IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50762

CITY OF EL CENIZO, TEXAS; RAUL L. REYES, Mayor, City of El Cenizo; TOM SCHMERBER, County Sheriff; MARIO A. HERNANDEZ, Maverick County Constable Pct. 3-1; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; MAVERICK COUNTY; CITY OF EL PASO, *Plaintiffs-Appellees Cross-Appellants*,

CITY OF AUSTIN, JUDGE SARAH ECKHARDT, in her Official Capacity as Travis County Judge; SHERIFF SALLY HERNANDEZ, in her Official Capacity as Travis County Sheriff; TRAVIS COUNTY; CITY OF DALLAS, TEXAS; TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS, CITY OF HOUSTON, *Intervenors-Plaintiffs-Appellees Cross-Appellants*,

v.

STATE OF TEXAS; GREG ABBOTT, Governor of the State of Texas, in his Official Capacity; KEN PAXTON, TEXAS ATTORNEY GENERAL, *Defendants-Appellants Cross-Appellees*.

EL PASO COUNTY; RICHARD WILES, Sheriff of El Paso County, in his Official Capacity; TEXAS ORGANIZING PROJECT EDUCATION FUND, MOVE SAN ANTONIO, *Plaintiffs-Appellees Cross-Appellants*,

v.

STATE OF TEXAS; GREG ABBOTT, Governor; KEN PAXTON, Attorney General; STEVE MCCRAW, Director of the Texas Department of Public Safety, *DEFENDANTS-Defendants-Appellants Cross-Appellees*.

CITY OF SAN ANTONIO; BEXAR COUNTY, TEXAS; REY A. SALDANA, in his Official Capacity as San Antonio City Councilmember; TEXAS ASSOCIATION OF CHICANOS IN HIGH EDUCATION; LA UNION DEL PUEBLO ENTERO, INCORPORATED; WORKERS DEFENSE PROJECT,
Plaintiffs-Appellees Cross-Appellants,

CITY OF AUSTIN,
Intervenor Plaintiff-Appellee Cross-Appellant,

V.

STATE OF TEXAS; KEN PAXTON, sued in his Official Capacity as Attorney General of Texas; AND GREG ABBOTT, sued in his Official Capacity as Governor of the State of Texas,
Defendants-Appellants Cross Appellees.

On Appeal from the United States District Court for the Western District of Texas

---

AMICUS CURIAE BRIEF OF THE IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF DEFENDANTS-APPELLANTS CROSS-APPELLEES

Michael M. Hethmon
Christopher J. Hajec
Immigration Reform Law Institute
25 Massachusetts Ave, NW
Suite 335
Washington, DC 20001
Phone: 202-232-5590
Fax: 202-464-3590
Email: litigation@irli.org

CERTIFICATE OF INTERESTED PARTIES

In addition to those persons listed in Defendants-Appellants' Statement of Interested Persons, the following persons have an interest in this *amicus curiae* brief:

1) The Immigration Reform Law Institute, *amicus curiae*; and

2) Attorneys for *amicus curiae*: Michael M. Hethmon and Christopher J. Hajec (Immigration Reform Law Institute).

Dated: October 5, 2017

/s/ MICHAEL M. HETHMON
Michael M. Hethmon
Counsel for *Amicus Curiae*

CORPORATE DISCLOSURE STATEMENT

The Immigration Reform Law Institute is a 501(c)(3) nonprofit corporation. It does not have a parent corporation and does not issue stock.

