State of Indiana
Lake County_____ Court

Greg Serbon and **John Allen**, *Plaintiffs*, *v.* **City of East Chicago**, **Indiana**; **City of East Chicago Common Counci**l; **Myrna Maldonado**, **Lenny Franciski**, **Brenda Walker**, **Christine Vasquez**, **Robert Garcia**, **Gilda Orange**, **Robert Medina**, **Emiliano Perez**, and **Kenneth Monroe**, in their official capacities as City of East Chicago Common Council Members; **Anthony Copeland**, in his official capacity as City of East Chicago Mayor; **City of East Chicago Police Department**; and **Frank Smith**, in his official capacity as City of East Chicago Chief of Police, *Defendants*.	**Cause No. _____**

Verified Complaint for Declaratory and Injunctive Relief

Plaintiffs complain against the City of East Chicago ("City") et al. as follows:

1. This case, involving Ordinance 17-0010 ("Ordinance," *see* Appendix A), is (**a**) an "action to compel . . . governmental bod[ies] . . . to comply with" Indiana's sanctuary-city-preemption law, IC 5-2-18.2 ("Chapter 18.2"),[1] as authorized by IC 5-2-18.2-5,[2] and (**b**) an action against the City for declaratory judgment and injunctive relief for violating the United States Constitution.

2. Chapter 18.2, titled "Citizenship and Immigration Status Information and Enforcement of Federal Immigration Laws," bans what are commonly called sanctuary-city ordinances.

[1] *See* Appendix B (Relevant Indiana, Federal & Local Laws).

[2] **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.

3. Chapter 18.2 preempts local regulation of the immigration-law field by (**a**) prohibiting Indiana "governmental bodies" from (inter alia) adopting non-cooperation policies regarding immigration-law information and enforcement, IC 5-2-18.2-3 and -4, and imposing on law-enforcement officers ("LEOs") "a duty to cooperate with state and federal officials on matters pertaining to enforcement of state and federal laws governing immigration," IC 5-2-18.2-7, of which cooperation duty "every law enforcement agency" has a duty to provide them "written notice"; (**b**) authorizing an "action to compel . . . compl[iance] with [Chapter 18.2]"[3] by "a person lawfully domiciled in Indiana," IC 5-2-18.2-5; and (**c**) requiring an injunction against violations of "section 3 or 4 of [Chapter 18.2]," IC 5-2-18.2-6.[4]

4. The *action to compel* seeks to compel the "governmental bodies" that enacted, implement, and enforce Ordinance 17-0010 ("Ordinance") to comply with Chapter 18.2. The Ordinance (inter alia) unlawfully restricts and limits cooperation with federal immigration-enforcement authorities to "less than the full extent permitted by federal law." IC 5-2-18.2-4.

5. The *federal constitutional challenges* seek declaratory and injunctive relief against the City and Ordinance for violating the Supremacy Clause (U.S. Const. art. VI, cl. 2), Equal Protection Clause (U.S. Const. art. XIV, § 1), and Due Process Clause (U.S. Const. art. XIV, § 1).[5]

---

[3] Section 5 authorizes this Court to "compel the governmental body . . . to comply with [*Chapter 18.2*]," which includes IC 5-2-18.2-7 (establishing duty of LEO to cooperate with immigration-law enforcement and requiring notice of duty).

[4] **IC 5-2-18.2-6 Enjoin violation**
Sec. 6. If a court finds that a governmental body . . . knowingly or intentionally violated section 3 or 4 of this chapter, the court shall enjoin the violation.

[5] *Available at* https://www.congress.gov/constitution-annotated/, https://www.law.cornell.edu/constitution/overview, https://constitution.findlaw.com/. Federal statutes are available at http://uscode.house.gov/, https://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2016&go=Go.Federal and state court opinions and laws are available through https://www.law.cornell.edu/, https://lp.findlaw.com/, https://scholar.google.com/.

Jurisdiction, Venue, and Standing

6. This Court has jurisdiction under IC 5-2-18.2-5 and -6, IC 33-29-1-1.5 (providing superior-court jurisdiction) or IC 33-28-1-2 (providing circuit-court jurisdiction), IC 34-14-1-1 (Indiana Declaratory Judgment Act), and 42 U.S.C. 1983.[6]

7. Venue is proper under Ind. T.R. ("TR") 75(A)(4), (5), and (10).

8. Plaintiffs have standing for injunctive relief under IC 5-2-18.2-5 ("action to compel . . . compl[iance] with [Chapter 18.2]"), IC 5-2-18.2-6 ("shall enjoin"), and public-standing doctrine, *State ex rel. Cittadine v. Ind. DOT*, 790 N.E.2d 978, 980-982 (Ind. 2003) (doctrine applies "to procure enforcement of a public duty"). Public standing extends to constitutional challenges. *Id.* at 981 ("doctrine was also applied to permit constitutional challenges"); *id.* at 983 ("doctrine permits the assertion of all proper legal challenges, including claims that government action is unconstitutional"). Public standing for federal constitutional claims is proper because public officials such as Defendants are required to swear to uphold the United States Constitution, *see, e.g.*, Ind. Const. art. xv, § 4, creating a public duty that the public may enforce. Public standing extends to declaratory-judgment actions under the Indiana Declaratory Judgment Act, IC 34-14-1-1, to the extent that plaintiffs need not meet the standing requirements of IC 34-14-1-2 unless they are "seeking *only* declaratory relief," *Cittadine*, 790 N.E.2d at 984 (emphasis added), which is not the case here.

---

[6] **42 U.S.C. 1983 – Civil action for deprivation of rights**
Every person who, under color of any . . . ordinance . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights . . . secured by the Constitution, and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .
Section 1983 allows suits against local governments, *Monell v. Dept. of Social Services of the City of New York*, 436 U.S. 658 (1978), and in state courts, *Maine v. Thiboutot*, 448 U.S. 1 (1980), for both federal constitutional and statutory claims, *id.* at 4.

9. Plaintiffs have statutory standing because each is a "a person lawfully domiciled in Indiana [and so] may bring an action to compel the governmental body . . . to comply with [Chapter 18.2]." IC 5-2-18.2-5. *See supra* ¶ 1 n.2. The Indiana General Assembly has authority to create such jurisdiction and the standing that is part of jurisdiction. *See, e.g.*, *Cittadine*, 790 N.E.2d at 983-84 (recognizing authority of legislature in Declaratory Judgment Act to provide jurisdiction for declaratory judgments and to establish standing requirements therefor, IC 34-14-1-1 and -2). *See also Huffman v. Ind. Office Envtl. Adjudication*, 811 N.E.2d 806, 809 (Ind. 2004) (recognizing legislature's authority to establish court jurisdiction and standing requirements other than the "judicial doctrine of standing").

10. The statutory standing established by Chapter 18.2 is consistent with Indiana's public-standing doctrine, *see Cittadine*, 790 N.E.2d 978 (reaffirming doctrine), under which Plaintiffs also have standing because they are citizens of Indiana and Lake County who assert a public right under a public duty of compliance with Chapter 18.2, which public right and public duty are expressly established by Chapter 18.2. Thus, they have an interest "as citizens 'interested in common with other citizens in the execution of the law,'" *Cittadine*, 790 N.E.2d at 980-81 (citation omitted), including laws consistent with Chapter 18.2. Plaintiffs have public standing for federal constitutional challenges because (i) public standing "includ[es] claims that government action is unconstitutional," *Cittadine*, 790 N.E.2d at 983, (ii) government has a constitutional duty to comply with "the supreme law of the land," U.S. Constitution art. VI, cl.2, and (iii) the public thus has a right to assure governmental compliance with that "supreme law." Plaintiffs also share a public right to enforce the interest in public safety that flows from enforcement of the laws. *See Cittadine*, 790 N.E.2d at 984-85 (as "a member of the motoring public," Jack Cittadine had standing under the public-standing doctrine to challenge noncompliance with a law promoting

public safety by mandating visibility standards at railroad crossings).

Parties

11. Plaintiff Greg Serbon is a Lake County, Indiana resident who often works in the City and so is "a person lawfully domiciled in Indiana," IC 5-2-18.2-5, and a "citizen" of Indiana and Lake County, who is often in the City for extended periods, *Cittadine*, 790 N.E.2d at 980-81, thereby making Plaintiff authorized to bring this "action to compel," IC 5-2-18.2-5, and giving Plaintiff public interests in the performance of public duties required by Chapter 18.2 and the U.S. Constitution, including interests in the enforcement of the law and in public safety.

12. Plaintiff John Allen is a Lake County, Indiana resident who often enters City limits and so is "a person lawfully domiciled in Indiana," IC 5-2-18.2-5, and a "citizen" of Indiana and Lake County, *Cittadine*, 790 N.E.2d at 980-81, thereby making Plaintiff authorized to bring this "action to compel," IC 5-2-18.2-5, and giving Plaintiff public interests in the performance of public duties required by Chapter 18.2 and the U.S. Constitution, including interests in enforcement of the law and public safety.

