mexico Story

Hi there,
Hi,
A couple more things: are migrants allowed to have an attorney present during the interview with an asylum officer that is aimed at determining whether they have a fear of persecution in Mexico?
Also, some of the migrants I talked to said the transcript they were provided didn't reflect the entirety of their comments. Any comment on that?
Others said when they did say they had a fear of Mexico and were subsequently referred to an asylum officer for a second interview, they didn't receive a transcript. Is DHS issuing transcripts of that second interview that aims to determine a credible fear of Mexico?
Thanks much.
Zolan

On Tue, Apr 2, 2019 at 1:46 PM Kanno-Youngs, Zolan (b)(6) per DHS > wrote:

> Hello,
> I went was in Mexicali and Tijuana last week doing some reporting on the Remain In Mexico policy. I'll likely have a story on it running later this week. I wanted to give you a heads up in case you wanted to provide a fresh comment. I already have the secretary's recent comments as well as remarks from today's call.
> Here's some more specific questions:
> Can you specify where this policy will be expanded to next?
> -Do you have updated numbers on who has been sent back?
> -Has anyone under the policy been approved to remain in the US?
> Have you had conversations with Mexico to determine what the limit is on migrants they can accept back? What is that limit?
> I encountered one migrant in Calexico who was returned to Mexicali under the policy and was given a notice to appear in San Ysidro. He says he has no information on how to get there. Is the onus on him to get there? Why not have a notice to appear at the same court and schedule a court date at the court in Imperial, California?
> Please get back to me by tomorrow afternoon.
>
> Thanks,
> Zolan Kanno-Youngs
> Homeland Security Correspondent
> The New York Times
> (b)(6) per DHS

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Zolan Kanno-Youngs
Homeland Security Correspondent
The New York Times
(b)(6) per DHS

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Zolan Kanno-Youngs
Homeland Security Correspondent
The New York Times
(b)(6) per DHS

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, May 6, 2019 11:24 AM
To: Jonathan F. Thompson
Subject: ICE launches program to strengthen immigration enforcement | ICE

Congrats.

https://www.ice.gov/news/releases/ice-launches-program-strengthen-immigration-enforcement

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, May 9, 2019 6:33 PM
To:	Jonathan F. Thompson
Subject:	Marion County Decision 5.19.19.pdf
Attachments:	Marion County Decision 5.19.19.pdf

In the

United States Court of Appeals

For the Seventh Circuit

No. 18-1050

ANTONIO LOPEZ-AGUILAR,

Plaintiff Appellee,

v.

MARION COUNTY SHERIFF'S DEPARTMENT, et al.,

Defendants Appellees.

APPEAL OF: STATE OF INDIANA,

Proposed Intervenor.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 1:16-cv-02457-SEB-TAB — **Sarah Evans Barker**, *Judge*.

ARGUED SEPTEMBER 7, 2018 — DECIDED MAY 9, 2019

Before FLAUM, RIPPLE, and BARRETT, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Antonio Lopez-Aguilar brought this action against the Marion County Sheriff's Department ("the Sheriff's Department"), Sheriff John R. Layton, in both his official capacity and his individual capacity, and a sergeant

of the Sheriff's Department, in his individual capacity (together, "the defendants"). His complaint set forth one claim under 42 U.S.C. § 1983. He alleged that when the defendants detained him for transfer into the custody of Immigration and Customs Enforcement ("ICE"), they violated his Fourth Amendment rights.[1] Mr. Lopez-Aguilar also brought supplemental claims, based on Indiana law, for false arrest and false imprisonment. His complaint sought damages and a declaration that the defendants had violated his rights by detaining him. He did not seek injunctive relief.

The parties later proposed, and the district court subsequently entered, a Stipulated Final Judgment and Order for Permanent Injunction ("the Stipulated Judgment"), which granted declaratory and prospective injunctive relief but dismissed with prejudice Mr. Lopez-Aguilar's damages claims. Following the entry of final judgment, but within the time for appeal, the State of Indiana ("the State" or "Indiana") moved to intervene for the purpose of appealing the district court's order entering the Stipulated Judgment. The district court denied Indiana's motion to intervene. The State now appeals that denial.

Indiana has standing for the purpose of bringing this appeal. The State's motion to intervene was timely, and it also fulfilled the necessary conditions for intervention of right. Finally, the State has demonstrated that the district court was without jurisdiction to enter prospective injunctive re-

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[1] The Fourth Amendment to the Constitution of the United States is made applicable to the states by the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

lief. Therefore, for the reasons set forth more fully below, we reverse the judgment of the district court and remand the case for proceedings consistent with this opinion.

I.

BACKGROUND

A.

On September 18, 2014, Mr. Lopez-Aguilar came to the Marion County Courthouse in Indianapolis to attend a hearing on a criminal misdemeanor complaint charging him with driving without a license. When he arrived, officers of the Sheriff's Department informed him and his attorney that an ICE officer had come to the courthouse earlier that day looking for him.[2] He alleges that a Sergeant Davis took him into custody. Later that day, Mr. Lopez-Aguilar appeared before the traffic court and resolved his misdemeanor charge. That disposition did not include a sentence of incarceration. Sergeant Davis nevertheless again took Mr. Lopez-Aguilar into custody, informing him that he would be held until the Sheriff's Department could transfer him to ICE's custody. Mr. Lopez-Aguilar consequently remained at the Marion County jail overnight; the next day, county officers transferred him to ICE. Neither federal nor state authorities charged Mr. Lopez-Aguilar with a crime, and he did not ap-

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[2] Kevin Wies, the ICE officer who claimed responsibility for Mr. Lopez-Aguilar's immigration detention and arrest, stated in a declaration that, based on a fingerprint match in the ICE database, he had asked the Sheriff's Department to communicate with him about Mr. Lopez-Aguilar. According to Officer Wies, ICE never issued either a written or an informal detainer for Mr. Lopez-Aguilar.

pear before a judicial officer. ICE subsequently released him on his own recognizance. An unspecified type of "immigration case" against Mr. Lopez-Aguilar was pending when he later filed this action.[3]

B.

On September 15, 2016, Mr. Lopez-Aguilar initiated this litigation by filing a complaint against the Sheriff's Department, Sheriff Layton, and Sergeant Davis. As noted earlier, he asserted a claim for violation of the Fourth Amendment under 42 U.S.C. § 1983 as well as state law claims for false arrest and false imprisonment. Following the exchange of discovery, the parties agreed to settle the case to "avoid the cost and uncertainty of continued litigation."[4] Specifically, on July 10, 2017, Mr. Lopez-Aguilar and the defendants jointly proposed to the district court a Stipulated Judgment. Indiana news outlets reported this proposed Stipulated Judgment in the days following its filing. On July 13, 2017, the United States filed a request for time to submit a pleading addressing the parties' proposed settlement. The district court granted that motion, and, on August 4, 2017, the United States filed a statement of interest objecting to the Stipulated Judgment. The news media also reported the Government's opposition to the parties' agreement.

In its statement, the United States noted that the Immigration and Nationality Act ("INA") authorized the Sheriff's Department to cooperate with the enforcement of federal immigration laws. Further, the Government submitted, the

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[3] R.1 ¶ 23.

[4] Lopez-Aguilar Br. 6.

Sheriff's Department's cooperation with ICE did not violate the Fourth Amendment. The United States disputed whether the defendants' detention of Mr. Lopez-Aguilar amounted to an unlawful seizure. Even if there had been an unlawful seizure, continued the Government, the permanent injunction was improper because it imposed relief far beyond any actual injury to Mr. Lopez-Aguilar.

After considering the positions of the parties and the Government, the district court approved the Stipulated Judgment and then entered a final judgment declaring that:

> [S]eizures by the defendants of any person based solely on detention requests from [ICE], in whatever form, or on removal orders from an immigration court, violate the Fourth Amendment, unless ICE supplies, or the defendants otherwise possess, probable cause to believe that the individual to be detained has committed a criminal offense; [and]
>
> … [F]or the avoidance of doubt, an ICE request that defendants seize or hold an individual in custody based solely on a civil immigration violation does not justify a Fourth Amendment seizure … .[5]

Further, the district court permanently enjoined the defendants from "seizing or detaining any person based solely on detention requests from ICE, in whatever form, or on removal orders from an immigration court, unless ICE sup-

[5] R.50 at 1–2.

plies a warrant signed by a judge or otherwise supplies probable cause that the individual to be detained has committed a criminal offense."[6]

The district court also issued an opinion to explain its approval of the Stipulated Judgment. The court first considered whether the Stipulated Judgment would require the Sheriff's Department to violate Indiana law. A statutory provision prohibits a governmental body, such as the Sheriff's Department, from implementing a policy that "prohibits or in any way restricts" law enforcement officers from taking certain actions "with regard to information of the citizenship or immigration status" of a person, such as "[c]ommunicating or cooperating with federal officials." Ind. Code § 5-2-18.2-3. The district court determined, however, that because the Stipulated Judgment only prohibited the Sheriff's Department from "seizing" or "detaining" certain individuals, "not from communicating with or about them," the Stipulated Judgment posed no conflict.[7] The district court then examined another provision that forbids a state governmental body from "limit[ing] or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law." Ind. Code § 5-2-18.2-4. The district court conceded difficulty in interpreting and applying this provision. It nevertheless determined that, if the provision simply prohibits a state governmental body from requiring or permitting anything less than cooperation with federal immigration enforcement to the full extent such co-

[6] *Id.* at 2.

