UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, *et al.*.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 5:17-cv-404-OLG
Texas, *et al*.,	)	
Respondents.	)	

SUPPLEMENTAL STATEMENT OF INTEREST ON BEHALF OF THE UNITED STATES

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Dated July 20, 2017

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CASE LAW

FEDERAL STATUTES

STATE STATUES

MISCELLANEOUS

Pursuant to 28 U.S.C. § 517, the United States respectfully submits this supplemental Statement of Interest addressing three points relevant to Senate Bill 4's (SB 4) detainer provisions raised by the Plaintiffs and *amici* in their supplemental briefs.

1. "A system of dual sovereignties cannot work without informed, extensive, and cooperative interaction of a voluntary nature between sovereign systems for the mutual benefit of each system." *City of New York v. United States*, 179 F.3d 29, 35 (2d Cir. 1999). Texas, like any other State, may, as an exercise of its sovereignty, promulgate positive law authorizing state and local law enforcement officers to cooperate with the federal government by making civil arrests premised on a probable cause determination made by Immigration and Customs Enforcement (ICE). In our system of government, States possess 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). The States' status as separate sovereigns means they possess all residual powers not abridged or superseded by the United States Constitution. *Mayor of New York v. Miln*, 36 U.S. 102, 139 (1838). This residual authority preexists any statutory invocation or clarification of that authority by a State's legislature. *See Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819) (Marshall, C.J.).

Consistent with these broad police powers, many State legislatures have, from the earliest days of the Republic, defined and regulated the circumstances under which their officers can effectuate arrests. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 336-38 (2001). But these subsequent statutory developments have generally been construed to supplement—not supplant—each State's residual, common law authority. *See, e.g.*, *Dep't of Pub. Safety & Correctional Servs. v. Berg*, 342 Md. 126, 137-39 (1996); *Commonwealth v. Leet*, 537 Pa. 89, 96 (1994); *State v. Stahl*, 838 P.2d 1193, 1196 (Wy. 1992). Such is the case here, where it is beyond

dispute that Texas, through SB 4, has exercised its sovereign authority by affirmatively authorizing local peace officers to make temporary arrests in response to ICE detainer requests, when the subject of those requests is already in local custody. *See* Texas Code of Criminal Procedure. Article 2.251. And no party to this litigation disputes that absent federal preemption concerns, Texas, like other States, has authority as a sovereign to regulate as it sees fit within its borders, including by regulating its subdivisions, as it has done here.[1] *See, e.g.*, *Williams v. Mayor*, 289 U.S. 36, 40 (1933); *Koog v. United States*, 79 F.3d 452, 460 (5th Cir. 1996).

2. Contrary to plaintiffs' argument, the Immigration and Nationality Act (INA) does not preempt this provision of SB4. Plaintiffs' argument regarding preemption is contrary to *Arizona v. United States*, 567 U.S. 387 (2012). In *Arizona*, the Supreme Court held that the INA preempted a provision of state law that had "authoriz[ed] state and local officers to engage in [warrantless immigration arrests] as a general matter" without "any input from the Federal Government about whether an arrest is warranted in a particular case." 567 U.S. at 408, 410.

The Court was clear, however, that State or local detention of aliens for possible removability does *not* conflict with the INA at least where (1) an agreement with the federal government to assist in the enforcement of the immigration laws exists, *see id*. at 408-409 (citing 8 U.S.C. 1357(g)(1)); or (2) *even absent such an agreement*, when the State or locality is "cooperat[ing] with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States," *id*. at 409 (quoting 8 U.S.C. § 1357(g)(10)(B)). Indeed, the Court explicitly distinguished such cooperation from the State law at issue in *Arizona*, which constituted "unilateral state action" authorizing a "*unilateral* decision

[1] Because Texas has *affirmatively* authorized its local peace officers to make arrests in response to federal immigration detainer requests, there is no need for this Court to determine if State officers retain inherent authority to make civil immigration arrests, whether or not such authority has been preempted. *See, e.g.*, *United States v. Santana-Garcia*, 264 F.3d 1188, 1190-94 (10th Cir. 2001); Br. of United States at 18-19 (collecting cases).