13. Defendant City knowingly and intentionally enacted the Ordinance. *See* East Chicago Common Counsel, Minutes of Regular Meeting at 5-7 (June 26, 2017) (7-0 vote).[7] As a "political subdivision," the City is a "governmental body"[8] subject to an "action to compel," IC 5-2-18.2-5,

[7] *Available at* http://www.eastchicago.com/page7/downloads-2/files/06-26-2017%20Minutes%20Regular%20Meeting.pdf (Council Minutes).

[8] Chapter 18.2 defines "governmental body" by incorporating the meaning at IC 5-22-2-13. IC 5-2-18.2-1 *and* by "including a law enforcement officer, a state or local official, or a state or local government employee," IC 5-2-18.2-3. IC 5-22-2-13 follows:

> **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.

and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

14. Defendant City Common Council knowingly and intentionally enacted the Ordinance. *See* East Chicago Common Counsel, Minutes of Regular Meeting at 5-7 (June 26, 2017) (7-0 vote). As a "council" of a "political subdivision" it is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

15. Defendant Myrna Maldonado (sued in official capacity) is a Member of the City Common Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.[9]

16. Defendant Lenny Franciski (sued in official capacity) is a Member of the City Common Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

17. Defendant Brenda Walker (sued in official capacity) is a Member of the City Common Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

18. Defendant Christine Vasquez (sued in official capacity) is a Member of the City Common

---

(2) The judicial branch.
(3) The legislative branch.
(4) A political subdivision.

"**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.

[9] *See* http://www.eastchicago.com/page7/index.html (City website identifying council members) (last visited April 23, 2018). Successors in office are automatically substituted. TR 25(F).

Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

19. Defendant Robert Garcia (sued in official capacity) is a Member of the City Common Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

20. Defendant Gilda Orange (sued in official capacity) is a Member of the City Common Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

21. Defendant Robert Medina (sued in official capacity) is a Member of the City Common Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

22. Defendant Emiliano Perez (sued in official capacity) is a Member of the City Common Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

23. Defendant Kenneth Monroe (sued in official capacity) is a Member of the City Common Council that knowingly and intentionally enacted the Ordinance, and as a person holding that "office" in the Council is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

24. Defendant City Mayor, an office currently held by Anthony Copeland (sued in official capacity),[10] is the City's chief law-enforcement official and knowingly and intentionally signed the Ordinance into law. As an "office" of a "political subdivision," the Mayor is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2. IC 5-2-18.2-5 and -6.

25. Defendant City Police Department controls City LEOs and implements and enforces the Ordinance (including compliance with immigration-law-enforcement non-cooperation and avoid-arrest, resist-deportation provisions) and Chapter 18.2. As a "law enforcement agency," it has a duty to impose the "duty to cooperate" and "to 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 5-2-18.2-7. As a "department" of a "political subdivision," it is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.

26. Defendant City Chief of Police, an office currently held by Frank Smith (sued in official capacity),[11] has "management, control and supervision of the Police Department, its officers, members and assistants" and "custody and control of the offices, stations, equipment, books, records and other property belonging to the Department," City Ordinance 34.016(A).[12] The Chief of Police implements and enforces the Ordinance (including compliance with immigration-law-

[10] *See* http://www.eastchicago.com/page1/index.html (identifying Mayor) (last visited April 23, 2018). Successors in office are automatically substituted. TR 25(F).

[11] *See* http://www.eastchicago.com/page10/page50/index.html (identifying Chief of Police) (last visited April 23, 2018). Successors in office are automatically substituted. TR 25(F).

[12] *See* http://www.eastchicago.com/EC-City-Code-UPDATED-2011-Edited4.23.12.pdf (City Code of Ordinances) (last visited April 23, 2018).

enforcement non-cooperation and avoid-arrest, resist-deportation provisions) and Chapter 18.2. As the person in charge of a "law enforcement agency," he has a duty to impose the "duty to cooperate" and to "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 5-2-18.2-7. As an "office" of a "political subdivision," he is a "governmental body" subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-5 and -6.[13]

Legal Context

27. Six legal contexts are involved here—(a) federal immigration law, (b) Chapter 18.2, (c) the Ordinance, (d) the Supremacy Clause, (e) the Equal Protection Clause, and (f) the Due Process Clause. To provide essential background, these are briefly discussed below.

Federal Immigration Law: Federal Law Protects Hoosiers with Immigration Laws

28. "The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012).[14] "This authority rests, in part, on the National Government's constitutional power to 'establish an uniform Rule of Naturalization,' and its inherent power as sovereign to control and conduct relations with foreign nations." *Id.* at 394-95 (internal citations omitted).

29. Congress consolidated the federal government's broad authority over immigration law in 1952 in the Immigration and Nationality Act ("INA") (8 U.S.C. 1101 et seq.),[15] creating a com-

[13] He is also a "governmental body" because that "includ[es] a law enforcement officer, a state or local official, or a state or local government employee." IC 5-2-18.2-3.

[14] *Available at* https://caselaw.findlaw.com/us-supreme-court/11-182.html.

[15] *Available at* https://www.gpo.gov/fdsys/granule/USCODE-2011-title8/USCODE-2011-title8-chap12-subchapI-sec1101.

prehensive scheme to regulate immigration and naturalization. In INA, Congress specified categories of admissible aliens (8 U.S.C. 1182); made unlawful entry and unlawful reentry into the U.S. federal crimes (8 U.S.C. 1325, 1326)[16]; required aliens to register with the federal government and carry proof of status on their person (8 U.S.C. 1301-1306); authorized states to prevent noncitizens from receiving public benefits (8 U.S.C. 1622); and imposed sanctions on employers who hire unauthorized workers (8 U.S.C. 1324a). *See also Arizona*, 567 U.S. at 395-96.

30. Congress intended state and local governments to play a vital role in INA enforcement. *Arizona*, 567 U.S. at 411 ("consultation between federal and state officials is an important feature of the immigration system").

31. Congress has amended INA to underscore the necessity of such cooperation. For example, Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act (1996) ("IIRAIRA") is titled "Communication between government agencies and the Immigration and Naturalization Service"[17] and codified at 8 U.S.C. 1373.

32. 8 U.S.C. 1373 bans prohibitions or restrictions on federal-, state-, or local-government sharing of information related to individuals' citizenship or immigration status as follows:

> **[8 U.S.C.] § 1373. Communication between government agencies and the Immigration and Naturalization Service**
> **(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

[16] Though illegal entry into the United States is often portrayed as a civil, not criminal, matter, sections 1325 and 1326 clearly make "improper entry by an alien" and "reentry of removed aliens," respectively, crimes subject to substantial fines and imprisonment, with additional civil penalties possible. *See, e.g.*, 8 U.S.C. 1325(b) (titled "improper time or place; civil penalties") ("civil penalties under this section are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed").

[17] Pub. L. 104-208, 110 Stat. 3009-546 (Sept. 30, 1966). *Available at* https://www.gpo.gov/fdsys/pkg/STATUTE-110/pdf/STATUTE-110-Pg3009.pdf.

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.

33. In crafting 8 U.S.C. 1373, Congress understood and intended the phrase "information regarding the citizenship or immigration status" to 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 understanding of the language and the 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)[18]; *see also City of New York v. U.S.*, 179 F.3d 29, 32-33 (2nd Cir.1999) (quoting foregoing Report as a unit with the statutory text to ex-

[18] *Available at* https://www.congress.gov/104/crpt/srpt249/CRPT-104srpt249.pdf. Because the quoted paragraph is under the caption "IV. Section-by-Section Analysis," S. Rep. No. 104-249, at 8, it is an "analysis" of what § 1373 *does*.

plain what statute does and Congress intended). So Congress understood that it had mandated what it intended, i.e., 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.

34. 8 U.S.C. 1644, though enacted later, underscores the intent behind 8 U.S.C. 1373 and its "information regarding . . . immigration status" language. Section 1644 follows:

> **[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.

35. 8 U.S.C. 1644 was enacted as Section 434 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA").[19] The PRWORA Conference Report made clear what Congress believed the language it used "*provides*" and what Congress "*intended*" by it:

> 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.

[19] Pub. L. 104-193, 110 Stat. 2105 (Aug. 22, 1966). *Available at* https://www.gpo.gov/fdsys/pkg/STATUTE-110/pdf/STATUTE-110-Pg2105.pdf.

H.R. Conf. Rep. No. 104-725, at 383 (emphasis added),[20] *reprinted in* 1996 U.S.C.C.A.N. 2649, 2771; *see also City of New York*, 179 F.3d at 32 (quoting foregoing Report as a unit with the statutory text to explain what statute does and Congress intended).

36. Also as a part of IIRAIRA, Congress enacted 8 U.S.C. 1357(g). In this provision, Congress authorized written agreements whereby state/local LEOs could perform functions of federal immigration-enforcement officers. 8 U.S.C. 1357(g)(1). Congress also made clear that no written agreement is needed for state/local officers or employees "to communicate with [federal immigration authorities] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States. . . ." 8 U.S.C. 1357(g)(10)(A). Likewise, Congress also made clear that no written agreement is required for state/local officers or employees to "cooperate with [federal immigration authorities] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. 1357(g)(10)(B).

