State of Indiana
Lake County Superior Court - Civil Division Room No. Five

Jeff Nicholson, **Douglas Grimes, Greg Serbon**, and **Cheree Calabro**, *Plaintiffs* *v.* **City of Gary**, **Indiana**; **City of Gary Common Council**; **Herbert Smith, Jr.**, **Rebecca L. Wyatt**, **Michael L. Protho**, **Mary Brown**, **Carolyn D. Rogers**, **Linda Barnes Caldwell**, **LaVetta Sparks-Wade**, **Ronald Brewer**, and **Ragen Hatcher**, in their official capacities as City of Gary Common Council Members; and **Karen Freeman-Wilson**, in her official capacity as City of Gary Mayor, *Defendants*	**Cause No. 45D05-1802-MI-00014** **SPECIAL JUDGE Nanette K. Raduenz** (formerly Cause No. 45C01-1712-MI-00347 in the Lake Circuit Court, Crown Point, Indiana; transferred after recusal)

Plaintiffs' Summary-Judgment Reply and Opposition Memorandum

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Introduction[2]

Six big-picture analytical points readily refute most of the City's argument:

(**1**) The City alleges a material-fact issue over "knowingly or intentionally" under IC 5-2-18.2-6: "Plaintiffs have offered virtually no evidence to support their remarkable claim that the Common Council knowingly and intentionally flouted the law." (City's SJ Mem. 53.) But "knowingly or intentionally" means "'the intent to do the prohibited act, or the knowledge that one is doing so,'" which "'does not require knowledge that the act is in violation of the law or the intent to violate a statutory provision.'" *Simon v. Auburn, Bd. of Zoning Appeals*, 519 N.E.2d 205, 210 (Ind. Ct. App. 1988) (citation omitted). The City admits it "knowingly and intentionally enacted the Ordinance." (VC ¶ 14; Answer ¶ 14.) So the City conceded the relevant knowingly-intentionally issue. No material-fact issue exists. *See infra* Facts and Part IV(A).

(**2**) The City urges narrow statutory constructions in its favor to supposedly avoid violations of the Supremacy Clause and the Fourth, Tenth, and Fourteenth Amendments (City's S.J. Mem. 4, 14, 26-33, 40 n.19, 40-44), for which arguments it relies heavily on *City of El Cenizo v. Texas*, 264 F. Supp. 3d 744 (W.D. Tex. 2017) (City's SJ Mem. 42-43, 53). But the Fifth Circuit rejected such constitutional arguments. *City of El Cenizo v. Texas*, No. 17-50762, slip op. at 3 (5th Cir. Mar. 13, 2018) ("*El Cenizo*"), *available at* http://www.ca5.uscourts.gov/opinions/pub/17/17-50762-CV0.pdf. And assertions that Plaintiffs' constructions raise serious constitutional concerns requiring avoidance by narrow constructions err because the constitutional insinuations are

[2] In this combined reply supporting Plaintiffs' summary-judgment motion and opposition to the cross-motion for summary judgment, Plaintiffs (i) incorporate by reference all of their summary-judgment briefing and supporting documents herein and (ii) ask the Court to consider all such briefing and documents together to avoid the necessity of duplicative briefing. Though this brief addresses arguments by the *City*, the arguments apply to *all* Defendants.

meritless. *See infra* Part V.[3] So erroneous, unserious constitutional claims can't justify narrow constructions. *See infra* Parts II-IV.

(**3**) Where laws may be interpreted in more than one way, Indiana requires a court "to ascertain and give effect to the intent of the legislature." *Simon*, 519 N.E.2d at 211 (citing *Foremost Life Ins. Co. v. Dep't of Ins.*, 409 N.E. 2d 1092, 1095 (Ind. 1980)). That mandates considering a law "as a whole . . . and not overemphasizing a strict literal or selective reading of individual words, *id.* (citation omitted), e.g., "status." So the City's too-narrow constructions of federal and state statutes must be rejected. *See infra* Parts II-IV.

(**4**) The City says permanent-injunction elements aren't satisfied. (City's SJ Mem. Part II.) But an "action to compel . . . compl[iance] with [Chapter 18.2]" is a *statutory* (not equitable) action under IC 5-2-18.2-5,[4] and IC 5-2-18.2-6 provides the *sole* element for an injunction: "*if a court finds* that a governmental body . . . *violated section 3 or 4* of [Chapter 18.2], the court *shall enjoin* the violation," IC 5-2-18.2-6 (emphasis added). The City says section 6 might mean what it says, "but the court need not decide this question" because "any violation could not have been knowing or intentional" (City's SJ Mem. 47), based on its erroneous interpretation refuted in point #1 above. So no other elements are required. *See infra* Part VI.

(**5**) The City says home rule protects the Ordinance. (City's SJ Mem. Part I(A)(2)(b).) But *El Cenizo* rejected that argument because local law can't *conflict* with Texas law. No. 17-50762, slip op. at 35-36. The same being true in Indiana (Pls.' SJ Mem. 12 n.17 (quoting IC 36-1-3-5)), the City's argument fails. *See infra* Part III.

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[3] Because the City didn't deem constitutional concerns about Chapter 18.2 serious enough to warrant counterclaims of unconstitutionality, its assertions of "serious [constitutional] concerns" mandating narrow constructions (City's SJ Mem. 26; *see also id.* at 26-33, 40-44) can't be taken seriously. By contrast, the *El Cenizo* plaintiffs challenged Texas's law as unconstitutional.

[4] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

(**6**) The present issue is whether challenged provisions of *the Ordinance itself* prohibit/restrict/limit what *Chapter 18.2 itself* says a governmental body may not prohibit/restrict/limit, not what a City-invented, over-reading of Chapter 18.2 might require, e.g., the City's notion that IC 5-2-18.2-4 might be violated if "a courthouse or public library 'limit[ed]' the scope of potential immigration enforcement by closing at 5 PM rather than 6 PM." (City's SJ Mem. 32.)

For these and other reasons shown below, the City's cross-motion for summary judgment should be denied and Plaintiffs' summary-judgment motion should be granted.

Facts

There is "no genuine issue as to any material fact," TR 56(C), and the material facts are simple.(*See* Pls.' SJ Mem. 2-3.) (*See also* Plaintiffs' Designation of Evidence in Support of Their Motion for Summary Judgment ("Pls.' SJ Evid."); Plaintiffs' Designation of Evidence in Support of Their Opposition to the City's Cross-Motion for Summary Judgment (Pls.' 2d SJ Evid.").)[5]

As noted above, *see infra* at 1 (point #1), the City alleges a material-fact issue over "knowingly or intentionally" but admits that it "knowingly and intentionally enacted the Ordinance," so it conceded the relevant knowingly-intentionally issue, *see also infra* Part IV(A), and no material-fact issue precludes summary judgment for Plaintiffs.

In addition to the facts recited already, Plaintiffs highlight the following relevant facts here (and none creates a material-fact issue that prevents a grant of summary judgment to Plaintiffs):

- Gary Police Department Policy Number 1-92, a "General Order" effective "2-27-2006," ti-

[5] Plaintiffs incorporate by reference their prior statement of facts and evidence designation and ask the Court to consider all factual statements and evidence designation together to avoid duplication. The Trial Rules expressly provide for supplementation of evidence. *Compare* TR 56(C) ("[a]t the time of filing . . . shall designate") *with* TR 56(E) ("The Court may permit affidavits [e.g., the Verified Complaint] to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.").

tled "Relationships With Other Agencies," establishes that City LEOs are governed generally by two specific, relevant policies. First: "All department personnel shall maintain harmonious working relations and communication with . . . *any other criminal justice agencies*. The department shall provide *all possible information, assistance, and support* to these agencies *allowed by law*" (emphasis added). Second: "All employees of the department shall assist and cooperate with *all* federal, state, and local law-enforcement agencies *in every way possible allowed by law*" (emphasis added). (Pls.' 2d SJ Evid. Ex. C.)

- In her deposition (Pls.' 2d SJ Evid. Ex. A.), Mayor Karen Marie Freeman-Wilson, as the City's chief law enforcement officer, established (inter alia) the following facts:
  - In the past seven years, which reaches before the enactment of the Ordinance, the City has not had a problem with city employees and agencies discriminating based on immigration status (Mayor Dep. 18:21-21:11);
  - The Ordinance doesn't allow an LEO who has stopped someone for speeding to inquire as to the person's citizenship status (*id.* 39:22-41:16)
  - Absent a criminal warrant, the Ordinance doesn't allow compliance with an ICE detainer (*id.* 42:14-45:1);
  - Absent a criminal warrant, the Ordinance doesn't allow providing ICE with information beyond citizenship/immigration status, such as a residence address, about a person subject to an ICE detainer (*id.* 45:2-48:15);
  - The Ordinance doesn't allow entering into an agreement under 8 U.S.C. 1357(g) (Mayor Dep. 48:16-49:13);
  - Absent a criminal warrant, the Ordinance doesn't allow ICE to interview a person detained by the City (*id.* at 49:14-50:23); and

- Absent a criminal warrant, the Ordinance doesn't allow a detained person to be transferred to ICE custody (*id.* at 50:24-51:5).

• In his deposition (Pls.'s 2d SJ Evid. Ex. B), Police Chief Richard Allen established (inter alia) the following facts:

- In the City's jail (a.k.a. "detention facility" and "holding facility" (Allen Dep. 17:20-19:8; 33:2-8)) are facilities for keeping persons overnight, and the City can hold, and has held, persons overnight in its jail (*id.* 33:2-34:15);
- The Police Chief had no knowledge of the notice of a duty to cooperate that IC 5-2-18.2-7 establishes and requires to be provided in writing to every LEO ever having been provided to City LEOs, and no such notice was produced in response to applicable production requests (Allen Dep. 44:2-45:3);
- Prior to the enactment of the Ordinance, there was no problem with a lack of trust concerning persons not trusting City LEOs to protect public safety (*id.* 25:11-27-15); and
- City LEOs have been given no training or instruction on implementing the Ordinance (*id.* 31:24-32:12).

Argument

Plaintiffs are "entitled to a judgment as a matter of law," TR 56(C), because, as established in Plaintiffs' Summary-Judgment Memorandum and below: (**I**) Plaintiffs have standing to challenge the Ordinance; (**II**) federal law protects Hoosiers with immigration laws; (**III**) Chapter 18.2 preempts local law and bans noncompliance with federal law; (**IV**) the Ordinance violates Chapter 18.2; (**V**) Gary's constitutional insinuations about Chapter 18.2 are meritless; and (**VI**) injunctions are required under Chapter 18.2 for knowing and willful violations, without more. For the

same reasons, the City is not entitled to summary judgment.

I.
Plaintiffs Have Standing to Challenge the Ordinance.

In Part I of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs established their standing under IC 5-2-18.2-6,[6] which is consistent with Indiana public-standing doctrine. Such standing includes the concomitant facts inherent in public standing and Chapter 18.2 regarding public interests and duties, e.g., that Plaintiffs share public interests in "'the execution of the law'" and "public safety" and the City's duties "includ[e] (i) a duty to cooperate with federal immigration law enforcement as established by Chapter 18.2 and (ii) a duty to impose on Gary LEOs their 'duty to cooperate with state and federal officials on matters pertaining to enforcement of state and federal laws governing immigration . . . .'" (Pls.' SJ Mem. 4-5 (citations omitted).) In its initial/opposition summary-judgment briefing, the City neither asserts that Plaintiffs lack standing nor responds to Plaintiffs' arguments establishing standing and the concomitant interests and public duties. (*See, e.g.*, City's SJ Mem. Table of Contents.) So the City doesn't contest standing.

In the later-filed Answer, the City said that Verified Complaint ¶¶ 7-9 "contain[] a conclusion of law to which no response is required" but "[t]o the extent a response is deemed required, Defendant **DENIES** the allegations." (Answer ¶¶ 7-9.) In ¶¶ 7-9, Plaintiffs asserted their statutory and public-interest standing, along with verified qualification therefor under IC 5-2-18.2-5 and public-standing doctrine in near-identical language to Part I of their Memorandum. Since the City (i) provides no arguments in response to Part I of Plaintiffs' Memorandum and (ii) concedes it "does not intend to contest Plaintiffs' purely factual allegations—for example, where each Plaintiff lives or works" (City's SJ Mem. 5 n.3), the City hasn't contested the issues of Plaintiffs'

[6] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

qualifications for, and possession of, statutory and public-interest standing (and the concomitant interests and duties).

In its Answer, the City also says it is "without sufficient information to admit or deny" Verified Complaint ¶¶ 10-13, which paragraphs also verify facts about individual Plaintiffs. (Answer ¶¶ 10-13.) But because (i) the City concedes that it doesn't contest these factual allegations (City's SJ Mem. 5 n.3) and (ii) Plaintiffs verified these facts under TR 11(B), designated them as evidence under TR 56(C) (Pls.' SJ Evid. ¶ 1), and the City provides no specific facts to show the facts untrue, they must be accepted as true (and pose no material-fact issue), TR 56(E).

So Plaintiffs (i) have standing for this action to compel and (ii) may assert those concomitant rule-of-law and public-safety interests and duties. Though balancing of interests isn't required, *see supra* at 2 (point #3) and *infra* Part VI, any City public-safety-interest claim is offset by the public's public-safety interest asserted by Indiana in enacting Chapter 18.2, the interests and duties inherent in Chapter 18.2 and public-standing doctrine, and the federal government's public-safety interests asserted in federal immigration laws and enforcement priorities (Pls.' SJ Mem. 9-11). *See infra* Parts II, III, and VI.

II.
Federal Law Protects Hoosiers with Immigration Laws.

In Part II of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs established that "federal law protects Hoosiers with immigration laws." (Pls.' SJ. Mem. 5.) Plaintiffs (i) set out those federal laws, including INA generally and 8 U.S.C. 1373 and 1644[7] specifically; (ii) established the proper broad interpretation of those laws based on their language and legislative history; (iii) cited and quoted the *El Cenizo* DOJ Statement of Interest, which established current ICE policy

[7] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

regarding immigration detainer requests, permissible state/local cooperation with federal authorities, and (iii) federal immigration-enforcement priorities, i.e., removing aliens that "'pose a risk to public safety or national security.'" (Pls.' SJ Mem. 5-11 (citation omitted).)

The scope of the 8 U.S.C. 1373 and 1644 mandates and the "full extent" of permissible state/local participation in "enforcement of federal immigration laws" are vital because the City "may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law." IC 5-2-18.2-4. The City erroneously attempts to minimize the mandates of 8 U.S.C. 1373 and 1644 and the "full extent permitted by law." (City's SJ Mem. Part I.)

Preliminarily, note that *Simon* summarizes controlling Indiana statutory-construction doctrine, including requiring courts to ascertain and implement legislative intent:

> In interpreting a statute we are to ascertain and give effect to the intent of the legislature. *Foremost Life Ins. Co. v. Dep't of Ins.* (1980), 274 Ind. 181, 409 N.E.2d 1092, 1095. In determining the legislative intent, the language of the statute itself must be examined, including the grammatical structure of the clause or sentence in issue. If possible, effect and meaning must be given to every word, and no part of the statute is to be held meaningless if that part can be reconciled with the rest of the statute. *Id.* at 1096. Further, a statute is to be examined and interpreted as a whole, giving common and ordinary meaning to words used in the English language and not over-emphasizing a strict literal or selective reading of individual words. *Id.*
>
> Indispensible to ascertaining the legislature's intent is a consideration of the goals sought to be achieved and the reasons and the policy underlying a statute. It is, therefore, necessary to view a statute within the context of the entire act, rather than in isolation, when construing the statute. *Matter of Middlefork Watershed Conservancy Dist.* (1987), Ind. App., 508 N.E.2d 574, 577. In construing statutes, it cannot be presumed that a legislature expects its enactments to be applied in an illogical or absurd manner, inconsistent with its underlying policies and goals. *Id.*

Simon, 519 N.E.2d at 211;[8] *see also ESPN v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192,

[8] *Simon* is of particular relevance to this case because in *Simon* plaintiff residents challenged a city board, the board members, et al. for holding a meeting in violation of Indiana's Open Door Law, with defendants arguing that they weren't liable because "there was no evidence that its violation of the Open Door Law was knowing and intentional." *Id.* at 210. The appellate court held that "since the Board does not argue that it did no intend the acts *it* performed, the trial court erred in finding the Board did not intend to avoid the Open Door Law." *Id.* (emphasis in origi-

1195-96 (Ind. 2016) ("we 'avoid interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results'" and "we determine and give effect to the intent of the legislature" (citations omitted)).[9] Moreover, "[a] statute is ambiguous, and thus open to judicial construction, when it is susceptible to more than one meaning." *Hendricks County Bd. of Zoning Appeals v. Barlow*, 656 N.E.2d 481, 485 (Ind. Ct. App. 1995) (citing *Amoco Production Co. v. Laird*, 622 N.E.2d 912 (Ind. 1993); *see also Day v. State*, 57 N.E.3d 809, 813 (Ind. 2016) ("[A] statute is ambiguous when it allows more than one reasonable interpretation." (citation omitted)). As discussed below, multiple interpretations exist of 8 U.S.C. 1373 and 1644, and Indiana's Chapter 18.2,[10] so Indiana's statutory-construction doctrine controls the interpretation of these provisions. Interpretation of federal laws may not be treated to less-favorable interpretation doctrines than are Indiana laws.

8 U.S.C. 1373(a) bans "local government entit[ies]'" from prohibiting/restricting sending/receiving "information *regarding* the citizenship or immigration status, lawful or unlawful, of any

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nal). *See* Introduction and Part VI (knowing and willful here refers to enacting Ordinance, not violation of Chapter 18.2) Applying the above statutory-construction rules to the Open Door Law, the court held it provided no exception for what happened, i.e., a meeting of members with its lawyer for advice "on matters other than those allowed under [the Open Door Law]." *Id.* at 212.

