State of Indiana
Lake County _____ Court

Jeff Nicholson, **Douglas Grimes, Greg Serbon**, and **Cheree Calabro**, *Plaintiffs* *v.* **City of Gary**, **Indiana**; **City of Gary Common Council**; **Herbert Smith, Jr.**, **Rebecca L. Wyatt**, **Michael L. Protho**, **Mary Brown**, **Carolyn D. Rogers**, **Linda Barnes Caldwell**, **LaVetta Sparks-Wade**, **Ronald Brewer**, and **Ragen Hatcher**, in their official capacities as City of Gary Common Council Members; and **Karen Freeman-Wilson**, in her official capacity as City of Gary Mayor, *Defendants*	**Civil Case No. _____**

Verified Complaint for Injunctive Relief

Plaintiffs complain as follows:

1. This an "action to compel ... governmental bod[ies] ... to comply with" Indiana's sanctuary-city-preemption law, IC 5-2-18.2 ("Chapter 18.2"), as authorized by IC 5-2-18.2-5.[1]

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

3. Chapter 18.2 preempts local regulation of the immigration-law field by

(i) prohibiting Indiana "governmental bodies" from adopting non-cooperation policies re-

[1]The text of IC 5-2-18.2-5 follows:

> **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.

garding 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, all to the "full extent permitted by federal law," IC 5-2-18.2-4;

(ii) authorizing an "action to compel ... compl[iance]" by "a person lawfully domiciled in Indiana," IC 5-2-18.2-5; and

(iii) requiring an injunction against violations of Chapter 18.2, IC 5-2-18.2-6.[2]

4. Plaintiffs seek to compel the "governmental bodies" that enacted City of Gary (Indiana) Ordinance 9100 ("Ordinance"), "An Ordinance Establishing the City of Gary Indiana as a Welcoming City,"[3] to comply with Indiana's Chapter 18.2. Among other things, the Ordinance unlawfully restricts cooperation with federal immigration-enforcement authorities to "less than the full extent permitted by federal law." IC 5-2-18.2-4.

Jurisdiction, Venue, and Standing

5. This Court has jurisdiction under IC 5-2-18.2-5 and -6, as well as IC 33-29-1-1.5 (providing superior-court jurisdiction) or IC 33-28-1-2 (providing circuit-court jurisdiction).

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

7. Plaintiffs have standing under both IC 5-2-18.2-5 and public-standing doctrine, *see State ex*

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[2]The text of IC 5-2-18.2-6 follows:

> **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.

[3] *See* Appendix A (Ordinance as passed). According its preamble, the Ordinance is to be codified as "a new Article I, Section 26 [o]f the City of Gary City Ordinances" at § 26-51 et seq.

rel. Cittadine v. Ind. DOT, 790 N.E.2d 978, 980-982 (Ind. 2003) (public-standing doctrine applies where "object of the mandate is to procure enforcement of a public duty").

8. 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 infra* ¶ 1 n.1. 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 34-1-1 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").

9. 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 (three are) citizens of 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. They also share a public interest in public safety that flows from enforcement of the laws. *See id.* 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

10. Plaintiff Jeff Nicholson both lives and works in City of Gary, Indiana, and so is "a person lawfully domiciled in Indiana," IC 5-2-18.2-5, and a "citizen" of Indiana, Lake County, and City of Gary, *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, including interests in enforcement of the law and public safety.

11. Plaintiff Douglas Grimes both lives and works in City of Gary, Indiana, and so is "a person lawfully domiciled in Indiana," IC 5-2-18.2-5, and a "citizen" of Indiana, Lake County, and City of Gary, *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, including interests in enforcement of the law and public safety.

12. Plaintiff Greg Serbon is a Lake County, Indiana resident who often works in City of Gary, 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 City of Gary 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, including interests in the enforcement of the law and in public safety.

13. Plaintiff Cheree Calabro is an Indiana resident and so is "a person lawfully domiciled in Indiana," IC 5-2-18.2-5, and a "citizen" of Indiana, *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, including interests in the enforcement of the law and in public safety.

14. Defendant City of Gary knowingly and intentionally enacted the Ordinance.

15. Defendant City of Gary Common Council knowingly and intentionally enacted the Ordinance, and as a "council" of a "political subdivision" it is a "governmental body"[4] subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-6.

16. Defendant Herbert Smith, Jr. (sued in official capacity), is a Member of the City of Gary 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 5-2-18.2-6.[5]

17. Defendant Rebecca L. Wyatt (sued in official capacity), is a Member of the City of Gary 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 5-2-18.2-6.