37. Congress also encouraged state/local cooperation with the federal government in 8 U.S.C. 1324(c) (authorizing state/local LEOs to make arrests for violations of the INA's prohibition against smuggling, transporting, or harboring aliens) and 8 U.S.C. 1252(c) (affirming state/local LEO's authority to arrest certain felons who have unlawfully returned to the United States). *See also* U.S. Department of Justice ("DOJ"), Statement of Interest on Behalf of the United States at *4, *City of El Cenizo v. Texas*, No. 5:17-cv-00404-OLG, 2017 U.S. Dist. LEXIS 140309 (W.D. Tex. Aug. 30, 2017) ("Statement of Interest").[21]

38. In the *El Cenizo* Statement of Interest, the DOJ highlighted several examples of coopera-

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

[21] *Available at* https://www.justice.gov/opa/press-release/file/975761/download.

tion between state and local officials and the federal government in immigration law enforcement. These examples include, *id.* at 4-5:

> State and local participation in joint task forces with federal officers, providing operational support in executing a warrant, allowing federal immigration officials to gain access to detainees held in State or local facilities and holding an alien in custody so that the federal government can effectuate an arrest, responding to requests for information about when an alien will be released from custody, requesting immigration status information from aliens, and sharing that information with federal officials.

39. In the Statement of Interest, the DOJ established that a key means of such cooperation is state/local cooperation with detainer requests by the U.S. Immigration and Customs Enforcement ("ICE")—addressing "generally aliens with pending criminal charges or convictions"—which are now subject to the following policy, *id.* at 1-2:

> [ICE] detainers issue only when there is probable cause to believe that the subject of the detainer is a removable alien, and ICE detainers are accompanied by an administrative warrant issued pursuant to 8 U.S.C. §§ 1226 or 1231. The detention period, moreover, may last no more than 48 hours. State and local cooperation with detainer requests facilitates the orderly transfer of removable aliens to federal custody when they are released from state or local custody. Absent cooperation, removable aliens would be released back into the community. Given the population addressed by immigration detainer requests—generally aliens with pending criminal charges or convictions—they are an important tool to promote public safety. When criminal aliens are released from state or local custody, they have the opportunity to reoffend and abscond. There are also many risks and uncertainties involved when apprehending criminal aliens at-large in the community, rather than in a controlled custodial setting. At-large arrests increase the risk to the officers and agents conducting the arrests, the alien arrested, and members of the public.
>
> These issues involving the sharing of information regarding aliens in state criminal custody, and the lawful cooperation by state and local authorities with federal immigration detainer requests, are of deep concern to the United States and present serious public safety and immigration enforcement issues.

40. The DOJ Statement of Interest also established that honoring ICE detainers and other such cooperation by state/local authorities with federal immigration enforcement officials is not preempted by federal law, *id.* at 20, is consistent with the Tenth Amendment, *id.* at 24, and is fully consistent with the Fourth Amendment, *id.* at 26.

41. As further stated by the DOJ, the aforementioned "cooperative efforts are critical to facilitating federal processing of the hundreds of thousands of aliens arrested for immigration violations each year." *Id.* at 5; *see also* Department of Homeland Security ("DHS"), Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters at 9 (Sept. 21, 2011) ("DHS Guidance")[22] ("In requiring 'cooperation,' the INA thus requires that a state or local law enforcement officer who assists DHS officers in their enforcement of the immigration laws must at all times have the freedom to adapt to federal priorities and direction and conform to federal discretion, rather than being subject to systematic mandatory state or local directives that may work at odds with DHS.").

42. The federal government's immigration-enforcement priorities are, not persons who are simply here illegally, but persons who "pose a risk to public safety or national security," including "removable aliens who are convicted felons or who are involved in gang activity or drug trafficking":

> Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Director of ICE, the Commissioner of CBP, and the Director of USCIS may, as they determine is appropriate, issue further guidance to allocate appropriate resources to prioritize enforcement activities within these categories—for example, by prioritizing enforcement activities against removable aliens who are convicted felons or who are involved in gang activity or drug trafficking.

Memorandum from John Kelly, DHS Secretary, to Federal Enforcement Officials at 2 (Feb. 20,

[22] *Available at* https://www.dhs.gov/sites/default/files/publications/guidance-state-local-assistance-immigration-enforcement.pdf.

2017) ("Subject: Enforcement of the Immigration Laws to Serve the National Interest").[23] So in seeking full cooperation at all levels of government, the federal government is seeking to protect the public by prioritizing (inter alia) immigration-law enforcement against felons, gang members, and drug traffickers. Of course, while DHS has "enforcement priorities," any "deportable alien" under 8 U.S.C. 1227 may be placed into removal proceedings by federal authorities.

Indiana's Chapter 18.2: Indiana Protects Hoosiers by Preempting Sanctuary-City Laws

43. To protect Hoosiers by assuring that Indiana governmental bodies are both compliant with protective federal law and are assisting federal authorities, Indiana enacted Indiana Code 5-2-18.2,[24] titled "Citizenship and Immigration Status Information and Enforcement of Federal Immigration Laws,"[25] to ban prohibiting/restricting/limiting compliance by "governmental bodies," including employees of the foregoing and "law enforcement officers,"[26] and require LEO compliance. Indiana does so by (**a**) barring ordinances, policies etc. that ban cooperation regarding immigration-related *information*, IC 5-2-18.2-3; (**b**) barring limiting/restricting immigration-law *enforcement* cooperation, IC 5-2-18.2-4, and mandating LEO cooperation on immigration-law enforcement (including information-cooperation), IC 5-2-18.2-7.[27]

---

[23] *Available at* https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

[24] Chapter 18.2 was enacted as part of Senate Enrolled Act ("SEA") 590. *Available at* http://www.in.gov/legislative/bills/2011/PDF/SE/SE0590.1.pdf. *Buquer v. City of Indianapolis*, 2013 U.S. Dist. LEXIS 45084 (S.D. Ind. 2013), enjoined applications of SEA 590 § 18 (restricting uses of consular identification documents) and enjoined § 20 (authorizing some state/local LEO arrests not "at the behest of the federal officials"), *id.* at *8-9.

[25] *Available at* http://iga.in.gov/legislative/laws/2017/ic/titles/005#5-2-18.2.

[26] "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 (defining term so as to include LEOs of the City Police Department).

[27] Though 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.

44. Section 3 *bans*[28] prohibitions/restrictions on maintaining, sharing, and cooperating regarding "information of the citizenship or immigration status . . . of an individual" as follows:

> **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 . . . may not enact or implement an ordinance, a resolution, a rule, or a policy that prohibits or in any way restricts another governmental body . . . , 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.

45. 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 an ordinance, policy, etc. may not *prohibit/restrict* as to communicating/cooperating, sending/receiving, maintaining, and exchanging as described in § 3 includes the following topics:

- identifying information (name(s), alias(es), description, ID numbers, biometrics, 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 number(s), address(es), email address(es), etc.);
- work location(s);
- contact information for relatives, friends, etc.;
- vehicle information (make, model, color, VIN, plate number, etc.);

[28] Sections 3 and 4 *ban* governmental-body ordinances, policies, etc. and activities that prohibit/restrict/limit immigration-law enforcement while § 7 *mandates* LEO cooperation.

- history with law enforcement (charges, convictions, traffic infractions, etc.);
- firearm records (concealed carry permit etc.);
- custody status; and
- release date.

46. Section 4 *bans* limiting/restricting federal immigration-law enforcement as follows:

> **IC 5-2-18.2-4 Prohibited from limiting or restricting enforcement of federal immigration laws**
>
> Sec. 4. A governmental body . . . may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

47. *Enforcement* includes *information* sharing, as the Ordinance acknowledges. Ordinance § 2 ("[i]mmigration enforcement operation" includes "identification"); *id.* § 6(a) ("enforcement operations, including . . . information").

48. The following list provides concrete examples of things Defendants may not *limit/restrict* (including by an ordinance, but not so limited) City personnel (especially City LEOs) from doing because federal law permits them:

- "[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.*; *see also Arizona*, 567 U.S. at 411-15 (upholding requirement that LEOs ask 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)[29];
- "work[ing] in conjunction with all other levels of the criminal justice system," which includes cooperation with federal immigration-law authorities, and "enforc[ing] all laws and ordinances," which include 8 U.S.C. 1357(g), 1373, and 1644 and Chapter 18.2, City of East Chicago Police Department, "Duties," http://www.eastchicago.com/page10/page50/page53/;
- "uphold[ing] the Federal and State of Indiana Constitution [and] laws," which include 8 U.S.C. 1357(g), 1373, and 1644 and Chapter 18.2, City of East Chicago Police Department, "Code of Ethics" at no. 11, http://www.eastchicago.com/page10/page50/page53/; and
- "provid[ing] each law enforcement officer with a written notice that the law enforcement offi-

---

[29] 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:
> (1) as a witness to or victim of a crime; or
> (2) for purposes of reporting a crime.

Consequently, any arguments that barring verifying 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.

cer 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 5-2-18.2-7.

49. Section 7 establishes an LEO *duty* to cooperate and mandates *notice* to LEOs of that duty "on matters pertaining to" immigration-law enforcement as follows:

> **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.

50. "Cooperation" implies a request, *Arizona*, 567 U.S. at 410 ("cooperation" implies "request, approval, or other instruction from the Federal Government"), and § 7 indicates from whom as follows: "*with* state and federal agencies and officials" (emphasis added).

