

1 CHAD A. READLER
2 Acting Assistant Attorney General
3 Civil Division
4 WILLIAM C. PEACHEY
5 Director
6 EREZ REUVENI
7 Assistant Director
8 FRANCESCA GENOVA
9 LAUREN C. BINGHAM, Fl. Bar No. 105745
10 Trial Attorneys
11 United States Department of Justice
12 Civil Division
13 Office of Immigration Litigation
14 District Court Section
15 P.O. Box 868, Ben Franklin Station
16 Washington, DC 20044
17 (202) 616-4458; (202) 305-7000 (facsimile)
18 lauren.c.bingham@usdoj.gov
19 *Attorneys for the United States*

20 UNITED STATES DISTRICT COURT
21 DISTRICT OF ARIZONA

22 Guillermo Tenorio-Serrano, as an individual,
23 and on behalf of others similarly situated,

24 Plaintiff,

25 v.

26 James Driscoll, Coconino County Sheriff;
27 Matt Figuero, Jail Commander of the
28 Coconino County Jail; Matt Ryan, Member
of the Board of Directors of the Coconino
County Jail District; Jim Parks, Member of
the Board of Directors of the Coconino
County Jail District; Elizabeth Archuleta,
Member of the Board of Directors of the
Coconino County Jail District; Art Babbott,
Member of the Board of Directors of the
Coconino County Jail District,

Defendants.

Case No. 3:18-cv-8075-DGC-BSB

STATEMENT OF INTEREST OF THE
UNITED STATES

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INTRODUCTION

The United States respectfully submits this statement of interest in accordance with federal statutes that authorize the United States Department of Justice “to attend to the interests of the United States” by “argu[ing] any case in a court of the United States in which the United States is interested.” 28 U.S.C. §§ 517, 518.¹

This memorandum of law explains why and in what circumstances Coconino County’s (the County) cooperation with federal immigration detainers and federal immigration arrest warrants issued by U.S. Immigration and Customs Enforcement (ICE), a component of DHS responsible for immigration enforcement in the interior of the country, is lawful. A detainer asks local law enforcement to aid federal immigration-enforcement efforts by notifying ICE prior to the release of an individual for whom there is probable cause to believe that he or she is a removable alien, and maintaining custody of that alien briefly (up to 48 hours beyond when the alien would otherwise be released) so that ICE can take custody of the alien in an orderly way. Without such cooperation, removable aliens, including criminal aliens, would be released into local communities,

¹ Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” Under 28 U.S.C. § 518, “[w]hen the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.” These statutes provide a mechanism for the United States to submit its views in cases in which it is not a party, *see, e.g., Application of Blondin v. Dubois*, 78 F. Supp. 2d 283, 288 n.4 (S.D.N.Y. 2000), and is not intended to “subject[] it to the general jurisdiction of this Court,” *Flatow v. Islamic Republic of Iran*, 305 F.3d 1249, 1252-53 & n.5 (D.C. Cir. 2002).

1 where it is harder and more dangerous for ICE to take custody of them and where they
2 may commit more crimes. Furthermore, under an intergovernmental service agreement
3 (IGSA) between the County and the United States Marshals Service, on which ICE is an
4 authorized rider, the County assists ICE, at federal request and cost, by physically housing
5 detainees ICE has arrested, though the detainees remain in federal custody.
6

7 ICE's use of—and local cooperation with—detainers and administrative arrest
8 warrants is consistent with federal and Arizona law. Federal statutes authorize ICE to use
9 detainers and warrants, and allow States and localities to cooperate with them. Arizona
10 law affirmatively permits such cooperation with detainers. And such cooperation is
11 consistent with the U.S. Constitution and the Arizona Constitution.
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14 In light of these points, and as explained below, the motion for a temporary
15 restraining order should be denied and this case should be dismissed.
16

17 **BACKGROUND**

18 **I. Legal Background.**

19 The federal government has “broad, undoubted power over the subject of
20 immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 394 (2012).
21 This includes authority to interview, arrest, and detain removable aliens. *See, e.g.*, 8 U.S.C.
22 § 1226(a) (Secretary of Homeland Security may arrest and detain aliens pending removal
23 decision based on an administrative arrest warrant); *id.* § 1226(c)(1) (Secretary “shall take
24 into custody” aliens who have committed certain crimes when “released”); *id.*
25 § 1231(a)(1)(A), (2) (Secretary may detain and remove aliens ordered removed); *id.*
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1 § 1357(a)(1), (2) (authorizing certain warrantless interrogations and arrests).²

2 In enforcing the immigration laws against removable aliens, the federal government
3 works closely with state and local governments. The Immigration and Nationality Act
4 (INA), 8 U.S.C. § 1101 *et seq.*, contemplates these cooperative efforts, which are critical
5 to enabling the federal government to identify and remove the hundreds of thousands of
6 aliens who violate immigration laws each year.
7

8 First, the INA authorizes the Department of Homeland Security (DHS) to enter into
9 cooperative agreements with States and localities, *see* 8 U.S.C. § 1357(g), also known as
10 287(g) agreements, under which state and local officers may, “subject to the direction and
11 supervision of the [Secretary],” *id.* § 1357(g)(3), perform the “functions of an immigration
12 officer in relation to the investigation, apprehension, or detention aliens.” *Id.* § 1357(g)(1).
13

14 Second, Congress has authorized DHS to enter into agreements, referred to as
15 IGSA, with localities for the “housing, care, and security of persons detained by [DHS]
16 pursuant to Federal law.” *Id.* § 1103(a)(11)(A). Under these agreements, a detainee has
17 been arrested by ICE, and is in the legal custody of ICE, but ICE utilizes IGSA facility to
18 house the alien temporarily in a state or local facility. *See, e.g., Roman v. Ashcroft*, 340
19 F.3d 314, 320-21 (6th Cir. 2003). Until an immigration officer—or a state or local officer
20 who has been delegated immigration officer authority under a 287(g) agreement³—arrests
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25 ² Following the Homeland Security Act of 2002, many references in the Immigration and
26 Nationality Act to the “Attorney General” are now read to mean the Secretary. *Clark v.*
27 *Suarez Martinez*, 543 U.S. 371, 374 n.1 (2005).

28 ³ The existence of an IGSA or one on which ICE is an authorized rider does not deputize
state law enforcement to unilaterally perform the functions of a federal immigration officer.
Rather, it governs the housing, at federal request and cost, of federal detainees in state

1 the detainee, the IGSA is not triggered, and the detainee remains in state custody.

2 Third, even without a formal 287(g) agreement or IGSA detention contract, States
 3 and localities may “communicate with the [Secretary] regarding the immigration status of
 4 any individual,” 8 U.S.C. § 1357(g)(10)(A); *see also* 8 U.S.C. § 1373(a), or “cooperate
 5 with the [Secretary] in the identification, apprehension, detention, or removal of aliens not
 6 lawfully present in the United States,” *id.* § 1357(g)(10)(B), when that cooperation is
 7 pursuant to a “request, approval, or other instruction from the Federal Government,”
 8 *Arizona*, 567 U.S. at 410. Such cooperation may include: “participat[ion] in a joint task
 9 force with federal officers”; “provid[ing] operational support in executing a warrant”;
 10 “allow[ing] federal immigration officials to gain access to detainees held in state facilities”;
 11 “arrest[ing] an alien for being removable” at the federal government's request or direction;
 12 and “responding to requests for information about when an alien will be released from their
 13 custody.” *Id.* The INA permits such cooperation whether it is directed by state statute or is
 14 implemented *ad hoc* by a local sheriff. *See id.* at 413. To comply with the Supremacy
 15 Clause of the U.S. Constitution, which invalidates uninvited intrusions on the federal
 16 government’s expansive immigration authority, a state or local government generally may
 17 not cooperate beyond the scope of the federal government’s “request, approval, or other
 18 instruction.” *Arizona*, 567 U.S. at 403.

19 States and localities frequently cooperate with federal immigration enforcement by
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 27 facilities. Therefore, an IGSA on which ICE is a rider is distinct from a 287(g) agreement.
 28 Compare 8 U.S.C. § 1103(a)(11)(A) (authority for IGSAs), with *id.* § 1357(g)(1)–(9)
 (authority for 287(g) agreements).

