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IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

STATE OF IOWA, **Plaintiff,** **vs.** **DANIEL MARX, in his official capacity as Winneshiek County Sheriff, and WINNESHIEK COUNTY,** **Defendants.**	**CASE NO. CVCV068880** **SHERIFF MARX'S PRE-ANSWER MOTION TO DISMISS AND FOR CHANGE OF VENUE**

COMES NOW, Sheriff Daniel Marx, by and through his undersigned counsel, and pursuant to Iowa Rule of Civil Procedure 1.421, and hereby moves the Court to dismiss and for change of venue, and in support thereof, respectfully submits the following:

"*Criticism need not be stilled. Active obstruction or defiance is barred*."[1]

INTRODUCTION

On March 26, 2025, Plaintiff filed the present civil action alleging a violation of Iowa Code Chapter 27A. The Petition seeks to enjoin a purported ongoing violation of Iowa Code Chapter 27A and to strip county funding based on a single social media post on Winneshiek County Sheriff Marx's Facebook page. This motion addresses several deficiencies in the Petition. At the threshold, the State filed this action in the wrong venue. Second, the State named the wrong parties under Chapter 27A. Third, the Petition is devoid of any evidence the post prohibited or discouraged enforcement of federal

[1] Cooper v. Aaron, 358 U.S. 1, 24 (1958) (Frankfurter, J., concurring).

immigration laws, Fourth, the post has been removed. Because there is no ongoing violation of Iowa Code Chapter 27A, the court has nothing to enjoin, and the court must dismiss this matter as moot. Finally, although the Iowa Attorney General seeks a specifically phrased apology, there is no statutory support to compel Sheriff Marx to post the Attorney General and Governor's proposed retraction language.

The petition is nothing more than thought policing. At its core, Sheriff Marx posted his understanding of his constitutional duties on Facebook. Not only did the State take issue with that position but now threatens to withhold needed public funding from the people of Winneshiek County because Sheriff Marx does not agree with State-drafted retraction.

I. IMPROPER VENUE

Improper venue under rule 1.808 must be raised by pre-answer motion filed prior to or in a single motion under rule 1.421(3). Iowa R. Civ. P. 1.421(2). Under Iowa R. Civ. P. 1.808(1), an action brought in the wrong county may be prosecuted there unless a defendant, before answer, moves for change to the proper county. "Thereupon the court shall order the change at plaintiff's costs, which may include reasonable compensation for defendant's trouble and expense, including attorney's fees, in attending in the wrong county."

Actions against a public officer or person specially appointed to execute the public officer's duties, for an act done by the officer must be brought in the county where the cause, or some part thereof, arose. Iowa Code § 616.3(2). Sheriff Dan Marx is a public officer. The purported conduct (i.e., posting on Facebook) happened entirely in Winneshiek County. Therefore, this court must transfer venue to Winneshiek County.

II. MOOTNESS

"Courts exist to decide cases, not academic questions of law. For this reason, a court will generally decline to hear a case when, because of changed circumstances, the court's decision will no longer matter." Homan v. Branstad, 864 N.W.2d 321, 328 (Iowa 2015). A case is moot if the issue becomes nonexistent or academic and, consequently, no longer involves a justiciable controversy. In re B.B., 826 N.W .2d 425, 428 (Iowa 2013). The court generally refrains from reviewing moot issues. State v. Hernandez-Lopez, 639 N.W.2d 226, 235 (Iowa 2002). The test for mootness is "whether an opinion would be of force or effect in the underlying controversy." Grinnell College v. Osborn, 751 N.W.2d 396, 399 (Iowa 2008) (citations omitted).

"Matters that are technically outside the record may be submitted in order to establish or counter a claim of mootness." In re L.H., 480 N.W.2d 43, 45 (Iowa 1992). In addition, the court can take judicial notice of facts in motions to dismiss. Southard v. Visa U.S.A. Inc., 734 N.W.2d 192, 194 (Iowa 2007). The court can take judicial notice at any stage of the proceeding. Iowa R. Evid. 5.201(d).

Sheriff Marx respectfully requests the court take judicial notice of the fact that the February 4, 2025, Facebook post from the Winneshiek County Sheriff's Office Facebook account has been removed. This fact can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Iowa R. Evid. 5.201(b)(2).

