Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, November 6, 2018 11:41 AM
To: Jonathan F. Thompson
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Another detainer win for a sheriff with our participation as amicus

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-317

Filed: 6 November 2018

Mecklenburg County, No. 17 CR 230629-30

CARLOS CHAVEZ, Petitioner,

v.

IRWIN CARMICHAEL, SHERIFF, MECKLENBURG COUNTY, Respondent.

Mecklenburg County, No. 16 CR 244165

LUIS LOPEZ, Petitioner,

v.

IRWIN CARMICHAEL, SHERIFF, MECKLENBURG COUNTY, Respondent.

Appeal by respondent from orders entered 13 October 2017 by Judge Yvonne Mims-Evans in Mecklenburg County Superior Court. Heard in the Court of Appeals 2 October 2017.

National Immigration Project of the National Lawyers Guild, by Sejal Zota, and Goodman Carr, PLLC, by Rob Heroy, for petitioners Luis Lopez and Carlos Chavez.

Womble Bond Dickenson (US) LLP, by Sean F. Perrin, for respondent.

U.S. Department of Justice Civil Division, by Trial Attorney Joshua S. Press, for amicus curiae United States Department of Justice.

TYSON, Judge.

Mecklenburg County Sheriff Irwin Carmichael ("the Sheriff") appeals, in his official capacity, from two orders of the superior court ordering the Sheriff to release two individuals from his custody. We vacate the superior court's orders and remand to the superior court to dismiss the *habeas corpus* petitions for lack of subject matter jurisdiction.

I. Background

A. *287(g) Agreement and ICE Detainer Requests*

The Sheriff and Immigration and Customs Enforcement ("ICE"), an agency under the jurisdiction and authority of the United States Department of Homeland Security ("DHS"), entered into a written agreement (the "287(g) Agreement") on 28 February 2017 pursuant to 8 U.S.C. § 1357(g)(1).

The federal Immigration and Nationality Act ("INA") authorizes DHS to enter into formal cooperative agreements, like the 287(g) Agreement, with state and local law enforcement agencies and officials. *See* 8 U.S.C. § 1357(g). Under these agreements, state and local authorities and their officers are subject to the supervision of the Secretary of Homeland Security and are authorized to perform specific immigration enforcement functions, including, in part, investigating, apprehending, and detaining illegal aliens. 8 U.S.C. §§ 1357(g)(1)-(9). In the absence of a formal cooperative agreement, the United States Code additionally provides local authorities may still "communicate with [ICE] regarding the immigration status of

any individual . . . or otherwise cooperate with [ICE] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(A)-(B).

Upon request from DHS, state and local law enforcement may "participate in a joint task force with federal officers, provide operational support in executing a warrant, or allow federal immigration officials to gain access to detainees held in state facilities." *Id.* However, state and local officers may not make unilateral decisions concerning immigration enforcement under the INA. *Id.*

Federal agencies and officers issue a Form I-247 detainer regarding an alien to request the cooperation and assistance of state and local authorities. 8 C.F.R. § 287.7(a), (d). An immigration detainer notifies a state or locality that ICE intends to take custody of an alien when the alien is released from that jurisdiction's custody. *Id.* ICE requests the state or local authority's cooperate by notifying ICE of the alien's release date and by holding the alien for up to 48 hours thereafter for ICE to take custody. *Id.* In addition to detainers, ICE officers may also issue administrative warrants based upon ICE's determination that probable cause exists to remove the alien from the United States. *Lopez-Lopez v. Cty. of Allegan*, 321 F. Supp. 3d 794, 799 (W.D. Mich. 2018) (citing *Abel v. United States*, 362 U.S. 217, 233-34, 4 L. Ed. 2d 668 (1960) and 8 U.S.C. § 1226(a)).

B. *Chavez and Lopez' Habeas Petitions*

1. Luiz Lopez

On 5 June 2017, Luiz Lopez ("Lopez") was arrested for common law robbery, felony conspiracy, resisting a public officer, and misdemeanor breaking and entering. Lopez was incarcerated at the Mecklenburg County Jail under the Sheriff's custody. Later that day, following his arrest, Lopez was served with a Form I-200 administrative immigration arrest warrant issued by DHS. Also the same day, the Sheriff's office was served with a Form I-247A immigration detainer issued by DHS. The Form I-247A requested the Sheriff to maintain custody of Lopez for up 48 hours after he would otherwise be released from the state's jurisdiction to allow DHS to take physical custody of Lopez. Lopez was held in jail on the state charges under a $400 secured bond.

2. Carlos Chavez

On 13 August 2017, Carlos Chavez ("Chavez") was arrested for driving while impaired, no operator's license, interfering with emergency communications, and assault on a female, and was detained at the Mecklenburg County Jail. That same day, Chavez, under his name "Carlos Perez-Mendez," was served with a Form I-200 administrative immigration warrant issued by DHS.

The Sheriff's office was served with a Form I-247A immigration detainer, issued by DHS, requesting the Sheriff to detain "Carlos Perez-Mendez" for up to 48 hours after he would otherwise be released from the state's jurisdiction to allow DHS

to take physical custody of him. Chavez was held in jail for the state charges on a $100 cash bond.

At approximately 9:00 a.m., on 13 October 2017, Lopez' release from jail on state criminal matters was resolved when his $400 secured bond was purportedly made unsecured by a bond modification form. That same day, Chavez posted bond on his state criminal charges. The Sheriff continued to detain Lopez and Chavez ("Petitioners") at the county jail pursuant to the Form I-247A immigration detainers and I-200 arrest warrants issued by DHS.

At 9:13 a.m. on 13 October 2017, Chavez and Lopez filed petitions for writs of *habeas corpus* in the Mecklenburg County Superior Court. Petitioners recited three identical grounds to assert their continued detention was unlawful: (1) "the detainer lacks probable cause, is not a warrant, and has not been reviewed by a judicial official therefore violating [Petitioners'] Fourth Amendment rights under the United States Constitution and . . . North Carolina Constitution"; (2) "[the Sheriff] lacks authority under North Carolina General Statutes to continue to detain [Petitioners] after all warrants and sentences have been served"; and (3) "[the Sheriff's] honoring of ICE's request for detention violates the anti-commandeering principles of the Tenth Amendment . . . ." In his petition for writ of *habeas corpus,* Chavez alleged that he was held at the county jail pursuant to the immigration detainer and administrative warrant listing his name as "Carlos Perez-Mendez."

Later that morning, the superior court granted both Petitioners' petitions for writs of *habeas corpus*, and entered return orders, which ordered that the Petitioners "be immediately brought before a judge of Superior Court for a return hearing pursuant to N.C.G.S. 17-32 to determine the legality of [their] confinement." The trial court also ordered the Sheriff to "immediately appear and file [returns] in writing pursuant to N.C.G.S. 17-14."

Based upon our review of a chain of emails included in the record on appeal, Mecklenburg County Public Defender's Office Investigator, Joe Carter, notified Marilyn Porter, in-house legal counsel for the Sheriff's office, the petitions for writs of *habeas corpus* had been filed. At 9:30 a.m. on October 13, Porter forwarded Carter's email to the Sheriff; Sean Perrin, outside legal counsel for the Sheriff; and eight other individuals affiliated with the Sheriff's office. Porter stated in her email that "I do not acknowledge receipt of any of [Carter's] emails on this topic. We will see who is the subject of this Writ – and what Judge signed."

In the same chain of emails, Sheriff's Captain Donald Belk responded he had received notice from the clerk of court that Petitioners' "cases are on in 5350 this morning." Belk also wrote, "CHAVEZ, CARLOS 451450, he was put in ICE custody this morning. I have informed Lock Up that Chavez is in ICE custody and should not go to court." Belk's email also stated, "LOPEZ, LUIS 346623, he is in STATE custody."

After the superior court signed its return orders, Public Defender Investigator Carter went to the Sheriff's office. An employee at the front desk informed him that neither the Sheriff nor his in-house counsel, Porter, were present at the office. The front desk receptionist refused to accept service of the superior court's return orders and the Petitioners' *habeas* petitions. Carter left copies of the orders and petitions on the Sheriff's front desk at 10:23 a.m. Carter then went to the county jail and left copies of the orders and petitions with a sheriff's deputy at 10:26 a.m.

At 11:57 a.m. that morning and without notice of the hearing to the Sheriff, the superior court began a purported return hearing on Petitioners' *habeas* petitions. The Sheriff did not appear at the hearing, did not produce Petitioners before the court, and had not yet filed returns pursuant to N.C. Gen. Stat. § 17-14 (2017).

During the return hearing, Petitioners' counsel provided the court with Carter's certificates of service of the Petitioners' *habeas* petitions and the court's return orders. Petitioners' counsel informed the court about the email sent by Carter to the Sheriff's in-house counsel, Porter, earlier that day. The court ruled Petitioners' continued detention was unlawful and ordered the Sheriff to immediately release Petitioners.

Later that day, after the superior court had ordered Petitioners to be released, counsel for the Sheriff timely filed written returns for both Petitioners' cases within the limits allowed by N.C. Gen. Stat. § 17-26 (2017). Before the superior court issued

its orders to release Petitioners, the Sheriff's office had turned physical custody of both Petitioners over to ICE officers.

On 6 November 2017, the Sheriff filed petitions for writs of certiorari with this Court to seek review of the superior court's 13 October 2017 orders. The Sheriff also filed petitions for a writ of prohibition to prevent the superior court from ruling on *habeas corpus* petitions filed in state court, premised upon the Sheriff's alleged lack of authority to detain alien inmates subject to federal immigration warrants and detainer requests. On 22 December 2017, this Court allowed the Sheriff's petitions for writs of certiorari and writ of prohibition.

On 22 January 2018, the Sheriff served a proposed record on appeal. Petitioners objected to inclusion of two documents, a version of the Form I-200 immigration arrest warrant for Lopez signed by a DHS immigration officer and the 287(g) Agreement between ICE and the Sheriff's office. The trial court held a hearing to settle the record on appeal. The trial court ordered the 287(g) Agreement to be included in the record on appeal and the signed Form I-200 warrant for Lopez not to be included.

The record on appeal was filed and docketed with this Court on 27 March 2018. Prior to the Sheriff submitting his brief, Petitioners filed a motion to strike the 287(g) Agreement and a petition for writ of certiorari challenging the trial court's order, which had settled the record on appeal. By an order issued 4 May 2018, this Court

denied Petitioners' petition for writ of certiorari "without prejudice to assert argument in direct appeal." Petitioners' motion to strike the 287(g) Agreement from the record on appeal was dismissed by an order of this Court entered 12 September 2018.

On 27 April 2018, the United States filed a motion for leave to file an *amicus curiae* brief. By an order dated 1 May 2018, this Court allowed the United States' ("*Amicus")* motion.

On 27 April 2018, the Sheriff filed his appellate brief. Included in the appendix to the brief was a copy of the ICE Operations Manual. On 2 July 2018, Petitioners filed a motion to strike the ICE Operations Manual from the Sheriff's brief. This Court denied Petitioners' motion to strike the ICE Operations Manual by an order entered 12 September 2018.

II. Jurisdiction

Jurisdiction to review this appeal lies with this Court pursuant to the Court's order granting the Sheriff's petitions for writs of certiorari and prohibition entered 22 December 2017. N.C. Gen. Stat. § 1-269 (2017).

III. Analysis

The Sheriff, Petitioners, and *Amicus* all present the same arguments with regard to both Petitioners. We review the parties' arguments as applying to both of the superior court's orders.

The Sheriff argues the superior court was without jurisdiction to consider Petitioners' petitions for writs of *habeas corpus*, or to issue the writs, because of the federal government's exclusive control over immigration under the United States Constitution, the authority delegated to him under the 287(g) Agreement, and under the administrative warrants and immigration detainers issued against Petitioners. *See* 8 U.S.C. § 1357(g)(10)(A)-(B).

A. Mootness

Petitioners initially argue the cases are moot, because the Sheriff has turned Petitioners over to the physical custody of ICE. The Sheriff argues that even if the cases are moot, the issues fall within an exception to the mootness doctrine.

"Whenever, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed [as moot.]" *In re Peoples,* 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978). "A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Roberts v. Madison Cty. Realtors Ass'n*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996) (citation omitted).

The issues in the case before us are justiciable where the question involves is a "matter of public interest." *Matthews v. Dep't of Transportation*, 35 N.C. App. 768,

770, 242 S.E.2d 653, 654 (1978). "In such cases the courts have a duty to make a determination." *Id.* (citation omitted).

Even if the Sheriff is not likely to be subject to further *habeas* petitions filed by Chavez and Lopez or orders issued thereon, this matter involves an issue of federal and state jurisdiction to invoke the "public interest" exception to mootness. Under the "public interest" exception to mootness, an appellate court may consider a case, even if technically moot, if it "involves a matter of public interest, is of general importance, and deserves prompt resolution." *N.C. State Bar v. Randolph*, 325 N.C. 699, 701, 386 S.E.2d 185, 186 (1989). Our appellate courts have previously applied the "public interest" exception to otherwise moot cases of clear and far-reaching significance, for members of the public beyond just the parties in the immediate case. *See, e.g.*, *Granville Cty. Bd. of Comm'rs v. N.C. Hazardous Waste Mgmt. Comm'n*, 329 N.C. 615, 623, 407 S.E.2d 785, 790 (1991) (applying the "public interest" exception to review case involving location of hazardous waste facilities); *In re Brooks*, 143 N.C. App. at 605-06, 548 S.E.2d at 751-52 (applying the "public interest" exception to police officers' challenge of a State Bureau of Investigation procedure for handling personnel files containing "highly personal information" and recognizing that "the issues presented . . . could have implications reaching far beyond the law enforcement community").

Similar to the procedural posture of the Sheriff's appeal, this Court applied the "capable of repetition, but evading review" as well as the "public interest" exception in *State v. Corkum* to review a defendant's otherwise moot appeal, which was before this Court on a writ of certiorari. *State v. Corkum*, 224 N.C. App. 129, 132, 735 S.E.2d 420, 423 (2012) (holding that an issue of felon's confinement credit under structured sentencing under the Justice Reinvestment Act of 2011 required review because "all felons seeking confinement credit following revocation of post-release supervision will face similar time constraints when appealing a denial of confinement credit effectively preventing the issue regarding the trial judge's discretion from being resolved").

The Sheriff's appeal presents significant issues of public interest because it involves the question of whether our state courts possess jurisdiction to review *habeas* petitions of alien detainees ostensibly held under the authority of the federal government. This issue potentially impacts *habeas* petitions filed by suspected illegal aliens held under 48-hour ICE detainers directed towards the Sheriff and the many other court and local law enforcement officials across the state. The Sheriff's filings show that several other *habeas* petitions have been filed against him by ICE detainees, including one that was filed and ruled upon after a writ of prohibition was issued by this Court. Prompt resolution of this issue is essential because it is likely

other *habeas* petitions will be filed in our state courts, which impacts ICE's ability to enforce federal immigration law.

Resolution of the Sheriff's appeal potentially affects many other detainees, local law enforcement agencies, ICE, and other court and public officers and employees. For the reasons above and in the interest of the public, we review the Sheriff's appeal. *See Randolph*, 325 N.C. at 701, 386 S.E.2d at 186; *Corkum*, 224 N.C. App. at 132, 735 S.E.2d at 423.

B. *Judicial Notice of 287(g) Agreement*

The Sheriff included the 287(g) Agreement between his office and ICE in the record to this Court to support his arguments on appeal. Notwithstanding the multiple prior rulings on this issue, Petitioners argue this Court should not consider the 287(g) Agreement between the Sheriff and ICE in deciding the matter because the 287(g) Agreement was not submitted to the superior court.

As previously ruled upon by the superior court and this Court, the 287(g) Agreement is properly in the record on appeal and bears upon the issue of whether the superior court possessed subject matter jurisdiction to consider the petitions and issue these writs of *habeas corpus*. An appellate court may also consider materials that were not before the lower tribunal to determine whether subject matter jurisdiction exists. *See N.C. ex rel Utils. Comm'n. v. S. Bell Tel.*, 289 N.C. 286, 288,

221 S.E.2d 322, 323-24 (1976); N.C. Gen. Stat. § 8C-1, Rule 201(c) (2017) ("A court may take judicial notice, whether requested or not").

> The device of judicial notice is available to an appellate court as well as a trial court. This Court has recognized in the past that important public documents will be judicially noticed. Consideration of matters outside the record is especially appropriate where it would disclose that the question presented has become moot, or academic[.]

S. Bell, 289 N.C. at 288, 221 S.E.2d at 323-24 (internal quotation and citations omitted).

In *Bell*, the Supreme Court of North Carolina judicially noticed an order from the Utilities Commission to assess whether an appeal by a telephone company was moot. *Id.*; *see also State ex rel. Comm'r of Ins. v. N.C. Auto. Rate Admin. Office*, 293 N.C. 365, 381, 239 S.E.2d 48, 58 (1977) (taking judicial notice of the North Carolina Rate Bureau's filing with the Commissioner of Insurance).

The 287(g) Agreement between the Sheriff and ICE is a controlling public document. ICE maintains listings and links to all the current 287(g) agreements it has entered into with local law enforcement entities across the United States on its website, including the 28 February 2017 Agreement with the Sheriff. *See* U.S. Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, https://www.ice.gov/287g (last visited Oct. 18, 2018).