51. The § 7 duty to cooperate "on matters pertaining to enforcement of *state* and federal laws governing immigration" requires City LEOs to abide by §§ 3 and 4. While §§ 3 and 4 govern "governmental bodies," the City Police Department and Chief of Police are governmental bodies who must impose the cooperation requirements of §§ 3 and 4 on City LEOs and provide the cooperation-duty notice mandated by § 7. Moreover, a law enforcement *officer* is also an "office" established by the city and thus a "governmental body" subject to §§ 3 and 4. IC 5-22-2-13. Furthermore, "governmental bodies . . . includ[e] a law enforcement officer." IC 5-2-18.2-3. So what is barred in §§ 3 and 4 for governmental bodies is also barred for City LEOs. Thus, § 3's prohibition on "polic[ies]" etc. that prohibit/restrict cooperation and sharing regarding immigration-related information prohibits prohibiting/restricting information-cooperation required by § 7. And § 4's prohibition on limiting/restricting enforcement-cooperation prohibits limiting /restricting full compliance with § 7's cooperation-duty mandate because what § 7 requires is "permitted by federal law." In sum, § 7's duty to cooperate, with the concomitant notice of that duty, may not

be limited as the City's enactment, implementation, and enforcement of the Ordinance does, and because failure to implement and enforce § 7 also violates §§ 3 and 4, the injunctive remedy for violations of §§ 3 and 4 may be used to enforce full compliance with § 7. IC 5-2-18.2-5 ("compel . . . compliance with [Chapter 18.2]"); IC 5-2-18.2-6 ("enjoin the violation"). And of course, IC 5-2-18.2-6 provides authority for this Court to "compel the governmental body . . . to comply with this *chapter*" (emphasis added), which includes violations of §§ 3, 4, and 7.

52. Reading §§ 3, 4, and 7 together indicates that Indiana intended to bar prohibitions and restrictions on sharing information about citizenship and immigration information with such information interpreted *broadly*, not narrowly to mean a mere statement of someone's country of citizenship or immigration status. *See* IC 5-2-18.2-4 (not "less than full extent permitted by federal law") and -7 ("matters pertaining to enforcement," which includes cooperation regarding information useful to enforcement).

53. The broad reading of the information that Indiana requires to be shared (by banning prohibiting or restricting sharing it and requiring LEO cooperation) is further evidenced by Indiana's adoption of the federal language prohibiting prohibitions or restrictions on information sharing. *Compare* 8 U.S.C. 1373 ("information regarding the citizenship or immigration status, lawful or unlawful, of any individual") *and* 8 U.S.C. 1644 ("information regarding the immigration status, lawful or unlawful, of an alien in the United States") *with* IC 5-2-18.2-3 ("with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual"). By using language virtually identical to the federal language, Indiana intended to enforce the federal requirement in Indiana at least to the broad extent of the federal meaning of those terms as set out above, *supra* ¶¶ 32-35. *See, e.g.*, *Brownsburg Area Patrons Affecting Change v. Baldwin*, 714 N.E2d 136 (Ind. 1999) (construing language virtually identical to federal statutory language to

mean the same thing as U.S. Supreme Court construed it to mean).

City of East Chicago's Sanctuary-City Ordinance

54. Despite Indiana's Chapter 18.2 clearly preempting local government from enacting contrary ordinances, rules, and policies with the clear intent to ban sanctuary cities and welcoming cities, Defendants knowingly and intentionally enacted, implement, and enforce Ordinance 17-0010.[30]

55. The "knowingly or intentionally" language of IC 5-2-18.2-6 is satisfied by the knowing and intentional enactment and implementation of the Ordinance. *Simon v. Auburn, Bd. of Zoning Appeals*, 519 N.E.2d 205, 210 (Ind. Ct. App. 1988) ("[K]nowingly 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.'" (citation omitted)).

56. Section 1 of the Ordinance purports to "support immigration enforcement as a federal matter" and says "City of East Chicago is committed to upholding . . . the 4th Amendment requirements of probable cause for arrest and detention and the 10th [A]mendment bar on commandeering of local governments to perform federal functions," but it is silent about Indiana's Chapter 18.2, 18.2's preemption, and 18.2's mandates against doing what Defendants did in the Ordinance and 18.2's requirement of LEO cooperation.

57. The Ordinance sets forth the City's laws and policies governing immigration and is binding on every "municipal agency" and "agent," Ordinance § 2 (terms defined); *id.* §§ 3, 6, 10.

58. The City Common Council ("Council") passed and adopted the Ordinance on June 26,

[30] *See* http://www.eastchicago.com/page7/downloads-2/files/06-26-2017%20Minutes%20Regular%20Meeting.pdf (Council Minutes).

2017. *See* Ordinance 17-0010 at 7 (Appendix A). City Mayor, Anthony Copeland, approved and signed the Ordinance on June 27, 2017. *Id*. The Ordinance was sponsored by Councilwoman Christine Vasquez and Councilman Robert Garcia. *Id.* at 1.

59. Section 2 ("Definitions") defines "citizenship or immigration status" in a broad, all-matters-regarding manner as follows:

> "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.[31]

60. Section 2 defines "immigration enforcement operation" broadly to include "identification" (information sharing) and "apprehension" concerning both civil and criminal matters as follows:

> "Immigration 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.

61. Section 3 bans requesting information and prohibits and restricts cooperation in inquiries and investigations regarding immigration and citizenship information as follows:

> **Section 3. 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.

62. Section 6 restricts and limits immigration-law enforcement, including by restrict-

[31] Despite this broad, all-matters-regarding definition of citizenship/immigration information —which squares with how the federal and Indiana mandates for information-sharing should be interpreted, *see supra* ¶¶ 32-35—§ 10 defines the same information narrowly in an effort to limit cooperation. *See infra* ¶ 64.

ing/limiting cooperating with federal authorities, and acknowledges that "enforcement" includes "provid[ing] *information*," as follows:

> **Section 6. 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:
> 1) an immigration detainer;
> 2) an administrative warrant (including but not limited to [sic] entered into the Federal Bureau of Investigation's National Crime Information Center database); or
> 3) 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.
>
> a. 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,[32] 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 [sic][33] of this ordinance), 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.
> b. 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.
> c. 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 [sic][34] 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.

63. Section 9(c) imposes a different duty on LEOs than that imposed by Chapter 18.2 for indi-

---

[32] "[I]mmigration enforcement operations" is defined to include *information* and *enforcement* "related to immigration status." Ordinance § 2 ("identification or apprehension").

[33] Section 11 is a severability clause. Presumably the City meant "section 10."

[34] Section 11 is a severability clause. Presumably the City meant "section 10."

viduals at "risk of deportation" as follows (emphasis added):

> **Section 9. Commitments.**
> a) The City commits to working with community advocates, policy experts, and legal advocates to defend the human rights of immigrants.
> b) The East Chicago 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 East Chicago 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 East Chicago Police Department will make available and provide material at all East Chicago Police Stations concerning this ordinance and information concerning rights of all immigrants.

64. Section 10 purports to comply with 8 U.S.C. 1373 and 1644, but it provides a too-narrow definition of "information regarding an individual's citizenship or immigration status" that conflicts with the "information" phrases in 8 U.S.C. 1373 and 1644, thereby acting as an obstacle to and impeding enforcement of federal immigration law. And by creating a conflicting definition, it occupies a definitional field that Congress preempted by the language of §§ 1373 and 1644 and the congressional Reports stating what that "information" language means. Section 10's too-narrow definition—at odds with §§ 1373 and 1644, Chapter 18.2, and Ordinance § 2—follows:

> **Section 10. 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.

65. Because the challenged provision of the Ordinance are incompatible with the LEO cooperation duty and written notice thereof at IC 5-2-18.2-7, Defendants Mayor, Police Department, and

Chief of Police have apparently neither required that the notice issue nor issued the notice.

The Federal Supremacy Clause

66. The federal Supremacy Clause, U.S. Const. art. VI, cl. 2, makes federal constitutional and statutory law "the supreme law of the land" as follows:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

67. Under the Supremacy Clause, Congress has the power to preempt state and local laws. *Arizona*, 567 U.S. at 399 (citing *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). "[F]or the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws." *Hillsborough Cty. v. Automated Med. Labs., Inc*., 471 U.S. 707, 713 (1985)).

68. Preemption may be either express or implied, and implied preemption includes both field preemption and conflict preemption. *Lozano v. City of Hazleton*, 724 F.3d 297, 302 (3rd Cir. 2013) (citing *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992)).

69. In field preemption, "States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona*, 567 U.S. at 399.

70. Conflict preemption can occur in one of two ways: where "compliance with both federal and state regulations is a physical impossibility" or "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Lozano*, 724 F.3d at 303 (citing *Arizona*, 567 U.S. at 399) (internal quotation marks and citations omitted). "If the purpose of the act cannot otherwise be accomplished—if its operation within its

chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power." *Savage v. Jones*, 225 U.S. 501, 533 (1912), *quoted in Hines v. Davidowitz*, 312 U.S. 52, 67 n.20 (1941). The judgment of courts about what constitutes an unconstitutional impediment to federal law is "informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby*, 530 U.S. at 373.