Anyone with internet access can visit the Facebook page[2] to verify and the removal has been reported on by the media.[3]

The purpose of the civil action that the Attorney General is authorized to bring is not a generalized approval of loss of funding for a purported *past* violation. Rather, the Attorney General is authorized to "file a civil action in district court to enjoin any *ongoing violation* of this chapter by a local entity." Iowa Code § 27A.8(6) (emphasis added). The Petition incorrectly avers violation of the act must necessarily give way to the "statutory penalty" of the loss of funding contemplated in Iowa Code § 27A.8(6).

A. The Petition Fails to Identify an Ongoing Violation as Required by Iowa Code § 27A.8(6)

The mootness doctrine is generally not a rule against judicial power but rather a self-imposed rule of restraint. Rhiner v. State, 703 N.W.2d 174, 177 (Iowa 2005). The statute uniquely authorizes a civil action seeking an injunction for an *ongoing violation*. Iowa Code § 27A.8(6). In other words, there needs to be an ongoing violation and actual controversy. In deciding whether to hear a case as a matter of judicial restraint, the court will consider the following factors: (1) the private or public nature of the issue; (2) the desirability of an authoritative adjudication to guide public officials in their future conduct; (3) the likelihood of the recurrence of the issue; and (4) the likelihood the issue will recur yet evade appellate review. Id.

Interpreting the statute as permitting a civil action to proceed *only* where there is an ongoing violation fits within the entire statutory scheme and is the best reading of the statute as a whole. See State v. Brown, 16 N.W.3d 288, 295 (Iowa 2025) (the court reads

[2] https://www.facebook.com/winneshiekcountysheriff/
[3] https://www.desmoinesregister.com/story/news/politics/2025/03/27/winneshiek-county-sheriff-removes-facebook-post-iowa-attorney-general-brenna-bird-called-unlawful/82691529007/

"statutes as a whole rather than looking at words and phrases in isolation."). The court looks to the whole text and considers it in view of its structure, and whether there is a step-by-step process for raising, regulating, and resolving issues. Id.

The statute first contemplates a complaint, filed with supporting evidence. Iowa Code § 27A.8(1). The Attorney General then investigates the complaint to determine if the violation was intentional. Iowa Code § 27A.8(3). If the Attorney General determines that the complaint is valid, the Attorney General provides written notification to the local entity. Iowa Code § 27A.8(4). As part of that notice, the Attorney General informs the local entity that they are authorized to file a civil action for an injunction "if the local entity does not come into compliance with the requirements of this chapter." Iowa Code § 27A.8(4)(c).

The entire written notification process after the complaint is designed to ensure voluntary compliance by local entities in order to prevent the need for a further injunction. The Attorney General warns the local entity that the civil action will come if the local entity does not comply with the requirements of the chapter. In fitting with the rest of the statutory scheme of ensuring compliance before loss of funding, the local entity is required to respond to the Attorney General's notification by providing a "description of all actions the local entity has taken or will take to correct any violations." Iowa Code § 27A.8(5)(d).

Only then, after the local entity has been informed of the evidence-based complaint, the Attorney General has deemed the violation to be intentional, and the local entity has responded detailing the actions they have taken or will take to correct any violations of the chapter, may the Attorney General file a civil action to seek an injunction for any *ongoing* violations of the chapter.

The statutory scheme is not designed to punish the citizens of a county by denying their local entities the state funds they need to function, but to ensure compliance with Iowa Code Chapter 27A by denying funds if the local entity is violating the statute on an ongoing basis. The further statutory scheme confirms this, as the denial of state funds is not permanent. Rather, state funding returns to the local entity if the local entity petitions the district court for "a declaratory judgment that the local entity is in full compliance with" Iowa Code Chapter 27A. Iowa Code § 27A.10(1). "If the court issues a declaratory judgment, that the local entity is in full compliance with" Iowa Code Chapter 27A then the local entity is eligible to receive state funds again. Iowa Code § 27A.10(3).

This specific statute means that a case must not be moot in the sense that the court must consider whether to take up the issue as a matter of discretion and judicial restraint, but that the violations must be ongoing for the Attorney General to be able to state a claim. The court need not consider the aforementioned factors. Because the statute requires an *ongoing* violation, the failure of an ongoing violation means the case must be dismissed because the Attorney General has failed to state a claim upon which relief can be granted.

Without an ongoing violation, there is no cause for continuing through the statutory process by allowing the Attorney General to continue with the civil action. Without an ongoing violation, there is nothing for the court to enjoin. The court cannot grant an injunction for a violation that no longer exists. The purposes of the statute have been met and the Attorney General has ensured local entity compliance with the law. As both a matter of judicial restraint and enforcement of the statute, the court should and must dismiss the petition.