TABLE OF CONTENTS

SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES i

CORPORATE DISCLOSURE STATEMENT..ii

TABLE OF AUTHORITIES iv

INTEREST OF *AMICUS CURIAE* 1

ARGUMENT...2

A. Under The Special Needs Doctrine, Federal Authorities Can Constitutionally Arrest And Detain Individuals Suspected Of Being In The United States Illegally 3

B. States Do Not Violate The Fourth Amendment By Assisting The Federal Government In Detaining Individuals Thought To Be In The United States Illegally 8

1. Under 8 U.S.C. § 1357(g)(10)(B), state and local jurisdictions may cooperate with ICE officials in detaining aliens 9

2. State and local officials are entitled to rely on probable cause determinations made by the federal government in detainer requests 11

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

Arizona v. United States, 567 U.S. 387 (2012) 3, 7, 10-12

Au Yi Lau v INS, 445 F.2d 217 (D.C. Cir. 1971) 8

Blackie's House of Beef, Inc. v. Castillo, 659 F.2d 1211 (D.C. Cir. 1981) 4

Brown v. Texas, 443 U.S. 47 (1979) 5

Comm. for Immigrant Rights v. Cty. of Sonoma, 644 F. Supp. 2d 1177
(N.D. Cal. 2009) 3

Demore v. Kim, 538 U.S. 510 (2003) 6-7

Harisiades v. Shaughnessy, 342 U.S 580 (1952) 7

Illinois v. Lidster, 540 U.S. 419 (2004) 5

In re Q- T- -- M- T-, 21 I. & N. Dec. 639 (B.I.A. 1996) 1

John Doe No. 1 v. Ga. Dep't of Pub. Safety, 147 F. Supp. 2d 1369
(N.D. Ga. 2001) 6

Keller v. City of Fremont, 719 F.3d 931 (8th Cir. 2013) 1

League of United Latin Am. Citizens v. Bredesen, No. 3:04-0613, 2004
U.S. Dist. LEXIS 26507 (M.D. Tenn. Sept. 28, 2004) 6

Matter of C-T-L-, 25 I. & N. Dec. 341 (B.I.A. 2010) 1

Matter of Silva-Trevino, 26 I. & N. Dec. 826 (B.I.A. 2016) 1

Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990) 5

New York v. Burger, 482 U.S. 691 (1987) 5

New Jersey v. T.L.O., 469 U.S. 325 (1985) 4

Ohio v. Robinette, 519 U.S. 33 (1996) 4

People v. Xirum, 993 N.Y.S.2d 627 (N.Y. Sup. Ct. 2014) 14

Santos v. Frederick Cty. Bd. of Comm'rs, 725 F.3d 451 (4th Cir. 2013) 10

Save Jobs USA v. U.S. Dep't of Homeland Sec., No. 16-5287 (D.C. Cir. filed Sept. 28, 2016) 1

Skinner v. Ry. Labor Execs' Ass'n, 489 U.S. 602 (1989) 5

State v. Somfleth, 492 P.2d 808 (Or. Ct. App. 1972) 13

Terry v. Ohio, 392 U.S. 1 (1968) 4

Texas v. United States, 787 F.3d 733 (5th Cir. 2015) 1

United States v. Hensley, 469 U.S. 221 (1985) 12

United States v. Martinez-Fuerte, 428 U.S. 543 (1976) 5

United States v. Ortiz, 781 F.3d 221 (5th Cir. 2015) 12-13

United States v. Ovando-Garzo, 752 F.3d 1161 (8th Cir. 2014) 10

United States v. Quintana, 623 F.3d 1237 (8th Cir. 2010) 10

Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995) 4-5

Virginia v. Moore, 553 U.S. 164 (2008) 2

Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec., 74 F. Supp. 3d 247 (D.D.C. 2014) 1

Constitutional Provisions

U.S. Const., art. VI, cl. 2 11-12

U.S. Const. amend. 4 .... *passim*

Statutes

6 U.S.C. § 202 .... 3 n.1

6 U.S.C. § 291 .... 3 n.1

6 U.S.C. § 557 .... 3 n.1

8 U.S.C. § 1103(a) 3

8 U.S.C. § 1226(a) 3

8 U.S.C. § 1231 3

8 U.S.C. § 1357 3

8 U.S.C. § 1324(a)(1)(A)(ii) 6

8 U.S.C. § 1357(g) 9-11

10 U.S.C. § 808 13

Interstate Agreement on Detainers Act., Pub. L. 91-538, 84 Stat. 1397 (1970); Tex. Code Crim. Proc. Art. 51.14 12