As part of the record on appeal and as verified above, we review the 287(g) Agreement, as an applicable public document, for the purpose of considering the trial court's subject matter jurisdiction to rule upon Petitioners' *habeas* petitions. *See S. Bell*, 289 N.C. at 288, 221 S.E.2d at 323-24. Petitioners' argument that we should not consider the 287(g) Agreement because it was not presented to the superior court is wholly without merit and is dismissed.

C. *Superior Court Lacked Subject-Matter Jurisdiction*

The Sheriff and *Amicus* assert the superior court lacked subject matter jurisdiction to review Petitioners' *habeas* petitions, issue writs of *habeas corpus*, and order Petitioners' release. The Sheriff' argues the superior court "had no jurisdiction to rule on immigration matters under the guise of using this state's habeas corpus statutes, because immigration matters are exclusively federal in nature." Petitioners respond and assert the superior court had jurisdiction to issue the writs of *habeas corpus* because "the Sheriff and his deputies did not act under color of federal law."

"Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question[, and] . . . is conferred upon the courts by either the North Carolina Constitution or by statute." *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987) (citation omitted). Whether subject matter jurisdiction exists over a matter is firmly established:

> Subject matter jurisdiction cannot be conferred upon a court by consent, waiver or estoppel, and failure to demur

> or object to the jurisdiction is immaterial. The issue of subject matter jurisdiction may be considered by the court at any time, and may be raised for the first time on appeal.

In re T.B., 177 N.C. App. 790, 791, 629 S.E.2d 895, 896-97 (2006) (citations and internal quotation marks omitted).

"The standard of review for lack of subject matter jurisdiction is *de novo*." *Keith v. Wallerich*, 201 N.C. App. 550, 554, 687 S.E.2d 299, 302 (2009). "In determining whether subject matter jurisdiction exists, a court may consider matters outside of the pleadings." *Id.*

Before addressing the Sheriff's argument, we initially address Petitioners' contention that the superior court could exercise subject matter jurisdiction on these matters. Petitioners argue "North Carolina law does not permit civil immigration detention, even where there is a 287(g) agreement[.]"

Pursuant to 8 U.S.C. § 1357(g)(1):

> [T]he Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer . . . of the State . . ., who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or *detention of aliens* in the United States . . . may carry out such function at the expense of the State . . . *to the extent consistent with State and local law*. (emphasis supplied).

The General Assembly of North Carolina expressly enacted statutory authority for state and local law enforcement agencies and officials to enter into 287(g) agreements with federal agencies. The applicable statute states:

> *Where authorized by federal law*, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. *State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency* required to perform the described functions. (emphasis supplied).

N.C. Gen. Stat. § 128-1.1(c1) (2017). 8 U.S.C. § 1357(g)(1) permits the Attorney General to enter into agreements with local law enforcement officers to authorize them to "perform a function of an immigration officer" to the extent consistent with state law.

Petitioners contend N.C. Gen. Stat. § 162-62 prevents local law enforcement officers from performing the functions of immigration officers or to assist DHS in civil immigration detentions. N.C. Gen. Stat. § 162-62 (2017) provides:

> (a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail . . . the administrator . . . shall attempt to determine if the prisoner is a legal resident of the United States by an inquiry of the prisoner, or by examination of any relevant documents, or both.
>
> (b) *If the administrator . . . is unable to determine if that prisoner is a legal resident or citizen of the United States*

> *. . . the administrator . . .* ***shall*** *make a query of Immigration and Customs Enforcement of the United States Department of Homeland Security.* If the prisoner has not been lawfully admitted to the United States, the United States Department of Homeland Security will have been notified of the prisoner's status and confinement at the facility by its receipt of the query from the facility.
>
> (c) Nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement *when that prisoner is otherwise eligible for release.* (Emphasis supplied).

Petitioners purport to characterize N.C. Gen. Stat. § 162-62(c) as forbidding sheriffs from detaining prisoners who are subject to immigration detainers and administrative warrants beyond the time they would otherwise be released from custody or jail under state law. Petitioners' assertion of the applicability of this statute is incorrect.

N.C. Gen. Stat. § 162-62 specifically refers to a sheriff's *duty to inquire* into a prisoner's immigration status and, if that prisoner is within the country unlawfully, mandates the sheriff "shall" notify DHS of the prisoner's "status and confinement." *Id.* N.C. Gen. Stat. § 162-62 does not refer to a 287(g) agreement, federal immigration detainer requests, administrative warrants or prevent a sheriff from performing immigration functions pursuant to a 287(g) agreement, or under color of federal law. *See id.*

N.C. Gen. Stat. § 162-62(c) only provides that "*[n]othing in this section* shall be construed . . . to prevent a prisoner from being released from confinement when that

prisoner *is otherwise eligible for release*." (Emphasis supplied). This statute does not mandate a prisoner must be released from confinement, only that nothing in that specific section dealing with reporting a prisoner's immigration status shall prevent a prisoner from being released when they are "otherwise eligible." *Id.*

N.C. Gen. Stat. § 128-1.1 specifically authorizes state and local law enforcement officers to enter into 287(g) agreements under 8 U.S.C. § 1357(g) and perform the functions of immigration officers, including detention of aliens. No conflict exists in the statutes between N.C. Gen. Stat. §§ 162-62 and 128-1.1.

Even though Petitioners assert these two statutes are inconsistent, N.C. Gen. Stat. § 128-1.1 controls over N.C. Gen. Stat. § 162-62, as the more specific statute. "[W]here two statutory provisions conflict, one of which is specific or 'particular' and the other 'general,' the more specific statute controls in resolving any apparent conflict." *Furr v. Noland*, 103 N.C. App. 279, 281, 404 S.E.2d 885, 886 (1991).

N.C. Gen. Stat. § 128-1.1 specifically authorizes state and local law enforcement agencies to enter into agreements with the federal government to perform the functions of immigration officers under 8 U.S.C. § 1357(g), as present here. The express language of 8 U.S.C. § 1357(g)(1) lists the "detention of aliens within the United States" as one of the "function[s] of an immigration officer."

N.C. Gen. Stat. § 162-62 does not specifically regulate the conduct of sheriffs acting as immigration officers pursuant to a 287(g) agreement under 8 U.S.C. §

1357(g), or under color of federal law. Instead, N.C. Gen. Stat. § 162-62 imposes a specific and mandatory duty upon North Carolina sheriffs, as administrators of county jails, to inquire, verify, and report a detained prisoner's immigration status. N.C. Gen. Stat. § 162-62.

Contrary to Petitioners' argument, North Carolina law does not forbid state and local law enforcement officers from performing the functions of federal immigration officers, but the policy of North Carolina as enacted by the General Assembly, expressly authorizes sheriffs to enter into 287(g) agreements to permit them to perform such functions. *See* N.C. Gen. Stat. § 128-1.1. We reject and overrule their contention that "North Carolina law does not permit civil immigration detention, even where there is a 287(g) agreement[.]"

D. *Federal Government's Supreme and Exclusive Authority over Immigration*

The Sheriff contends the superior court did not possess subject matter jurisdiction in these cases. We agree.

The Supremacy Clause of the Constitution of the United States establishes that the Constitution and laws of the United States "shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. Nearly 200 years ago, the Supreme Court of the United States held the Supremacy Clause prevents state and local officials from taking actions or passing laws to "retard, impede, burden, or in any manner control"

the execution of federal law. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436, 4 L. Ed. 579 (1819).

"The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394, 183 L. Ed. 2d 351, 366 (2012). This broad authority derives from the federal government's delegated and enumerated constitutional power "[t]o establish an uniform Rule of Naturalization[.]" U.S. Const. art. I, § 8, cl. 4. "Power to regulate immigration is unquestionably exclusively a federal power." *DeCanas v. Bica*, 424 U.S. 351, 354, 47 L. Ed. 2d 43 (1976*), superseded by statute on other grounds as recognized in Arizona*, 567 U.S. at 404, 183 L. Ed. 2d at 372.

The Sheriff cites several other states' appellate court decisions, which hold state courts lack jurisdiction to consider petitions for writs of *habeas corpus* and other challenges to a detainee's detention pursuant to the federal immigration authority. *See Ricketts v. Palm Beach County Sheriff*, 985 So. 2d 591 (Fla. Dist. Ct. App. 2008); *State v. Chavez-Juarez,* 185 Ohio App. 3d 189, 192, 923 N.E.2d 670, 673 (2009).

In *Ricketts*, the Court of Appeals of Florida addressed a similar situation to the instant case. Ricketts was arrested on a state criminal charge and detained by the sheriff. *Ricketts*, 985 So. 2d at 591. His bond was set at $1,000; however, the sheriff refused to accept the bond and release Ricketts, due to a federal immigration hold issued by ICE. *Id*. As in the present case, Ricketts first sought *habeas corpus* relief

in state court. *Id.* at 592. The trial court denied all relief, reasoning that the issues were within the exclusive jurisdiction of the federal government. *Id.*

On appeal, the Court of Appeals of Florida agreed with the trial court "that appellant cannot secure *habeas corpus* relief from the state court on the legality of his federal detainer." *Id.* The court reasoned that the constitutionality of his detention pursuant to the immigration hold "is a question of law for the federal courts." *Id.* at 592-93. The court further explained that "a state court cannot adjudicate the validity of the federal detainer, as the area of immigration and naturalization is within the exclusive jurisdiction of the federal government." *Id.* at 593 (citing *Plyler v. Doe*, 457 U.S. 202, 225, 72 L. Ed. 2d. 786, 804 (1982); and *DeCanas*, 424 U.S. at 354, 47 L. Ed. 2d at 43 ("Power to regulate immigration is unquestionably exclusively a federal power")).

The Court of Appeals of Ohio followed the Florida Court of Appeals' decision in *Ricketts* and reached a similar conclusion in *Chavez-Juarez.* Chavez was arrested for operating a vehicle under the influence of alcohol. *Chavez-Juarez*, 185 Ohio App. at at 193, 923 N.E.2d at 673. After arraignment, the state court ordered Chavez released; however, he was held pursuant to a federal immigration detainer, was turned over to ICE, and deported to Mexico. *Id.* at 193-94, 923 N.E.2d at 674. His attorney filed a motion to have ICE officers held in contempt for violating the state court's release order. *Id.* at 194, 923 N.E.2d at 674.

The trial court concluded that it lacked jurisdiction over ICE and denied the contempt motion, because the federal courts have pre-emptive jurisdiction over immigration issues. *Id*. at 199, 923 N.E.2d at 679. The Ohio Court of Appeals recognized "Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere." *Id.* (quoting *Nyquist v. Mauclet*, 432 U.S. 1, 10, 53 L. Ed. 2d 63 (1977)).

The Ohio Court of Appeals affirmed the trial court's denial of the contempt motion, and stated:

> Under federal regulation, the Clark County Sheriff's Office was required to hold Chavez for 48 hours to allow ICE to assume custody. Chavez's affidavit indicates that he was held in state custody for approximately 48 hours after the trial court released him on his own recognizance. If Chavez wished to challenge his detention, the proper avenue at that point would have been to file a petition in the federal courts, not an action in contempt with the state court, which did not have the power to adjudicate federal immigration issues.

Id. at 202, 923 N.E.2d at 680.

We find the reasoning in both *Ricketts* and *Chavez-Juarez* persuasive and their applications of federal immigration law to state proceedings to be correct.

A state court's purported exercise of jurisdiction to review the validity of federal detainer requests and immigration warrants infringes upon the federal government's exclusive federal authority over immigration matters. *See Plyler,* 457 U.S. at 225, 72 L. Ed. 2d. at 804; *DeCanas*, 424 U.S. at 354, 47 L. Ed. 2d at 43. The

superior court did not possess subject matter jurisdiction, or any other basis, to receive and review the merits of Petitioners' *habeas* petitions, or issue orders other than to dismiss for lack of jurisdiction, as it necessarily involved reviewing and ruling on the legality of ICE's immigration warrants and detainer requests.

E. *State Court Lacks Jurisdiction Even Without Formal Agreement*

Even if the express 287(g) Agreement between the Sheriff and ICE did not exist or was invalid, federal law permits and empowers state and local authorities and officers to "communicate with [ICE] regarding the immigration status of any individual . . . or otherwise to cooperate with [ICE] in the identification, apprehension, *detention*, or removal of aliens not lawfully present in the United States" in the absence of a formal agreement. 8 U.S.C. § 1357(g)(10)(A)-(B) (emphasis supplied).

A state court's purported exercise of jurisdiction to review petitions challenging the validity of federal detainers and administrative warrants issued by ICE, and to potentially order alien detainees released, constitutes prohibited interference with the federal government's supremacy and exclusive control over matters of immigration. *See* U.S. Const. art. I, § 8, cl. 4; U.S. Const. art. VI, cl. 2.; *Nyquist*, 432 U.S. at 10, 53 L. Ed. 2d at 63; *Plyler,* 457 U.S. at 225, 72 L. Ed. 2d. at 804; *DeCanas*, 424 U.S. at 354, 47 L. Ed. 2d at 43.

F. *State Court Lacks Jurisdiction to Order Release of Federal Detainees*

An additional compelling reason that prohibits the superior court from exercising jurisdiction to issue *habeas* writs to alien petitioners, is a state court's inability to grant *habeas* relief to individuals detained by federal officers acting under federal authority.

Nearly 160 years ago, the Supreme Court of the United States held in *Ableman v. Booth* that "No state judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to require him to be brought before them." *Ableman v. Booth*, 62 U.S. (21 How.) 506, 524, 6 L. Ed. 169, 176 (1859).

The Supreme Court of the United States reaffirmed this principle in *In re Tarble*, in which the Court stated:

> State judges and state courts, authorized by laws of their states to issue writs of *habeas corpus*, have, undoubtedly, a right to issue the writ in any case where a party is alleged to be illegally confined within their limits, *unless it appear upon his application that he is confined under the authority, or claim and color of the authority, of the United States, by an officer of that government. If such fact appear upon the application, the writ should be refused.*
> . . .
>
> *But, after the return is made, and the state judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further.* They then know that the prisoner is within the dominion and jurisdiction of another government, and that neither the writ of *habeas corpus* nor any other process issued under state authority can pass over the line of division between the two sovereignties. He is then within the

> dominion and exclusive jurisdiction of the United States. If he has committed an offence against their laws, *their tribunals alone* can punish him. If he is wrongfully imprisoned, *their judicial tribunals can release* him and afford him redress.
> . . .
>
> [*T*]*hat the state judge or state court should proceed no further when it appears, from the application of the party, or the return made, that the prisoner is held by an officer of the United States under what, in truth, purports to be the authority of the United States;* that is, an authority the validity of which is to be determined by the Constitution and laws of the United States. If a party thus held be illegally imprisoned, *it is for the courts or judicial officers of the United States, and those courts or officers alone, to grant him release.*

In re Tarble, 80 U.S. (13 Wall) 397, 409-11, 20 L. Ed. 597, 601-02 (1871) (emphasis supplied) (citations omitted).

In sum, if a prisoner's *habeas* petition indicates the prisoner is held: (1) under the authority, or color of authority, of the federal government; and, (2) by an officer of the federal government under the asserted "authority of the United States", the state court must refuse to issue a writ of *habeas corpus*. *See id.*

It is undisputed the Sheriff's continued detention of Petitioners, after they were otherwise released from state custody, was pursuant to the federal authority delegated to his office under the 287(g) Agreement. Appendix B of the 287(g) Agreement states, in relevant part:

> This Memorandum of Agreement (MOA) is between the U.S. Department of Homeland Security's U.S. Immigration

> and Customs Enforcement (ICE) and the Law Enforcement [Mecklenburg County Sheriff's Office] (MCSO), pursuant to which selected MCSO personnel are authorized to perform immigration enforcement duties in specific situations *under Federal authority*. (Emphasis supplied).

Although the 287(g) Agreement was not attached to Petitioners' *habeas* petitions, the petitions indicated to the court the Sheriff was acting under color of federal authority, if not actual federal authority. Petitioners' petitions acknowledge and specifically assert the Sheriff was purporting to act under the authority of the United States by detaining them after they would have otherwise been released from custody for their state criminal charges.

Petitioners' petitions both acknowledge and assert the Sheriff was detaining them "at the behest of the federal government." Petitioners' *habeas* petitions refer to the 287(g) Agreement. Copies of the Form I-200 immigration arrest warrant and Form I-247A detainer request were attached to Chavez's *habeas* petition submitted to the superior court.

A copy of the Form I-200 warrant was attached to Lopez's *habeas* petition, and the petition itself refers to the existence of the Form I-247A detainer, stating: "the jail records, which have been viewed by counsel, indicate that there is an immigration detainer lodged against [Lopez] pursuant to a Form I-247[.]"

Additionally, 8 U.S.C. § 1357(g)(3) indicates state and local law enforcement officers act under color of federal authority when performing immigration functions

authorized under a 287(g) agreement. The statute provides: "In performing a function under this subsection [§ 1357(g)], an officer or employee of a State or political subdivision of a State *shall be subject to the direction and supervision of the Attorney General* [*of the United States*.]*"* 8 U.S.C. § 1357(g)(3) (emphasis supplied).

The Sheriff was acting under the actual authority of the United States by detaining Petitioners under the immigration enforcement authority delegated to him under the 287(g) Agreement, and under color of federal authority provided by the administrative warrants and Form I-247A detainer requests for Petitioners issued by ICE. Petitioners' own *habeas* petitions also indicate the Sheriff was acting under color of federal authority for purposes of the prohibitions against interference by state courts and state and local officials. *See Tarble*, 80 U.S. (13 Wall) at 409, 20 L. Ed. at 601.