[9] The City's notion that including information-cooperation within "enforcement" in IC 5-2-18.2-4 would make IC 5-2-18.2-3 "wholly superfluous" (City's SJ Mem. 16) is erroneous under the foregoing interpretation doctrines because § 3 addresses information in the context of enacted ordinances, polices, etc. while § 4 addresses enforcement generally and bans limits/restrictions on "the enforcement of federal immigration laws," which would include information-cooperation. The City's argument here is meritless also because the City concedes that information-cooperation is part of enforcement in Ordinance § 26-51 ("immigration enforcement operation" includes "identification") and § 26-55(d) ("immigration enforcement operations[] includ[e] . . . information on persons").

[10] To be clear, Plaintiffs don't believe §§ 1373 and 1644 are ambiguous because the plain language means exactly what the supporting Reports say the plain language means. But as discussed below, multiple interpretations exist, creating the technical ambiguity arising from two interpretations that requires statutory construction and reference to legislative history.

individual" to/from the federal government (emphasis added), and § 1373(b) bans the same as to "sending . . . to," "requesting or receiving from," "maintaining," and "exchanging" such information with INS and other U.S. governmental entities.

In crafting § 1373, Congress intended that the phrase "information regarding the citizenship or immigration status" be interpreted broadly to include (inter alia) unimpeded communication of information *related to* individuals' citizenship or immigration status, including unobstructed cooperation in locating illegal aliens. The Senate Judiciary Committee Report accompanying the bill that became IIRAIRA makes this intent clear in its summary of what now-§ 1373 *does*:

> Prohibits any restriction on the exchange of information between the Immigration and Naturalization Service and any Federal, State, or local agency *regarding* a person's immigration status. Effective immigration law enforcement requires a cooperative effort between all levels of government. The acquisition, maintenance, and exchange of *immigration-related* information by State and Local agencies is consistent with, and potentially of considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act.

S. Rep. No. 104-249, at 19-20 (1996) (emphasis added).[11] So the natural reading of "information regarding citizenship or immigration status" is information generally related to the two broad topics of an individual's citizenship and immigration status, i.e., "information . . . *pertaining to* 'citizenship or immigration status,'" as the City concedes (City's SJ Mem. at 13 n.7 (emphasis added)),[12] and IC 5-2-18.2-7 confirms ("duty to cooperate . . . on matters *pertaining to* enforcement of state a federal laws governing immigration" (emphasis added)).

Moreover, "[a] statute is ambiguous when it allows more than one reasonable interpretation," *Day*, 57 N.E.3d at 813, and the City expressly concedes in its Ordinance that "citizenship

[11] *Available at* https://www.congress.gov/104/crpt/srpt249/CRPT-104srpt249.pdf.

[12] Though the City elsewhere resists this natural reading of "information regarding citizenship or immigration status," "pertaining to" is the natural reading instead of the City's overly narrow interpretation based on erroneous emphasis on the term"status," *see infra* at 16-20.

or immigration status" has two possible meanings: (i) the broad all-matters-regarding definition of that phrase in § 26-51 and (ii) the narrow definition of "[i]nformation regarding an individual's citizenship of immigration status" to "mean[] a statement of the individual's country of citizenship of the individual's immigration status" in § 26.59. And the *Steinle* case on which the City relies cites another court that interpreted the scope of § 1373 differently than *Steinle* did. (City's SJ Mem. 8 (quoting *Steinle v. City and Cnty. of San Francisco*, 230 F. Supp. 3d 944 (N.D. Cal. 2017) (citing *Bologna v. City & County of San Francisco*, 192 Cal. App. 4th 429 (Cal. App. 2011))).) Also, the conferees in the Senate Report clearly thought that § 1373 meant something different than what the City thinks it means (under its narrow definition). Given that the City concedes that § 1373 may be read in more than one way, Indiana requires this court to "determine and give effect to the intent of the legislature," *ESPN*, 62 N.E.3d at 1196, including "consideration of the goals sought to be achieved and the reasons and the policy underlying a statute," *Simon*, 519 N.E.2d at 211. So the Senate Report must be considered, and it plainly equates "regarding" with "immigration-related," so that § 1373 reaches all immigration-related information, as in Ordinance § 26-51, not just the narrow "statement" interpretation the City provides at § 26.59.

Notably, when the Second Circuit upheld § 1373 against constitutional challenge in a case involving Executive Order 124 (a provision similar to the present Ordinance), the court summarized the content of § 1373 and the cited Report together—without break or comment between them—as a package in a paragraph explaining the reach of § 1373. *City of New York v. U.S.*, 179 F.3d 29, 32-33 (2nd Cir.1999) (quoting foregoing Report). So Congress intended a "cooperative effort" between all governmental levels in enforcing immigration law, with the "acquisition, maintenance, and exchange of immigration-related information" being a key component.

Similarly, **8 U.S.C. 1644** bans prohibiting/restricting "sending to or receiving from the Immigration and Naturalization Service information *regarding* the immigration status, lawful or unlawful, of an alien in the United States" (emphasis added). Again the Second Circuit included the Conference Report without break as part of the package meaning of § 1644:

> "The conferees intend to give State and local officials the authority to communicate with the INS regarding the presence, whereabouts, or activities of illegal aliens.... The conferees believe that immigration law enforcement is as high a priority as other aspects of Federal law enforcement, and that illegal aliens do not have the right to remain in the United States undetected and unapprehended."

City of New York, 179 F.3d at 32 (quoting H.R. Conf. Rep. No. 104-725, at 383 (1996)[13]).

In *City of New York*, the Second Circuit treated §§ 1373 and 1644 as having the broad meanings that the cited legislative reports said they did, not as narrowly limited to mean merely a statement of citizenship status (e.g., "Iranian") and immigration status (e.g., "illegal"). For example, Executive Order 124 prohibited (with exceptions) "'transmit[ting] information respecting any alien to federal immigration authorities,'" 179 F.3d at 31 n.1 (citation omitted), and the Second Circuit describes that as "prohibit[ing] . . . transmitting information *regarding* the immigration status . . . ," *id.* at 31 (emphasis added), as "prohibit[ing] . . . transmitting information *regarding such an alien*," *id.* at 32 (emphasis added), and as one of the "laws that essentially restrict state and local officials from cooperating in the federal regulation of aliens," *id.* at 34. To underscore the non-cooperation intent of the Executive Order, the Second Circuit refers to it as "passive resistance that frustrates federal programs" and that §§ 1373 and 1644 are "valid federal measures that prohibit states from compelling passive resistance to particular federal programs." *Id.* at 35. So when the Second Circuit later describes the Executive Order as "appl[ying] only to information about immigration status," that shorthand use of "about" must be understood to

[13] *Available at* https://www.congress.gov/104/crpt/hrpt725/CRPT-104hrpt725.pdf.

mean what the Second Circuit's broader descriptions mean. Neither the Executive Order nor the Second Circuit understood the language of §§ 1373 and 1644 to be narrowly read as the City attempts to do here. (*See, e.g.*, City's SJ Mem. 7-10.) And this is clear at the close of its analysis when *City of New York* summarizes what §§ 1373 and 1644 did: "The effect of those Sections here is to nullify an Order that singles out and forbids voluntary cooperation with federal immigration officials." 179 F.3d at 37. That last holding is crucial because, if §§ 1373 and 1644 had the narrow meaning that the City here assigns them (providing a mere statement of citizenship/immigration status), the new federal laws would have affected only a small application of New York's broad Executive Order, not "nullify" it.

To summarize thus far, Congress chose to use the phrases "regarding the citizenship or immigration status" and "regarding immigration status" and indicated its intention that they be understood using an "all matters regarding"[14] understanding of "regarding"[15] so that the information on which cooperation may not be prohibited or restricted encompasses: (a) "[t]he acquisition, maintenance, and exchange of *immigration-related* information by State and Local agencies," S. Rep. No. 104-249, at 19-20 (1996) (emphasis added); (b) information "regarding the presence,

[14] The Ordinance recognizes that its synonymous phrase "about . . . the citizenship or immigration status of any person," § 26-52, requires defining "citizenship or immigration status" to include "all matters regarding" citizenship and immigration, § 26-51 (defining "*Citizenship or immigration status*"), which vitiates the City's argument that the nearly-identical language in 8 U.S.C. §§ 1373 and 1644 can't mean the same thing.

[15] Definitions of "regarding" include "with respect to," "concerning," "relating to," and "about," *see, e.g.*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/regarding, so *regarding citizenship/immigration status* means information concerning, relating to, or about an individual's citizenship and immigration status, broadly understood. By contrast, the language Congress used to indicate *merely* communicating country of citizenship or verifying immigration status is in 8 U.S.C. 1373(c), requiring INS response to inquiries by government entities "seeking to verify or ascertain the citizenship or immigration status . . . by providing the requested verification or status information." So the language in 8 U.S.C. 1373(a)-(b) and 1644 may not be narrowly defined to mean what the more limited language in 8 U.S.C. 1373(c) means.

whereabouts, or activities of illegal aliens . . . ," H.R. Conf. Rep. No. 104-725; and (c) information "'including reporting knowledge that a particular alien is not lawfully resident in the United States.'" *Arizona v. United States*, 567 U.S. 387, 411-12 (2012) (quoting 8 U.S.C. 1357(g)(10)(A)). So any attempt to restate or redefine the language that Congress identified, especially by narrowing the broad meaning Congress intended it to have, is contrary to Congressional language and intent and if adopted would violate the Supremacy Clause, U.S. Const. art. VI, para. 2, because such redefinition is field preempted (because Congress occupied the definitional field by employing its own language and saying what it means) and conflict preempted (as conflicting with Congress's meaning and intent). Sections 1373 and 1644 must be construed as Congress said it intended them to be, not narrowly so as to impede immigration-law enforcement by facilitating passive resistance.

The City says *City of New York* "does not purport to construe the term 'citizenship or immigration status' information." (City's SJ Mem. 10.) But as just shown, the way the Second Circuit described and employed the scope of §§ 1373 and 1644 (e.g., as nullifying the Executive Order's ban on "transmit[ing] information respecting any alien," 179 F.3d at 3131 n.1, 37) indicates its broader interpretation of what those federal laws require than what the City asserts.

The City also says "the Senate and House conference reports . . . do not support Plaintiffs' broad understanding of 'citizenship or immigration status' information. (City's Mem. 9.) "The portion of the Senate report on section 1373 cited by Plaintiffs," says the City, "purports to do no more that explain how the exchange of 'immigration-related information' acquired and maintained by state and local governments 'is consistent with, and potentially of considerable assistance to,' the INA's objectives." (City's SJ Mem. 9.) "It also immediately follows a sentence," the City continues, "that refers more specifically to information 'regarding a person's immigra-

tion status'—nearly the exact language used in section 1973—and so must be understood in that more limited sense." (*Id.*) But the City errs for at least three reasons.

First, *City of New York* explained that § 1373 bars (inter alia) prohibiting/restricting "exchanging information with the INS *about* the immigration or citizenship status of any individual." 179 F.3d at 32 (emphasis added.) That use of "about" parallels "regarding" and is broader than the mere "status" interpretation the City advocates (i) because of the about/regarding language, (ii) because the Second Circuit said that the Report "explained that the 'acquisition, maintenance, and exchange of immigration-related information by State and local agencies is consistent with, and potentially of considerable assistance to, the Federal regulation of immigration and achieving of the purposes and objectives of the [INA],'" *id.* at 23-33 (citation omitted), which shows that the Second Circuit, correctly, understood the Report as providing the meaning of § 1373's "regarding" language, and (iii) because as established above, *see supra* at 11-13, had the Second Circuit *not* so understood § 1373's "regarding" language, §§ 1373 and 1644 would not have "nullif[ied]" New York's Executive Order, as the Court held it did, but would only have affected one application thereof.

Second, though Plaintiffs included the portion of the Report describing now-§ 1373 that *City of New York* quoted and relied upon, the full quote (which summarizes what § 1373 *does*) shows that the initial sentence on which the City relies is actually given meaning by the more specific third sentence, which also established Congress's "purposes and objectives" to bar ordinances etc. prohibiting/restricting the sharing of such immigration-related information:

> Prohibits any restriction on the exchange of information between the Immigration and Naturalization Service and any Federal, State, or local agency *regarding* a person's immigration status. Effective immigration law enforcement requires a cooperative effort between all levels of government. The acquisition, maintenance, and exchange of *immigration-related* information by State and Local agencies is consistent with, and potentially of

> considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act.

S. Rep. No. 104-249, at 19-20 (emphasis added). That first sentence maintains the "regarding" term of § 1373 that indicates a broad reading; the second sentence clarifies that Congress is promoting multi-level cooperation in § 1373; the third sentence explains the scope of the "regarding" language of § 1373 (immigration-related information); and the third sentence declares that cooperation in sharing immigration-related information is Congress's purpose and objective in enacting § 1373, so that were there any doubt as to the meaning of § 1373 it must be resolved in light of Congress's declared purpose and objective to bar any prohibiting/restricting of the sharing of immigration-related information.

Third, the City's suggestion that the above-quoted Report paragraph merely "explain[s]" that sharing immigration-related information comports with INA objectives (City's SJ Mem. 9) erroneously ignores that the paragraph is an "analysis" of what § 1373 *does*, because that paragraph is under the caption "IV. Section-by-Section Analysis," S. Rep. No. 104-249, at 8. So all of the paragraph is describing what § 1373 does, i.e., it prohibits restrictions on cooperation in the form of sharing immigration-related information because that is what Congress intends to do in INA.

The City also says that § 1373

> has been read narrowly, according to its plain terms, to prohibit restrictions on the sharing of information relating solely to citizenship status—not "*all* restrictions of communication between local law enforcement and federal immigration authorities," such as "restrictions on sharing inmate's release dates." *Steinle v. City and Cnty. of San Francisco*, 230 F. Supp. 3d 944, 1015 (N.D. Cal. 2017). This reading coheres with the commonly understood meaning of "citizenship or immigration status": statements of an individual's country of citizenship, whether an individual is lawfully present in the United States, and, if so, the source of permission authorizing her continued presence. *Cf. Saldivar v. Sessions*, 877 F.3d 812, 816-17 (9th Cir. 2017) ("Although the word 'status' is not defined in the INA, its general meaning is '[a] person's legal condition.'") (quoting *Black's Law Dictionary* 1542 (10th ed. 2014)).

(City's SJ Mem. 8 (emphasis in *Steinle* opinion).) *Steinle* and *Saldivar* and the recited quotations don't help the City for at least six reasons.

First, the "*all* restrictions" quote is a strawman. It is an inaccurate paraphrase by *Steinle* of what a California appellate court actually said about § 1373's scope, and elsewhere *Steinle* accurately said that *Bologna*, 192 Cal. App. 4th 429, "characterized § 1373(a) as 'invalidat[ing] all restrictions on the voluntary exchange of *immigration* information between federal, state and local government entities and officials and federal immigration authorities.'" *Steinle*, 230 F. Supp. 3d at 1014 (quoting *Bologna*, 192 Ca. App. 4th at 438) (emphasis added)). So *Steinle*'s "*all* restrictions" rejection was not what *Bologna* says § 1973 requires. *Steinle* said *Bologna* interpreted § 1973 based on the Senate and House Reports, discussed above, which support *Bologna*'s all-*immigration*-information interpretation. *Steinle* rejected that interpretation for reasons to which we shall return, but for present note that *Steinle* and the City attack the strawman notion that § 1373 bars *all* restrictions of federal-local communications. As *City of New York* decided, § 1373 does "nullify" a city prohibition on "'transmit[ting] information *respecting any alien* to federal immigration authorities,'" 179 F.3d at 31 n.1, 37 (citation omitted; emphasis added), i.e., immigration-related information.

Second, *Steinle*'s interpretation of § 1373 was dictum. The relevant issue in *Steinle* was whether § 1373(a) was intended to prevent harm caused by violent crime so as to establish "negligence per se" thereby making city defendants liable in an action against defendants for the death of Kathryn Steinle involving an illegal alien. 230 F. Supp. 3d at 1002-03, 1005, 1013-16. Because, the court held, "§ 1373(a) was not intended to prevent harm caused by violent crime," *id.* at 1016, it couldn't be used to establish negligence per se, *id.* That resolved the issue, so anything the court said about the interpretation of § 1373 was dictum.

Third, *Steinle* has yet another layer of dictum. Even in unnecessarily interpreting § 1373, the factual issue involved notifying federal authorities of an illegal-alien inmate's release date. *Steinle* decided that "[n]othing in 8 U.S.C. § 1373 addressed information concerning an inmate's release date." 230 F. Supp. 3d at 1015. That was wrong because the release date of an illegal alien that ICE had provided to local authorities for prosecution and for which ICE had issued a detainer request was plainly immigration-related information.[16] But for present purposes, any interpretation of § 1373 beyond saying it doesn't include release dates is dictum.

Fourth, even if *Steinle*'s interpretation of § 1373 weren't double-layered dictum, *Steinle* isn't binding here, just as *Steinle* said that *Bologna* didn't bind it. 230 F. Supp. 3d at 1014.