[7] R.49 at 17.

operation is permitted by federal law, there is no conflict with the Stipulated Judgment. In the district court's view, without an express agreement with the United States Attorney General or some other Congressionally-approved arrangement, state cooperation with federal immigration authorities did not contemplate state enforcement of removal orders or ICE detainers. The INA preempted any such requirement. Additionally, said the court, any such state enforcement absent probable cause would violate the Fourth Amendment. Accordingly, the district court found that the Stipulated Judgment did not require the Sheriff's Department to violate Indiana law.[8]

The district court next considered whether the Stipulated Judgment complied with the strictures of *Local No. 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501 (1986). That case requires the district court to determine that a proposed consent decree "(1) spring[s] from and serve[s] to resolve a dispute within the court's subject matter jurisdiction; (2) come[s] within the general scope of the case made by the pleadings; and (3) further[s] the objectives of the law upon which the complaint was based." *Komyatti v. Bayh*, 96 F.3d 955, 960 (7th Cir. 1996) (quoting *Local No. 93*,

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[8] The district court also determined that the Stipulated Judgment did not conflict with Indiana Code §§ 5-2-18.2-5, 6. Section 5 creates a private right of action for violations of Chapter 18.2, *id.* § 5-2-18.2-5, and Section 6 requires a state court that finds a knowing or intentional violation of this chapter to enjoin the violation, *id.* § 5-2-18.2-6. According to the district court, because these provisions "impose[] no duties" on the Sheriff's Department, there was no conflict. R.49 at 17. The State does not challenge the district court's rulings regarding Sections 5 and 6 in this appeal.

478 U.S. at 525) (alteration omitted) (internal quotation marks omitted). The district court concluded that the Stipulated Judgment satisfied these requirements because: (1) it would resolve Mr. Lopez-Aguilar's § 1983 claim, which was within the court's subject-matter jurisdiction, by terminating the litigation; (2) restricting the defendants' ability to cooperate with ICE was within the scope of Mr. Lopez-Aguilar's complaint that the defendants had unlawfully seized and detained him; and (3) the Stipulated Judgment "further[ed] Fourth Amendment values" by limiting "state intrusions on individual privacy."[9] Further, "to the extent the remedy in the Stipulated Judgment exceed[ed] the Fourth Amendment's requirements," the district court ruled, it was "directly related to the elimination of the condition alleged to offend the Fourth Amendment."[10]

Finally, the district court evaluated whether the Stipulated Judgment was fair and reasonable. The district court acknowledged that Mr. Lopez-Aguilar "appear[ed] to have a strong case," but noted that "litigating the merits" would involve difficult disputes over the defendants' qualified immunity defense and the facts surrounding his detention.[11] Finally, the district court considered the Government's position. It rejected the Government's view that the relief exceeded the scope of the alleged injury and therefore violated the rule set forth in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). In the court's view, "if Indiana law does not conflict

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[9] R.49 at 31.

[10] *Id.* at 32.

[11] *Id.* at 33.

with the Stipulated Judgment, then Marion County and Lopez-Aguilar are free to contract for nearly any remedy they desire."[12] Finally, the court determined that the Stipulated Judgment was consistent with the public interest and would be judicially manageable.

The district court approved and entered the Stipulated Judgment on November 7, 2017. According to the State, following the entry of final judgment, "an attorney at the United States Department of Justice informally advised the Office of the Indiana Attorney General that the State may have interests at stake in the case."[13] Consequently, on December 4, 2017, the State moved for intervention of right or, alternatively, for permissive intervention, in order to appeal the district court's order entering the Stipulated Judgment. On the same date, the State requested a thirty-day extension of time to file a notice of appeal, which the district court granted. The district court concluded that it was appropriate to grant the State's motion for extension of time given that "[t]he State was not involved in, and did not necessarily have cause to know of, the course of litigation in this case before filing its intervention and extension motions, and appear[ed] to have sought to protect its interests as soon as was practicable upon learning of the Stipulated Judgment."[14]

Mr. Lopez-Aguilar and the defendants opposed the State's request to intervene, and, on January 5, 2018, the dis-

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[12] *Id.* at 34.

[13] Appellant's Br. 14.

[14] R.58 at 4 (emphasis omitted).

trict court denied the State's motion. First, the district court found that the State had failed to establish Article III standing to intervene because it had not demonstrated an injury-in-fact and because any injury suffered by the State would not be redressable by taking an appeal. The court acknowledged that a state has a legally protected interest in the continued enforceability of its laws and that this interest is harmed when a court holds that a state law is unconstitutional. But the district court reasoned that it had not held a state law unconstitutional; it had simply construed a state statute as not requiring that law enforcement officers cooperate with removal orders, standing alone, or with immigration orders, standing alone. A disagreement about the interpretation of a statute is not, held the district court, sufficient to establish a cognizable injury-in-fact. The district court further held that any injury the State suffered was not redressable. Relying on our decisions in *1000 Friends of Wisconsin Inc. v. United States Department of Transportation*, 860 F.3d 480 (7th Cir. 2017), and *Kendall Jackson Winery, Ltd. v. Branson*, 212 F.3d 995 (7th Cir. 2000), the court concluded that any judicial relief obtained on appeal (i.e., vacation of the Stipulated Judgment) would remedy the State's injury only in a contingent and collateral way.

The district court went on to say that, even if Indiana had standing to intervene, its motion would fail under Federal Rule of Civil Procedure 24 because it was untimely. Further, the court continued, even assuming that the motion was timely, the State was not entitled to intervene as of right because it had not asserted "a direct, significant, and protectable interest unique to the State which will be impaired by the

denial of its motion to intervene."[15] Finally, the district court held that the State was not entitled to permissive intervention because it had failed to satisfy the requirements of Rule 24(b). The State timely appealed from the denial of intervention.

II.

DISCUSSION

A.

In reviewing the district court's decision, we begin with a basic principle: "It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Art. III of the Constitution by alleging an actual case or controversy." *Lyons*, 461 U.S. at 101. We therefore must examine, as a threshold matter, whether the State of Indiana has the requisite standing to intervene in this case. This is a question of law, which we review de novo. *Winkler v. Gates*, 481 F.3d 977, 982 (7th Cir. 2007).

To establish standing, a plaintiff must satisfy three criteria. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, the plaintiff must, as an "irreducible constitutional minimum," demonstrate "injury in fact," "an invasion of a legally protected interest" which is both "concrete and particularized," not "conjectural or hypothetical." *Id.* (internal quotation marks omitted). "Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly … trace[able] to the chal-

[15] R.62 at 17.

lenged action of the defendant … .'" *Id.* (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41 (1976)). Third, the plaintiff must demonstrate that a favorable decision by the court is likely to remedy the claimed injury. *Id.* at 561. Here, two of these factors—whether the State suffered an injury-in-fact and whether its claimed injury can be redressed by this court—deserve a close examination.

We first consider whether the State has demonstrated sufficient injury-in-fact. The State contends that the Stipulated Judgment interferes *directly and substantially* with the use of its police power to cooperate with the federal government in the enforcement of the Country's immigration laws. Mr. Lopez-Aguilar, agreeing with the district court, emphasizes that the injunction does not render the state statutes unconstitutional; it merely interprets them. In his view, Indiana's injury is therefore not a significant one. Mr. Lopez-Aguilar further suggests that if the State could intervene in any litigation where its Attorney General disagreed with a judicial interpretation of a state statute, the State would have the right to intervene in all sorts of private litigation.

Mr. Lopez-Aguilar's characterization artificially minimizes the particular interest that the State seeks to vindicate here. Indiana seeks to protect a state prerogative of constitutional dimension. The Supreme Court has recognized specifically that a state has a cognizable interest sufficient to establish Article III standing in the "continued enforceability of its own statutes," even when another party with an aligned interest has determined not to appeal. *Maine v. Taylor*, 477 U.S. 131, 137 (1986). Although the district court did not declare Section 4 unconstitutional in all respects, it did hold that

Fourth Amendment considerations and the preemptive effect of the INA required that the statute be given a restrictive reading. That reading is so restrictive as to preclude state officers from cooperating with federal officers with respect to ICE detainers or immigration court removal orders. The district court's interpretation of the statute, although not a total declaration of unconstitutionality, restricts significantly the vitality of the statute and the capacity of the State to cooperate with the federal government. Indiana has demonstrated that it has suffered a cognizable injury sufficient for standing to appeal. *See Taylor*, 477 U.S. at 137 (holding that the State of Maine, an intervenor in the district court and the only appealing party, had standing to appeal because, "if the judgment of the Court of Appeals [was] left undisturbed," Maine would "be bound by the conclusive adjudication" that its law was unenforceable).

