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DISTRICT COURT, TELLER COUNTY, COLORADO 101 W. Bennett Avenue Cripple Creek, Colorado 80813	
Plaintiff: LEONARDO CANSECO SALINAS, v. **Defendant:** JASON MIKESELL, in his official capacity as Sheriff of Teller County, Colorado	▲COURT USE ONLY▲
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COMBINED BRIEF OF PLAINTIFF AND *AMICI CURIAE* IN RESPONSE TO STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

Pursuant to the Court's order of August 9, 2018, Plaintiff Leonardo Canseco and *Amici Curiae*[1] in support of Plaintiff submit this joint brief in response to the Statement of Interest of the United States of America submitted on August 6, 2018. In separate Sections, Plaintiff and *amici* address the flaws in the Statement of Interest, which distorts both federal and Colorado law. Plaintiff primarily focuses on the United States' assertions implicating state law, while *amici* respond primarily to the assertions the United States has made about the Immigration and Nationality Act and how courts have implemented federal immigration law. Plaintiff and *amici* have attempted to coordinate to avoid any repetitious arguments, and both demonstrate how the Statement of Interest does not support denial of interim relief in favor of Plaintiff.

PLAINTIFF'S RESPONSE

The issue in this case is whether state law – not federal law – authorizes Colorado sheriffs to conduct civil immigration arrests. The United States Department of Justice ("DOJ") fails to cite any Colorado law conferring such authority, but nevertheless contends that Colorado sheriffs are authorized to conduct civil immigration arrests based on their so-called "inherent authority." The DOJ further asserts that only legislation could curtail this claimed inherent authority, but fails to address Colorado statutory law that courts have long held prescribe the limits of Colorado sheriffs' arrest authority. The DOJ's arguments lack any foundation in Colorado law and are attenuated at best.

The DOJ also contends that Colorado sheriffs are authorized to enforce ICE detainers because doing so amounts only to a "continued detention" rather than an arrest, requiring only the authority of the federal government. To arrive at this conclusion, the DOJ retracts its prior

[1] The list of *amici curiae* is appended to the end of this brief.

concessions that such conduct does in fact constitute an arrest and relies instead on a fundamental misapplication of Colorado law that ultimately makes no difference, as no Colorado statute authorizes depriving persons of liberty (whether called "continued detention" or "arrest") on the basis of ICE documents. The DOJ also seeks to equate an ICE form with a "warrant" under state law, but does not address, let alone reconcile, that claim with Colorado's definition of "warrant." And the DOJ's assertion that Colorado sheriffs can conduct warrantless arrests based on probable cause of a violation of federal civil immigration law fares no better, as the statute authorizing warrantless arrests requires probable cause of a crime, and being present in violation of federal immigration laws is not a crime.

Moreover, given the complete absence of statutory authority for a Colorado sheriff to make a civil immigration arrest, such an arrest also constitutes an unreasonable seizure in violation of Article II, Section 7 of the Colorado Constitution. Finally, the DOJ also raises other issues that are largely irrelevant for purposes of the Motion for Preliminary Injunction that the Court need not address now. Nevertheless, the relevant authority ultimately reveals that Colorado sheriffs may not make civil immigration arrests unless authorized by state statute.

A. Colorado Statutes Are the Exclusive Source of Colorado Sheriffs' Arrest Authority

Colorado courts have specifically addressed common law "inherent powers" related to a sheriff's authority to execute an arrest. *See, e.g.*, *People v. Hamilton*, 666 P.2d 152, 154 (Colo. 1983). In doing so, the Colorado Supreme Court rejected any notion that sheriffs somehow possess an undefined and limitless authority to conduct an arrest, noting unequivocally that: "In Colorado, as elsewhere, the authority of peace officers to effectuate arrests is now defined by legislation." *Hamilton*, 666 P.2d at 154. To that end, the Court discussed the three discrete sets

of legislatively-defined circumstances authorizing peace officer arrests described in C.R.S. § 16-3-102, none of which include enforcing federal civil immigration law or making warrantless arrests for noncriminal matters. *See id.*; *see also* C.R.S. § 16-3-102. The Court further noted that a peace officer executing an arrest beyond the scope of those three circumstances – as Sheriff Mikesell attempts to do here – impermissibly exceeds his statutory authority. *See id*. This law has remained undisturbed for nearly thirty-five years.

Ignoring this authority altogether, the DOJ mischaracterizes the holding in *Douglass v. Kelton*, a case that pre-dates *Hamilton*, in an attempt to support its position that Colorado law provides the sheriff with "broad residual authority" and common law "inherent powers." *See* Br. 18-19. But Colorado law is clear that a sheriff's responsibilities and authority, like those of other county officers, are generally prescribed by legislative enactment. *See, e.g.*, *Hamilton*, 666 P.2d at 154; *Skidmore v. O'Rourke*, 383 P.2d 473 (Colo. 1963). The power "inherent in the office" referred to in *Douglass* are "those implied powers reasonably necessary to execute the [sheriff's] express powers." *See Bd. of Cty. Comm'rs v. Pfeifer*, 546 P.2d 946, 947 (1976); *Skidmore v. O'Rourke*, *supra*. There are no statutory provisions which authorize Colorado sheriffs to arrest individuals upon a mere request from the federal government, nor is such power required for Colorado sheriffs' to fully perform the powers expressly provided.

The only cited decision that even superficially lends credence to the DOJ's position is *United States v Santana-Garcia*, which, in assessing a Fourth Amendment claim for suppression of evidence arising out of Utah, mentions "implicit authority . . . 'to investigate and make arrests for violations of federal law, including immigration laws.'" 264 F.3d 1188, 1194 (10th Cir. 2001) (quoting *United States v Vasquez-Alvarez*, 176 F.3d 1294, 1295 (10th Cir. 1999)). But the

Tenth Circuit also cited Utah's "expansive" statutory grant of arrest authority for "any public offense." *Id*. at 1194 n.8. The Tenth Circuit likewise relied on Oklahoma-specific statutes in addressing this same issue in *Vasquez-Alvarez*. 176 F.3d at 1296-97 (relying in part on defendant's concession and opinion by Oklahoma Attorney General that Oklahoma statutes permit local officers to make immigration arrests). But no such "expansive" or other statutory authority exists in Colorado, rendering these cases largely inapplicable here.