The next issue is whether the Sheriff was acting as a federal officer under the 287(g) Agreement by detaining Petitioners pursuant to the detainer requests and administrative warrants. *See id.* After careful review of state and federal authorities, no court has apparently decided the issue of whether a state or local law enforcement officer is considered a federal officer when they are performing immigration functions authorized under a 287(g) Agreement.

In contexts other than immigration enforcement, several federal district courts and United States courts of appeal for various circuits have held state and local law

enforcement officers are "federal officers" when they have been authorized or deputized by federal law enforcement agencies, such as the Drug Enforcement Agency, Federal Bureau of Investigation, and the United States Marshals Service. *United States v. Martin*, 163 F. 3d 1212, 1214-15 (10th Cir. 1998) (holding that local police officer deputized to participate in a FBI narcotics investigation is a federal officer within the meaning of 18 U.S.C. § 115(a)(1)(B) [defining the crime of threatening to murder a federal law enforcement officer]); *United States v. Torres*, 862 F.2d 1025, 1030 (3d Cir. 1988) (holding that local police officer deputized to participate in a DEA investigation is a federal officer within the meaning of 18 U.S.C. § 111 [defining the crime of assault on a federal official]); *United States v. Diamond*, 53 F.3d 249, 251-52 (9th Cir. 1995) (holding that a state official specially deputized as a U.S. Marshal was an officer of the United States even though he was not technically a federal employee); *DeMayo v. Nugent*, 475 F. Supp. 2d 110, 115 (D. Mass. 2007) ("State police officers deputized as federal agents under the DEA constitute federal agents acting under federal law"), *rev'd on other grounds*, 517 F. 3d 11 (1st Cir. 2008).

The United States Court of Appeals for the Fourth Circuit specifically recognized an employee of the State of North Carolina as being a federal officer for purposes of the assault on an federal officer statute, when the state employee was assisting the Internal Revenue Service. *United States v. Chunn*, 347 F. 2d 717, 721

(4th Cir. 1965). The Fourth Circuit has also held that under a 287(g) Agreement, local law enforcement officers effectively become federal officers of ICE, as they are deputized to perform immigration-related enforcement functions. *United States v. Sosa-Carabantes,* 561 F. 3d 256, 257 (4th Cir. 2009) ("The 287(g) Program permits ICE to deputize local law enforcement officers to perform immigration enforcement activities pursuant to a written agreement." (citing 8 U.S.C. § 1357(g)(1))).

The United States Court of Appeals for the Fifth Circuit recently stated, "Under [287(g) agreements], state and local officials become de facto immigration officers[.]" *City of El Cenizo v. Texas*, 890 F. 3d 164, 180 (5th Cir. 2018); *see also People ex rel. Norfleet v. Staton*, 73 N.C. 546, 550 (1875) ("[T]here is no difference between the acts of *de facto* and *de jure* officers so far as the public and third persons are concerned").

To the extent personnel of the Sheriff's office were deputized or empowered by DHS or ICE to perform immigration functions, including detention and turnover of physical custody, pursuant to the 287(g) Agreement, we find these federal cases persuasive to conclude the Sheriff was empowered and acting as a federal officer by detaining Petitioners under the detainer requests and administrative warrants. *See Martin*, 163 F.3d at 1214-15; *Torres*, 862 F. 2d at 1030; *Sosa-Carabantes*, 561 F. 3d at 257; *El Cenizo*, 890 F.3d at 180.

Petitioners' *habeas* petitions clearly disclosed Petitioners were being detained under express, and color of, federal authority by the Sheriff, who was acting as a *de facto* federal officer. *See El Cenizo*, 890 F. 3d at 180. Under the rule enunciated by the Supreme Court of the United States in *Ableman* and expanded upon in *Tarble*, the superior court was without jurisdiction, or any other basis, to receive, review, or consider Petitioners' *habeas* petitions, other than to dismiss for want of jurisdiction, to hear or issue writs of *habeas corpus*, or intervene or interfere with Petitioner's detention in any capacity. *Ableman,* 62 U.S. (21 How.) at 524, 6 L. Ed. at 176; *Tarble*, 80 U.S. (13 Wall.) at 409. 20 L. Ed. at 607.

The superior court should have dismissed Petitioners' petitions for writs of *habeas corpus. See* N.C. Gen. Stat. § 17-4(4) (2017) ("Application to prosecute the writ [of *habeas corpus*] shall be denied . . . [w]here no probable ground for relief is shown in the application."). "When the record shows a lack of jurisdiction in the lower court, the appropriate action on the part of the appellate court is to arrest judgment or vacate any order entered without authority." *State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981). The orders of the superior court, which purported to order the release of Petitioners, are vacated. *Id.*

The proper jurisdiction and venues where Petitioners may file their *habeas* petitions is in the appropriate federal tribunal. *See* 28 U.S.C. §2241(a); *Tarble*, 80 U.S. (13 Wall.) at 411, 20 L. Ed. at 602 ("If a party thus held be illegally imprisoned,

it is for the courts or judicial officers of the United States, and those courts or officers alone, to grant him release").

IV. Conclusion

The superior court lacked any legitimate basis and was without jurisdiction to review, consider, or issue writs of *habeas corpus* for alien Petitioners not in state custody and held under federal authority, or to issue any orders related thereon to the Sheriff. State or local officials and employees purporting to intervene or act constitutes a prohibited interference with the federal government's supreme and exclusive authority over the regulation of immigration and alienage. *See* U.S. Const. art. I, § 8, cl. 4; *Ableman,* 62 U.S. (21 How.) at 524, 6 L. Ed. at 176; *Tarble*, 80 U.S. at 409. 20 L. Ed. at 607.

The superior court was on notice the Petitioners were detained under the express, and color of, exclusive federal authority. The Sheriff was acting as a federal officer under the statutorily authorized and executed 287(g) Agreement. The orders appealed from are vacated for lack of jurisdiction and remanded to the trial court with instructions to dismiss Petitioners' *habeas* petitions.

A certified copy of this opinion and order shall be delivered to the Judicial Standards Commission and to the Disciplinary Hearing Commission of the North Carolina State Bar. *It is so ordered.*

VACATED and REMANDED.

Judges DIETZ and BERGER concur.

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, November 27, 2018 12:48 PM
To: Jonathan F. Thompson

I have a conflicting meeting so will miss you today at 2:00. Hope all is well!

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

Hamilton, Gene (OAG)

Subject:	Tentative: N.J. AG Directive 20180-6
Location:	(b) (6)
Start:	Tuesday, December 4, 2018 3:30 PM
End:	Tuesday, December 4, 2018 4:30 PM
Recurrence:	(none)
Organizer:	Hamilton, Gene (OAG)
Required Attendees:	Executive Director

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Tuesday, December 4, 2018 1:04 PM
To: Jonathan F. Thompson
Subject: RE: N.J. AG Directive 20180-6

Hi Jonathan,

Unfortunately, I won't be able to be on the call that is scheduled for this afternoon. Our team is aware of the case and is assessing it. Can we connect later today?

Thank you,

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

-----Original Appointment-----
From: Executive Director <ed@sheriffs.org>
Sent: Tuesday, December 4, 2018 11:45 AM
To: Executive Director; Gualtieri,Robert; Albence, Matthew; Greg Champagne; Carrie Hill; Hamilton, Gene (OAG); Cook, Steven H. (ODAG); Maddie Colaiezzi
Subject: N.J. AG Directive 20180-6
When: Tuesday, December 4, 2018 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: [redacted] (b) (6)

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, December 10, 2018 3:51 PM
To:	Bruce Jolly; Patrick McCullah; 'Executive Director'; Cook, Steven H. (ODAG); Robert A.Gualtieri; Greg Champagne
Cc:	Rick Ramsay
Subject:	Call

Hey y'all,

Our team has been looking into this—it's obviously an important matter for this administration. As you know, there are a lot of complexities at this stage, but we understand the importance of this case to everyone on this email (and folks not on this email, too).

My plan is to have someone for our Civil Division reach out very soon—and we'll obviously have to loop in ICE. I'll check with him now.

Thank you,

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

From: Bruce Jolly <bruce@purdylaw.com>
Sent: Friday, December 7, 2018 8:46 AM
To: Patrick McCullah <PMcCullah@keysso.net>; 'Executive Director' <ed@sheriffs.org>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Robert A.Gualtieri <rgualtieri@pcsonet.com>; Greg Champagne <gchamp@stcharlessheriff.org>
Cc: Rick Ramsay <rramsay@keysso.net>
Subject: RE: IMPORTANT: Legally Privileged Communication

Patrick:

I am in the office all morning, today, and all day on Monday although I am preparing for oral argument in the 11th Circuit for Tuesday. I will be back in the office after 2PM on Tuesday and all day on Wednesday.

From: Patrick McCullah <PMcCullah@keysso.net>
Sent: Thursday, December 06, 2018 9:52 PM
To: 'Executive Director' <ed@sheriffs.org>; Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>; Steven H. Cook <Steven.H.Cook@usdoj.gov>; Robert A.Gualtieri <rgualtieri@pcsonet.com>; Greg Champagne <gchamp@stcharlessheriff.org>
Cc: Bruce Jolly <bruce@purdylaw.com>; Rick Ramsay <rramsay@keysso.net>
Subject: RE: IMPORTANT: Legally Privileged Communication

Good evening all,

I am looping our outside counsel, Bruce Jolly, in as well. I have copied him and Sheriff Ramsay on this email. Please let me know when a conference call would be possible.

Thank you all again for your assistance on this,

Patrick McCullah
General Counsel,
Monroe County Sheriff's Office
5525 College Road
Key West, Florida 33040
Telephone: 305.292.7020
Fax: 305.292.7070
E-mail: pmccullah@keysso.net

From: Executive Director [mailto:ed@sheriffs.org]
Sent: Wednesday, December 05, 2018 12:28 PM
To: Patrick McCullah <PMcCullah@keysso.net>; Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>; Steven H. Cook <Steven.H.Cook@usdoj.gov>; Robert A.Gualtieri <rgualtieri@pcsonet.com>; Greg Champagne <gchamp@stcharlessheriff.org>
Subject: Re: IMPORTANT: Legally Privileged Communication

Gene,
We need to collectively discuss the strategy of how to put this case back into a proper federal box.

Patrick, Monroe County Sheriff Ramsay' Counsel, is copied here.

We should move this discussion to telephonic soonest.

J

Jonathan Thompson
(b) (6)

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

From: Patrick McCullah <PMcCullah@keysso.net>

Sent: Wednesday, December 5, 2018 12:04:09 PM
To: Executive Director
Subject: IMPORTANT: Legally Privileged Communication

Good afternoon,

Thank you for your time this morning. The documents we discussed are attached. Please advise if there is anything else I can do to assist. I am available 24/7 at (b) (6).

Best regards,

Patrick McCullah
General Counsel,
Monroe County Sheriff's Office
5525 College Road
Key West, Florida 33040
Telephone: 305.292.7020
Fax: 305.292.7070
E-mail: pmccullah@keysso.net

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, December 13, 2018 11:31 AM
To:	Stransky, Steve
Subject:	Re: Old Ebbitt tonight (12.13.18)

Thanks very much for the invite, Steve. Unfortunately, I will be caught up with some work things. I don't know (b) (6) — (b) (6)

Good luck hitting that target!

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

On Dec 13, 2018, at 9:58 AM, Stransky, Steve <Steve.Stransky@thompsonhine.com> wrote:

> Gene,
>
> I hope you don't mind, but I got your email from (b)(6) per DHS. I am tentatively scheduled to (b) (6) with (b) (6) (from Senate Judiciary). I never met (b) (6) before, (b) (6) If you have time you should come join us. We will not be staying too long because I have to head back to work to (b) (6)
>
> Best,
>
> Steve

Hamilton, Gene (OAG)

Subject:	Happy Hour
Start:	Friday, January 11, 2019 5:00 PM
End:	Friday, January 11, 2019 6:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	No response required
Organizer:	Hamilton, Gene (OAG)
Required Attendees:	(b)(6) per DHS
Optional Attendees:	(b)(6) per DHS; (b)(6), (b)(7)(C) per ICE

From: (b)(6) per DHS (b)(6) per DHS >
Sent: Tuesday, January 8, 2019 1:06 PM
To: (b)(6) per DHS; (b)(6) per DHS
Cc: (b)(6) per DHS; (b)(6), (b)(7)(C) per ICE
Subject: A Toast to (b)(6) p

Fellow Patriots,

Last week marked the end of an era, no I'm not talking about the 115th Congress. Sadly, Friday was (b)(6) p last day serving with the 20,000 American patriots at ICE.

Therefore, your presence is formally requested at **The Brighton this Friday, January 11 at 5PM.**

Disclaimer: This invitation was not cleared by the SAG (which is currently furloughed).

**This will be a mandatory in-person briefing, no dial in number provided.

See you there!

—

(b)(6) per DHS
Department of Homeland Security
Office of Public Affairs
(b)(6) per DHS

(b)(6) per DHS

From: (b)(6) per DHS (b)(6) per DHS; (b)(6), (b)(7)(C) per ICE
Sent: Sunday, January 6, 2019 10:57 PM
To: (b)(6) per DHS (b)(6) per DHS; (b)(6), (b)(7)(C) per ICE
Cc: (b)(6) per DHS; (b)(6), (b)(7)(C) per ICE
Subject: Signing Off

Hey all,

As most of you know, tomorrow I head back to the Senate where I'll be serving as Senator Romney's Communications Director. Before I officially sign off, I want to express my deepest appreciation for all that you have done to support me and the Office of Public Affairs during my time at ICE.

I've worked with some incredible people throughout my career, but no one has ever matched the commitment, talent, and esprit de corps at ICE. That's especially true of my OPA family, who have taught me so much. This agency is lucky to have such an outstanding public affairs team - please take good care of them! (I'll be watching…)

While the past two years have not been without their challenges, it's been a true privilege to promote and defend the important work this agency does. That experience and the many amazing friendships I have here made moving on a difficult and bittersweet decision for me. I will miss you all very much. Please stay in touch (contact info below) and let me know how I can be helpful going forward. And if you find yourself on the Hill, stop by my very glamorous temp office in (b)(6) per DHS

(b)(6) per DHS; (b)(6), (b)(7)(C) p will be acting head of OPA starting tomorrow – please be sure to keep him looped in on any public affairs matters, especially as the rest of our team remains furloughed.

Stay tuned for an invite to happy hour this **Friday, January 11th!** See you all soon.

Best,
(b)(6) p

(b)(6) per DHS
Assistant Director
Office of Public Affairs
U.S. Immigration and Customs Enforcement (ICE)
(b)(6) per DHS; (b)(6), (b)(7)(C) per ICE

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, January 14, 2019 10:37 AM
To:	Bob Flores
Subject:	RE: Requests to bring in child brides legal under US laws

Hi Bob,

I hope that you are well. I understand that Homeland Security Investigations has reached out to y'all, as recently as January 4, and they haven't heard anything back. Can you give them a call to discuss your client's case?

Thanks!

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

From: Lori Handrahan [redacted (b) (6)]
Sent: Monday, January 14, 2019 7:23 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Cc: Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>; Wiles, Morgan (OAG) <mwiles@jmd.usdoj.gov>; 'J. Robert Flores' [redacted (b) (6)] jrf@gg-law.com
Subject: Requests to bring in child brides legal under US laws
Importance: High

Gene,

Are you able to schedule some time to meet with Bob Flores and I this week to review my case?

I'm sure you've seen this recent AP article. All under the Obama Administration. Of course.

In addition, there is [redacted (b) (6)], where criminal aliens, who should have been deported for the crimes they are committing against US citizens and the US government are instead protected and allowed to rape, sexually abuse and destroy the lives of law-abiding US citizen children and mothers.

[redacted (b) (6)].

Hoping and praying you will take action on my case.

Kindest,

Lori Handrahan, Ph.D.
www.LoriHandrahan.com
Washington DC

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https://apnews.com/19e43295c76d4d249aa51c9f643eb377?utm_medium=AP_Politics&utm_campaign=SocialFlow&utm_source=Twitter&utm_campaign=SocialFlow&utm_medium=AP_Politics&utm_source=Twitter

Requests to bring in child brides OK'd; legal under US laws

By COLLEEN LONG

January 11, 2019

WASHINGTON (AP) — Thousands of requests by men to bring in child and adolescent brides to live in the United States were approved over the past decade, according to government data obtained by The Associated Press. In one case, a 49-year-old man applied for admission for a 15-year-old girl.

The approvals are legal: The Immigration and Nationality Act does not set minimum age requirements for the person making the request or for that person's spouse or fiancee. By contrast, to bring in a parent from overseas, a petitioner has to be at least 21 years old.

And in weighing petitions, U.S. Citizenship and Immigration Services goes by whether the marriage is legal in the spouse or fiancee's home country and then whether the marriage would be legal in the state where the petitioner lives.

The data raises questions about whether the immigration system may be enabling forced marriage and about how U.S. laws may be compounding the problem despite efforts to limit child and forced marriage. Marriage between adults and minors is not uncommon in the U.S., and most states allow children to marry with some restrictions.

There were more than 5,000 cases of adults petitioning on behalf of minors and nearly 3,000 examples of minors seeking to bring in older spouses or fiances, according to the data requested by the Senate Homeland Security Committee in 2017 and compiled into a report. The approval is the first of a two-step visa process, and USCIS said it has taken steps to better flag and vet the petitions.