Tex. Gov't Code § 752.053(a)(3) 2

Tex. Code Crim. Proc. art. 2.251 2

Other Authorities

H.R. Rep. No. 104-725 (1996) (Conf. Rep.) 6

Matthew O'Brien, Spencer Raley & Jack Martin, *The Fiscal Burden of Illegal Immigration on United States Taxpayers (2017)* 3, Fed'n for Am. Immigration Reform (2017), https://fairus.org/sites/default/files/2017-09/Fiscal-Burden-of-Illegal-Immigration-2017.pdf 8

INTEREST OF *AMICUS CURIAE*

The Immigration Reform Law Institute (IRLI) is a non-profit 501(c)(3) public interest law firm dedicated to litigating immigration-related cases on behalf of, and in the interests of, United States citizens and legal permanent residents, and also to assisting courts in understanding and accurately applying federal immigration law. IRLI has litigated or filed *amicus curiae* briefs in a wide variety of cases, including *Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec.*, 74 F. Supp. 3d 247 (D.D.C. 2014); *Save Jobs USA v. U.S. Dep't of Homeland Sec.*, No. 16-5287 (D.C. Cir. filed Sept. 28, 2016); *Keller v. City of Fremont*, 719 F.3d 931 (8th Cir. 2013); and *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015). IRLI is considered an expert in immigration law by the Board of Immigration Appeals, which has solicited *amicus* briefs, drafted by IRLI staff, from the Federation for American Immigration Reform, of which IRLI is a supporting organization, for more than twenty years. *See*, *e.g.*, *Matter of Silva-Trevino*, 26 I. & N. Dec. 826 (B.I.A. 2016); *Matter of C-T-L-*, 25 I. & N. Dec. 341 (B.I.A. 2010); and *In re Q- T- -- M- T-*, 21 I. & N. Dec. 639 (B.I.A. 1996).

All parties have consented to the filing of this *amicus curiae* brief. No party or party's counsel authored any part of this brief. No person or entity, other than *amicus,* its members, or its counsel, has made a monetary contribution to its preparation or submission.

ARGUMENT

The argument of the court below that SB 4's detainer mandate, Tex. Gov't Code § 752.053(a)(3); Tex. Code Crim. Proc. art. 2.251, probably violates the Fourth Amendment appears to rest on that court's holding that state officials, when they detain someone, comply with the Fourth Amendment only when they meet the Fourth Amendment's familiar requirements for making a criminal arrest. ROA.4191, .4195-.4196. The court below tried to support this holding by asserting that no Texas law gave state officials the power to detain individuals for civil immigration violations. ROA.4195. As appellants point out, however, SB 4 itself is such a law. Appellant's Opening Brief at 12. As appellants also point out, whether an arrest by a police officer is outside of his authority under state law is irrelevant to whether that arrest is valid under the Fourth Amendment. *Id.* at 16 (citing *Virginia v. Moore,* 553 U.S. 164, 172 (2008)).

Contrary to the conclusion of the court below, compliance with detainers is lawful under the Fourth Amendment because 1) the federal government may constitutionally enforce the nation's immigration laws by detaining removable aliens, and 2) it is reasonable for local officials both to assist the federal government in this endeavor and to rely on the federal government's determination, stated in a detainer, that there is probable cause to believe that an individual is a removable alien.

A. Under The Special Needs Doctrine, Federal Authorities Can Constitutionally Arrest And Detain Individuals Suspected Of Being In The United States Illegally.