Moreover, to the extent the Tenth Circuit seemed to suggest that non-federal officers have "implicit authority" under state law to make civil immigration arrests, it disclaimed any expertise on the subject and noted its required deference to state law by cautioning: "This, of course, presumes no state or local law to the contrary." *See Santana-Garcia*, 264 F3d at 1194 n 8 (acknowledging that state courts could and might "tell us otherwise"); *LeFrere v. Quezada*, 582 F.3d 1260, 1262 (11th Cir. 2009) ("[W]hen [federal courts] write to a state law issue, we write in faint and disappearing ink . . . ."). Consistent with those principles, Colorado courts clearly reject the "inherent authority" theory. *See Hamilton*, 666 P.2d at 154 ("[i]n Colorado, as elsewhere, the authority of peace officers to effectuate arrests is now defined by legislation."). Moreover, as the Massachusetts Supreme Court explained in *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017), "it is questionable whether a theory of 'inherent' or 'implicit' State authority continues to be viable in the immigration context after the United States Supreme Court decision in Arizona [v. United States, 567 U.S. 387 (2012)], which severely curtailed, on Federal preemption grounds, the power of State and local police to act in Federal immigration matters." *Id*. at 1157.

B. Colorado Sheriffs Lack the Authority to Conduct Civil Immigration Arrests

1. A detention based on an ICE detainer constitutes an arrest.

In a stark reversal of its position in other cases, *see, e.g.*, *Lunn*, 78 N.E.3d at 1153, the DOJ now contends that detention pursuant to an ICE detainer does not constitute a new arrest, but is instead a "continued detention" or "temporary extension of current custody," which somehow requires only federal authority rather than state authority. Br. 14-15. The DOJ contends that in Colorado, custody is something that follows from a prior arrest and therefore continuing to hold someone in custody can never amount to an arrest. The DOJ provides no Colorado law supporting this newly invented distinction aside from isolating particular phrases from various unrelated statutes in an unsuccessful effort to bolster its claim.

Even so, the DOJ's new argument is wrong. If under state statute, custody is something that follows from a prior arrest, once the state statutory authority to continue custody expires, due to posting of bond or the resolution of the criminal case, then continued custody does not follow from the prior arrest. Instead, it can only follow the federal government's request that the sheriff continue to exercise custody. As the court in *Lunn* aptly noted, "by its very nature, the detainer comes into play only if and when there is no other basis for the State authorities to continue to hold the individual." *Lunn*, 78 N.E.3d at 1153; *see also Cisneros*, slip op. at 4.

The court in *Cisneros* agreed that the decision to hold a prisoner who would otherwise be released is the equivalent of a new arrest that must comply with the legal requirements for depriving persons of liberty. *S*lip op. at 5. And Colorado law does not carve out any exception for a "temporary extension of current custody" for ICE detainers, as the DOJ suggests. Indeed, other courts have expressly rejected this argument. *See, e.g.*, *Lunn*, 78 N.E.3d at 1153 ("[t]o be

sure, it is permissible in certain limited circumstances for a police officer . . . to briefly detain an individual for investigatory purposes . . . . But that is not what happens with a Federal immigration detainer.") At bottom, refusing to release an individual upon posting of bond or the conclusion of the state criminal matter constitutes a new arrest without legal authority.

2. Under Colorado law, a warrant must be issued by a judge of a court of record.

Colorado has not adopted the expansive definition of the term "judge" to include any "public civil officer," *see* Br. at 20, and the DOJ provides no authority suggesting otherwise. Colorado statute defines a warrant as "a written order issued by a judge of a court of record directed to any peace officer commanding the arrest of the person named or described in the order." C.R.S. § 16-1-104(18). In turn, a "court of record" is defined as "any court except a municipal court unless otherwise defined by a particular section." C.R.S. § 16-1-104(8). There can be no genuine dispute that under Colorado law, the term judge is to be construed narrowly as only judicial officers. The forms provided by ICE fall decidedly short of this requirement.

3. Colorado law does not permit warrantless arrests based on probable cause that a person has violated the civil provisions of federal immigration law.

As the DOJ correctly notes, a peace officer may make a warrantless arrest only when he has "probable cause to believe an offense was committed" by the suspect in question. C.R.S. § 16-3-102(1)(c). But from there, the DOJ's analysis of Colorado law follows a disjointed path, ignoring key statutory provisions that are particularly instructive here. For example, the term "offense," for purposes of probable cause, does in fact mean "crime." *See* C.R.S. § 18-1-104(1) ("The terms 'offense' and 'crime' are synonymous"); C.R.S. § 16-1-105(2) (stating that the definitions in Title 18 (the criminal code) apply to Title 16 (the code of criminal procedure)).

The Colorado Supreme Court noted that under C.R.S. § 16-3-102 "a peace officer may arrest a person when the officer has probable cause to believe that a criminal offense has been or is being committed by that person." *People v. Haurey*, 859 P.2d 889, 894 (Colo. 1993) (emphasis added). Colorado has never adopted the broad definition of the term "offense" that the DOJ advocates here. Thus, to the extent the DOJ argues that Colorado sheriffs may rely on probable cause conveyed by ICE under the "collective knowledge" doctrine, that argument fails. At most, ICE detainers and administrative warrants supply sheriffs with probable cause of removability, not probable cause of a crime. Thus, Colorado's statute authorizing warrantless arrests does not authorize arrests based on ICE detainers or administrative warrants.

4. The DOJ misconstrues the facts and legal issues in *Cisneros v. Elder*.

Contrary to the DOJ's assertion, *Cisneros v. Elder* is directly on point. The court there considered an identical issue: "whether Sheriff Elder has authority under Colorado law – based on receipt and service of [an ICE detainer and immigration warrant] – to hold Plaintiffs for up to 48 hours after they posted bond, completed their sentence, or otherwise resolved their criminal cases." Slip op. at 3. The court granted Plaintiffs' requested preliminary injunction and ordered the sheriff to release them if they posted bond. *Id.* at 13. The DOJ also claims that *Cisneros* is different because Mr. Canseco has not yet attempted to post bond, but that distinction has potential legal relevance only to standing, not the merits. As Mr. Canseco demonstrates in his Reply Brief, he has standing to challenge Sheriff Mikesell's practices. Contrary to the DOJ's erroneous suggestion, Br. at 21, the court in *Cisneros* made no finding, express or otherwise, that the county acted "unilaterally" or "lacked federal authorization" to detain the plaintiffs, as the DOJ suggests. The Defendant in *Cisneros* claimed that receipt of ICE detainers and

administrative warrants provided authority to refuse release on bond, just as Sheriff Mikesell claims. Br. at 21.