We next consider whether the State's claimed injury is redressable. Mr. Lopez-Aguilar observes that the district court's injunction runs solely against Marion County officials. It does not run against any state official. In his view, we could not grant Indiana relief because it seeks to set aside an injunction against a non-appealing party. He views this rule as an ironclad one, admitting of no exceptions. To support this broad assertion, Mr. Lopez-Aguilar invites our attention to our decision in *Kendall Jackson Winery*. There, three suppliers of alcoholic beverages sought an injunction against state officials preventing the enforcement of a newly enacted statute that forbade the suppliers to cancel distribution agreements without good cause. 212 F.3d at 996. In bringing the suit against the state officials, these suppliers also had named their previous distributors as defendants. The court entered a preliminary injunction against the state officials,

enjoining them from enforcing the statute. *Id.* The state officials did not take an appeal, but the distributor-defendants did. *Id.* We held that the distributors did not have standing to appeal because the district court's injunction ran against only the state officials. *Id.* at 997–98. As long as those officials acquiesced in the imposition of the injunction, the distributors could obtain no relief. *Id.* at 998. Their injury was derivative; they were harmed only indirectly by the inability of the state officials to issue orders that would protect the distributors' interests. *Id.*

Our later cases have confirmed the continued vitality of this rule. In *Cabral v. City of Evansville*, 759 F.3d 639 (7th Cir. 2014), residents of the City of Evansville brought an action against the City challenging the City's approval of a two-week display of numerous six-foot crosses along public riverfront property. *Id.* at 641. The district court entered a permanent injunction; it barred the City from granting a permit for the erection of the display. *Id.* The applicant, the West Side Christian Church, was an intervenor in the district court but was not subject to the injunction. *Id.* The City did not appeal the district court's decision to enter a permanent injunction, but the Church did. *Id.* We dismissed the appeal because the Church did not have standing. *Id.* We emphasized that only the City, not the Church, was subject to the injunction. *Id.* at 642. If we vacated the injunction at the Church's request, it would not alter whether the Church was permitted to erect the crosses. *Id.* It would simply allow the City, a stranger to the appeal, to determine whether to permit the crosses. *Id.* Any injury that the Church would suffer, we concluded, was "derivative" of the City's injury. *Id.*

We then went on to express our holding another way. We said that it was a basic rule of appellate procedure that "a judgment will not be altered on appeal in favor of a party who did not appeal [even if] the interests of the party not appealing are aligned with those of the appellant." *Id.* at 643 (quoting *Albedyll v. Wis. Porcelain Co. Revised Ret. Plan*, 947 F.2d 246, 252 (7th Cir. 1991)). Relying on *Kendall Jackson*, we wrote that "[t]he critical question is this: when a district judge enters an order creating obligations only for Defendant A, may the court of appeals alter the judgment on appeal by Defendant B when obligations imposed on A *indirectly* affect B?" *Id*. (quoting *Kendall Jackson*, 212 F.3d at 998) (emphasis added).

Our more recent decision in *1000 Friends of Wisconsin* presented a similar situation. Wisconsin, desirous of widening a road between Fond du Lac and Sheboygan, sought the release of federal funds for the project. 860 F.3d at 481. The United States Department of Transportation released an environmental impact statement evaluating the potential effects of the project and then issued a "record of decision permitting the use of federal funds." *Id.* At that point, a group opposed to the project brought suit, asking the district court to determine that the impact statement was inadequate and to enjoin the project. *Id.* The district court declined to enjoin the project but did set aside the "record of decision." *Id.* The United States Department of Transportation then issued a revised impact statement, but the district court continued to deem it inadequate. *Id.* Only the *Wisconsin* Department of Transportation and one of its employees appealed the district court's decision; the United States Department of Transportation did not. *Id.* We held that the Wisconsin authorities did not have standing to appeal. *Id.* at

483. We stressed that, under the statute governing environmental impact statements, state authorities had no duties. *Id.* at 482. They remained free to undertake the project with state funds. *Id.* Only the federal authorities were subject to the court's order disapproving of the environmental impact statement, and the State could not substitute itself for the federal agency that had responsibility for the statement. *Id.* Any harm to Wisconsin was indirect; it could not obtain federal funds, but it remained free to proceed on its own.

In Mr. Lopez-Aguilar's view, our holdings in these cases are dispositive. Although his argument has superficial appeal, on reflection, we cannot accept it. Here, we are not dealing with the derivative injury of a private party whose interests are dependent on the enjoined party. Rather, the district court has enjoined a subordinate component of state government from acting in accordance with the directive of the state legislature. Indiana alleges a direct injury to its capacity to require subordinate entities of state government to act in accordance with state law. In its sovereign capacity, the State seeks to vindicate its authority to require officials of subordinate units of government to fulfill their responsibilities. The State maintains that the Stipulated Judgment directly frustrates its prerogatives and confounds its efforts to be supportive of federal policy. Indiana contends, in essence, that the subordinate officers of state government have abdicated their responsibilities by agreeing to the district court's injunction. The State seeks to protect its sovereign prerogative to cooperate with the federal government and to require subordinate entities of state government to comply with that legislative policy directive.

Mr. Lopez-Aguilar reminds us that the defendants have no statutory duty to appeal the district court's judgment. Those officials do have a statutory duty, however, to obey state law. Indiana simply asks that we vacate a federal district court order requiring local law enforcement officers in Marion County to act in perpetuity contrary to state law. Such relief will remedy directly the injury to the State's sovereign interest in implementing a state-wide legislative policy of full cooperation with federal immigration law. Because the State established a cognizable injury-in-fact, *see Taylor*, 477 U.S. at 137 (recognizing that "a State clearly has a legitimate interest in the continued enforceability of its own statutes"), and because we can directly redress that injury by vacating the Stipulated Judgment, we conclude that the State has standing to bring this appeal.

B.

1.

Having presented a justiciable case or controversy, Indiana still must comply with the requirements of Rule 24. A prerequisite for both intervention of right and permissive intervention is that the motion to intervene must be timely. Fed. R. Civ. P. 24(a), (b). Mr. Lopez-Aguilar submits that the district court correctly held that, even if the State had standing to appeal, its motion to intervene was not timely.

As detailed above, Mr. Lopez-Aguilar and the defendants jointly filed the Stipulated Judgment with the district court on July 10, 2017. Three days later, on July 13, 2017, the United States filed a request for time to submit a Statement of Interest, which the district court granted. On August 4, 2017, the United States filed its Statement of Interest oppos-

ing entry of the Stipulated Judgment. The district court nevertheless approved and entered the Stipulated Judgment on November 7, 2017. According to the State of Indiana, following entry of the Stipulated Judgment, "an attorney at the United States Department of Justice informally advised the Office of the Indiana Attorney General that the State may have interests at stake in the case."[16] Consequently, on December 4, 2017, the State moved to intervene in order to appeal the district court's order entering the Stipulated Judgment. On the same date, the State requested, and the district court granted, a thirty-day extension of time to file a notice of appeal.

In its order granting the extension of time, the district court explained that, "[e]ven with the exercise of due diligence, the State would not necessarily have had earlier notice of this lawsuit and our entry of final judgment."[17] The court further observed that:

> [P]ublished news items and broadcast media coverage included discussions of this lawsuit both before and after final judgment was entered. It is not far-fetched to presume that State government officials would take the appropriate steps to keep abreast of legal proceedings touching on major questions of public policy involving its capital city's government. That said, we know of no legal duty imposed on the

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[16] Appellant's Br. 14.

[17] R.58 at 3.

> State to track every lawsuit implicating an interpretation of Indiana law—the primary basis for the State's intervention motion—and we have no reason to believe that the State had actual notice of this lawsuit before its filing of the motions now before us.[18]

The district court concluded that it was appropriate to grant the State's motion for extension of time to appeal given that "[t]he State was not involved in, and did not necessarily have cause to know of, the course of litigation in this case before filing its intervention and extension motions, and appear[ed] to have sought to protect its interests as soon as was practicable upon learning of the Stipulated Judgment."[19] Despite these findings, on January 5, 2018, the district court denied the State's motion to intervene. Among other grounds, the court determined that the State's motion failed for lack of timeliness.

We have stated, in the context of Rule 24, that "[t]imeliness is not limited to chronological considerations but is to be determined from all the circumstances." *City of Bloomington v. Westinghouse Elec. Corp.*, 824 F.2d 531, 534 (7th Cir. 1987) (internal quotation marks omitted). We consider four factors to determine whether a motion to intervene is timely: "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice

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[18] *Id.* at 3–4.

[19] *Id.* at 4 (emphasis omitted).

to the intervenor if the motion is denied; [and] (4) any other unusual circumstances." *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000). "The test for timeliness is essentially one of reasonableness: 'potential intervenors need to be reasonably diligent in learning of a suit that might affect their rights, and upon so learning they need to act reasonably promptly.'" *Reich v. ABC/York Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995) (quoting *Nissei Sangyo America, Ltd. v. United States*, 31 F.3d 435, 438 (7th Cir. 1994)). We further note that, when intervention of right is sought, because "the would-be intervenor may be seriously harmed if intervention is denied, courts should be reluctant to dismiss such a request for intervention as untimely, even though they might deny the request if the intervention were merely permissive." 7C Charles Alan Wright et al., *Federal Practice & Procedure: Civil* § 1916 (3d ed. 2018). "We review the district court's decision on timeliness for an abuse of discretion." *Reich*, 64 F.3d at 321.

The first factor that we consider is the length of time the State knew or should have known of its interest in this case. "[W]e do not necessarily put potential intervenors on the clock at the moment the suit is filed or even at the time they learn of its existence. Rather, we determine timeliness from the time the potential intervenors learn that their interest might be impaired." *Id.* Indiana contends that its motion was timely because it moved to intervene as soon as it became aware of the Stipulated Judgment, less than a month after the entry of judgment and within the time to file an appeal. It maintains that it was unaware of this case or the Stipulated Judgment until after the district court entered final judgment.

In considering this first factor, we, like our sister circuits, give significant weight to the fact that the motion to intervene was filed within the time limit for filing a notice of appeal.[20] Additionally, although the district court ultimately ruled that the motion to intervene was not timely, the court's earlier statements reflected another view. In finally denying the motion to intervene, the court remarked that the State should have known that it had an interest in the litigation five months earlier, when the parties proposed the Stipulated Judgment. The court also asserted that the State should have known of its interest in this case when, as early as July 12, 2017, Indiana media outlets published stories about this litigation and the parties' proposed agreement. By contrast, in granting the State's motion for extension of time to appeal, the court noted that "[e]ven with the exercise of due diligence, the State would not necessarily have had earlier notice of this lawsuit and [the district court's] entry of final judgment."[21] Indeed, the district court acknowledged, correctly, that "we know of no legal duty imposed on the State to track every lawsuit implicating an interpretation of Indiana law … and we have no reason to believe that the State had actual notice of this lawsuit" before filing its motion to intervene.[22] We think the latter remarks of the district court reflect a more accurate and realistic view of the entire record. The district court was correct in determining that the State

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[20] *See, e.g.*, *Ross v. Marshall*, 426 F.3d 745, 755 (5th Cir. 2005); *Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1229 (6th Cir. 1984).