III. FAILURE TO STATE A CLAIM

Failure to state a claim may be raised by pre-Answer motion. Iowa R. Civ. P. 1.421(1)(f). A motion to dismiss tests the legal sufficiency of the challenged pleading. Southard v. Visa U.S.A. Inc., 734 N.W.2d 192, 194 (Iowa 2007). The motion must stand or fall on the contents of the petition and matters of which the court can take judicial notice. Id. Well-pled facts in the pleading are deemed admitted. Id. The court asses the petition in the light most favorable to the plaintiffs, and all doubts and ambiguities are resolved in the plaintiffs' favor. Id.

A. The Sheriff is Not a "Local Entity" as the Statute Contemplates

The local entity is primarily the governing body of a city or county, but it might also include all the constituent parts, depending on context. Sheriff Dan Marx is not the governing body of a city or county, but he is, by definition, a sheriff. Iowa Code § 27A.1(4) states that a "local entity" is "the governing body of a city or county." However, the section also states that a "local entity" "*includes* an officer or employee of a local entity or a division, department, or other body that is part of a local entity, including but not limited to a sheriff, police department, city attorney, or county attorney." (emphasis added). Merriam Webster's defines "include" as "to take in or comprise as a part of a whole or group."[4] Cambridge defines "include" as "to contain something as a part of something else, or to make something part of something else."[5]

When the court interprets a statute, it does not construe a statute to make any part of it superfluous. Splittgerber v. Bankers Trust Co., 8 N.W.2d 135, 139 (Iowa 2024). The court interprets "every word and every provision of a statute to give it effect, if possible."

[4] https://www.merriam-webster.com/dictionary/include
[5] https://dictionary.cambridge.org/us/dictionary/english/include

Bribriesco-Ledger v. Klipsch, 957 N.W.2d 646, 650-51 (Iowa 2021). The same word can have a different meaning in the same statute, depending on the context. See Daughenbaugh v. State, 805 N.W.2d 591, 597 (Iowa 2011) ("conviction" has different meaning in the Iowa statutes depending on context).

The statutory term "local entity" means different things in the statute depending on different contexts. The legislature was not using a circular definition of "local entity." The statutory provisions under which a civil action is authorized support that the legislature only intended for suit to be brought against a "governing body of a city or county" and not the employees of the city or county. For example, to reinstate funds, a "local entity" may petition the court before the time limitation "if the person who was the director or other chief officer of the local entity at the time of the violation of this chapter is subsequently removed from or otherwise leaves office." Iowa Code § 27A.10(5). An "employee" includes people who are not chief officers or director and strongly suggests that the legislature is using the definition of "governing body of city or county" in this context when describing how that governing body can receive state funds once again. In describing how funds are lost, Iowa Code § 27A.8(4)(d) includes the "local entity and any entity that is under the jurisdiction of the local entity" as those who will be denied state funds. The logical reading behind this subsection is the legislature means "the governing body of the city or county and the employees and other specified parts in the second definition of local entity." To not consider that the statute means "local entity" in the "governing body" sense would render the second part of the subsection superfluous.

There are other examples of how interpreting "local entity" to mean only "the governing body" and not all the constituent parts of the governing body prevents the

statute from having superfluous language. Iowa Code § 27A.4(2) states that a "local entity shall not prohibit or discourage a person who is a law enforcement officer, corrections officer, county attorney, city attorney, or other official who is employed by or otherwise under the direction or control of the local entity from doing any of the following[.]" The sentence only makes sense if the statute means "governing body" and not the employees. Iowa Code § 27A.1(4) includes "city attorney, or county attorney" so the statute would read "a county attorney or city attorney shall not prohibit or discourage a person who is a county attorney or city attorney, or other official who is employed by or otherwise under the direction or control of the county attorney or city attorney from doing any of the following[.]." This leads to the conclusion that Iowa Code § 27A.4(2) is using the term "local entity" in its first, more restrictive meaning of "governing body of a city or county."

A sheriff is not the type of "local entity" under which a civil action can be brought. While a sheriff or any "officer or employee" of a "governing body of a city or county" is defined as a "local entity", the statute only authorizes civil actions against a "governing body." A civil action for injunction and eventual loss of funds for the local entity is only available if the "local entity" is the "governing body of a city or county." Iowa Code § 27A.9(1) states that "a local entity, including any entity under the jurisdiction of the local entity, shall be ineligible to receive any state funds if the local entity intentionally violates this chapter." If the legislature meant that it authorized civil actions against individual employees of the governing body, it would not have needed to use the words "any entity under the jurisdiction of the local entity."