C. An Arrest Without Legal Authority Is an Unreasonable Seizure Under the Colorado Constitution.

Colorado courts have repeatedly held that the Fourth Amendment provides only the floor for the constitutional protection from unreasonable searches and seizures in Colorado, as the state constitution has frequently provided even greater protection than required by federal precedents. *See, e.g.*, *People v. Haley*, 41 P.3d 666, 672 (Colo. 2001); *People v. Oates*, 698 P.2d 811, 818-19 (Colo. 1985); *People v. Sporleder*, 666 P.2d 135, 139-40 (Colo. 1983); *Charnes v. DiGiacomo*, 612 P.2d 1117, 1120-21 (Colo. 1990).

Rather than respecting this state constitutional tradition, the DOJ urges that Mr. Canseco somehow deserves less protection from Colorado courts, simply because he is suspected (but not adjudicated) of being removable from the country. Br. 27. The DOJ has not cited a single case in which Colorado courts have applied this "Constitution light" in the fashion DOJ urges. On the contrary, Colorado courts are fully willing to extend and apply constitutional protections to persons accused of being removable. An outstanding example is *People v. Gutierrez*, 922 P.2d 925 (Colo. 2009), in which the Colorado Supreme Court ruled that Weld County authorities violated the Constitution when they obtained a search warrant for the tax files of 5,000 customers of a tax preparer who catered to the Latino community. The decision protected the privacy of approximately 1300 allegedly undocumented immigrants the District Attorney announced he was

targeting for prosecution (for allegedly earning wages under false identities) based on documents obtained in the illegal search.[2]

The DOJ's argument boils down to an argument about the Fourth Amendment, not about Article II, Section 7. According to the DOJ, if federal officers can make arrests on the basis of administrative warrants, then Colorado officers can do so if they are acting at federal officers' request. But Colorado law requires sheriffs to release pretrial detainees when they post bond, complete their sentence, or otherwise resolve their state criminal case. The DOJ simply has no response to the fact that federal officers are asking Colorado sheriffs to exceed their lawful authority.

In arguing that Sheriff Mikesell's planned arrest of Mr. Canseco is not an unreasonable arrest, the DOJ advances the following argument:

> [T]he legality of an arrest is especially apparent where a local officer is not just arresting for a federal offense, but doing so at and after the express request of the federal government supported by a federal administrative warrant, *and consistent with state law authorizing the arrest and requiring compliance with federal detainers requesting such arrests.*

DOJ Br., at 30 (emphasis added). The DOJ's argument is seriously misplaced. There is no Colorado law authorizing peace officers to make arrests for civil violations of immigration law, nor is there any Colorado law requiring compliance with immigration detainers.

In Colorado, when a peace officer makes an arrest that is totally without legal authority, that arrest is unreasonable. Unreasonable arrests violate Art. II, section 7. As the Seventh

[2] Monte Whaley, "Raid violated privacy rights of alleged illegal immigrants, Colorado's top court rules," *Denver Post*, Dec. 14, 2009, available at https://www.denverpost.com/2009/12/14/raid-violated-privacy-rights-of-alleged-illegal-immigrants-colorados-top-court-rules/

Circuit stated, "In a constitutional sense, how much more basic could it get—jails cannot confine people without the authority to do so." *Armstrong v. Squadrito*, 152 F.3d 564, 578 (7th Cir. 1998). Likewise, in Colorado, it cannot get much more basic: sheriffs cannot deprive persons of liberty without the legal authority to do so.

RESPONSE OF THE *AMICI CURIAE*

Amici curiae are professors who teach, research, write, and practice in the areas of immigration law, constitutional law, criminal law and procedure, international human rights law, employment law, family law, and civil rights law; the Meyer Law Office, a Denver law firm that litigates and engages in policy advocacy in immigration law; and the National Immigrant Justice Center, which advocates, litigates, and practices in the area of immigration law. *Amici* include practitioners with extensive experience litigating issues arising under the Immigration and Nationality Act ("INA"). In response to the U.S. Statement of Interest, *amici* offer their understanding of Immigration and Customs Enforcement's detainer practice, the INA's allocation of arrest and detention authority, and of the historical practice and customary understanding of an immigration "detainer" that informed Congressional intent when it enacted the one statutory provision that references detainers. These understandings are guided by *amici*'s knowledge of historical practices and judicial decisions concerning immigration detainers, as well an analysis of the statutory structure Congress has created for immigration enforcement, and the history of the statutory enactments allocating arrest authority. Despite having no basis in state or federal law, the Teller County Sheriff's practice of making unlawful civil arrests based on immigration detainers is a troubling, yet all too common practice by law enforcement around the United States. The Court's correct resolution of the issues presented here is of great importance to *amici*.

A detainer is a checkbox form that automatically requests that local law enforcement detain a person for up to an additional 48 hours after local authority for detention has expired because of the posting of bail, dismissal of charges, or the completion of a sentence. Over the

past decade, Immigration and Customs Enforcement ("ICE") has dramatically transformed its civil immigration enforcement, in large part through immigration detainers, targeting people with no criminal record or only a minor one. Until 2008, ICE principally conducted enforcement through monitoring federal and state prisons—with inmate populations consisting disproportionately of those convicted of felonies and sentenced to a prison term of more than a year. In October 2008, ICE launched its "Secure Communities" program, under which ICE screens *every* law enforcement fingerprint submission for civil immigration enforcement. ICE's principal tool for seeking the custody of an individual in local custody has been the immigration detainer. Section I, *infra*.

The Immigration and Nationality Act ("INA") establishes a comprehensive statutory scheme for immigration enforcement. Congress carefully delineated arrest and detention authority for civil immigration violations, strictly limiting the authority of federal immigration officials and even further limiting the authority of state and local ("non-federal") officials to perform civil immigration arrests and detention except in specifically enumerated circumstances. Section II.A, *infra*.

Congress has also carefully adhered to the reservation of powers to the states, by authorizing state and local participation, but only to the extent such participation is permitted by state law. Section II.B, *infra*.