1 responding to federal requests for assistance, often contained in federal immigration
2 detainers, including those issued by ICE.⁴ An immigration detainer notifies a State or
3 locality that ICE intends to take custody of a removable alien who is detained in state or
4 local criminal custody, and asks the State or locality to cooperate with ICE in that effort.
5 A detainer asks a State or locality to cooperate in two main respects: (1) by providing ICE
6 with advance notification of the alien's release date; and (2) by maintaining custody of the
7 alien for up to 48 hours, based on ICE's determination that it has probable cause to believe
8 that the individual is a removable alien, until DHS can take custody. *See* 8 C.F.R.
9 § 287.7(a) (describing notification of release), (d) (describing request for continued
10 detention).⁵

14 DHS's detainer form, Form I-247A, sets forth the basis for DHS's determination
15 that it has probable cause to believe that the subject is a removable alien. The form states
16 that probable cause is based on: (1) a final order of removal against the alien; (2) the
17 pendency of removal proceedings against the alien; (3) biometric confirmation of the
18 alien's identity and a records match in federal databases that indicate, by themselves or
19 with other reliable information, that the alien either lacks lawful immigration status or,
20 despite such status, is removable; or (4) the alien's voluntary statements to an immigration
21 officer, or other reliable evidence that the alien either lacks lawful immigration status or,
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26 ⁴ U.S. Customs and Border Protection, another DHS component, also issues detainers in
27 certain situations. 6 U.S.C. § 211. This brief addresses only ICE detainers. ICE always
28 requires probable cause to issue a detainer.

⁵ Statutes authorizing such action include 8 U.S.C. §§ 1103(a)(3), 1226(a) and (c), 1231(a),
and 1357(d).

1 despite such status, is removable. Form I-247A at 1,
2 <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>.

3 Specifically, the current detainer form requests that the State or locality “[m]aintain
4 custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when
5 he/she would otherwise have been released from your custody.” *Id.* The form clarifies that
6 “[t]his detainer arises from DHS authorities and should not impact decisions about the
7 alien’s bail, rehabilitation, parole, release, diversion, custody classification, work, quarter
8 assignments, or other matters.” *Id.* The I-247A detainer form also says that the “alien must
9 be served with a copy of this form for the detainer to take effect,” and that the detainer
10 “should not impact,” among other things, “decisions about the alien’s bail” or “release.”
11 *Id.* The form encourages local law enforcement and the alien to contact ICE with “any
12 questions or concerns” about a detainer. *Id.*

13
14 As of April 2, 2017, ICE policy requires that detainers be accompanied by a signed
15 administrative warrant issued under 8 U.S.C. §§ 1226 or 1231(a). *See* ICE Policy No.
16 10074.2 ¶¶ 2.4, 2.5, <https://www.ice.gov/detainer-policy>. That warrant—either a Form I-
17 200, Warrant for Arrest of Alien (issued for aliens not yet subject to a removal order) or a
18 Form I-205, Warrant of Removal/Deportation (issued for aliens subject to a final removal
19 order)—is issued by an executive immigration officer and sets forth the basis for that
20 officer’s probable-cause determination. *See* 8 C.F.R. §§ 236.1, 241.2, 287.5 (describing
21 officers who may issue such warrants and when). It is this detainer and warrant that
22 authorize a county to detain an alien who is scheduled for release.

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24 In sum, a state or local law enforcement agency generally may physically detain an
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1 alien suspected of being removable in three scenarios: (1) when the jurisdiction has a
2 287(g) agreement with ICE, under which “state and local officials become de facto
3 immigration officers, competent to act on their own initiative,” *City of El Cenizo, Texas v.*
4 *Texas*, --- F.3d ----, 2018 WL 2121427, *7 (5th Cir. May 8, 2018); (2) when the jurisdiction
5 has an IGSA with ICE, which authorizes local law enforcement to house aliens at the
6 request of ICE, after ICE takes physical custody of those aliens and then decides to book
7 those aliens into the local facility as ICE detainees, *see Roman*, 340 F.3d at 320-21; or
8 (3) when ICE requests cooperation from the law enforcement agency through a detainer,
9 accompanied by an administrative warrant, thereby permitting the locality to maintain
10 custody of the alien for up to 48 hours, consistent with federal law. *See* 8 U.S.C.
11 1357(g)(10)(B); *see also id.* at § 1357(g)(8) (providing that local law enforcement that
12 cooperates with federal immigration enforcement efforts under section 1357, including
13 1357(g)(10), does so “under color of federal authority” for purposes of liability and
14 immunity from suit). 8 U.S.C. § 1357(g)(8), (10)(B). Outside of such scenarios or absent a
15 “predicate federal request” to detain, *see El Cenizo*, 2018 WL 2121427, at *14, a local
16 government’s seizure based on suspected removability is unilateral, and thus in many cases
17 unlawful as state action preempted by federal law. *Arizona*, 567 U.S. at 410.

23 **II. Factual Background.**

24 Coconino County has a policy of cooperating with ICE’s immigration enforcement
25 efforts by honoring detainers. This policy, attached to Plaintiff’s First Amended Complaint
26 (ECF No. 18-1), provides as follows: “Detention Staff will notify the Detention and
27 Removal Office (DRO), a subsidiary of [ICE], immediately upon reasonable suspicion,
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1 notification, or admission that an inmate in our facility is an alien and is unlawfully present
2 in the United States.” *Id.* If ICE determines that the person is in the country illegally, ICE
3 will fax an immigration detainer request, and an administrative warrant to be placed in the
4 inmate’s file. *Id.* The policy provides that the inmate will be allowed to post bond on his
5 local charges. *Id.* Once bond is posted, or charges have been adjudicated or dropped, the
6 County will call ICE. *Id.* The detainer “will remain in effect and the inmate will remain in
7 custody until”: (1) ICE notifies the county to remove or drop the detainer; (2) ICE takes
8 custody of the alien; or (3) the detainer period expires—which shall not exceed forty-eight
9 hours, including Saturdays, Sundays, and holidays. *Id.*

12 The County also has an IGSA with the United States Marshals Service, on which
13 ICE is an authorized rider and which accordingly allows ICE to house immigration
14 detainees in the Coconino County Correctional Facility (CCCCF). First Am. Compl., ECF
15 No. 18 ¶ 131. Pursuant to ICE policy, if ICE wishes to be notified of the impending release
16 of an alien who ICE has probable cause to believe is removable from the United States, it
17 will lodge a detainer and administrative warrant with the alien’s state or local custodian.
18 See ICE Policy No. 10074.2 ¶¶ 2.3-2.7. Once grounds for state custody lapse—that is, once
19 the state charge does not authorize further detention—if ICE wants to take physical custody
20 of the alien, ICE will do so within 48 hours. *Id.* ¶ 2.7. If ICE then wishes to avail itself of
21 bed space at the county jail, as it is authorized to do under the IGSA, ICE may arrest the
22 alien after his state charges have been resolved or his bond posted, after which ICE will
23 book the alien back into the jail, subject to the IGSA, as a federal ICE detainee. See Exhibit
24 1, Declaration of Samantha Seaman, ¶¶ 8-10.