Fifth, *Steinle* is also not persuasive authority because its analysis and conclusion err. *Steinle* first set out statutory interpretation doctrines, e.g., the legislative history isn't consulted absent textual ambiguity. *Id.* at 1015. The court said "no plausible reading of 'information regarding . . . citizenship or immigration status' encompasses the release date of an undocumented inmate." 230 F. Supp. 3d at 1015. But that is overly narrow framing of the issue. Of course the § 1373 doesn't contain the words "release date" or the like, but a very plausible reading of "regarding

[16] The immigration-related facts of *Steinle* include (inter alia) that Lopez-Sanchez (convicted of multiple felonies) "has been deported to Mexico at least five times," "was released to the custody of the San Francisco Sheriff's Department to face additional felony charges," which were dropped, and "[t]hat same day, ICE sent a detainer request asking that the Sheriff's Department notify ICE forty-eight hours before releasing Lopez-Sanchez and continue to hold him until ICE could take custody of him." *Id.* at 1004 (citations omitted). So ICE had given Lopez-Sanchez to the local jurisdiction for prosecution and wanted him back, making his release date plainly immigration related. But "[t]he Sheriff's Department did not respond . . . or otherwise communicate with ICE, and [it] released Lopez-Sanchez." *Id.* 1004 (citations omitted). The Sheriff had issued a sanctuary-city memorandum barring employees from providing ICE "'citizenship/immigration status of any inmate' and 'release dates or times.'" *Id.* at 1003 (citation omitted). Before that memorandum, "the Sheriff's Department had freely 'provide[d] information to ICE regarding undocumented alien felons in custody." *Id.* at 1004 (citation omitted). After his release, "Lopez-Sanchez shot and killed Steinle." *Id.* at 1004 (citation omitted).

. . . citizenship or immigration status can clearly be read as *Bologna* and the congressional Reports discussed above say the plain text is to be read. So there were multiple plausible readings of § 1373's "information regarding" language, i.e., the sort of ambiguity requiring that those congressional Reports be considered—and what they say clearly includes immigration-related information such as the release date for a person for whom ICE has issued a detainer request, especially on the facts of this case. *See supra* footnote 16.

Sixth, in interpreting § 1373, the City ignores the words "information *regarding*" and relies overmuch on the term "status," for the meaning of which it quotes *Saldivar*. (City's SJ Mem. 8.) Indiana requires that statutory interpretation not "over-emphasiz[e] a strict literal or selective reading of individual words." *Simon*, 519 N.E.2d at 211. *Saldivar*'s quotation of *Black's Law Dictionary* for the meaning of "status" (*id.* ("'legal condition'")) addresses an undisputed issue. The issue is not the meaning of "status" but the meaning of § 1373's phrase "information regarding the citizenship or immigration status." Citing *Saldivar* and *Black's Law Dictionary* for the meaning of "status" doesn't support the City's "commonly understood" meaning of § 1373 for which it cites those authorities, i.e., that "'*citizenship or immigration status*' [means] statements of an individual's country of citizenship, whether an individual is lawfully present in the United States, and, if so, the source of permission authorizing her continued existence." (City's SJ Mem. 8 (emphasis added).) *Saldivar*'s unremarkable recitation of "status" definitions does nothing to support the City's interpretation of § 1373's "information regarding" language. Note that the City totally omits *information regarding*, as if it didn't exist, and says its interpretation is only of *citizenship or immigration status*. As Plaintiffs have established, a proper interpretation of § 1373 is that it governs information regarding, i.e., "related to," "pertaining to," "about," or "of," the two broadly understood topics of citizenship and immigration status.

Regarding § 1644, the City says "the House Report on section 1644 lends no further support for Plaintiffs' argument." (City's SJ Mem. 9.) But the City errs, as may be readily seen from what the conferees in the House Report said about what § 1644 "*provides*" and what they "*intend*," which is set out in full here for ready reference:

> The conference agreement *provides* that no State or local government entity shall prohibit, or in any way restrict, any entity or official from sending to or receiving from the INS *information regarding the immigration status of an alien or the presence, whereabouts, or activities of illegal aliens*. It does not require, in and of itself, any government agency or law enforcement official to communicate with the INS.
>
> The conferees *intend* to give State and local officials the authority to communicate with the INS *regarding the presence, whereabouts, or activities of illegal aliens*. This provision is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts *any communication between State and local officials and the INS*. The conferees believe that immigration law enforcement is as high a priority as other aspects of Federal law enforcement, and that illegal aliens do not have the right to remain in the United States undetected and unapprehended.

H.R. Conf. Rep. No. 104-725, at 383 (emphasis added). The City only recites "'information regarding the immigration status of an alien," likening it to § 1644, and says "information regarding 'the presence, whereabouts, or activities of illegal aliens'" . . . was simply cited as an example of what state and local officials had 'the *authority* to communicate.'" City's SJ Mem. 9-10 (emphasis in City memorandum).) The City errs for at least five reasons.

First, the Second Circuit in *City of New York* correctly understood that both § 1644 and § 1373 require the broad interpretation that Plaintiffs assert, as discussed above. *See supra* at 11-15. That analysis need not be repeated, but note especially that the Second Circuit interpreted § 1644 as broad enough to "nullif[y]" New York's Executive Order ("respecting any alien"), not just the application of the Order to mere statements of citizenship/immigration status (as would have been required under the City's narrow reading).

Second, the Report says § 1644 "*provides*" that there be no prohibiting/restricting sending/receiving (with INS) "information *regarding* the immigration status of an alien *or the presence, whereabouts, or activities of illegal aliens*" (emphasis added). The conferees expressly assert the breadth of "regarding" and include broad information regarding illegal aliens in what § 1644 provides. With that broad language being in *both* the "provides" paragraph and the "intend" paragraph, § 1644 plainly provides what the conferees intended—a broad reading of the "regarding" language, which makes the City's narrow interpretation erroneous.

Third, the first paragraph about what § 1644 "provides" establishes that what the conferees "intend" is the same as what they "provide"—the information at issue is broadly defined. So the City's mere "authority" argument fails, along with its narrow interpretation.

Fourth, given what the Second Circuit understood and the House conferees Report says that the language of § 1644 "provides," i.e., the broad interpretation that Plaintiffs assert, the City errs in asserting that "[i]nterpreting section 1644's prohibition as applying to all manner of information regarding 'the presence, whereabouts, or activities of illegal aliens' would extend beyond the enacted text.'" (City's SJ Mem. 10.) Given the Second Circuit's and the Report's understanding and assertion of what the plain meaning of the language of § 1644 *is*, the City's assertion that "[c]ourts are forbidden to 'expand the plain meaning' of statutory language in this way" (City's SJ Mem. 10 (quoting *George P. Todd Funeral Home v. Estate of Beckner*, 663 N.E.2d 786, 788 (Ind. Ct. App. 1996))) is irrelevant because the Second Circuit and the Report didn't *expand* § 1644's meaning. Even if the City were to argue that § 1644 "is ambiguous, and thus open to judicial construction, [because] it is susceptible to more than one meaning," *Barlow*, 656 N.E.2d at 485 (citing *Laird*, 622 N.E.2d 912), a proper construction favors the Second Circuit's and Report's understanding because the Report made clear the congressional intent. *See, e.g.*, *Simon*,

519 N.E.2d at 211 ("In interpreting a statute we are to ascertain and give effect to the intent of the legislature.").

Fifth, for the statutory-construction and other reasons showing that the phrase "information regarding the citizenship or immigration status" in § 1373 requires the broad immigration-related interpretation established above, the similar phrase in § 1644, "information regarding the immigration status," requires the same broad interpretation that the phrase "information *regarding*" requires. *See supra* at 10-20.

In Part II of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs also established that Congress intended and encouraged multi-level cooperation in a variety of ways, that the DOJ in the *El Cenizo* Statement of Interest provided examples of that cooperation that Congress intended, that detainer requests now issue only under precise conditions, and that the federal government's immigration enforcement prioritizes persons who "pose a risk to public safety or national security." (Pls.' SJ Mem. 8-11 (citation omitted).) Notably, the City contests none of the foregoing. And though balancing of interests isn't required, *see supra* at 2 (point #3) and *infra* Part VI, any City public-safety-interest claim is offset by the public-safety and national-security interests established by the DHS removal priorities.

In sum, 8 U.S.C. 1373 and 1644 bar prohibiting/restricting information on "all matters regarding" (to use the City's own definition, Ordinance § 26-51) citizenship and immigration, and the federal government asserts strong public-safety interests in these provisions and the federal government's immigration-enforcement policy, employing special care in issuing detainer requests to assure that they comply with federal law authorizing removal of aliens. And conversely, §§ 1373 and 1644 don't have the narrow construction on which the City erroneously relies.

The City says "even if" that were so, Chapter 18.2's § 3 uses "of" instead of "regarding" so the Indiana General Assembly didn't really intend to enforce §§ 1373 and 1644. (City's SJ Mem. 10.) Part III addresses that error. As shall be seen, by enacting Chapter 18.2 Indiana intended to require compliance with 8 U.S.C. 1373 and 1644 broadly defined.

III.
Chapter 18.2 Preempts Local Law and Bans Noncompliance with Federal Law.

In Part III of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs established that Chapter 18.2[17] preempts[18] local law and bans noncompliance with federal law. (Pls.' SJ Mem. 11.) As Plaintiffs noted, IC 5-2-18.2-3, bans *ordinances*, policies, etc. prohibiting/restricting maintaining or sharing "information of the citizenship or immigration status . . . of an individual" (Pls.' SJ Mem. 12); IC 5-2-18.2-4 bans limiting/restricting "the enforcement of federal immigration to less than the full extent permitted by federal law" (Pls.' SJ Mem. 13); and IC 5-2-18.2-7 establishes an LEO "duty to cooperate" with federal/state authorities "on matters pertaining to enforcement of state and federal laws governing immigration" and mandates "written notice" of that duty to cooperate. (Pls.' SJ Mem.13.)[19] Because Indiana intended in Chapter 18.2 to prevent sanctuary-

[17] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

[18] The City's argument that Chapter 18.2 is too vague to preempt challenged provisions of the Ordinance (City's SJ Mem. 23) readily fails because the Chapter 18.2 is very clear in forbidding the very sanctuary-city type policies that *the Ordinance* (all that is at issue here) systematically and thoroughly adopts. The City's alleged vagueness is largely a product of its overwrought interpretation of Chapter 18.2 in contexts not remotely at issue, e.g., whether libraries must close at 6 versus 5 pm (City's SJ Mem. 32). Anyway, any perceived ambiguity must be resolved under Indiana interpretation doctrine to implement the legislature's intent. *See supra* at 2, 8-9.

[19] The City says § 7 "does not purport to impose a duty to cooperate; it instead obligates law enforcement to provide *notice* of a duty located elsewhere." (City's SJ Mem. 16.) But that errs because § 7 requires noticing LEOs that they "ha[ve] a duty to cooperate with state and federal agencies on matters pertaining to enforcement of state and federal laws governing enforcement." The mandate to notice LEOs of an immigration-law cooperation duty includes the *existence* of that duty, or else it is a notice of something that doesn't exist. The City disputes that §§ 3 and 4 of Chapter 18.2 inform the LEO's duty because they regulate governmental bodies, but of course

city type policies such as the Ordinance by requiring compliance with 8 U.S.C. 1373 and 1644 and cooperation permitted in 8 U.S.C. 1357(g)(10),[20] Chapter 18.2's provisions must be interpreted in light of those federal provisions. Because IC 5-2-18.2-3 uses language nearly identical to §§ 1373 and 1644, Indiana intended to enforce the federal requirement in Indiana at least to the broad extent of the meaning of those terms. (Pls.' SJ Mem. 14 (citing *Brownsburg Area Patrons Affecting Change v. Baldwin*, 137 F.3d 503 (7th Cir. 1998) ("*BAPAC*")).)

In interpreting what §§ 3, 4, and 7 of Chapter 18.2 require in the *present* context, it is vital to keep the *Ordinance* in mind because whether *that* complies with Chapter 18.2 is the issue before the Court—not some hypothetical application the City might posit. So for example, the present issue is not whether the City must enter into a formal agreement under 8 U.S.C. 1357(g)(1)-(2) and pay for its LEOs to be trained accordingly (*see, e.g.*, City's SJ Mem. 26), but whether the City may ban (a clear "limit" or "restrict[ion]") such a formal agreement as it does in Ordinance 26-55(e)— and it may not.[21]

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the governmental bodies *control* the LEOs, as in the Ordinance, and governmental bodies are barred by Chapter 18.2 from prohibiting/restricting/limiting LEO's cooperation duty.

[20] 8 U.S.C. 1357(g)(10), provides as follows (with DHS, INS, and ICE now superseding "the Attorney General" as federal immigration-law enforcement officials):

> (10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—
>
> (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
>
> (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

[21] Though the City erroneously argues that "Plaintiffs' reading" would require such training (*id.*) the real issue is what *Chapter 18.2* requires, not the City's strawman caricatures of Plaintiffs' position, and the City acknowledges that S.B. 590 contained a provision authorizing the state police to enter into such a formal agreement that was changed to a feasability study, which supports Plaintiffs' position that Chapter 18.2 doesn't require entering into such agreements but rather prohibits banning them.

Similarly, though the City never actually challenges Chapter 18.2 as unconstitutionally vague it suggests vagueness, but any vagueness analysis would have to focus on whether Chapter 18.2 is *facially* vague. *See infra* Part V(D). Of course, facial vagueness is a difficult standard to meet. *Id.* Chapter 18.2 is not vague regarding what the Ordinance does. For example, the City claims erroneously that IC 5-2-18.2-4 "under Plaintiffs reading—that governmental bodies may not 'limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law'—would be virtually unbounded" and thus vague. (City's SJ Mem. 30-31.) Of course, as the City's own quotation marks show, the language recited is § 4's own language, not merely "Plaintiffs' reading." But the issue is not where some outer, hypothetical boundary might lie but whether § 4 bans what *the Ordinance* does. And by its many non-cooperation mandates, the Ordinance clearly "limit[s] and restrict[s] federal immigration officials from enforcing federal immigration laws," which the City concedes is within § 4's scope. (City's SJ Mem. 37; *see also id.* at 6 (§ 4 forbids a governmental entity "to restrict the federal government's ability to enforce federal immigration laws").) So for example, if a federal immigration-law-enforcement official seeks access to an illegal alien in City custody, the Ordinance bars that access, § 26-55(f)(1), which plainly limits and restricts that federal LEO's enforcement of federal law. *See also* Part V(D) (further vagueness analysis).

Because the City says that Plaintiffs say Chapter 18.2's provisions mean things that Plaintiffs didn't say—e.g., "Plaintiffs' reading [of] section 4[] . . . would be virtually unbounded" (City's SJ Mem. 31)—Plaintiffs here begin with an analysis of what §§ 3, 4, and 7 actually require. In these section analyses, Plaintiffs will provide concrete examples of what is required, which will show that the Ordinance is in the very heart of what Chapter 18.2 bans. In light of what these three sections *actually* require, the error of the City's arguments will re readily appar-

ent and require no further response, though Plaintiffs will address and refute some specific City arguments.

■ **IC 5-2-18.2-3**[22]

The first thing to note about § 3 is that its topic is *information* sharing.[23] The second thing to note is that what it bans are *ordinances, polices, etc.* that prohibit/restrict that information sharing. The third thing to note is that the information at issue is stated in parallel language to 8 U.S.C. 1373 and 1644, so § 3 must be read to mean what §§ 1373 and 1644 mean.[24]

As established in Part II, *supra*, 8 U.S.C. 1373 and 1644 ban prohibiting/restricting (without the requirement that there be an ordinance, policy, etc. as in IC 5-2-18.2-3) information related to the two general topics of citizenship and immigration status. The City's argument concerning § 3 turns on whether the broad interpretation of "information" required by 8 U.S.C. 1373 and 1644 is employed, or the City's narrow interpretation. The city wants the "information" at issue to be mere "statements of an individual's country of citizenship, whether an individual is lawfully present in the United States, and, if so, the source of permission authorizing her continued presence." (City's SJ Mem. 8.) But as shown in Part II, the broad all-matters-concerning interpretation of "information" is required for §§ 1373 and 1644, so that is what § 3 requires. Consequently, Ordinance §§ 26-52, 26-55(d), 26-55(f)(3), 26-55(f)(4), and 26.59 violate IC 5-2-18.2-3 because they are part of an ordinance that prohibits/restricts the broad information sharing that § 3 says no ordinance may prohibit/restrict. That is straightforward, turning on the scope of the

[22] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

[23] The topic of § 4 is *enforcement*. The topic of § 7 is general *LEO cooperation*.

[24] The City concedes that § 3 forbids it "to restrict the sharing or maintenance of information in [its] possession *relating to* an individual's citizenship or immigration status" (City's SJ Mem. 6 (emphasis added)), which indicates its clear understanding that § 3 forbids what the Ordinance does.

language describing the information concerning which no ordinance prohibiting/restricting is permitted by § 3.

But the City says "even if" the scope of "information" in §§ 1373 and 1644 is as the Senate and House Reports and Plaintiffs say it is, IC -5-2-18.2-3 uses "of" instead of "regarding" so the Indiana General Assembly didn't really intend to adopt the scope of the "information" in §§ 1373 and 1644. (City's SJ Mem. 10.) The City errs for at least four reasons.

First, Chapter 18.2 clearly intends to enforce the mandates of 8 U.S.C. 1373 and 1644, so § 3 must be read to share the meaning of the "information" language in those two provisions. The City *concedes* that the "information" language is intended to mean the same thing: "Because section 3 largely mirrors the language of § 1373(a) and (b), it should be understood to share that statute's limited scope." (City's SJ Mem. 8 (quoting *BAPAC*, 137 F.3d at 140).) That the provisions "mirror" each other means that they mean the same thing, whether narrow *or* broad, and that conclusion isn't altered by a minor word change that means the same thing. As shown in Part II, *supra*, a broad all-matters-regarding citizenship and immigration status is the proper reading of the "information" at issue in the federal provisions. That requires the same reading of the parallel language in § 3. And if there is any doubt, Indiana statutory-construction rules require effecting the legislature's intent, *see supra* at 2, 8-9, which intent, the City concedes, is to "mirror" the "information" that 8 U.S.C. 1373 and 1644 govern.