of state officers to arrest an alien for being removable *absent any request, approval, or other instruction from the Federal Government*." *Id*. at 410, 413 (emphases added) (listing "allow[ing] federal immigration officials to gain access to detainees held in state facilities" and "responding to requests for information about when an alien will be released from their custody" as examples of State cooperation with federal immigration enforcement that is not preempted by the INA).[2]

As *Arizona* demonstrates, the INA does not preempt State or local cooperation with an ICE detainer request, *see* ICE Policy No. 10074.2: *Issuance of Immigration Detainers by ICE Immigration Officers* (Mar. 24, 2017), https://www.ice.gov/detainer-policy, because that involves precisely the kind of cooperation with the federal government's efforts to enforce the INA that *Arizona* recognized as different. As explained in our Statement of Interest at pages 6-11, a detainer is a "request . . . from the Federal Government," *Arizona*, 567 U.S. at 410, to a State or locality to assist the federal government's efforts to take a particular alien into custody by briefly continuing to detain the alien so the federal government can assume custody in an orderly manner. The ICE detainer initiates and cabins any state or local cooperation through "the direction and guidance of federal officials charged with implementing and enforcing the immigration laws," such that local assistance is "rendered within any parameters set by DHS [and] DHS can exercise control over enforcement and has the flexibility to respond to changing

[2] *Arizona* thus forecloses any suggestion that the *only* way for a State or locality to make immigration arrests in response to an immigration detainer is through a formal agreement under 8 U.S.C. § 1357(g)(1)-(9). *See United States v. Ovando-Garzo*, 752 F.3d 1161, 1164 (8th Cir. 2014) ("Although a formal, written agreement is sometimes required for a state official to perform certain functions of a federal immigration officer, no written agreement is required for a state official to cooperate with the Attorney General in identifying, apprehending, and detaining any individual unlawfully present in the United States."); Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters at 7 ("As contemplated by [§ 1357(g)(10)], DHS has invited and accepted the assistance of state and local law enforcement personnel in a variety of contexts that lie outside of the written agreements provided for by paragraphs (1) - (9) of subsection 1357(g)"), *available at* https://www.dhs.gov/sites/default/files/publications/guidance-state-local-assistance-immigration-enforcement.pdf.

considerations." *See* DHS, Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters at 8. Furthermore, under ICE policy, every detainer is accompanied by a warrant, and the INA thus plainly authorizes the federal government to effectuate the arrest itself. See *id.*; 8 U.S.C. 1226(a), 1231(a).

Put another way, because ICE exercises its enforcement discretion in deciding whether to issue a detainer request and whether to issue the accompanying warrant, State and local officers who choose to comply with that request by definition are conforming their assistance "to federal priorities and direction and [therefore] conform to federal discretion," whatever federal priorities may entail. *See id.* at 9; *Santos v. Frederick Cnty. Bd. of Comm'rs*, 725 F.3d 451, 465-67 (4th Cir. 2013) (recognizing that local police may detain and transport an alien after express direction of federal officials); *Ovando-Garzo*, 752 F.3d at 1164-65 ("state official [may] cooperate with the Attorney General in identifying, apprehending, and detaining any individual unlawfully present in the United States" so long as the actions are "not unilateral"); *see also United States v. Quintana*, 623 F.3d 1237, 1242 (8th Cir. 2010) (holding that a state officer was authorized under Section 1357(g)(10)(B) to detain an alien at DHS's behest until DHS could take him into custody the following day); *United States v. Soriano-Jarquin*, 492 F.3d 495 (4th Cir. 2007) (finding temporary detention of alien by local officer lawful where the police officer detained the passengers at ICE's express direction).[3]

