IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA, Plaintiff, v. **DANIEL MARX, in his official capacity as Winneshiek County Sheriff, and WINNESHIEK COUNTY**, Defendants.	Case No. CVCV068880 **Resistance to Defendant Marx's Motion to Transfer and to Dismiss**

Contents

COMES NOW Plaintiff State of Iowa and submits this resistance to Defendant Daniel Marx's motion to transfer and to dismiss.

INTRODUCTION

Chapter 27A's command is clear: Winneshiek County Sheriff Marx shall not "prohibit[] or discourage[] the enforcement of immigration laws." Iowa Code § 27A.4(1); *see also id.* §§ 27A.4(2)(*c*)–(*d*) (similar). That includes federal immigration detainer requests. *Id.* § 27A.2. Marx intentionally violated that law when he posted from the Winneshiek County Sheriff's Office Facebook page that immigration detainers are unconstitutional and that "we will make every effort to block, interfere and interrupt their actions from moving forward," among other similar statements. D0001, Petition at ¶ 12 (03/26/2025). He also incorrectly touted having a "long-time stance on not recognizing detainers." D0001 at ¶ 12. Chapter 27A required the Attorney General to initiate this enforcement action and seek a judicial determination that Marx violated the law. Iowa Code § 27A.8(6).

This Court should deny Marx's motion to transfer. Venue is proper in Polk County because necessary parts of the State's cause of action—the filing of a complaint and investigation—occurred there.

This Court should also deny Marx's motion to dismiss. Marx's removal of his Facebook post after the Attorney General initiated this enforcement action does not moot the case. Marx has not issued a public retraction of the statement, so his violation is ongoing. D0001 at ¶ 29. More, Chapter 27A authorizes the Attorney General to seek a judicial determination that Marx "has intentionally violated this chapter," Iowa Code § 27A.9(2), which contemplates non-ongoing violations.

Marx's failure-to-state-a-claim argument fails because the petition is more than sufficient under Iowa's liberal notice-pleading standard. Marx's argument that he is not a proper party has no bearing on whether this suit can go forward because both Defendants essentially concede that there is at least one proper defendant. The bulk of Marx's failure-to-state-a-claim argument is an improper attempt to adduce evidence about his intent behind the post. Because the petition alleges that Marx's violation was intentional and thus satisfies the notice-pleading standard, the Court need not get bogged down in Marx's post-hoc recharacterizations of his post. Indeed, the conflicting nature of those recharacterizations underscores that Marx's intent was to discourage enforcement of immigration law.

BACKGROUND

I. Chapter 27A forbids local entities from prohibiting or discouraging enforcement of immigration detainers.

Local law enforcement often arrests removable aliens. To ensure that a removable alien does not evade federal immigration authorities, and to avoid a potentially dangerous public arrest, United States Immigration and Customs Enforcement can request that local law enforcement notify ICE before the local law enforcement releases the alien. That includes holding the alien for up to 48 hours beyond the time they would ordinarily release the alien, so that federal agents have time to take the alien into federal custody. *See* 8 U.S.C. § 1357(d); *see also e.g.*, D0001, Exhibit B, at 8. Those requests are called immigration detainers.

Immigration-detainer requests contain a federal agent's attestation that he or she has probable cause to believe that the individual is a removable alien. *E.g.*,

D0001, Exhibit B, at 8. The requests ask local law enforcement to "[m]aintain custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from [law enforcement's] custody." *E.g.*, D0001, Exhibit B, at 8.

Though federal law does not require local law enforcement to comply with immigration-detainer requests, State law does. Local law enforcement must "fully comply with any instruction made in the detainer request." Iowa Code § 27A.2.

Chapter 27A reflects the State's strong public policy of cooperating with its federal immigration-enforcement partners. It prohibits local law enforcement from "adopt[ing] or enforce[ing] a policy or tak[ing] any other action under which the local entity prohibits or discourages the enforcement of immigration laws." *Id.* § 27A.4(1). It also forbids local law enforcement from "prohibit[ing] or discourage[ing] a person who is a law enforcement officer, . . . or other official who is employed by or otherwise under the direction or control of the local entity from . . . [a]ssisting or cooperating with a federal immigration officer," or "[p]ermitting a federal immigration officer to enter and conduct enforcement activities at a jail or other detention facility to enforce a federal immigration law." *Id.* §§ 27A.4(2)(*c*)–(*d*).

The consequence of prohibiting or discouraging enforcement of immigration laws is that the governing body of the local entity loses State funding following the violation. *Id.* § 27A.9(1). So, for example, if a sheriff violates Chapter 27A, the county loses funding. *See id.* Funding eligibility can be reinstated later under the statute. *Id.* § 27A.10.

Chapter 27A vests the Attorney General with enforcement power. Once the Attorney General receives a complaint, the Attorney General investigates and determines whether a local entity has intentionally violated the statute. *See id.* § 27A.8. If so, the Attorney General may seek "a final judicial determination that the local entity has intentionally violated" Chapter 27A. *Id.* § 27A.9(2). And if the violation is ongoing, the Attorney General *must* bring an enforcement action. *Id.* § 27A.8(6). Finally, if there is a judicial determination of a violation, State funds are denied to the local entity's governing body until the entity goes through the restatement process. *Id.* §§ 27A.9(2), 27A.10.