The sole reference to detainers in the INA, § 287(d) ("Section 287(d)"), codified at 8 U.S.C. § 1357(d), confers no arrest or detention authority on state and local officials. Instead, Congress used the word "detainer" in INA § 287(d), enacted in 1986, to reflect longstanding detainer practices that respected the limited authority of state and local officials over immigration

matters—a "detainer" was simply a request for state and local officials to notify immigration officials of the subject's upcoming release. Any detention that would take place because of a detainer would not be imposed by local officials but by federal immigration authorities. Section III, *infra.*

I. ICE HAS TRANSFORMED INTERIOR CIVIL IMMIGRATION ENFORCEMENT TO TARGET THE ENTIRE IMMIGRANT POPULATION THROUGH ITS USE OF IMMIGRATION DETAINERS.

Under successive Administrations, ICE has claimed to target and prioritize "criminal aliens" for arrest and deportation.[3] But ICE's stated policy has not matched its enforcement practices over the past decade. Through 2008, ICE's principal enforcement strategy was to monitor federal and state prison systems to identify noncitizens with significant criminal convictions for possible removal.[4] But ICE's 2008 launch of Secure Communities dramatically changed the scope of—and demographic targets for—ICE enforcement. Through Secure Communities, every time law enforcement sends an individual's fingerprints to the FBI to check for criminal warrants and history, those fingerprints and booking information automatically are

[3] *See, e.g.*, Memorandum, ICE Director John Morton, "Civil Immigration Enforcement: Priorities for the Apprehension , Detention, and Removal of Aliens" (March 2, 2011); Memorandum, ICE Director John Morton, "Exercising Prosecutorial Discretion Consistent with the Civil Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens"(June 17, 2011); Memorandum, ICE Director John Morton, "Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems" (December 21, 2012); Memorandum, DHS Secretary Jeh Johnson to Acting ICE Director Thomas S. Winkowski, "Secure Communities" (Nov. 20, 2014) [hereafter "Memorandum Ending Secure Communities"]; Memorandum, DHS Secretary John Kelly, "Enforcement of the Immigration Laws to Serve the National Interest" (Feb. 20, 2017).

[4] See American Immigration Council, "The Criminal Alien Program: Immigration Enforcement in Prisons and Jails" (Aug. 2013), https://www.americanimmigrationcouncil.org/sites/default/files/research/cap_fact_sheet_8-1_fin_0.pdf.

shared with ICE to check for possible immigration enforcement.[5] ICE championed the program as a "force-multiplier" by which it could "leverage" local police forces nationwide.[6]

ICE's principal tool for seeking the custody of local detainees identified through this fingerprint sharing has been the immigration detainer.[7] Over the last decade, the number of detainers sent to local jails has skyrocketed. In FY 2005, ICE issued 7,090 detainers; by FY 2012, that number had shot up by a factor of 40, to 276,181, and it has started to climb again under the current Administration.[8] The increase in detainer use appears to have been accomplished in large part by placing detainers on people with little or no criminal record. According to available ICE data, nearly half of all detainers in 2012 targeted people with no criminal record at all, and almost two-thirds of targeted people had very minor offenses, if any,

[5] ICE, "Secure Communities: Standard Operating Procedures" (2009), https://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf.

[6] ICE, Press Release, "Secretary Napolitano and ICE Assistant Secretary Morton Announce That the Secure Communities Initiative Identified More Than 111,000 Criminal Aliens in Its First Year" (Nov. 12, 2009), https://www.dhs.gov/news/2009/11/12/secure-communities-initiative-identified-more-111000-criminal-aliens-its-first-year; *supra* note 5.

[7] ICE has changed the detainer form five times since 2010 due to repeated court defeats or conceded constitutional infirmaries. *See generally* Memorandum Ending Secure Communities, *supra* note 3, at 2 & n. 1.

[8] Transactional Record Access Clearinghouse (TRAC), "Detainer Use Stabilizes Under Priority Enforcement Program," Tbl. 1 (Jan. 21, 2016), http://trac.syr.edu/immigration/reports/413/. In November 2014, DHS announced the Priority Enforcement Program (PEP), which continued the Secure Communities fingerprint and information-sharing but limited the categories of individuals that ICE could target with detainers. *See* Memorandum Ending Secure Communities, *supra* note 3. Accordingly, the number of detainers issued to LEAs in 2015 and 2016 declined. The Trump administration has eliminated the PEP restrictions, such that ICE's detainer use has again climbed. TRAC, "Use of ICE Detainers Obama v. Trump" (Aug. 30, 2017), http://trac.syr.edu/immigration/reports/479/.

such as traffic offenses.[9] In Colorado, 39 percent of ICE detainers in 2012 were issued against individuals with no criminal convictions, and another 45 percent with very minor violations.[10] And in Teller County, 86 percent of individuals subjected to detainers had no criminal record or very minor offenses.[11] While ICE now resists public release of current detainer data,[12] ICE's general arrest data, released in January 2018, reveals that nationwide 26 percent of arrestees have no criminal record and 56 percent of the remainder had only minor offenses.[13] In short, ICE's detainer practice has consistently diverged dramatically from its public rhetoric regarding its policies and justification for its enforcement strategies.

II. THE "SYSTEM CONGRESS CREATED" CAREFULLY DELINEATES IMMIGRATION ARREST AUTHORITY AND RESERVES TO THE STATE WHETHER TO PERMIT ITS OFFICERS TO PARTICIPATE WHEN AUTHORIZED BY THE INA.

The continued detention by non-federal officials of an individual based on an immigration detainer, after the grounds supporting an initial criminal arrest have evaporated, is a new arrest for constitutional purposes. *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Moreno v. Napolitano,* 213 F. Supp. 3d 999, 1005 (N.D. Ill. 2016) (noting government concession that detainer-based detention "constitutes a warrantless arrest"); *Lunn v.*

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[9] TRAC, "Few ICE detainers Target Serious Criminals," Tbl. 3 (Sept. 17. 2013), http://trac.syr.edu/immigration/reports/330/.

[10] TRAC, "Targeting of ICE Detainers Varies Widely by State and by Facility," Tbl. 2 (Feb. 11, 2014), http://trac.syr.edu/immigration/reports/343/.

[11] *Id.* at Tbl. 3.

[12] TRAC, "Failure to Implement Public Reporting on Detainers Undermines ICE Pronouncements" (Nov. 2, 2017), http://trac.syr.edu/immigration/reports/488/.

[13] *See* ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," Tbl. 1 & 2 (last updated Dec. 13, 2017), https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf.