18. Defendant Michael L. Protho (sued in official capacity), is a Member of the City of Gary Common Council that knowingly and intentionally enacted the Ordinance, and as a person hold-

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[4]Chapter 18.2 defines "governmental body" by incorporating the meaning at IC 5-22-2-13. IC 5-2-18.2-1. 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.
> (2) The judicial branch.
> (3) The legislative branch.
> (4) A political subdivision.

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

[5]Members of the Gary Common Council are identified here based on the Gary Common Council's listing at http://www.garycommoncouncil.org/members.asp (last visited November 30, 2017). Any successors in office are automatically substituted. Ind. T.R. 25(F).

ing 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 5-2-18.2-6.

19. Defendant Mary Brown (sued in official capacity), is a Member of the City of Gary 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 5-2-18.2-6.

20. Defendant Carolyn D. Rogers (sued in official capacity), is a Member of the City of Gary 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 5-2-18.2-6.

21. Defendant Linda Barnes Caldwell (sued in official capacity), is a Member of the City of Gary 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 5-2-18.2-6.

22. Defendant LaVetta Sparks-Wade (sued in official capacity), is a Member of the City of Gary 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 5-2-18.2-6.

23. Defendant Ronald Brewer (sued in official capacity), is a Member of the City of Gary 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 5-2-18.2-6.

24. Defendant Ragen Hatcher (sued in official capacity), is a Member of the City of Gary

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 5-2-18.2-6.

25. Defendant City of Gary Mayor, an office currently held by Karen Freeman-Wilson (sued in official capacity),[6] knowingly and intentionally signed the Ordinance into law, and as an "office" of a "political subdivision" the Mayor is a "governmental body" and subject to "an action to compel," IC 5-2-18.2-5, and an injunction for violating Chapter 18.2, IC 5-2-18.2-6.

Legal Context

26. Three legal contexts are involved here—(i) federal immigration law, (ii) Indiana's Chapter 18.2, and (iii) City of Gary's Ordinance. To provide the Court with essential background, these three contexts and key provisions are briefly discussed below.

Federal Immigration Law: Federal Law Protects Hoosiers with Immigration Laws

27. "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). "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).

28. 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.),[7] creating a comprehensive scheme to regulate immigration and naturalization. In INA, Congress specified cate-

[6]City of Gary identifies the current holder of the Mayor's office at http://www.gary.in.us/city-departments/mayor.asp.

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

gories 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)[8]; 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.

29. 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").

30. Congress has amended the 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"[9] and codified at 8 U.S.C. 1373.

31. 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 information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

[8]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").

[9]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.

> **(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.

32. In crafting 8 U.S.C. 1373, Congress intended that the phrase "information regarding the citizenship or immigration status" be interpreted broadly to include (inter alia) unimpeded communication of information *related to* individuals' citizenship or immigration status, including unobstructed cooperation in locating illegal aliens. The Senate Judiciary Committee Report accompanying the bill that became IIRAIRA makes this intent clear:

> 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)[10]; *see also City of New York v. U.S.*, 179 F.3d 29, 32-33 (2nd Cir.1999) (quoting foregoing Report). So Congress intended a "cooperative effort" between all governmental levels in enforcing immigration law, with the "acquisition, maintenance, and exchange of immigration-related information" being a key component.

33. 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:

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

> **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.

34. 8 U.S.C. 1644 was enacted as Section 434 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA").[11] The PRWORA Conference Report made clear Congress's intent to (i) authorize state/local authority to communicate with INS about "the presence, whereabouts, or activities of illegal aliens, (ii) reaffirm the high priority of immigration-law enforcement, and (iii) reaffirm that illegal aliens have no right to remain in the country without detection:

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

H.R. Conf. Rep. No. 104-725, at 383 (1996),[12] *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).

35. 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.

[11]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.

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

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).

36. Congress also encouraged state and 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").[13]

37. In the *El Cenizo* Statement of Interest, the DOJ highlighted several examples of cooperation between state and local officials and the federal government in immigration law enforcement. These examples include

> 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.

Id. at 4-5.

38. 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:

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

> [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.

Id. at 1-2.

39. 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.

40. 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")[14] ("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

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

conform to federal discretion, rather than being subject to systematic mandatory state or local directives that may work at odds with DHS.").