II. Marx publicly states from the Winneshiek County Sheriff Office's official Facebook account that immigration detainers are unconstitutional and that his office would not honor them.

Defendant Daniel Marx is the Winneshiek County Sheriff. D0001 at ¶ 11. On February 4, 2025, Marx used his office's Facebook account to publicly address immigration detainers. As explored below, Marx stated that "share[d] . . . mistrust" of federal immigration officials. D0001 at ¶ 12. He stated that "[t]he only reason [immigration] detainers are issued is because the federal agency does not have enough information," and that "they are not sure they are detaining the right person and need more time to figure it out." D0001 at ¶ 12. He stated, without qualification, that "detainers are violations of our 4th Amendment protection against warrantless search, seizure and arrest, and our 6th Amendment right to due process." D0001 at ¶ 12. Marx explained his office's stance on unconstitutional immigration detainers: "we will make every effort to block, interfere and interrupt their actions from moving

forward." D0001 at ¶ 12. Marx's "[b]ottom line" was that he had a "long-time stance on not recognizing detainers." D0001 at ¶ 12.

III. The Attorney General initiates this enforcement action.

In response to the post, the Governor filed a complaint with the Attorney General in Polk County. D0001 at ¶ 3. The Attorney General investigated in Polk County and, based on the many intentional factual and legal inaccuracies in the post, among other evidence, determined that Marx had intentionally prohibited or discouraged enforcement of immigration law in violation of Chapter 27A. D0001 at ¶ 19.

The investigatory report made clear that after an investigation, the Attorney General's Office found that "Sheriff Marx's Facebook post violated Iowa Code section 27A.4 by discouraging 'the enforcement of immigration laws.'" D0001, Exhibit C, at 2. While the post was the start of that discouragement, the message of the post highlighting the inaccurate characterizations of Marx's policy and the inaccurate characterizations of the illegality of ICE detainers were what were found to be discouraging. That is why just "[d]eleting the offending Facebook post" was not alone enough to bring Marx back into compliance. Without more explanation of what was wrong with the post, the untrue allegations remain unrebutted and the discouragement caused by the initial post remains ongoing. D0001, Exhibit C, at 10.

The Attorney General filed this enforcement action on March 26, 2025 and seeks a judicial determination that Marx intentionally violated Chapter 27A. D0001 at ¶ 34.

ARGUMENT

I. Venue is Proper in Polk County

This Court should deny Marx's request to transfer the case to Winneshiek County. Venue is proper in Polk County because some part of the State's cause of action—the complaint and investigation—arose in Polk County.

Actions "against a public officer . . . for an act done by the officer . . . under color of the public office" "must be brought in the county where the cause, or some part thereof, arose." Iowa Code § 616.3(2).

To determine whether "some part" of "the cause" "arose" in a particular county, courts ask whether the events that occurred in that county "were a part of the cause of action." *Coll. of Physicians & Surgeons of Keokuk v. Guilbert*, 69 N.W. 453, 454 (Iowa 1896). In *Guilbert*, a medical college challenged the Board of Medical Examiners' decision to not recognize the college's diplomas. *Id*. Though the Board conducted an accreditation investigation in Lee County, where the college was located, it made its denial decision in Polk County. *Id*. The Supreme Court held that venue was not proper in Lee County because "[n]either the doings of the committee to investigate the college, nor the acts of the members in directing a withholding of certificates [which occurred in Lee County] . . . , were a part of the cause of action." *Id*.

Here, Chapter 27A requires the filing of a complaint and investigation by the Attorney General before a cause of action arises. *See* Iowa Code § 27A.8(1)–(3). Marx agrees: "Only after the filing of the complaint . . . does the Attorney General then have authority to determine if the complaint is valid." D0009, Motion to Dismiss at

10 (05/07/2025); D0009 at 10 ("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.").

Both the filing of the complaint by the Governor and investigation by the Attorney General occurred in Polk County. The Governor, who resides and works in Polk County, filed the complaint with the Attorney General's Office, which is also in Polk County. *See* D0001 at ¶¶ 3, 6, 18, 30. And the investigation was conducted at the Attorney General's Office in Polk County. *See* D0001 at ¶¶ 19, 32. Because these events "were a part of the cause of action," *Guilbert*, 69 N.W. at 454, and took place in Polk County, venue is proper in Polk County. *See* Iowa Code § 616.3(2).

Marx highlights that his "conduct (i.e., posting on Facebook) happened entirely in Winneshiek County." D0009 at 2. But there is no evidence in the record on this issue; Marx could have posted from anywhere, including Polk County. And the discouragement to other local officials caused by his post could be anywhere in the State. Even if Marx posted from Winneshiek County, all that means is that venue is proper in *both* Polk and Winneshiek Counties. All the venue statute requires is that "some part" arose in Polk County. Iowa Code § 616.3(2).