The legislature intended for a "local entity" to mean different things depending on context. This interpretation would give the most effect to the words the legislature used.

It fits within the statutory scheme that the only "local entity" the Attorney General is authorized to file a civil action against is the "governing body of a city or county." The State and the Attorney General ensure compliance with the law by filing civil actions against the *governing bodies* of cities and countries. Those governing bodies then ensure compliance with the law by exercising control over their employees and the other entities they have jurisdiction over. That explains why the statute only contemplates that the governing body can petition the court for reinstatement of funds. This all fits within a statutory scheme and is the best reading of the statute as a whole. See State v. Brown, 16 N.W.3d 288, 295 (Iowa 2025) (stating the court reads "statutes as a whole rather than looking at words and phrases in isolation.").

B. The Underlying Complaint is Not Valid

All civil actions brought under Iowa Code Chapter 27A must go through the process described in Iowa Code § 27A.8, which ultimately authorizes the Attorney General to file a civil action in the district court. A complaint under Iowa Code § 27A.8(1) must allege "that a local entity has violated or is violating this chapter if the person offers evidence to support such an allegation. The person shall include with the complaint any evidence the person has in support of the complaint."

The petition alleges that Governor Reynolds made a written complaint. However, the petition does not include evidentiary support for the complaint. The complaint, with evidentiary support, is required before the Attorney General has authority to file a civil action. The statute contemplates the filing of a complaint with evidentiary support. Iowa Code § 27A.8(1). Only after the filing of the complaint with evidentiary support does the Attorney General then have authority to determine if the complaint is valid by determining

that a violation of this chapter by a local entity was intentional. Iowa Code § 27A.8(3). After the Attorney General determines the complaint is valid, the Attorney General then must contact the local entity. Iowa Code § 27A.8(3). Then, no later than 40 days after notifying the local entity of the valid and intentional complaint, the Attorney General is finally authorized to file a civil action. Iowa Code § 27A.8(6).

Without a valid complaint, the Attorney General has no authority to file the civil action, and the Petition has failed to state a claim under which relief may be granted and must be dismissed.

C. The Sheriff Has Complied with All Immigration Detainer Requests

Iowa Code § 27A.2 provides the first way that a local entity may violate the Chapter. A local entity "that has custody of a person subject to an immigration detainer request issued by United States immigration and customs enforcement shall fully comply with any instruction made in the detainer request and in any other legal document provided by a federal agency."

Not only does the Petition fail to establish a violation of this section, but the Petition also concedes the Sheriff has complied. As the Petition notes in paragraph 25, all evidence from the Attorney General's so-called investigation found

> 56 pages of documentary evidence going back to December 14, 2018 of the Sheriff complying with every single ICE detainer request made. Ex. B. The documentation, consistent with the County policy, details each of the 21 ICE detainer requests that the Sheriff complied with. Rather than a longstanding policy of defying ICE (and the written policy), the Sheriff has duly enforced federal and State law whenever asked.

D. No Evidence That the Sheriff or Local Entity Has Discouraged the Investigation or Sharing of Information Regarding Immigration Status

Iowa Code § 27A.4(2)(a) and (b) delineates the ways that a local entity can violate the chapter by prohibiting or discouraging the investigation or sharing of information regarding a person under arrest:

> 2. A local entity shall not prohibit or discourage a person who is a law enforcement officer, corrections officer, county attorney, city attorney, or other official who is employed by or otherwise under the direction or control of the local entity from doing any of the following:
>
> a. Inquiring about the immigration status of a person under a lawful detention or under arrest.
>
> b. Doing any of the following with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest, including information regarding the person's place of birth:
>
> (1) Sending the information to or requesting or receiving the information from United States citizenship and immigration services, United States immigration and customs enforcement, or another relevant federal agency.
>
> (2) Maintaining the information.
>
> (3) Exchanging the information with another local entity or a federal or state governmental entity.