[21] R.58 at 3.

[22] *Id.* at 4.

cannot be faulted for not learning of this suit sooner. The State received no notification of the initiation of this litigation, and the Attorney General of Indiana had no obligation to monitor the local news services to determine from their reports whether the State had a sufficient interest to justify entering the litigation.[23]

Of course, the "most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case." *Nissei Sangyo America, Ltd. v. United States*, 31 F.3d 435, 439 (7th Cir. 1994) (quoting 7C Charles Alan Wright et al., *Federal Practice & Procedure: Civil* § 1916 (2d ed. 1986)). Where a stipulated judgment is involved, intervention can prejudice the original parties because the judgment cannot be approved without the intervenor's agreement and because the implementation of its terms will "necessarily be delayed." *City of Bloomington*, 824 F.2d at 536.

The district court determined that the prejudice to the original parties would be "real and appreciable" because the personal-capacity defendants had been dismissed with prejudice and their repose would be disturbed.[24] The offi-

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[23] *Cf. Atl. Mut. Ins. Co. v. Nw. Airlines, Inc.*, 24 F.3d 958, 961 (7th Cir. 1994) (noting that, "[u]ntil the district judge issued his opinion," the intervenor "could not have known that this otherwise-mundane case included an issue affecting international relations"); *Peruta v. Cty. of San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (en banc) (granting the State of California's motion to intervene after a panel of the Ninth Circuit had issued its decision because the State "had no strong incentive to seek intervention … at an earlier stage, for it had little reason to anticipate … the breadth of the panel's holding").

[24] R.62 at 14.

cial-capacity defendants had obtained the district court's determination of their obligations, and Mr. Lopez-Aguilar's vindication of his position would be "wholly overthrown" by reopening the litigation.[25]

As a practical matter, however, none of these suggested difficulties can be said to be a result of the State's "delay" in moving to intervene. Even if the State moved to intervene in July 2017, after the parties proposed the Stipulated Judgment, rather than in December 2017, after the State learned that the district court had entered final judgment, the burden to the parties of reopening the litigation and resuming settlement negotiations would have been the same. *Cf. Nissei Sangyo America*, 31 F.3d at 439 (concluding that the intervenor's "delay" did not cause the type of prejudice advanced by the plaintiff, since the plaintiff "would have been burdened in precisely the same manner had [the movant's] motion to intervene been filed in July rather than October"). Any prejudice to Mr. Lopez-Aguilar and the defendants is not "so great as to justify denying" the State's motion to intervene. *Reich*, 64 F.3d at 322.

We also must consider "the prejudice to the intervenor if the motion is denied." *Sokaogon Chippewa Cmty.*, 214 F.3d at 949. For example, we determined in *Reich* that the prejudice to a group of exotic dancers who wished to intervene in a Fair Labor Standards Act suit brought against their employer by the Secretary of Labor was significant and outweighed any prejudice to the existing parties. *Reich*, 64 F.3d at 322. Absent intervention, the dancers would have been denied

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[25] *Id.*

"their one and only opportunity to define their employment status" with the defendant. *Id.*

Here, the district court took the view that the prejudice to the State "would be minimal or nonexistent" because its order "binds only the original parties to this action" and because the State "has numerous courts, state and federal, and numerous potential cases, open to it for the vindication of its preferred legal position."[26] We cannot accept this view. The district court's entry of a *permanent* injunction hobbles, substantially, Indiana's ability to implement its legislative policy in its most populous county. Nor is this a case where the State previously had the opportunity, but elected not, to provide its input on the terms of the Stipulated Judgment. *Cf. City of Bloomington*, 824 F.2d at 537 (noting that the proposed intervenor had "submitted its comments to the Justice Department, and its views were presumably considered by the district court prior to the final entry of the consent decree," such that "it would suffer little prejudice if it were denied permission to intervene"). Rather, the district court approved and entered the Stipulated Judgment without any adversarial briefing on the enforceability of the relevant Indiana code provisions, let alone any input from the State. The prejudice to the State from being denied the opportunity to explain portions of its legal code is "significant" and "outweighs any prejudice" to the existing parties. *Reich*, 64 F.3d at 322.

A state's right to participate in federal litigation implicating its interests as a sovereign is a serious matter. *Cf.* 28

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[26] *Id.* at 15.

U.S.C. § 2403(b) (requiring a district court to notify a state's attorney general and permit the state to intervene whenever the constitutionality of a state statute is at stake); Fed. R. Civ. P. 5.1 (permitting the state attorney general to intervene when a party files a paper "drawing into question the constitutionality" of a state statute).[27] Moreover, the impairment of a substantive state legislative policy that directly implicates federal-state cooperation is surely a matter requiring great sensitivity on the part of the federal courts. If the State cannot intervene, then the district court's judgment will stand without adversarial briefing on the question of the enforceability of the Indiana code provisions designed to promote such cooperation.

In sum, because the State filed its motion to intervene within the time for filing an appeal, because the State cannot be faulted for not having intervened earlier, and because the prejudice to the State from being denied intervenor status outweighs any prejudice to the parties from allowing intervention, its motion to intervene was timely.[28] The district

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[27] Indiana does not argue that 28 U.S.C. § 2403(b) is directly applicable in this case, nor is the operation of that statute clear where federal preemption of state law is the operative issue. For those reasons, we will pretermit any reliance upon it.

[28] The fourth factor we may consider is whether there are "any other unusual circumstances" bearing on the timeliness inquiry. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000). The district court ruled that "the State has pointed us to no such circumstances, and we perceive none." R.62 at 15. In its brief on appeal, the State has raised no argument regarding any unusual circumstances. *Cf.* Appellant's Br. 23–27. Therefore, our analysis does not include this factor.

court exceeded the bounds of permissible discretion in reaching a contrary conclusion.

2.

We now turn to examine whether the State satisfied the remaining conditions for seeking intervention. A non-party who wishes to intervene as of right must satisfy three requirements under Rule 24(a):

> (1) [T]he applicant must claim an interest relating to the property or transaction which is the subject of the action,
> (2) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, and
> (3) existing parties must not be adequate representatives of the applicant's interest.

Sokaogon Chippewa Cmty., 214 F.3d at 945–46.

We first consider whether Indiana has a legally protectable interest in this litigation. "Our cases say that the prospective intervenor's interest must be direct, significant, and legally protectable." *Solid Waste Agency of N. Cook Cty. v. United States Army Corps of Eng'rs*, 101 F.3d 503, 506 (7th Cir. 1996). The Rule does not define "interest," but "the case law makes clear that more than the minimum Article III interest is required." *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009). At the same time, we have interpreted "statements of the Supreme Court as encouraging liberality in the definition of an interest." *Meridian Homes Corp. v. Nicholas W. Prassas & Co.*, 683 F.2d 201, 204 (7th Cir. 1982). In general, "[w]hether an applicant has an interest sufficient to warrant

intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value." *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995).

In this case, the State has a *fundamental* interest in the maintenance of its legislatively mandated policy to cooperate fully with the federal government in the enforcement of immigration laws. It is certainly within the State's exclusive purview to establish its expectations of the law enforcement officers operating under its statutes. Indiana has an interest in giving effect to its legislature's determination that the State ought to cooperate fully with federal immigration enforcement. Because the State has a substantial interest in overturning a federal injunction that limits its ability to effectuate its legislature's expectations, it has a "direct, significant, and legally protectable" interest in this litigation. *Solid Waste Agency*, 101 F.3d at 506.[29]

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[29] The Supreme Court's decision in *Arizona v. United States*, 567 U.S. 387 (2012), does not diminish the State's asserted interest in this litigation. In *Arizona*, the Court held that the Immigration and Nationality Act ("INA") preempted an Arizona statute authorizing state officers, acting without a warrant, to detain any person if the officer had probable cause to believe that person committed an offense that made him removable from the United States. *Id.* at 410. The Court observed that federal law "instructs when it is appropriate to arrest an alien during the removal process." *Id.* at 407. By "attempt[ing] to provide state officers even greater authority to arrest aliens on the basis of possible removability than Congress ha[d] given to trained federal immigration officers," the Arizona statute conflicted with the federal scheme. *Id.* at 408. In defense of the statute, Arizona referenced 8 U.S.C. § 1357(g)(10)(B), which authorizes state officers to "cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present

(continued …)

Next, we examine whether the Stipulated Judgment "may as a practical matter impair or impede" the State's "ability to protect its interest." Fed. R. Civ. P. 24(a)(2). We have recognized that "concern with the stare decisis effect of a decision can be a ground for intervention." *Flying J*, 578 F.3d at 573. We also have observed that requiring a would-be intervenor to assert his interest in a separate suit can amount to an "impediment" justifying intervention as of right. *Id.* In *Flying J*, for example, we held that the interest of retailers who wished to limit price competition "would be directly rather than remotely harmed by invalidation" of a statute regulating unfair sales because the retailers "would lose much or even all of their business to their larger, more efficient competitors." *Id.* at 572. Because the retailers sought only "an opportunity to litigate an appeal," we concluded that requiring the retailers to "start over" by bringing a sepa-

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(… continued)
in the United States." But, according to the Court, "no coherent understanding" of the word "cooperation" would include "the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." *Arizona*, 567 U.S. at 410. By contrast, the Indiana statutes at issue here only require that state and local officers cooperate with federal immigration efforts. *See* Ind. Code § 5-2-18.2-3 (prohibiting a governmental body from implementing a policy that "prohibits or in any way restricts" law enforcement officers from taking covered actions "with regard to information of the citizenship or immigration status" of a person, such as "[c]ommunicating or cooperating with federal officials"); *id.* § 5-2-18.2-4 (prohibiting a governmental body from "limit[ing] or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law"). Indiana law does not contemplate the kind of unilateral action by state officers that the *Arizona* Court determined violated federal law.

rate suit was an "impediment" that could be removed, without prejudice to the parties, "by allowing intervention." *Id.* at 573.