II. This Case is Not Moot

Marx next argues that this case is moot because he took his post down after the Attorney General sued. D0009 at 3–6. Not so. Because Marx has not publicly corrected or disavowed his post, his discouragement of enforcement of immigration law in violation of sections 27A.4(1) and (2) is ongoing. Moreover, Chapter 27A authorizes the Attorney General to seek a judicial determination that Marx "has

intentionally violated" the law, Iowa Code § 27A.9(2), which includes determinations regarding past actions. So it does not matter whether Marx took his post down. And even if Marx were right that the case is moot, it would fall into an exception because it is capable of repetition, yet evading review.

First, Marx wrongly assumes that because he deleted his post, there is no longer an ongoing violation. As explained below, Marx's post discouraged enforcement of immigration detainers. *See* Iowa Code §§ 27A.4(1), (2)(*c*)–(*d*). Though he deleted the post, the discouragement is ongoing. For example, Marx has never disavowed his statement that his office would "then we will make every effort to block, interfere and interrupt their actions from moving forward." D0001 at ¶¶ 12, 29. Or his statement that he has a "long-time stance on not recognizing detainers." D0001 at ¶¶ 12, 29. Without any corrective statement or explicit retraction or acknowledgment of the errors in the post, Marx's previous statements continue to discourage the enforcement of immigration detainers, especially among law enforcement in Winneshiek County.

More, whether Marx's violation is ongoing is a question of fact not properly resolved on a motion to dismiss. Courts routinely treat whether a violation was ongoing as a question of fact. *See, e.g.*, *Crowley v. L.L. Bean, Inc.*, 303 F.3d 387, 410 (1st Cir. 2002) (discussing "the jury's finding that the [employment] violation was ongoing"); *Braxton/Obed-Edom v. City of New York*, 2018 WL 11316020, at *8 n.11 (S.D.N.Y. Dec. 20, 2018) ("[T]here is question of fact as to whether the letters were received and responded to and the alleged constitutional violation was ongoing."); *United States v. Organic Pastures Dairy Co., LLC*, 2023 WL 3568969, at *6 (E.D. Cal.

May 19, 2023) ("The parties' conflicting versions of events create material disputes of fact regarding Respondents' ongoing violations and their efforts to comply with the original order.").

Second, it does not matter that Marx took down his post because Chapter 27A is not limited to ongoing violations. State funds shall be denied "if the local entity *intentionally violates*" Chapter 27A, regardless of when that violation occurred or if it continues. Iowa Code § 27A.9(1) (emphasis added). The Legislature could have limited funding denials to violations that are ongoing during an enforcement action. It knew how to do so, as demonstrated by its definition of the scope of conduct over which someone can file a complaint: "Any person . . . may file a complaint with the attorney general alleging that a local entity has violated *or is violating* this chapter." *Id.* § 27A.8(1) (emphasis added).

To trigger a funding denial, the Legislature established a judicial-determination procedure that similarly uses past-tense language: "State funds shall be denied. . . after the date on which a final judicial determination that the local entity *has intentionally violated* this chapter is made in a civil action." *Id.* § 27A.9(2) (emphasis added). Again, the term "has intentionally violated" includes a violation that is no longer ongoing. The Legislature certainly knew how to narrow the judicial-determination to ongoing violations, but it did not.

Because section 27A.9 requires a State-funds denial whenever Chapter 27A is violated—no matter whether the violation persists throughout the litigation—and created a judicial-determination procedure that explicitly references past violations,

this Court can issue a judicial determination even Marx's the violation were no longer ongoing. Indeed, even the most stringent following of the text requires that the violation be ongoing at the time of filing. *See* Iowa Code § 27A.8(6). To find otherwise would allow local entities to avoid liability for violating the law by ceasing to violate the law as soon as an enforcement action begins.

Ignoring the statutory text, Marx argues that the Legislature's requirement that the Attorney General sue to enjoin an ongoing violation means that once a violation ceases, the case must be dismissed. *E.g.*, D0009 at 4 ("[T]here needs to be an ongoing violation . . ."); *see also* Iowa Code § 27A.8(6) ("[T]he attorney general shall file a civil action in district court to enjoin any ongoing violation of this chapter by a local entity."). But the Legislature did not make that mandate the exclusive means of enforcing Chapter 27A. *See State v. Iowa Dist. Ct. for Polk Cnty.*, No. 23-1555, 2024 WL 4761828, at *4 (Iowa Ct. App. 2024) (relying on the Legislature's omission of exclusive language "such as 'only,' 'just,' or 'exclusively'"). Taken to its logical conclusion, if Marx had been accurate in stating a longstanding policy of not complying with ICE detainers, then his logic would require this Court to dismiss the case as soon as he announced a policy going forward that he would comply. Such a result would avoid the statutory punishment—lack of funds—and would likely render the post-violation remedy of reinstatement a superfluity. *See* Iowa Code § 27A.10. Indeed, the Legislature clearly intended a local entity to face some punishment for a violation because it does not allow a petition for reinstatement until "no earlier than ninety days after the date of a final judicial determination." *Id.*

It would make no sense for the Legislature to pass a comprehensive law forbidding local officials from prohibiting or discouraging enforcement with immigration law, create a penalty for failing to comply with that command that explicitly refers to past violations, *id.* § 27A.9(1), define an enforcement mechanism that similarly references past violations, *id.* § 27A.9(2), and then limit the Attorney General's enforcement authority to violations that are ongoing throughout the entire course of an enforcement action. Any local entity worried about losing its funding after a bench trial goes awry could try to self-correct and argue post-hoc mootness. Marx's ongoing-violation-only interpretation is incorrect because it fails to give Chapter 27A its full effect. *See id.* § 4.4(2) ("In enacting a statute, it is presumed that . . . [t]he entire statute is intended to be effective.").