Second, the City recognized that the *natural* reading of § 3 involves "information . . . *relating to* an individual's citizenship or immigration status" (City's SJ Mem. 6 (emphasis added)) and "information in the governmental body's possession *pertaining to* 'citizenship or immigration status'" (*id.* at 13 n.7 (emphasis added)).[25] Because the City recognizes that "of" means

[25] The City here is focusing on "possession" in support of its argument that "Section 3 does

"relating to" and "regarding" means "pertaining to," the City's reliance on "of" (City's SJ Mem. 10) doesn't change § 3's meaning, which has the same "information" scope as §§ 1373 and 1644.

Third, dictionaries readily show that "of" includes the meanings of "relating to" and "about," indicating "association," *see, e.g.*, https://www.merriam-webster.com/dictionary/of; http://www.dictionary.com/browse/of?s=t, and a legal definition includes "[a]ssociated with or connected with," Black's Law Dictionary 975 (5th ed. 1979), so substituting "of" for "regarding" doesn't change the meaning.

Fourth, the most likely explanation for substituting the synonym "of" for "regarding" is that § 3 has the word "regard" shortly before the "of" and the drafter likely thought that using "of" was preferable for stylistic purposes, i.e., "actions with regard to information of [not *regarding*] the citizenship or immigration status . . . ." That stylistic choice doesn't change the meaning.

So as discussed further in Part IV, when the City says its Ordinance doesn't violate Chapter 18.2 (City's SJ Mem. 6), the City bases that on its erroneously narrow interpretation of the federal provisions and a concomitantly narrow interpretation of the "information" language in IC 5-2-18.2-3. The City says the "information" language in § 3 and 8 U.S.C. 1373 and 1644 involves only "statements of an individual's country of citizenship, whether an individual is lawfully present in the United States, and if so, the source of permission authorizing her continued presence." (City's SJ Mem. 8.) The City provides no authority for its overly narrow, mere-statement-only construction. As discussed above, the recited cases of *Steinle* and *Saldivar* provide no authority for mere-statement-only construction. *See supra* at 16-20. The City claims its construction is

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not impose an obligation to collect information" (City's SJ Mem. 10), which duty Plaintiffs have not asserted. But as may be seen, the focus on "possession" allowed it to concede that the natural reading of § 3's "of" is "relating to an individual's citizenship or immigration status," which is broader than the mere status-statement that it advocates elsewhere.

"commonly understood" but it provides no authority to establish a common understanding, and anyway common understandings of law are often erroneous and statutory-construction doctrines require much more than reciting that one's interpretation is "commonly understood." As established in Part II and the above portion of Part III, statutory construction rules require a broader reading of 8 U.S.C. 1373 and 1644 and consequently of IC 5-2-18.2-3.

Given the applicable all-matters-regarding and immigration-related interpretation of the "information" in IC 5-2-18.2-3, the information of an individual that a city ordinance may not *prohibit/restrict* as to communicating/cooperating, sending/receiving, maintaining, and exchanging as described in § 3includes the following topics:

- identifying information (name(s), alias(es), physical description, ID numbers, etc.);
- personal history (origin, places lived and worked, marital status and spouse(s), relatives, etc.);
- citizenship;
- immigration status;
- basis for immigration status;
- contact information (the individual's phone(s), address(es), email address(es), etc.);
- work location(s);
- contact information for relatives, friends, etc.;
- automobile information (make, model, color, VIN, plate number, etc.);
- history with law enforcement (charges, convictions, traffic infractions, etc.);
- firearm records (concealed carry permit etc.);
- custody status; and
- release date.

IC 5-2-18.2-3 bars any ordinance that prohibits/restricts sharing such immigration-related infor-

mation. As discussed further in Part IV, the City did the forbidden—enacting an Ordinance that prohibits/restricts sharing such immigration-related information. The foregoing suffices to resolve the scope of § 3, which is the current topic, but two additional points are discussed next.

First, § 3 (properly understood as Plaintiffs describe it) comports with the Gary Police Department's *own* policy, which remains in force except as implicitly and selectively rescinded by the Ordinance. As set out in the Gary Police Department Policy Number 1-92, a "General Order" effective "2-27-2006," titled "Relationships With Other Agencies" (Pls.' 2d SJ Evid. Ex. B.), the official policy on such matters is stated in two specific, relevant policies. First, "All department personnel shall maintain harmonious working relations and communication with . . . *any other criminal justice agencies*. The department shall provide *all possible information, assistance, and support* to these agencies *allowed by law*" (emphasis added). Second. "All employees of the department shall assist and cooperate with *all* federal, state, and local law-enforcement agencies *in every way possible allowed by law*" (emphasis added). So all of the information listed in bullet points above is the sort of information that would be shared as a matter of course under Policy 1-92 between federal, state, and local law enforcement agencies. The City can't properly complain (as it does on multiple levels) if Indiana requires the City to not except immigration-enforcement-related information from the City's own information-sharing policy.

Second, as Policy 1-92 acknowledges, such information-sharing as 1-92 and § 3 mandate is an inherent part of proper law enforcement practice. To have a major-city police department and to engage in proper police work is to engage in and assume the costs of such information sharing. It is part of the cost of doing the business of policing. Anyway, the expenditure of money and resources to share vital law-enforcement information is de minimis or minimal—e.g., simply providing requested information already in the City's possession about a person in custody—and

sharing information with other LEOs is essential to obtaining reciprocal information-assistance.

In sum, § 3 bans the City from passing an ordinance that prohibits/restricts cooperation regarding the sharing of any and all information related to the general topics of citizenship and immigration status, i.e., the City may not make an exception targeting immigration-related information to the City's own full-information-sharing policy for purposes of law-enforcement. The compliance of the City's Ordinance with Chapter 18.2 is the sole issue before the Court, and as shall be shown in Part IV the Ordinance is not in compliance.

■ **IC 5-2-18.2-4**[26]

The first thing to note about § 4 is that its topic is limiting/restricting actual immigration-law *enforcement*. The second thing to note is that what it bans is *limiting/restricting* immigration-law enforcement, without requiring that this be done by ordinances, policies, etc., so it applies whether or not there is an ordinance, policy, etc. that does the limiting/restricting. The third thing to note is that the immigration-law enforcement that may not be limited/restricted is "the enforcement of federal immigration laws" without regard to *who* is doing the enforcing. The Fourth thing to note is that the forbidden degree of limiting/restricting is "to less than the full extent permitted by federal law," but as noted this is qualified by relating to actual immigration-law enforcement.[27]

[26] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

[27] Of course, in the *present* context, the issue is whether challenged provisions of *the Ordinance itself* limit/restrict immigration-law enforcement in violation of *§ 4 itself*, not what a City-invented over-reading of § 4 might require in contexts not at issue, e.g., the City's notion that IC 5-2-18.2-4 might be violated if "a courthouse or public library 'limit[ed]' the scope of potential immigration enforcement by closing at 5 PM rather than 6 PM." (City's SJ Mem. 32.) In the highly unlikely event that § 4 were so enforced, an as-applied challenge could readily find that § 4 requires no such thing.

Now, despite the City's purported confusion over the scope of § 4, the City knows perfectly well what it means, especially as it relates to enactment of the Ordinance (the sole issue before the Court). This is evidenced by the City's concession in briefing (which suffices to doom the Ordinance), by the Ordinance itself (which defines and details what § 4 means and what it requires by not allowing it), and by IC 5-2-18.2-7 (which establishes that City LEOs indeed have a cooperation duty)—all as set out next.

First, the City concedes that "[s]ection 4 prohibits governmental bodies from limiting or restricting the federal enforcement of federal immigration law" (City's SJ Mem. 13), i.e., "the domain of section 4 is limited to actions that restrict [or limit, per § 4] the federal government's efforts to enforce federal immigration laws" (*id.* at 20). That suffices to doom the Ordinance (what is at issue) because (i) the concession acknowledges that the context that § 4 addresses is limiting/restricting *actual law enforcement* (as opposed to, say, closing libraries at 5:00 instead of 6:00 (City's SJ Mem. 32)) and (ii) the concession that the City may not limit/restrict federal LEO immigration-law enforcement means it must cooperate with actual enforcement to the full extent permissible under federal law. For example, it is permissible under federal law for cities to allow federal agents access to persons in city custody, 8 U.S.C. 1357(g)(10), but Ordinance § 26-55(f)(1) limits/restricts "ICE agent[']s access to a person being detained by, or in the custody of, the agency or agent" absent "a valid and properly issued criminal warrant." So if an ICE agent comes to the City's jail to interview a detained illegal alien, her access would be physically restricted by City agents. All challenged non-cooperation provisions of the Ordinance likewise limit/restrict ICE agents performing enforcement of federal immigration law and violate § 4. And the City well knows what activities limit/respect an ICE agent enforcing federal immigration law because the Ordinance is careful to include them, from refusal to provide information and assis-

tance to exclusion of ICE agents from City facilities.

The City says "limit or restrict" in § 4 "says nothing about 'cooperation,' a term used in sections 3 and 7" so § 4's ban on limiting/restricting "the enforcement of federal immigration laws" doesn't require cooperation. (City's SJ Mem. 14.) But of course not cooperating with ICE *is* limiting/restricting ICE's enforcement of federal immigration laws. And LEO's have a clear duty to cooperate under §§ 3 and 7, so the natural reading of § 4 is that it includes that cooperation—and that is what Indiana statutory construction rules require to effect the intent and goals of the legislature. At pages 14-15, the City cites *Lopez-Aquilar v. Marion Cnty. Sheriff's Dept.*, No. 116CV02457SEBTAB, 2017 WL 5634965, at *9 n.8 (S.D. Ind. Nov. 7, 2017), for the proposition that "if the Indiana General Assembly specifically intended to mandate state cooperation with federal authorities, it surely could have said so." But of course the legislature in § 4 used *broader* language, limiting/restricting "the enforcement of federal immigration laws," which *includes* such cooperation and must be read *in pari materia* with the express use of the term "cooperation" in §§ 3 and 7. Anyway, interpretation of state statutes rests finally with state, not federal, courts. *See, e.g.*, *Gooding v. Wilson*, 405 US 518, 520 (1972) ("'[W]e lack jurisdiction authoritatively to construe state legislation.'" (citation omitted)). Moreover, the Texas statute at issue in *El Cenizo* provides guidance in understanding Indiana's § 4 because it has similar language to Indiana's and interprets it as Plaintiffs do. As the Fifth Circuit opinion recites, "[a]s codified at Texas Government Code § 752.053(a)-(b),[28] SB4 forbids local entities from limiting the

[28] That Texas provision provides as follows, in relevant part (emphasis added):

Sec. 752.053. POLICIES AND ACTIONS REGARDING IMMIGRATION ENFORCEMENT. (a) A local entity . . . may not:

(1) adopt, enforce, or endorse a policy under which the entity or department *prohibits or materially limits the enforcement of immigration laws*;

(2) as demonstrated by pattern or practice, *prohibit or materially limit the enforcement of immigration laws*; . . .

enforcement of federal immigration law." *El Cenizo*, No. 17-50762, slip op. at 3. And "subsection (b) enumerates concrete examples of immigration-enforcement activities that a local entity may not 'prohibit or materially limit." *Id.*, slip op. at 4. So subsection (a)(1) provides that "[a] local entity . . . may not . . . adopt, enforce, or endorse a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws." And that language *includes* examples of required actions that are "in compliance with Subsection (a)." All of the examples are instructive here in interpreting Indiana's law, but for present purposes the broad language barring prohibiting/limiting "the enforcement of immigration laws" *includes* "assisting or cooperation with a federal immigration office as reasonable or necessary, including providing enforcement assistance . . . or permitting a federal immigration office to enter and conduct enforcement activities at a jail to enforce immigration laws." Tex. Gov. Code § 752.053(a)-(b). So Texas and the Fifth Circuit understand that prohibiting/limiting immigration-law enforcement *includes* non-cooperation with those enforcing immigration law. Indiana used similar language

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(b) *In compliance with Subsection (a)*, a local entity . . . *may not prohibit or materially limit* [enforcement authorities] from doing any of the following:

(1) inquiring into the immigration status of a person under a lawful detention or under arrest;

(2) with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest, including information regarding the person's place of birth:

(A) sending the information to or requesting or receiving the information from United States Citizenship and Immigration Services, United States Immigration and Customs Enforcement, or another relevant federal agency;

(B) maintaining the information; or

(C) exchanging the information with another local entity or campus police department or a federal or state governmental entity;

(3) assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance; or

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a jail to enforce federal immigration laws.

Available at http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.752.htm.

and likewise intended to include such cooperation in § 4.

Second, the City clearly understands the controlling topic of § 4, i.e., actual immigration-law enforcement, because the City's own Ordinance provides a definition of "immigration enforcement operation," i.e., "any operation that has as one of its objectives the identification or apprehension of a person [for civil or criminal immigration-law proceedings]." § 26-51. That the immigration-law enforcement at issue encompasses both "identification" and "apprehension" is reiterated in § 26-55(d), which reaffirms that "immigration enforcement operations[] includ[e] but [are] not limited to requests to provide information on persons who may be the subject of immigration enforcement operations." § 26-55(d).

Third, the City clearly knows what *identification/information*-cooperation § 4 requires (as does § 3), because the City's own "citizenship or immigration status" definition provides it:

> "*Citizenship or immigration status*" means all matters regarding questions of citizenship of questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States, the time and manner of a person's entry into the United States, or any other immigration matter enforced by the Department of Homeland Security or successor or other federal agency charged with the enforcement of civil immigration laws."

§ 26-51 ("Definitions"). "All matters regarding" is the natural and required reading of what §§ 3 and 4 require as to information sharing and enforcement cooperation.

Fourth, the City knows the specific aspects of immigration-law enforcement that § 4 requires the city to cooperate on, by not limiting/restricting enforcement, because it bans them systematically in its Ordinance as noted above, ranging from denying assistance with establishing traffic perimeters to consulting a City agency database with needed information.

Fifth, the City knows well what the phrase "the full extent permitted by federal law" means because Gary Police Department Policy 1-92 uses like language, requiring that (i) "[t]he Depart-

ment shall provide *all* possible information, assistance, and support to these agencies *allowed by law*" and (ii) "[a]ll employees of the department shall assist and cooperate with all federal, state, and local law-enforcement agencies *in every way possible allowed by law*" (emphasis added). So any City protestation that such language is vague errs. (City's SJ Mem. 14 ("grave problems with . . . void-for-vagueness doctrine").) Moreover, § 4's "permitted by federal law" must be read in light of its topic, i.e., "enforcement of federal immigration laws," so the natural scope of that language is limited to the sort of activities listed below in bullet points, *see infra* at 38-39. And Plaintiffs provided several examples of what federal law permits already (Pls.' SJ Mem. 13, 20, 26-27) and gives the City a list below (which its counsel may supplement if needed with minimal research). The problem here is not any vagueness as to what federal law permits but rather the City's decision to selectively prohibit/restrict/limit what Policy 1-92 would otherwise routinely require if the cooperation didn't immigration-related information and enforcement.[29]

Sixth, IC 5-2-18.2-7 requires that LEOs be advised of their "duty to cooperate," which necessarily includes the *existence* of such an LEO duty, which is clearly stated in § 7. Section 4 bans limits/restrictions on "the enforcement of federal immigration law to less than the full extent permitted by law," so while "the full extent" language strictly applies only to § 4, the provisions must be read *in pari materia* and thus inform each other as to the intent and goals of the legislature. Reading §§ 3, 4, and 7 together

> indicates that Chapter 18.2 imposes (inter alia) a state-mandated LEO "duty to cooperate" with immigration-enforcement authorities "on matters pertaining to" immigration-law enforcement and that this LEO-Enforcement-Cooperation Mandate includes, the two mandates in §§ 3 and 4 applicable to all governmental bodies, i.e., information sharing and enforcement cooperation to the full extent permitted by federal law. And reading §§ 3, 4, and 7 of Chapter 18.2 together indicates that Indiana intended to bar prohibitions and restrictions on sharing information about citizenship and immigration information with such information

[29] The vagueness allegation and controlling doctrines are addressed further in Part V(D).

> interpreted broadly, not narrowly to mean a mere statement of someone's country of citizenship or immigration status. *See* IC 2-5-18.2-4 (not "less than full extent permitted by federal law") and -7 ("matters pertaining to enforcement," which includes full sharing of information useful to enforcement).

(Pls.' SJ Mem. 14.) That the LEO duty to cooperate with enforcement authorities on matters pertaining to immigration-law enforcement should be informed by the ban in § 3 on non-cooperation by withholding immigration-related information is unremarkable as LEOs are the ones most likely to have, to be able to share, and to be asked for such information. That the LEO duty to cooperate on enforcement matters should be informed by the ban in § 4 on limiting/restricting "the enforcement of federal immigration laws to less than the full extent permitted by federal law" is also unremarkable because § 4 and § 7 focus on enforcement cooperation (which includes sharing information, Ordinance § 26-55(d) ("immigration enforcement operations, including . . . request to provide information on persons who may be the subject of immigration enforcement")), and LEOs are the ones most likely to be asked for such enforcement cooperation. That reading §§ 3, 4, and 7 together to inform the LEO duty to cooperate is unremarkable and proper is also evidenced by the fact that the City has the *same policy*, which remains in force except as implicitly and selectively rescinded by the Ordinance. As set out in the Gary Police Department Policy Number 1-92, the official policy on such matters is stated in two specific, relevant policies. First, "[a]ll department personnel shall maintain harmonious working relations and communication with . . . *any other criminal justice agencies*. The department shall provide *all possible information, assistance, and support* to these agencies *allowed by law*" (emphasis added). Second, "[a]ll employees of the department shall assist and cooperate with *all* federal, state, and local law-enforcement agencies *in every way possible allowed by law*" (emphasis added). That the italicized statements of the City's own policy is synonymous with § 4's "the full extent permitted

by federal law" is beyond cavil, as is the fact that the synonymous passages were applied by a City official (Chief of Police) to LEOs. Consequently, arguments that the City doesn't understand such language, that it is vague, that it is overbroad, and so on ring hollow. Chapter 18.2 means essentially what Policy 1-92 means—i.e., LEOs must cooperate on immigration-law enforcement, including information sharing—but the Ordinance prohibits/restrict/limits that cooperation selectively as to immigration-related information and enforcement.