[3] The parties ignore this authority, and instead rely on cases addressing *unilateral* state enforcement of civil immigration law, absent actual federal direction, supervision, or authorization. *See Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012) (affirming preliminary injunction prohibiting county sheriff from unilaterally making civil immigration arrests as ICE had revoked his department's 287(g) agreement with ICE permitting him to do so); *Buquer v. City of Indianapolis*, No. 1:11-cv-00708-SEB-MJD, 2013 WL 1332158, at *10-11 (S.D. Ind. Mar. 28, 2013) (finding State law preempted where it provided state and local officers "unilateral discretion" to make immigration arrests). But these authorities are irrelevant where, as here, any arrest is made following a specific "request, approval, or other instruction from the Federal Government" in the form of the immigration detainer request. *Arizona*, 567 U.S. at 410.

Accordingly, because SB 4's detainer provision is simply a codification of Texas's sovereign prerogative to cooperate with the federal government in the identification, apprehension, detention, and/or removal of aliens removable from the United States, *see Arizona*, 567 U.S. at 409-10, in response to a "request, approval, or other instruction from the Federal Government," *id.* at 410; *see id.* at 413, there is no merit to the argument that SB 4's detainer provision is preempted by federal law.

3. Nor is there any merit to the claim that SB 4's detainer provision violates the Fourth Amendment by allowing State and local law enforcement officers to make civil (rather than criminal) arrests based on probable cause to believe that the subject is a removable alien. The same detention of the same alien pursuant to the same warrant is no less reasonable when the custodian is a State or local officer, rather than the federal government itself, and the State or local officer already has the individual in custody and is merely continuing to hold him or her temporarily under the direction, supervision, or authorization of the federal government so that it can effectuate an arrest in a safe and orderly manner.

First, as Plaintiffs must concede, it is well-established that immigration arrests may be premised on *civil*, administrative warrants. The Supreme Court has long held that removal proceedings are civil, rather than criminal in nature, and "various protections that apply in the context of a criminal trial," including various Fourth Amendment protections, "do not apply in a deportation hearing." *Immigration & Naturalization Servs. v. Lopez–Mendoza*, 468 U.S. 1032, 1050–51 (1984); *see also Carlson v. Landon*, 342 U.S. 524, 537 (1952) ("Deportation is not a criminal proceeding and has never been held to be punishment. No jury sits. No judicial review is guaranteed by the Constitution."). In fact, the entirety of immigration proceedings, from initial arrests initiating those proceedings, *see* 8 U.S.C. § 1226(a), to bond hearings, *see id.*, to

challenging mandatory detention, *see Demore v. Kim*, 538 U.S. 510, 514 (2003), to the ultimate decision as to whether an individual is removable, *see* 8 U.S.C. § 1229a, is conducted by administrative officials within the Executive Branch, and are only subject to review before an actual Article III judge if the alien seeks judicial review of a final order of removal. *See* 8 U.S.C. § 1252(a). And unlike individuals in other civil contexts, aliens have a weaker liberty interest with respect to immigration detention, because their presence in the county is due to and conditioned on federal immigration law. *See, e.g.*, *Demore*, 538 U.S. at 523 ("detention during deportation proceedings as a constitutionally valid aspect of the deportation process").[4]

That the Fourth Amendment's requirements in the *criminal* context may not apply to the initiation and conduct of these *civil* immigration proceedings is thus not a novel concept.[5] *See Gerstein v. Pugh*, 420 U.S. 103, 125, n.27 (1975) ("The Fourth Amendment was tailored explicitly for the criminal justice system . . . ."); *De La Paz v. Coy*, 786 F.3d 367, 372 (5th Cir. 2015) (rejecting an attempt to "equate civil immigration enforcement actions with federal criminal law enforcement"); *Rhoden v. United States*, 55 F.3d 428, 432 n.7 (9th Cir. 1995) (per curiam) (noting how civil immigration proceedings "involve a distinct set of considerations and require different administrative procedures" than criminal proceedings); *cf. Marshall v. Barlow's, Inc*., 436 U.S. 307, 320 (1978) (noting, in the context of administrative searches, how "[p]robable cause in the criminal law sense is not required"). Accordingly, "it is not unconstitutional under the Fourth Amendment for the Legislature to delegate a probable cause determination to an executive officer, such as an ICE agent, rather than to an immigration, magistrate, or federal district court judge." *Gonzalez v. ICE*, No. 13-4416, 2017 WL 2559616,

[4] Of course, it is a violation of federal *criminal* law for an alien to enter or re-enter the United States without authorization. 8 U.S.C. §§ 1325, 1326.