41. 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, 2017) ("Subject: Enforcement of the Immigration Laws to Serve the National Interest").[15] 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

42. To protect Hoosiers by assuring that Indiana governmental bodies are both compliant with

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

protective federal law and are assisting federal authorities, Indiana enacted Indiana Code 5-2-18.2,[16] titled "Citizenship and Immigration Status Information and Enforcement of Federal Immigration Laws,"[17] to require such compliance by "governmental bodies" and "postsecondary educational institutions," including employees of the foregoing, and "law enforcement officers."[18] Indiana does so with three mandates, called herein the "Information-Cooperation Mandate," IC 5-2-18.2-3, the "Full-Extent-Enforcement-Cooperation Mandate," IC 5-2-18.2-4, and the "LEO-Enforcement-Cooperation Mandate," IC 5-2-18.2-7.[19]

43. The **Information-Cooperation Mandate**, IC 5-2-18.2-3, bans restrictions or prohibitions on maintaining or sharing "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 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.

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[16] 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.

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

[18] "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 Gary Police Department).

[19] 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.

(3) Maintaining information.
(4) Exchanging information with another federal, state, or local government entity.

44. The **Full-Extent-Enforcement-Cooperation Mandate**, IC 5-2-18.2-4, bans limitations or restrictions that provide for less-than-full-extent-permissible federal immigration enforcement:

> **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.

45. Full-extent-enforcement-cooperation includes *information* sharing, as the Ordinance acknowledges. Ordinance § 26-55(d) ("enforcement operations, including ... information").

46. "[T]he full extent permitted by federal law" includes (inter alia) the formal cooperation authorized by 8 U.S.C. 1357(g)(1), which allows written agreements with states and political subdivisions whereby state/local LEOs may "perform a function of an immigration officer." It also includes the cooperation authorized by 8 U.S.C. 1357(g)(10), absent such a formal agreement, as follows:

> (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.

47. The **LEO-Enforcement-Cooperation Mandate** at IC 5-2-18.2-7 summarizes the foregoing requirements of §§ 3 and 4 as a "duty to cooperate" and mandates notice to law-enforcement officers of that "duty to cooperate" on immigration-law enforcement "matters" 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.

48. Parts of the same statutory provision must be read *in pari materia*, so §§ 3, 4, and 7 of Chapter 18.2 must be read together. Doing so indicates that Chapter 18.2 imposes (inter alia) a state-mandated LEO "duty to cooperate" with immigration-enforcement authorities "on matters pertaining to" immigration-law enforcement and that this LEO-Enforcement-Cooperation Mandate includes, the two mandates in §§ 3 and 4 applicable to all governmental bodies, i.e., information sharing and enforcement cooperation to the full extent permitted by federal law.

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

50. The broad reading of the information that Indiana requires to be shared (by banning prohibiting or restricting sharing it) 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 2-5-18.2-3 ("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 ex-

tent of the federal meaning of those terms as set out above in ¶¶ 31-33. *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 Gary's Sanctuary-City Ordinance

51. Despite Indiana's Chapter 18.2, preempting local government from enacting contrary ordinances, rules, and policies with the clear intent to ban sanctuary cities and welcoming cities, Defendants (collectively "Gary Defendants") enacted Ordinance 9100 to make City of Gary a "welcoming city."

52. The Ordinance's preamble purports to "support immigration enforcement as a federal matter" and says "City of Gary 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, Chapter 18.2's preemption, and Chapter 18.2's mandates against doing what the Gary Defendants did in the Ordinance.

53. The Ordinance sets forth the City's laws and policies governing immigration and is binding on all municipal agencies and their agents.

54. By a vote of 6 to 3, the City of Gary Common Council ("Council") passed and adopted the Ordinance on May 16, 2017. City of Gary Mayor, Karen Freeman-Wilson, approved and signed the Ordinance on May 22, 2017. *See* Ordinance 9001 at 8 (Appendix A). The Ordinance was sponsored by Mayor Karen Freeman-Wilson and Councilwoman Rebecca Wyatt. *Id.*

55. In the "[d]efinitions," Ordinance **§ 26-51**[20] defines "citizenship or immigration status" in a

[20]Because the Ordinance in the form signed uses two formats for identifying sections (both periods and hyphens), Plaintiffs simply quote the Ordinance, so the following variants are not

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.[21]

56. In the "[d]efinitions," Ordinance **§ 26-51** defines "immigration enforcement operation" to include enforcement concerning both civil and criminal matters as follows:

> "[*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.