1 According to the operative complaint, Plaintiff was arrested on December 1, 2017,
2 charged with four criminal counts related to driving under the influence, and booked into
3 the CCCF. ECF No. 18 ¶¶ 74-76. On December 12, 2017, ICE faxed to CCCF a detainer
4 and an administrative warrant of arrest for Plaintiff. *Id.* ¶ 83. To date, Plaintiff has chosen
5 not to post bond, because he believes he will be transferred to ICE custody for removal
6 proceedings if he does. ECF No. 18 at ¶¶ 121, 130. He thus remains in County custody on
7 state charges.
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10 On April 30, 2018, Plaintiff filed his First Amended Complaint in this putative class
11 action, claiming that the County lacks authority to detain aliens beyond the point they are
12 entitled to release under state law. Plaintiff contends that the County's policy violates the
13 Fourth and Fourteenth Amendments to the U.S. Constitution, and Article II, Section 8 of
14 the Arizona Constitution. ECF No. 18 ¶¶ 151-63. Plaintiff has moved for preliminary and
15 permanent injunctive relief, seeking to enjoin the 2017 Coconino Jail Policy as
16 unconstitutional. *Id.*
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19 ARGUMENT

20 This Court should hold that a locality's cooperation with ICE—either through ICE
21 detainers and arrest warrants or through housing an alien on behalf of ICE after ICE effects
22 an arrest pursuant to the IGSA—is lawful under federal and Arizona law and the state and
23 federal constitutions insofar as it complies with ICE policy. The Court should therefore
24 deny Plaintiff's request for preliminary relief and dismiss this case.
25
26

27 To start, Plaintiff has no basis for challenging the County's cooperation with ICE.
28 Plaintiff elected not to post bond, and remains in County custody. He thus is not now

1 subject to any restraint caused by an ICE detainer or administrative warrant, and so lacks
2 any basis to challenge cooperation with a detainer and warrant by the County. Even if he
3 could challenge the County's cooperation, his challenge would fail. To the extent that the
4 County cooperates with ICE detainers, such cooperation is fully consistent with federal and
5 Arizona law, the Fourth Amendment, and its Arizona analogue. Moreover, although the
6 County does not have a 287(g) agreement, it does have an IGSA with the United States
7 Marshals Service, which authorizes the County to temporarily house aliens in ICE custody
8 following ICE's arrest of such aliens, and detention pursuant to such an agreement occurs
9 under ICE's detention authority. Either form of cooperation is lawful. This court should
10 therefore conclude that the County acts lawfully when it cooperates with ICE pursuant to
11 a detainer request once Plaintiff posts bond or when it houses Plaintiff pursuant to the IGSA
12 once ICE arrests Plaintiff.

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16 **I. Plaintiff Has No Grounds for Challenging the Legality of the County's**
17 **Cooperation with ICE because Plaintiff is not Subject to Any Restraint**
18 **Caused by an ICE Detainer or Warrant.**

19 At the threshold, the Court should hold that an individual who has elected not to
20 post bond in order to avoid being transferred into federal immigration custody lacks any
21 basis to challenge the legality of cooperation with a federal immigration detainer or
22 warrant.

23
24 Plaintiff suggests that he may challenge his possible *future* detention based on the
25 detainer and warrant because "[a]n ICE detainer request has the effect of prolonging one's
26 pre-trial detention in the local jail." ECF No. 14 at 7; *see also id.* at 8-9. And the Ninth
27 Circuit has held that a plaintiff established Article III standing, at the motion-to-dismiss
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1 stage, by alleging that “but for [an] immigration detainer” he would have been able to
2 “post[] bail with the assistance of a bail bondsman,” even where the detainer only
3 “indirectly” caused the detention. *Mendia v. Garcia*, 768 F.3d 1011, 1013 (9th Cir. 2014).
4 But that does not help Plaintiff, because it is settled law that where an individual is in state
5 custody on state charges based on his own decision to not post bond, that individual lacks
6 any basis to challenge cooperation with federal detainer requests. That is because the mere
7 existence of a detainer does not itself cause any seizure, and any possible seizure based on
8 the detainer instead requires a further, intentional act. *See Keil v. Spinella*, No. 09-cv-3417,
9 2011 U.S. Dist. LEXIS 1075, *8-9 (W.D. Mo. Jan. 6, 2011) (“[D]etainer alone does not
10 cause imprisonment or a seizure by ICE. Rather, a seizure only occurs when the agency to
11 which the detainer was issued turns custody over to ICE.”); *Nasious v. Two Unknown*
12 *B.I.C.E. Agents*, 657 F. Supp. 2d 1218, 1223, 1225 (D. Colo. 2009), *aff’d*, 366 F. App’x
13 894 (10th Cir. 2010) (“Plaintiff’s detention was imposed by the state of Colorado based on
14 Plaintiff’s pending criminal charges; it was not imposed by or in any way impacted by the
15 ICE detainer,” and “could not, as a matter of law, constitute a restraint on or deprivation of
16 a liberty”). Plaintiff cannot manufacture standing by his refusing to post bond and thereby
17 prolonging his own stay in state custody—exactly what he complains about. ECF No. 14
18 at 7. *See Clapper v. Amnesty Int’l U.S.A.*, 568 U.S. 398, 418, (2013) (“respondents’ self-
19 inflicted injuries are not fairly traceable to the Government’s purported activities,” and do
20 not give rise to standing.)

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27 Indeed, a federal detainer request, without more, is “simply an administrative
28 mechanism that ensure[s] that upon the completion of his state criminal matter, [the alien]

[will] be transferred to federal custody.” *United States v. Juarez-Velasquez*, 763 F.3d 430, 436 (5th Cir. 5014). Such requests “do not limit [the receiving agency’s] discretion” in any way. *Garcia v. Taylor*, 40 F.3d 299, 303 (9th Cir. 1994). “[S]tate charges [remain] the impetus for the entire duration of [any] pretrial detention” in such circumstances. *Juarez-Velasquez*, 763 F.3d at 436. The Court should therefore conclude that Plaintiff’s election to prolong his own state custody in order to avoid transfer to federal custody provides no cognizable basis to prematurely challenge the legality of cooperation with federal detainers.

II. Cooperation with ICE Detainers Is Consistent with Federal Statutory Law.

Even assuming Plaintiff’s challenge is justiciable, his claims fail. Plaintiff challenges the County’s cooperation with ICE detainers pursuant to the County’s 2017 policy. The INA provides that state and local officers may “cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” 8 U.S.C. § 1357(g)(10)(B). Such cooperation is consistent with the INA if it is undertaken pursuant to a “request, approval, or other instruction from the Federal Government” and follows the federal government’s directions. *Arizona*, 567 U.S. at 410.

Cooperation with a detainer satisfies that test. *First*, detainers are “request[s] . . . from the Federal Government” to a State or locality to assist its efforts to detain a particular alien, so complying with those requests is necessarily permissible cooperation at the federal government’s “request, approval, or other instruction.” *Id.*; accord *El Cenizo*, 2018 WL 2121427, *14 (assistance with detainers occurs “only when there is already federal direction—namely, an ICE-detainer *request*”) (emphasis added).

1 *Second*, the INA authorizes DHS to request cooperation “either to hold the prisoner
 2 for the agency or to notify the agency when release [] is imminent.” *McLean v. Crabtree*,
 3 173 F.3d 1176, 1185 n.12 (9th Cir. 1998) (defining detainer as a request “to hold the
 4 prisoner for the agency or to notify the agency when release of the prisoner is imminent”
 5 and holding that DHS “has authority to lodge a detainer against a prisoner”); *accord El*
 6 *Cenizo*, 2018 WL 2121427, *2 (similar). This detainer “authority,” formalized in 8 U.S.C.
 7 §§ 1103(a)(3), 1226(a) and (c), 1231(a), and 1357(d), “predates the INA and has long been
 8 viewed as implied by federal immigration enforcers’ authority to arrest those suspected of
 9 being removable.” *Santoyo v. United States*, No. 16-855, 2017 WL 6033861, *3 (W.D.
 10 Tex. Oct. 18, 2017); *see United States v. Carlos Gomez-Robles*, No. 17-730, 2017 WL
 11 6558595, at *3 (D. Ariz. Nov. 28, 2017) (similar); *Mendez v. United States*, No. 02 CR 745
 12 (RPP), 2009 WL 4857490, *1 n.2 (S.D.N.Y. Dec. 11, 2009) (similar); *Comm. for*
 13 *Immigrant Rights of Sonoma Cty. v. Cty. of Sonoma*, 644 F. Supp. 2d 1177, 1199 (N.D.
 14 Cal. 2009) (similar); *see also Akande v. U.S. Marshals Serv.*, 659 F. App’x 681, 684 (2d
 15 Cir. 2016) (“[T]he immigration detainer would appear . . . to justify an additional 48 hours
 16 of detention beyond the expiration of the prisoner’s term.”); *Rosario v. New York City*, No.
 17 12 Civ. 4795 (PAE), 2013 WL 20992547, *3 (S.D.N.Y. May 15, 2013) (noting the INA’s
 18 “authority to detain [alien] under [a] detainer”).
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24 *Third*, such cooperation is permitted even if the County lacks a formal 287(g)
 25 agreement or does not satisfy the training and certification requirements that accompany
 26 such agreements. As the Fifth Circuit recently explained, the INA, through section
 27 1357(g)(10)(B), “indicates that Congress intended local cooperation without a formal
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1 agreement,” and without “a written agreement, training, and direct supervision by DHS . . .
2 in a range of key enforcement functions.” *El Cenizo*, 2018 WL 2121427, at *7. That is,
3 cooperation with immigration detainers is permitted and envisioned by the INA without
4 any of the formal training and certification requirements necessary for “state and local
5 officials [to] become de facto immigration officers, competent to act on their own
6 initiative” under a formal 287(g) agreement. *Id.* And as a prior panel (at the stay stage) of
7 the Fifth Circuit held with respect to Texas law requiring cooperation with immigration
8 detainers, “nothing in *Arizona v. United States*, 567 U.S. 387 (2012), prohibits such
9 assistance” and “8 U.S.C. § 1357(g), provides for such assistance.” *El Cenizo*, 2017 WL
10 4250186, at *1-2.