The Petitioner offers no evidence that Sheriff Marx has prohibited or discouraged a person who is a law enforcement officer, corrections officer, county attorney, city attorney, or other official employed by or otherwise under the direction or control of Sheriff Marx from inquiring about the immigration status of a person under a lawful detention or under arrest, sending information relating to the immigration status of any person under a lawful detention or under arrest to or requesting or receiving the information from United States citizenship and immigration services, United States immigration and customs enforcement, or another relevant federal agency, maintaining the information of the immigration status of any person under a lawful detention or under arrest, or exchanging

the immigration status of any person under a lawful detention or under arrest with another local entity or a federal or state governmental entity.

E. No Evidence that the Local Entity has Discouraged Assistance in Federal Enforcement Activities

Iowa Code § 27A.4(2)(c) and (d) establish that there is a violation if the local entity prohibits or discourages a person who is a law enforcement officer, corrections officer, county attorney, city attorney, or other official who is employed by or otherwise under the direction or control of the local entity from assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance, or from permitting a federal immigration officer to enter and conduct enforcement activities at a jail or other detention facility to enforce a federal immigration law.

Again, the Petition presents no evidence that Sheriff Marx has prohibited or discouraged a person who is a law enforcement officer, corrections officer, county attorney, city attorney, or other official employed by or otherwise under the direction or control of Sheriff Marx from assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance, or from permitting a federal immigration officer to enter and conduct enforcement activities at a jail or other detention facility to enforce a federal immigration law.

F. No Evidence That the Local Entity Has Adopted a Policy that Prohibits or Discourages the Enforcement of Immigration Laws

There are only two remaining statutory violations under Iowa Code § 27A.4(1), for either adopting or enforcing a policy or taking any other action which prohibits or discourages the enforcement of immigration laws. (“A local entity shall not adopt or

enforce a policy or take any other action under which the local entity prohibits or discourages the enforcement of immigration laws.").

First, there is no allegation in the petition that the local entity has adopted or enforced a *policy* which prohibits or discourages the enforcement of immigration laws. The chapter defines "policy" as "a formal, written rule, policy, procedure, regulation, order, ordinance, motion, resolution, or amendment and an informal, unwritten policy." Iowa Code § 27A.1(1). In addition, Iowa Code § 27A.5 required all state or local law enforcement agencies subject to the chapter to "[f]ormalize in writing any unwritten, informal policies relating to the enforcement of immigration laws" before January 1, 2019. All unwritten policies thus became written policies as the Winneshiek County Sheriff complied with this statutory provision. As the Petition alleges, the written policy of the Winneshiek County Sheriff was "a November 26, 2018 policy that remains in effect today." D0001, Petition at 5 (03/26/2025). The policy requires compliance with federal immigration detainer requests. D0001 at 5.

The Petition does not allege that the written policy prohibits or discourages cooperation with federal immigration enforcement but rather alleges that "[t]he post discouraged complying with Winneshiek County's written policy" and "the post contradicted that longstanding written policy." D0001 at 5. "Rather than a longstanding policy of defying ICE (and the written policy), the Sheriff has duly enforced federal and State law whenever asked." D0001 at 5.

G. No Evidence That the Post Intentionally Discourages the Enforcement of Immigration Laws

This leaves the Attorney General with only one possible statutory violation under Iowa Code § 27A.4(1), for taking "any other action under which the local entity prohibits

or discourages the enforcement of immigration laws." The Facebook post reveals that there is nothing that can be taken to prohibit or discourage law enforcement from cooperating with federal immigration enforcement.

There are two different definitions of "discourage" and the statute means "discourage" as "to hinder or prohibit." Merriam-Webster defines "prohibit" as "to forbid by authority" or "to prevent from doing something."[6] Merriam-Webster defines "discourage" in two ways: first, discourage can mean to dishearten, such as if you were "to deprive of courage or confidence."[7] However, discourage also means to try to prohibit in line with the definition of "prohibit", such as "to hinder by disfavoring" or "to dissuade or attempt to dissuade from doing something."[8] Cambridge follows a similar split, as discourage can mean to make less confident, such as "to make someone feel less confident, enthusiastic, and positive about something, or less willing to do something" yet it can also mean to try to prevent, such as "to try to prevent something from happening or someone from doing something, or to have the effect of making something less likely."[9]

The statute means "discourage" as hindering or prohibiting. The use of the word "discourage" alongside the word "prohibit" implies that the legislature wished to use the meaning of "discourage" that corresponds with actively trying to prevent, rather than to make someone feel less confident about something. The court reads "statutes as a whole rather than looking at words and phrases in isolation." State v. Brown, 16 N.W.2d 288, 295 (Iowa 2025). The most reasonable interpretation is that the legislature wanted to

[6] https://www.merriam-webster.com/dictionary/prohibit
[7] https://www.merriam-webster.com/dictionary/discourage
[8] https://www.merriam-webster.com/dictionary/discourage
[9] https://dictionary.cambridge.org/us/dictionary/english/discourage

restrict violations of the chapter only to active efforts to impede, rather than actions that made officers feel less enthusiastic about enforcing federal immigration laws.