The federal government has plenary power over immigration derived from its powers over naturalization and foreign affairs, and also from the inherent rights of the United States as a sovereign nation. *Arizona v. United States*, 567 U.S. 387, 394-96 (2012). Congress created a comprehensive immigration statutory scheme in the Immigration and Nationality Act (INA), which charges the Secretary of Homeland Security with the "administration and enforcement" of immigration laws and the promulgation of regulations as necessary. 8 U.S.C. § 1103(a)(1), (a)(3). This scheme grants DHS authority to arrest and detain certain aliens, both with and without warrants. 8 U.S.C. §§ 1226(a),[1] 1231, 1357; *see also Comm. for Immigrant Rights v. Cty. of Sonoma*, 644 F. Supp. 2d 1177, 197-99 (N.D. Cal. 2009) (recognizing the authority of the agency to use detainers outside of the controlled substance violations context).

The Fourth Amendment provides that "[t]he right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the . . . the persons or things to be seized." U.S. Const.

[1] The responsibilities of the Attorney General were transferred to the Department of Homeland Security. 6 U.S.C. §§ 202, 291, 557.

amend. 4. Thus, "the touchstone of the Fourth Amendment is reasonableness . . . . Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances." *Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (internal quotation and citation omitted).

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

Yet outside of the criminal-arrest context, the Fourth Amendment's requirement of reasonableness is applied differently. *See, e.g.*, *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211 (D.C. Cir. 1981) (holding that a civil, executive warrant to search a commercial business for immigration purposes met Fourth Amendment standards). Specifically, the Supreme Court developed the special needs doctrine for areas where applying requirements suitable in the criminal-arrest context would be unreasonable. *See, e.g.*, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (applying the special needs doctrine to the search of a high school student on school grounds). Under the special needs doctrine, a search or seizure can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."

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

Consideration of these factors shows unmistakably that federal seizures of illegal aliens comport with the Fourth Amendment. To take the third factor—the severity of the interference with individual liberty—first, it is true that, when an individual is held pursuant to a detainer, his individual liberty is severely interfered with. But an illegal alien's right to individual liberty within the borders of this country is severely circumscribed to begin with. Such an alien has no right to be in

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

510, 521-22, 531 (2003) (holding that the detention of a deportable lawful permanent resident prior to removal did not violate due process), *and cases cited therein.*

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

More generally, a sovereign nation has the power to regulate foreign policy, *Arizona*, 567 U.S. at 395, and that power includes the sovereign's power to protect itself by identifying those who are within its borders unlawfully and removing them. *Harisiades v. Shaughnessy*, 342 U.S 580, 587-88 (1952) ("[Expulsion] is a weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state.") It obviously is of grave public concern that this nation retain its full sovereign right to control its borders, and that right is meaningless without the constitutional power to exercise it. Currently, there are an estimated

12.5 million illegal aliens in the United States. Matthew O'Brien, Spencer Raley & Jack Martin, *The Fiscal Burden of Illegal Immigration on United States Taxpayers (2017)* 3, Fed'n for Am. Immigration Reform (2017), https://fairus.org/sites/default/files/2017-09/Fiscal-Burden-of-Illegal-Immigration-2017.pdf. If more stringent requirements than those in current law were imposed on their detention by federal agents—such as a requirement for a judicial warrant—the ability of this country to enforce its immigration laws, as a practical matter, would be at an end.

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

B. States Do Not Violate The Fourth Amendment By Assisting The Federal Government In Detaining Individuals Thought To Be In The United States Illegally.

Federal law provides for voluntary cooperation by state and local authorities with the federal government in the detention of aliens. It also provides for such cooperation in federal criminal law enforcement. The standard for whether either kind of cooperation is reasonable under the Fourth Amendment is whether the state or local authorities have reasonably relied on the probable cause determination of