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14 Indeed, in *Arizona v. United States*, involving 8 U.S.C. § 1357(g), the U.S. Supreme
15 Court did not purport to define the outer limits of cooperation permitted by section
16 1357(g)(10). Instead, it listed a number of examples of permissible cooperation which
17 states and localities may partake in without the training and certification requirements of a
18 formal agreement under 8 U.S.C. § 1357(g)(1), including “arrest[ing] an alien for being
19 removable” if that arrest is made in response to a “request” from the federal government.
20 *Arizona*, 567 U.S. at 410. *Arizona* distinguished between such a scenario—which is
21 permissible under section 1357(g)(10)(B)—and the scenario authorized by the law at issue
22 in *Arizona*: “unilateral state action to detain . . . aliens in custody for possible unlawful
23 presence without federal direction and supervision” and without any federal “request” to
24 do so. *Id.* at 410, 413; accord *El Cenizo*, 2018 WL 2121427, *7 (state law requiring
25 cooperation with federal detainers “permit[s] no unilateral enforcement activity” because
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1 cooperation only occurs following “a predicate federal request for assistance”).⁶

2 Moreover, there is no requirement under the INA that a State or locality may
3 cooperate only if it has a formal cooperation agreement under 8 U.S.C. § 1357(g)(1) and
4 its officers are trained and certified under that provision. *See* 8 U.S.C. § 1357(g)(10)(B).
5 Indeed, the Fifth Circuit recently rejected that assertion, *El Cenizo*, 2018 WL 2121427, at
6 *7, and rightly so: section 1357(g)(10) says that *no* formal “agreement under” section
7 1357(g) is required for local officers to “cooperate with” federal immigration officers.
8 Formal agreements are quite different from informal cooperation. Under formal
9 agreements, local officers undergo the training necessary to “perform [the] function of an
10 immigration officer,” 8 U.S.C. § 1357(g)(1)—allowing them to enforce immigration law
11 without any triggering request from the federal government to do so. *See Arizona*, 567 U.S.
12 at 409-10 (explaining when DHS “grant[s] that authority to specific officers” through
13 formal agreement). Under section 1357(g)(10), officers not subject to such agreements may
14 still cooperate absent any formal training, so long as such cooperation is not “unilateral,”
15 but at the “request, approval, or other instruction from the Federal Government.” *Id.* at 410;
16 *see United States v. Ovando-Garzo*, 752 F.3d 1161, 1164 (8th Cir. 2014) (argument to the
17 contrary is “meritless”). The County’s cooperation with federal immigration detainers thus
18 presumes that such cooperation will occur *consistent with* federal law, because a detainer
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25 ⁶ Given the request for assistance from the federal government through the detainer, the
26 Court need not address whether the County could unilaterally effect immigration arrests.
27 *See Gonzales v. Peoria*, 722 F.2d 468, 474 (9th Cir. 1983), *overruled on other grounds by*
28 *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037 (9th Cir. 1999) (suggesting federal law does
not preempt unilateral arrests for criminal immigration offenses by local law enforcement,
but not addressing arrests at the *request* of the federal government like those at issue here).

1 “always requires a predicate federal *request* before local officers may detain aliens for the
2 additional 48 hours.” *El Cenizo*, 2018 WL 2121427, at *15 (emphasis added).

3 Cooperation is thus permitted irrespective of whether it is directed by a state statute
4 or by a local sheriff: in neither case does it exceed the bounds of the cooperation permitted
5 by Congress. *See Arizona*, 567 U.S. at 410, 413 (affirming state legislative mandate
6 “requiring state officials to contact ICE as a routine matter”). The only limitation is that
7 such local cooperation may not “authorize state and local officers to engage in []
8 enforcement activities as a general matter” without “any input from the Federal
9 Government.” *Id.* at 408, 410. While “unilateral decision[s] of state officers to arrest an
10 alien for being removable” are preempted, cooperation under a “request, approval, or other
11 instruction from the Federal Government” is not. *Id.* at 410. Courts have thus recognized
12 that federal law permits States and localities to cooperate, without formal training or
13 certification, with federal requests to detain a removable alien, and that such cooperation
14 is not preempted. *See, e.g., El Cenizo*, 2018 WL 1282035, at *6 (holding that “[s]tate action
15 under” state-law provision requiring local cooperation with federal immigration
16 enforcement does “not conflict with federal priorities or limit federal discretion [] because
17 it requires a predicate federal request,” and therefore “does not permit local officials to act
18 without federal direction and supervision”); *Santos v. Frederick Cty. Bd. of Comm’rs*, 725
19 F.3d 451, 467 (4th Cir. 2013) (detention by state officer lawful when “at ICE’s express
20 direction”); *Ovando-Garzo*, 752 F.3d at 1164 (cooperation without “written agreement” is
21 lawful if “not unilateral”); *cf. Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012)
22 (concluding that local officers not subject to a 287(g) agreement may not *unilaterally* seize
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aliens absent direction from the federal government).⁷

Federal statutory law thus permits the County's cooperation with detainers because that cooperation is not unilateral and occurs pursuant to a request or direction from the federal government.

III. Cooperation with ICE Detainers and Warrants Is Consistent with Arizona Law.

Plaintiff argues that the County's detention power is constrained by Arizona law. ECF No. 14 at 3, 5-7. Plaintiff is incorrect: Arizona law authorizes cooperation with ICE detainers.

Arizona, like every State, wields broad "police powers," which are "an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people." *Manigault v. Springs*, 199 U.S. 473, 480 (1905). As the Supreme Court has recognized, States did not give up their common-law police powers by joining the Union. *See Arizona*, 567 U.S. at 400. The States' status as separate sovereigns means that they possess all residual powers not abridged or superseded by the federal Constitution. *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102, 139 (1838). This residual

⁷ One district court has found to the contrary, concluding that the INA does not allow states and localities to cooperate with immigration detainer requests. *See Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 296 F. Supp. 3d 959, 2017 WL 5634965 (S.D. Ind. 2017). That decision is contrary to the weight of authority concluding the INA authorizes and therefore does not preempt cooperation with detainer requests, *see supra* 13-14 (collecting cases), turns on a specific question of Indiana state law, does not involve, and therefore does not address, the current ICE policy at issue in this case, which requires that all detainers be accompanied by federal administrative warrants, *see* ICE Policy No. 10074.2 ¶¶ 2.4, 2.5, <https://www.ice.gov/detainer-policy>; 8 U.S.C. 1226(a), and is currently on appeal in any event. *See Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, No. 18-1050 (7th Cir.).