Read in context, Chapter 27A authorizes the Attorney General to seek a judicial determination that a local entity has violated the law. That is what the Attorney General did here. The Attorney General initiated this action "pursuant to section 27A.8, subsection 6," *id.* § 27A.9(2), because the Attorney General followed the Legislature's non-discretionary directive to "file a civil action in district court to enjoin any ongoing violation of this chapter by a local entity," *id.* § 27A.8(6).

After all, at the time the Attorney General initiated this action, Marx had not taken down his post. *See* D0001 at ¶ 29 ("As of the time of this filing, the violating Facebook post remains posted and no public walk back, revocation, or other corrective action has been taken."). And because the "judicial determination" that the Attorney General seeks is that Marx "has intentionally violated" Chapter 27A, Iowa Code

§ 27A.9(2), whether Marx continues to violate Chapter 27A by continuing to discourage cooperation with federal law enforcement is beside the point. This Court is asked to determine whether a violation occurred—and whether that violation was ongoing at the time of filing.

Finally, even if the Facebook post does not follow the sheriff office's written policy, if this Court says that he may avoid liability through deleting the post then it is dangerously capable of repetition yet evading review. *See*, *e.g.*, *Rhiner v. State*, 703 N.W.2d 174, 177 (Iowa 2005) (not reaching mootness because even if moot "this case falls squarely into the 'capable of repetition but evading review' exception to the mootness doctrine"); *Vislisel v. Bd. of Adjustment of Cedar Rapids*, 372 N.W.2d 316, 318 (Iowa App. 1985) (similar). Indeed, it is not clear under Iowa law if "matters of public importance are presented and the problem is likely to recur" that mootness appropriate. *See Rhiner*, 703 N.W.2d at 177 (quoting *In re M.T.*, 625 N.W.2d 702, 704–05 (Iowa 2001)); D0009 at 4 (Marx recognizing this exception).

Chapter 27A lays out the process for the Attorney General to seek a judicial determination that a violation has occurred and it defines the penalties that follow. Nothing about this case or controversy is moot.

III. This Court Should Deny Marx's Motion to Dismiss

Marx also moves to dismiss this action for failure to state a claim. The Iowa Supreme Court has "taken a dim view of attempts to strike a claim through a motion to dismiss." *1000 Friends of Iowa v. Polk Cnty. Bd. of Sups.*, 19 N.W.3d 290, 296 (Iowa 2025). "Generally, a motion to dismiss should not be granted." *Id.* (citation omitted). "[A] court will rarely dismiss a petition for a failure to state a claim." *Turner v. Iowa*

State Bank & Tr. Co. of Fairfield, 743 N.W.2d 1, 3 (Iowa 2007). "Under notice pleading, nearly every case will survive a motion to dismiss." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004).

Courts may grant a motion to dismiss "only when there exists no conceivable set of facts entitling the non-moving party to relief." *Rees*, 682 N.W.2d at 79 (citation omitted). "The petition need not allege ultimate facts that support each element of the cause of action." *Id*. The petition need only "contain factual allegations that give the defendant 'fair notice' of the claim asserted so the defendant can adequately respond to the petition." *Id*. "A petition complies with the 'fair notice' requirement if it informs the defendant of the incident giving rise to the claim and of the claim's general nature." *Id*. In analyzing a motion to dismiss, courts view the allegations in the petition in the light most favorable to the plaintiff and resolve doubts in the plaintiff's favor. *Id*. When reviewing a motion to dismiss, courts do not consider facts outside the petition. *See Turner*, 743 N.W.2d at 3.

A. Sheriff Marx is a "local entity" under Chapter 27A.

Marx first argues that he is not a proper party to a Chapter 27A enforcement action; only Winneshiek County is. D0009 at 7–10. Ultimately, Marx's proper-party argument has no bearing on whether this enforcement action can go forward. Marx concedes that Winneshiek County is a proper party. D0009 at 9 ("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.'"). And Winneshiek County concedes that the county board of supervisors is a proper party as well, D0011, Def. Misjoinder

Br. at 4–5 (07/05/2025) ("The county board of supervisors is the governing body of Winneshiek County."). So either way, there is a proper party to this lawsuit.