[5] This is not to say that the Fourth Amendment is limited to criminal proceedings. *See, e.g. Soldal v. Cook Cnty*., 506 U.S. 56, 69 (1992).

*10 (C.D. Cal. June 12, 2017) (collecting cases).

Moreover, as noted in our earlier Statement of Interest, given the civil nature of these administrative proceedings, the Supreme Court has observed at length that there is "overwhelming historical legislative recognition of the propriety of administrative arrest[s] for deportable aliens." *Abel v. United States*, 362 U.S. 217, 233 (1960) (noting "impressive historical evidence of acceptance of the validity of the statutes providing for administrative deportation arrest from almost the beginning of the Nation" and concluding that "[s]tatutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time."); *see, e.g.*, *Lopez v. INS*, 758 F.2d 1390, 1393 (10th Cir. 1985) (aliens "may be arrested by administrative warrant issued without an order of a magistrate"); *Moreno v. Napolitano*, 213 F. Supp. 3d 99, 1005 (N.D. Ill. 2016) (citing Section 1226(a) provision that an alien may be detained "pursuant to 'a warrant issued by the Attorney General'").

The "impressive historical evidence" of the validity of civil, administrative warrants as the basis for immigration enforcement is further supported by both historic and contemporary understandings of the scope of "probable cause" as used in the Fourth Amendment. Probable cause to arrest under the Fourth Amendment, whether through a warrant or without one, may be premised on suspected violations of *civil*, as opposed to criminal, law. As the Eleventh Circuit recently explained, the "Fourth Amendment does not require warrants to be based on probable cause of a crime, as opposed to a civil offense." *United States v. Phillips*, 834 F.3d 1176, 1181 (11th Cir. 2016). Indeed, during the founding era, "probable cause" meant a belief "made under circumstances which warrant suspicion," without distinguishing between criminal or civil offenses. *See Locke v. United States*, 11 U.S. (7 Cranch) 339, 348 (1813) (Marshall, C.J.); *see also Atwater*, 532 U.S. at 328-32, 351-54 (noting common law authority constables had to arrest

suspects regardless of whether such offenses were "jailable"). The Supreme Court has never suggested that arrests do not satisfy the Fourth Amendment if they are not premised on probable cause of a *crime*. Rather, recent Supreme Court cases reinforce the notion that arrests may be premised on probable cause of a legal violation, whether civil or criminal. *See, e.g.*, *Arkansas v. Sullivan*, 532 U.S. 769 (2001) (per curiam) (upholding an arrest for speeding, a "violation" punishable by only a fine under state law); *Soldal*, 506 U.S. at 69 (holding that civil seizure of property governed by normal Fourth Amendment standards); *cf. Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (describing material witness warrants and explaining warrants may be issued based on probable cause of something other than a "violation of law"); *United States v. Comstock*, 560 U.S. 126, 130-31 (2010) (upholding federal civil commitment statute for mentally ill or sexually dangerous persons).[6]

Applying these authorities, courts of appeals have concluded that "arrests for violations of purely civil laws are common enough . . . ." *Thomas v. City of Peoria*, 580 F.3d 633, 638 (7th