The Federal Equal Protection Clause

71. The Fourteenth Amendment's Equal Protection Clause, applicable to local government, guarantees "equal protection of the laws" as follows, U.S. Const. amend. XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

72. Under 42 U.S.C. 1983, lawsuits may be brought to enforce federal statutory and constitutional rights (including equal-protection and due-process claims), including against local governments, *Monell*, 436 U.S. 658, and in state courts, *Maine*, 448 U.S. 1, and also against government officials in their official capacities for prospective injunctive relief, *see, e.g.*, *Will v. Michigan Dept. of State Police*, 491 U.S. 48 (1989), which suits "are not treated as actions against the State" and so not subject to Eleventh Amendment sovereign immunity, *id.* at 71 n.10.

73. In cases brought under 42 U.S.C. 1983, attorney-fee awards are authorized to prevailing parties under 42 U.S.C. 1988, *see, e.g.*, *Hutto v. Finney*, 437 U.S. 678 (1978), including awards made by state courts, *see, e.g.*, *Maine*, 448 U.S. 1.

The Federal Due Process Clause

74. The Fourteenth Amendment's Due Process Clause, U.S. Const. amend. XIV, § 1, applica-

ble to local government, makes laws void for vagueness for one or both of two reasons:

> Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement.

City of Chicago v. Morales, 527 U.S. 41, 56 (1999). This requires that "a legislature establish minimal guidelines to govern law enforcement, *id.* at 60, and not leave persons to "the whim of any police officer," *id.* at 60 n.29, based on an "inherently subjective" standard, *id.* at 62.

Additional Facts

75. Plaintiffs are presently suffering irreparable harm to their public interests and rights, established by Chapter 18.2, public-standing doctrine, the Supremacy Clause, the Equal Protection Clause, and the Due Process Clause, as a result of the Ordinance and Defendants' noncompliance with the public duty established by Chapter 18.2 and cited constitutional provisions, and Plaintiffs have no adequate remedy at law.[35]

Count I
Ordinance § 3 Violates Chapter 18.2.

76. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

77. In enacting, implementing, and enforcing Ordinance § 3 (restricting full cooperation regarding information sharing), *see supra* ¶ 61 (text), Defendants violated, and violate, IC 5-2-18.2-3, -4, and -7—which preempt the immigration-law field and ban what Defendants have done, and do, by Ordinance § 3.

[35] Though Plaintiffs recite that they suffer irreparable harm and lack an adequate remedy at law, they are not required to establish the usual elements for *equitable* injunctive relief under the *statutory* "action to compel the governmental body . . . to comply with [Chapter 18.2]," IC 5-2-18.2-5, or under IC 5-2-18.2-6, which provides for injunctive relief based solely on a "find[ing] that a governmental body . . . knowingly or willfully violated sections 3 or 4 of [Chapter 18.2]."

78. IC 5-2-18.2-**3** bans ordinances etc. prohibiting/restricting communicating, cooperating, sending, receiving, maintaining, and exchanging broadly defined immigration-related information. *See supra* ¶¶ 44-45.

79. IC 5-2-18.2-**4** bans (whether or not by ordinance, policy, etc.) limiting/restricting "the enforcement of federal immigration laws to less than the full extent permitted by federal law." *See supra* ¶¶ 46-48. *See also supra* ¶ 48 (permitted-by-federal-law bullet points). What is "permitted by federal law" includes the activities that may not be banned under § 3 and the LEO cooperation required by § 7 of Chapter 18.2, so those may not be limited/restricted.

80. IC 5-2-18.2-**7** declares and established an LEO " duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration" to be implemented by "every law enforcement agency . . . providing each law enforcement officer with a written notice" of that cooperation duty. Though IC 5-2-18.2-6 only provides injunctive relief for violations of "sections 3 or 4 of [Chapter 18.2]," prohibiting/restricting/limiting the § 7 duty to cooperate violates § 3 or § 4, or both, so § 7 is enforced through injunctions under §§ 3 and 4. And IC 5-2-18.2-5 authorizes this Court to "compel the governmental body . . . to comply with [Chapter 18.2]," which includes § 7.

81. Ordinance § 3 prohibits/restricts LEO requests about citizenship/immigration status that *Arizona* held permissible and prohibits/restricts/limits investigations and cooperation in investigations regarding "citizenship or immigration status" (broadly defined in Ordinance § 2):

> 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.

82. In Ordinance § 3, Defendants enacted (and implement and enforce) an ordinance prohibiting/restricting information-activity in violation of IC 5-2-18.2-3, limiting/restricting enforcement-activity in violation of IC 5-2-18.2-4, and prohibiting/restricting/limiting cooperation-activity in violation of IC 5-2-18.2-7.

83. Ordinance § 3 is not saved by Ordinance § 10, *see supra* ¶ 64, which purports to comply with 8 U.S.C. 1373 and 1644 (by using § 1373's language) but employs an improper, narrow definition of the citizenship/immigration information-cooperation that may not be prohibited/restricted.

84. Rather than preserving open lines of communication and cooperation between local, state, and federal officials regarding all matters broadly related to citizenship and immigration status as required by IC 5-2-18.2-3, -4, and -7, Ordinance § 3 violates state law by doing the opposite.

85. Ordinance § 3 restricts a City agent or agency from "investigat[ing] or assist[ing] 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."

86. Ordinance § 3 allows "the Corporation Counsel [to] investigate and inquire about citizenship or immigration status" only "when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party."

87. Regarding IC 5-2-18.2-3 particularly, that section clearly states that a local government cannot enact or implement an ordinance that, regarding the citizenship/immigration status of an individual, prohibits or restrict its agencies or agents from:

(1) communicating or cooperating with federal officials;
(2) sending information to or receiving it from the United States Department of Homeland Security;
(3) maintaining information; or
(4) exchanging information with another federal, state, or local government entity.

88. Since the actions listed in (1) through (4) in the preceding paragraph typically would be taken by a local official investigating immigration status, the express language of Ordinance § 3, by placing restrictions—a court order or "relevant" potential or actual litigation or administrative proceeding—on when local City LEOs may investigate, assist in the investigation of, or otherwise inquire into the citizenship or immigration status of an individual, restricts local officials from taking these actions.

89. Accordingly, Ordinance § 3 violates IC 5-2-18.2-3's ban on prohibiting/restricting communication/cooperation with federal officials, sending information to or receiving it from DHS, and exchanging information with another federal, state, or local government entity.

90. Regarding IC 5-2-18.2-4 particularly, Ordinance § 3 also violates IC 5-2-18.2-4's ban on "limit[ing] or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law."

91. Federal law permits full cooperation by state/local officials, at the request of the federal government, in enforcing federal immigration law. For example, under 8 U.S.C. 1357(g)(10)(B), no formal agreement with the federal government is needed for state and local officers or employees to "cooperate with [federal immigration authorities] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." Also, 8 U.S.C. 1373 and 1644 obviously permit full communication between federal and state and local officials regarding immigration status information.

92. Ordinance § 3 requires a court order for a City of East Chicago agent or agency to "request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person." Federal law permits such actions without a court order.

93. Ordinance § 3 allows "the Corporation Counsel [to] investigate and inquire about citizen-

ship or immigration status" only "when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party." Federal law permits such investigations and inquiries by officers of a locality when they are not so relevant.

94. IC 5-2-18.2-5 provides this Court authority "to compel a governmental body . . . to comply with [Chapter 18.2]," and this Court should find Ordinance § 3 noncompliant and compel compliance.

95. 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."

96. By enacting, implementing, and enforcing Ordinance § 3, Defendants acted knowingly and intentionally in violating the contrary provisions of IC 5-2-18.2-3, -4, and -7.

97. This Court should find that Defendants knowingly and intentionally violated Indiana's Chapter 18.2 by enacting Ordinance § 3 and enjoin that provision and its implementation.

Count II
Ordinance § 6 Violates Chapter 18.2.

98. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

99. As established in Count I, Chapter 18.2 preempts the immigration-law field by banning prohibiting/restricting/limiting information, enforcement, and cooperation as described. *See* IC 5-2-18.2-3, -4, and -7.

100. Ordinance § 6, *see supra* ¶ 62 (text), violates IC 5-2-18.2-3, -4, and -7.

101. The phrase "immigration enforcement operations" in § 6, is a term of art in the Ordinance, § 2 (definition), that includes "identification" (information sharing) and "apprehension":

> "[*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.

So the enforcement cooperation that the Ordinance prohibits/restricts/limits is targeted precisely at immigration-enforcement cooperation (including sharing of useful information) that Chapter 18.2 says governmental bodies may not so prohibit/restrict/limit.

102. Ordinance § 6's first sentence (including (1) through (3)) violates IC 5-2-18.2-4 and -7 by banning cooperation with ICE detainer requests and administrative warrants though § 4 bans limiting/restricting such cooperation and § 7 mandates such cooperation.[36]

103. Ordinance § 6's first sentence, including part (3), violates IC 5-2-18.2-4 because it prohibits LEOs from asking about citizenship or immigration status during a stop justified under state law, e.g., for speeding, even though the Supreme Court permitted questions about citizenship or immigration status during such stops in *Arizona*, 567 U.S. at 411-15.

