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 (b)(6), (b)(7)(C) per ICE and the Acting Community Relations Officer, Ms. (b)(6), (b)(7)(C) per ICE will be the primary points of contact, but FOD (b)(6), (b)(7)(C) per ICE can certainly be helpful also.

FOD (b)(6), (b)(7)(C) per ICE
(b)(6), (b)(7)(C) per ICE @ice.dhs.gov
Office: 404-893-(b)(6), (b)(7)(C)
Mobile: 716-270-(b)(6), (b)(7)

SAC (b)(6), (b)(7)(C) per ICE
(b)(6), (b)(7)(C) per ICE @ice.dhs.gov
Office: 404-346-(b)(6), (b)(7)
Mobile: 202-256-(b)(6), (b)(7)(C)

NOTE: Atlanta Community Relations Officer position is currently vacant. The position is remotely covered by Acting Regional Director (b)(6), (b)(7)(C) per ICE, who sits in the Tampa office.

Community Relations Officer/Acting Regional Director (b)(6), (b)(7)(C) per ICE
(b)(6), (b)(7)(C) per ICE @ice.dhs.gov
Office: 813-357-(b)(6), (b)(7)(C)
Mobile: 813-535-(b)(6), (b)(7)(C)

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

[redacted]

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:(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:(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" (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:(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

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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

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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)
(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?

between 11:30 1pm PST (2:30 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
>>> (b) (6)
>>> 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 (b) (6) mailto (b) (6) g>>
>>> 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 [redacted] (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
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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

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Eagan, MN 55123

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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
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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

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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
EREZ REUVENI
Assistant Director
U.S. Department of Justice
Civil Division
450 5th Street, NW
Washington, D.C. 20530
Tel: 202-307-4293
erez.r.reuveni@usdoj.gov

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 interference 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

Michael S. Daudt
Woodruff, Spradlin & Smart
714.415.1059 (Direct)
714.415.1159 (Facsimile)
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)]

(b) (5)

Sent from my iPhone

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

(b) (5)

(b) (5)

(b) (5)

(b) (5)

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) (b) (6) > wrote:

Fine with me. Here is a suggestion (b) (5)

(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

--
Marguerite Telford
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(202) 466-8185 fax: (202) 466-8076
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--
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Director of Communications
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(202) 466-8185 fax: (202) 466-8076
mrt@cis.org www.cis.org