[6] Plaintiffs, relying on *Messerchmidt v. Millender*, 565 U.S. 535, 546-47 (2012), contend that SB 4 violates the Fourth Amendment because peace officers are foreclosed from determining for themselves whether an ICE administrative warrant is in fact supported by probable cause. *Millender*, however, addresses a qualified immunity defense, and holds that absent evidence that the warrant is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," an officer is entitled to qualified immunity in relying on it. *Id.* at 547. Where, as here, the ICE detainer and warrant contain specific explanations concerning the ICE official's probable cause determination, an officer is entitled to rely on that probable cause finding. *See* Statement of Interest of U.S. at 28 & n.15, 35. Regardless, SB 4 in fact permits peace officers to verify whether the subject of the detainer is an alien or a citizen, *see* Texas Code of Criminal Procedure. Article 2.251(b), and nothing in Federal or State law precludes a peace officer from contacting ICE directly to verify an alien's immigration status. *See* 8 U.S.C. § 1373; *Arizona*, 567 U.S. at 410-13. Although the parties paradoxically suggest such provisions are required to satisfy the Fourth Amendment yet are preempted under federal law, every court to address such an argument since *Arizona* has rejected it. *See Utah Coalition of La Raza v. Herbert*, 26 F. Supp. 3d 1125, 1137-40 (D. Utah 2014) (rejecting Fourth Amendment and preemption challenge to provision of Utah law requiring immigration status checks and permitting peace officer to rely on State drivers' licenses as evidence that an individual is not a removable alien); *United States v. S.C.*, 906 F. Supp. 2d 463, 470-74 (D.S.C. 2012) (similar); *see also United States v. Alabama,* 691 F.3d 1269, 1277, 1292 (11th Cir. 2012) (affirming immigration status check provisions under *Arizona*).

Cir. 2009) (upholding arrest for civil contempt, for alleged failure to pay parking tickets); *see also United States v. Perdoma*, 621 F.3d 745, 749 (8th Cir. 2010) (upholding arrest for possession of one ounce or less of marijuana, an "infraction" under State law); *United States v. Burtton*, 599 F.3d 823, 830 (8th Cir.2010) (upholding arrest for violation of State's "open container" law, an "infraction"). So too are arrests for noncriminal conduct that are not even a civil violation at all. *See, e.g.*, *Bruce v. Guernsey*, 777 F.3d 872 (7th Cir.2015) (upholding noncriminal arrest of mentally ill individual based on probable cause that individual was danger to self or others); *United States v. Gilmore*, 776 F.3d 765, 77071 (10th Cir. 2015) (upholding noncriminal arrest of intoxicated person because of probable cause to believe he was a threat to himself or others); *United States v. Timms*, 664 F.3d 436, 452-53 (4th Cir. 2012) (addressing federal statute permitting civil commitment of sexually dangerous persons upon certification of executive officer); *cf. United States v. Duka*, 671 F.3d 329 (3d Cir.2011) (upholding Foreign Intelligence and Surveillance Act "significant purpose" test as basis for surveillance as reasonable under the Fourth Amendment, notwithstanding absence of any requirement that government show "probable cause of a crime being committed").

Plaintiffs ignore these authorities, and instead suggest that whether a civil immigration arrest supported by an immigration detainer and an administrative warrant violates the Fourth Amendment turns on whether Federal *or* State and local authorities are effectuating the arrest. But this argument assumes that inter-sovereign cooperation is only permitted based on allegations of criminality. That assumption is at odds with the extensive case law addressing cooperation between sovereigns, both State-to-State and Federal-State, whereby one sovereign temporarily detains an individual based on a *civil* infraction committed by the individual against the other sovereign. Indeed, as explained in our Statement of Interest at pages 36-37, temporary