Before turning to Marx's proper-party argument, it is important to see what Marx does *not* argue. Marx does not argue that a sheriff is not the type of local entity that can violate Chapter 27A. Nor could he, because the statute's definition is clear: "A local entity shall not . . . take any other action under which the local entity prohibits or discourages the enforcement of immigration laws." Iowa Code § 27A.4(1). 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*." Iowa Code § 27A.4 (emphasis added).

Instead, Marx argues that he is not a proper party to a Chapter 27A enforcement action. D0009 at 7–10. Marx contends that because the consequence of a county sheriff's violation is that the county loses State funding, *see* Iowa Code § 27A.9(1), the county is the only proper party for in a Chapter 27A enforcement proceeding, D0009 at 8–9.

But because it is Marx's conduct here, he is an indispensable party. *See* Iowa R. Civ. P. 1.234(2). After all, the statute requires a "judicial determination that the local entity"—referring to Marx—"has intentionally violated this chapter." Iowa Code § 27A.9(2). Indeed, Chapter 27A's complaint and investigation process references entities such as sheriffs, and not just the county as a whole. *See, e.g.*, Iowa Code § 27A.8(1) (permitting persons to "file a complaint . . . alleging that a local entity has violated or is violating this chapter").

Ultimately, the State does not hold strong views on the issue of which defendant best represents the County's interest in the statutory remedy following this Court's finding of a violation. If Marx wants to put Winneshiek County's State funding at risk and then not defend his actions in Court, so be it. The post and its effects speak for themselves. In the end, resolving Marx's proper-party argument is not dispositive to the Attorney General's enforcement action because at least one proper party is named.

B. The Governor's complaint is irrelevant.

Marx next argues that the petition should be dismissed because it purportedly "does not include evidentiary support for the [Governor's] complaint." D0009 at 10–11. Marx contends that the petition needed to specifically allege that the Governor's complaint included evidence of his Chapter 27A violation. D0009 at 10.

Though Marx is wrong for many reasons, this Court can cut straight to the chase: the petition and its exhibits allege that the Governor's complaint included evidentiary support. *See* D0001, Exhibit A, at 1 ("The Governor has, under Iowa Code section 27A.8, filed a complaint including evidence that you have stated an intent to intentionally violate this chapter."); D0001, Exhibit C, at 2 ("The Iowa Attorney General's Office has received a formal complaint from Governor Kim Reynolds under Iowa Code section 27A.8 about a Facebook post made by Winneshiek County Sheriff Dan Marx."); D0001, Exhibit A, at 1 ("The complaint points to a public statement that you issued that included multiple statements . . .").

And this Court can take judicial notice that the Governor's complaint "attached" the Facebook post. *See* @IAGovernor, X.com (Feb. 5, 2025 6:14 PM),

https://perma.cc/9C6M-W5C9 (complaint). Indeed, the Sheriff and County should know that too—the Governor's complaint was explicitly sent to both. *Id.* That should all be obvious. The subject of the Governor's complaint was Marx's Facebook post, which the Governor would have needed to include to alert the Attorney General of the violation. This evidence, coupled with all inferences in the State's favor, is sufficient under the notice-pleading standard. *See Rees*, 682 N.W.2d at 79.

Also, Marx is wrong that the petition needed to include allegations detailing the specific evidentiary support attached to the Governor's complaint. Marx does not dispute that the petition "inform[ed] [him] of the incident giving rise to the claim and of the claim's general nature." *Id*. That is enough under the notice-pleading standard. The petition "need not allege ultimate facts that support each element of the cause of action." *Id*.

Finally, whether the petition properly put Marx on notice that he violated Chapter 27A has nothing to do with the substance of the Governor's complaint. Section 27A.8's complaint procedure is merely a starting point for the Attorney General's investigation. And while the Attorney General cannot investigate without receiving a complaint, nothing in Chapter 27A prohibits the Attorney General from pursuing an enforcement action if the Attorney General deems the complaint meritorious, yet the underlying complaint failed to "include with the complaint any evidence the person has in support of the complaint." Iowa Code § 27A.8(1). Marx's argument incorrectly turns his motion to dismiss, which tests the legal sufficiency of the *petition*, into an attack on the Governor's underlying *complaint*.

C. The petition stated a claim that Marx violated section 27A.4(1).

Marx's next group arguments claim that the petition fails to state a violation of Chapter 27A. D0009 at 13–23. Marx is wrong; the petition stated a claim that he violated section 27A.4(1).

Section 27A.4(1) states that Marx "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." Iowa Code § 27A.4(1). If Marx "intentionally violated" that law, Winneshiek County's State funding must be denied. *Id.* § 27A.8(2). Marx does not dispute that his Facebook post was "other action." *Id.* § 27A.4(1). So the only two questions are whether the petition alleges that (1) Marx's post "prohibits or discourages the enforcement of immigration laws," and (2) Marx did so intentionally. The answer to both questions is "yes," so this Court should deny Marx's motion to dismiss.