57. Ordinance **§ 26-52** restricts cooperation in inquiries and investigations regarding immigration and citizenship information to less than the full-extent-permissible cooperation mandated by Indiana Chapter 18.2 as follows:

> **Section 26-52. Requesting information prohibited.**
> No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by an order issued by a court of competent jurisdiction. Notwithstanding this provision, the Corporation Counsel may investigate and inquire about citizenship or immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.

58. Ordinance **§ 26-55** restricts immigration-enforcement to less than the full-extent-permissi-

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typographical errors: § 26-51 ("Definitions."), § 26-52 ("Requesting information prohibited."), § 26-55 ("Immigration enforcement actions – Federal responsibility."), § 26.58 ("Commitments."), § 26.59 ("Information regarding citizenship or immigration status."), and § 26.61 ("Effect upon passage.").

[21]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* ¶¶ 32-34—§ 26.59 defines the same information narrowly in an effort to limit cooperation. *See infra* ¶ 60.

ble cooperation mandated by Chapter 18.2 as follows:

> **Section 26-55. Immigration enforcement actions - Federal responsibility.**
> No agency or agent shall stop, arrest, detain, or continue to detain a person after that person becomes eligible for release from custody or is free to leave an encounter with an agent or agency, based on any of the following:
> (a) an immigration detainer;
> (b) an administrative warrant (including but not limited to [sic] entered into the Federal Bureau of Investigation's National Crime Information Center database); or
> (c) any other basis that is based solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation.
> (d) No agency or agent shall be permitted to accept requests by ICE or other agencies to support or assist in any capacity with immigration enforcement operations,[22] including but not limited to requests to provide information[23] on persons who may be the subject of immigration enforcement operations (except as may be required under section 11 of this ordinance [sic][24]), to establish traffic perimeters, or to otherwise be present to assist or support an operation. In the event an agent receives a request to support or assist in an immigration enforcement operation, he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the agency director through the chain of command.
> (e) No agency or agent shall enter into an agreement under Section 1357(g) of Title 8 of the United States Code or any other federal law that permits state or local governmental entities to enforce federal civil immigration laws.
> (f) Unless presented with a valid and properly issued criminal warrant, no agency or agent shall:
> (1) permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;
> (2) transfer any person into ICE custody;
> (3) permit ICE agents use of agency facilities, information (except as may be re-

[22] "[I]mmigration enforcement operations" is defined to include civil and criminal enforcement related to immigration status. *See supra* ¶ 55 (definition).

[23]Notably, Gary Defendants acknowledge here that "enforcement" includes "provid[ing] information," so that not only the Information-Cooperation Mandate, IC 5-2-18.2-3, but also the Full-Extent-Enforcement-Cooperation Mandate, IC 5-2-18.2-4, and the LEO-Enforcement-Cooperation Mandate" require sharing of information on immigration matters as part of enforcement.

[24]Plaintiffs' counsel identify this reference to a "section 11" as a "sic" because Ordinance 9100 contains no "section 11" that counsel are able to locate. Moreover, counsel have been unable to even identify any § 26.11 (or § 26-11) in the Gary Municipal Code, either on LEXIS or at City of Gary's website. If "section 11" somehow refers to § 26.59, given that the topic is "provid[ing] information on persons who may be the subject of immigration enforcement operations," that overly narrow provision fails to comply with federal law and Indiana's Chapter 18.2, as established in Counts I and IV.

quired 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.

59. Ordinance **§ 26.58(c)** imposes a different duty on LEOs than the full-extent-permissible cooperation duty imposed by Chapter 18.2 as follows:

Section 26.58. Commitments.
(a) The City commits to working with community advocates, policy experts, and legal advocates to defend the human rights of immigrants.
(b) The Gary Police Department will continue to respond to requests from immigrant communities to defend them against all crimes, including hate crimes, to assist people with limited language proficiency and to connect immigrants with social services.
(c) The City recognizes the arrest of an individual increases that individual's risk of deportation even in cases where the individual is found to be not guilty, creating a disproportionate impact from law enforcement operations. Therefore, for all individuals, *the Gary Police Department will recognize and consider the extreme potential negative consequences of an arrest in exercising its discretion regarding whether to take such an action and will arrest an individual only after determining that less severe alternatives are unavailable or would be inadequate to effect a satisfactory resolution*.
(d) The Gary Police Department will make available and provide material at all Gary Police Stations concerning this ordinance and information concerning rights of all immigrants.

Ordinance § 26.58 (emphasis added).