civil detentions effectuated by one sovereign on behalf of another routinely occur in our system of dual sovereignty. *See, e.g.*, *United States v. Cardona*, 903 F.2d 60, (1st Cir. 1990) (parole violator warrant issued by New York, arrest effectuated by local police officers in Rhode Island); *Chavez v. City of Petaluma*, No. 14-CV-5038, 2015 WL 6152479, at *6, *11 (N.D. Cal. Oct. 20, 2015) (dismissing a claim for allegedly improper warrantless arrest and detention where parole officers placed parole hold on Plaintiff, city policy effectuated warrantless arrest, and County detained plaintiff following arrest); *Furrow v. U.S. Bd. of Parole*, 418 F. Supp. 1309, 1312 (D. Me. 1976) (similar, warrant issued by federal government, effectuated by Maine); *Andrews v. State*, 962 So. 2d 971, 973 (Fla. Dist. Ct. App. 2007) (recounting how a DD Form 553 was issued for the desertion of a military officer and Federal agents enlisted local police in the search of his residence and arrest); *accord United States v. Lucas*, 499 F.3d 769, 776-79 (8th Cir. 2007) (administrative arrest warrant issued by State executive official for apprehension of prison escapee, executed by city police officer); *Henderson v. Simms*, 223 F.3d 267 (4th Cir. 2000) (so-called administrative "retake" warrant issued by State prison officials directed at prisoners released prematurely, effectuated by police officers); *see also Gardner v. Cal. Highway Patrol*, No. 2:14-CV-2730, 2015 WL 4456191, at *16 (E.D. Cal. July 20, 2015) (explaining that county could reasonably rely on a facially valid probable-cause declaration from a highway patrol officer to detain the plaintiff in jail).

The Supreme Court's decision in *Virginia v. Moore*, 553 U.S. 164 (2008), further supports the constitutionality of SB4. In *Moore*, local police officers in Virginia stopped a car driven by defendant, who was not in possession of a valid driver's license. Under State law, that was not an arrestable offense and instead triggered a citation, but the officers nonetheless arrested him, searched him, and found crack cocaine. *Id.* at 167. The Virginia Supreme Court

held that because under State law the police should have issued the defendant a citation, and the Fourth Amendment does not permit searches incident to citations, the warrantless arrest violated the Fourth Amendment. The Supreme Court reversed, rejecting the view that the state-law limitation controlled the Fourth Amendment analysis.

The Court explained that "whether or not a search is reasonable within the meaning of the Fourth Amendment, . . . has never depended on the law of the particular State in which the search occurs," and "state law [does] not alter the content of the Fourth Amendment." *Id.* at 172. Indeed, as the Court observed, "the Fourth Amendment's meaning did not change with local law enforcement practices—even practices set by rule. While those practices 'vary from place to place and from time to time,' Fourth Amendment protections are not 'so variable' and cannot 'be made to turn upon such trivialities." *Id.* (quoting *Whren v. United States*, 517 U.S. 806, 815 (1996)). Rather, "when States go above the Fourth Amendment minimum, the Constitution's protections concerning search and seizure remain the same," *id.* at 173, and to hold otherwise would cause Fourth Amendment "protections [to] vary if federal officers were not subject to the same statutory constraints as state officers." *Id.* at 176. Thus, "[i]t would be strange to construe a constitutional provision that did not apply to the States at all when it was adopted to now restrict state officers *more* than federal officers . . . ." *Id.* (emphasis added); *see United States v. Bernacet*, 724 F.3d 269, 276-77 (2d Cir. 2013) (similar); *United States v. Brobst*, 558 F.3d 982, 991 (9th Cir. 2009) (similar). To hold otherwise, the Court found, would conflict with its oft-repeated observation concerning the importance of "readily administrable rules" in determining reasonableness under the Fourth Amendment. *Id.* at 175 (citing *Atwater*, 532 U.S. at 347); *see Dunaway v. New York*, 442 U.S. 200, 213 (1979) ("A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the

social and individual interests involved in the specific circumstances they confront.").[7]