1 authority exists regardless any statutory invocation or clarification of that authority by a
2 State's legislature. *See Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819)
3 (Marshall, C.J.). Thus, absent evidence that it "was the clear and manifest purpose of
4 Congress to abridge [a State's police] powers," *Arizona*, 567 U.S. at 400, States and their
5 subdivisions retain whatever common-law police powers they had when joining the Union.
6 *Id.* Far from abridging state power, Congress has authorized cooperation with detainers
7 and federal immigration warrants through the INA. *See* 8 U.S.C. § 1357(g)(10)(B).
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10 As to Arizona's or its localities' exercise of its police powers, there is no
11 requirement that, "before a state law enforcement officer may arrest a suspect for violating
12 federal immigration law, state law must *affirmatively* authorize the officer to do so." *United*
13 *States v. Santana-Garcia*, 264 F.3d 1188, 1193–94 (10th Cir. 2001) (collecting cases).
14 Rather, the overwhelming consensus is that at common law, a State's inherent police
15 powers are not diminished absent explicit legislative action cabining a state or local peace
16 officer's arrest authority. *See id.*; *United States v. Bowdach*, 561 F.2d 1160, 1167-68 (5th
17 Cir. 1977) (state officers may make arrests based on federal statutes or arrest warrants
18 despite absence of state statute explicitly and specifically so permitting); *United States v.*
19 *Janik*, 723 F.2d 537, 548 (7th Cir. 1983) (recognizing state law enforcement officers'
20 implicit authority to arrest suspects for federal offenses, even though "no Illinois statute
21 explicitly authorized an Illinois officer to arrest"); *cf. Marsh v. United States*, 29 F.2d 172,
22 174 (2d Cir. 1928) (L. Hand, J.) (the fact that state statute governing arrest authority does
23 not explicitly authorize a specific arrest does not mean that arrest is not authorized, because
24 it is inappropriate to infer in such circumstances an intent to restrict pre-existing authority
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to arrest for other offenses); *see also Commonwealth v. Leet*, 641 A.2d 299, 303 (Pa. 1994) (holding common-law authority not abrogated absent explicit statutory provision to that effect); *Christopher v. Sussex Cty.*, 77 A.3d 951, 959 (Del. 2013) (similar); *Dep’t of Pub. Safety & Corr. Servs. v. Berg*, 342 Md. 126, 137-39 (1996); *Southern R. Co. v. Mecklenburg County*, 231 N.C. 148, 150-51 (1949) (similar).⁸ That is the law in Arizona too. *See Merrill v. Phelps*, 84 P.2d 74, 76 (Ariz. 1938) (“The power exercised by the sheriff under the common law still pertains to [the] sheriff, *except in so far as it has been modified* by constitutional and statutory provisions.”) (emphasis added).

Pursuant to Arizona common law, sheriffs in particular retain broad residual authority to cooperate with other federal and state authorities in the enforcement of their laws, including the ability to effect writs of arrest both criminal and civil and detain prisoners pursuant to outstanding warrants. Arizona common law permits the holding of prisoners beyond the length of their sentence “to answer to other writs upon which [they have] not been arrested.” 1 WALTER H. ANDERSON, TREATISE ON THE LAW OF SHERIFFS, CORONERS, AND CONSTABLES § 146 (1941). The reasoning for this detainer authority is clear: “It would be a useless and idle ceremony to discharge [a prisoner] and immediately arrest him upon the other process held by the officer.”⁹ *Id.* These common-law duties have

⁸ One state’s judiciary has ruled to the contrary, holding that the State may not act on their common law police powers absent *affirmative* legislation activating those powers. *See Lunn v. Commonwealth*, 477 Mass. 517, 528-33 (2017). *Lunn* represents the minority view, rests on Massachusetts law, and conflicts with the authorities cited above.

⁹ Further, continuing to hold a criminal defendant is not the same thing as being arrested. Under Arizona law, an arrest is in relevant part “made by an actual restraint of the person to be arrested.” Ariz. Rev. Stat. § 13-3881. An arrest is “a *process* with a beginning and an end.” *State v. Barker*, 253 P.3d 286, 287 (Ariz. Ct. App. 2011) (emphasis added).

1 existed throughout Arizona's history, even as some provisions of Arizona law have been
2 codified. *See Merrill*, 84 P.2d at 76.

3 Far from abridging Sheriffs' common-law authority, Arizona has done the opposite.
4 Arizona law does not withdraw Sheriffs' retained authority to cooperate with federal
5 enforcement, be it criminal or civil. Instead, it reaffirms it: by statute, "[n]o official or
6 agency of [Arizona] or a county, city, town or other political subdivision of this state may
7 limit or restrict the enforcement of federal immigration laws *to less than the full extent*
8 *permitted by federal law.*" Ariz. Rev. Stat. § 11-1051(A) (emphasis added). This law
9 explicitly prohibits any limitations on cooperation with federal immigration authorities,
10 including permissible cooperation with detainers, and implicitly rejects any notion that
11 Arizona has affirmatively instructed its sheriffs that they may not cooperate with requests
12 for assistance from the federal government.

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14 In addition to this explicit command, Arizona has codified the common law arrest
15 authority to "to answer to other writs" into statute. "The provisions of [Arizona's] statutes
16 on arrest are, for the most part, a codification of the common-law rules regarding the
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22 "Custody," meanwhile, is "restraint *pursuant to an on-site arrest or court order*,"
23 demonstrating that custody comes *after* the arrest. Ariz. Rev. Stat. § 13-2501 (emphasis
24 added) (defining "custody" in the context of escape). Therefore, unless a peace officer
25 begins a period of physical confinement of the defendant, the officer has not executed an
26 arrest. Plaintiff's citation of statutes and a rule describing arrests is thus irrelevant to the
27 analysis of whether sheriffs may cooperate with ICE detainers. *See* Pl.'s Mot. for
28 Preliminary Injunction, ECF No. 14, at 17 (citing Ariz. Rev. Stat. § 13-3964, which
concerns an "officer making [an] arrest," the Uniform Criminal Extradition Act as codified
at Ariz. Rev. Stat. § 13-3841 *et seq.*, concerning "the duty of the governor of this state to
have arrested" certain persons, and Ariz. R. Crim. P. 4.1, entitled "Procedure Upon
Arrest").

subject.” *Adair v. Williams*, 210 P. 853, 855 (Ariz. 1922). Those statutes recognize that:

(1) sheriffs may make an arrest based on “all process and orders regular on their face and issued by competent authority,” including those issues pursuant to criminal or civil authority, Ariz. Rev. Stat. § 11-447; (2) peace officers may arrest a person “by virtue of a warrant,” *id.* § 13-3887; and (3) detention officers have the statutory authority to arrest those who are already incarcerated in a jail facility pursuant to a warrant, *id.* § 13-3907. Additionally, a sheriff has statutory authority to “keep in the county jail any prisoner committed thereto by process or order issued under the authority of the United States.” *Id.* § 31-122.¹⁰

¹⁰ To the extent Plaintiff suggests that a temporary detention premised on a detainer and federal administrative warrant is somehow not a warrant because an officer effecting the detention must ““without unnecessary delay take the person arrested before the magistrate who issued the warrant,”” ECF No. 38 at 2 n.2 (quoting A.R.S. § 13-3897), he is mistaken. This provision appears in Title 13 of the *criminal* code, and thus, by its own terms, refers to arrests based on *criminal* warrants issued by judicial officers. It does not purport to limit the Sheriff’s authority to answer to other “writs,” civil or criminal, so long as they are regular on their face. Regardless, an officer holding an individual under a detainer and warrant does in fact take the person arrested before the *magistrate* who issued the warrant when ICE takes custody of the prisoner. See 8 U.S.C. § 1226(a). It is well-settled that the term “magistrate” is not limited to *judicial* officers, but in fact encompasses any “public civil officer, possessing such power—legislative, executive, or judicial—as the government appointing him may ordain.” *Shadwick v. City of Tampa*, 407 U.S. 345, 349 (1972); see *Compton v. State of Alabama*, 214 U.S. 1, 7 (1909) (“the appellation of magistrate is not confined to justices of the peace, and other persons, *ejusdem generis*, who exercise general judicial powers; but it includes others *whose duties are strictly executive*”) (emphasis added). Indeed, it has long been the case that federal immigration officials in the Executive Branch may function as magistrates by issuing administrative warrants pursuant to federal statutes authorizing them to do so. See, e.g., *Abel v. United States*, 362 U.S. 217, 234 (1960); accord *Sherman v. U.S. Parole Comm’n*, 502 F.3d 869, 876-80 (9th Cir. 2007) (in immigration context, warrants may be issued “outside the scope of the Fourth Amendment’s Warrant Clause”). Thus, even were Plaintiff correct that Arizona law permits cooperation with a detainer and warrant only if the cooperating officer takes the prisoner before the magistrate who issued the warrant, that plainly will occur here if and

The United States' issuance of a detainer request, accompanied by a federal warrant, plainly encompasses an "order issued under the authority of the United States." Likewise, the detainer and federal arrest warrant are "process and orders regular on their face" that are "issued by competent authority," i.e., the United States under federal authorities described above. *See supra* Section II. Arizona county authorities through the Sheriff therefore have clear authorization to continue to hold persons already subject to state authority pursuant to immigration detainers and warrants on behalf of the United States.¹¹

Thus, if and when the County in fact honors the detainer ICE issued as to Plaintiff, that cooperation with an ICE detainer, supported by a federal administrative warrant, is not affirmatively forbidden, and, in fact, is authorized by Arizona common and statutory law. *See* Ariz. Rev. Stat. §§ 11-1051(A), 31-122.