1. The petition alleged that Marx's post prohibited and discouraged the enforcement of immigration laws.

The petition put Marx on notice that he prohibited and discouraged the enforcement of immigration laws: "The Sheriff posted on Facebook a message rife with legal and factual errors that discouraged enforcing immigration laws." D0001 at ¶ 3; *see also* D0001 at ¶ 11 ("His 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 ¶ 14 ("The Sheriff knows many of those inaccurate claims are wrong and thus discourage law

enforcement."); D0001 at ¶ 17 (". . . those statements 'discourage[] the enforcement of immigration laws'").

Those allegations are more than sufficient to survive Marx's motion to dismiss under the notice-pleading standard. *See Rees*, 682 N.W.2d at 79. The petition "need not allege ultimate facts that support each element of the cause of action." *Id.*

But the petition goes well beyond the notice-pleading standard. Sheriffs like Marx are required to comply with immigration detainer requests. *See* Iowa Code § 27A.2; *id.* § 27A.1(1). Thus, if Marx discouraged or prohibited the enforcement of immigration detainer requests, he violated section 27A.4(1).

To "prohibit" means "[t]o forbid by authority." Prohibit, American Heritage Dictionary, *supra*, https://perma.cc/JH3N-Z488.

To "discourage" means (1) to "cause (someone) to lose confidence or enthusiasm," (2) to "prevent or seek to prevent (something) by showing disapproval or creating difficulties," and (3) to "persuade (someone) against an action." Discourage, New Oxford American Dictionary 496 (3d ed. 2010).

Authoritative dictionaries adopt a substantially similar definition. *See* Discourage, American Heritage Dictionary of the English Language (5th ed. 2022), https://perma.cc/SNH3-LLM6 ("To deprive of confidence, hope, or spirit"; "To dissuade or deter (someone) from doing something"; "To try to prevent by expressing disapproval or raising objections"); Discourage, Webster's New World College Dictionary 419 (5th ed. 2016) ("to deprive of courage, hope, or confidence," "to advise or persuade (a person) to refrain"; "to prevent or try to prevent by disapproving or

raising objections or obstacles"; "to prevent or try to prevent by disapproving or raising objections or obstacles"); Discourage, Merriam-Webster's Collegiate Dictionary 357 (11th ed. 2009) ("to deprive of courage or confidence"; "to hinder by disfavoring"; "to dissuade or attempt to dissuade from doing something"); Discourage, Oxford English Dictionary (2d ed. 1989) ("To deprive of courage, confidence, or moral energy; to lessen the courage of; to dishearten, dispirit"; "To lessen or repress courage for (an action or project); to discountenance, express disapproval"); *see also* Antonin Scalia & Bryan A. Garner, Reading Law: An Interpretation of Legal Texts 423 (2012) (listing each of these dictionaries as "most useful and authoritative" for the year Chapter 27A was enacted).

Trudging his own path, Marx defines "discourage" as "actively trying to prevent." D0009 at 15. But that definition is made-up: it does not appear in any of the dictionaries he cites nor in any of the authoritative dictionaries cited above.

The petition alleges that Marx's post intended to cause a loss of "confidence or enthusiasm" in enforcing immigration detainers, how it "prevent[ed] or s[ought] to prevent" the enforcement of immigration detainers "by showing disapproval or creating difficulties," and how it could have "persuade[d] [law enforcement officers] against an action"—enforcing immigration detainers. *See* New Oxford American Dictionary, *supra* at 496. Consider these excerpts:

- "Given what we have seen from these agencies"—referring to "three letter" federal agencies—"I share your mistrust and many of your concerns with the legitimacy of how these federal agents conduct business." D0001 at ¶ 12.

- Stating that detainers are unconstitutional and that Marx's office would "make every effort to block, interfere and interrupt their actions." He continued, "[i]f [federal agencies'] actions or paperwork are not within constitutional parameters (such as non-judicially vetted 'detainers,' which are very different than warrants and are simply an unconstitutional 'request' from ICE or other three letter federal agency to arrest or hold someone), then we will make every effort to block, interfere and interrupt their actions from moving forward." D0001 at ¶ 12.

- Repeating that immigration detainers violate the constitution because "[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. Simply put, they are not sure they are detaining the right person and need more time to figure it out." D0001 at ¶ 12. Coupled with his earlier statement that his office would "make every effort to block, interfere and interrupt their actions from moving forward," this reiterates that law enforcement officers should not comply with immigration detainers. D0001 at ¶ 12.

- Stating, for the third time, that immigration detainers violate the constitution: "Specifically, these detainers are violations of our 4th Amendment protection against warrantless search, seizure and arrest, and our 6th Amendment right to due process." D0001 at ¶ 12.

- Marx's "[b]ottom line" was that he had a "long-time stance on not recognizing detainers." D0001 at ¶ 12.

In sum, Marx stated that federal immigration officials should not be trusted, immigration detainers are issued only when federal officials do not have probable cause to detain an individual, immigration detainers violate the constitution, Marx's office would make every effort to interfere with immigration detainers because detainers violate the constitution, and that he has a long-time stance on not complying with the detainers. *See* D0001 at ¶ 12.

Marx is a well-respected sheriff that, according to his own Facebook post, is known as a "Constitutional Sheriff." *Id.* Other sheriffs or their deputies and

employees that see the duly elected Sheriff Marx stating that he will take every effort to interfere with immigration detainers because they are unconstitutional very well could be discouraged. And sadly, many questions Marx raises through inaccurate pronouncements of unconstitutionality could discourage law enforcement officers.