60. Ordinance **§ 26.59** purports to comply with federal law, 8 U.S.C. 1373 and 1644, by a narrow definition of information that must be shared—which squares with neither the broad, all-matters-regarding definition at Ordinance § 26-51 (and used at § 26-52) nor the full-extent-permissible cooperation required by Chapter 18.2—as follows:

Section 26.59. Information regarding citizenship or immigration status.
Nothing in this chapter prohibits any municipal agency from sending to, or receiving from, any local, state, federal agency, information regarding an individual's citizenship or immigration status. All municipal agents shall be instructed that federal law does not allow any such prohibition. "Information regarding an individual's citizenship or immigration status," for purposes of this section, means a statement of the indi-

vidual's country of citizenship or a statement of the individual's immigration status.

61. Ordinance **§ 26.61** made the Ordinance effective immediately upon passage and approval.

Additional Facts

62. All Plaintiffs are presently suffering irreparable harm to their public interests and right, established by Chapter 18.2, as a result of the Ordinance and Gary Defendant's noncompliance with the public duty established by Chapter 18.2, and Plaintiffs have no adequate remedy at law.

Count I
Ordinance § 26-52 Violates Chapter 18.2.

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

64. In enacting Ordinance § 26-52 (restricting full cooperation regarding information sharing), Gary Defendants violated Indiana's Chapter 18.2—particularly IC 2-5-18.2-3, -4, and -7—which preempts the immigration-law field and bans what Gary Defendants have done.

65. In the Information-Cooperation Mandate, IC 2-5-18.2-3, Indiana mandates broad and full cooperation among federal, state, and local entities in communicating, cooperating, sending, receiving, maintaining, and exchanging information regarding citizenship and immigration status:

> 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 ... local official, or a ... 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 2-5-18.2-3.

66. In the Full-Extent-Enforcement-Cooperation Mandate, IC 2-5-18.2-4, Indiana mandates

the following regarding "enforcement," which necessarily requires cooperation both in sharing information[25] necessary to enforcement and all activities to facilitate arrests, detainers, and other enforcement proceedings: "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."

67. "[P]ermitted by federal law"—regarding statutes, regulations, policies, and guidance—includes authorization for state and local government and LEOs to enter into enforcement agreements, 8 U.S.C. 1357(g)(1), to broadly cooperate in immigration enforcement and information sharing without such agreements, 8 U.S.C. 1357(g)(10), and otherwise to cooperate in sharing information regarding the citizenship and immigration status of individuals, *see supra* ¶ 35.

68. "[P]ermitted by federal law"—regarding constitutional law—included the fact that the U.S. Constitution permits the full cooperation that Indiana's Chapter 18.2 mandates regarding information sharing and enforcement support. *See supra* ¶¶ 37-38 (U.S. Statement of Interest in *El Cenizo*).

69. "[P]ermitted by federal law" includes the Supreme Court's holding in *Arizona*, 567 U.S. at 411-15, that law enforcement officials may inquire about citizenship and immigration status as part of a stop that is otherwise lawful under state law, e.g., for speeding.

70. The mandated duties imposed by §§ 3 and 4 of Chapter 18.2 are further clarified by § 7, which recognizes that Chapter 18.2 imposes a full-extent-permissible cooperation duty on LEOs, which duty necessarily includes full-extent-cooperation on sharing of all information related to immigration and citizenship useful for enforcement as follows:

> 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.

[25] *See supra* ¶ 58 n.23.

71. Gary Ordinance § 26-52 not only restricts LEO requests about citizenship/immigration status that *Arizona* held permissible but also restricts investigations and cooperation in investigations regarding immigration and citizenship information to less than Chapter 18.2's full-extent-permissible-cooperation requirement as follows:

> 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.

72. In so restricting permissible requests, investigations, and cooperation, Ordinance 26-52 uses the following broad, all-matters-regarding definition of "citizenship or immigration status" from Ordinance § 26-51:

> "*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.

73. In Ordinance § 26-52, with the foregoing all-matters-regarding definition, Gary Defendants have enacted an ordinance, rule, and policy prohibited by the Information-Cooperation Mandate, IC 2-5-18.2-3, and the Full-Extent-Enforcement-Cooperation Mandate, IC 2-5-18.2-4, as informed by the LEO-Enforcement-Cooperation Mandate, IC 5-2-18.2-7.