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

1. Under 8 U.S.C. § 1357(g)(10)(B), state and local jurisdictions may cooperate with ICE officials in detaining aliens.

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

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

Whether an action by state or local officials constitutes enforcement or

cooperation turns on whether the conduct is undertaken unilaterally or at the request of ICE. Unilateral action by state or local officials in the area of immigration, to be done correctly, requires specialized training. *Arizona*, 567 U.S. at 409 ("There are significant complexities involved in enforcing federal immigration law, including the determination of whether a person is removable. As a result, agreements reached with the Attorney General must contain written certification that officers have received adequate training to carry out the duties of an immigration officer."). Thus, actions performed without "express direction or authorization by federal statute or federal officials" do not constitute cooperation, but rather enforcement requiring a Memorandum of Understanding. *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 465 (4th Cir. 2013) (determining that the unilateral seizure of an alien prior to ICE's direction was unconstitutional); *United States v. Ovando-Garzo*, 752 F.3d 1161, 1164-65 (8th Cir. 2014) (holding that the acts of identifying an illegal alien, communicating with immigration officials, and detaining the illegal alien until immigration officials could take custody were not unilateral in nature and did not require a written agreement); *United States v. Quintana*, 623 F.3d 1237, 1242 (8th Cir. 2010) (holding that a state officer could, under § 1357(g)(10)(B) detain an alien at the request of ICE and maintain custody until ICE could take the alien the following day). By this test, if an action is performed at the express direction of or with express

authorization by ICE, it constitutes cooperation rather than enforcement.

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

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

2. State and local officials are entitled to rely on probable cause determinations made by the federal government in detainer requests.

The cooperation of state or local authorities with the federal government in honoring detainers generally comports with the Fourth Amendment for at least two reasons. To begin with, any finding that the laws authorizing such cooperative assistance are unconstitutional would conflict with the Supreme Court's holding in *Arizona* that these very laws preempted, under the Constitution's Supremacy Clause, Arizona's law conferring power on its state officers to enforce immigration

laws unilaterally. *See Arizona*, 567 U.S. at 410. If unconstitutional, these federal laws would lack the preemptive force the Supreme Court ascribed to them, since only those laws "made in Pursuance" of the Constitution are "the supreme Law of the Land." U.S. Const. art. VI, cl. 2.

Secondly, where, as here, federal law authorizes state cooperation in federal law enforcement, such cooperation is not contrary to the Fourth Amendment if state officials reasonably rely on information provided by the federal government. For example, under the Interstate Agreement on Detainers Act, states may take custody, at the request of the federal government, of persons the federal government believes have violated federal criminal law. *See* Interstate Agreement on Detainers Act., Pub. L. 91-538, 84 Stat. 1397 (1970); Tex. Code Crim. Proc. Art. 51.14.

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

some degree of communication between the arresting officer and an officer who has knowledge of all the necessary facts").

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

The same holds for compliance with detainer requests. Federal officials have special expertise, which state and local officials lack, in determining whether

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

CONCLUSION

For the foregoing reasons, this Court should reverse the grant of a preliminary injunction by the court below.

DATE: October 5, 2017

Respectfully Submitted,
Amicus Curiae,
By its Attorneys,

/S/ MICHAEL M. HETHMON

Michael M. Hethmon
Christopher J. Hajec
Immigration Reform Law Institute
25 Massachusetts Ave, NW, Suite 335
Washington, DC 20001
Phone: 202-232-5590
Fax: 202-464-3590
Email: litigation@irli.org

CERTIFICATE OF COMPLIANCE

I certify that per Circuit Rule 25.2.13 that the electronic submission was scanned using commercial virus-scanning software and no viruses were detected.

Per Fed. R. App. P. 32(a)(5) and (a)(6), the attached *amici curiae* brief has been prepared in a proportionately spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font. Per Fed. R. App. P. 27(d)(2), this brief contains, and contains 3,200 words, excluding the parts of the brief exempted by Fed. R. App. P. 27(a)(2)(2)(B).

October 5, 2017
Date

/S/MICHAEL M. HETHMON
Michael M. Hethmon
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2017 I electronically filed a copy of the foregoing Brief *Amici Curiae* using the CM/ECF System for the United States Court of Appeals for the Fifth Circuit, which will send notification of that filing to all counsel of record in this litigation.

Dated: October 5, 2017

/S/ MICHAEL M. HETHMON
Michael M. Hethmon
Attorney for *Amici Curiae*