Here, the Stipulated Judgment will impair directly the State's ability to protect its substantial interest in cooperating with federal immigration enforcement efforts. The terms of the injunction oblige the Sheriff's Department of Indiana's most populous county to disregard, in a significant way, what the State believes is a legislative command to cooperate with the federal government. Absent intervention, the State will have no opportunity to assert its interest before the parties are bound by the terms of the Stipulated Judgment. *See Solid Waste Agency*, 101 F.3d at 507 (observing that "[t]he strongest case for intervention" is "where the intervenor-aspirant has no claim against the defendant yet a legally protected interest that could be impaired by the suit").

Lastly, we examine whether the existing parties adequately represent Indiana's interest. We presume adequacy of representation "[w]here the interests of the original party and of the intervenor are identical—where in other words there is no conflict of interest." *Id.* at 508. Here, by contrast, none of the original parties, who jointly requested entry of the Stipulated Judgment and did not seek an appeal, share the State's interest in defending the enforceability of the contested state statutes. Neither Mr. Lopez-Aguilar nor the defendants contend that any existing party adequately represents any interest the State may have in this case.

Because the State has demonstrated a direct, significant, and legally protectable interest in this litigation, which will be impaired absent intervention and is not adequately represented by the existing parties, the State is entitled to inter-

vention as of right. The district court therefore erred when it denied the State's motion.[30]

C.

Having determined that the district court should have permitted Indiana to intervene for purposes of taking an appeal, we turn now to consider the State's position. In Indiana's view, "[t]he district court lacked Article III jurisdiction to declare unlawful and permanently enjoin Marion County's detention of removable aliens."[31] More specifically, Indiana submits that, because Mr. Lopez-Aguilar alleged only a single past incident of unlawful conduct—his detention in September 2014, at an ICE officer's request—his claim of past injury does not constitute in itself the real and immediate threat of injury necessary to make out a case or controversy.

We evaluate this contention by focusing on the Supreme Court's decision in *Lyons*. In that case, Lyons sued the City of Los Angeles and four of its police officers, alleging that the officers had stopped him for a traffic violation and, without provocation or legal justification, seized him and applied a "chokehold." 461 U.S. at 97. He sought damages, a declaratory judgment, and an injunction against the City barring the use of chokeholds. *Id.* at 98. The Supreme Court reversed the district court's entry of a preliminary injunc-

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[30] Because Indiana clearly satisfies the criteria for intervention as of right under Rule 24(a), we need not examine in-depth whether it fulfills the requirements for permissive intervention under Rule 24(b).

[31] Appellant's Br. 33.

tion. It held that "the federal courts [were] without jurisdiction to entertain Lyons' claim for injunctive relief." *Id.* at 101.

The Court began its analysis with the premise that "those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Art. III of the Constitution by alleging an actual case or controversy." *Id.* Specifically, "[t]he plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct." *Id.* at 101–02 (internal quotation marks omitted). That "injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *Id.* at 102 (internal quotation marks omitted). It followed that "Lyons' standing to seek the injunction requested depended on whether he was likely to suffer future injury from the use of the chokeholds by police officers." *Id.* at 105.

Relying on its decisions in *O'Shea v. Littleton*, 414 U.S. 488 (1974), and *Rizzo v. Goode*, 423 U.S. 362 (1976), the Court concluded that Lyons "failed to demonstrate a case or controversy with the City that would justify the equitable relief sought." *Id.* In *O'Shea*, the Court had held that the plaintiffs' complaint that they had been subject to discriminatory enforcement of the criminal law "failed to satisfy the threshold requirement imposed by Art. III of the Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy." 414 U.S. at 493. The Court reasoned that, although some of the named plaintiffs had actually "suffered from the alleged unconstitutional practices," "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief[] … if unaccompanied by any continuing, present ad-

verse effects." *Id.* at 495–96. Further, even if the Court were to conclude that the complaint presented a case or controversy, the plaintiff class had failed "to establish the basic requisites of the issuance of equitable relief in these circumstances—the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law." *Id.* at 502.

Similarly, in *Rizzo*, the plaintiffs sought equitable intervention to remedy police officer mistreatment of minority citizens and Philadelphia residents. 423 U.S. at 366–67. Because the plaintiffs' alleged injury rested on "what one of a small, unnamed minority of policemen might do to them in the future," the Court concluded that "[t]his hypothesis [was] even more attenuated than those allegations of future injury found insufficient in *O'Shea* to warrant invocation of federal jurisdiction." *Id.* at 372.

Adhering to these principles, the Court in *Lyons* concluded that the plaintiff's complaint fell "far short of the allegations that would be necessary to establish a case or controversy." *Lyons*, 461 U.S. at 105. Although Lyons may have been illegally choked by the police on October 6, 1976, the Court observed that this single past incident did "nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part." *Id.* Given the "speculative nature" of his "claim of future injury," Lyons had failed to demonstrate a "likelihood of substantial and immediate irreparable injury," which is a "prerequisite of equitable relief." *Id.* at 111 (quoting *O'Shea*, 414 U.S. at 502). "Absent a sufficient likelihood that he

[would] again be wronged in a similar way," the Court explained, Lyons was "no more entitled to an injunction than any other citizen of Los Angeles." *Id.* Finally, the Court stressed that "the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of the States' criminal laws" absent "irreparable injury which is both great and immediate." *Id.* at 112 (citing *O'Shea*, 414 U.S. at 499). Accordingly, Lyons lacked standing to seek the injunction requested.

Lyons establishes that a plaintiff cannot seek an injunction "absent a showing of irreparable injury, a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again." *Id.* at 111. We consistently have understood *Lyons* to foreclose claims for equitable relief based on lack of standing where "the possibility" that the plaintiff "would suffer any injury as a result of" the challenged practice was "too speculative." *Robinson v. City of Chi.*, 868 F.2d 959, 966 (7th Cir. 1989) (affirming that there was "no reasonable likelihood" that plaintiff's claims would recur because he had "not alleged and ha[d] not shown that he [was] in immediate danger of again being directly injured" by a "post-arrest detention for investigation prior to a probable cause hearing"); *see also Campbell v. Miller*, 373 F.3d 834, 836 (7th Cir. 2004) (concluding that, after Indianapolis police officers arrested plaintiff for possessing marijuana and conducted a body-cavity search for drugs before releasing him, the district court could not enjoin this practice because, "[u]nless the same events [were] likely to happen again *to him* there [was] no controversy between him and the City about the City's future handling of other arrests" (emphasis in original)); *Perry v. Sheahan*, 222

F.3d 309, 313 (7th Cir. 2000) (affirming plaintiff's lack of standing to seek injunction of county policy of seizing firearms during an eviction because Perry could not "demonstrate a realistic threat that he would be the subject of another forcible eviction in Cook County that would result in the seizure of his property"); *Knox v. McGinnis*, 998 F.2d 1405, 1413 (7th Cir. 1993) (denying Knox's claim for injunctive relief because "the mere possibility that Knox may sometime in the future be returned to the [prison] segregation unit [did] not establish a real and immediate case or controversy").

We recently applied *Lyons* in *Simic v. City of Chicago*, 851 F.3d 734 (7th Cir. 2017). In that case, a police officer issued Simic a ticket for violating Chicago's ordinance against texting while driving. *Id.* at 736. When the plaintiff failed to pay the ticket, the City took steps to collect a fine. *Id.* Simic then sued the City, claiming that the ordinance was unconstitutional and seeking to enjoin its enforcement. *Id.* at 736–37. On appeal, we determined that Simic did not have standing to seek injunctive relief. "Unlike with damages," we explained, "a past injury alone is insufficient to establish standing for purposes of prospective injunctive relief." *Id.* at 738.

We determined that "Simic's claimed threat of future injury" was "conjectural" because it was entirely "contingent upon her once again driving while using her cell phone and receiving a citation under the Chicago ordinance." *Id.* "For purposes of standing to seek injunctive relief against future harm," we added, "courts generally assume that litigants 'will conduct their activities within the law and so avoid prosecution and conviction.'" *Id.* (quoting *O'Shea*, 414 U.S. at 497). Because Simic did "not have concrete plans to violate

Illinois law by using her cell phone while driving in Chicago," she lacked standing to seek injunctive relief. *Id.*

Applying *Lyons* to the case at hand, Mr. Lopez-Aguilar has failed to establish a case or controversy with the defendants "that would justify the equitable relief sought." *Lyons*, 461 U.S. at 105. Mr. Lopez-Aguilar's complaint identified as the source of his injury a single, isolated incident, on September 18, 2014, when a Marion County officer, at the request of an ICE officer, arrested and held him without probable cause. He did not allege any subsequent contact with the Sheriff's Department or the individual defendants, let alone any subsequent detentions in Marion County. That Mr. Lopez-Aguilar does not reside in Marion County makes a subsequent encounter with the Sheriff's Department and detention at the request of ICE all the more speculative. Therefore, "the odds" that Mr. Lopez-Aguilar will return to Marion County, again commit a traffic violation or other infraction resulting in an encounter with the Sheriff's Department, and again be detained at ICE's request are not "sufficient to make out a federal case for equitable relief." *Lyons*, 461 U.S. at 108 (internal quotation marks omitted). Absent "continuing, present adverse effects," Mr. Lopez-Aguilar's "[p]ast exposure to illegal conduct" by the defendants does not amount to a "present case or controversy" for equitable relief. *O'Shea*, 414 U.S. at 495–96.