74. Ordinance § 26-52 is not saved by Ordinance § 26.59, which purports to comply with 8 U.S.C. 1373 and 1644 (but not Chapter 18.2) but employs an improper, narrow definition of the citizenship/immigration information that must be shared—which squares with neither the broad, all-matters-regarding citizenship/immigration definition at Ordinance § 26-51 (and used at § 26-

52), nor the full-extent-permissible cooperation required by 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* ¶¶ 32-34—as follows:

> **Section 26.59. Information regarding citizenship or immigration status.**
> Nothing in this chapter prohibits any municipal agency from sending to, or receiving from, any local, state, federal agency, information regarding an individual's citizenship or immigration status. All municipal agents shall be instructed that federal law does not allow any such prohibition. "Information regarding an individual's citizenship or immigration status," for purposes of this section, means a statement of the individual's country of citizenship or a statement of the individual's immigration status.

75. 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 § 26-52 violates state law by doing the opposite.

76. Ordinance § 26-52 restricts a City of Gary 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."

77. Ordinance § 26-52 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."

78. 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.

Id.

79. 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 § 26-52, by placing restrictions—a court order or "relevant" potential or actual litigation or administrative proceeding—on when local City of Gary 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.

80. Accordingly, Ordinance § 26-52 violates IC 5-2-18.2-3's ban on prohibiting or restricting communication or cooperation with federal officials, sending information to or receiving it from DHS, and exchanging information with another federal, state, or local government entity.

81. Regarding IC 5-2-18.2-4 particularly, Ordinance § 26-52 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."

82. 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.

83. Ordinance § 26-52 "limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law" and thereby violates IC 5-2-18.2-4, in several ways.

84. First, Ordinance § 26-52 requires a court order for a City of Gary 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.

85. Second, Ordinance § 26-52 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." Federal law permits such investigations and inquiries by officers of a locality when they are not so relevant.

86. Third, Ordinance § 26-55(a)-(b) prohibits a City of Gary agency or agent from detaining an individual for federal immigration authorities pursuant to "an immigration detainer" or "an administrative warrant."

87. 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.[26]

88. 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."

89. By enacting Ordinance 9100, including Ordinance § 26-52, Gary Defendants acted knowingly and intentionally in violating the contrary provisions of IC 2-5-18.2-3 and -4, as informed by § 7.

90. This Court should find that Gary Defendants knowingly and intentionally violated Indiana's Chapter 18.2 by enacting Ordinance § 26-52 and enjoin that provision of the Ordinance.

Count II
Ordinance § 26-55 Violates Chapter 18.2.

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

[26]U.S. Immigration and Customs Enforcement, Detainer Policy, https://www.ice.gov/detainer-policy.

92. As established in Count I, Indiana Chapter 18.2 preempts the immigration-law field by barring any immigration-law ordinance, rule, or policy prohibiting or restricting both information and enforcement to less than full-extent-permissible cooperation. *See* IC 2-5-18.2-3, -4, and -7.

93. Ordinance § 26-55 violates IC 2-5-18.2-3 and -4, as informed by -7.

94. Ordinance § 26-55 restricts immigration-enforcement to less than the full-extent-permissible cooperation mandated by Chapter 18.2 as follows:

> **Section 26-55. Immigration enforcement actions - Federal responsibility.**
> No agency or agent shall stop, arrest, detain, or continue to detain a person after that person becomes eligible for release from custody or is free to leave an encounter with an agent or agency, based on any of the following:
> (a) an immigration detainer;
> (b) an administrative warrant (including but not limited to [sic] entered into the Federal Bureau of Investigation's National Crime Information Center database); or
> (c) any other basis that is based solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation.
> (d) No agency or agent shall be permitted to accept requests by ICE or other agencies to support or assist in any capacity with immigration enforcement operations, including but not limited to requests to provide information on persons who may be the subject of immigration enforcement operations (except as may be required under section 11 of this ordinance [sic]), to establish traffic perimeters, or to otherwise be present to assist or support an operation. In the event an agent receives a request to support or assist in an immigration enforcement operation, he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the agency director through the chain of command.
> (e) No agency or agent shall enter into an agreement under Section 1357(g) of Title 8 of the United States Code or any other federal law that permits state or local governmental entities to enforce federal civil immigration laws.
> (f) Unless presented with a valid and properly issued criminal warrant, no agency or agent shall:
> (1) permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;
> (2) transfer any person into ICE custody;
> (3) permit ICE agents use of agency facilities, information (except as may be required under section 11 of this ordinance [sic]), 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.