To be sure, the reasoning of *Moore* turned in part on the fact that the local police officers in that case lacked authority under Virginia law to make an arrest for that offense. But that is not an issue in this case, where, by contrast, there is no dispute whether controlling law authorizes continued detention: federal law affirmatively authorities the federal government to arrest and detain the alien based on an administrative warrant backed by probable cause, 8 U.S.C. §§ 1226(a), 1231(a); the federal government has, through the detainer request, affirmatively asked local law enforcement to continue detaining the individual so that the federal government can effectuate the arrest in an orderly manner; the detention is not warrantless, but instead the detainer request is accompanied by a warrant based on a determination of probable cause; and the relevant State law, SB 4, *affirmatively* authorizes local peace officers to cooperate with the detainer request.[8] And although civil immigration violations are "jailable" offenses, in that DHS may take any alien suspected to be removable into physical custody pending a determination on removability, *see* 8 U.S.C. §§ 1226(a), (c); 1231(a), "the Fourth Amendment does not forbid an arrest for a 'nonjailable' offense." *Thomas*, 580 F.3d at 637 (citing *Atwater*, 532 U.S. at 351-54); *accord Burtton*, 599 F.3d at 830. Rather, what matters is whether there is probable cause to believe the legal violation has occurred in the first place. If there is, then there can be no Fourth

[7] *Moore* also supports the view that the fact that a state statute authorizing a civil arrest may be preempted under Federal law does not necessarily render the arrest a violation of the Fourth Amendment itself. *See* 553 U.S. at 176 (rejecting "linking Fourth Amendment protections to state law" and noting that such laws cannot "alter the content of the Fourth Amendment"). Regardless, as noted, under *Arizona*, the arrests authorized by SB 4 are not preempted.

[8] Under *Moore* (which did not involve preemption claims) the fact that a facially-valid arrest warrant exists supplies all the probable cause that is necessary under the Fourth Amendment. *See. Johnson v. Phillips*, 664 F.3d 232, 238 (10th Cir. 2008) (applying *Moore*, and holding that local police officer "lacked authority under state law to make an arrest does not establish that his conduct violated the Fourth Amendment" and that "[t]he outstanding warrant gave [the officer] probable cause to arrest [plaintiff], and that probable cause satisfied the Fourth Amendment"); *cf. Phillips*, 834 F.3d at 1182 ("arrest based on a valid warrant is per se reasonable").

Amendment violation, regardless of whether the arresting officer is a Federal or State or local officer. *See Moore*, 553 U.S. at 176. Having reasonableness turn on what sovereign employs the arresting officer such that the Fourth Amendment would "now restrict state officers more than federal officers," is precisely the sort of haphazard, "variable . . . trivialit[y]" the Supreme Court routinely rejects, *See, e.g.*, *Moore*. 553 at 172, 176.

In short, a federal officer does not violate the Fourth Amendment by relying on a civil immigration warrant to arrest and detain a removable alien. A State or local officer similarly does not violate the Fourth Amendment by temporarily detaining the same removable alien at the request of the federal government, based on the *identical* administrative arrest warrant and determination of probable cause. *See* 553 U.S. at 176. Of course, no party or *amici* seriously contends that civil, administrative arrest warrants issued pursuant to 8 U.S.C. §§ 1226 and 1231 somehow violate the Fourth Amendment.[9] But that is precisely the point: the fact of *cooperation* between two separate sovereigns in reliance on the same set of facts and the same administrative warrant cannot alter the analysis. If federal immigration warrants do not violate the Fourth Amendment (which they do not, *see supra*), and Federal officers do not violate the Fourth Amendment when effectuating arrests in reliance on federal immigration warrants, then State or local officers' reliance on those warrants in making identical arrests pursuant to State authorization like that found in SB 4 to cooperate with federal authorities similarly cannot violate the Fourth Amendment. *See* 553 U.S. at 176.

4. For these reasons, and those in the United States' Statement of Interest, the United States requests that the Court find that SB 4's detainer and information-sharing provisions do not violate the Fourth or Tenth Amendments, and are not preempted by federal law.

[9] This would be a strange argument for Plaintiffs to advance, given that each municipality in this lawsuit in fact cooperates in whole or in part with ICE detainer requests.

Dated: July 20, 2017

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CERTIFICATE OF SERVICE

I certify that on June 23, 2017, I electronically filed the foregoing motion with the Clerk of Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to the attorneys of record for all parties.

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