The following list provides examples of things the City may not *limit/restrict* City personnel (especially City LEOs) from doing because federal law permits them (*see, e.g.*, Pls.' SJ Mem. 9, 13, 20, 26-27 and cited materials), and specifically the City may not forbid these actions in the Ordinance (which is what is at issue here):

- "[s]tate and local participation in joint task forces with federal officers," DOJ Statement of Interest in *El Cenizo* at 4-5;
- "providing operational support in executing a warrant," *id.*;
- "allowing federal immigrations officials to gain access to detainees held in State or local facilities," *id.*;
- "holding an alien in custody so that the federal government can effectuate an arrest," *id.*;
- "responding to requests for information about when an alien will be released from custody," *id.*;
- "requesting immigration information from aliens, and sharing that information with federal officials," *id.*[30]; *see also Arizona*, 567 U.S. at 411-15 (upholding requirement that LEOs ask

[30] Such verification is limited by IC 5-2-20-3, which provides as follows:

> Sec. 3. A law enforcement agency or law enforcement officer may not request verification of the citizenship or immigration status of an individual from federal immigration authorities if the individual has contact with the law enforcement agency or law enforcement officer only:

about immigration status where person is stopped for another reason, e.g., a traffic infraction); *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 611 (2011) (upholding state law requiring employers to e-verify immigration status);

- "to communicate with [federal authorities] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States[] or . . . otherwise to cooperate with [federal authorities] 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);
- "provid[ing] all possible information, assistance, and support to [all law enforcement] agencies allowed by law," City of Gary Police Department Policy 1-92; and
- "assist[ing] and cooperat[ing] with all federal, state, and local law-enforcement agencies in every way possible allowed by law," *id.*

In sum, § 4 banned the City from passing its Ordinance provisions that limit/restrict cooperation regarding enforcement of federal immigration law, both as to information sharing and assisting in immigration enforcement operations, i.e., the City may not make an exception targeting immigration-related information to the City's own full-cooperation policies for purposes of law-enforcement. The compliance of the City's Ordinance with Chapter 18.2 is the sole issue before the Court, and as shall be shown in Part IV the Ordinance is not in compliance.[31]

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(1) as a witness to or victim of a crime; or
(2) for purposes of reporting a crime.

Consequently, any arguments that barring asking persons about their citizenship or immigration status (which *Arizona* expressly held permissible, 567 U.S. at 411-15) is necessary in the Ordinance (*see* § 26-52) to protect crime reporting, witnesses, and victims fails because that protection already exists.

[31] The City says certain provisions of the final version of S.B. 590 used to be arranged differently (City's SJ Mem. 16-19), but of course the final form of S.B. 590 is what the legislature ultimately agreed to and thus governs. The City says SEA 590 had a provision *requiring* LEOs to

■ **IC 5-2-18.2-7**[32]

The first thing to note about § 7 is that it is about an LEO "*duty to cooperate*" (emphasis added). Second, cooperation implies a request, from whom § 7 makes clear by stating that the required cooperation is "*with* state and federal agencies and officials" (emphasis added). *See Arizona*, 567 U.S. 410 ("cooperation" implies "request, approval, or other instruction from the Federal Government"). Third, the scope of that required LEO cooperation is "on matters *pertaining to* enforcement of state and federal laws governing immigration" (emphasis added), a broadly worded scope. Fourth, § 7 mandates that "each law enforcement officer" be provided "a written *notice* that the law enforcement *has* a duty to cooperate" as specified, so § 7 both (i) establishes the duty to cooperate as explicitly described and (ii) mandates notice of that clearly articulated duty to all LEOs

So City LEOs have a clear duty to cooperate with all enforcement officials specifically on all matters pertaining to immigration-law enforcement, and consequently the City may not in its Ordinance prohibit/limit/restrict that cooperation. As discussed above, *see supra* at 36-38, the cooperation duty mandated in § 7 for City LEOs necessarily informs what §§ 3 and 4 require the City not to prohibit/limit/restrict. And as discovery has shown, Defendants have provided no evidence that it has complied with the notice requirement of § 7. *See infra* Part VII.

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request citizenship/immigration-status verification under certain conditions that didn't make it into the final bill. But such a *requirement* is not before the Court, only whether the City may *limit/restrict* the enforcement of federal immigration laws, e.g., by *barring* such an inquiry. The City may not do so, as evidenced (inter alia) by IC 5-2-20-3, which only bars such verification to protect victims, witnesses, and reporting, thereby *permitting* such verification in other situations. Here as elsewhere, the City tries to expand the issue beyond the permissibility of the Ordinance itself, which is all that is at issue. Similarly, the failure to *require* a formal 8 U.S.C. 1357(g)(1)-(2) agreement (City's SJ Mem. 19) does not mean that the City may *bar* such an agreement or *limit/restrict* LEO verification (*supra*), as the Ordinance does.

[32] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

Given what §§ 3, 4, and 7 of Chapter 18.2 *actually* require, and focused solely on the only issue in this case, which is whether the *Ordinance itself* complies, it is self-evident that the Ordinance's laundry list of banned cooperation with federal authorities and other banned but permissible enforcement activities violate Chapter 18.2, as detailed next in Part IV.

Finally, from the foregoing, it is clear that Chapter 18.2 preempts the sort of provisions that Plaintiffs challenge in the Ordinance. The City makes an extended home-rule argument (City's SJ Mem. Part I(A)(2)(b)), but as set out at the very beginning of this case "[t]hough Indiana has granted some 'home rule,' IC 36-1-3, it may preempt local government ordinances and policies. IC 36-1-3-5 ('unit' lacks power where 'expressly denied by ... statute'). So Chapter 18.2 preempts local ordinances or policies that conflict." (VC ¶ 43 n.19.) That has not changed, and the challenged provisions of the Ordinance are clearly preempted for conflicting with Chapter 18.2, as shown next. The Fifth Circuit was recently confronted with a similar home-rule argument in *El Cenizo*, but noted that "[t]he Texas Constitution prohibits a city from acting in a manner inconsistent with the general laws of the state. Thus, the legislature may, by general law, withdraw a particular subject from a home rule city's domain. . . . For better or worse, Texas can 'commandeer' its municipalities in this way." No. 17-50762, slip op. at 36. So can Indiana commandeer municipalities, and it did so in Chapter 18.2, so the City lacks home rule as to the challenged provisions, which clearly conflict with Chapter 18.2.

IV.
Gary's Ordinance Violates Chapter 18.2.

In Part IV of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs established that the challenged provisions of Gary's Ordinance[33] violate Chapter 18.2. (Pls.' SJ Mem. 15-30.) As es-

[33] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

tablished above and discussed in relation to challenged provisions below, the City's counter-arguments fail because they rely on (i) a misunderstanding of "knowingly and intentionally"[34]; (ii) an erroneously narrow interpretation of the "information" governed by 8 U.S.C. 1373 and 1644 and IC 5-2-18.2-3[35]; (iii) an erroneous interpretation of what Chapter 18.2 requires regarding information- and enforcement-cooperation; and, overall, (iv) an erroneous failure to focus on what is specifically at issue, i.e., whether Chapter 18.2 bans the challenged provisions of *the Ordinance itself*, not, e.g., some hypothetical 5pm-versus-6pm-library-closure application of Chapter 18.2 that the Plaintiffs don't believe is covered by Chapter 18.2 and (in the highly unlikely event that anyone ever adopts the City's strained interpretation and seeks to enforce Chapter 18.2 that way) should be dealt with in a separate as-applied challenge to Chapter 18.2.

A. Defendants Knowingly and Intentionally Enacted the Ordinance.

IC 5-2-18.2-6 requires that "[i]f a court finds that a governmental body . . . knowingly or intentionally violated section 3 or 4 of this chapter, the court shall enjoin the violation." So Plaintiffs established that "Gary Defendants knowingly and intentionally enacted the ordinance." (Pls.' SJ Mem. Part IV(A)), detailing facts about the Ordinance's enactment (*id.* at 15).

But as noted in the Introduction, the City alleges a material-fact issue over "knowingly or intentionally" under IC 5-2-18.2-6: "Plaintiffs have offered virtually no evidence to support their remarkable claim that the Common Council knowingly and intentionally flouted the law." (City's SJ Mem. 53.) The City misunderstands Indiana law because "knowingly or intentionally" means "'the intent to do the prohibited act, or the knowledge that one is doing so,'" which "'does not require knowledge that the act is in violation of the law or the intent to violate a statutory provi-

[34] *See supra* at 1, 3 and *infra* at Part IV(A).

[35] *See supra* at 2 and Parts II-III.

sion.'" *Simon*, 519 N.E.2d at 210 (citation omitted). The City admits it "knowingly and intentionally enacted the Ordinance." (VC ¶ 14; Answer ¶ 14.) So the City has already conceded the relevant knowingly-intentionally issue, and no material-fact issue exists. This answers the City's arguments at pages 47-48 and Part III.

Moreover, leaving in place sanctuary-city-type policies that Indiana intended to preempt with Chapter 18.2 based on the City's own erroneous interpretations of law would be legally anomalous: *ignorantia juris non excusat* (ignorance of the law is no defense). And that should be doubly true where the remedy is an injunction, not civil or criminal penalties.

B. Count I: Ordinance § 26-52 Violates Chapter 18.2.[36]

In Part IV(B) of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs established that "[i]n enacting Ordinance § 26-52 (restricting full cooperation regarding information sharing), Gary Defendants violated Indiana's Chapter 18.2—particularly IC 2-5-18.2-3, -4, and -7—which preempts the immigration-law field and bans what Gary Defendants have done." (Pls.' SJ Mem. 19.) Plaintiffs proceeded to establish that § 26-52 violates § 18.2-3, -4, and -7. (Pls.' SJ Mem. 19-24.)[37]

The City acknowledges that its response turns on its own interpretations of Chapter 18.2: "The challenged provisions of Gary's Ordinance do not violate sections 3 or 4, *properly interpreted*." (City's SJ Mem. 33 (emphasis added).) But as established above, the City's interpretations are not proper. *See supra* Parts II-III.

[36] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

[37] The City concedes that "part of section 26-52[] limit[s] city agencies' cooperation in response to request by ICE for assistance in immigration enforcement operations." (City's SJ Mem. 45 n. 21.)

Regarding IC 5-2-18.2-**3**, the City concedes that it "bars policies that prohibit or restrict the sharing and maintenance of information *relating to* an individual's citizenship or immigration status." (City's SJ Mem. 6 (emphasis added).) The City thus concedes that the "of" in § 3 means "relating to," a synonym of "regarding" in 8 U.S.C. 1373 and 1644, *see supra* at 27-28, and all three provisions require the broad all-matters-regarding interpretation of the "information" at issue, *see supra* Parts II and III, as the City's own definition of "citizenship and immigration status," Ordinance § 26-51, concedes is a proper reading of that language (Pls.' SJ Mem. 16, 18, 21-22). So the City's protestation that Ordinance § 26.59 "authorizes Gary official to share the very information addressed by section 3" (City's SJ Mem. 34) relies on the City's restrictive "information" interpretation at § 26-59 that is itself erroneous. (Pls.' SJ Mem. 21-22.) Under the truly proper, broad interpretation of the "information" that IC 5-2-18.2-3 says the City may not enact an ordinance to prohibit/restrict sharing and maintaining, *see supra* Part II-III, Ordinance § 26-52's broad restriction on requesting, investigating, or assisting investigation of "information . . . of the citizenship or immigration status of any person" violates § 3.

Also regarding IC 5-2-18.2-3, Plaintiffs established that "the actions listed in (1) through (4) in [§ 3] typically would be taken by a local official investigating immigration status," which investigation and assisting in investigation § 26-52 *bans* (with limited exceptions), and "[a]ccordingly, Ordinance § 26-52 violates IC 5-2-18.2-3's *ban on prohibiting or restricting* communication or cooperation with federal official, sending information to or receiving it from DHS and exchanging information . . . ." (Pls.' SJ Mem. 23 (emphasis added).) The City says it "explained above" (without citation) that § 3 "does not ban policies that limit the ability of local officials to *collect* . . . information." But the City errs. What the City argued earlier was that "section 3 does not *require* the *collection* of . . . information." (City's SJ Mem. 11 (emphasis

added).) An argument that § 3 doesn't *require* something differs markedly from an argument that § 3 "*does not ban policies that limit*." Section 3 actually *does ban* an ordinance that prohibits/restricts "cooperating with federal officials," "maintaining," "exchanging," etc. regarding broadly understood immigration-related information. In fact, the City conceded that "[s]ection 3 bans policies that *restrict*" what § 3 addresses, i.e., communicating, cooperating, sending, receiving, maintaining, exchanging the information at issue. So the City didn't establish that § 3 does the *reverse*, i.e., "not ban policies that limit the ability of local officials to collect . . . information." (*Id.* at 35.) In 8 U.S.C. 1357(g)(10), federal law provides full authority for

> *any officer or employee* of a State or *political subdivision* of a State—
> (A) to communicate with [federal authorities] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
> (B) otherwise to cooperate with [federal authorities] in the *identification*, apprehension, detention, or removal of aliens not lawfully present in the United States.

Id. (emphasis added). So no other authority is needed, e.g., for a Gary LEO to "cooperat[e] with federal officials" by "assisting in the investigation of the citizenship or immigration status [broadly defined] of any person," which Ordinance § 26-52 prohibits/restricts in violation of IC 5-2-18.2-3. Now, the City says Ordinance § 26-52 doesn't "restrict the maintenance or sharing of information in the possession of the City's agencies" (City's SJ Mem. 35), but of course such information is the precise topic of § 26-52 and sharing that information is what a Gary LEO would do in the investigation assistance that § 26-52 prohibits/restricts in violation of § 3.

Regarding IC 5-2-18.2-**4**, Plaintiffs noted that the City concedes that the topic of enforcement includes "provid[ing] information on persons who may be the subject of immigration enforcement operations" (Ordinance § 26-55(d)), and that Ordinance 26-52 violates § 4 by limiting/restricting "the enforcement of federal immigration laws" in ways that federal law permits.

As noted above, the City fully understands what such language means because it uses nearly identical language in Policy 1-92 and the City is well acquainted with what federal law permits because it systematically prohibits/restricts/limits the various aspects of it in the Ordinance, and Plaintiffs provide a bullet-point list of permitted activities easily drawn from legal provisions, government documents and briefs, and cases. *See supra* at 38-39. Yet 26-52 violates § 4 because (inter alia), it doesn't allow an "agent or agency . . . to "request information about . . . citizenship or immigration status" though the Supreme Court in *Arizona*, 567 U.S. at 411-15, held that it is permissible for an LEO making an otherwise legal stop, e.g., a traffic stop, to request such information, *id.* at 411-12 (citing 8 U.S.C. 1357(g)(10)). Though the City cites *Arizona* for numerous propositions, Plaintiffs have searched the word "Arizona" in the PDF version of the City's Memorandum and don't see a discussion of what *Arizona* said LEOs may do. Since Ordinance 26-55 says LEOs can't ask about citizenship/immigration information, it violates § 4's ban on such a limitation/restriction.

Regarding IC 5-2-18.2-**7**, that provision not only mandates notice of the duty to cooperate but defines that duty by saying to whom the cooperation duty flows ("state and federal agencies and officials") and the broadly defined scope of the duty ("on matters pertaining to enforcement of state and federal laws governing immigration"). Though IC 5-2-18.2-6 provides a statutory injunction for violation of §§ 3 and 4 (not § 7), §§ 3, 4, and 7 were enacted together, are on the same topic, and all address cooperation either expressly (§§ 3 and 7) or implicitly (§ 4, because cooperation is "permitted" under 8 U.S.C. 1357(g)(10)), so all must be read *in pari materia* to reflect an *LEO* duty to cooperate regarding "information" (§ 3) and "enforcement" (§§ 4 and 7). Consequently, to the extent Ordinance § 22-52 limits such cooperation, it also violates § 7.

In sum, Ordinance § 26-52 violates IC 5-2-18.2-3, -4, and -7, as set out in Plaintiffs' Summary-Judgment Memorandum (at 19-24) and not refuted by the City.

C. Count II: Ordinance § 26-55 Violates Chapter 18.2.[38]

In Part IV(C) of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs established that "Ordinance § 26-55 violates IC 2-5-18.2-3 and -4, as informed by -7." (Pls.' SJ Mem. 24.) Plaintiffs proceeded to prove that § 26-55 violated those provisions of Chapter 18.2. (Pls.' SJ Mem. 24-28.) Section 26-55, of course bans a range of immigration-enforcement actions permissible under federal law, from honoring federal detainers to refusing information useful to federal-immigration-law enforcement to entering into a formal agreement under 8 U.S.C. 1357(g) to providing ICE access to persons in custody, and so on. Of course this is a virtual catalog of what is permissible under federal law, *see supra* at 38-39 (bullet-point list of permissible activity), so by enacting § 26-55 the City prohibits/restricts information-cooperation that it may not do under IC 5-2-18.2-3 and limits/restricts "enforcement of federal immigration laws" in a range of ways permissible under federal law in violation of IC 5-2-18.2-4. And of course, the City is mandating that its LEOs violate their duty to cooperate in the broad ways that IC 5-2-18.2-7 requires of them.[39]

Regarding IC 5-2-18.2-**3**, the City insists on its narrow reading of the "information" that is the topic of 8 U.S.C. 1373 and 1644 and IC 5-2-18.2-3, which it insists that Ordinance § 26.59 requires to be provided. All of that has already been refuted. *See supra* Parts II-III.