Mr. Lopez-Aguilar simply fails to demonstrate a "likelihood of substantial and immediate irreparable injury," a prerequisite for equitable relief. *Lyons*, 461 U.S. at 111 (quoting *O'Shea*, 414 U.S. at 502). Without a "showing of any real or immediate threat that the plaintiff will be wronged again," *id.*, Mr. Lopez-Aguilar lacked standing to request,

and the district court lacked jurisdiction to award, the declaratory judgment and permanent injunction set forth in the Stipulated Judgment.

Mr. Lopez-Aguilar is notably reticent about countering forthrightly the State's argument that, under *Lyons*, he lacked standing to seek (and the district court lacked jurisdiction to award) injunctive relief. Instead, he maintains that the State ignores the line of cases holding that parties can agree through consent decrees to more relief than a court could have ordered absent settlement and more than the Constitution itself requires.[32] This argument over-reads significantly the governing case law. The requirement that the plaintiff must have standing to seek equitable relief does not cease when the parties agree to such relief by stipulated judgment. Although "[c]onsent decrees often embody outcomes that reach beyond basic constitutional protections," to be "enforceable as a judicial decree," a consent decree is "subject to the rules generally applicable to other judgments and decrees." *Kindred v. Duckworth*, 9 F.3d 638, 641 (7th Cir. 1993). The district court cannot "suspend the application of Article III" and the parties cannot "stipulate to the enlargement of federal jurisdiction" by means of a consent decree.

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[32] One of the cases on which Mr. Lopez-Aguilar relies is *Local No. 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501, 522 (1986). Although the Court in *Local No. 93* concluded that parties may agree to, and courts may enter, a consent decree that includes terms beyond the remedies provided in a specific *statute*, the Court never suggested that a court may enter a consent decree that includes a remedy beyond the court's *jurisdiction*. Indeed, the Court noted that "a consent decree must spring from and serve to resolve a dispute within the court's subject-matter jurisdiction." *Id*. at 525.

United States v. ACCRA PAC, Inc., 173 F.3d 630, 633 (7th Cir. 1999). Even when the parties resolve the plaintiff's claims by agreement, therefore, the district court must consider whether it has jurisdiction to award the relief requested.

For instance, in *Blair v. Shanahan*, 38 F.3d 1514 (9th Cir. 1994), the court determined that the plaintiff lacked standing to seek a declaratory judgment that a California statute criminalizing aggressive panhandling was unconstitutional. In the district court, the City of San Francisco had made an offer of judgment under which it would accept a declaratory judgment in favor of the plaintiff. *Id.* at 1517. After the district court approved the consent judgment, the City moved to modify or vacate the judgment. The district court denied that motion, and the City appealed. *Id.* at 1518. The Ninth Circuit reversed, holding that the plaintiff lacked standing to seek declaratory relief because "it [was] unlikely that he [would] ever again desire to panhandle." *Id.* at 1519. Relying on *Lyons*, the court observed that, "in the context of Blair's request for declaratory or injunctive relief, '[p]ast exposure to illegal conduct does not itself show a present case or controversy … if unaccompanied by any continuing, present adverse effects.'" *Id.* (quoting *Lyons*, 461 U.S. at 102). Thus, "Blair's lack of a personal stake in the declaratory judgment" left the court "without jurisdiction to review the district court's order" declaring the statute unconstitutional. *Id.* at 1520.[33]

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[33] Similarly, in *Ducharme v. Rhode Island*, No. 93-1675, 1994 WL 390144 (1st Cir. July 15, 1994) (unpublished), the court concluded that "Ducharme's claims for equitable relief [did] not fall within the subject matter jurisdiction of the federal courts." *Id.* at *3. The Rhode Island State

(continued …)

The parties' agreement to resolve Mr. Lopez-Aguilar's claims by stipulated judgment did not relieve the district court of its obligation to confirm that it had Article III jurisdiction to enter the declaratory judgment and permanent injunction. *Lyons* operates with the same force and effect in this context and compels the conclusion that Mr. Lopez-Aguilar did not have standing to request equitable relief. The Supreme Court has admonished that, absent "great and immediate" irreparable injury, "the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers

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(… continued)
Police had arrested Ducharme for disorderly conduct, taken him to a police building, and strip searched him before placing him in a holding cell. *Id.* at *1. Ducharme brought a claim under 42 U.S.C. § 1983 against the State Police and the police officer who searched him, alleging that the strip search violated his rights under the Fourth and Fourteenth Amendments. *Id.* The parties negotiated a consent judgment, by which the defendants agreed to pay Ducharme damages and to refrain from performing strip searches of arrestees charged with misdemeanors or motor vehicle offenses. *Id.* at *2. The district court denied Ducharme's motion for entry of the consent judgment, and the First Circuit affirmed. Acknowledging that "Ducharme clearly ha[d] standing to bring an action for damages against the defendants based on the … strip search," the court held that "[i]t [was] equally obvious that Ducharme ha[d] no standing to request equitable relief." *Id.* at *3. The court "simply" could not "assume that Ducharme [would] violate the law in the future in a manner that would lead the State Police to arrest him and place him in a holding cell." *Id.* Accordingly, "[i]n the absence of a case or controversy with respect to Ducharme's claim for equitable relief, *Lyons* teaches that neither we nor the district court have jurisdiction to consider the merits of an equitable decree." *Id.* The court perceived no "reason why the outcome of the jurisdictional inquiry should turn on whether the decree is the product of a pre-trial consent judgment or a post-trial order." *Id.*

engaged in the administration of the States' criminal laws." *Lyons*, 461 U.S. at 112; *see also O'Shea*, 414 U.S. at 499. Therefore, the district court erred when it entered the Stipulated Judgment without regard to Mr. Lopez-Aguilar's standing to seek equitable relief.[34]

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[34] Mr. Lopez-Aguilar relies on *O'Sullivan v. City of Chicago*, 396 F.3d 843 (7th Cir. 2005), for the proposition that, although "Article III standing might not have supported injunctive relief (or any relief) at the time the decree was entered," that "did not cast doubt on the district court's ability to enter the decree when the case was properly within its subject-matter jurisdiction." Lopez-Aguilar Br. 47. *O'Sullivan*, however, addressed a different, and unique, situation. In *O'Sullivan*, the original consent decree was entered in 1972 and modified twice after that date. *O'Sullivan*, 396 F.3d at 848, 851. Approximately fifteen years after the last modification of the consent decree, the plaintiffs brought an enforcement action. *Id.* at 851. In response, the defendants maintained that the plaintiffs lacked standing to enforce the decree. *Id.* After reviewing the convoluted history of the litigation, the court made a few notable observations. First, "[a]fter a case has become final by exhaustion of all appellate remedies, only an egregious want of jurisdiction will allow the judgment to be undone by someone who, having participated in the case, cannot complain that his rights were infringed without his knowledge." *Id.* at 859 (quoting *In re Factor VIII*, 159 F.3d 1016, 1019 (7th Cir. 1998)). We determined that there was not "an egregious want of jurisdiction" when the district court originally entered the consent decree. *Id.* at 866. Rather, there had been significant changes in the Supreme Court's approach to subject-matter jurisdiction since entry of the decree. *Id.* at 866–67. Further, we observed that when enforcing a consent decree that included "an injunction restricting the ability of a State or local government to meet its responsibilities," "there is a need to ensure that changes in factual or legal circumstances do not transform a once-just result into one that is unjust, illegal or overly burdensome and do not unnecessarily hinder a State in providing for the welfare of its citizenry." *Id.* at 865. Given these circumstances, the proper action of the governmental de-

(continued …)

Conclusion

For the foregoing reasons, we reverse the judgment of the district court and remand for proceedings consistent with this opinion. Indiana may recover its costs in this court.

REVERSED AND REMANDED

(… continued)
fendant is not to ignore or defy the decree, but to seek a modification of the decree based on the change in law. *Id.* at 868. We therefore remanded the case to the district court, inviting the governmental defendants to seek a modification of the decree under Rule 60(b). *Id.*

The differences between our situation and the one in *O'Sullivan* are stark. There is no suggestion that, because of changes in the law, the district court initially had jurisdiction to award injunctive relief when the parties entered the Stipulated Judgment but has since lost such jurisdiction. At no point in this litigation did Mr. Lopez-Aguilar have standing to seek the prospective injunctive relief awarded by the district court. Moreover, this case is before us on direct appeal; it has not "become final by exhaustion of all appellate remedies." *Id.* at 859. Nor is the State attempting to undo a judgment after it has had the opportunity to participate in a case and have its rights fairly determined. Rather, the State seeks in the first instance an opportunity to ensure that its laws can operate within its most populous county in the manner contemplated by the Indiana legislature.

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, June 17, 2019 10:24 AM
To:	Short, Tracy
Cc:	twheeler@fbtlaw.com
Subject:	Connecting

Hi Tracy,

I'm connecting you with Tom Wheeler, the new General Counsel for the National Sheriffs Association. I think he might have some questions for you about the Warrant Service Officer program.

Thanks!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, June 23, 2019 5:34 PM
To: Executive Director
Subject: Re: Brown v. Ramsay case # 18-10279-CIV-KMW

I can ask our folks to give you a call. Sheriff's GC is in the loop (McCullah, I think?).