The words "prohibit" and "discourage" should also be read in conjunction with the statute's use of the word "intentional," as in an intentional violation of the statute that could result in loss of state funds. Iowa Code § 27A.8(3), 27A.9(1). The most reasonable reading of the statute, knowing that it targets intentional conduct, is that it does not cover statements that only have the ultimate effect of making officers feel less enthusiastic about enforcing immigration laws. Rather, the local entity must intentionally try and hinder the enforcement of federal immigration laws.

The State apparently believes that a violation is intentional if the post was intentional, so it only needs a local entity to intentionally post. See D0001 at 1 ("On February 4, 2025, Winneshiek County Sheriff Dan Marx intentionally posted on Facebook."). Their other theory is that a violation is intentional if a statement made by a local entity had any perceived "falsehoods." See D0001 at 5-6 ("By stating wrong information about following State and federal law and omitting information about complying with 21 ICE encounters, the Sheriff intentionally posted false information. That had the effect of discouraging violation enforcement in violation of the law." A far better reading of the statute is that the post must "intentionally discourage" and that the discouragement must be more than potential loss of morale by officers but active hindering in federal immigration enforcement. This is especially true on a social media post that was not addressed to law enforcement officers, but rather the people of Winneshiek County.

The Petition alleges that the Winneshiek County Sheriff's "post included many factual and legal inaccuracies. Those factual and legal inaccuracies impeded and discouraged cooperation with federal immigration authorities in violation of Iowa law." D0001 at 2. The Petition does not allege that the Sheriff told other law enforcement not to enforce federal immigration law, but rather that he made inaccurate claims, which thus "discourage law enforcement." D0001 at 4. The Petition alleges that the Sheriff made "legally incorrect statements" which thus discourage the enforcement of immigration laws. D0001 at 4. In particular focus is that the posting of this "false information" had "the effect of discouraging violation enforcement in violation of the law." D0001 at 6.

The Petition alleges that the Sheriff intentionally made false statements but does not allege that the Sheriff intended these statements to have the effect of hindering the enforcement of immigration laws or that the Sheriff told his officers to not enforce federal immigration laws. The Petition instead focuses solely on the "effects" of the false statements and how officers might have hypothetically felt from seeing such statements. This type of discouragement, or causing loss of confidence or enthusiasm, is not an intentional violation of the statute, nor does it meet the reasonable statutory construction of "discourage."

H. A public refusal to commit unconstitutional actions does not violate the statute

Detention of an alien without a warrant issued by a neutral magistrate is unconstitutional. Gonzalez v. United States Immigr. & Customs Enf't, 975 F.3d 788, 820 (9th Cir. 2020). The court presumes that statutes are constitutional. Summit Carbon Solutions, LLC v. Kasischke, 14 N.W.2d 119, 126 (Iowa 2024). The court ordinarily looks to statutory issues first to avoid unnecessary constitutional questions. Simmons v. State

Public Defender, 791 N.W.2d 69, 73-74 (Iowa 2010). If possible, the court will construe the statute in a way to avoid doubt as to constitutionality. Id. Only if the statute can bear no reasonable construction that avoids constitutional doubt will the court proceed to decide the constitutional issue. Id.

It follows that since the presumption is that the statute is constitutional, the statute certainly cannot condition State funding on the willingness of the Winneshiek County Sheriff to commit constitutional violations. The court should interpret the statute to fall within that constitutional framework.