Those statements fit within any definition of the word "discourage." Further, Marx's "long-time stance on not recognizing detainers" and statement that "we"—meaning him and his deputies—"will make every effort to block, interfere and interrupt their actions from moving forward" prohibits his deputies from enforcing immigration detainers. D0009 at ¶ 12. Even if Marx's defense is that he did not mean what he posted, or that his written policy is different from his written post, those fact issues cannot be determined at the motion-to-dismiss stage of litigation.

2. The petition alleged that Marx's post was intentional.

The petition also "contain[s] factual allegations that give the [Marx] 'fair notice'" that his violation of Chapter 27A was intentional. *See Rees*, 682 N.W.2d at 79. It alleged: "Sheriff Dan Marx intentionally posted on Facebook," D0001 at ¶ 11, that he "intentionally posted false information," D0001 at ¶ 26, and that he "intentionally posted his inaccurate Facebook post," D0001 at ¶ 31.

More, the petition alleged that Marx knew he posted false information to discourage compliance with immigration detainers: "The Sheriff knows many of those inaccurate claims are wrong and thus discourage law enforcement." D0001 at ¶ 14. And it alleged that Marx's response to the Attorney General's investigatory report "was sent because the post discouraged law enforcement and the County Attorney and Sheriff realized, belatedly, the error." D0001 at ¶ 28. Coupled with Marx's

statements that immigration detainers are unconstitutional, that he would actively try to block them, and that he has a long-time stance on not recognizing them, *see* D0001 at ¶ 12, these allegations are more than sufficient to put Marx on notice that his violation was intentional, *see Rees*, 682 N.W.2d at 79.

Though "Iowa is a notice pleading state," *Benskin*, 952 N.W.2d at 296, the bulk of Marx's seeks to litigate these allegations by adducing novel explanations of his state of mind in his motion to dismiss. He makes four arguments. Each fails.

First, though Marx asserts that there is "no evidence that the post intentionally discourages the enforcement of immigration laws," D0009 at 14 (capitalization omitted); *see id.* at 14–17, that argument falls short because "[t]he petition need not allege ultimate facts that support each element of the cause of action." *Rees*, 682 N.W.2d at 79. And, of course there is no question that Marx intended to make his public post.

Second, Marx argues that his post was "[a] public refusal to commit unconstitutional actions." D0009 at 17 (Part . At its core, this is an improper attempt by Marx to explain his mental state in a motion to dismiss. *See also, e.g.*, D0009 at 21 ("Sheriff Marx is saying nothing more than . . ."). He claims for the first time that his "long-time stance on not recognizing detainers," D0001 at ¶ 12, was really a policy of not recognizing detainers that lacked a "properly completed" Form I-200 or Form I-205, which in his view required a "determination by a neutral and detached magistrate," D0009 at 19.

While it is understandable that Marx, with the benefit of counsel, would want to re-characterize his post following the initiation of this enforcement action, a motion to dismiss is not the proper place to do so. A motion to dismiss rises and falls on the petition, not the explanation Marx gives in his motion to dismiss. *See White v. Harkrider*, 990 N.W.2d 647, 656 (Iowa 2023). This Court should reject Marx's improper attempt to adduce scienter evidence in a motion to dismiss.

Setting aside the impropriety of arguing about Marx's mental state in a motion to dismiss, Marx's characterization in his motion of his "long-time stance on not recognizing detainers" comment cannot be correct. Marx says that what he meant by that statement was that the only detainers he did not comply with are those that lacked "a probable cause determination by a neutral and detached magistrate." D0009 at 19. Without a probable-cause finding by a magistrate, he says, the detainers "would be unconstitutional." D0009 at 19. And Marx has made clear what his office will do when a detainer is unconstitutional: "make every effort to block, interfere and interrupt" the detainer. D0001 at ¶ 12.

Here's the problem: Exhibit B contains every immigration detainer request Marx's office received since 2018, and most, if not all, of those immigration detainers lack a judicial probable-cause determination of removability. D0001, Exhibit B at 8–64. Instead, the probable-cause determination is made by the immigration officer. The first part of an immigration detainer reads: "DHS has determined that probable cause exists that the subject is a removable alien, this determination is based on . . ." *See, e.g.*, D0001, Exhibit B at 13 (emphasis added; capitalization altered). So the only

entity determining probable cause in the context of the immigration detainers were DHS agents. *Id.*

More, Marx's post explained that "[t]he only reason detainers are issued is because the federal agency does not have enough information" and are "not sure they are detaining the right person." D0001 at ¶ 12. He doubles-down on that claim in his motion to dismiss, saying it "is true." D0009 at 21. If that were "true," there is no way the federal agents could obtain probable-cause findings from a magistrate, much less make one themselves.