104. Ordinance § 6(a), banning enforcement assistance while acknowledging that enforcement assistance includes "provid[ing] information," violates IC 5-2-18.2-3, which forbids governmental bodies from prohibiting/restricting governmental bodies (including LEOs) from communicating/cooperating with federal officials, sending information to or receiving it from the U.S. Department of Homeland Security, or exchanging information with another federal, state, or local governmental entity regarding citizenship or immigration status.

105. While Ordinance § 10 purports to comply with 8 U.S.C. 1373 and 1644, by allowing the sharing of too-narrowly defined citizenship and immigration information, it does not fix the violations of state and federal law here because it employs an improperly narrow definition of the

[36] Under federal detainer protocol, all that federal authorities require to hold an individual for ICE is a valid ICE detainer Form I-247A and administrative warrant Form I-200 or I-205. U.S. Immigration and Customs Enforcement, Detainer Policy, https://www.ice.gov/ detainer-policy.

citizenship/immigration information that must be shared—which squares with neither the broad, all-matters-regarding citizenship/immigration definition at Ordinance § 2 (and used at § 3), nor IC 5-2-18.2-3, nor the proper broad, all-matters-regarding understanding of what is required by 8 U.S.C. 1373 and 1644, which federal laws Chapter 18.2 implements in Indiana.

106. Ordinance 6(a) violates IC 5-2-18.2-4, which encompasses provision of information helpful to enforcement and bans limiting/restricting enforcement permitted under federal law. *See supra* ¶¶ 46-48.

107. Ordinance § 6(a) violates IC 5-2-18.2-3, -4, -7 by mandating that any requests to support or assist in an immigration enforcement operation be automatically reported to an agent's supervisor who is required to decline the request.

108. Ordinance § 6(b), which prohibits "enter[ing] 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," violates IC 5-2-18.2-3 and -4, which ban such prohibiting/restricting/limiting regarding information-cooperation and enforcement-cooperation.

109. Ordinance § 6(c), prohibiting multiple forms of cooperation with ICE absent a valid "criminal warrant," violates IC 5-2-18.2-3, -4, and-7, by prohibiting/restricting/limiting information-cooperation and enforcement-cooperation that §§ 3 and 4 say may not be prohibited/restricted/limited and by barring LEOs from fulfilling their duty to cooperate under § 7.

110. IC 5-2-18.2-5 provides this Court authority "to compel a governmental body . . . to comply with [Chapter 18.2]," and this Court should find Ordinance § 6 noncompliant and compel compliance.

111. 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."

112. By enacting, implementing, and enforcing Ordinance § 6, Defendants acted knowingly and intentionally in violating the contrary provisions of IC 5-2-18.2-3, -4, and -7.

113. This Court should find that Defendants knowingly and intentionally violated Indiana's Chapter 18.2 by enacting Ordinance § 6 and enjoin that provision and its implementation.

Count III
Ordinance § 9(c) Violates Chapter 18.2.

114. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

115. As established in Count I, Chapter 18.2 preempts the immigration-law field by banning prohibiting/restricting/limiting information, enforcement, and cooperation as described. *See* IC 5-2-18.2-3, -4, and -7.

116. Ordinance § 9(c), *see supra* ¶ 63 (text), violates IC 5-2-18.2-3, -4, and -7.

117. While Ordinance § 9 is titled "Commitments," section 9(c) uses mandatory language, "will," and so directly requires (and states a policy requiring) that LEOs take into account—for those subject to "risk of deportation"—the negative immigration-enforcement consequences of arrest where the arrest otherwise would be proper under law, thereby stating an avoid-arrest, resist-deportation policy that City LEOs are required to follow.

118. Ordinance § 9(c), by expressly discouraging otherwise valid arrests for individuals with a "risk of deportation," violates IC 5-2-18.2-3, -4 and -7 by restricting (inter alia) "cooperating with federal officials" regarding immigration-related information, restricting "enforcement of federal immigration law" by discouraging law-enforcement activity permitted under federal law, and by restricting City LEOs in their duty of cooperation with immigration-law enforcement. The

very purpose of § 9(c) is to stymie immigration-law enforcement.

119. IC 5-2-18.2-5 provides this Court authority "to compel a governmental body . . . to comply with [Chapter 18.2]," and this Court should find Ordinance § 9(c) noncompliant and compel compliance.

120. 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."

121. By enacting, implementing, and enforcing Ordinance § 9(c), Defendants acted knowingly and intentionally in violating the contrary provisions of IC 5-2-18.2-3, -4, and -7.

122. This Court should find that Defendants knowingly and intentionally violated Indiana's Chapter 18.2 by enacting Ordinance § 9(c) and enjoin that provision and its implementation.

Count IV
Ordinance § 10 Violates Chapter 18.2.

123. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

124. As established in Count I, Chapter 18.2 preempts the immigration-law field by banning prohibiting/restricting/limiting information, enforcement, and cooperation as described. *See* IC 5-2-18.2-3, -4, and -7.

125. Ordinance § 10, *see supra* ¶ 64 (text), violates IC 5-2-18.2-3, -4, and-7.

126. Ordinance § 10 employs an improper, too-narrow definition of the citizenship/immigration information that must be shared. It complies with neither the broad, all-matters-regarding citizenship/immigration definition at Ordinance § 2 (used at § 3), nor the broad understanding of the information to be shared in Chapter 18.2, nor the proper broad, all-matters-regarding understanding of what is required by 8 U.S.C 1373 and 1644, *see supra* ¶¶ 32-35.

127. Ordinance § 10, by too-narrowly defining what information City agencies and agents may share, violates IC 5-2-18.2-3, -4, and-7, by prohibiting/restricting/limiting what §§ 3 and 4 require not to be prohibited/restricted/limited and by restricting LEOs in fulfilment of their cooperation duty.

128. IC 5-2-18.2-5 provides this Court authority "to compel a governmental body . . . to comply with [Chapter 18.2]," and this Court should find Ordinance § 10 noncompliant and compel compliance.

129. 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."

130. By enacting, implementing, and enforcing Ordinance § 10, Defendants acted knowingly and intentionally in violating the contrary provisions of IC 5-2-18.2-3, -4, and -7.

131. This Court should find that Defendants knowingly and intentionally violated Indiana's Chapter 18.2 by enacting Ordinance § 10 and enjoin that provision and its implementation.

Count V
Ordinance §§ 3, 6, 9(c), and 10 Violate the Federal Supremacy Clause.

132. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

133. Under the Supremacy Clause, the federal Constitution and federal laws are "the supreme law of the land." U.S. Const. art. VI, cl. 2.

134. State/local laws conflicting with federal law violate the Supremacy Clause. *See supra* ¶¶ 66-70.

135. Sections 3, 6, 9(c), and 10 of the Ordinance violate the federal Supremacy Clause under preemption doctrine by (a) making compliance with federal laws, e.g., 8 U.S.C. 1373 and 1644,

impossible; (b) obstructing the congressional intent of federal-state cooperation in immigration-law enforcement; and (c) impeding federal officers in the performance of their duties. Because, for example, these provisions forbid the sharing of release dates with ICE, they have the intended effect of sharply reducing City officials' cooperation with federal immigration enforcement. And because they forbid local officers to allow ICE to access City jails, where ICE can most safely and conveniently assume custody, they create the potential for direct conflict between federal and local officers.

136. Section 10 of the Ordinance is also preempted because it not only provides a definition of the phrase "information regarding an individual's citizenship or immigration status" that conflicts with the similar phrases in 8 U.S.C. 1373 and 1644 (with which § 10 purports to comply) and acts as an obstacle to, and impedes, the enforcement of federal immigration law by creating a narrower definition of the relevant "information" than §§ 1373 and 1644 provide but also because it occupies a definitional *field* that Congress has preempted. Congress used the phrase "information regarding the citizenship or immigration status, lawful or unlawful, of any individual," 8 U.S.C. 1373 and the parallel language in 8 U.S.C. 1644, so the Ordinance may not define the relevant "information" more narrowly than has Congress.

137. This Court should declare the challenged Ordinance provisions in violation of the Supremacy Clause and enjoin their implementation and enforcement.

Count VI
Ordinance § 9(c) Violates the Federal Equal Protection Clause.

138. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

139. Ordinance § 9(c), *see supra* ¶ 63 (text), violates the Equal Protection Clause, U.S. Const.

amend. XIV, which bars violating the equal protection of the laws. *See supra* ¶¶ 71-73.

140. Ordinance § 9(c) expressly sets out City policy and restricts and burdens City LEOs in their duty to apply the law equally to all within their jurisdiction. *See supra* ¶¶ 63, 117.

141. Ordinance § 9(c) violates the Equal Protection Clause by thus disparately treating the class of persons with a deportation risk and the class of persons without such deportation risk, which classes are similarly situated regarding their duty to obey the law and LEOs' duty to enforce the law equally against all. Such disparate policies and enforcement deny equal protection based on national origin.

142. This Court should declare Ordinance § 9(c) in violation of the Equal Protection Clause and enjoin its implementation and enforcement.