Commonwealth, 78 N.E.3d 1143, 1153 (Mass. 2017) (finding detention based on an immigration detainer constitutes an arrest under state law). Likewise, denying a person held on criminal charges the opportunity to post bail and obtain release amounts to a new arrest for constitutional purposes. *Miranda-Olivares v. Clackamas Cty.*, 2014 WL 1414305, at *9-*10 (D. Or. Apr. 11, 2014); *see also Mendia v. Garcia*, 768 F.3d 1009 (9th Cir. 2014); *Ochoa v. Campbell*, 266 F. Supp. 3d 1237 (E.D. Wash. 2017).

The Department of Homeland Security ("DHS") regularly requests, through immigration detainers, such arrests. Before turning to an interpretation of the sole reference to a "detainer" in the INA, *see* INA § 287(d), it is necessary to review the system Congress created for civil immigration arrests and detention. Throughout the INA, Congress carefully limited the arrest and detention authority of federal officials and even more narrowly restricted non-federal immigration arrests and detention.

A. Congress created a system that authorizes non-federal officials to make civil immigration arrests and detain non-citizens only in narrow, defined circumstances.

The Supreme Court examined the "system Congress created" in *Arizona v. United States,* 567 U.S. 387 (2012). The INA authorizes federal immigration officials to make a civil immigration arrest in the interior either (1) pursuant to an immigration arrest warrant, or (2) when the person is "likely to escape before a warrant can be obtained" and there is "reason to believe" the person has violated federal immigration laws. *Arizona*, 567 U.S. at 407-08 (describing the "federal statutory structure" for "when it is appropriate to arrest an alien during the removal process"); *Moreno,* 213 F. Supp. 3d at 1009 (holding ICE detainer requests regularly

violate immigration officers' statutory warrantless authority).[14] The Supreme Court emphasized that the system Congress created requires civil immigration arrests be made by trained immigration officers. *Id.* at 407-08; *see also* 8 C.F.R. § 287.5(c)(1) (requiring training for warrantless arrest authority); § 287.1(g) (defining the required training); § 287.5(e)(3) (requiring training to execute warrants); 8 C.F.R. § 241.2(b) (same); Form I-200, https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF (Sept. 2016) (administrative immigration arrest warrant directed to "immigration officer[s] authorized pursuant to [INA and regulations] to serve warrants"); Form I-205, https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF (administrative immigration warrant with similar direction); 8 C.F.R. § 236.1(b)(1) (only designated, trained immigration officers "may arrest[] and take[] into custody" under the

[14] Subsequent to *Moreno*, ICE enacted a policy requiring officers to issue an administrative warrant to accompany each detainer. ICE Policy No. 10074.2, ¶ 2.4 (Mar. 24, 2017, eff. Apr. 2, 2017). As the Supreme Court has noted, these administrative warrants must be executed by "federal officers who have received training in the enforcement of immigration law." *Arizona*, 567 U.S. at 408 (citing 8 C.F.R. §§ 241.2(b) and 287.5(e)(3)); *see also* 8 C.F.R. §§ 236.1(b)(1) and 241.2(b) (requiring warrants to be served by federal immigration officers). Because detainers request that *non-federal* officers—not authorized to execute administrative warrants—make civil immigration arrests, detainers continue to be requests for warrantless arrests. Under the INA, warrantless arrests can only be made when the subject is "likely to escape," *Arizona*, 567 U.S. at 408 (citing 8 U.S.C. § 1357(a)(2)), and since no attempt is made to comply with this requirement, detainer requests continue to request non-federal officers make arrests unauthorized by the INA. *See Moreno*, 213 F. Supp. 3d at 1009 (holding ICE's detainer requests exceeded warrantless arrest authority under § 1357(a)(2)); *Buquer v. City of Indianapolis*, No. 1:11–cv–00708, 2013 WL 1332158, at *8 (S.D. Ind. 2013) (in accordance with *Arizona*, finding "absolutely no indication that Congress intended state and local law enforcement officers to retain greater authority to effectuate a warrantless arrest than do trained federal immigration officials").

authority of an I-200 immigration administrative warrant but only after service on the arrestee of a Notice to Appear for removal proceedings).[15]

The authority of non-federal officials to make civil immigration arrests and detain is even more strictly limited. *Arizona*, 567 U.S. at 408-09. Congress has authorized three "limited circumstances in which state officers may perform the [civil arrest and detention] functions of an immigration officer." *Id.* at 409 (citing 8 U.S.C. § 1357(g)(1); § 1103(a)(10); § 1252c). Of the three authorizations, only an agreement under 8 U.S.C. § 1357(g)(1) ("Section 287(g)"), subject to the limitations described in Section II.B *infra*, would permit non-federal officials to make civil immigration arrests and detention based on detainers or administrative immigration warrants in the manner currently exercised by Defendant. Section 287(g) permits cooperative agreements whereby non-federal officials "determined by the [DHS Secretary] to be qualified" are authorized "to perform [the] function of an immigration officer" as to the "investigation, apprehension, or detention of aliens in the United States." 8 U.S.C. § 1357(g)(1). Section 287(g) requires these non-federal officials to "receive[] adequate training regarding the

[15] In its Statement of Interest brief, the United States indicates that Defendant is authorized to make an arrest pursuant to the I-200 administrative warrant. *See* U.S. Brief, at 6, 15, 16, 19, 21. The United States' assertion is contrary to U.S. Supreme Court precedent, federal regulations, a plain reading of the I-200 warrant, and ICE's concessions in other litigation. *See Arizona*, 567 U.S. 407-08; 8 C.F.R. §§ 236.1(b)(1), 287.5(e)(3); Sample Form I-200 warrant, https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF; *Lunn*, 78 N.E.3d at 1151 n. 17 ("[Forms I-200 and I-205] are civil administrative warrants approved by, and directed to, Federal immigration officials."); *Gonzalez v. Immigration and Customs Enforcement*, Case No. 13-4416 (C.D. Cal.), *consolidated with Roy v. Los Angeles County*, Case No. 12-9012 (C.D. Cal.), Dkt. 272-1, ¶ 160.

enforcement of relevant Federal immigration laws" and be "subject to the direction and supervision of the [DHS Secretary]." 8 U.S.C. §1357(g)(2)-(3); *Arizona*, 567 U.S. at 409.[16]

Non-federal civil immigration arrests cannot be justified as "cooperation" under Section 287(g)(10)(B) of the INA. 8 U.S.C. § 1357(g)(10)(B). In each instance where Congress authorized non-federal enforcement of civil immigration laws, Congress expressly used the word "authorize" in relation to delegated arrest authority. 8 U.S.C. §§ 1357(g)(1), (5); § 1103(a)(10); § 1252c(a); *Lunn*, 78 N.E.3d at 1159 (observing that "[i]n those limited instances where the [INA] affirmatively grants authority to [non-federal] officers to arrest, it does so in more explicit terms than those in [8 U.S.C.] § 1357(g)(10)"); *Cisneros*, slip op. at 8-9; *Ochoa,* 266 F.Supp.3d at 1254-55; *see Arizona*, 567 U.S. at 410 (describing responding to detainers *by providing notification of release rather than detention*, *see* Section III. B *infra*, as an example of non-federal "cooperat[ion]" permitted by the 8 U.S.C. § 1357(g)(10)(B)).