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[38] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

[39] The City concedes that "sections 26-55(d) and (f) . . . limit city agencies' cooperation in response to request by ICE for assistance in immigration enforcement operations." (City's SJ Mem. 45 n.21.)

Regarding IC 5-2-18.2-**4**, the City says that § 26-55(d) (banning cooperation with ICE or other requests for assistance in immigration enforcement operations, including providing information) doesn't violate § 4 because it "regulate[s] the types of cooperation that Gary agencies and agents may render, without restricting federal authorities' own enforcement of federal immigration laws." (City's SJ Mem. 37.[40]) But as discussed above, the earlier concession that the City may not limit/restrict *federal* enforcement of federal immigration law suffices to doom the Ordinance because banning information and enforcement cooperation with federal enforcement activities—in ways that are fully, plainly permitted by federal law—does "limit or restrict the enforcement of federal immigration laws" in violation of § 4. *See supra* at 32-33. As explained by way of example, if an ICE agent requests access to a person in City custody and City LEOs refuse and block her access, that limits/restricts "the enforcement of federal immigration laws." *See supra* at 32.

The City then makes the same argument as to § 26-55(a)-(c) (City's SJ Mem. 37), which fails for the same reason. For example, not honoring an ICE detainer request limits/restricts the "enforcement of federal immigration laws" because the ICE agent is limited and restricted in her federal enforcement by Gary's Ordinance. The same is true of honoring federal administrative warrants. And because *Arizona* held that it is constitutionally permissible for a local LEO to verify citizenship/immigration status when a person is stopped for other reasons, e.g., a traffic infraction, § 22-55's ban on that possibility limits/restricts that possible enforcement of federal immigration law.

[40] The City says §§ 26-52 and 26.59 don't violate § 4 for the same reasons, and the argument fails as to all as shown next here.

The City flatly alleges that "[i]n any case, the Fourth Amendment prohibits Gary official from performing the acts identified in subsection (a)-(c)." (City's SJ Mem. 38 n.15.) But that is flatly wrong as evidenced by the fact that *Arizona* itself allowed the traffic-stop verification check just described, as proved in the Fifth Circuit's recent *El Cenizo* decision, and as clear from longstanding federal law—all as shall be discussed in Part V(B). Anyway, the City has made no Fourth Amendment challenge in its Answer, so no such "claim" is before the Court and the City may not rely on any such "claim."

The City says "[s]ubsections (d) and (e)" "do not restrict ICE's own activities" (City's SJ Mem. 38), which is the erroneous argument about not limiting/restricting "the enforcement of federal immigration law" in permissible ways that has just been rejected in the present context because it violates § 4. The same is true of the City's argument about § 26-55(f), though the City here concedes that its argument is flawed by admitting that "[i]t is true that, absent these provisions, ICE might enjoy slightly greater resources and opportunities to enforce federal immigration laws. But that is not what section 4 requires." (City's SJ Mem. 38.) But the City fundamentally errs about what section 4 requires, and just stating the City's view doesn't make it true. Section 4 requires that the City enact no ordinance that restricts/limits "the enforcement of federal immigration laws," and denying ICE access to detainees, refusing transfers to ICE, refusing to provide ICE information about release dates or contacts, and the like all *severely* limit and restrict ICE in its work of enforcing federal immigration law. For example, if ICE detainers aren't honored, and honoring them is fully permissible under federal law and the U.S. Constitution (*see* Part V), ICE must arrest illegal aliens, some with criminal records or who are suspected of criminal activity, at large in the community, e.g., at courthouses, places of work, in apartment build-

ings, greatly burdening ICE officers and endangering the community.[41]

In sum, Ordinance § 26-55 violates IC 5-2-18.2-3 and -4, as informed by -7, as set out in Plaintiffs' Summary-Judgment Memorandum (at 24-28) and not refuted by the City.

D. Count III: Ordinance § 26.58(c) Violates Chapter 18.2.[42]

In Part IV(D) of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs showed that Ordinance § 26.58(c) violates IC 2-5-18.2-3 and -4, as informed by -7. (Pls.' SJ Mem. 28.) It does so by actively discouraging *only* the arrest of illegal aliens (and not of legal residents equally subject to arrest) *precisely because* they are illegal aliens and an arrest might lead to immigration-law consequences. That is the *City*'s expressed justification ("increases that individual's risk of deportation"), and Plaintiffs merely describe what the City says without, as the City alleges, creating a "could lead to" test (City's SJ Mem. 31-32, 39) in place of § 4's *actual* test, i.e., limiting/restricting "the enforcement of federal law to less than the full extent permitted by federal law."

Preliminarily, note that the City agrees that "section 26.58(c) *requires* the Gary Police Department to consider the 'extreme potential negative consequences of an arrest,'" (City's SJ Mem. 38), so the City concedes that the "will" in the "Commitments" section is mandatory. And the City concedes that its special non-arrest consideration extends only to those subject to "a heightened risk of deportation," i.e., to illegal aliens. (*Id.*)

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[41] The City appeals here and elsewhere to protecting "expenditures of its limited resources in supporting federal enforcement" (*id.*), but (i) much activity that the Ordinance bans requires de minimis or minimal expenditures (information sharing, access to detainees, etc.), (ii) such costs are part of being a city and having a police force, (iii) such costs are inherent in proper police work, and (iv) the City has nowhere shown that Indiana can't mandate the City to expend its resources on such vital matters that the State has considered important enough to carefully regulate.

[42] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

The clear purpose and effect of this avoid-arresting-illegals policy is to limit/restrict the enforcement of federal immigration law against those at "risk of deportation," at whom this provision is plainly targeted by its express terms (as the City concedes), so the violation of § 4 is clear. The City seeks to limit the natural consequences for illegal aliens of violating laws to which all are subject, and those consequences flow from the enforcement of federal immigration law. So while the laws that illegal immigrants violate to subject them to arrest may not be federal immigration laws, the City is clearly trying to avoid the enforcement of immigration law for illegal aliens by treating them more favorably than others (with all the equal-protection and rule-of-law implications involved) for one sole purpose: to limit/restrict the enforcement of federal immigration laws. So the policy violates IC 5-2-18.2-4.

And the City's policy here violates IC 5-2-18.2-3's mandate that the City not restrict "cooperating with federal officials" concerning information regarding citizenship/immigration-status information because a central premise of the policy is that the LEO *knows* that the person otherwise subject to arrest is an illegal alien and the LEO is affirmatively encouraged not to cooperate with federal immigration-law enforcement authorities concerning that knowledge, including by not arresting that person for the purpose, and with the effect, of letting that person evade the enforcement of federal immigration laws.

And of Course IC 5-2-18.2-7 requires that City LEOs fulfill their duty to cooperate with federal officials on matters pertaining to federal immigration laws. So this policy asks LEOs to violate that cooperation duty by instructing them to minimize the arrest of illegal aliens otherwise subject to arrest precisely because illegal aliens are subject to risk of deportation. Encouraging City LEOs to effectively hide illegal aliens from federal authorities by avoiding the arrest of illegal aliens otherwise subject to arrest violates what § 7 mandates: cooperation in all matters per-

taining to immigration-law enforcement.

The City's argument that this mandate to City LEOs is "to minimize both ethnic profiling[] and arrests that bear little relation to sound policing policies and public safety priorities" (City's SJ Mem. 39) errs for at least three reasons. First, ethnic profiling is not involved because that is already banned elsewhere, as the City's footnote 17 notes, and because the premise of § 26.58(c) is that a person is otherwise subject to arrest for violating a law, and the fact that a person has violated the law is a neutral determination involving no ethnic profiling. If anything, the policy requires reverse discrimination based on illegal-alien (and national-origin) status alone, i.e., out of the pool of persons neutrally determined to be subject to arrest for violating the law, the policy encourages LEOs to let one group off—illegal aliens of whatever ethnicity, national origin, etc. So this provision has nothing to do with ethnic profiling.

Second, the provision is not about "arrests that bear little relation to sound policing policies" because such a policy would necessarily be aimed at *all* persons otherwise subject to arrest. By discouraging the arrest of those subject to "the risk of deportation" alone, the policy abandons all pretext of being just about neutral policing policies. So that argument fails.

Third, the provision is likewise *not* about "public safety priorities" because, even if encouraging the non-arrest of persons otherwise subject to arrest somehow promotes public safety (it does not, or the whole notion of the rule is turned on its head),[43] the policy would have to apply neutrally to all persons otherwise subject to arrest. By encouraging non-arrest of illegal aliens but not of persons here legally, where both are otherwise equally subject to arrest, the City asserts that illegal aliens pose *less* of a risk to public safety than persons here legally, but it has proven no

[43] The Ordinance doesn't even include an exception to its non-cooperation mandates for persons known to be violent felons.

such thing and it surely is not self-evident, especially in light of the fact that federal enforcement officials prioritize the removal of "'removable aliens who . . . pose a risk to public safety or national security.'" (Pls.' SJ Mem. 11 (citation omitted).) So that argument also fails.

In sum, Ordinance § 26.58(c) violates IC 5-2-18.2-3, -4, and -7.

E. Count IV: Ordinance § 26.59 Violates Chapter 18.2.[44]

In Part IV(E) of Plaintiffs' Summary-Judgment Memorandum, Plaintiffs established that Ordinance § 26.59 violates IC 2-5-18.2-3, -4, and -7—which preempt the immigration-law field and ban what Gary Defendants have done. (Pls.' SJ Mem. 29-30.) As established in the opening brief and above at Parts II, III, and IV(B), 8 U.S.C. 1373 and 1644 and Chapter 18.2 mandate a broad, all-matters-regarding interpretation of the "information" that the City may not prohibit/restrict/limit the sharing of with federal officials. Yet the City adopted an impermissibly narrow construction of that "information" and so violates Chapter 18.2.

The City's erroneous argument is that the federal and state provisions cited require only "statements of an individual's country of citizenship, whether an individual is lawfully present in the United States, and, if so, the source of permission authorizing her continued existence." (City's SJ Mem. 8.) But for reasons already exhaustively set out in above-cited provisions of the opening brief and present memorandum, the City is wrong. Those arguments need not be repeated and are incorporated here by reference.

In sum, Ordinance § 26.59 violates IC 5-2-18.2-3, -4, and -7.

[44] *See infra* Appendix: Relevant Indiana, Federal & Local Laws.

V.
Gary's Constitutional Insinuations About Chapter 18.2 Are Meritless.

Though the City brings no constitutional challenges in its Answer, the City tries to enlist constitutional provisions to its aid, e.g., by its assertions of "serious [constitutional] concerns" mandating narrow constructions. (City's SJ Mem. 26; *see also id.* at 26-33, 40-44.) But the City's claims lack merit. As shall be shown, Judge Edith Jones's careful, erudite opinion for the unanimous Fifth Circuit in *El Cenizo*, No. 17-50762, slip op., is particularly valuable in analyzing such allegations because in *El Cenizo* the plaintiffs actually made constitutional challenges to the Texas law barring sanctuary-city polices like those at issue here, and the Fifth Circuit rejected them (with one limited free-speech exception not at issue here).

A. Chapter 18.2 Isn't Preempted.

The City argues that if IC 5-2-18.2-3, -4, and -7 are interpreted *in pari materia* to require the City, its agencies, and agents to actually cooperate with enforcement officials (state and federal) in the language of those provisions—e.g., "communicating or cooperating with federal officials" regarding immigration-related information, IC 5-2-18.2-3(1), not limiting/restricting "the enforcement of federal immigration laws to less than the full extent permitted by federal law," IC 5-2-18.2-4, and LEOs having "a duty to cooperate with state and federal agencies and officials on matters pertaining to the enforcement of state and federal laws governing immigration," IC 5-2-18.2-7—that "would raise grave concerns under . . . principles of federal preemption." (City's SJ Mem. 6-7.) But Chapter 18.2 isn't preempted by federal law.

A similar argument was made and rejected in the Fifth Circuit's *El Cenizo* opinion upholding Texas's similar law banning sanctuary cities. The Fifth Circuit's analysis is instructive here and shows the proper analysis on this issue.

The Fifth Circuit first set out the doctrine of federal preemption under the Supremacy Clause, including the field preemption and conflict preemption that plaintiffs there actually raised in their complaint. *El Cenizo*, No. 17-50762, slip op. at 8-10, 12.

Turning to the field-preemption claim, the court set out the federal regulatory scheme, concluding by noting that 8 U.S.C. 1357(g)(10)(A)-(B) "expressly allows cooperation in immigration enforcement outside those [formal] agreements [under § 1357(g)]." So it rejected plaintiffs' argument that SB4 is field-preempted in its entirety because Congress occupied the field of 'federal-local cooperation in immigration enforcement." No. 17-50762, slip op. at 9.[45] Noting the "critical savings clause" at 8 U.S.C. 1357(g)(10)(A)-(B), the court held that "SB4 and the federal statutes involve different fields. Federal law regulates *how* local entities may cooperate in immigration enforcement; SB4 specifies *whether* they cooperate." No. 17-50762, slip op. at 10 (emphasis in original). "In its operation," the court continued, "SB4 is similar to one of the [sanctuary] city ordinances some plaintiffs themselves have adopted," *id.* at 11, so "if SB4 is field preempted, so too are the local ordinances that regulate 'federal-local cooperation in immigration enforcement,'" *id.* at 12. In sum, if Chapter 18.2 is field-preempted under federal law, so too would be the City's Ordinance here. There is no-field preemption of Chapter 18.2.

Turning to conflict preemption, the Fifth Circuit rejected arguments against the assistance-cooperation provision. First, it held that (1) "'assisting or cooperating' requires a predicate federal *request*" so that a provision authorizing assisting or cooperating doesn't "permit[] unilateral

[45] SB4 contained what the Fifth Circuit called "(A) the immigration-enforcement provisions, (B) the ICE-detainer mandate, and (C) the penalty provisions." *Id.* at 3. Essentially (A) banned local entities from adopting polices that prohibit/limit immigration enforcement, with specific examples, (B) requires LEOs to comply with ICE detainer requests, and (C) provides for enforcement by private citizens and the attorney general with penalties ranging from fines to removal from office. No. 17-50762, slip op. at 3-6.

local immigration enforcement," as plaintiffs had argued and claimed to be in violation of *Arizona*. *Id.* at 12-13 (rejecting erroneous argument purportedly based on *Arizona*, 567 U.S. at 409). Second, it held that the savings clause at 1357(g)(10) expressly allows such cooperation without any formal agreement or training, which plaintiffs had said was required. No. 17-50762, slip op. at 13-14. Third, it rejected plaintiffs' argument that a provision mandating assisting federal immigration-law enforcement made mandatory what Congress intended to be voluntary because (i) *Arizona* expressly "upheld state laws *mandating* immigration-status inquiries," *id.* at 15 (citation omitted), and (ii) "in *Chamber of Commerce of U.S. v. Whiting*, the Court upheld a state law *mandating* that employers check immigration status with an electronic verification system," *id.* at 16 (citing *Whiting*, 563 U.S. 482, 611 (2011)). "Indeed," the Fifth Circuit continued, "the Court has repeatedly rejected a 'freewheeling judicial inquiry into whether a state statute is in tension with federal objectives' because 'such an endeavor would undercut the principle that it is Congress rather than the courts that preempts state law.'" *Id.* (quoting *Whiting*, 563 U.S. at 607). Fourth, regarding conflict preemption, the Fifth Circuit noted that "the plaintiffs have admitted that, under the Tenth Amendment, Congress could not compel local entities to enforce immigration law," and "[i]f that is the case, Congress did not choose to make these laws voluntary; it could not have made them mandatory." *Id.*

Under a similar analysis here, where the City doesn't actually *make* a preemption claim, no provision needs to be narrowly construed to avoid preemption. None are preempted under a properly broad interpretation that seeks to implement the legislatures intent and goals in similarly banning sanctuary-city-type policies in Indiana.

B. Chapter 18.2 Doesn't Violate the Fourth Amendment.

In *El Cenizo*, the Fifth Circuit rejected the notion that the Fourth Amendment, U.S. Const. amend. IV, bars a Texas requirement that LEOs comply with ICE detainer requests. *El Cenizo*, No. 17-50762, slip op. at 24-32. While the whole opinion is valuable, Plaintiffs focus on the City's notion, articulated in its Ordinance, that the Fourth Amendment requires in this immigration-enforcement context a judicial warrant based on probable cause that a crime has occurred. *See* Ordinance §§ 26-52 and 26-55. (City's SJ Mem. 40-44.)

The Fifth Circuit "pretermit[ed] the question of whether the Fourth Amendment even applies to many aliens subject to ICE-detainer requests," citing cases that held it does not, including one "noting that the Supreme Court has never 'held that the Fourth Amendment extends to a native and citizen of another nation who entered and remained in the United States illegally.'" *El Cenizo*, No. 17-50762, slip op. at 26 n.19 (quoting *United States v. Portillo-Munoz*, 643 F.3d 437, 440 (5th Cir. 2011)). The Fifth Circuit then noted that "this case does not involve whether probable cause existed in a particular instance: it is a pre-enforcement facial challenge. Such a challenge is 'the most difficult . . . to mount successfully.'" *Id.* at 26 (citation omitted). The present case must also be considered in the "facial challenge" context, for no specific application is at issue. The Fifth Circuit then relied on a straightforward two-step analysis: (1) "*federal* immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability," *id.* at 27 (citation omitted), and (2) "[u]nder the collective-knowledge doctrine . . . the ICE officer's knowledge may be imputed to local officials even when those officials are unaware of the specific facts that establish probable cause of removability," *id.* at 28. The Fifth Circuit then rejected the argument that only "probable cause of *criminality*" suffices, *id.* (emphasis in original), noting court decisions in a variety of situations upholding "statutes that allow

seizures absent probable cause that a crime has been committed," *id.* at 28-29 (citation omitted). The Fifth Circuit said the contrary "contention is also patently at odds with immigration law and procedure; civil removal proceedings necessarily contemplate detention absent proof of criminality." *Id.* at 29 (citing *Demore v. Kim*, 538 U.S. 510, 531 (2003)). The Fifth Circuit proceeded to reject several arguments and distinguish several cases. *Id.* at 28-32. So a case on which the City particularly relied, *El Cenizo*, has now shown the correct result under the Fourth Amendment. That Judge Edith Jones's opinion is correct can also be shown by further authorities, as follows.