Some victims of forced marriage say the lure of a U.S. passport combined with lax U.S. marriage laws are partly fueling the petitions.

"My sunshine was snatched from my life," said Naila Amin, a dual citizen born in Pakistan who grew up in New York City. She was forcibly married at 13 in Pakistan and later applied for papers for her 26-year-old husband to come to the U.S. at

for papers for her 20-year-old husband to come to the U.S. at the behest of her family. She was forced for a time to live in Pakistan with him, where, she said, she was sexually assaulted and beaten. She came back to the U.S., and he was to follow.

"People die to come to America," she said. "I was a passport to him. They all wanted him here, and that was the way to do it."

Amin, now 29, said she was betrothed when she was just 8 and he was 21. The petition she submitted after her marriage was approved by immigration officials, but he never came to the country, in part because she ran away from home. She said the ordeal cost her a childhood. She was in and out of foster care and group homes, and it took a while to get her life on track.

"I was a child. I want to know: Why weren't any red flags raised? Whoever was processing this application, they don't look at it? They don't think?" Amin asked.

Fraidy Reiss, who campaigns against coerced marriage as head of a group called Unchained at Last, has scores of similar anecdotes: An underage girl was brought to the U.S. as part of an arranged marriage and eventually was dropped at the airport and left there after she miscarried. Another was married at 16 overseas and was forced to bring an abusive husband.

Reiss said immigration status is often held over their heads as a tool to keep them in line.

There is a two-step process for obtaining U.S. immigration visas and green cards. Petitions are first considered by U.S. Citizenship and Immigration Services, or USCIS. If granted, they must be approved by the State Department. Overall, there were 3.5 million petitions received from budget years 2007 through 2017.

Over that period, there were 5,556 approvals for those seeking to bring minor spouses or fiancees, and 2,926 approvals by minors seeking to bring in older spouses, according to the data. Additionally, there were 204 for minors by minors. Petitions can be filed by U.S. citizens or permanent residents.

"It indicates a problem. It indicates a loophole that we need to close," Republican Sen. Ron Johnson of Wisconsin, the chairman of the Senate Homeland Security Committee, told the AP.

In nearly all the cases, the girls were the younger person in the relationship. In 149 instances, the adult was older than 40, and in 28 cases the adult was over 50, the committee found. In 2011, immigration officials approved a 14-year-old's

petition for a 48-year-old spouse in Jamaica. A petition from a 71-year-old man was approved in 2013 for his 17-year-old wife in Guatemala.

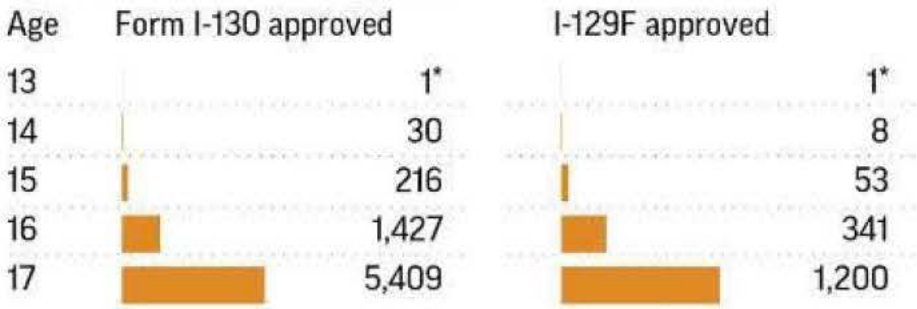
There are no nationwide statistics on child marriage, but data from a few states suggests it is far from rare. State laws generally set 18 as the minimum age for marriage, yet every state allows exceptions. Most states let 16- and 17-year-olds marry if they have parental consent, and several states — including New York, Virginia and Maryland — allow children under 16 to marry with court permission.

An adult can obtain a visa for a child spouse

U.S. laws allow adults to petition for a visa for a minor spouse or fiancé living abroad.

Petitions and approvals involving minors 2007-2017

Age of minor involved in approval



Age ranges of adult petitioners for minor beneficiaries

*Department of State terminated or refused the petition

SOURCE: Committee on Homeland Security and Governmental Affairs AP

Reiss researched data from her home state, New Jersey. She determined that nearly 4,000 minors, mostly girls, were married in the state from 1995 to 2012, including 178 who were under 15

were under 15.
"This is a problem both domestically and in terms of immigration," she said.
Reiss, who says she was forced into an abusive marriage by her Orthodox Jewish family when she was 19, said that often cases of child marriage via parental consent involve coercion, with a girl forced to marry against her will.
"They are subjected to a lifetime of domestic servitude and rape," she said. "And the government is not only complicit; they're stamping this and saying: Go ahead."
The data was requested in 2017 by Johnson and then-Missouri Sen. Claire McCaskill, the committee's top Democrat. Johnson said it took a year to get the information, showing there needs to be a better system to track and vet the petitions.
"Our immigration system may unintentionally shield the abuse of women and children," the senators said in the letter requesting the information.
USCIS didn't know how many of the approvals were granted by the State Department, but overall only about 2.6 percent of spousal or fiance claims are rejected. A State Department representative said the department is committed to protecting the rights of children and combatting forced marriage.
Separately, the data show some 4,749 minor spouses or fiancees received green cards to live in the U.S. over that 10-year period.
The head of USCIS said in a letter to the committee that its request had raised questions and discussion within the agency on what it can do to prevent forced minor marriages. USCIS created a flagging system when a minor spouse or fiance is detected. After the initial flag, it is sent to a special unit that verifies the age and relationship are correct before the petition is accepted. Another flag requires verification of the birthdate whenever a minor is detected. Officials note an approval doesn't mean the visa is immediately issued.
"USCIS has taken steps to improve data integrity and has implemented a range of solutions that require the verification of a birthdate whenever a minor spouse or fiance is detected," USCIS spokesman Michael Bars said. "Ultimately, it is up to Congress to bring more certainty and legal clarity to this process for both petitioners and USCIS officers."
The country where most requests came from was Mexico, followed by Pakistan, Jordan, the Dominican Republic and Yemen. Middle Eastern nationals had the highest percentage of overall approved petitions.

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, January 24, 2019 1:35 PM
To:	jrf@gg-law.com; (b)(6) - Bob Flores Email Address
Cc:	(b)(6); (b)(7)(C) per ICE
Subject:	Connecting

Good afternoon, Bob,

I'm connecting you via email to (b)(6); (b)(7)(C) per ICE Acting Chief of Staff at HSI. Please let (b)(6); (b)(7)(C) pe know when a convenient time might be for y'all to talk.

Thanks!

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

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Friday, February 22, 2019 11:07 AM
To: (b)(6) per DHS; Carafano, James
Subject: RE: Introduction

Thanks for the introduction, Jim. (b)(6) per DHS great to be connected. Let's plan to connect sometime in the next couple of weeks.

Best,

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

From: (b)(6) per DHS
Sent: Friday, February 22, 2019 10:32 AM
To: Carafano, James <james.carafano@heritage.org>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: Re: Introduction

Jim, thanks for the introduction!

Gene, I've heard your name many times here at DHS since I work with many of the folks that you were working with while over here. Glad to make your acquaintance. I am S1's LE Advisor and handle TOC, opioids, HT, etc. Happy to connect over coffee sometime.

(b)(6) per DHS

(b)(6) per DHS
Law Enforcement Advisor to the Secretary
U.S. Department of Homeland Security
(b)(6) per DHS

From: Carafano, James <James.Carafano@Heritage.org>
Sent: Friday, February 22, 2019 10:22:16 AM
To: gene.hamilton@usdoj.gov; (b)(6) per DHS
Subject: Introduction

(b)(6) per DHS Gene is at DOJ, a good friend from transition team days, you guys should hook up

---

James Jay Carafano
Vice President for the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, and the E. W. Richardson Fellow
Davis Institute for National Security and Foreign Policy
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002

202-608-6161
heritage.org

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, April 4, 2019 2:14 PM
To:	Media Inquiry; Hoffman, Jonathan; Gountanis, John
Cc:	Houlton, Tyler; McHenry, James (EOIR); Alexei Woltornist
Subject:	RE: NYT Remain In Mexico Story

I'm adding Alexei to this to run point for DOJ.

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

From: (b)(6) per DHS > **On Behalf Of** Media Inquiry
Sent: Thursday, April 4, 2019 1:15 PM
To: Media Inquiry (b)(6) per DHS >; Hoffman, Jonathan (b)(6) per DHS ; Gountanis, John (b)(6) per DHS >
Cc: Houlton, Tyler (b)(6) per DHS >; McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>
Subject: RE: NYT Remain In Mexico Story

Adding EOIR. Please review the following responses to NYT query and advise:

(b)(5) per DHS

Thank you,

(b)(6) per DHS

(b)(6) per DHS

From: Kanno-Youngs, Zolan (b)(6) per DHS
Sent: Wednesday, April 3, 2019 9:06 PM
To: Houlton, Tyler (b)(6) per DHS >; Media Inquiry (b)(6) per DHS
Subject: Re: NYT Remain In Mexico Story

Hi there,
Hi,
A couple more things: are migrants allowed to have an attorney present during the interview with an asylum officer that is aimed at determining whether they have a fear of persecution in Mexico?
Also, some of the migrants I talked to said the transcript they were provided didn't reflect the entirety of their comments. Any comment on that?
Others said when they did say they had a fear of Mexico and were subsequently referred to an asylum officer for a second interview, they didn't receive a transcript. Is DHS issuing transcripts of that second interview that aims to determine a credible fear of Mexico?
Thanks much.
Zolan

On Tue, Apr 2, 2019 at 1:46 PM Kanno-Youngs, Zolan (b)(6) per DHS > wrote:

> Hello,
> I went was in Mexicali and Tijuana last week doing some reporting on the Remain In Mexico policy. I'll likely have a story on it running later this week. I wanted to give you a heads up in case you wanted to provide a fresh comment. I already have the secretary's recent comments as well as remarks from today's call.
> Here's some more specific questions:
> Can you specify where this policy will be expanded to next?
> -Do you have updated numbers on who has been sent back?
> -Has anyone under the policy been approved to remain in the US?
> Have you had conversations with Mexico to determine what the limit is on migrants they can accept back? What is that limit?
> I encountered one migrant in Calexico who was returned to Mexicali under the policy and was given a notice to appear in San Ysidro. He says he has no information on how to get there. Is the onus on him to get there? Why not have a notice to appear at the same court and schedule a court date at the court in Imperial, California?
> Please get back to me by tomorrow afternoon.
>
> Thanks,
> Zolan Kanno-Youngs
> Homeland Security Correspondent
> The New York Times
> (b)(6) per DHS

--
Zolan Kanno-Youngs
Homeland Security Correspondent
The New York Times
(b)(6) per DHS

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Zolan Kanno-Youngs
Homeland Security Correspondent
The New York Times
(b)(6) per DHS

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Monday, May 6, 2019 11:24 AM
To: Jonathan F. Thompson
Subject: ICE launches program to strengthen immigration enforcement | ICE

Congrats.

https://www.ice.gov/news/releases/ice-launches-program-strengthen-immigration-enforcement

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

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Thursday, May 9, 2019 6:33 PM
To:	Jonathan F. Thompson
Subject:	Marion County Decision 5.19.19.pdf
Attachments:	Marion County Decision 5.19.19.pdf

In the

United States Court of Appeals

For the Seventh Circuit

No. 18-1050

ANTONIO LOPEZ-AGUILAR,

Plaintiff Appellee,

v.

MARION COUNTY SHERIFF'S DEPARTMENT, et al.,

Defendants Appellees.

APPEAL OF: STATE OF INDIANA,

Proposed Intervenor.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 1:16-cv-02457-SEB-TAB — **Sarah Evans Barker**, *Judge*.

ARGUED SEPTEMBER 7, 2018 — DECIDED MAY 9, 2019

Before FLAUM, RIPPLE, and BARRETT, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Antonio Lopez-Aguilar brought this action against the Marion County Sheriff's Department ("the Sheriff's Department"), Sheriff John R. Layton, in both his official capacity and his individual capacity, and a sergeant

of the Sheriff's Department, in his individual capacity (together, "the defendants"). His complaint set forth one claim under 42 U.S.C. § 1983. He alleged that when the defendants detained him for transfer into the custody of Immigration and Customs Enforcement ("ICE"), they violated his Fourth Amendment rights.[1] Mr. Lopez-Aguilar also brought supplemental claims, based on Indiana law, for false arrest and false imprisonment. His complaint sought damages and a declaration that the defendants had violated his rights by detaining him. He did not seek injunctive relief.

The parties later proposed, and the district court subsequently entered, a Stipulated Final Judgment and Order for Permanent Injunction ("the Stipulated Judgment"), which granted declaratory and prospective injunctive relief but dismissed with prejudice Mr. Lopez-Aguilar's damages claims. Following the entry of final judgment, but within the time for appeal, the State of Indiana ("the State" or "Indiana") moved to intervene for the purpose of appealing the district court's order entering the Stipulated Judgment. The district court denied Indiana's motion to intervene. The State now appeals that denial.

Indiana has standing for the purpose of bringing this appeal. The State's motion to intervene was timely, and it also fulfilled the necessary conditions for intervention of right. Finally, the State has demonstrated that the district court was without jurisdiction to enter prospective injunctive re-

[1] The Fourth Amendment to the Constitution of the United States is made applicable to the states by the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

lief. Therefore, for the reasons set forth more fully below, we reverse the judgment of the district court and remand the case for proceedings consistent with this opinion.

I.

BACKGROUND

A.

On September 18, 2014, Mr. Lopez-Aguilar came to the Marion County Courthouse in Indianapolis to attend a hearing on a criminal misdemeanor complaint charging him with driving without a license. When he arrived, officers of the Sheriff's Department informed him and his attorney that an ICE officer had come to the courthouse earlier that day looking for him.[2] He alleges that a Sergeant Davis took him into custody. Later that day, Mr. Lopez-Aguilar appeared before the traffic court and resolved his misdemeanor charge. That disposition did not include a sentence of incarceration. Sergeant Davis nevertheless again took Mr. Lopez-Aguilar into custody, informing him that he would be held until the Sheriff's Department could transfer him to ICE's custody. Mr. Lopez-Aguilar consequently remained at the Marion County jail overnight; the next day, county officers transferred him to ICE. Neither federal nor state authorities charged Mr. Lopez-Aguilar with a crime, and he did not ap-

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[2] Kevin Wies, the ICE officer who claimed responsibility for Mr. Lopez-Aguilar's immigration detention and arrest, stated in a declaration that, based on a fingerprint match in the ICE database, he had asked the Sheriff's Department to communicate with him about Mr. Lopez-Aguilar. According to Officer Wies, ICE never issued either a written or an informal detainer for Mr. Lopez-Aguilar.

pear before a judicial officer. ICE subsequently released him on his own recognizance. An unspecified type of "immigration case" against Mr. Lopez-Aguilar was pending when he later filed this action.[3]

B.

On September 15, 2016, Mr. Lopez-Aguilar initiated this litigation by filing a complaint against the Sheriff's Department, Sheriff Layton, and Sergeant Davis. As noted earlier, he asserted a claim for violation of the Fourth Amendment under 42 U.S.C. § 1983 as well as state law claims for false arrest and false imprisonment. Following the exchange of discovery, the parties agreed to settle the case to "avoid the cost and uncertainty of continued litigation."[4] Specifically, on July 10, 2017, Mr. Lopez-Aguilar and the defendants jointly proposed to the district court a Stipulated Judgment. Indiana news outlets reported this proposed Stipulated Judgment in the days following its filing. On July 13, 2017, the United States filed a request for time to submit a pleading addressing the parties' proposed settlement. The district court granted that motion, and, on August 4, 2017, the United States filed a statement of interest objecting to the Stipulated Judgment. The news media also reported the Government's opposition to the parties' agreement.

In its statement, the United States noted that the Immigration and Nationality Act ("INA") authorized the Sheriff's Department to cooperate with the enforcement of federal immigration laws. Further, the Government submitted, the

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[3] R.1 ¶ 23.

[4] Lopez-Aguilar Br. 6.

Sheriff's Department's cooperation with ICE did not violate the Fourth Amendment. The United States disputed whether the defendants' detention of Mr. Lopez-Aguilar amounted to an unlawful seizure. Even if there had been an unlawful seizure, continued the Government, the permanent injunction was improper because it imposed relief far beyond any actual injury to Mr. Lopez-Aguilar.