Section 287(g)(10), on the other hand, was not an expansion of authority but instead a proviso[17] to the grant of authority under Sections 287(g)(1) through (9),[18] clarifying that a 287(g)

[16] For non-federal officers to exercise the functions of immigration officers under the "mass influx" provision, 8 U.S.C. § 1103(a)(10), similarly requires a detailed written agreement, as under Section 287(g), regarding the scope of authorized immigration enforcement functions, requisite training, and the limited duration of the authority. 28 C.F.R. § 65.84.

[17] A proviso is "a clause engrafted on a preceding enactment in order to restrain or modify the enacting clause or to except something from the operation of the statute which otherwise would have been within it." 82 C.J.S. Statutes § 502. A proviso acts "to restrain or modify the enacting clause, and not to enlarge it, or to confer a power." *Id.* § 504. Section 287(g)(10)'s role as a proviso is made clear by its opening language: "Nothing in this subsection shall be construed . . . ." *See, e.g., Edward J. DeBartolo Corp. v. N.L.R.B.*, 463 U.S. 147, 149 n.2 (1983) (involving proviso stating "nothing contained in such paragraph shall be construed ….").

[18] In its Statement of Interest brief, the United States claims that when Defendant "cooperates" on a detainer that that the Sheriff is acting under color of Federal authority described in 8 U.S.C. § 1357(g)(8). U.S. Brief, at 6, 15. Section 1357(g)(8), however does not shield the Sheriff because that provision is only applicable to officers under a 287(g) agreement. *See Santos v.*

agreement is not necessary in order for non-federal officials to participate in immigration enforcement in ways they had previously been permitted, *i.e.*, that do not involve the actual "function of an immigration officer in relation to the investigation, apprehension, and detention." 8 U.S.C. § 1357(g)(1); *Lunn*, 78 N.E.3d at 1159; *Cisneros*, slip. op. at 8. Indeed, the DHS's own written guidance on Section 287(g)(10)(B), submitted in *Arizona,* 567 U.S. at 410, demonstrates that arrests and detention based on detainers, administrative warrants, or any other action that is the function of an immigration officer should not be understood as "cooperation . . . in the identification, apprehension, detention, or removal of aliens" contemplated by Section 287(g)(10)(B). DHS, "Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters" at 13-15, https://www.dhs.gov/sites/default/files/publications/guidance-state-local-assistance-immigration-enforcement.pdf. An expansive interpretation of Section 287(g)(10)(B)—that the United States and the Defendant espouse in their briefs—effectively makes Section 287(g)'s requirement of an agreement and training in order to exercise the "function of an immigration officer" meaningless. *See Lopez-Aguilar v. Marion County Sheriff's Dep't*, 296 F.Supp.3d 959, 975 (S.D. Ind. 2017); *see also Hibbs v. Winn,* 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . .'") (internal citations omitted). Cooperating with immigration enforcement simply cannot be

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Frederick County Bd. Of Com'rs, 725 F.3d 451, 463 (4th Cir. 2013); Dep't Homeland Security, "Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters," at 7 (last published date July 16, 2015), *https://www.dhs.gov/sites/default/files/publications/guidance-state-local-assistance-immigration-enforcement.pdf.* The United States concedes as much earlier in its Statement of Interest. *See* U.S. Brief, at 3, n. 3.

interpreted as the equivalent of exercising the actual functions of an immigration officer contemplated under Section 287(g).

B. The INA makes clear that non-federal officials' exercising the function of an immigration officer is subject to the limits of state and local law.

The other common thread running through the INA is that each grant of arrest authority to non-federal officials is made subject to state and local law governing the duties and authorities of such officers.

Under Section 287(g), for example, Congress permitted federal-state agreements to authorize non-federal officials to perform immigration enforcement functions, but only "to the extent consistent with State and local law." 8 U.S.C. § 1357(g)(1). Under 8 U.S.C. § 1103(a)(10), the Attorney General is permitted to delegate enforcement authority to a local officer in the case of a mass immigration influx, but only "with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving." *Id.* Title 8 U.S.C. § 1252c(a) grants authority to state and local law enforcement to make civil arrests of a convicted felon who illegally reenters the United States but only "to the extent permitted by relevant State and local law."

The proposition that state or local officers enforcing federal law must also have local authority for their actions is well established in the criminal law context. In an unbroken line of decisions dating back to 1948, the Supreme Court has held that where federal law does not preclude enforcement by local officers, authority for the arrest must nonetheless be found in state or local law. *United States v. Di Re,* 332 U.S. 581 (1948); *see also Miller v. United States,* 357 U.S. 301 (1958); *Ker v. California,* 374 U.S. 23 (1963).

Local officials thus must ascertain whether state or local law authorizes their action. Even during the period when it was hotly contested whether state and local law enforcement had authority to enforce *civil* immigration laws, *criminal* immigration laws, or both,[19] there was nonetheless agreement on one point: Whatever federal authority state officials had to enforce immigration law was subject to state-law restrictions on those officials' arrest authority.