In the preamble to its Ordinance, the City recites "the 4th Amendment requirements of probable cause for arrest and detention," which presumably is the purported basis of the Ordinance's prescribed non-cooperation with detainer requests issued by federal immigration authorities. But the Fourth Amendment doesn't save the Ordinance from challenges here because (**1**) the federal government may constitutionally enforce the nation's immigration laws by detaining removable aliens and (**2**) it is reasonable for local officials both to assist the federal government in this endeavor and to rely on the federal government's determination, stated in a detainer, that there is probable cause to believe that an individual is a removable alien.[46]

1. Under the Special Needs Doctrine, Federal Authorities Can Constitutionally Arrest and Detain Individuals Suspected of Being in the United States Illegally.

The federal government has plenary power over immigration derived from its powers over naturalization and foreign affairs, and also from the inherent rights of the United States as a sovereign nation. *Arizona*, 567 U.S. at 394-96. Congress created a comprehensive immigration statutory scheme in the Immigration and Nationality Act, which charges the Secretary of Homeland

[46] *See also* Statement of Interest on Behalf of the United States at *24, *City of El Cenizo*, No. 5:17-cv-00404-OLG, 2017 U.S. Dist. LEXIS 140309 (W.D. Tex. Aug. 30 2017) (honoring ICE detainers and similar cooperation is consistent with the Fourth Amendment), *Available at* https://www.justice.gov/opa/press-release/file/975761/download.

Security with the "administration and enforcement" of immigration laws and the promulgation of regulations as necessary. 8 U.S.C. 1103(a)(1), (a)(3). This scheme grants DHS authority to arrest and detain certain aliens, both with and without warrants. 8 U.S.C. 1226(a),[47] 1231, 1357; *see also Comm. for Immigrant Rights v. Cty. of Sonoma*, 644 F. Supp. 2d 1177, 197-99 (N.D. Cal. 2009) (recognizing the authority of the agency to use detainers outside of the controlled substance violations context).

The Fourth Amendment provides that "[t]he right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the . . . the persons or things to be seized." U.S. Const. amend. IV. Thus, "the touchstone of the Fourth Amendment is reasonableness . . . . Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances." *Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (internal quotation and citation omitted).

For criminal arrests, the Fourth Amendment has been interpreted generally to require either a warrant issued by a neutral and detached magistrate and based on probable cause that a crime has been committed or, in exigent circumstances, a police officer's warrantless possession of probable cause. *Terry v. Ohio*, 392 U.S. 1 (1968).

Yet outside of the criminal-arrest context, the Fourth Amendment's requirement of reasonableness is applied differently. *See, e.g.*, *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211 (D.C. Cir. 1981) (holding that a civil, executive warrant to search a commercial business for immigration purposes met Fourth Amendment standards). Specifically, the Supreme Court developed the special needs doctrine for areas where applying requirements suitable in the crimi-

[47] Attorney General responsibilities were transferred to DHS. 6 U.S.C. 202, 291, 557.

nal-arrest context would be unreasonable. *See, e.g.*, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (applying the special needs doctrine to the search of a high school student on school grounds). Under the special needs doctrine, a search or seizure can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995) (holding that drug testing student athletes fell under the special needs doctrine). The Supreme Court has applied the special needs doctrine to both searches and seizures. *See, e.g.*, *id.*; *New York v. Burger*, 482 U.S. 691 (1987) (permitting administrative inspections in "closely regulated" industries); *Skinner v. Ry. Labor Execs' Ass'n*, 489 U.S. 602 (1989) (allowing the coerced drug testing of railroad employees after an accident under the special needs doctrine). Under the special needs doctrine, a seizure's compliance with the Fourth Amendment depends on "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Brown v. Texas*, 443 U.S. 47, 51 (1979). *See also, e.g.*, *Illinois v. Lidster*, 540 U.S. 419, 426-28 (2004) (balancing these factors in finding a checkpoint stop reasonable); *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 450-55 (1990) (same); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-64 (1976) (same).

Consideration of these factors shows unmistakably that federal seizures of illegal aliens comport with the Fourth Amendment. To take the third factor—the severity of the interference with individual liberty—first, it is true that, when an individual is held pursuant to a detainer, his individual liberty is severely interfered with. But an illegal alien's right to individual liberty within the borders of this country is severely circumscribed to begin with. Such an alien has no right to be in the country at all, and thus, at most, a reduced right to move about freely within it. As a U.S. House of Representatives conference committee report in 1996 stated: "[I]mmigration law

enforcement is as high a priority as other aspects of Federal law enforcement, and illegal aliens do not have the right to remain in the United States undetected and unapprehended." H.R. Rep. No. 104-725, at 383 (1996) (Conf. Rep.). *See also League of United Latin Am. Citizens v. Bredesen*, No. 3:04- 0613, 2004 U.S. Dist. LEXIS 26507 (M.D. Tenn. Sept. 28, 2004) (rejecting a challenge, premised on the right to travel, to a state law barring illegal aliens from possessing drivers' licenses; "given their status, illegal aliens do not have a constitutional right to move freely about the country or the state"); *John Doe No. 1 v. Ga. Dep't of Pub. Safety*, 147 F. Supp. 2d 1369, 1374 (N.D. Ga. 2001) ("[T]he right to travel is derived from federal citizenship. Regardless of which passage in the Constitution the right to travel emanates from, the obvious correlation to national citizenship is fatal to Plaintiff's argument that a fundamental right is at stake in his entitlement to a Georgia driver's license. Plaintiff's presence in this country is unlawful. In fact, it would be a federal crime for someone knowingly to transport Plaintiff within the United States. 8 U.S.C. 1324(a)(1)(A)(ii)."). And, *a fortiori*, even with respect to lawful permanent resident aliens, the Supreme Court has repeatedly held that Congress may make rules impacting their liberty interests that would be unacceptable if made for citizens. *Kim*, 538 U.S. at 521-22, 531 (holding that the detention of a deportable lawful permanent resident prior to removal did not violate due process), *and cases cited therein*.

The other special needs factors—the gravity of the public concerns served by the seizure, and the degree to which the seizure advances the public interest—militate strongly in favor of reasonableness. For example, in 2003, the Supreme Court found that criminal aliens (a large subset of aliens subject to detainers) were a rapidly rising percentage, already comprising 25%, of the federal prisoner population, and that most criminal aliens who were released committed more crimes before their removal. *Kim*, 538 U.S. at 518-519. Releasing criminal aliens back onto the streets,

where they are likely to commit more crimes, clearly is contrary to the public interest.

More generally, a sovereign nation has the power to regulate foreign policy, *Arizona*, 567 U.S. at 395, and that power includes the sovereign's power to protect itself by identifying those who are within its borders unlawfully and removing them. *Harisiades v. Shaughnessy*, 342 U.S 580, 587-88 (1952) ("[Expulsion] is a weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state.") It obviously is of grave public concern that this nation retain its full sovereign right to control its borders, and that right is meaningless without the constitutional power to exercise it. Currently, there are an estimated 12.5 million illegal aliens in the United States. Matthew O'Brien, Spencer Raley & Jack Martin, *The Fiscal Burden of Illegal Immigration on United States Taxpayers* (2017) (Fed'n for Am. Immigration Reform Report).[48] If more stringent requirements than those in current law were imposed on their detention by federal agents—such as a requirement for a judicial warrant—the ability of this country to enforce its immigration laws, as a practical matter, would be at an end.

For these reasons, the detention of illegal aliens by federal agents pursuant to current federal law does not violate the Fourth Amendment. *See, e.g.*, *Au Yi Lau v. INS*, 445 F.2d 217, 224 (D.C. Cir. 1971) (finding probable cause for the warrantless arrest of illegal aliens who had told immigration officers they had "jumped ship" and had attempted to flee when approached).

2. States Do Not Violate the Fourth Amendment by Assisting the Federal Government in Detaining Individuals Thought to Be in the United States Illegally.

Federal law provides for voluntary cooperation by state/local authorities with the federal government in detaining aliens. It also provides for such cooperation in federal criminal law enforcement. The standard for whether either kind of cooperation is reasonable under the Fourth Amend-

[48] *Available at* https://fairus.org/sites/default/files/2017 09/Fiscal-Burden-of-Illegal-Immigration-2017.pdf.

ment is whether the state or local authorities have reasonably relied on the probable cause determination of the federal government. Because it is reasonable for state or local authorities to rely on the probable cause determinations of the federal government in detainer requests, state or local authorities do not violate the Fourth Amendment by complying with such requests.

a. Under 8 U.S.C. 1357(g)(10)(B), State and Local Jurisdictions May Cooperate with ICE Officials in Detaining Aliens.

Through statute, Congress has provided a means by which state or local officials may assume the functions and powers of an immigration officer, and separately provided that they may cooperate with federal immigration officers without assuming those functions or powers. 8 U.S.C. 1357(g)(1) outlines how state and local law enforcement officers may perform immigration officer functions. The U.S. Attorney General, through ICE, may enter into written agreements with state and local law enforcement officers to perform immigration officer functions related to investigation, apprehension, or detention. 8 U.S.C. 1357(g)(1)-(2).

If a state or local employee or officer merely "cooperates" with federal officials, however, no written agreement is necessary. *Id.* at § 1357(g)(10)(B). Without such an agreement, state and local law enforcement officers may cooperate with ICE in the identification, apprehension, detention, or removal of aliens. *Id.*

Whether an action by state or local officials constitutes enforcement or cooperation turns on whether the conduct is undertaken unilaterally or at the request of ICE. Unilateral action by state or local officials in the area of immigration, to be done correctly, requires specialized training. *Arizona*, 567 U.S. at 409 ("There are significant complexities involved in enforcing federal immigration law, including the determination of whether a person is removable. As a result, agreements reached with the Attorney General must contain written certification that officers have re-

ceived adequate training to carry out the duties of an immigration officer."). Thus, actions performed without "express direction or authorization by federal statute or federal officials" do not constitute cooperation, but rather enforcement requiring a Memorandum of Understanding. *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 465 (4th Cir. 2013) (determining that the unilateral seizure of an alien prior to ICE's direction was unconstitutional); *United States v. Ovando-Garzo*, 752 F.3d 1161, 1164-65 (8th Cir. 2014) (holding that the acts of identifying an illegal alien, communicating with immigration officials, and detaining the illegal alien until immigration officials could take custody were not unilateral in nature and did not require a written agreement); *United States v. Quintana*, 623 F.3d 1237, 1242 (8th Cir. 2010) (holding that a state officer could, under § 1357(g)(10)(B), detain an alien at the request of ICE and maintain custody until ICE could take the alien the following day). By this test, if an action is performed at the express direction of or with express authorization by ICE, it constitutes cooperation rather than enforcement.

Detaining individuals pursuant to detainers is not unilateral conduct and is properly categorized as cooperation. After an individual is arrested, the local jurisdiction communicates with immigration officials. 8 U.S.C. 1357(g)(10)(A). ICE makes the determination of whether there is probable cause to believe the person is in the country illegally through objective means such as biometric information.

If there is probable cause, ICE then initiates the detainer, a request to the local jurisdiction to cooperate in detaining the individual for an additional 48 hours. The local jurisdiction cannot act without ICE's detainer; therefore, the local jurisdiction does not make a unilateral decision about the individual's immigration status or removability. This process clearly falls within the statutory language of 8 U.S.C. 1357(g)(10)(B), and is cooperation.

b. State and Local Officials Are Entitled to Rely on Probable Cause Determinations Made by the Federal Government in Detainer Requests.

The cooperation of state or local authorities with the federal government in honoring detainers generally comports with the Fourth Amendment for at least two reasons. To begin with, any finding that the laws authorizing such cooperative assistance are unconstitutional would conflict with the Supreme Court's holding in *Arizona* that these very laws preempted, under the Constitution's Supremacy Clause, Arizona's law conferring power on its state officers to enforce immigration laws unilaterally. *See Arizona*, 567 U.S. at 410. If unconstitutional, these federal laws would lack the preemptive force the Supreme Court ascribed to them, since only those laws "made in Pursuance" of the Constitution are "the supreme Law of the Land." U.S. Const. art. VI, para. 2.

Secondly, where, as here, federal law authorizes state cooperation in federal law enforcement, such cooperation is not contrary to the Fourth Amendment if state officials reasonably rely on information provided by the federal government. For example, under the Interstate Agreement on Detainers Act, states may take custody, at the request of the federal government, of persons the federal government believes have violated federal criminal law. *See* Interstate Agreement on Detainers Act., Pub. L. 91-538, 84 Stat. 1397 (1970); IC 35-33-10-4.

When state officials detain such individuals pursuant to this law, they do not violate the Fourth Amendment if they reasonably rely on information provided by the federal government. Under the shared knowledge doctrine, the knowledge of an investigating officer is imputed to each officer participating in an arrest, and the arresting officer may rely on the probable cause gathered by other officers to arrest a suspect. *United States v. Hensley*, 469 U.S. 221, 231 (1985); *United States v. Ortiz*, 781 F.3d 221, 228 (5th Cir. 2015) ("[I]t is not necessary for the arresting

officer to know all of the facts amounting to probable cause, as long as there is some degree of communication between the arresting officer and an officer who has knowledge of all the necessary facts").

By the same token, when state or local officials make an arrest or detain an individual for a federal offense, they are entitled to rely on information pertaining to probable cause provided by the federal government. Such reliance is especially reasonable in areas where the federal government possesses special expertise or sources of information that the state or local officials lack. For example, federal law provides that "[a]ny civil officer having authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces." 10 U.S.C. 808. Under this law, when the information that an individual is a deserter comes from federal military authorities, local officials are entitled to rely on it. *See, e.g.*, *State v. Somfleth*, 492 P.2d 808, 809-11 (Or. Ct. App. 1972) (holding that when state police arrested a motorist after receiving information from military authorities that he was a deserter, the arrest was valid under the Fourth Amendment because the police were entitled to rely on that information, even though it later turned out to be inaccurate).

The same holds for compliance with detainer requests. Federal officials have special expertise, which state and local officials lack, in determining whether an individual is in the country illegally, and local officials complying with such a request are entitled to rely on the information provided by federal authorities. *See, e.g.*, *People v. Xirum*, 993 N.Y.S.2d 627, 631 (N.Y. Sup. Ct. 2014) ("[T]he [Department of Corrections] had the right to rely upon the very federal law enforcement agency charged under the law with the identification, apprehension, and removal of illegal aliens from the United States") (internal quotation omitted).

In sum, states don't violate the Fourth Amendment by assisting federal authorities enforce immigration law. So the Fourth Amendment is no justification for the Ordinance's no-cooperation, resist-deportation, and avoid-arrest policies and mandates.

C. Chapter 18.2 Doesn't Violate the Tenth Amendment.

To the extent the City asserts any notion that the federal government can't compel the City to do anything, e.g., by 8 U.S.C. 1373 and 1644 (which Chapter 18.2 enforces in Indiana), such a notion would be erroneous. In the preamble to its Ordinance the City recites "the 4th Amendment requirements of probable cause for arrest and detention and the 10th amendment bar on commandeering of local government to perform federal functions." The Tenth Amendment assertion is addressed here.

Despite the Ordinance's recitation of the Tenth Amendment, U.S. Const. amend. X, the Tenth Amendment doesn't save the Ordinance from challenges here because (**1**) the Tenth Amendment doesn't control Indiana's Chapter 18.2 and (**2**) U.S. Supreme Court precedents establish that the Tenth Amendment doesn't bar what federal laws require in this area.[49]

1. The Tenth Amendment Doesn't Affect Indiana's Chapter 18.2.

The Tenth Amendment acts as a potential limit on *federal*, not *state* law: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." U.S. Const. amend. X. So Indiana laws are unaffected by the Tenth Amendment. Consequently, no appeal to the Tenth Amendment can protect the Ordinance from Indiana's Chapter 18.2, which bans what the Ordinance does. The Ordinance is

[49] *See also* Statement of Interest on Behalf of the United States at *24, *City of El Cenizo*, No. 5:17-cv-00404-OLG, 2017 U.S. Dist. LEXIS 140309 (W.D. Tex. Aug. 30 2017) (honoring ICE detainers and similar cooperation is consistent with the Tenth Amendment), *available at* https://www.justice.gov/opa/press-release/file/975761/download.

totally silent concerning controlling Indiana law, making no effort to show how the Ordinance squares with Chapter 18.2.

2. Controlling Precedent Allows What Federal Law Requires.

The City is not within its rights, under the Tenth Amendment to deny its cooperation, including in sharing information, and to impede federal officers enforcing federal law. The seminal cases delimiting such rights are *New York v. United States*, 505 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 898 (1997). In *New York*, the Court took up a statute that required states to enact legislation to take possession and dispose of nuclear waste produced in their state. In *Printz*, the Court considered the Brady Act, which required state employees to do background checks of firearm purchasers. The Court ruled that both of these two kinds of federal imperatives constituted commandeering in violation of the Tenth Amendment. *New York*, 505 U.S. at 158; *Printz*, 521 U.S. at 935.

Relevantly here, however, the Supreme Court has carved out a safe harbor for federal law controlling state activity when such law regulates information flow in or affecting a domain of federal authority. In this realm, the Court has ruled favorably for federal law both mandating state actions and prohibiting state actions, as discussed next. *See also City of New York*, 179 F.3d at 33-35 (distinguishing *New York* and *Printz* and rejecting a Tenth Amendment challenge to 8 U.S.C. 1373).