After considering the positions of the parties and the Government, the district court approved the Stipulated Judgment and then entered a final judgment declaring that:

> [S]eizures by the defendants of any person based solely on detention requests from [ICE], in whatever form, or on removal orders from an immigration court, violate the Fourth Amendment, unless ICE supplies, or the defendants otherwise possess, probable cause to believe that the individual to be detained has committed a criminal offense; [and]
>
> … [F]or the avoidance of doubt, an ICE request that defendants seize or hold an individual in custody based solely on a civil immigration violation does not justify a Fourth Amendment seizure … .[5]

Further, the district court permanently enjoined the defendants from "seizing or detaining any person based solely on detention requests from ICE, in whatever form, or on removal orders from an immigration court, unless ICE sup-

[5] R.50 at 1–2.

plies a warrant signed by a judge or otherwise supplies probable cause that the individual to be detained has committed a criminal offense."[6]

The district court also issued an opinion to explain its approval of the Stipulated Judgment. The court first considered whether the Stipulated Judgment would require the Sheriff's Department to violate Indiana law. A statutory provision prohibits a governmental body, such as the Sheriff's Department, from implementing a policy that "prohibits or in any way restricts" law enforcement officers from taking certain actions "with regard to information of the citizenship or immigration status" of a person, such as "[c]ommunicating or cooperating with federal officials." Ind. Code § 5-2-18.2-3. The district court determined, however, that because the Stipulated Judgment only prohibited the Sheriff's Department from "seizing" or "detaining" certain individuals, "not from communicating with or about them," the Stipulated Judgment posed no conflict.[7] The district court then examined another provision that forbids a state governmental body from "limit[ing] or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law." Ind. Code § 5-2-18.2-4. The district court conceded difficulty in interpreting and applying this provision. It nevertheless determined that, if the provision simply prohibits a state governmental body from requiring or permitting anything less than cooperation with federal immigration enforcement to the full extent such co-

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[6] *Id.* at 2.

[7] R.49 at 17.

operation is permitted by federal law, there is no conflict with the Stipulated Judgment. In the district court's view, without an express agreement with the United States Attorney General or some other Congressionally-approved arrangement, state cooperation with federal immigration authorities did not contemplate state enforcement of removal orders or ICE detainers. The INA preempted any such requirement. Additionally, said the court, any such state enforcement absent probable cause would violate the Fourth Amendment. Accordingly, the district court found that the Stipulated Judgment did not require the Sheriff's Department to violate Indiana law.[8]

The district court next considered whether the Stipulated Judgment complied with the strictures of *Local No. 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501 (1986). That case requires the district court to determine that a proposed consent decree "(1) spring[s] from and serve[s] to resolve a dispute within the court's subject matter jurisdiction; (2) come[s] within the general scope of the case made by the pleadings; and (3) further[s] the objectives of the law upon which the complaint was based." *Komyatti v. Bayh*, 96 F.3d 955, 960 (7th Cir. 1996) (quoting *Local No. 93*,

[8] The district court also determined that the Stipulated Judgment did not conflict with Indiana Code §§ 5-2-18.2-5, 6. Section 5 creates a private right of action for violations of Chapter 18.2, *id.* § 5-2-18.2-5, and Section 6 requires a state court that finds a knowing or intentional violation of this chapter to enjoin the violation, *id.* § 5-2-18.2-6. According to the district court, because these provisions "impose[] no duties" on the Sheriff's Department, there was no conflict. R.49 at 17. The State does not challenge the district court's rulings regarding Sections 5 and 6 in this appeal.

478 U.S. at 525) (alteration omitted) (internal quotation marks omitted). The district court concluded that the Stipulated Judgment satisfied these requirements because: (1) it would resolve Mr. Lopez-Aguilar's § 1983 claim, which was within the court's subject-matter jurisdiction, by terminating the litigation; (2) restricting the defendants' ability to cooperate with ICE was within the scope of Mr. Lopez-Aguilar's complaint that the defendants had unlawfully seized and detained him; and (3) the Stipulated Judgment "further[ed] Fourth Amendment values" by limiting "state intrusions on individual privacy."[9] Further, "to the extent the remedy in the Stipulated Judgment exceed[ed] the Fourth Amendment's requirements," the district court ruled, it was "directly related to the elimination of the condition alleged to offend the Fourth Amendment."[10]

Finally, the district court evaluated whether the Stipulated Judgment was fair and reasonable. The district court acknowledged that Mr. Lopez-Aguilar "appear[ed] to have a strong case," but noted that "litigating the merits" would involve difficult disputes over the defendants' qualified immunity defense and the facts surrounding his detention.[11] Finally, the district court considered the Government's position. It rejected the Government's view that the relief exceeded the scope of the alleged injury and therefore violated the rule set forth in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). In the court's view, "if Indiana law does not conflict

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[9] R.49 at 31.

[10] *Id.* at 32.

[11] *Id.* at 33.

with the Stipulated Judgment, then Marion County and Lopez-Aguilar are free to contract for nearly any remedy they desire."[12] Finally, the court determined that the Stipulated Judgment was consistent with the public interest and would be judicially manageable.

The district court approved and entered the Stipulated Judgment on November 7, 2017. According to the State, following the entry of final judgment, "an attorney at the United States Department of Justice informally advised the Office of the Indiana Attorney General that the State may have interests at stake in the case."[13] Consequently, on December 4, 2017, the State moved for intervention of right or, alternatively, for permissive intervention, in order to appeal the district court's order entering the Stipulated Judgment. On the same date, the State requested a thirty-day extension of time to file a notice of appeal, which the district court granted. The district court concluded that it was appropriate to grant the State's motion for extension of time given that "[t]he State was not involved in, and did not necessarily have cause to know of, the course of litigation in this case before filing its intervention and extension motions, and appear[ed] to have sought to protect its interests as soon as was practicable upon learning of the Stipulated Judgment."[14]

Mr. Lopez-Aguilar and the defendants opposed the State's request to intervene, and, on January 5, 2018, the dis-

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[12] *Id.* at 34.

[13] Appellant's Br. 14.

[14] R.58 at 4 (emphasis omitted).

trict court denied the State's motion. First, the district court found that the State had failed to establish Article III standing to intervene because it had not demonstrated an injury-in-fact and because any injury suffered by the State would not be redressable by taking an appeal. The court acknowledged that a state has a legally protected interest in the continued enforceability of its laws and that this interest is harmed when a court holds that a state law is unconstitutional. But the district court reasoned that it had not held a state law unconstitutional; it had simply construed a state statute as not requiring that law enforcement officers cooperate with removal orders, standing alone, or with immigration orders, standing alone. A disagreement about the interpretation of a statute is not, held the district court, sufficient to establish a cognizable injury-in-fact. The district court further held that any injury the State suffered was not redressable. Relying on our decisions in *1000 Friends of Wisconsin Inc. v. United States Department of Transportation*, 860 F.3d 480 (7th Cir. 2017), and *Kendall Jackson Winery, Ltd. v. Branson*, 212 F.3d 995 (7th Cir. 2000), the court concluded that any judicial relief obtained on appeal (i.e., vacation of the Stipulated Judgment) would remedy the State's injury only in a contingent and collateral way.

The district court went on to say that, even if Indiana had standing to intervene, its motion would fail under Federal Rule of Civil Procedure 24 because it was untimely. Further, the court continued, even assuming that the motion was timely, the State was not entitled to intervene as of right because it had not asserted "a direct, significant, and protectable interest unique to the State which will be impaired by the

denial of its motion to intervene."[15] Finally, the district court held that the State was not entitled to permissive intervention because it had failed to satisfy the requirements of Rule 24(b). The State timely appealed from the denial of intervention.

II.

DISCUSSION

A.

In reviewing the district court's decision, we begin with a basic principle: "It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Art. III of the Constitution by alleging an actual case or controversy." *Lyons*, 461 U.S. at 101. We therefore must examine, as a threshold matter, whether the State of Indiana has the requisite standing to intervene in this case. This is a question of law, which we review de novo. *Winkler v. Gates*, 481 F.3d 977, 982 (7th Cir. 2007).

To establish standing, a plaintiff must satisfy three criteria. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, the plaintiff must, as an "irreducible constitutional minimum," demonstrate "injury in fact," "an invasion of a legally protected interest" which is both "concrete and particularized," not "conjectural or hypothetical." *Id.* (internal quotation marks omitted). "Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly … trace[able] to the chal-

[15] R.62 at 17.

lenged action of the defendant … .'" *Id.* (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41 (1976)). Third, the plaintiff must demonstrate that a favorable decision by the court is likely to remedy the claimed injury. *Id.* at 561. Here, two of these factors—whether the State suffered an injury-in-fact and whether its claimed injury can be redressed by this court—deserve a close examination.

We first consider whether the State has demonstrated sufficient injury-in-fact. The State contends that the Stipulated Judgment interferes *directly and substantially* with the use of its police power to cooperate with the federal government in the enforcement of the Country's immigration laws. Mr. Lopez-Aguilar, agreeing with the district court, emphasizes that the injunction does not render the state statutes unconstitutional; it merely interprets them. In his view, Indiana's injury is therefore not a significant one. Mr. Lopez-Aguilar further suggests that if the State could intervene in any litigation where its Attorney General disagreed with a judicial interpretation of a state statute, the State would have the right to intervene in all sorts of private litigation.

Mr. Lopez-Aguilar's characterization artificially minimizes the particular interest that the State seeks to vindicate here. Indiana seeks to protect a state prerogative of constitutional dimension. The Supreme Court has recognized specifically that a state has a cognizable interest sufficient to establish Article III standing in the "continued enforceability of its own statutes," even when another party with an aligned interest has determined not to appeal. *Maine v. Taylor*, 477 U.S. 131, 137 (1986). Although the district court did not declare Section 4 unconstitutional in all respects, it did hold that

Fourth Amendment considerations and the preemptive effect of the INA required that the statute be given a restrictive reading. That reading is so restrictive as to preclude state officers from cooperating with federal officers with respect to ICE detainers or immigration court removal orders. The district court's interpretation of the statute, although not a total declaration of unconstitutionality, restricts significantly the vitality of the statute and the capacity of the State to cooperate with the federal government. Indiana has demonstrated that it has suffered a cognizable injury sufficient for standing to appeal. *See Taylor*, 477 U.S. at 137 (holding that the State of Maine, an intervenor in the district court and the only appealing party, had standing to appeal because, "if the judgment of the Court of Appeals [was] left undisturbed," Maine would "be bound by the conclusive adjudication" that its law was unenforceable).

We next consider whether the State's claimed injury is redressable. Mr. Lopez-Aguilar observes that the district court's injunction runs solely against Marion County officials. It does not run against any state official. In his view, we could not grant Indiana relief because it seeks to set aside an injunction against a non-appealing party. He views this rule as an ironclad one, admitting of no exceptions. To support this broad assertion, Mr. Lopez-Aguilar invites our attention to our decision in *Kendall Jackson Winery*. There, three suppliers of alcoholic beverages sought an injunction against state officials preventing the enforcement of a newly enacted statute that forbade the suppliers to cancel distribution agreements without good cause. 212 F.3d at 996. In bringing the suit against the state officials, these suppliers also had named their previous distributors as defendants. The court entered a preliminary injunction against the state officials,

enjoining them from enforcing the statute. *Id.* The state officials did not take an appeal, but the distributor-defendants did. *Id.* We held that the distributors did not have standing to appeal because the district court's injunction ran against only the state officials. *Id.* at 997–98. As long as those officials acquiesced in the imposition of the injunction, the distributors could obtain no relief. *Id.* at 998. Their injury was derivative; they were harmed only indirectly by the inability of the state officials to issue orders that would protect the distributors' interests. *Id.*

Our later cases have confirmed the continued vitality of this rule. In *Cabral v. City of Evansville*, 759 F.3d 639 (7th Cir. 2014), residents of the City of Evansville brought an action against the City challenging the City's approval of a two-week display of numerous six-foot crosses along public riverfront property. *Id.* at 641. The district court entered a permanent injunction; it barred the City from granting a permit for the erection of the display. *Id.* The applicant, the West Side Christian Church, was an intervenor in the district court but was not subject to the injunction. *Id.* The City did not appeal the district court's decision to enter a permanent injunction, but the Church did. *Id.* We dismissed the appeal because the Church did not have standing. *Id.* We emphasized that only the City, not the Church, was subject to the injunction. *Id.* at 642. If we vacated the injunction at the Church's request, it would not alter whether the Church was permitted to erect the crosses. *Id.* It would simply allow the City, a stranger to the appeal, to determine whether to permit the crosses. *Id*. Any injury that the Church would suffer, we concluded, was "derivative" of the City's injury. *Id*.

We then went on to express our holding another way. We said that it was a basic rule of appellate procedure that "a judgment will not be altered on appeal in favor of a party who did not appeal [even if] the interests of the party not appealing are aligned with those of the appellant." *Id.* at 643 (quoting *Albedyll v. Wis. Porcelain Co. Revised Ret. Plan*, 947 F.2d 246, 252 (7th Cir. 1991)). Relying on *Kendall Jackson*, we wrote that "[t]he critical question is this: when a district judge enters an order creating obligations only for Defendant A, may the court of appeals alter the judgment on appeal by Defendant B when obligations imposed on A *indirectly* affect B?" *Id*. (quoting *Kendall Jackson*, 212 F.3d at 998) (emphasis added).

Our more recent decision in *1000 Friends of Wisconsin* presented a similar situation. Wisconsin, desirous of widening a road between Fond du Lac and Sheboygan, sought the release of federal funds for the project. 860 F.3d at 481. The United States Department of Transportation released an environmental impact statement evaluating the potential effects of the project and then issued a "record of decision permitting the use of federal funds." *Id.* At that point, a group opposed to the project brought suit, asking the district court to determine that the impact statement was inadequate and to enjoin the project. *Id.* The district court declined to enjoin the project but did set aside the "record of decision." *Id.* The United States Department of Transportation then issued a revised impact statement, but the district court continued to deem it inadequate. *Id.* Only the *Wisconsin* Department of Transportation and one of its employees appealed the district court's decision; the United States Department of Transportation did not. *Id.* We held that the Wisconsin authorities did not have standing to appeal. *Id.* at

483. We stressed that, under the statute governing environmental impact statements, state authorities had no duties. *Id.* at 482. They remained free to undertake the project with state funds. *Id.* Only the federal authorities were subject to the court's order disapproving of the environmental impact statement, and the State could not substitute itself for the federal agency that had responsibility for the statement. *Id*. Any harm to Wisconsin was indirect; it could not obtain federal funds, but it remained free to proceed on its own.

In Mr. Lopez-Aguilar's view, our holdings in these cases are dispositive. Although his argument has superficial appeal, on reflection, we cannot accept it. Here, we are not dealing with the derivative injury of a private party whose interests are dependent on the enjoined party. Rather, the district court has enjoined a subordinate component of state government from acting in accordance with the directive of the state legislature. Indiana alleges a direct injury to its capacity to require subordinate entities of state government to act in accordance with state law. In its sovereign capacity, the State seeks to vindicate its authority to require officials of subordinate units of government to fulfill their responsibilities. The State maintains that the Stipulated Judgment directly frustrates its prerogatives and confounds its efforts to be supportive of federal policy. Indiana contends, in essence, that the subordinate officers of state government have abdicated their responsibilities by agreeing to the district court's injunction. The State seeks to protect its sovereign prerogative to cooperate with the federal government and to require subordinate entities of state government to comply with that legislative policy directive.

Mr. Lopez-Aguilar reminds us that the defendants have no statutory duty to appeal the district court's judgment. Those officials do have a statutory duty, however, to obey state law. Indiana simply asks that we vacate a federal district court order requiring local law enforcement officers in Marion County to act in perpetuity contrary to state law. Such relief will remedy directly the injury to the State's sovereign interest in implementing a state-wide legislative policy of full cooperation with federal immigration law. Because the State established a cognizable injury-in-fact, *see Taylor*, 477 U.S. at 137 (recognizing that "a State clearly has a legitimate interest in the continued enforceability of its own statutes"), and because we can directly redress that injury by vacating the Stipulated Judgment, we conclude that the State has standing to bring this appeal.

B.

1.

Having presented a justiciable case or controversy, Indiana still must comply with the requirements of Rule 24. A prerequisite for both intervention of right and permissive intervention is that the motion to intervene must be timely. Fed. R. Civ. P. 24(a), (b). Mr. Lopez-Aguilar submits that the district court correctly held that, even if the State had standing to appeal, its motion to intervene was not timely.

As detailed above, Mr. Lopez-Aguilar and the defendants jointly filed the Stipulated Judgment with the district court on July 10, 2017. Three days later, on July 13, 2017, the United States filed a request for time to submit a Statement of Interest, which the district court granted. On August 4, 2017, the United States filed its Statement of Interest oppos-

ing entry of the Stipulated Judgment. The district court nevertheless approved and entered the Stipulated Judgment on November 7, 2017. According to the State of Indiana, following entry of the Stipulated Judgment, "an attorney at the United States Department of Justice informally advised the Office of the Indiana Attorney General that the State may have interests at stake in the case."[16] Consequently, on December 4, 2017, the State moved to intervene in order to appeal the district court's order entering the Stipulated Judgment. On the same date, the State requested, and the district court granted, a thirty-day extension of time to file a notice of appeal.

In its order granting the extension of time, the district court explained that, "[e]ven with the exercise of due diligence, the State would not necessarily have had earlier notice of this lawsuit and our entry of final judgment."[17] The court further observed that:

> [P]ublished news items and broadcast media coverage included discussions of this lawsuit both before and after final judgment was entered. It is not far-fetched to presume that State government officials would take the appropriate steps to keep abreast of legal proceedings touching on major questions of public policy involving its capital city's government. That said, we know of no legal duty imposed on the

[16] Appellant's Br. 14.

[17] R.58 at 3.

> State to track every lawsuit implicating an interpretation of Indiana law—the primary basis for the State's intervention motion—and we have no reason to believe that the State had actual notice of this lawsuit before its filing of the motions now before us.[18]

The district court concluded that it was appropriate to grant the State's motion for extension of time to appeal given that "[t]he State was not involved in, and did not necessarily have cause to know of, the course of litigation in this case before filing its intervention and extension motions, and appear[ed] to have sought to protect its interests as soon as was practicable upon learning of the Stipulated Judgment."[19] Despite these findings, on January 5, 2018, the district court denied the State's motion to intervene. Among other grounds, the court determined that the State's motion failed for lack of timeliness.