95. The phrase "immigration enforcement operations," as used in § 26-55, is a term of art in the Ordinance and defined to include civil and criminal *immigration* enforcement as follows:

> "[*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 and restricts is targeted precisely at immigration enforcement cooperation (including sharing of useful information) that Chapter 18.2 says governmental bodies may not so prohibit and restrict.

96. Ordinance § 26-55's first sentence (including (a) through (c)) violates the Full-Extent-Enforcement-Cooperation Mandate, IC 2-5-18.2-4, because it bans cooperation with ICE detainer requests and administrative warrants—which now accompany detainer requests and state the basis of probable cause to believe a person is removable under federal immigration law (*see supra* ¶ 38)—though Chapter 18.2 requires such cooperation.

97. Ordinance § 26-55's first sentence, including part (c), also violates the Full-Extent-Enforcement-Cooperation Mandate, IC 2-5-18.2-4, 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.

98. Ordinance § 26-55(d), banning enforcement assistance while acknowledging that enforcement assistance includes "provid[ing] information," violates Indiana's Information-Cooperation

Mandate, IC 5-2-18.2-3, which forbids governmental bodies from prohibiting or otherwise restricting local officials from communicating or 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.

99. While Ordinance § 26.59 purports to comply with 8 U.S.C. 1373 and 1644, by allowing the sharing of 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 citizenship/immigration information that must be shared—which squares with neither the broad, all-matters-regarding citizenship/immigration definition at Ordinance § 26-51 (and used at § 26-52), nor the full-extent-permissible cooperation required by Chapter 18.2, nor the proper broad, all-matters-regarding understanding of what is required by 8 U.S.C 1373 and 1644, which federal law Chapter 18.2 implements in Indiana.

100. Ordinance 26-55(d) also violates the Full-Extent-Enforcement-Cooperation Mandate at IC 5-2-18.2-4, which encompasses provision of information helpful to enforcement and requires full cooperation permitted under federal law. *See supra* ¶¶ 44-46.

101. Ordinance § 26-55(d) further violates the Information-Cooperation Mandate, IC 5-2-18.2-3, the Full-Extent-Enforcement-Cooperation Mandate, IC 5-2-18.2-4, and the LEO-Enforcement-Cooperation Mandate, IC 5-2-18.2-7, 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.

102. Ordinance § 26-55(e), 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 the Information-Cooperation Mandate, IC 5-2-18.2-3, the Full-Extent-Enforcement-Cooperation Mandate, IC 5-2-18.2-4, and the LEO-Enforcement-Cooperation Mandate, IC 5-2-18.2-7, by barring participation in the 1357(g)(1) program described favorably in *Arizona*, as a "circumstance[] in which state officers may perform the functions of an immigration officer," 567 U.S. at 409.

103. Ordinance § 26-55(f), prohibiting multiple forms of cooperation with ICE absent a valid "criminal warrant," violates the Information-Cooperation Mandate, IC 5-2-18.2-3, the Full-Extent-Enforcement-Cooperation Mandate, IC 5-2-18.2-4, and the LEO-Enforcement-Cooperation Mandate, IC 5-2-18.2-7, by barring cooperation permitted by those mandates and federal law.

104. 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."

105. By enacting Ordinance 9100, including Ordinance § 26-55, Gary Defendants acted knowingly and intentionally in violating the contrary provisions of IC 2-5-18.2-3 and -4, as informed by § 7.

106. This Court should find that Gary Defendants knowingly and intentionally violated Indiana's Chapter 18.2 by enacting Ordinance § 26-55 and enjoin that provision of the Ordinance.

Count III
Ordinance § 26.58(c) Violates Chapter 18.2.

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

108. As established in Count I, Indiana Chapter 18.2 preempts the immigration-law field by barring any immigration-law ordinance, rule, or policy prohibiting or restricting both informa-

tion and enforcement to less than full-extent-permissible cooperation. *See* IC 2-5-18.2-3, -4, and -7.

109. Ordinance § 26.58(c) violates IC 2-5-18.2-3 and -4, as informed by -7.

110. Ordinance § 26.58(c) expressly sets out City of Gary policy and restricts Gary LEOs to less than the full-extent-permissible cooperation mandated by Chapter 18.2 as follows (emphasis added):

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

111. While Ordinance § 26.58 is titled "Commitments," section 26.58(c) uses mandatory language, "will," and so directly requires (and indicates a policy requiring) that LEOs take into account the negative immigration-enforcement consequences of arresting illegal aliens where the arrest otherwise would be proper under law.