A constitutional interpretation of the statute is also a reasonable interpretation of the statute. As defined in Iowa Code § 27A.1(1), an "immigration detainer request" includes "only written federal government requests" that are accompanied by "*properly completed* forms or similar or successor forms" that are signed by an ICE officer. (emphasis added). These include DHS Form I-200 and DHS Form I-205. DHS Form I-200 includes a determination that the ICE officer has found there is probable cause that the alien is removable from the United States and explains how the ICE officer made the determination. This form is available online for public viewing.[10] DHS Form I-205 includes that the alien has already been subject to a final order of removal and been subjected to due process in the form of at least the immigration judge. This form is also available online for public viewing.[11]

The Fourth Amendment of the U.S. Constitution requires that arrests, such as prolonged detentions on ICE detainers, be based on probable cause. See, e.g., Morales v. Chadbourne, 793 F.3d 208, 223 (1st Cir. 2015); Hernandez v. United States, 939 F.3d

[10] https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF
[11] https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF

191, 200 (2d Cir. 2019); Alcocer v. Mills, 906 F. 3d 944, 955 (11th Cir. 2018); Cervantez v. Whitfield, 776 F.2d 556, 560 (5th Cir. 1985); Gonzalez v. United States Immigr. & Customs Enf't, 975 F.3d 788, 820 (9th Cir. 2020).

Continuing to detain a person after they have been ordered released from custody constitutes a new arrest, which must be based on new probable cause. Id. In other words, although a local agency may have probable cause to arrest a person on criminal charges, continued detention based on an ICE detainer was a new arrest that required a new probable cause analysis. Id.

"Because the Fourth Amendment requires probable cause to seize or detain an individual for a civil immigration offense, it follows that the Fourth Amendment requires a prompt probable cause determination by a neutral and detached magistrate to justify continued detention pursuant to an immigration detainer." Gonzalez v. United States Immigr. & Customs Enf't, 975 F.3d 788, 820 (9th Cir. 2020); see also Gonzalez, 975 F.3d at 824 (citing Gerstein v. Pugh, 420 U.S. 103, 116 (1975) (probable cause must be decided by a neutral and detached magistrate); County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991) (there generally must be a judicial determination of probable cause within 48 hours of arrest); and United States v. Brignoni-Ponce, 422 U.S. 873, 881-82 (1975) (probable cause applies in civil immigration context and detention of a suspected alien must be based on probable cause)).

A "properly completed" Form I-200 or Form I-205 would thus require a probable cause determination by a neutral and detached magistrate or that detainer would be unconstitutional. This falls into Sheriff Marx's proclaimed long-time stance is to not recognize detainers unless the warrant has been judicially approved. The requirement

that there be a probable cause determination by a magistrate makes sense, as errors have occurred before, with ICE identifying and detaining U.S. citizens for removal action. See, e.g., id.;[12].

Because Sheriff Marx announced he would only comply with the statute when it met constitutional requirements, and the statute does not require local entities to comply with unconstitutional requests, the Petition has failed to state a claim on which relief can be granted.

I. The Post Does Not Contain Inaccuracies; the Sheriff Was Either Correct or His Statements Are Constitutionally Protected Opinions That Are Not Verifiably True or False

The Petition alleges that there are many "inaccuracies" that violate Iowa Code § 27A.8. In the context of libel, the court examines factors to determine whether a statement is fact or opinion. These include the precision and specificity of the statement, the verifiability of the statement, and the literary context in which the statement was made. Kiesau v. Bantz, 686 N.W.2d 164, 177 (Iowa 2004). "[S]tatements regarding matters of public concern that are not sufficiently factual to be capable of being proven true or false and statements that cannot reasonably be interpreted as stating actual facts are absolutely protected under the Constitution." Yates v. Iowa West Racing Ass'n, 721 N.W.2d 762, 771 (Iowa 2006).

The Petition alleges that Sheriff Marx inaccurately stated that "[t]he only reason detainers are issued is because the federal agency does not have enough information or has not taken the time to obtain a valid judicial warrant." This statement is an opinion. In context, it is a political criticism of ICE not obtaining judicial warrants before getting

[12] https://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html

"properly completed" forms to the Sheriff. It contains Sheriff Marx's interpretation of ICE actions and their motivation for issuing detainers when they have not obtained a warrant, it is not subject to verifiability.

In addition, the statement that "[t]he only reason detainers are issued is because the federal agency does not have enough information or has not taken the time to obtain a valid judicial warrant." is true. ICE uses these detainers when they have not taken the time to obtain a valid judicial warrant, and sometimes, when they do not have enough information. See Gonzalez v. United States Immigr. & Customs Enf't, 975 F.3d 788, 820 (9th Cir. 2020) (ICE issues detainer without probable cause).

The Petition alleges that Sheriff Marx wrongly claimed, "these detainers are violations of our 4th Amendment protection against warrantless search, seizure and arrest, and our 6th Amendment right to due process." This statement is an opinion. In context, it is political criticism of ICE not complying with the sort of process that the Sheriff believes is due. How much process is "due" is not subject to verifiable measurements, it depends on human judgment, and any statement on how much process should be due depends on the speaker.