We have stated, in the context of Rule 24, that "[t]imeliness is not limited to chronological considerations but is to be determined from all the circumstances." *City of Bloomington v. Westinghouse Elec. Corp.*, 824 F.2d 531, 534 (7th Cir. 1987) (internal quotation marks omitted). We consider four factors to determine whether a motion to intervene is timely: "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice

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[18] *Id.* at 3–4.

[19] *Id.* at 4 (emphasis omitted).

to the intervenor if the motion is denied; [and] (4) any other unusual circumstances." *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000). "The test for timeliness is essentially one of reasonableness: 'potential intervenors need to be reasonably diligent in learning of a suit that might affect their rights, and upon so learning they need to act reasonably promptly.'" *Reich v. ABC/York Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995) (quoting *Nissei Sangyo America, Ltd. v. United States*, 31 F.3d 435, 438 (7th Cir. 1994)). We further note that, when intervention of right is sought, because "the would-be intervenor may be seriously harmed if intervention is denied, courts should be reluctant to dismiss such a request for intervention as untimely, even though they might deny the request if the intervention were merely permissive." 7C Charles Alan Wright et al., *Federal Practice & Procedure: Civil* § 1916 (3d ed. 2018). "We review the district court's decision on timeliness for an abuse of discretion." *Reich*, 64 F.3d at 321.

The first factor that we consider is the length of time the State knew or should have known of its interest in this case. "[W]e do not necessarily put potential intervenors on the clock at the moment the suit is filed or even at the time they learn of its existence. Rather, we determine timeliness from the time the potential intervenors learn that their interest might be impaired." *Id.* Indiana contends that its motion was timely because it moved to intervene as soon as it became aware of the Stipulated Judgment, less than a month after the entry of judgment and within the time to file an appeal. It maintains that it was unaware of this case or the Stipulated Judgment until after the district court entered final judgment.

In considering this first factor, we, like our sister circuits, give significant weight to the fact that the motion to intervene was filed within the time limit for filing a notice of appeal.[20] Additionally, although the district court ultimately ruled that the motion to intervene was not timely, the court's earlier statements reflected another view. In finally denying the motion to intervene, the court remarked that the State should have known that it had an interest in the litigation five months earlier, when the parties proposed the Stipulated Judgment. The court also asserted that the State should have known of its interest in this case when, as early as July 12, 2017, Indiana media outlets published stories about this litigation and the parties' proposed agreement. By contrast, in granting the State's motion for extension of time to appeal, the court noted that "[e]ven with the exercise of due diligence, the State would not necessarily have had earlier notice of this lawsuit and [the district court's] entry of final judgment."[21] Indeed, the district court acknowledged, correctly, that "we know of no legal duty imposed on the State to track every lawsuit implicating an interpretation of Indiana law … and we have no reason to believe that the State had actual notice of this lawsuit" before filing its motion to intervene.[22] We think the latter remarks of the district court reflect a more accurate and realistic view of the entire record. The district court was correct in determining that the State

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[20] *See, e.g.*, *Ross v. Marshall*, 426 F.3d 745, 755 (5th Cir. 2005); *Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1229 (6th Cir. 1984).

[21] R.58 at 3.

[22] *Id.* at 4.

cannot be faulted for not learning of this suit sooner. The State received no notification of the initiation of this litigation, and the Attorney General of Indiana had no obligation to monitor the local news services to determine from their reports whether the State had a sufficient interest to justify entering the litigation.[23]

Of course, the "most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case." *Nissei Sangyo America, Ltd. v. United States*, 31 F.3d 435, 439 (7th Cir. 1994) (quoting 7C Charles Alan Wright et al., *Federal Practice & Procedure: Civil* § 1916 (2d ed. 1986)). Where a stipulated judgment is involved, intervention can prejudice the original parties because the judgment cannot be approved without the intervenor's agreement and because the implementation of its terms will "necessarily be delayed." *City of Bloomington*, 824 F.2d at 536.

The district court determined that the prejudice to the original parties would be "real and appreciable" because the personal-capacity defendants had been dismissed with prejudice and their repose would be disturbed.[24] The offi-

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[23] *Cf. Atl. Mut. Ins. Co. v. Nw. Airlines, Inc.*, 24 F.3d 958, 961 (7th Cir. 1994) (noting that, "[u]ntil the district judge issued his opinion," the intervenor "could not have known that this otherwise-mundane case included an issue affecting international relations"); *Peruta v. Cty. of San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (en banc) (granting the State of California's motion to intervene after a panel of the Ninth Circuit had issued its decision because the State "had no strong incentive to seek intervention … at an earlier stage, for it had little reason to anticipate … the breadth of the panel's holding").

[24] R.62 at 14.

cial-capacity defendants had obtained the district court's determination of their obligations, and Mr. Lopez-Aguilar's vindication of his position would be "wholly overthrown" by reopening the litigation.[25]

As a practical matter, however, none of these suggested difficulties can be said to be a result of the State's "delay" in moving to intervene. Even if the State moved to intervene in July 2017, after the parties proposed the Stipulated Judgment, rather than in December 2017, after the State learned that the district court had entered final judgment, the burden to the parties of reopening the litigation and resuming settlement negotiations would have been the same. *Cf. Nissei Sangyo America*, 31 F.3d at 439 (concluding that the intervenor's "delay" did not cause the type of prejudice advanced by the plaintiff, since the plaintiff "would have been burdened in precisely the same manner had [the movant's] motion to intervene been filed in July rather than October"). Any prejudice to Mr. Lopez-Aguilar and the defendants is not "so great as to justify denying" the State's motion to intervene. *Reich*, 64 F.3d at 322.

We also must consider "the prejudice to the intervenor if the motion is denied." *Sokaogon Chippewa Cmty.*, 214 F.3d at 949. For example, we determined in *Reich* that the prejudice to a group of exotic dancers who wished to intervene in a Fair Labor Standards Act suit brought against their employer by the Secretary of Labor was significant and outweighed any prejudice to the existing parties. *Reich*, 64 F.3d at 322. Absent intervention, the dancers would have been denied

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[25] *Id.*

"their one and only opportunity to define their employment status" with the defendant. *Id.*

Here, the district court took the view that the prejudice to the State "would be minimal or nonexistent" because its order "binds only the original parties to this action" and because the State "has numerous courts, state and federal, and numerous potential cases, open to it for the vindication of its preferred legal position."[26] We cannot accept this view. The district court's entry of a *permanent* injunction hobbles, substantially, Indiana's ability to implement its legislative policy in its most populous county. Nor is this a case where the State previously had the opportunity, but elected not, to provide its input on the terms of the Stipulated Judgment. *Cf. City of Bloomington*, 824 F.2d at 537 (noting that the proposed intervenor had "submitted its comments to the Justice Department, and its views were presumably considered by the district court prior to the final entry of the consent decree," such that "it would suffer little prejudice if it were denied permission to intervene"). Rather, the district court approved and entered the Stipulated Judgment without any adversarial briefing on the enforceability of the relevant Indiana code provisions, let alone any input from the State. The prejudice to the State from being denied the opportunity to explain portions of its legal code is "significant" and "outweighs any prejudice" to the existing parties. *Reich*, 64 F.3d at 322.

A state's right to participate in federal litigation implicating its interests as a sovereign is a serious matter. *Cf.* 28

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[26] *Id.* at 15.

U.S.C. § 2403(b) (requiring a district court to notify a state's attorney general and permit the state to intervene whenever the constitutionality of a state statute is at stake); Fed. R. Civ. P. 5.1 (permitting the state attorney general to intervene when a party files a paper "drawing into question the constitutionality" of a state statute).[27] Moreover, the impairment of a substantive state legislative policy that directly implicates federal-state cooperation is surely a matter requiring great sensitivity on the part of the federal courts. If the State cannot intervene, then the district court's judgment will stand without adversarial briefing on the question of the enforceability of the Indiana code provisions designed to promote such cooperation.

In sum, because the State filed its motion to intervene within the time for filing an appeal, because the State cannot be faulted for not having intervened earlier, and because the prejudice to the State from being denied intervenor status outweighs any prejudice to the parties from allowing intervention, its motion to intervene was timely.[28] The district

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[27] Indiana does not argue that 28 U.S.C. § 2403(b) is directly applicable in this case, nor is the operation of that statute clear where federal preemption of state law is the operative issue. For those reasons, we will pretermit any reliance upon it.

[28] The fourth factor we may consider is whether there are "any other unusual circumstances" bearing on the timeliness inquiry. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000). The district court ruled that "the State has pointed us to no such circumstances, and we perceive none." R.62 at 15. In its brief on appeal, the State has raised no argument regarding any unusual circumstances. *Cf.* Appellant's Br. 23–27. Therefore, our analysis does not include this factor.

court exceeded the bounds of permissible discretion in reaching a contrary conclusion.

2.

We now turn to examine whether the State satisfied the remaining conditions for seeking intervention. A non-party who wishes to intervene as of right must satisfy three requirements under Rule 24(a):

> (1) [T]he applicant must claim an interest relating to the property or transaction which is the subject of the action,
> (2) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, and
> (3) existing parties must not be adequate representatives of the applicant's interest.

Sokaogon Chippewa Cmty., 214 F.3d at 945–46.

We first consider whether Indiana has a legally protectable interest in this litigation. "Our cases say that the prospective intervenor's interest must be direct, significant, and legally protectable." *Solid Waste Agency of N. Cook Cty. v. United States Army Corps of Eng'rs*, 101 F.3d 503, 506 (7th Cir. 1996). The Rule does not define "interest," but "the case law makes clear that more than the minimum Article III interest is required." *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009). At the same time, we have interpreted "statements of the Supreme Court as encouraging liberality in the definition of an interest." *Meridian Homes Corp. v. Nicholas W. Prassas & Co.*, 683 F.2d 201, 204 (7th Cir. 1982). In general, "[w]hether an applicant has an interest sufficient to warrant

intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value." *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995).

In this case, the State has a *fundamental* interest in the maintenance of its legislatively mandated policy to cooperate fully with the federal government in the enforcement of immigration laws. It is certainly within the State's exclusive purview to establish its expectations of the law enforcement officers operating under its statutes. Indiana has an interest in giving effect to its legislature's determination that the State ought to cooperate fully with federal immigration enforcement. Because the State has a substantial interest in overturning a federal injunction that limits its ability to effectuate its legislature's expectations, it has a "direct, significant, and legally protectable" interest in this litigation. *Solid Waste Agency*, 101 F.3d at 506.[29]

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[29] The Supreme Court's decision in *Arizona v. United States*, 567 U.S. 387 (2012), does not diminish the State's asserted interest in this litigation. In *Arizona*, the Court held that the Immigration and Nationality Act ("INA") preempted an Arizona statute authorizing state officers, acting without a warrant, to detain any person if the officer had probable cause to believe that person committed an offense that made him removable from the United States. *Id.* at 410. The Court observed that federal law "instructs when it is appropriate to arrest an alien during the removal process." *Id.* at 407. By "attempt[ing] to provide state officers even greater authority to arrest aliens on the basis of possible removability than Congress ha[d] given to trained federal immigration officers," the Arizona statute conflicted with the federal scheme. *Id.* at 408. In defense of the statute, Arizona referenced 8 U.S.C. § 1357(g)(10)(B), which authorizes state officers to "cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present

(continued …)

Next, we examine whether the Stipulated Judgment "may as a practical matter impair or impede" the State's "ability to protect its interest." Fed. R. Civ. P. 24(a)(2). We have recognized that "concern with the stare decisis effect of a decision can be a ground for intervention." *Flying J*, 578 F.3d at 573. We also have observed that requiring a would-be intervenor to assert his interest in a separate suit can amount to an "impediment" justifying intervention as of right. *Id.* In *Flying J*, for example, we held that the interest of retailers who wished to limit price competition "would be directly rather than remotely harmed by invalidation" of a statute regulating unfair sales because the retailers "would lose much or even all of their business to their larger, more efficient competitors." *Id.* at 572. Because the retailers sought only "an opportunity to litigate an appeal," we concluded that requiring the retailers to "start over" by bringing a sepa-

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(… continued)
in the United States." But, according to the Court, "no coherent understanding" of the word "cooperation" would include "the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." *Arizona*, 567 U.S. at 410. By contrast, the Indiana statutes at issue here only require that state and local officers cooperate with federal immigration efforts. *See* Ind. Code § 5-2-18.2-3 (prohibiting a governmental body from implementing a policy that "prohibits or in any way restricts" law enforcement officers from taking covered actions "with regard to information of the citizenship or immigration status" of a person, such as "[c]ommunicating or cooperating with federal officials"); *id.* § 5-2-18.2-4 (prohibiting a governmental body from "limit[ing] or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law"). Indiana law does not contemplate the kind of unilateral action by state officers that the *Arizona* Court determined violated federal law.

rate suit was an "impediment" that could be removed, without prejudice to the parties, "by allowing intervention." *Id.* at 573.

Here, the Stipulated Judgment will impair directly the State's ability to protect its substantial interest in cooperating with federal immigration enforcement efforts. The terms of the injunction oblige the Sheriff's Department of Indiana's most populous county to disregard, in a significant way, what the State believes is a legislative command to cooperate with the federal government. Absent intervention, the State will have no opportunity to assert its interest before the parties are bound by the terms of the Stipulated Judgment. *See Solid Waste Agency*, 101 F.3d at 507 (observing that "[t]he strongest case for intervention" is "where the intervenor-aspirant has no claim against the defendant yet a legally protected interest that could be impaired by the suit").

Lastly, we examine whether the existing parties adequately represent Indiana's interest. We presume adequacy of representation "[w]here the interests of the original party and of the intervenor are identical—where in other words there is no conflict of interest." *Id.* at 508. Here, by contrast, none of the original parties, who jointly requested entry of the Stipulated Judgment and did not seek an appeal, share the State's interest in defending the enforceability of the contested state statutes. Neither Mr. Lopez-Aguilar nor the defendants contend that any existing party adequately represents any interest the State may have in this case.

Because the State has demonstrated a direct, significant, and legally protectable interest in this litigation, which will be impaired absent intervention and is not adequately represented by the existing parties, the State is entitled to inter-

vention as of right. The district court therefore erred when it denied the State's motion.[30]

C.

Having determined that the district court should have permitted Indiana to intervene for purposes of taking an appeal, we turn now to consider the State's position. In Indiana's view, "[t]he district court lacked Article III jurisdiction to declare unlawful and permanently enjoin Marion County's detention of removable aliens."[31] More specifically, Indiana submits that, because Mr. Lopez-Aguilar alleged only a single past incident of unlawful conduct—his detention in September 2014, at an ICE officer's request—his claim of past injury does not constitute in itself the real and immediate threat of injury necessary to make out a case or controversy.

We evaluate this contention by focusing on the Supreme Court's decision in *Lyons*. In that case, Lyons sued the City of Los Angeles and four of its police officers, alleging that the officers had stopped him for a traffic violation and, without provocation or legal justification, seized him and applied a "chokehold." 461 U.S. at 97. He sought damages, a declaratory judgment, and an injunction against the City barring the use of chokeholds. *Id.* at 98. The Supreme Court reversed the district court's entry of a preliminary injunc-

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[30] Because Indiana clearly satisfies the criteria for intervention as of right under Rule 24(a), we need not examine in-depth whether it fulfills the requirements for permissive intervention under Rule 24(b).

[31] Appellant's Br. 33.

tion. It held that "the federal courts [were] without jurisdiction to entertain Lyons' claim for injunctive relief." *Id.* at 101.

The Court began its analysis with the premise that "those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Art. III of the Constitution by alleging an actual case or controversy." *Id.* Specifically, "[t]he plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct." *Id.* at 101–02 (internal quotation marks omitted). That "injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *Id.* at 102 (internal quotation marks omitted). It followed that "Lyons' standing to seek the injunction requested depended on whether he was likely to suffer future injury from the use of the chokeholds by police officers." *Id.* at 105.

Relying on its decisions in *O'Shea v. Littleton*, 414 U.S. 488 (1974), and *Rizzo v. Goode*, 423 U.S. 362 (1976), the Court concluded that Lyons "failed to demonstrate a case or controversy with the City that would justify the equitable relief sought." *Id.* In *O'Shea*, the Court had held that the plaintiffs' complaint that they had been subject to discriminatory enforcement of the criminal law "failed to satisfy the threshold requirement imposed by Art. III of the Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy." 414 U.S. at 493. The Court reasoned that, although some of the named plaintiffs had actually "suffered from the alleged unconstitutional practices," "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief[] … if unaccompanied by any continuing, present ad-

verse effects." *Id.* at 495–96. Further, even if the Court were to conclude that the complaint presented a case or controversy, the plaintiff class had failed "to establish the basic requisites of the issuance of equitable relief in these circumstances—the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law." *Id.* at 502.

Similarly, in *Rizzo*, the plaintiffs sought equitable intervention to remedy police officer mistreatment of minority citizens and Philadelphia residents. 423 U.S. at 366–67. Because the plaintiffs' alleged injury rested on "what one of a small, unnamed minority of policemen might do to them in the future," the Court concluded that "[t]his hypothesis [was] even more attenuated than those allegations of future injury found insufficient in *O'Shea* to warrant invocation of federal jurisdiction." *Id.* at 372.