IV. Cooperation with ICE Detainers Is Consistent with the U.S. Constitution and the Arizona Constitution.

Plaintiff alleges that cooperation with ICE detainers violates the Fourth and Fourteenth Amendments to the United States Constitution, and Article II, Section 8 of the Arizona Constitution, which provides that "No person shall be disturbed in his private

when Plaintiff actually posts bond and ICE takes custody of him. At that time, he may challenge his custody or removal proceedings before the "magistrate," i.e. ICE, as well as the immigration courts. *See* 8 U.S.C. §§ 1226; 8 U.S.C. § 1229(b)(1); 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 287.3(d)

¹¹ Indeed Ariz. Rev. Stat. § 11-447 actually provides that the sheriff "shall (emphasis) execute process and orders regular on their face and issued by competent authority," even if there "may be [a] defect in the proceedings upon which they were issued." This mandatory command is further evidence that Arizona has not abrogated Sheriffs common law authority to effect writs and cooperate in executing arrests both criminal and civil on behalf of other sovereigns.

1 affairs, or his home invaded, without authority of law.” Am. Compl. ¶¶ 151-63. This is
2 meritless.

3 At the outset, Article II, Section 8 of the Arizona Constitution is frequently
4 interpreted co-extensively with the Fourth Amendment to the U.S. Constitution. “Article
5 2, Section 8 has historically been construed as imposing limits on search and seizure
6 consistent with the prohibitions of the Fourth Amendment.” *State v. Juarez*, 203 Ariz. 441,
7 445 (Ct. App. 2002), *as amended* (Oct. 25, 2002). *See State v. Pelosi*, 68 Ariz. 51, 57 (1948)
8 (Article 2, Section 8 “was adopted for the purpose of preserving the rights which the Fourth
9 Amendment to the Federal Constitution was intended to protect”). Thus, for ease of
10 reference, the United States will generally refer only to the Fourth Amendment.
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14 Three points establish that local cooperation with detainers accords with both the
15 Fourth Amendment and its Arizona equivalent: (1) federal officials can constitutionally
16 arrest aliens under a federal administrative warrant (which accompanies each ICE
17 detainer); (2) the lawfulness of that practice does not change when local officials help
18 effectuate such an arrest at ICE’s request; and (3) local officials may constitutionally rely
19 upon federal officials’ probable-cause determinations.
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22 *First*, the Fourth Amendment permits *federal* officers to make civil arrests of aliens
23 based on probable cause of removability contained in a detainer or administrative warrant.
24 To start, the “Fourth Amendment does not require warrants to be based on probable cause
25 of a crime, as opposed to a civil offense.” *United States v. Phillips*, 834 F.3d 1176, 1181
26 (11th Cir. 2016) (collecting examples, including bench warrants for civil contempt and
27 writs of replevin). Arrests may be premised on probable cause of any legal violation,
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1 whether civil or criminal. *See, e.g., El Cenizo*, 2018 WL 2121427, *13 (collecting other
2 constitutionally valid examples, like *Maag v. Wessler*, 960 F.2d 773, 775-76 (9th Cir.
3 1991), including seizures of the mentally ill, those who pose a danger to themselves, and
4 juvenile runaways); *United States ex rel. Randazzo v. Follette*, 418 F.2d 1319, 1322 (2d
5 Cir. 1969) (holding that a parole violator warrant designated as “administrative” under New
6 York law was not subject to ordinary Fourth Amendment safeguards and thus did “not
7 depend upon a showing of probable cause” of a crime). Indeed, given that “[i]n determining
8 whether a search or seizure is unreasonable, [courts] begin with history,” including
9 “statutes and common law of the founding era,” *Virginia v. Moore*, 553 U.S. 164, 168
10 (2008), that understanding is especially settled in the immigration context. There is
11 “overwhelming historical legislative recognition of the propriety of administrative arrest[s]
12 for deportable aliens.” *Abel v. United States*, 362 U.S. 217, 233 (1960) (noting “impressive
13 historical evidence” of validity of “administrative deportation arrest from almost the
14 beginning of the Nation”). Therefore, aliens “may be arrested by administrative warrant
15 issued without order of a magistrate.” *Lopez v. U.S. I.N.S.*, 758 F.2d 1390, 1393 (10th Cir.
16 1985).

17
18 Plaintiff does not contest that federal immigration officers can detain an alien based
19 on a civil administrative warrant attesting to probable cause of removability. Plaintiff does
20 suggest that Fourth Amendment problems arise when a state or local officer effects an
21 arrest based on probable cause of a civil—as opposed to a criminal—violation because a
22 local officer may continue an individual’s detention only if he has probable cause to believe
23 that person has “committed a criminal offense.” ECF No. 14 at 8. The authorities discussed

1 above refute that suggestion.¹² Nor can it be squared with textbook “immigration law and
 2 procedure; civil removal proceedings necessarily contemplate detention absent proof of
 3 criminality.” *El Cenizo*, 2018 WL 1282035, *14; accord *Demore v. Kim*, 538 U.S. 510,
 4 531 (2003) (upholding no-bail civil immigration detention against a Fifth Amendment Due
 5 Process challenge); cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018) (holding that
 6 federal law “makes clear that detention of aliens [] must continue ‘pending a decision on
 7 whether the alien is to be removed from the United States’”) (citing 8 U.S.C. § 1226).

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 10 Plaintiff also errs in contending that warrants accompanying detainers are
 11 problematic because they are issued by an ICE official rather than “by a judicial officer.”
 12 ECF No. 14 at 7. Given the civil context of federal immigration detainers, an executive
 13 immigration officer can constitutionally make the necessary probable-cause determination.
 14 “[L]egislation giving authority to the Attorney General or his delegate to arrest aliens
 15 pending deportation proceedings under an administrative warrant, not a judicial warrant
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19 ¹² Indeed, the district court cases on which Plaintiff relies for this interpretation (ECF No.
 20 14 at 7-8) have since been rejected and their reasoning “disavow[ed]” by the Fifth Circuit.
 21 *El Cenizo*, 2018 WL 2121427, *13 n.22 (“[W]e also disavow any district court decisions
 22 that have suggested the Fourth Amendment requires probable cause of criminality in the
 23 immigration context.”). See *Mercado v. Dallas Cty.*, 229 F.Supp.3d 501, 512–13 (N.D.
 24 Tex. 2017); *Santoyo v. United States*, No. 5:16-CV-855-OLG, 2017 WL 2896021 (W.D.
 25 Tex. June 5, 2017). Plaintiff’s reliance on *Ochoa v. Campbell*, 266 F. Supp. 3d 1237 (E.D.
 26 Wash. Nov. 28, 2017), ECF 14 at 9-10, is also misplaced. First, the decision on appeal has
 27 been vacated as moot. See 716 F. App’x 741 (9th Cir. 2018). Second, *Ochoa* is
 28 distinguishable on its facts because that case did not involve a detainer request, so that the
 record lacked a sufficient basis from which jail officials could “understand that federal
 authorities were requesting cooperation.” *Ochoa*, 266 F. Supp. 3d at 1256; see *United*
States v. Gomez-Robles, No. CR170730TUCCKJJR, 2017 WL 6558595, *5 (D. Ariz. Nov.
28, 2017), report and recommendation adopted, No. CR17730TUCCKJJM, 2017 WL