Count VII
Ordinance § 9(c) Violates the Due Process Clause for Vagueness.

143. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

144. Ordinance § 9(c), *see supra* ¶ 63 (text), is void for vagueness in violation of the Due Process Clause, U.S. Const. amend. XIV.

145. Section 9(c) establishes resist-deportation, avoid-arrest policies and mandates implemented by absolute, standardless discretion for LEOs to decide that "less severe alternatives" to an otherwise lawful arrest "are unavailable or would be inadequate to effect a satisfactory resolution."

146. The foregoing language violates due-process requirements to (i) provide fair "notice" of what to do to avoid arrest and (ii) not "authorize and even encourage arbitrary and discriminatory enforcement." *Morales*, 527 U.S. at 56.

147. This Court should declare Ordinance § 9(c) in violation of the Due Process Clause and enjoin its implementation and enforcement.

Prayer for Relief

Wherefore, Plaintiffs pray for the following relief regarding Defendants' enacting, implementing, and enforcing the Ordinance:

1. Regarding Count I and Ordinance § **3**:
    a. a finding that by enacting, implementing, and enforcing this provision each defendant "governmental body . . . violates [Chapter 18.2]" and an order "to compel the governmental body . . . to comply with [Chapter 18.2]," IC 5-2-18.2-5;
    b. a "find[ing] that a governmental body . . . knowingly or intentionally violated section 3 or 4 of [Chapter 18.2]," including by violating § 7, in enacting, implementing, and enforcing this provision, IC 5-2-18.2-6; and
    c. an order "enjoin[ing] the violation," IC 5-2-18.2-6.
2. Regarding Count II and Ordinance § **6**:
    a. a finding that by enacting, implementing, and enforcing this provision each defendant "governmental body . . . violates [Chapter 18.2]" and an order "to compel the governmental body . . . to comply with [Chapter 18.2]," IC 5-2-18.2-5;
    b. a "find[ing] that a governmental body . . . knowingly or intentionally violated section 3 or 4 of [Chapter 18.2]," including by violating § 7, in enacting, implementing, and enforcing this provision, IC 5-2-18.2-6; and
    c. an order "enjoin[ing] the violation," IC 5-2-18.2-6.
3. Regarding Count III and Ordinance § **9(c)**:

a. a finding that by enacting, implementing, and enforcing this provision each defendant "governmental body . . . violates [Chapter 18.2]" and an order "to compel the governmental body . . . to comply with [Chapter 18.2]," IC 5-2-18.2-5;

b. a "find[ing] that a governmental body . . . knowingly or intentionally violated section 3 or 4 of [Chapter 18.2]," including by violating § 7, in enacting, implementing, and enforcing this provision, IC 5-2-18.2-6; and

c. an order "enjoin[ing] the violation," IC 5-2-18.2-6.

4. Regarding Count IV and Ordinance § **10**:

a. a finding that by enacting, implementing, and enforcing this provision each defendant "governmental body . . . violates [Chapter 18.2]" and an order "to compel the governmental body . . . to comply with [Chapter 18.2]," IC 5-2-18.2-5;

b. a "find[ing] that a governmental body . . . knowingly or intentionally violated section 3 or 4 of [Chapter 18.2]," including by violating § 7, in enacting, implementing, and enforcing this provision, IC 5-2-18.2-6; and

c. an order "enjoin[ing] the violation," IC 5-2-18.2-6.

5. Regarding Count V and Ordinance §§ **3**, **6**, **9(c)**, and **10**:

a. a declaration that Ordinance §§ 3, 6, 9(c), and 10 violate the federal Supremacy Clause; and

b. an order enjoining the City from implementing and enforcing it.

6. Regarding Count VI and Ordinance § **9(c)**:

a. a declaration that Ordinance § 9(c) violates the Equal Protection Clause; and

b. an order enjoining the City from implementing and enforcing it.

7. Regarding Count VII and Ordinance § **9(c)**:

a. a declaration that Ordinance § 9(c) violates the Due Process Clause; and

b. an order enjoining the City from implementing and enforcing it.

8. As part of the order "compelling [Defendants] . . . to comply with [Chapter 18.2]," IC 5-2-18.2-5, and "enjoin[ing] the violation[s]," IC 5-2-18.2-6, Plaintiffs pray for the following:

a. an order enjoining the implementation and enforcement of the challenged provisions;

b. an order requiring that Defendants City Police Department and Chief of Police issue, within thirty days of this Court's order, to "each law enforcement officer" the "written notice" required by IC 5-2-18.2-7, i.e., "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 Defendant City Mayor require that this be done by said defendants, and that said defendants promptly report to the Court that this written notice has been provided;

c. an order requiring that the City prominently post, within thirty days of this Court's order, on the homepages of its website, http://www.eastchicago.com/ and social media sites (listed on homepage of its website), notices that

- the challenged provisions of the Ordinance have been found in violation of Chapter 18.2 and the U.S. Constitution, as applicable,
- City LEOs "ha[ve] a duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration," and
- a copy of this Court's opinion and order are available to the public at a hyperlink provided with the notices,

which notices shall remain posted for thirty days from the date of posting.

9. Any other relief the Court finds proper, including under any provision awarding costs and attorneys' fees to Plaintiffs, especially 42 U.S.C. 1988.[37]

Respectfully submitted,

Dale Lee Wilcox, IN #19627-10
dwilcox@irli.org
IRLI Exec. Dir. & General Counsel
IMMIGRATION REFORM LAW INSTITUTE
25 Massachusetts Ave, NW, Suite 335
Washington, DC 20001
202/232-5590 telephone
202/464-3590 facsimile

James Bopp, Jr., IN #2838-84
jboppjr@aol.com
Richard E. Coleson, IN #11527-70
rcoleson@bopplaw.com
Corrine L. Youngs, IN#32725-49
cyoungs@bopplaw.com
Courtney Turner Milbank, IN #32178-29
cmilbank@bopplaw.com
THE BOPP LAW FIRM, PC
1 South Sixth Street
Terre Haute, IN 47807-3510
812/232-2434 telephone
812/235-3685 facsimile

[37] Section 1988 provides, in relevant part, as follows: "In any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title . . . , the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs.

Appendix A

City of East Chicago Ordinance 17-0010

Sponsor: Councilwoman Christine Vasquez
Councilman Robert Garcia

ORDINANCE 17-0010
WELCOMING CITY ORDINANCE

WHEREAS, the Common Council of the City of East Chicago desires to state a policy position of the City concerning Immigrants and Public Safety.

IT IS THEREFORE ORDAINED BY THE COMMON COUNCIL OF THE CITY OF EAST CHICAGO, as follow:

Section 1. Purpose and intent.
It is the purpose and intent of the City of East Chicago to recognize the present and historic importance of immigrants to our community and to further demonstrate the City of East Chicago's commitment to ensure public safety for all city residents and specifically enable immigrants to report crimes.

Additionally, it is the intent of the City of East Chicago to support immigration enforcement as a federal matter. The City of East Chicago is committed to upholding the Constitution, including the 4th Amendment requirements of probable cause for arrest and detention and the 10th amendment bar on commandeering of local governments to perform federal functions.

Section 2. Definitions.
The following terms wherever used in this chapter shall have the following meanings unless a different meaning appears from the context:

> "Administrative warrant" means an immigration warrant of arrest, order to detain or release aliens, notice of custody determination, notice to appear, removal order, warrant of removal, or any other document issued by ICE that can form the basis for an individual's arrest or detention for a civil immigration enforcement purpose. This definition does not include any criminal warrants issued upon a judicial determination of probable cause and in compliance with the requirements of the Fourth Amendment to the U.S. Constitution and the Indiana Constitution.
>
> "Agency" means every municipal department, agency, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.
>
> "Agent" means any person employed by or acting on behalf of an agency.
>
> "Certification" means any law enforcement certification or statement required by federal immigration law including, but not limited to, the information required by Section 1184(p) of Title 8 of the United States Code (including current United States Citizenship and Immigration Service Form I-918, Supplement B, or any successor forms) for purposes of obtaining a U visa, or by Section 1184(o) of Title 8 of the United States Code (including current United States Citizenship and Immigration Service Form I-914, Supplement B, or any successor forms) for purposes of obtaining a T visa.

"Certifying agency" means a municipal law enforcement agency or other authority that has responsibility for the investigation or prosecution of criminal activity. "Certifying agency" includes any agency that has criminal investigative jurisdiction in its respective areas of expertise.

"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.

"Coerce" means to use express or implied threats towards a person or any family member of a person that attempts to put that person in immediate fear of the consequences in order to compel that person to act against his or her will.

"Contact information" means home address, work address, telephone number, electronic mail address, social media contact information, or any other means of contacting an individual.

"Eligible for release from custody" means that the person may be released from custody because one of the following conditions has occurred:

1) All criminal charges against the person have been dropped or dismissed.
2) The person has been acquitted of all criminal charges filed against him or her.
3) The person has served all the time required for his or her sentence.
4) The person has posted a bond.
5) The person is otherwise eligible for release under state or local law, or local policy.