In addition, the statement that ""these detainers are violations of our 4th Amendment protection against warrantless search, seizure and arrest, and our 6th Amendment right to due process" is true. "[T]he Fourth Amendment requires a prompt probable cause determination by a neutral and detached magistrate to justify continued detention pursuant to an immigration detainer." Gonzalez v. United States Immigr. & Customs Enf't, 975 F.3d 788, 820 (9th Cir. 2020).

The Petition alleges that Sheriff Marx might "make every effort to block, interfere and interrupt [ICE] actions from moving forward." In context, Sheriff Marx said he would only do this if ICE's "actions or paperwork are not within constitutional parameters" and then he would "make every effort to block, interfere and interrupt their actions from moving forward." As argued *supra*, the statute is presumed to be constitutional. A "properly completed" detainer request would include judicial approval. Sheriff Marx is saying nothing more than he will not comply with ICE unless ICE complies with the demands of the presumptively constitutional statute. This is not discouraging the enforcement of federal immigration laws. Sheriff Marx identifying the terms under which he would comply with the statute cannot be taken to mean he would refuse to follow the statute.

The Petition alleges that Sheriff Marx saying "Given what we have seen from these agencies, I share your mistrust and many of your concerns with the legitimacy of how these federal agents conduct business" discouraged the enforcement of federal immigration laws. This statement is an opinion, addressed to the constituents of Winneshiek County. Local law enforcement needs to foster trust and cooperation from the public, including members of immigrant communities.[13] Sheriff Marx is merely noting the public's mistrust of ICE and telling them how he empathizes with them. This mistrust is not unwarranted given ICE has illegally detained U.S. citizens before. Gonzalez v. United States Immigr. & Customs Enf't, 975 F.3d 788, 820 (9th Cir. 2020).[14] Mistrust of ICE is not the same as discouragement or refusal to assist with the enforcement of federal immigration laws. The statute requires that ICE must produce forms and "properly

[13] Major Cities Chiefs Immigration Committee Recommendations For Enforcement of Immigration laws By Local Police Agencies, June 2006, https://www.houstontx.gov/police/pdfs/mcc_position.pdf

[14] https://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html

completed" requests for detainers. Mistrust of ICE officers is inherent in the statute as local law enforcement must determine if the requests for detainers are properly completed.

In addition, expressing mistrust of ICE is not discouraging because it is not intentionally hindering. A Sheriff having mistrust of ICE may make officers have less enthusiasm in their role in enforcing federal immigration laws. However, Sheriff Marx's written policies make it clear that officers are instructed to cooperate with ICE. As discussed *supra*, the court should not take the unintended effect of loss of confidence of officers in ICE's mission as an intentional hindering of the enforcement of federal immigration laws.

The Petition alleges that "[t]o the extent there are open constitutional questions on these issues, his post did not raise or ask them: it made clear declarative legally incorrect statements." D0001 at 4. First, none of these statements are legally incorrect. Substantial caselaw supports the Sheriff's statements. Gonzalez v. United States Immigr. & Customs Enf't, 975 F.3d 788, 820 (9th Cir. 2020). Second, this supports that the Sheriff's statements are not factual, verifiable statements, but opinions. It might be the case that Korematsu v. United States, 323 U.S. 214 (1944) is good law, as it was for many years. A party in a legal proceeding, or any person, might say "the government's actions in Korematsu were unconstitutional" as shorthand for saying they think the court should make that decision or they do not agree with the court's decision. In the political context of Sheriff Marx's statements, he was saying what he believed the Constitution legally required and what he hoped courts would adopt.

CONCLUSION

The court should change venue and ultimately the court should dismiss this matter for mootness, dismiss this matter for failure to state a claim upon which relief can be granted, or both. Defendant Marx asks that the Court grant this motion and dismiss the Plaintiff's Petition, assess attorney fees against the State of Iowa, and grant any other relief in favor of Sheriff Marx that would be just and equitable in the premises.

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was **electronically filed** on EDMS on May 7, 2025. Subject to the exceptions cited therein, Iowa Court Rule 16.315 provides that this electronic filing, once electronically posted to the registered case party's EDMS account, constitutes service for purposes of the Iowa Court Rules.

Copies have been provided to the following registered parties:

_____*/s/ Alexandria Dea*_____