1 within the scope of the Fourth Amendment,” has existed “from almost the beginning of the
2 Nation.” *Abel*, 362 U.S. at 234. “It is undisputed that federal immigration officers may
3 seize aliens based on an administrative warrant attesting to probable cause of
4 removability.” *El Cenizo*, 2018 WL 2121427, *13; *Sherman v. U.S. Parole Comm’n*, 502
5 F.3d 869, 876-80 (9th Cir. 2007) (in immigration context, warrants may be issued “outside
6 the scope of the Fourth Amendment’s Warrant Clause”); *United States v. Lucas*, 499 F.3d
7 769, 776 (8th Cir 2007) (en banc) (plurality) (similar); *see also* cases cited *supra* at 22-23,
8 n.10 (explaining that a magistrate under the Fourth Amendment may be an Executive
9 official, including an ICE officer).¹³ So “it is not unconstitutional under the Fourth
10 Amendment for the Legislature to delegate a probable cause determination to an executive
11 officer, such as an ICE agent, rather than to an immigration, magistrate, or federal district
12 court judge.” *Roy v. ICE*, No. 13-4416, 2017 WL 2559616, *10 (C.D. Cal. June 12, 2017).

16 *Second*, because the Fourth Amendment allows federal immigration officers to
17 arrest and detain based on an administrative warrant attesting to probable cause of
18 removability, state and local officials can do the same when they act at the request or
19 direction of the federal government. The Fourth Amendment does not apply differently
20 when a local official rather than a federal official is arresting or detaining. “The Fourth
21 Amendment’s meaning [does] not change with local law enforcement practices.” *Virginia*,

25 ¹³ It is for this reason that Plaintiff’s reliance on *Ochoa v. Campbell*, 266 F. Supp. 3d 1237,
26 1252 (E.D. Wash. 2017) and *El Badrawi v. Dep’t of Homeland Sec.*, 579 F. Supp. 2d 249,
27 276 (D. Conn. 2008), ECF no 38 at 2, n.2, is entirely misplaced. Both cases do not
28 acknowledge, let alone discuss, *Abel* and related cases explaining that federal Executive
officers may issue warrants without presentment to a judicial officer consistent with the
Fourth Amendment.

1 553 U.S. at 172. To hold otherwise would cause Fourth Amendment “protections [to] vary
2 if federal officers were not subject to the same statutory constraints as state officers.” *Id.*
3 at 176.

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5 Thus, if a seizure is legal under the Fourth Amendment when a federal officer
6 effectuates it, then so too when a state or local officer does, even where state law does not
7 authorize the arrest. A police officer’s “violation of [state] law [in arresting an alien based
8 on a violation of federal immigration law] does not constitute a violation of the Fourth
9 Amendment.” *Martinez-Medina v. Holder*, 673 F.3d 1029, 1037 (9th Cir. 2011). And the
10 legality of an arrest made by a state officer is especially apparent where a local officer is
11 not just arresting for a federal offense, but doing so at and after the express request of the
12 federal government supported by a federal administrative warrant, and consistent with state
13 law authorizing compliance with federal detainers requesting such arrests. Under detainer
14 requests, County sheriff’s deputies do not act unilaterally—they act at ICE’s request,
15 within the parameters of ICE’s request. *See El Cenizo*, 2018 WL 2121427, *15 (“[T]he
16 ICE-detainer mandate, [] always requires a predicate federal request before local officers
17 may detain”); *Santos*, 725 F.3d at 467 (cooperation lawful when “at ICE’s express
18 direction”); *Ovando-Garzo*, 752 F.3d at 1164 (cooperation without “written agreement”
19 lawful if “not unilateral”); *cf. Melendres*, 695 F.3d at 1001 (detention of removable aliens
20 is unilateral absent a formal agreement or request for cooperation).

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26 *Third*, arrests or detentions based on probable cause may lawfully be made where
27 the probable-cause determination is made by one official (here, a federal ICE officer) and
28 relied on by another official who serves under a different sovereign (here, a local official).

1 Put differently, state and local officers may rely on ICE’s findings of probable cause, as
2 articulated in a detainer and administrative warrant, to detain the subject of a detainer when
3 the federal government so requests. Where one officer obtains an arrest warrant based on
4 probable cause, other officers can make the arrest even if they are “unaware of the specific
5 facts that established probable cause.” *United States v. Hensley*, 469 U.S. 221, 231 (1985).
6 An officer may thus arrest someone even if he himself does not independently ascertain all
7 facts forming the basis to arrest, so long as “an officer (or team of officers), with direct
8 personal knowledge of all the facts necessary to give rise to reasonable suspicion or
9 probable cause, directs or requests that another officer, not previously involved in the
10 investigation, conduct a stop, search, or arrest.” *United States v. Ramirez*, 473 F.3d 1026,
11 1032-33 (9th Cir. 2007).

15 This rule of collective law-enforcement knowledge applies when “the
16 communication [is] between federal and state or local authorities,” 3 Wayne R. LaFave,
17 *Search and Seizure* § 3.5(b) (2016) (collecting cases), including when a state or local
18 officer arrests someone based upon probable cause from information received from an
19 immigration officer. *See, e.g., El Cenizo*, 2018 WL 2121427, *13 (“Compliance with an
20 ICE detainer [] constitutes a paradigmatic instance of the collective-knowledge doctrine,
21 where the detainer request itself provides the required communication between the
22 arresting officer and an officer who has knowledge of all the necessary facts.”); *Mendoza*
23 *v. U.S. ICE*, 849 F.3d 408, 419 (8th Cir. 2017) (“County employees . . . reasonably relied
24 on [ICE agent’s] probable cause determination for the detainer.”). And “an ICE-detainer
25 request evidences probable cause of removability in every instance.” *El Cenizo*, 2018 WL

2121427, *13.¹⁴

In sum, the Fourth Amendment allows local officials to detain aliens in response to federal detainer requests when the United States presents probable cause of civil removability through a detainer and arrest warrant.

V. Cooperation with ICE Detainers is consistent with the Due Process Clause.

While Plaintiff's First Amended Complaint, ECF No. 18, alleges that the future cooperation with an ICE detainer violates the due process component of the Fourteenth Amendment, he does not mention the Fourteenth Amendment in his motion for preliminary

¹⁴ Decisions of other courts are in accord. *See, e.g., Rojas v. Suffolk County Sheriff's Office*, 06316/2017, 2018 WL 1387058, *3 (N.Y. Sup. Ct. Mar. 16, 2018) (state official's detention of inmate pursuant to I-247A and I-200 warrant issued by ICE was constitutional); *United States v. Gomez-Robles*, No. CR170730TUCCKJJR, 2017 WL 6558595, *5 (D. Ariz. Nov. 28, 2017), report and recommendation adopted, No. CR17730TUCCKJJM, 2017 WL 6554914 (D. Ariz. Dec. 22, 2017) (finding no Fourth Amendment violation based on probable-cause determination in I-247A form and I-200 warrant in context of motion for suppression in criminal case); *Chery v. Sheriff of Nassau Cty.*, Index No. 8100/15, 2015 WL 13665005, *3-4 (Sup. Ct., Nassau Cty. 2015) (addressing Form I-205 Warrant of Removal/Deportation, and holding that detainer authorizes detention where it is "accompanied by either a Warrant for Arrest or a Final Order of Removal/Deportation," which "does, in fact, provide respondent with lawful authority to detain petitioners"); *People v. Xirum*, 993 N.Y.S.2d 627, 632 (Sup. Ct., N.Y. Cty. 2014) (law enforcement may hold aliens for ICE, whom ICE has probable cause to believe are removable, as communicated through an administrative warrant, at ICE's request so long as the alien is "subject to a warrant for arrest or an order of removal or deportation," neither of which alleges that a crime has been committed). No case addressing the current ice policy of accompanying detainers with a warrant has found cooperation with that policy to violate the fourth amendment and nine of the cases Plaintiff cites in either brief in fact addresses that policy, but instead address policies no longer in place One state court has held to the contrary, but that decision is distinguishable on its facts, because the locality in question in fact detained the individual in question far beyond the time authorized by the detainer, which the Court determined was not authorized by Colorado law. *See Cisneros v. Elder*, 2018CV30549, at *7-11 (Colo. District Court, El Paso Cty., Mar. 19, 2018).