A sequence of memoranda issued by the Department of Justice Office of Legal Counsel ("OLC") demonstrates consensus on the necessity for state-law authority to make civil immigration arrests. In 1989 and again in 1996 the OLC opined that local officials lack federal authority to make civil immigration arrests. Memorandum for Joseph R. Davis, Ass't Director, FBI, from Douglas W. Kmiec, Ass't Att'y Gen'l, Office of Legal Counsel, *Re: Handling of INS Warrants of Deportation in Relation to NCIC Wanted Person File* (Apr. 11, 1989) ("1989 OLC memo"), https://www.scribd.com/document/24732201/DOJ-Memo-on-INS-Warrants-of-Deportation-in-Relation-to-NCIC-Wanted-Person-File-4-11-89; Memorandum for Ass't U.S. Att'y, S.D. Cal., from Teresa Wynn Roseborough, Dep. Ass't Att'y Gen'l, Office of Legal Counsel, *Re: Assistance by State and Local Police in Apprehending Illegal Aliens* (Feb. 5, 1996) ("1996 OLC memo"), https://www.justice.gov/file/20111/download. In 2002 the OLC reversed course, concluding that local officials have "inherent authority" to make civil immigration arrests, even where federal authority is not explicitly conferred. Memorandum for the Att'y Gen., from Jay S. Bybee, Ass't Att'y Gen'l, Office of Legal Counsel, *Non-preemption of the*

[19] The Supreme Court's decision in *Arizona* effectively ended the debate as to local officers' authority to conduct *civil* immigration enforcement, holding that the INA "specifies limited circumstances in which state officers may perform the functions of an immigration officer" and rejecting the notion that state officers had "inherent authority" to enforce civil immigration laws beyond the "system Congress created." *Arizona*, 567 U.S. at 407-10; *Cisneros*, slip. op. at 9 ("[T]he theory of 'inherent' or 'implicit' state authority in the immigration context has been sharply eroded by the Supreme Court's decision in *Arizona*.").

authority of state and local law enforcement officials to arrest aliens for immigration violations 8 (April 3, 2002) ("2002 OLC memo"), https://www.aclu.org/files/FilesPDFs/ACF27DA.pdf. Later, in *Arizona*, the Supreme Court rejected this conclusion. *See* note 19, *supra*.

While reaching different opinions as to what the federal government had authorized, these memoranda were consistent on one point—arrest authority would have to have a basis in state or local law. *See* 1989 OLC memo at 4 n.11 (noting need for both federal and local authority); *id.* at 5; *id.* at 9 (citing *Di Re*, 332 U.S. at 589); 1996 OLC memo at 29 ("That the INA permits state police officers to make arrests and detentions, *see, e.g.*, 8 U.S.C. § 1324(c), does not mean that states must permit their police to do so. Rather, the INA enforcement authority of state police is subject to the provisions and limitations of state law."); 2002 OLC memo at 2 (assuming for purposes of the memo that "States have conferred on state police the *necessary* state-law authority . . . .") (emphasis added).

Indeed, in *Lunn v. Commonwealth,* a comparable case decided in Massachusetts, the United States conceded that local law enforcement must have authority under state law in order to make a civil immigration arrest based on an immigration detainer. 78 N.E. 3d at 1158-59; *see Roy v. County of Los Angeles,* 2018 WL 914773, at *23 (C.D. Cal. Feb. 7, 2018), *reconsideration denied* 2018 WL 3439168, at *3 (C.D. Cal. July 11, 2018) (stating that as opposed to the Texas law analyzed in *City of El Cenizo v. Texas,* 890 F.3d 164 (5th Cir. 2018), "[t]he epicenter of the Court's decision is that the local law enforcement in this case does not have the authority to arrest individuals for civil immigration violations . . . ."); *cf. City of El Cenizo*, 890 F.3d at 188 ("*Lunn* [*v. Commonwealth*] is easily distinguishable. Here the ICE-

detainer [state statute] itself authorizes and requires state officers to carry out federal detention requests.").[20]

III. "DETAINER," AS USED IN THE INA, REFERENCES FEDERAL OFFICIALS' LONG CUSTOMARY PRACTICE TO REQUEST NOTIFICATION OF A PERSON'S RELEASE, NOT CONTINUED DETENTION.

The word "detainer" appears once in the INA. Section 287(d) specifies that following a controlled substances arrest, the arresting agency may request immigration officials "to determine promptly whether or not to issue a detainer to detain the alien . . . ." 8 U.S.C. § 1357(d)(3). An examination of Section 287(d) and its history reveals how detainers fit into the "removal system Congress created." *Arizona*, 567 U.S. at 407-410. Congress understood "detainer" to mean a request from immigration authorities for notification of a person's upcoming release—not continued detention.

A. At the time Congress enacted Section 287(d), the INS used "detainers" as requests for notice of a person's upcoming release, not requests or authorization for continued detention by non-federal officials.

When Congress enacted Section 287(d) in 1986, it did so against a background of existing detainer practice. Immigration authorities had been issuing notices styled "detainers" since at least the 1950s. *See, e.g.*, *Slavik v. Miller*, 89 F. Supp. 575 (W.D. Pa. 1950). As both the federal executive and federal courts understood them, these detainers served only to request *notice* from the receiving institution of the detainer subject's upcoming release from custody. Detainers did not purport to authorize or even request any detention beyond the point when the

[20] In its Statement of Interest brief, the United States makes the sweeping (and false) claim that "indeed, every other court that has considered cooperation with ICE after ICE's 2017 policy change has held it to be lawful." U.S. Brief, at 22. Both *Lunn,* 78 N.E. 3d at 1155 n. 21, and the consolidated class actions in *Roy*, 2018 WL 914773 (C.D. Cal. Feb. 7, 2018), addressed ICE's 2017 detainer policy and critical for the present matter both found that local police did not have authority to arrest and detain on the detainer and accompanying administrative warrant.

subject was entitled to release. Instead, detainers merely requested notification of release, in order to allow *federal* officials to take the subject into *federal* custody.

The limited scope of detainers when Section 287(d) was enacted was reflected in language on the Form I-247 noting its use "for notification purposes only." *See Vargas v. Swan*, 854 F.2d 1028, 1035 (7th Cir. 1988) (appendix showing the completed Form I-247 detainer). The Form I-247 requested notification of release, but nowhere did it purport to request or authorize continued detention. *Id.*; *see, e.g.*, *Garcia v. Taylor*, 40 F.3d 299, 304 (9th Cir. 1994) (finding "nothing in the detainer letter that would allow, much less compel, the warden to do anything but release Garcia at the end of his term of imprisonment"); *Campillo v. Sullivan,* 853 F.2d 593, 594 (8th Cir. 1988) (noting detainer was "for notification purposes only" and requested "INS be notified within thirty days of Campillo's release"); *Prieto v. Gulch,* 913 F.2d 1159, 1164 (6th Cir. 1990) (noting detainer "does [not] ask the warden to hold a petitioner" for immigration officials); *Matter of Lehder*, 15 I. & N. Dec. 159, 159 (BIA 1975) (describing detainer as requesting notification "30 days prior to the respondent's release").