Adhering to these principles, the Court in *Lyons* concluded that the plaintiff's complaint fell "far short of the allegations that would be necessary to establish a case or controversy." *Lyons*, 461 U.S. at 105. Although Lyons may have been illegally choked by the police on October 6, 1976, the Court observed that this single past incident did "nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part." *Id.* Given the "speculative nature" of his "claim of future injury," Lyons had failed to demonstrate a "likelihood of substantial and immediate irreparable injury," which is a "prerequisite of equitable relief." *Id.* at 111 (quoting *O'Shea*, 414 U.S. at 502). "Absent a sufficient likelihood that he

[would] again be wronged in a similar way," the Court explained, Lyons was "no more entitled to an injunction than any other citizen of Los Angeles." *Id.* Finally, the Court stressed that "the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of the States' criminal laws" absent "irreparable injury which is both great and immediate." *Id.* at 112 (citing *O'Shea*, 414 U.S. at 499). Accordingly, Lyons lacked standing to seek the injunction requested.

Lyons establishes that a plaintiff cannot seek an injunction "absent a showing of irreparable injury, a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again." *Id.* at 111. We consistently have understood *Lyons* to foreclose claims for equitable relief based on lack of standing where "the possibility" that the plaintiff "would suffer any injury as a result of" the challenged practice was "too speculative." *Robinson v. City of Chi.*, 868 F.2d 959, 966 (7th Cir. 1989) (affirming that there was "no reasonable likelihood" that plaintiff's claims would recur because he had "not alleged and ha[d] not shown that he [was] in immediate danger of again being directly injured" by a "post-arrest detention for investigation prior to a probable cause hearing"); *see also Campbell v. Miller*, 373 F.3d 834, 836 (7th Cir. 2004) (concluding that, after Indianapolis police officers arrested plaintiff for possessing marijuana and conducted a body-cavity search for drugs before releasing him, the district court could not enjoin this practice because, "[u]nless the same events [were] likely to happen again *to him* there [was] no controversy between him and the City about the City's future handling of other arrests" (emphasis in original)); *Perry v. Sheahan*, 222

F.3d 309, 313 (7th Cir. 2000) (affirming plaintiff's lack of standing to seek injunction of county policy of seizing firearms during an eviction because Perry could not "demonstrate a realistic threat that he would be the subject of another forcible eviction in Cook County that would result in the seizure of his property"); *Knox v. McGinnis*, 998 F.2d 1405, 1413 (7th Cir. 1993) (denying Knox's claim for injunctive relief because "the mere possibility that Knox may sometime in the future be returned to the [prison] segregation unit [did] not establish a real and immediate case or controversy").

We recently applied *Lyons* in *Simic v. City of Chicago*, 851 F.3d 734 (7th Cir. 2017). In that case, a police officer issued Simic a ticket for violating Chicago's ordinance against texting while driving. *Id.* at 736. When the plaintiff failed to pay the ticket, the City took steps to collect a fine. *Id.* Simic then sued the City, claiming that the ordinance was unconstitutional and seeking to enjoin its enforcement. *Id.* at 736–37. On appeal, we determined that Simic did not have standing to seek injunctive relief. "Unlike with damages," we explained, "a past injury alone is insufficient to establish standing for purposes of prospective injunctive relief." *Id.* at 738.

We determined that "Simic's claimed threat of future injury" was "conjectural" because it was entirely "contingent upon her once again driving while using her cell phone and receiving a citation under the Chicago ordinance." *Id.* "For purposes of standing to seek injunctive relief against future harm," we added, "courts generally assume that litigants 'will conduct their activities within the law and so avoid prosecution and conviction.'" *Id.* (quoting *O'Shea*, 414 U.S. at 497). Because Simic did "not have concrete plans to violate

Illinois law by using her cell phone while driving in Chicago," she lacked standing to seek injunctive relief. *Id.*

Applying *Lyons* to the case at hand, Mr. Lopez-Aguilar has failed to establish a case or controversy with the defendants "that would justify the equitable relief sought." *Lyons*, 461 U.S. at 105. Mr. Lopez-Aguilar's complaint identified as the source of his injury a single, isolated incident, on September 18, 2014, when a Marion County officer, at the request of an ICE officer, arrested and held him without probable cause. He did not allege any subsequent contact with the Sheriff's Department or the individual defendants, let alone any subsequent detentions in Marion County. That Mr. Lopez-Aguilar does not reside in Marion County makes a subsequent encounter with the Sheriff's Department and detention at the request of ICE all the more speculative. Therefore, "the odds" that Mr. Lopez-Aguilar will return to Marion County, again commit a traffic violation or other infraction resulting in an encounter with the Sheriff's Department, and again be detained at ICE's request are not "sufficient to make out a federal case for equitable relief." *Lyons*, 461 U.S. at 108 (internal quotation marks omitted). Absent "continuing, present adverse effects," Mr. Lopez-Aguilar's "[p]ast exposure to illegal conduct" by the defendants does not amount to a "present case or controversy" for equitable relief. *O'Shea*, 414 U.S. at 495–96.

Mr. Lopez-Aguilar simply fails to demonstrate a "likelihood of substantial and immediate irreparable injury," a prerequisite for equitable relief. *Lyons*, 461 U.S. at 111 (quoting *O'Shea*, 414 U.S. at 502). Without a "showing of any real or immediate threat that the plaintiff will be wronged again," *id.*, Mr. Lopez-Aguilar lacked standing to request,

and the district court lacked jurisdiction to award, the declaratory judgment and permanent injunction set forth in the Stipulated Judgment.

Mr. Lopez-Aguilar is notably reticent about countering forthrightly the State's argument that, under *Lyons*, he lacked standing to seek (and the district court lacked jurisdiction to award) injunctive relief. Instead, he maintains that the State ignores the line of cases holding that parties can agree through consent decrees to more relief than a court could have ordered absent settlement and more than the Constitution itself requires.[32] This argument over-reads significantly the governing case law. The requirement that the plaintiff must have standing to seek equitable relief does not cease when the parties agree to such relief by stipulated judgment. Although "[c]onsent decrees often embody outcomes that reach beyond basic constitutional protections," to be "enforceable as a judicial decree," a consent decree is "subject to the rules generally applicable to other judgments and decrees." *Kindred v. Duckworth*, 9 F.3d 638, 641 (7th Cir. 1993). The district court cannot "suspend the application of Article III" and the parties cannot "stipulate to the enlargement of federal jurisdiction" by means of a consent decree.

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[32] One of the cases on which Mr. Lopez-Aguilar relies is *Local No. 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501, 522 (1986). Although the Court in *Local No. 93* concluded that parties may agree to, and courts may enter, a consent decree that includes terms beyond the remedies provided in a specific *statute*, the Court never suggested that a court may enter a consent decree that includes a remedy beyond the court's *jurisdiction*. Indeed, the Court noted that "a consent decree must spring from and serve to resolve a dispute within the court's subject-matter jurisdiction." *Id*. at 525.

United States v. ACCRA PAC, Inc., 173 F.3d 630, 633 (7th Cir. 1999). Even when the parties resolve the plaintiff's claims by agreement, therefore, the district court must consider whether it has jurisdiction to award the relief requested.

For instance, in *Blair v. Shanahan*, 38 F.3d 1514 (9th Cir. 1994), the court determined that the plaintiff lacked standing to seek a declaratory judgment that a California statute criminalizing aggressive panhandling was unconstitutional. In the district court, the City of San Francisco had made an offer of judgment under which it would accept a declaratory judgment in favor of the plaintiff. *Id.* at 1517. After the district court approved the consent judgment, the City moved to modify or vacate the judgment. The district court denied that motion, and the City appealed. *Id.* at 1518. The Ninth Circuit reversed, holding that the plaintiff lacked standing to seek declaratory relief because "it [was] unlikely that he [would] ever again desire to panhandle." *Id.* at 1519. Relying on *Lyons*, the court observed that, "in the context of Blair's request for declaratory or injunctive relief, '[p]ast exposure to illegal conduct does not itself show a present case or controversy … if unaccompanied by any continuing, present adverse effects.'" *Id.* (quoting *Lyons*, 461 U.S. at 102). Thus, "Blair's lack of a personal stake in the declaratory judgment" left the court "without jurisdiction to review the district court's order" declaring the statute unconstitutional. *Id.* at 1520.[33]

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[33] Similarly, in *Ducharme v. Rhode Island*, No. 93-1675, 1994 WL 390144 (1st Cir. July 15, 1994) (unpublished), the court concluded that "Ducharme's claims for equitable relief [did] not fall within the subject matter jurisdiction of the federal courts." *Id.* at *3. The Rhode Island State

(continued …)

The parties' agreement to resolve Mr. Lopez-Aguilar's claims by stipulated judgment did not relieve the district court of its obligation to confirm that it had Article III jurisdiction to enter the declaratory judgment and permanent injunction. *Lyons* operates with the same force and effect in this context and compels the conclusion that Mr. Lopez-Aguilar did not have standing to request equitable relief. The Supreme Court has admonished that, absent "great and immediate" irreparable injury, "the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers

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(… continued)
Police had arrested Ducharme for disorderly conduct, taken him to a police building, and strip searched him before placing him in a holding cell. *Id.* at *1. Ducharme brought a claim under 42 U.S.C. § 1983 against the State Police and the police officer who searched him, alleging that the strip search violated his rights under the Fourth and Fourteenth Amendments. *Id.* The parties negotiated a consent judgment, by which the defendants agreed to pay Ducharme damages and to refrain from performing strip searches of arrestees charged with misdemeanors or motor vehicle offenses. *Id.* at *2. The district court denied Ducharme's motion for entry of the consent judgment, and the First Circuit affirmed. Acknowledging that "Ducharme clearly ha[d] standing to bring an action for damages against the defendants based on the … strip search," the court held that "[i]t [was] equally obvious that Ducharme ha[d] no standing to request equitable relief." *Id.* at *3. The court "simply" could not "assume that Ducharme [would] violate the law in the future in a manner that would lead the State Police to arrest him and place him in a holding cell." *Id.* Accordingly, "[i]n the absence of a case or controversy with respect to Ducharme's claim for equitable relief, *Lyons* teaches that neither we nor the district court have jurisdiction to consider the merits of an equitable decree." *Id.* The court perceived no "reason why the outcome of the jurisdictional inquiry should turn on whether the decree is the product of a pre-trial consent judgment or a post-trial order." *Id.*

engaged in the administration of the States' criminal laws." *Lyons*, 461 U.S. at 112; *see also O'Shea*, 414 U.S. at 499. Therefore, the district court erred when it entered the Stipulated Judgment without regard to Mr. Lopez-Aguilar's standing to seek equitable relief.[34]

---

[34] Mr. Lopez-Aguilar relies on *O'Sullivan v. City of Chicago*, 396 F.3d 843 (7th Cir. 2005), for the proposition that, although "Article III standing might not have supported injunctive relief (or any relief) at the time the decree was entered," that "did not cast doubt on the district court's ability to enter the decree when the case was properly within its subject-matter jurisdiction." Lopez-Aguilar Br. 47. *O'Sullivan*, however, addressed a different, and unique, situation. In *O'Sullivan*, the original consent decree was entered in 1972 and modified twice after that date. *O'Sullivan*, 396 F.3d at 848, 851. Approximately fifteen years after the last modification of the consent decree, the plaintiffs brought an enforcement action. *Id.* at 851. In response, the defendants maintained that the plaintiffs lacked standing to enforce the decree. *Id.* After reviewing the convoluted history of the litigation, the court made a few notable observations. First, "[a]fter a case has become final by exhaustion of all appellate remedies, only an egregious want of jurisdiction will allow the judgment to be undone by someone who, having participated in the case, cannot complain that his rights were infringed without his knowledge." *Id.* at 859 (quoting *In re Factor VIII*, 159 F.3d 1016, 1019 (7th Cir. 1998)). We determined that there was not "an egregious want of jurisdiction" when the district court originally entered the consent decree. *Id.* at 866. Rather, there had been significant changes in the Supreme Court's approach to subject-matter jurisdiction since entry of the decree. *Id.* at 866–67. Further, we observed that when enforcing a consent decree that included "an injunction restricting the ability of a State or local government to meet its responsibilities," "there is a need to ensure that changes in factual or legal circumstances do not transform a once-just result into one that is unjust, illegal or overly burdensome and do not unnecessarily hinder a State in providing for the welfare of its citizenry." *Id.* at 865. Given these circumstances, the proper action of the governmental de-

(continued …)

Conclusion

For the foregoing reasons, we reverse the judgment of the district court and remand for proceedings consistent with this opinion. Indiana may recover its costs in this court.

REVERSED AND REMANDED

(… continued)
fendant is not to ignore or defy the decree, but to seek a modification of the decree based on the change in law. *Id.* at 868. We therefore remanded the case to the district court, inviting the governmental defendants to seek a modification of the decree under Rule 60(b). *Id.*

The differences between our situation and the one in *O'Sullivan* are stark. There is no suggestion that, because of changes in the law, the district court initially had jurisdiction to award injunctive relief when the parties entered the Stipulated Judgment but has since lost such jurisdiction. At no point in this litigation did Mr. Lopez-Aguilar have standing to seek the prospective injunctive relief awarded by the district court. Moreover, this case is before us on direct appeal; it has not "become final by exhaustion of all appellate remedies." *Id.* at 859. Nor is the State attempting to undo a judgment after it has had the opportunity to participate in a case and have its rights fairly determined. Rather, the State seeks in the first instance an opportunity to ensure that its laws can operate within its most populous county in the manner contemplated by the Indiana legislature.

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Monday, June 17, 2019 10:24 AM
To:	Short, Tracy
Cc:	twheeler@fbtlaw.com
Subject:	Connecting

Hi Tracy,

I'm connecting you with Tom Wheeler, the new General Counsel for the National Sheriffs Association. I think he might have some questions for you about the Warrant Service Officer program.

Thanks!

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

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Sunday, June 23, 2019 5:34 PM
To: Executive Director
Subject: Re: Brown v. Ramsay case # 18-10279-CIV-KMW

I can ask our folks to give you a call. Sheriff's GC is in the loop (McCullah, I think?).

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

On Jun 23, 2019, at 5:07 PM, Executive Director <ed@sheriffs.org> wrote:

> No one got to me! Tom is our outside counsel. Sorry afraid that would happen.
>
> Please get me something because FL sheriff is still in dark...
>
> Thx!!!
>
> Please forgive any typos, errors or tonal shortcomings as this message is being sent from my phone.
>
> Jonathan Thompson
> (b) (6)

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Sunday, June 23, 2019 5:04:18 PM
To: Executive Director
Subject: Re: Brown v. Ramsay case # 18-10279-CIV-KMW

One of our folks connected with the Sheriff's GC and Tom Wheeler earlier this week to give a status update. Or so I understand

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

On Jun 23, 2019, at 4:23 PM, Executive Director <ed@sheriffs.org> wrote:

> Update on this, please…
>
> Please forgive any typos, errors or tonal shortcomings as this message is being sent from my phone.
>
> Jonathan Thompson

(b) (6)

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Wednesday, June 19, 2019 2:38:13 PM
To: Wheeler, Thomas E.; Cook, Steven H. (ODAG); Executive Director; Tom Blank; Wetmore, David H. (ODAG)
Cc: Gualtieri,Robert; Carrie Hill; Favitta, Jeff (OAG); (b)(6) per ATF
Subject: RE: Brown v. Ramsay case # 18-10279-CIV-KMW

Hey y'all,

I'm checking on the status of things internally. Adding Dave Wetmore from ODAG and taking off Auggie. Will be in touch.

Best,

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

From: Wheeler, Thomas E. <twheeler@fbtlaw.com>
Sent: Wednesday, June 19, 2019 12:32 PM
To: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Executive Director <ed@sheriffs.org>; Tom Blank (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Cc: Gualtieri,Robert <rgualtieri@pcsonet.com>; Carrie Hill <carrie@sheriffs.org>; Flentje, August (CIV) (b) (6) >; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF >; Wheeler, Thomas E. <twheeler@fbtlaw.com>
Subject: RE: Brown v. Ramsay case # 18-10279-CIV-KMW

Steve, thanks for looping in Gene and August. I am late to this party, but happy to help any way that I can in facilitating communication between NSA, DOJ and the MCSO since I spent so much time working with you guys in the past. Just let me know if I can help, but that being said I defer to Jonathan/Carrie as the NSA liaisons.

Thomas E. Wheeler
Attorney At Law | Frost Brown Todd LLC

317.237.3810 Direct
(b) (6) Mobile

twheeler@fbtlaw.com

From: Cook, Steven H. (ODAG) <Steven.H.Cook@usdoj.gov>
Sent: Wednesday, June 19, 2019 12:26 PM
To: Executive Director <ed@sheriffs.org>; Tom Blank (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Cc: Wheeler, Thomas E. <twheeler@fbtlaw.com>; Gualtieri, Robert

Cc: Wheeler, Thomas E. <twheeler@fbtlaw.com>; Gualtieri,Robert <rgualtieri@pcsonet.com>; Carrie Hill <carrie@sheriffs.org>; Flentje, August (CIV) (b) (6) Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>; Favitta, Jeff (OAG) <Jeff.Favitta@usdoj.gov>; (b)(6) per ATF

Subject: RE: Brown v. Ramsay case # 18-10279-CIV-KMW

By copy of this I am looping in Gene Hamilton and Jeff Favitta in the AG's office and August Flentje in the Civil Division. As of April 30, it was my impression that we were coordinating the DOJ position and potential next steps with MCSO but with my retirement looming, I will need to hand it off to those copied to address.