1 injunction. *Compare* First Am. Compl., at Counts I-III, with Motion at 5. But to the extent
2 that he is raising a claim under the Fourteenth Amendment, the claim is meritless.

3 *First*, where (as here) a party raises both Fourth and Fourteenth Amendment
4 challenges to the same nexus of events, the “independent” Fourteenth Amendment due
5 process claim collapses into the Fourth Amendment claim and cannot serve as a separate,
6 freestanding claim. *See, e.g., Graham v. Connor*, 490 U.S. 386, 395 (1989). Indeed, as the
7 Supreme Court has explained, “[i]f the complaint is that a form of legal process resulted in
8 pretrial detention unsupported by probable cause, then the right allegedly infringed lies in
9 the Fourth Amendment,” not the “Due Process Clause.” *Manuel v. City of Joliet*, 137 S.
10 Ct. 911, 919 (2017). Plaintiff’s putative Fourteenth Amendment claim thus adds nothing
11 to his meritless Fourth Amendment claim.

12 *Second*, a prerequisite to any due process claim, whether procedural or substantive,
13 is an assertion of a cognizable liberty interest—and Plaintiff has invoked no such interest
14 here. The mere existence of an “ICE detainer could not, as a matter of law, constitute a
15 restraint on or deprivation of a liberty interest upon which a due process violation could be
16 premised.” *Nasious*, 657 F. Supp. 2d at 1223. The lodging of any detainer generally has no
17 “immediate effect upon protected liberty interests,” because the subject of a detainer is “not
18 entitled to a hearing prior to the execution of the warrant or to compelled execution of the
19 warrant” on which the detainer relies. *Heath v. U.S. Parole Comm’n.*, 788 F.2d 85, 91 (2d
20 Cir. 1986); *see Escobar v. Holder*, Civ. No. 09-3717 (PAM/JJK), 2010 WL 1389608, *4
21 (D. Minn. Mar. 9, 2010) (finding “no support for the proposition that” an alien “is entitled
22 to a hearing before immigration officials send [] a detainer”); *see also Nasious* 657 F. Supp.

1 2d at 1223; *Keil*, 2011 WL 43491, *8-9.

2 This is especially true in the immigration context. Removable aliens generally lack
3 any due process right to be free from detention pending resolution of their removal
4 proceedings until such detention becomes *prolonged*. *Demore*, 538 U.S. at 523. Until it
5 does, detention remains “a constitutionally valid aspect of the deportation process,” and
6 impinges on no cognizable liberty interest. *Id.* That is true whether the custodian of that
7 detention is the federal government or a State or locality. *See, e.g., Themeus v. U.S. Dep’t*
8 *of Justice*, 643 F. App’x 830, 832-33 (11th Cir. 2016). To be sure, aliens who are not
9 subject to mandatory detention may challenge their ongoing detention in their removal
10 proceedings and seek release on bond. *See, e.g.,* 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1),
11 287.3(d). They may also seek to terminate removal proceedings based on a pre-removal
12 proceeding deprivation of fundamental rights, including Fourth Amendment rights.
13 *Martinez-Medina*, 673 F.3d at 1037. But the remedies available in removal proceedings do
14 not create a freestanding due process right to avoid immigration detention. *See Demore*,
15 538 U.S. at 523. And without such a cognizable liberty interest, there can be no procedural-
16 due-process violation in the first place. *See Bd. of Regents v. Roth*, 408 U.S. 564, 569–70,
17 (1972) (procedural protections of due process clause are triggered only when there is a
18 cognizable liberty or property interest at stake).

19 *Finally*, even if Plaintiff could make a freestanding due process claim and even if
20 Plaintiff’s detention affected a cognizable liberty interest, any due process claim would
21 still fail because he has been accorded procedural due process as a matter of law. Procedural
22 due process requires only notice and some opportunity to be heard before deprivation of a
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protected interest. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Detainers constitute such notice. Those forms provide that the “alien must be served with a copy of this form for the detainer to take effect,” encourage local law enforcement and the alien to contact ICE’s Law Enforcement Support Center with “any questions or concerns” about a detainer request, and clearly provide a means for contacting ICE to correct any errors. Form I-247A at 1. No more is required. When a detainer is served, the recipient alien receives all the notice and opportunity to be heard that he or she is due.

For these reasons, the U.S. and Arizona Constitutions allow local officials to detain aliens in response to, and in accordance with, ICE detainers.

VI. Cooperation with an IGSA Is Consistent with Federal Law.

Finally, although the Court need not address the issue because there is no basis in the record to conclude that Plaintiff is likely to be subject to the IGSA following any arrest by ICE once he is released from County custody, to the extent that Plaintiff is ultimately released upon posting bond and is booked back into ICE custody pursuant to the IGSA, that cooperation would be lawful. If Plaintiff elects to post bond and is released, and ICE wishes to assume custody, ICE would do so by effectuating an administrative arrest warrant following release from state charges. Thereafter, one of two things might happen. ICE could transport Plaintiff elsewhere. In that scenario, there would be no justiciable complaint against Coconino County, because Plaintiff would not be housed in the County. If, however, ICE were to invoke its authority pursuant to the IGSA to house Plaintiff in County facilities, Plaintiff then would be detained as an ICE detainee subject to ICE’s custody. The fact that, under the IGSA, Plaintiff would only return to county facilities *after*

1 ICE effects an arrest, means any detention of Plaintiff after release from state charges
2 would be premised on *federal* authority. *See* 8 U.S.C. § 1226(a).

3 The County’s contract to house ICE detainees is entered into pursuant to federal
4 law, which permits ICE to pay localities for the housing of aliens detained by ICE “pursuant
5 to Federal law under an agreement” with any locality for “detention services” including
6 “guaranteed bed space for person detained by the” federal government. *Id.*
7 § 1103(a)(11)(A); *see, e.g., Roman*, 340 F.3d at 320-21 (addressing section 1103(a)(11)(A))
8 and holding that ICE is the proper defendant in habeas cases involving persons detained at
9 the request of ICE in state and local contract detention facilities); *Henderson v. INS*, 157
10 F.3d 106, 122 (2d Cir. 1998) (holding that although the warden of each detention facility
11 technically has day-to-day control over alien detainees, the INS District Director for the
12 district where a detention facility is located “has power over” such alien habeas corpus
13 petitioners); *accord Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 489 n.4 (1973)
14 (“Since the Alabama warden acts here as the agent of the Commonwealth of Kentucky in
15 holding the petitioner . . . we have no difficulty concluding that petitioner is ‘in
16 [Kentucky’s] custody’ . . .”). Thus, if ICE arrests Plaintiff pursuant to its federal
17 administrative warrants and invokes its authority pursuant to the IGSA to house him in
18 County facilities, Plaintiff would be detained there as an ICE detainee subject to ICE’s
19 custody. *See* 8 U.S.C. § 1103(a)(11)(A). Thus, any County cooperation with the IGSA is
20 consistent with federal law.
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CONCLUSION

Coconino County's cooperation with federal immigration detainers, as well as housing ICE detainees under the IGSA, is permitted by federal law. Thus, this Court should deny Plaintiff's motion for a temporary restraining order and injunctive relief, and should dismiss this case.

Dated: May 19, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

WILLIAM C. PEACHEY
Director, Office of Immigration Litigation
District Court Section

EREZ REUVENI
Assistant Director

FRANCESCA GENOVA
Trial Attorney

/s/ Lauren C. Bingham
Lauren C. Bingham, Fl. Bar No. 105745
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
(202) 616-4458; (202) 305-7000 (facsimile)
lauren.c.bingham@usdoj.gov

Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System, which will deliver a copy to all counsel of record.

/s/ Lauren C. Bingham

Lauren C. Bingham, Fl. Bar No. 105745

Trial Attorney

United States Department of Justice

Civil Division

Office of Immigration Litigation

District Court Section

Attorney for the United States