The federal government endorsed this understanding in litigation contemporary to the adoption of Section 287(d), pointing to the "for notification purposes only" language in the Form I-247 to show detainers functioned as "an internal administrative mechanism" which "merely serves to advise" a receiving agency of the suspicion that the subject is deportable. *Vargas*, 854 F.2d at 1030-33. In the executive's view, a detainer was simply a "comity-restrained notice document." *Id.*

Drafted against this background, Section 287(d) reflects Congress's recognition of an existing administrative mechanism to request notification from other law enforcement agencies.

Thus, a detainer, as intended in the INA, is properly understood neither as an authorization nor even a request that non-federal officials receiving an immigration detainer continue the detention of a person otherwise entitled to release. *Moreno*, 213 F. Supp. 3d at 1005 n.3 (finding Section 287(d) "does not provide ICE with any authority to request that a local law enforcement agency detain an alien beyond when the local agency would otherwise release the person."); *Lunn*, 78 N.E.3d at 1146 & n. 21 (finding "no Federal statute that confers on State officers the power to make [an arrest based on an immigration detainer]").

Indeed, contrary to assertions in its Statement of Interest (U.S. Brief, at 6, 15, 16, 21), the United States has conceded that an immigration detainer "does not . . . provide legal authority for [an] arrest" by non-federal officials. *Gonzalez v. Immigration and Customs Enforcement*, Case No. 13-4416 (C.D. Cal.), *consolidated with Roy v. Los Angeles County*, Case No. 12-9012 (C.D. Cal.), Dkt. 272-1, ¶¶ 64, 162.

B. The Supreme Court has properly interpreted "detainer" in Section 287(d) as a request for notice of a detainee's upcoming release, not an authorization (or even request) for continued detention.

The Supreme Court's understanding of Section 287(d) accords with the historical practice and legislative intent discussed above. In *Arizona,* the Court briefly considered the proper place of Section 287(d) in the "system Congress created" for immigration enforcement.

In its brief, the United States pointed to detainer-based detention by non-federal officials as an example of "cooperative enforcement" with federal immigration officials. The government cited as authority for this "cooperative enforcement" the detainer *regulation* (which arguably

addresses continued detention)[21] rather than the statute (which does not). *Arizona v. United States*, 567 U.S. 387 (2012), 2012 WL 939048, Br. for the United States, at *54. The Supreme Court, however, focused on what Congress enacted. The Court looked to Section 287(d) and described detainers as "*requests for information* about when an alien will be released from custody." *Arizona*, 567 U.S. at 410 (emphasis added)*, cited in Galarza,* 745 F.3d at 641 (stating the *Arizona* Court "noted that § 1357(d) is a request for notice of a prisoner's release, not an authorization (or even a request) to [non-federal agencies] to detain suspects"); *Lopez-Aguilar*, 296 F.Supp.3d at 973 ("Of critical importance to our analysis, [the U.S. Supreme Court in *Arizona*] cited only the detainer statute, *but not the detainer regulation*, as a further example of permissible cooperation, marking a clear line between communication authorized by statute and detention not authorized by statute.") (emphasis in the original). The Court classified responding to detainers *by providing notification of release* as an example of non-federal "cooperat[ion] with the Attorney General" permitted by the INA. *Arizona*, 567 U.S. at 410 (citing 8 U.S.C. § 1357(g)(10)(B)).[22]

[21] 8 C.F.R. § 287.7(d). Courts have interpreted the regulation as, in fact, not authorizing detention. *See Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 807(N.D. Ill. 2014) (finding regulation does not authorize detention "*after local custody over the detainee would otherwise end*") (emphasis in original); *Galarza v. Szalczyk*, 745 F.3d 634, 639-40 (3rd Cir. 2014) (holding the plain language of 8 C.F.R. § 287.7(d) "merely authorizes the issuance of detainers as *requests*").

[22] In its Statement of Interest brief, the United States repeatedly misrepresents *Arizona* to claim the U.S. Supreme Court expressly endorsed that "arrest[ing] an alien for being removable" when the federal government requests is a form of §1357(g)(10) (B) cooperation. U.S. Brief, at 4, 12 (quoting *Arizona*, 567 U.S. at 410). The full passage actually reads: "There may be some ambiguity as to what constitutes cooperation under the federal law; but no coherent understanding of the term would incorporate the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." *Arizona,* 567 U.S. at 410.

The Court correctly focused on the historical use of detainers as requests for notification of release, rather than on DHS's more recent practice of requesting continued detention by non-federal officials.

* * *

Three clear principles emerge to guide this Court's consideration of the questions presented. First, the "system Congress created" for immigration enforcement is one in which the immigration arrest authority of federal officials is strictly limited, and the authority of state and local officials is even more limited, to specifically enumerated circumstances. *Arizona,* 567 U.S. at 408-09. Second, the INA reflects Congress's adherence to well-established law that local officials may only enforce federal law as authorized under state law. Finally, in enacting the only reference to "detainers" in the INA, Congress intended to reinforce federal immigration officials' decades-old practice of requesting notification of an individual's release from local custody, not authorizing detention, or even requesting it.

CONCLUSION

For the foregoing reasons, Plaintiff and *amici curiae* respectfully urge this Court to reject the assertions stated in the Statement of Interest of the United States of America and grant Plaintiff's request for relief.

Respectfully submitted this 10th day of August, 2018.

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The National Immigrant Justice Center, through its staff of attorneys, paralegals and a network of over 1,500 *pro bono* attorneys, provides free or low-cost legal services to immigrants, including detained non-citizens. NIJC's direct representation has informed its strategic policy and litigation work around the myriad legal and policy problems of entangling local law enforcement in civil immigration enforcement. NIJC was co-counsel in *Lunn v. Commonwealth*, Docket No. SJC-12276 (Mass.), a comparable case recently decided in Massachusetts. NIJC is counsel on a host of other immigration detainer-related cases including *Jimenez Moreno v. Napolitano*, 11-5452 (N.D. Ill.) (class action); *Gonzalez v. ICE*, Case No. 13-4416 (C.D. Cal.) (class action); *Roy v. Los Angeles County Sheriff's Dep't*, Case No. 12-9012 (C.D. Cal.) (class action).

CERTIFICATE OF SERVICE

I certify that on August 10, 2018, I served a copy of the foregoing document to the following by

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Fax
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