In *Reno v. Condon*, 528 U.S. 141 (2000), the Court considered a suit by the State of South Carolina enjoining enforcement of the Driver's Privacy Protection Act of 1994 ("DPPA"), 18 U.S.C. 2721 through 2725. The DPPA forbade state department of motor vehicles personnel from disclosing the personal information of drivers for most purposes, though in some circumstances it mandated such disclosure. 18 U.S.C. 2721. In a unanimous decision, the Court held

that the DPPA was consistent with the federalism required by the Tenth Amendment, despite the heavy resource expenditure states needed to make to enforce the Act, and even states' need to pass laws to comply with it. *Condon*, 528 U.S. at 150-151.

The Court distinguished the federal legislation in *Condon* from that in *Printz* and *New York*. The statute in *Condon* regulated state activities, and the legislation required and man hours employed were a byproduct. *Condon*, 528 U.S. at 150-151. By contrast, the statute in *Printz* directly required state employers to fulfill a federal law enforcement function, and the statute in *New York* directly commanded state legislative initiatives and expenditures to dispose of property (waste). As the Court held, *id.* at 151:

> [T]he DPPA does not require the States in their sovereign capacity to regulate their own citizens. The DPPA regulates the States as the owners of databases. It does not require the South Carolina Legislature to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals. We accordingly conclude that the DPPA is consistent with the constitutional principles enunciated in *New York* and *Printz*.

In affirming the validity of the DPPA, the Court noted that the statute requires the disclosure of certain information:

> The DPPA's prohibition of nonconsensual disclosures is also subject to a number of statutory exceptions. For example, the DPPA requires disclosure of personal information for use in connection with matters of motor vehicle or driver safety and theft, to carry out the purposes of [federal statutes].

Id. at 145 (internal quotation marks and ellipses omitted). The Court explained: "'[t]hat a State wishing to engage in certain activity must take administrative and sometimes legislative action to comply with federal standards regulating that activity is a commonplace that presents no constitutional defect.'" *Id.* at 150-51 (quoting *South Carolina v. Baker*, 485 U.S. 505, 514-15 (1988)). *Cf. Arizona*, 567 U.S. 412-13 (holding that an Arizona law making verification of immigration status by local officials mandatory was not preempted by federal immigration law because 8

U.S.C. 1644 (a provision with wording almost identical to that of § 1373), the constitutionality of which the Court did not question, encouraged the sharing of such information).

In sum, the Tenth Amendment doesn't protect the Ordinance from violating what 8 U.S.C. 1373 and 1644 require.

D. Chapter 18.2 Doesn't Violate the Due Process Clause.[50]

At various points, the City alleges vagueness in Chapter 18.2, either as something to be avoided by adopting the City's preferred, overly narrow construction (*see, e.g.*, City's SJ Mem. 27 (re IC 5-2-18.2-4)) or as "far too imprecise to wrest control of local affairs from . . . Gary" (*id.* at 1). Plaintiffs have already addressed vagueness arguments in various relevant contexts above, but some additional comments here supplement those and reiterate some key analytical points of law that control.

First, the City acknowledges that Indiana vagueness law parallels federal law (City's SJ Mem. 30 n.12), so the holdings and doctrines of federal cases discussed next control.

Second, the remedy for violating Chapter 18.2 is only injunctive relief, IC 5-2-18.2-6, so higher vagueness standards afforded where criminal penalties and free speech are involved, *see, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 41 (1976), don't apply. Only "fair notice" to "a person of ordinary intelligence" is required. *See, e.g.*, *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010) (citation omitted). The City had fair notice under 8 U.S.C. 1357(g)(10), 1373, and 1644 as well as Chapter 18.2 that the challenged provision of its Ordinance are in violation.

Third, where a provision is subject to more than one reading due to ambiguity, the legislature's intent and goals must be determined and the provision construed to give effect to the legislative intent. *See supra* at 8-9. The Indiana General Assembly clearly intended to block the very

[50] U.S. Const. amend. XIV.

sort of sanctuary-city-type provisions that the City enacted, so the provisions of Chapter 18.2 should be construed where necessary to further that intent.

Fourth, the *actual language* in the provisions of Chapter 18.2 controls, not the City's over-the-top caricatures of what Plaintiffs supposedly say the provisions mean. *See supra* at 24, 31 n.27. Creating and attacking strawman constructions doesn't refute what the challenged provisions actually require.

Fifth, as noted above, the City well understands what key provisions of Chapter 18.2 mean because its Police Policy 1-92 requires similar cooperation and employs "in every way possible allowed by law," which parallels "to the full extent permitted by federal law" in IC 5-2-18.2-4, *see supra* at 4, 30-31, its Ordinance provides a properly broad definition of "citizenship and immigration status," § 26-51, its "immigration enforcement operation" includes information-cooperation, § 26-51, and the Ordinance itself is a virtual catalog of the *sorts* of cooperation required by Chapter 18.2, *see supra* at 45, though the City refuses such cooperation.

Sixth, any vagueness assertions by the City are in the nature of a facial challenge to Chapter 18.2, *see, e.g.*, *El Cenizo*, No. 17-50762, slip op. at 33 (vagueness challenge to similar Texas anti-sanctuary-city law was facial), which is the most difficult type of challenge to make. *See, e.g.*, *United States v. Salerno*, 481 U.S. 739, 745 (1987) ("A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid"). Moreover, "[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982). The City cannot overcome those doctrines here.

Seventh, where a provision has a solid "core" of what it covers, facial vagueness may not be

found. *See, e.g.*, *El Cenizo*, No. 17-50762, slip op. at 32. And here there is a solid core of well-recognized immigration-related activities that federal law permits that Plaintiffs have established in bullet points, *see supra* at 38-39, which is what the City may not *prohibit/restrict/limit* under Chapter 18.2. Indeed, the Ordinance provides a virtual checklist of what federal law permits but the City prohibits/restricts/limits.

Eighth, the Fifth Circuit's *El Cenizo* decision again provides guidance in considering a challenge to "materially limits" on vagueness grounds. No. 17-50762, slip op. at 32-35. The court noted "the exacting standard for establishing facial vagueness: 'When a provision is so vague that it specifies "no standard of conduct . . . none at all," then the provision "simply has no core," and will be vague as applied to anyone—that is, it will be facially vague.'" *Id.*, slip op. at 32 (quoting *United States v. Gonzales-Longoria*, 831 F.3d 670, 675 (5th Cir. 2016) (en banc) (quoting *Smith v. Goguen*, 415 U.S. 566, 578 (1974))). "The plaintiffs have not established that 'materially limits' is facially vague under this standard," the court held. *Id.*

Under these doctrines, this Court may and should readily reject the City's insinuations of facial unconstitutionality.

VI.
Injunctions Are Required for Knowing and Willful Violations, Without More.

As noted in the Introduction, the City says permanent-injunction elements aren't satisfied. (City's SJ Mem. Part II.) But as noted, an "action to compel . . . compl[iance] with [Chapter 18.2" is a *statutory* (not equitable) action under IC 5-2-18.2-5, and IC 5-2-18.2-6 provides the *sole* element for an injunction: "*if a court finds* that a governmental body . . . *violated section 3 or 4* of [Chapter 18.2], the court *shall enjoin* the violation," IC 5-2-18.2-6 (emphasis added).

The City acknowledges the mandatory shall-enjoin language of § 6, but says that "[t]o the

extent that section 6 might be thought to eliminate the irreparable harm element, it does so only for 'knowing[] or intentional[]' violations," and the City says Plaintiffs haven't met the knowingly/intentionally standard. (City's SJ Mem. 47-48.) But of course, as set out in the Introduction and Part IV(A), the City *knowingly and intentionally enacted the Ordinance*, which it admits, so the knowingly or intentionally standard is met.

The City says Indiana's "per se" rule doesn't help Plaintiffs. (City's SJ Mem. 48-50.) But of course §§ 5-6 set a statutory "action to compel" with the sole standard required for a shall-issue injunction, as set in this Part, i.e., a court finding of a knowing/willful violation of §§ 3 and/or 4. Of course, the "per se" doctrine is consistent with what §§ 5-6 require.

The City says that "[e]ven if some provisions of Gary's Ordinance violate section 4, Plaintiffs have failed to demonstrate that they are suffering from irreparable harm." (City's SJ Mem. 50.) Though, as the City notes, Plaintiffs recite "'irreparable harm to their public interests and right'" (City's SJ Mem. 50 (citation omitted)), irreparable harm is not required due to §§ 5-6. Moreover, the public standing doctrine that Plaintiffs recited as consistent with §§ 5-6 means that one has public interests and rights that Plaintiffs represent, as they described (Pls.' SJ Mem. Part I), and that the City has not disputed. *See supra* Part I. So under Chapter 18.2, the mere existence of the Ordinance's challenged provisions *does* authorize this "action to compel," for the Ordinance is what Chapter 18.2 forbids. (City's SJ Mem. 50.) And for the same reason, Plaintiffs need not show "that Gary agencies or agents have been asked to provide information" etc. and "refused such requests" (*id.*) because the Ordinance itself violates §§ 3 and 4, without more. Consequently, the City's arguments about other inapplicable injunction elements are wholly beside the point. (City's SJ Mem. 50-53.)

VII.
A Mandate Should Issue Requiring the Notice Mandated by IC 5-2-18.2-7.

Section 7 required that each City LEO should have received "written notice that the law enforcement officer has a duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration." That should have already happened. But in discovery, Plaintiffs have learned that this has not been done. *See supra* at 5 (Police Chief deposition). Because § 7 imposes a mandate, it is not discretionary: the City's "law enforcement agency shall provide each law enforcement officer with a written notice." Because it has not been done, a mandate from this Court is appropriate, *see, e.g., State ex rel. Cittadine v. Indiana Dep't of Transp.*, 790 N.E.2d 978, 979 (Ind. 2003) (public standing doctrine allows mandate to fulfill statutory duty), Plaintiffs ask this Court, as part of the remedy in this case, to mandate Defendants to require the City's law enforcement agency to issue this written notice forthwith.

Conclusion

For the reasons shown, this Court should grant Plaintiffs' summary-judgment motion, deny the City's, provide the relief requested in the Prayer for Relief, and mandate that Defendants require the City's law enforcement agency to issue the written notice required by IC 5-2-18.2-7 forthwith.

Date: April 16, 2018

Respectfully submitted,

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Appendix
Relevant Indiana, Federal & Local Laws

Indiana Laws

IC 5-2-18.2-1. "Governmental body"

Sec. 1. As used in this chapter, "governmental body" has the meaning set forth in IC 5-22-2-13.

IC 5-2-18.2-2. "Law enforcement officer"

Sec. 2. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 5-2-1-2.

IC 5-2-18.2-2.2 "Postsecondary educational institution"

Sec. 2.2. As used in this chapter, "postsecondary educational institution" refers to any state educational institution (as defined in IC 21-7-13-32) or private postsecondary educational institution that receives state or federal funds.

IC 5-2-18.2-3. Prohibited from enacting or implementing restrictions on taking certain actions regarding information of citizenship or immigration status

Sec. 3. A governmental body or a postsecondary educational institution may not enact or implement an ordinance, a resolution, a rule, or a policy that prohibits or in any way restricts another governmental body or employee of a postsecondary educational institution, including a law enforcement officer, a state or local official, or a state or local government employee, from taking the following actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual:

(1) Communicating or cooperating with federal officials.
(2) Sending to or receiving information from the United States Department of Homeland Security.
(3) Maintaining information.
(4) Exchanging information with another federal, state, or local government entity.

IC 5-2-18.2-4. Prohibited from limiting or restricting enforcement of federal immigration laws

Sec. 4. A governmental body or a postsecondary educational institution may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

IC 5-2-18.2-5. Action to compel

Sec. 5. If a governmental body ... violates this chapter, a person lawfully domiciled in Indiana may bring an action to compel the governmental body ... to comply with this chapter.

IC 5-2-18.2-6. Enjoin violation

Sec. 6. If a court finds that a governmental body or postsecondary educational institution knowingly or intentionally violated section 3 or 4 of this chapter, the court shall enjoin the violation.

IC 5-2-18.2-7. Written notice to law enforcement officers.

Every law enforcement agency (as defined in IC 5-2-17-2) shall provide each law enforcement officer with a written notice that the law enforcement officer has a duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration.

IC 5-2-18.2-8. Enforced without discrimination

Sec. 8. This chapter shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

IC 5-2-20-3. Prohibited from requesting verification of citizenship or immigration status

Sec. 3. A law enforcement agency or law enforcement officer may not request verification of the citizenship or immigration status of an individual from federal immigration authorities if the individual has contact with the law enforcement agency or law enforcement officer only:

(1) as a witness to or victim of a crime; or
(2) for purposes of reporting a crime.

IC 5-22-2-13. "Governmental body"

Sec. 13. "Governmental body" means an agency, a board, a branch, a bureau, a commission, a council, a department, an institution, an office, or another establishment of any of the following:

(1) The executive branch.
(2) The judicial branch.

(3) The legislative branch.
(4) A political subdivision.[51]

IC 36-1-3-5 Powers of unit; exercise; township exception

Sec. 5. (a) Except as provided in subsection (b), a unit may exercise any power it has to the extent that the power:

(1) is not expressly denied by the Indiana Constitution or by statute; and
(2) is not expressly granted to another entity.

(b) A township may not exercise power the township has if another unit in which all or part of the township is located exercises that same power.

Federal Laws

8 U.S.C. 1357(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, 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 (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, 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.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5 (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) to communicate with the Attorney General regarding the immigration status of any individ-

[51] "**Political subdivision**" includes "**municipal corporation**," IC 36-1-2-13, includes "**unit**," IC 36-1-2-10, includes "**municipality**," IC 36-1-2-23, "means city or town," IC 36-1-2-11.

ual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

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

8 U.S.C. 1373. Communication between government agencies and[INS]

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

8 U.S.C. 1644. Communication between State and local government agencies and Immigration and Naturalization Service.

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

Gary Ordinance

Section 26-51. Definitions

"*Citizenship or immigration status*" means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States, the time and manner of a person's entry into the United States, or any other immigration matter enforced by the Department of Homeland Security or successor or other federal agency charged with the enforcement of civil immigration laws.

"[*I*]*mmigration enforcement operation*" means any operation that has as one of its objectives the identification or apprehension of a person or persons: 1) in order to subject them to civil immigration detention, removal proceedings and removal from the United States; or 2) to criminally prosecute a person or persons for offenses related to immigration status, including but not limited to violations of Sections 1253, 1304, 1306(a) and (b), 1325, or 1326 of Title 8 of the United States Code.

Section 26-52. Requesting information prohibited.

No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by an order issued by a court of competent jurisdiction. Notwithstanding this provision, the Corporation Counsel may investigate and inquire about citizenship or immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.

Section 26-55. Immigration enforcement actions - Federal responsibility.

No agency or agent shall stop, arrest, detain, or continue to detain a person after that person becomes eligible for release from custody or is free to leave an encounter with an agent or agency, based on any of the following:

(a) an immigration detainer;

(b) an administrative warrant (including but not limited to [sic] entered into the Federal Bureau of Investigation's National Crime Information Center database); or

(c) any other basis that is based solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation.

(d) No agency or agent shall be permitted to accept requests by ICE or other agencies to support or assist in any capacity with immigration enforcement operations, including but not limited to requests to provide information on persons who may be the subject of immigration enforcement operations (except as may be required under section 11 of this ordinance [sic]), to establish traffic perimeters, or to otherwise be present to assist or support an operation. In the event an agent receives a request to support or assist in an immigration enforcement operation, he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the agency director through the chain of command.

(e) No agency or agent shall enter into an agreement under Section 1357(g) of Title 8 of the United States Code or any other federal law that permits state or local governmental entities to enforce federal civil immigration laws.

(f) Unless presented with a valid and properly issued criminal warrant, no agency or agent shall:

(1) permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;

(2) transfer any person into ICE custody;

(3) permit ICE agents use of agency facilities, information (except as may be required under section 11 of this ordinance), or equipment, including any agency electronic databases, for investigative interviews or other investigative purpose or for purposes of executing an immigration enforcement operation; or

(4) expend the time of the agency or agent in responding to ICE inquiries or communicating with ICE regarding a person's custody status, release date, or contact information.

Section 26.58. Commitments.

(a) The City commits to working with community advocates, policy experts, and legal advocates to defend the human rights of immigrants.

(b) The Gary Police Department will continue to respond to requests from immigrant communities to defend them against all crimes, including hate crimes, to assist people with limited language proficiency and to connect immigrants with social services.

(c) The City recognizes the arrest of an individual increases that individual's risk of deportation even in cases where the individual is found to be not guilty, creating a disproportionate impact from law enforcement operations. Therefore, for all individuals, the Gary Police Department will recognize and consider the extreme potential negative consequences of an arrest in exercising its discretion regarding whether to take such an action and will arrest an individual only after determining that less severe alternatives are unavailable or would be inadequate to effect a satisfactory resolution.

(d) The Gary Police Department will make available and provide material at all Gary Police Stations concerning this ordinance and information concerning rights of all immigrants.

Section 26.59. Information regarding citizenship or immigration status.

Nothing in this chapter prohibits any municipal agency from sending to, or receiving from, any local, state, federal agency, information regarding an individual's citizenship or immigration status. All municipal agents shall be instructed that federal law does not allow any such prohibition. "Information regarding an individual's citizenship or immigration status," for purposes of this section, means a statement of the individual's country of citizenship or a statement of the individual's immigration status.

Certificate of Service

I certify that on April 16, 2018 service of a true and complete copy of the foregoing was made upon each attorney of record by depositing the same in the United States Mail addressed as follows, postage prepaid, and that I also sent a courtesy copy by email in PDF format.

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