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 23, 2019, at 5:07 PM, Executive Director <ed@sheriffs.org> wrote:

> No one got to me! Tom is our outside counsel. Sorry afraid that would happen.
>
> Please get me something because FL sheriff is still in dark...
>
> Thx!!!
>
> Please forgive any typos, errors or tonal shortcomings as this message is being sent from my phone.
>
> Jonathan Thompson
> (b) (6)

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Sunday, June 23, 2019 5:04:18 PM
To: Executive Director
Subject: Re: Brown v. Ramsay case # 18-10279-CIV-KMW

One of our folks connected with the Sheriff's GC and Tom Wheeler earlier this week to give a status update. Or so I understand

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jun 23, 2019, at 4:23 PM, Executive Director <ed@sheriffs.org> wrote:

> Update on this, please…
>
> Please forgive any typos, errors or tonal shortcomings as this message is being sent from my phone.
>
> Jonathan Thompson

(b) (6)

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Wednesday, June 19, 2019 2:38:13 PM
To: Wheeler, Thomas E.; Cook, Steven H. (ODAG); Executive Director; Tom Blank; Wetmore, David H. (ODAG)
Cc: Gualtieri,Robert; Carrie Hill; Favitta, Jeff (OAG); (b)(6) per ATF
Subject: RE: Brown v. Ramsay case # 18-10279-CIV-KMW

Hey y'all,

I'm checking on the status of things internally. Adding Dave Wetmore from ODAG and taking off Auggie. Will be in touch.

Best,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Wheeler, Thomas E. <twheeler@fbtlaw.com>
Sent: Wednesday, June 19, 2019 12:32 PM
To: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Executive Director <ed@sheriffs.org>; Tom Blank (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Cc: Gualtieri,Robert <rgualtieri@pcsonet.com>; Carrie Hill <carrie@sheriffs.org>; Flentje, August (CIV) (b) (6) >; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF >; Wheeler, Thomas E. <twheeler@fbtlaw.com>
Subject: RE: Brown v. Ramsay case # 18-10279-CIV-KMW

Steve, thanks for looping in Gene and August. I am late to this party, but happy to help any way that I can in facilitating communication between NSA, DOJ and the MCSO since I spent so much time working with you guys in the past. Just let me know if I can help, but that being said I defer to Jonathan/Carrie as the NSA liaisons.

Thomas E. Wheeler
Attorney At Law | Frost Brown Todd LLC

317.237.3810 Direct
(b) (6) Mobile

twheeler@fbtlaw.com

From: Cook, Steven H. (ODAG) <Steven.H.Cook@usdoj.gov>
Sent: Wednesday, June 19, 2019 12:26 PM
To: Executive Director <ed@sheriffs.org>; Tom Blank (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Cc: Wheeler, Thomas E. <twheeler@fbtlaw.com>; Gualtieri, Robert

Cc: Wheeler, Thomas E. <twheeler@fbtlaw.com>; Gualtieri,Robert <rgualtieri@pcsonet.com>; Carrie Hill <carrie@sheriffs.org>; Flentje, August (CIV) (b) (6) Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>; Favitta, Jeff (OAG) <Jeff.Favitta@usdoj.gov>; (b)(6) per ATF
Subject: RE: Brown v. Ramsay case # 18-10279-CIV-KMW

By copy of this I am looping in Gene Hamilton and Jeff Favitta in the AG's office and August Flentje in the Civil Division. As of April 30, it was my impression that we were coordinating the DOJ position and potential next steps with MCSO but with my retirement looming, I will need to hand it off to those copied to address.

Steve

From: Executive Director <ed@sheriffs.org>
Sent: Wednesday, June 19, 2019 12:16 PM
To: (b)(6) per ATF Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Tom Blank (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Cc: Wheeler, Thomas E. <twheeler@fbtlaw.com>; Gualtieri,Robert <rgualtieri@pcsonet.com>; Carrie Hill <carrie@sheriffs.org>
Subject: Fwd: Brown v. Ramsay case # 18-10279-CIV-KMW

Guys,
Any federal inaction could have very serious repercussions for sheriffs cooperation in future enforcement programs.

How is the DOJ planning to help remedy a problem created by the government?

Jonathan

Please forgive any typos, errors or tonal shortcomings as this message is being sent from my phone.

Jonathan Thompson
(b) (6)

From: Patrick McCullah <PMcCullah@keysso.net>
Sent: Wednesday, June 19, 2019 11:30:14 AM
To: Executive Director; (b)(6) - Jack Heekin Email Address
Subject: Brown v. Ramsay case # 18-10279-CIV-KMW

Good morning Gentlemen,

I hope all is well. The cavalry has not arrived and this case is progressing. If the federal government is to make any meaningful contribution, either directly or indirectly in this litigation, the window for that involvement is rapidly closing. Anything new on your end?

Thank you,

Patrick McCullah

General Counsel,
Monroe County Sheriff's Office
5525 College Road
Key West, Florida 33040
Telephone: 305.292.7020
Fax: 305.292.7070
E-mail: pmccullah@keysso.net

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, July 3, 2019 11:25 AM
To: Executive Director
Subject: Re: Any Updates?

Working on it. Hope to have some update later today

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

> On Jul 2, 2019, at 10:33 AM, Executive Director <ed@sheriffs.org> wrote:
>
> THIS MESSAGE CONTAINS LEGALLY PROTECTED AND CLIENT PRIVILEGED INFORMATION
>
> Gene, forgive my tenor.
>
> I know you have this on your list, and Pre seems to get it too. But Florida sheriffs are beyond frustrated, their Summer meeting is July 27-29. My guess is unless they hear definitively they will take action to withdraw from WSOs and BOA until feds fix...
>
> Pre and I discussed.
>
> In my opinion the only person that can fix now is the DAG with a firm and swift kick to Civil, "fix this today, give me a report by COB, and take the Sheriff's case, now!"...
>
> Sorry...
>
> J
> (b) (6)
>
>
> Confidentiality Notice: This message originated or was sent by or on behalf of an attorney. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.
>
> -----Original Message-----

> -----Original Message-----
> From: Rick Ramsay [mailto:rramsay@keysso.net]
> Sent: Tuesday, July 2, 2019 10:03 AM
> To: Executive Director <ed@sheriffs.org>
> Subject: Re: Any Updates?
>
> No, the Government has let the Sheriff's down again !!
>
> Sent from my iPhone
>
>> On Jul 2, 2019, at 10:02 AM, Executive Director <ed@sheriffs.org> wrote:
>>
>> No, I have let you down...
>>
>> -----Original Message-----
>> From: Rick Ramsay [mailto:rramsay@keysso.net]
>> Sent: Tuesday, July 2, 2019 10:02 AM
>> To: Executive Director <ed@sheriffs.org>
>> Subject: Re: Any Updates?
>>
>> Thank you sir, Rick
>>
>> Sent from my iPhone
>>
>>> On Jul 2, 2019, at 9:57 AM, Executive Director <ed@sheriffs.org> wrote:
>>>
>>> Well, I just spoke with the AG's person. Told them time is up, if they don't do something this week, the jig is up...keeping glimmer of hope alive but...I won't stop jumping on them.
>>>
>>> J
>>>
>>> -----Original Message-----
>>> From: Rick Ramsay [mailto:rramsay@keysso.net]
>>> Sent: Tuesday, July 2, 2019 9:43 AM
>>> To: Executive Director <ed@sheriffs.org>
>>> Cc: Patrick McCullah <PMcCullah@keysso.net>; Gualtieri,Robert <rgualtieri@pcsonet.com>
>>> Subject: Re: Any Updates?
>>>
>>> So much for cooperation and partnership. In the end, just like prior with detainers Sheriff's left holding the bag, so sad. Thank you all for your efforts, Sheriff
>>>
>>> Sent from my iPhone
>>>
>>> On Jul 2, 2019, at 9:37 AM, Executive Director <ed@sheriffs.org<mailto:ed@sheriffs.org>> wrote:

>>>
>>> Great. I'm beyond words. Sounds to me like they don't know what to do.
>>>
>>> Bob, I will call you later this am...
>>>
>>> J
>>>
>>> From: Patrick McCullah [mailto:PMcCullah@keysso.net]
>>> Sent: Tuesday, July 2, 2019 9:35 AM
>>> To: 'Gualtieri,Robert' <rgualtieri@pcsonet.com<mailto:rgualtieri@pcsonet.com>>; Executive Director <ed@sheriffs.org<mailto:ed@sheriffs.org>>
>>> Cc: Rick Ramsay <rramsay@keysso.net<mailto:rramsay@keysso.net>>
>>> Subject: RE: Any Updates?
>>>
>>> Good morning Sheriff,
>>>
>>> I hope all is well. Unfortunately, no. Per Bruce Jolly "Last word, at the end the week before last week was to the effect that it was still looking at the situation."
>>>
>>> Thank you for staying on this.
>>>
>>> Have a great day,
>>>
>>> Patrick McCullah
>>> General Counsel,
>>> Monroe County Sheriff's Office
>>> 5525 College Road
>>> Key West, Florida 33040
>>> Telephone: 305.292.7020
>>> Fax: 305.292.7070
>>> E-mail: pmccullah@keysso.net<mailto:pmccullah@keysso.net> >>> <image001.gif>
>>>
>>> Confidentiality Notice: This message is being sent by or on behalf of an attorney. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.
>>>
>>> Florida has a very broad public records law. Virtually all electronic mail sent or received by the Monroe County Sheriff's Office is available to the public upon request.
>>>
>>>
>>>