"Family member" means a person's (i) mother, father, spouse, brother or sister (including blood, step or half), son or daughter (including blood, step or half), father-in-law, mother-in-law, daughter-in-law, son-in- law, brother-in-law, sister-in-law, grandparent or grandchild; or (ii) court appointed legal guardian or a person for whom the person is a court appointed legal guardian; or (iii) domestic partner or the domestic partner's mother, father, brother, sister (including blood, step, or half), son or daughter (including blood, step or half).

"ICE" means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of civil immigration laws.

"Immigration detainer" means a request by ICE to a federal, state, or local law enforcement agency that requests that the law enforcement agency provide notice of release or maintain custody of an individual based on an alleged violation of a civil immigration law, including detainers issued pursuant to Sections 1226 or 1357 of Title 8 of the United States Code or 287.7 or 236.1 of Title 8 of the Code of Federal Regulations.

"Immigration 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 person 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.

"Qualifying criminal activity" means any activity involving one or more of the following or any similar activity in violation of Federal, State or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder, felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in Section 1351 of Title 18 of the United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. This list of qualifying criminal activity is not a list of specific statutory violations, but instead a list of general categories of criminal activity. Activity not listed in the first sentence of this definition shall be presumed to be qualifying criminal activity when there is an articulable similarity to any qualifying criminal activity listed herein. Qualifying criminal activity that occurs during the commission of non-qualifying criminal activity shall be considered qualifying criminal activity regardless of whether criminal prosecution was sought for the qualifying criminal activity.

"Verbal abuse" means the use of a remark which is overtly insulting, mocking or belittling directed at a person based upon the actual or perceived: (1) race, color, sex, religion, nation origin, English proficiency, sexual orientation, or gender identity of that person, or (2) citizenship or immigration status of that person or that person's family member.

"Victim of qualifying criminal activity" means any individual who has reported qualifying criminal activity to a law enforcement agency or certifying agency, or has otherwise participated in the detection, investigation, or prosecution of qualifying criminal activity, who has suffered direct or proximate harm as a result of the commission of any qualifying criminal activity and may include, but is not limited to, an indirect victim, regardless of the direct victim's immigration or citizenship status, including the spouse, children under 21 years of age, and, if the direct victim is under 21 years of age, deceased, incompetent or incapacitated, parents and unmarried siblings under 18 years of age of the direct victim. A bystander victim may also be considered as a "victim of qualifying criminal activity". More than one victim may be identified and provided with certification depending upon the circumstances. A "victim of qualifying criminal activity" may also include a victim of a severe form of trafficking in persons as defined in Section 7102 of Title 22 of the United States Code. For purposes of this definition, the term "incapacitated" means unable to interact with law enforcement agency or certifying agency personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disappearance.

Section 3. 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 4. Conditioning benefits, services, or opportunities on immigrant status prohibited.

a. No agent or agency shall withhold any municipal benefits, services, or opportunities on matters related to citizenship or immigration status unless required to do so by state or federal law, or court order.
b. Where presentation of any driver's license, including an international driver's license, or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or consular identification document , shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if that person had provided a Indiana driver's license or identification card except that this subsection (b) shall not apply to the completion of the federally mandated I-9 forms.
c. In order to ensure that eligible persons are not deterred from seeking municipal benefits, services, or opportunities, all agencies shall review their confidentiality policies and identify any changes necessary to ensure that all information collected from individuals is limited to that necessary to perform agency duties and is not used or disclosed for any other purpose. Any necessary changes to those policies shall be made as expeditiously, as possible, consistent with agency procedures.
d. All applications, questionnaires, and interview forms used in relation to municipal benefits, opportunities, or services shall be promptly reviewed by the pertinent agencies and any questions regarding citizenship or immigration status, other than those required by statute, ordinance, federal law or court order, shall be deleted within 60 days of the passage of this ordinance.

Section 5. Threats based on citizenship or immigration status prohibited.

No agent or agency shall do any of the following:

a. coerce any person based upon the person's actual or perceived citizenship or immigration status or the actual or perceived citizenship or immigration status of the person's family member; or
b. communicate a threat to deport that person or any family member of that person under circumstances that reasonably tend to produce a fear that the threat will be carried out; or
c. otherwise subject a person to verbal abuse as defined by this chapter.

Section 6. 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:

1) an immigration detainer;
2) an administrative warrant (including but not limited to entered into the Federal Bureau of Investigation's National Crime Information Center database); or
3) 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.

a. No agency or agent shall be permitted to accept request 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), 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.

b. 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 government entities to enforce federal civil immigration laws.
c. 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 7. Certifications for victims of certain criminal activity.

a) A certifying agency shall execute any certification requested by any victim of qualifying criminal activity or representative of the victim including, but not limited to, the victim's attorney, accredited representative, or domestic violence service provider, within 90 days of receiving the request. If the victim seeking certification is in the federal immigration removal proceedings, the certifying agency shall execute the certification no later than 14 days after the request in received by the agency. If the victim or the victim's children would lose any benefits under Sections 1184(p) and 1184(o) of Title 8 of the United States Code by virtue of having reached the age of 21 years within 90 days after the certifying agency receives the certification request, the certifying agency shall execute the certification no later than 14 days before the date on which the victim or child would reach the age of 21 years. Requests for expedited certification must be affirmatively raised by the victim.
b) If a certifying agency fails to certify within the time limit prescribed in subsection (a) of this Section, or a victim of qualifying criminal activity disputes the content of a certification, then the victim of qualifying criminal activity may bring an action in circuit court to seek certification or amend the certification. The court shall award court costs and reasonable attorneys' fees to any person who brings a proceeding brought pursuant to this subsection who prevails.
c) The head of each certifying agency shall perform, or designate an agent, who performs a supervisory role within the agency, to perform the following responsibilities:
    1) responds to requests for certifications;
    2) provide outreach to victims of qualifying criminal activity to inform them of the agency's certification process; and
    3) keep written records of all certification requests and responses.

d) All certifying agencies shall implement a language access protocol for non-English speaking victims of qualifying criminal activity.
e) A certifying agency shall reissue any certification within 90 days of receiving a request from the victim of qualifying criminal activity or representative of the victim including, but not limited to, the victim's attorney, accredited representative, or domestic violence service provider.
f) Notwithstanding any other provision of this section, a certifying agency's completion of a certification shall not be considered conclusory evidence that the victim has met eligibility requirements for a U of T visa and completion of a certification by a certifying agency shall not be construed to guarantee that a victim will receive federal immigration relief. It is the exclusive responsibility of federal immigration officials to determine whether a victim of qualifying criminal activity is eligible for a U or T visa. Completion of a certification by a certifying agency merely verifies factual information relevant to the immigration benefit sought including information relevant for federal immigration officials to determine eligibility for a U or T visa. By completing a certification, the certifying agency attests that the information is true and correct to the best of the certifying official's knowledge. If after completion of a certification, the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, then the certifying agency may notify the United States Citizenship and Immigration Service in writing.

Section 8. Federal registry programs
No agency or agent shall expend any time, facilities, equipment, information, or other resources of the agency or agent to facilitate the creation, publication, or maintenance of any federal program to register individuals present in the United States based on their race, color, ancestry, national origin, or religion, or the participation of any residents of the municipality in such a registry.

Section 9. Commitments.
a) The City commits to working with community advocates, policy experts, and legal advocates to defend the human rights of immigrants.
b) The East Chicago 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 East Chicago 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 East Chicago Police Department will make available and provide material at all East Chicago Police Stations concerning this ordinance and information concerning rights of all immigrants.

Section 10. 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.

Section 11. Severability.
If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this chapter should have been adopted had such invalid provision, clause, section, part, or application not been included here.

Section 12. Effect upon passage.
This ordinance shall take full force and effect upon its passage and approval.

PASSED and ADOPTED by the Common Council of the City of East Chicago, Lake County, Indiana, on this the 26 day of June, 2017.

LENNY FRANCISKI, PRESIDENT
EAST CHICAGO COMMON COUNCIL

ATTEST:

ADRIAN A. SANTOS
CITY CLERK

PRESENTED by me to the Mayor for his approval and signature on this 27 day of June, 2017.

ADRIAN A. SANTOS
CITY CLERK

APPROVED and SIGNED by me on this 27th day of June, 2017.

ANTHONY COPELAND, MAYOR
CITY OF EAST CHICAGO

RECEIVED
JUN 06 2017
City Clerk's Office

Attest:

ADRIAN A. SANTOS, CITY CLERK

Appendix B

Relevant Indiana, Federal & Local Laws

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.[38]

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 politi-

[38] "**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.

cal 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 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.

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.

East Chicago Ordinance 17-0010

Section 2. 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.

"*Immigration 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 3. 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 6. 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:

1) an immigration detainer;
2) an administrative warrant (including but not limited to [sic] entered into the Federal Bureau of Investigation's National Crime Information Center database); or
3) 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.

a. 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 en-

forcement 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.

b. 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.
c. 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 9. Commitments.

a) The City commits to working with community advocates, policy experts, and legal advocates to defend the human rights of immigrants.
b) The East Chicago 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 East Chicago 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 East Chicago Police Department will make available and provide material at all East Chicago Police Stations concerning this ordinance and information concerning rights of all immigrants.

Section 10. 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.