112. Ordinance § 26-58(c), by expressly discouraging otherwise valid arrests for illegal activity to avoid immigration-law consequences violates the Full-Extent-Enforcement-Cooperation Mandate, IC 5-2-18.2-4, and the LEO-Enforcement-Cooperation Mandate, IC 5-2-18.2-7, including by barring activity that could lead to convictions that would make illegal aliens priorities for removal, *see supra* ¶ 41, and the subject of cooperation requests from federal immigration-enforcement officials.

113. 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."

114. By enacting Ordinance 9100, including Ordinance § 26-58(c), Gary Defendants acted

knowingly and intentionally in violating the contrary provisions of IC 2-5-18.2-3 and -4, as informed by § 7.

115. This Court should find that Gary Defendants knowingly and intentionally violated Indiana's Chapter 18.2 by enacting Ordinance § 26-58(c) and enjoin that provision of the Ordinance.

Count IV
Ordinance § 26.59 Violates Chapter 18.2.

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

117. As established in Count I, Indiana Chapter 18.2 preempts the immigration-law field by barring any immigration-law ordinance, rule, or policy prohibiting or restricting both information and enforcement to less than full-extent-permissible cooperation. *See* IC 2-5-18.2-3, -4, and -7.

118. Ordinance § 26.59 violates IC 2-5-18.2-3 and -4, as informed by -7.

119. Ordinance § 26.59 purports to comply with 8 U.S.C. 1373 and 1644 as follows:

> **Section 26.59. Information regarding citizenship or immigration status.**
> Nothing in this chapter prohibits any municipal agency from sending to, or receiving from, any local, state, federal agency, information regarding an individual's citizenship or immigration status. All municipal agents shall be instructed that federal law does not allow any such prohibition. "Information regarding an individual's citizenship or immigration status," for purposes of this section, means a statement of the individual's country of citizenship or a statement of the individual's immigration status.

120. Ordinance § 26.59 employs an improper, 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 § 26-51 (used at § 26-52), nor the full-extent-permissible cooperation required by Chapter 18.2, nor the proper broad, all-matters-regarding understanding of what is required by 8 U.S.C 1373 and 1644, *see infra* ¶¶ 32-34.

121. Ordinance § 26-59, by too narrowly defining what information City of Gary agencies and agents may share, violates the Information-Cooperation Mandate, IC 5-2-18.2-3, the Full-Extent-Enforcement-Cooperation Mandate, IC 5-2-18.2-4, and the LEO-Enforcement-Cooperation Mandate, IC 5-2-18.2-7, by barring the sharing of information required by both federal law and Chapter 18.2 to be shared.

122. 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."

123. By enacting Ordinance 9100, including Ordinance § 26-59, Gary Defendants acted knowingly and intentionally in violating the contrary provisions of IC 2-5-18.2-3 and -4, as informed by § 7.

124. This Court should find that Gary Defendants knowingly and intentionally violated Indiana's Chapter 18.2 by enacting Ordinance § 26-59 and enjoin that provision of the Ordinance.

Prayer for Relief

Wherefore, Plaintiffs pray for the following relief regarding Gary Defendants' enactment of City of Gary Ordinance 9100:

1. Regarding Count I and Ordinance § 26-**52**:
   a. a "find[ing] that a governmental body ... knowingly or intentionally violated section 3 or 4 of [IC 2-5-18.2]" in enacting this provision, IC 5-2-18.2-6; and
   b. an order "enjoin[ing] the violation," IC 5-2-18.2-6.
2. Regarding Count II and Ordinance § 26-**55**:
   a. a "find[ing] that a governmental body ... knowingly or intentionally violated section 3 or 4 of [IC 2-5-18.2]" in enacting this provision, IC 5-2-18.2-6; and
   b. an order "enjoin[ing] the violation," IC 5-2-18.2-6.

3. Regarding Count III and Ordinance § 26-**58(c)**:

   a. a "find[ing] that a governmental body ... knowingly or intentionally violated section 3 or 4 of [IC 2-5-18.2]" in enacting this provision, IC 5-2-18.2-6; and

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

4. Regarding Count IV and Ordinance § 26-**59**:

   a. a "find[ing] that a governmental body ... knowingly or intentionally violated section 3 or 4 of [IC 2-5-18.2]" in enacting this provision, IC 5-2-18.2-6; and

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

5. Any other relief the Court finds proper, including under any provision awarding costs and attorneys' fees to Plaintiffs.

Respectfully submitted,

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Appendix A

City of Gary Ordinance 9100