>>> From: Gualtieri,Robert [mailto:rgualtieri@pcsonet.com]
>>> Sent: Tuesday, July 02, 2019 7:59 AM
>>> To: Patrick McCullah <PMcCullah@keysso.net<mailto:PMcCullah@keysso.net>>; 'Executive Director' <ed@sheriffs.org<mailto:ed@sheriffs.org>>
>>> Subject: RE: Any Updates?
>>>
>>> Patrick.....any communications from DOJ since you and I talked last week?
>>>
>>> From: Patrick McCullah [mailto:PMcCullah@keysso.net]
>>> Sent: Monday, June 24, 2019 9:18 AM
>>> To: 'Executive Director' <ed@sheriffs.org<mailto:ed@sheriffs.org>>
>>> Cc: Gualtieri,Robert <rgualtieri@pcsonet.com<mailto:rgualtieri@pcsonet.com>>
>>> Subject: RE: Any Updates?
>>>
>>> Good morning,
>>>
>>> I received a call last week from Prerek Shah on behalf of Gene Hamilton. He indicated that it was a priority and they were working on it. I don't think we have had any additional communication at the trial level.
>>>
>>> Thank you for following up.
>>>
>>> Have a great day,
>>>
>>> Patrick McCullah
>>> General Counsel,
>>> Monroe County Sheriff's Office
>>> 5525 College Road
>>> Key West, Florida 33040
>>> Telephone: 305.292.7020
>>> Fax: 305.292.7070
>>> E-mail: pmccullah@keysso.net<mailto:pmccullah@keysso.net> >>> <image001.gif>
>>>
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>>>
>>> Florida has a very broad public records law. Virtually all electronic mail sent or received by the Monroe County Sheriff's Office is available to the public upon request.
>>>
>>>
>>>

>>> From: Executive Director [mailto:ed@sheriffs.org]
>>> Sent: Sunday, June 23, 2019 5:39 PM
>>> To: Patrick McCullah <PMcCullah@keysso.net<mailto:PMcCullah@keysso.net>>
>>> Cc: Gualtieri,Robert <rgualtieri@pcsonet.com<mailto:rgualtieri@pcsonet.com>>
>>> Subject: Any Updates?
>>>
>>> You hear any word from DOJ?
>>>
>>>
>>> Please forgive any typos, errors or tonal shortcomings as this message is being sent from my phone.
>>>
>>> Jonathan Thompson
>>> (b) (6)
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Hamilton, Gene (OAG)

Subject:	Meeting - Monroe County Florida Suit on Wrongful Detainer
Start:	Friday, July 26, 2019 1:00 PM
End:	Friday, July 26, 2019 2:00 PM
Recurrence:	(none)
Meeting Status:	No response required
Organizer:	Hamilton, Gene (OAG)
Required Attendees:	Ward, Thomas G. (CIV); Executive Director; Albence, Matthew; Short, Tracy; Loiacono, Adam V; Favitta, Jeff (OAG); Kueter, Dean (OLA); pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County
Optional Attendees:	Cook, Steven H. (ODAG); Shah, Prerak (OASG)

From: Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>
Sent: Tuesday, July 16, 2019 3:21 PM
To: Executive Director <ed@sheriffs.org>; Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Short, Tracy <(b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Shah, Prerak (OASG) <pshah@jmd.usdoj.gov>; Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

I've reserved the Civil Division's conference room 3143 in Main Justice (950 Penn, NW) for July 26 at 1pm.

If folks can send me a list of attendees I can share with DOJ security, please do.

Tom Ward

From: Executive Director <ed@sheriffs.org>
Sent: Tuesday, July 16, 2019 3:00 PM
To: Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>; Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF >; pmccullah@keysso.net; Bob A.

Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Shah, Prerak (OASG) <pshah@jmd.usdoj.gov>; Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>
Subject: Re: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

We will be there!

Please forgive any typos, errors or tonal shortcomings as this message is being sent from my phone.

Jonathan Thompson
(b) (6)

From: Ward, Thomas G. (CIV) <Thomas.G.Ward@usdoj.gov>
Sent: Tuesday, July 16, 2019 2:53:08 PM
To: Albence, Matthew; Hamilton, Gene (OAG); Executive Director; Short, Tracy; Loiacono, Adam V; Favitta, Jeff (OAG); (b)(6) per ATF pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County
Cc: Cook, Steven H. (OLA); Shah, Prerak (OASG); Ward, Thomas G. (CIV)
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

Should we calendar 1pm on July 26th at Main Justice?

Tom Ward
Deputy Assistant Attorney General, Torts Branch, Civil Division
U.S. Department of Justice

From: Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Sent: Tuesday, July 16, 2019 10:29 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Executive Director <ed@sheriffs.org>; Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF >; pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (OLA) <stcook@jmd.usdoj.gov>; Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>; Shah, Prerak (OASG) <pshah@jmd.usdoj.gov>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

26th best for us. Thanks.

Sent with BlackBerry Work
(www.blackberry.com)

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Date: Tuesday, Jul 16, 2019, 9:48 AM
To: Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>, Executive Director <ed@sheriffs.org>, Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>, Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>, Favitta, Jeff (OAG) <Jeff.Favitta@usdoj.gov>, (b)(6) per ATF >, pmccullah@keysso.net <pmccullah@keysso.net>, Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (ODAG) <Steven.H.Cook@usdoj.gov>, Ward, Thomas G. (CIV) <Thomas.G.Ward@usdoj.gov>, Shah, Prerak (OASG) <Prerak.Shah@usdoj.gov>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

Monday doesn't work for a key member of our team. The 26th is the optimal day for me but I can make the afternoon of the 24th work.

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Sent: Tuesday, July 16, 2019 9:45 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Executive Director <ed@sheriffs.org>; Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>; Shah, Prerak (OASG) <pshah@jmd.usdoj.gov>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

We will make it work.

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Tuesday, July 16, 2019 9:20 AM
To: Executive Director <ed@sheriffs.org>; Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <Jeff.Favitta@usdoj.gov>; (b)(6) per ATF >; pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Cook, Steven H. (OLA) <Steven.H.Cook2@usdoj.gov>; Ward, Thomas G. (CIV) <Thomas.G.Ward@usdoj.gov>; Shah, Prerak (OASG) <Prerak.Shah@usdoj.gov>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

Thank you for the message, Jonathan. We are DOJ would be happy to meet with you all next week. Is there a time on each of those days that is better than others for you all?

DHS, work on your end?

Thanks,

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

From: Executive Director <ed@sheriffs.org>
Sent: Monday, July 15, 2019 6:10 PM
To: (b)(6); (b)(7)(C) per ICE @ice.dhs.gov; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF ; pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Matthew Albence (b)(6); (b)(7)(C) per ICE @ice.dhs.gov) (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Cook, Steven H. (OLA) <stcook@jmd.usdoj.gov>
Subject: Meeting Request for Monroe County Florida Suit on Wrongful Detainer
Importance: High

Folks,
On behalf of Sheriff Ramsay of Monroe Country Florida and the National Sheriffs' Association I am requesting a meeting of this group (plus an added person from DOJ Civil Division) to discuss the impasse on federal support to the Sheriff's office in Brown v. Ramsay—a case pending in Florida federal district court.

It is apparent that your respective agencies have equities in this case that will favorably support the Sheriff's desires for a dismissal, negotiated settlement or other remedy. To be clear, it was because of the Government's request (via an ICE BOA detainer attached) that the sheriff's deputy detained plaintiff Brown. That detention is now the subject of federal litigation alleging the violation of Plaintiff's 5th amendment rights.

Since its inception the BOA, and now WSO, was meant as a tool to grant ICE officers/agents a constitutionally and legal method to ask non-federal law enforcement to hold an inmate if ICE determined probable cause existed. It was this mutual commitment that permitted the prior Attorney General and Secretary of DHS to state unequivocally that the USG would use all possible means available to intervene if/when a sheriff or local agency was sued as a result of these initiatives.

In this case ICE personnel erroneously requested a detainer against a USCIT (Brown). That detainer which was signed by multiple line and supervisory personnel. This mistaken determination is the cornerstone of the case in question.

For six plus months we have sought assistance to have the DOJ or ICE intervene. We are now told the DOJ cannot--short of offering remuneration of private attorney fees. While appreciated, it is not relevant in this case as the Sheriff's outside counsel is paid by their insurance underwriter.

We understand that Justice can't authorize further action/involvement than already offered unless/until ICE grants release of information or access to the Officer(s) in question.

Therefore we are at an impasse. We fear this impasse will unravel two vital programs to offer sheriffs the legal and constitutional authority to detain criminal aliens when requested by ICE.

We request a meeting for next week (22, 24, or 26 July) here in Washington, or as soon as practicable pending the parties availability.

Respectfully,

Jonathan Thompson
(b) (6)

Jonathan Thompson
Executive Director and CEO
National Sheriffs' Association

Jonathan F. Thompson
National Sheriffs' Association
Executive Director and CEO

(800) 424-7827 Work
jfthompson@sheriffs.org
1450 Duke Street 800.424.7827 Ext. 300
Alexandria, VA 22314
http://www.sheriffs.org

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, July 17, 2019 4:57 PM
To: Wheeler, Thomas E.
Subject: Re: Florida ICE Case - National Sheriffs Association

Yes. I set it up with some folks. Thanks for checking!

Gene P. Hamilton
Counselor to the Attorney General
U.S. Department of Justice

On Jul 17, 2019, at 4:52 PM, Wheeler, Thomas E. <twheeler@fbtlaw.com> wrote:

> Just want to make sure this meeting on Friday, July 26, 2019 is on your radar. The NSA President and I just got briefed on it by our ED. He said the ICE Director would be there, as well as someone senior from the DOJ Civil Division, as well as people from OLC and OLP. He did not mention any front office people. He says he has tried to contact the AG directly. I'm not really involved as of yet, beyond what we did before, but wanted to make sure you were in the loop.
>
> **Thomas E. Wheeler**
> Attorney At Law | Frost Brown Todd LLC
> 317.237.3810 Direct
> (b) (6) Mobile
> twheeler@fbtlaw.com