Steve

From: Executive Director <ed@sheriffs.org>
Sent: Wednesday, June 19, 2019 12:16 PM
To: (b)(6) per ATF Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Tom Blank (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Cc: Wheeler, Thomas E. <twheeler@fbtlaw.com>; Gualtieri,Robert <rgualtieri@pcsonet.com>; Carrie Hill <carrie@sheriffs.org>
Subject: Fwd: Brown v. Ramsay case # 18-10279-CIV-KMW

Guys,
Any federal inaction could have very serious repercussions for sheriffs cooperation in future enforcement programs.

How is the DOJ planning to help remedy a problem created by the government?

Jonathan

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

Jonathan Thompson
(b) (6)

From: Patrick McCullah <PMcCullah@keysso.net>
Sent: Wednesday, June 19, 2019 11:30:14 AM
To: Executive Director; (b)(6) - Jack Heekin Email Address
Subject: Brown v. Ramsay case # 18-10279-CIV-KMW

Good morning Gentlemen,

I hope all is well. The cavalry has not arrived and this case is progressing. If the federal government is to make any meaningful contribution, either directly or indirectly in this litigation, the window for that involvement is rapidly closing. Anything new on your end?

Thank you,

Patrick McCullah

General Counsel,
Monroe County Sheriff's Office
5525 College Road
Key West, Florida 33040
Telephone: 305.292.7020
Fax: 305.292.7070
E-mail: pmccullah@keysso.net

Hamilton, Gene (OAG)

From: Hamilton, Gene (OAG)
Sent: Wednesday, July 3, 2019 11:25 AM
To: Executive Director
Subject: Re: Any Updates?

Working on it. Hope to have some update later today

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

> On Jul 2, 2019, at 10:33 AM, Executive Director <ed@sheriffs.org> wrote:
>
> THIS MESSAGE CONTAINS LEGALLY PROTECTED AND CLIENT PRIVILEGED INFORMATION
>
> Gene, forgive my tenor.
>
> I know you have this on your list, and Pre seems to get it too. But Florida sheriffs are beyond frustrated, their Summer meeting is July 27-29. My guess is unless they hear definitively they will take action to withdraw from WSOs and BOA until feds fix...
>
> Pre and I discussed.
>
> In my opinion the only person that can fix now is the DAG with a firm and swift kick to Civil, "fix this today, give me a report by COB, and take the Sheriff's case, now!"...
>
> Sorry...
>
> J
> (b) (6)
>
>
> Confidentiality Notice: This message originated or was sent by or on behalf of an attorney. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.
>
> Original Message

> -----Original Message-----
> From: Rick Ramsay [mailto:rramsay@keysso.net]
> Sent: Tuesday, July 2, 2019 10:03 AM
> To: Executive Director <ed@sheriffs.org>
> Subject: Re: Any Updates?
>
> No, the Government has let the Sheriff's down again !!
>
> Sent from my iPhone
>
>> On Jul 2, 2019, at 10:02 AM, Executive Director <ed@sheriffs.org> wrote:
>>
>> No, I have let you down...
>>
>> -----Original Message-----
>> From: Rick Ramsay [mailto:rramsay@keysso.net]
>> Sent: Tuesday, July 2, 2019 10:02 AM
>> To: Executive Director <ed@sheriffs.org>
>> Subject: Re: Any Updates?
>>
>> Thank you sir, Rick
>>
>> Sent from my iPhone
>>
>>> On Jul 2, 2019, at 9:57 AM, Executive Director <ed@sheriffs.org> wrote:
>>>
>>> Well, I just spoke with the AG's person. Told them time is up, if they don't do something this week, the jig is up...keeping glimmer of hope alive but...I won't stop jumping on them.
>>>
>>> J
>>>
>>> -----Original Message-----
>>> From: Rick Ramsay [mailto:rramsay@keysso.net]
>>> Sent: Tuesday, July 2, 2019 9:43 AM
>>> To: Executive Director <ed@sheriffs.org>
>>> Cc: Patrick McCullah <PMcCullah@keysso.net>; Gualtieri,Robert <rgualtieri@pcsonet.com>
>>> Subject: Re: Any Updates?
>>>
>>> So much for cooperation and partnership. In the end, just like prior with detainers Sheriff's left holding the bag, so sad. Thank you all for your efforts, Sheriff
>>>
>>> Sent from my iPhone
>>>
>>> On Jul 2, 2019, at 9:37 AM, Executive Director <ed@sheriffs.org<mailto:ed@sheriffs.org>> wrote:

>>>
>>> Great. I'm beyond words. Sounds to me like they don't know what to do.
>>>
>>> Bob, I will call you later this am...
>>>
>>> J
>>>
>>> From: Patrick McCullah [mailto:PMcCullah@keysso.net]
>>> Sent: Tuesday, July 2, 2019 9:35 AM
>>> To: 'Gualtieri,Robert' <rgualtieri@pcsonet.com<mailto:rgualtieri@pcsonet.com>>; Executive Director <ed@sheriffs.org<mailto:ed@sheriffs.org>>
>>> Cc: Rick Ramsay <rramsay@keysso.net<mailto:rramsay@keysso.net>>
>>> Subject: RE: Any Updates?
>>>
>>> Good morning Sheriff,
>>>
>>> I hope all is well. Unfortunately, no. Per Bruce Jolly "Last word, at the end the week before last week was to the effect that it was still looking at the situation."
>>>
>>> Thank you for staying on this.
>>>
>>> Have a great day,
>>>
>>> Patrick McCullah
>>> General Counsel,
>>> Monroe County Sheriff's Office
>>> 5525 College Road
>>> Key West, Florida 33040
>>> Telephone: 305.292.7020
>>> Fax: 305.292.7070
>>> E-mail: pmccullah@keysso.net<mailto:pmccullah@keysso.net> >>> <image001.gif>
>>>
>>> Confidentiality Notice: This message is being sent by or on behalf of an attorney. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.
>>>
>>> Florida has a very broad public records law. Virtually all electronic mail sent or received by the Monroe County Sheriff's Office is available to the public upon request.
>>>
>>>
>>>

>>> From: Gualtieri,Robert [mailto:rgualtieri@pcsonet.com]
>>> Sent: Tuesday, July 02, 2019 7:59 AM
>>> To: Patrick McCullah <PMcCullah@keysso.net<mailto:PMcCullah@keysso.net>>; 'Executive Director' <ed@sheriffs.org<mailto:ed@sheriffs.org>>
>>> Subject: RE: Any Updates?
>>>
>>> Patrick.....any communications from DOJ since you and I talked last week?
>>>
>>> From: Patrick McCullah [mailto:PMcCullah@keysso.net]
>>> Sent: Monday, June 24, 2019 9:18 AM
>>> To: 'Executive Director' <ed@sheriffs.org<mailto:ed@sheriffs.org>>
>>> Cc: Gualtieri,Robert <rgualtieri@pcsonet.com<mailto:rgualtieri@pcsonet.com>>
>>> Subject: RE: Any Updates?
>>>
>>> Good morning,
>>>
>>> I received a call last week from Prerek Shah on behalf of Gene Hamilton. He indicated that it was a priority and they were working on it. I don't think we have had any additional communication at the trial level.
>>>
>>> Thank you for following up.
>>>
>>> Have a great day,
>>>
>>> Patrick McCullah
>>> General Counsel,
>>> Monroe County Sheriff's Office
>>> 5525 College Road
>>> Key West, Florida 33040
>>> Telephone: 305.292.7020
>>> Fax: 305.292.7070
>>> E-mail: pmccullah@keysso.net<mailto:pmccullah@keysso.net> >>> <image001.gif>
>>>
>>> Confidentiality Notice: This message is being sent by or on behalf of an attorney. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.
>>>
>>> Florida has a very broad public records law. Virtually all electronic mail sent or received by the Monroe County Sheriff's Office is available to the public upon request.
>>>
>>>
>>>

>>> From: Executive Director [mailto:ed@sheriffs.org]
>>> Sent: Sunday, June 23, 2019 5:39 PM
>>> To: Patrick McCullah <PMcCullah@keysso.net<mailto:PMcCullah@keysso.net>>
>>> Cc: Gualtieri,Robert <rgualtieri@pcsonet.com<mailto:rgualtieri@pcsonet.com>>
>>> Subject: Any Updates?
>>>
>>> You hear any word from DOJ?
>>>
>>>
>>> Please forgive any typos, errors or tonal shortcomings as this message is being sent from my phone.
>>>
>>> Jonathan Thompson
>>> (b) (6)
>>> CAUTION: This email originated from outside of the M.C.S.O. Whether you know the sender or not, do not click links or open attachments you were not expecting.
>>> CAUTION: This email originated from outside of the M.C.S.O. Whether you know the sender or not, do not click links or open attachments you were not expecting.
>>> CAUTION: This email originated from outside of the M.C.S.O. Whether you know the sender or not, do not click links or open attachments you were not expecting.
>>> CAUTION: This email originated from outside of the M.C.S.O. Whether you know the sender or not, do not click links or open attachments you were not expecting.
>> CAUTION: This email originated from outside of the M.C.S.O. Whether you know the sender or not, do not click links or open attachments you were not expecting.

Hamilton, Gene (OAG)

Subject:	Meeting - Monroe County Florida Suit on Wrongful Detainer
Start:	Friday, July 26, 2019 1:00 PM
End:	Friday, July 26, 2019 2:00 PM
Recurrence:	(none)
Meeting Status:	No response required
Organizer:	Hamilton, Gene (OAG)
Required Attendees:	Ward, Thomas G. (CIV); Executive Director; Albence, Matthew; Short, Tracy; Loiacono, Adam V; Favitta, Jeff (OAG); Kueter, Dean (OLA); pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County
Optional Attendees:	Cook, Steven H. (ODAG); Shah, Prerak (OASG)

From: Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>
Sent: Tuesday, July 16, 2019 3:21 PM
To: Executive Director <ed@sheriffs.org>; Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Short, Tracy <(b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Shah, Prerak (OASG) <pshah@jmd.usdoj.gov>; Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

I've reserved the Civil Division's conference room 3143 in Main Justice (950 Penn, NW) for July 26 at 1pm.

If folks can send me a list of attendees I can share with DOJ security, please do.

Tom Ward

From: Executive Director <ed@sheriffs.org>
Sent: Tuesday, July 16, 2019 3:00 PM
To: Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>; Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF >; pmccullah@keysso.net; Bob A.

Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Shah, Prerak (OASG) <pshah@jmd.usdoj.gov>; Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>
Subject: Re: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

We will be there!

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

Jonathan Thompson
(b) (6)

From: Ward, Thomas G. (CIV) <Thomas.G.Ward@usdoj.gov>
Sent: Tuesday, July 16, 2019 2:53:08 PM
To: Albence, Matthew; Hamilton, Gene (OAG); Executive Director; Short, Tracy; Loiacono, Adam V; Favitta, Jeff (OAG); (b)(6) per ATF pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County
Cc: Cook, Steven H. (OLA); Shah, Prerak (OASG); Ward, Thomas G. (CIV)
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

Should we calendar 1pm on July 26th at Main Justice?

Tom Ward
Deputy Assistant Attorney General, Torts Branch, Civil Division
U.S. Department of Justice

From: Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Sent: Tuesday, July 16, 2019 10:29 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Executive Director <ed@sheriffs.org>; Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF >; pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (OLA) <stcook@jmd.usdoj.gov>; Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>; Shah, Prerak (OASG) <pshah@jmd.usdoj.gov>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

26th best for us. Thanks.

Sent with BlackBerry Work
(www.blackberry.com)

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Date: Tuesday, Jul 16, 2019, 9:48 AM
To: Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>, Executive Director <ed@sheriffs.org>, Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>, Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>, Favitta, Jeff (OAG) <Jeff.Favitta@usdoj.gov>, (b)(6) per ATF >, pmccullah@keysso.net <pmccullah@keysso.net>, Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (ODAG) <Steven.H.Cook@usdoj.gov>, Ward, Thomas G. (CIV) <Thomas.G.Ward@usdoj.gov>, Shah, Prerak (OASG) <Prerak.Shah@usdoj.gov>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

Monday doesn't work for a key member of our team. The 26th is the optimal day for me but I can make the afternoon of the 24th work.

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

From: Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>
Sent: Tuesday, July 16, 2019 9:45 AM
To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Executive Director <ed@sheriffs.org>; Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Cook, Steven H. (ODAG) <shcook@jmd.usdoj.gov>; Ward, Thomas G. (CIV) <tward@CIV.USDOJ.GOV>; Shah, Prerak (OASG) <pshah@jmd.usdoj.gov>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

We will make it work.

From: Hamilton, Gene (OAG) <Gene.Hamilton@usdoj.gov>
Sent: Tuesday, July 16, 2019 9:20 AM
To: Executive Director <ed@sheriffs.org>; Short, Tracy (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Favitta, Jeff (OAG) <Jeff.Favitta@usdoj.gov>; (b)(6) per ATF >; pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Albence, Matthew (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Cook, Steven H. (OLA) <Steven.H.Cook2@usdoj.gov>; Ward, Thomas G. (CIV) <Thomas.G.Ward@usdoj.gov>; Shah, Prerak (OASG) <Prerak.Shah@usdoj.gov>
Subject: RE: Meeting Request for Monroe County Florida Suit on Wrongful Detainer

Thank you for the message, Jonathan. We are DOJ would be happy to meet with you all next week. Is there a time on each of those days that is better than others for you all?

DHS, work on your end?

Thanks,

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

From: Executive Director <ed@sheriffs.org>
Sent: Monday, July 15, 2019 6:10 PM
To: (b)(6); (b)(7)(C) per ICE @ice.dhs.gov; Loiacono, Adam V (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov>; Favitta, Jeff (OAG) <jfavitta@jmd.usdoj.gov>; (b)(6) per ATF ; pmccullah@keysso.net; Bob A. Gualtieri - Pinellas County <rgualtieri@pcsonet.com>
Cc: Matthew Albence (b)(6); (b)(7)(C) per ICE @ice.dhs.gov) (b)(6); (b)(7)(C) per ICE @ice.dhs.gov>; Cook, Steven H. (OLA) <stcook@jmd.usdoj.gov>
Subject: Meeting Request for Monroe County Florida Suit on Wrongful Detainer
Importance: High

Folks,
On behalf of Sheriff Ramsay of Monroe Country Florida and the National Sheriffs' Association I am requesting a meeting of this group (plus an added person from DOJ Civil Division) to discuss the impasse on federal support to the Sheriff's office in Brown v. Ramsay—a case pending in Florida federal district court.

It is apparent that your respective agencies have equities in this case that will favorably support the Sheriff's desires for a dismissal, negotiated settlement or other remedy. To be clear, it was because of the Government's request (via an ICE BOA detainer attached) that the sheriff's deputy detained plaintiff Brown. That detention is now the subject of federal litigation alleging the violation of Plaintiff's 5th amendment rights.

Since its inception the BOA, and now WSO, was meant as a tool to grant ICE officers/agents a constitutionally and legal method to ask non-federal law enforcement to hold an inmate if ICE determined probable cause existed. It was this mutual commitment that permitted the prior Attorney General and Secretary of DHS to state unequivocally that the USG would use all possible means available to intervene if/when a sheriff or local agency was sued as a result of these initiatives.

In this case ICE personnel erroneously requested a detainer against a USCIT (Brown). That detainer which was signed by multiple line and supervisory personnel. This mistaken determination is the cornerstone of the case in question.

For six plus months we have sought assistance to have the DOJ or ICE intervene. We are now told the DOJ cannot--short of offering remuneration of private attorney fees. While appreciated, it is not relevant in this case as the Sheriff's outside counsel is paid by their insurance underwriter.

We understand that Justice can't authorize further action/involvement than already offered unless/until ICE grants release of information or access to the Officer(s) in question.

Therefore we are at an impasse. We fear this impasse will unravel two vital programs to offer sheriffs the legal and constitutional authority to detain criminal aliens when requested by ICE.

We request a meeting for next week (22, 24, or 26 July) here in Washington, or as soon as practicable pending the parties availability.

Respectfully,

Jonathan Thompson
(b) (6)

Jonathan Thompson
Executive Director and CEO
National Sheriffs' Association

Jonathan F. Thompson
National Sheriffs' Association
Executive Director and CEO

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http://www.sheriffs.org

Hamilton, Gene (OAG)

From:	Hamilton, Gene (OAG)
Sent:	Wednesday, July 17, 2019 4:57 PM
To:	Wheeler, Thomas E.
Subject:	Re: Florida ICE Case - National Sheriffs Association

Yes. I set it up with some folks. Thanks for checking!

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

On Jul 17, 2019, at 4:52 PM, Wheeler, Thomas E. <twheeler@fbtlaw.com> wrote:

> Just want to make sure this meeting on Friday, July 26, 2019 is on your radar. The NSA President and I just got briefed on it by our ED. He said the ICE Director would be there, as well as someone senior from the DOJ Civil Division, as well as people from OLC and OLP. He did not mention any front office people. He says he has tried to contact the AG directly. I'm not really involved as of yet, beyond what we did before, but wanted to make sure you were in the loop.
>
> **Thomas E. Wheeler**
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> 317.237.3810 Direct
> (b) (6) Mobile
> twheeler@fbtlaw.com