Despite this, Marx "has complied with *every* ICE detainer request made of his office since November 26, 2018." D0001 at ¶ 16 (emphasis added); *see also* D0009 at 11 ("The Sheriff Has Complied with All Immigration Detainer Requests"). If Marx's long-time stance were really what he says it is in his motion to dismiss, Marx would have a different track record.

That Marx may have "work[ed] with [the] local judiciary to include language" denying an alien's post-arrest release if an immigration detainer is issued, D0001, Exhibit B, at 1–2, is beside the point. Marx's statement touting his "long-time stance on not recognizing detainers," D0001 at ¶ 12, was categorical. And, according to Marx, it would be illegal to work with the judiciary to deny an alien's release based on an immigration detainer that was issued (1) without probable cause ICE "does not have enough information" and is "not sure [it] [is] detaining the right person," and (2) is a "violation[] of our 4th Amendment protection against warrantless search, seizure and arrest, and our 6th Amendment right to due process." D0001 at ¶ 12. If Marx

truly believed what he posted, he would not have worked to deny an alien's released based on an "unconstitutional" immigration detainer. D0001 at ¶ 12.

In sum, Marx's inconsistent and inaccurate explanations of his intent, even with the benefit of counsel, underscore that he knew what he was posting.

Third, and relatedly, Marx doubles-down on some of his statements, claiming they are "true." D0009 at 21 (Part III.I). The Court need not go down this rabbit hole. The plain meaning of Chapter 27A's prohibition on discouragement does not turn on whether the discouragement to cooperate with federal law is true or false.

Marx never explains how the truth or falsity of his post affects the fact that he posted intentionally, and the post discouraged or prohibited enforcement of immigration detainers. The closest he gets is a passing reference to libel law, but he never explains how that body of law applies to officers speaking in their official capacity on behalf of the government. *See* D0009 at 20. Just as the State can prevent its attorneys from speaking about pending cases, so too can it prevent sheriffs from giving opinions about the constitutionality of immigration law and stating that they will interfere with attempts to enforce detainers. *See Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) ("[W]hen public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications.").

But even Marx does not appear to believe that his post was "true." Take his claim 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. Simply put, they are not sure they are detaining the right person and need more time to figure it out." D0001 at ¶ 12. If that were true, why did Marx "compl[y] with every ICE detainer request made of his office since November 26, 2018[?]" D0001 at ¶ 16. If federal agents "are not sure they are detaining the right person," there is no way they would be able to conclude that there is probable cause, whether themselves or through a neutral magistrate. D0001 at ¶ 12. And without "enough information . . . to obtain a valid judicial warrant," Marx would have no basis to convince courts to deny aliens' release based on immigration detainers that, according to Marx, are unconstitutional. D0001 at ¶ 12.

Or take Marx's claim that "detainers are violations of our 4th Amendment protection against warrantless search, seizure and arrest, and our 6th Amendment right to due process." D0001 at ¶ 12. On page 21, he says that statement "is true." D0009 at 21. But two pages later, on page 23, he all but admits that there is no caselaw to support his position: "[i]n 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." D0009 at 23.

His latter statement is correct—though Marx might "hope[] courts would adopt" his position, none has. And he certainly never said as much in his post. The case that Marx cites, *Gonzalez v. USCIS*, 975 F.3d 788 (9th Cir. 2020), shows that the detainers Marx received do not violate the constitution. *See* D0009 at 17, 19, 21, 22, 23 (citing *Gonzalez*). So Marx's lead argument against the constitutionality of ICE

detainers—that detaining "an alien without a warrant issued by a neutral magistrate is unconstitutional" is incorrect—and not what *Gonzalez* said. *Id.* at 17.

Gonzalez explained that in the criminal context, a police officer's probable-cause determination "provides legal justification for arresting a person suspected of crime," without the officer needing to first obtain a warrant from a neutral magistrate. *Id.* at 824 (quoting *Gerstein v. Pugh*, 420 U.S. 103, 113–14 (1975)). But after 48 hours, the officer must secure a probable-cause finding from a neutral magistrate, called a *Gerstein* hearing. *See id.* The Ninth Circuit held that this criminal-law doctrine applied to the civil immigration context: "[d]etaining persons for more than 48 hours pursuant to an immigration detainer implicates *Gerstein*." *Id.* at 826. The Ninth Circuit then remanded to the district court to address whether the five-day detention of a plaintiff without a probable-cause determination by a neutral magistrate violated that standard. *Id.*

Here, however, the immigration detainer requests Marx received each asked the Winneshiek County Sheriff's Office to "[m]aintain custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody." *E.g.*, D0001, Exhibit B, at 23. Because the detainers never asked Marx to detain removable aliens for more than 48 hours, the detainers passed constitutional muster under *Gonzalez*. In short, Marx is wrong when he says that an immigration detainer form "require[s] a probable cause determination by a neutral and detached magistrate or that detainer would be unconstitutional." D0009

at 19. And the case that he cites to justify his position supports both State and federal practice.

Finally, in an about-face from doubling-down on his statements as "true," Marx switches to arguing that they were "protected opinions that are not verifiably true or false." D0009 at 20 (capitalization altered). In the same breath, Marx states that his statement that"[t]he only reason detainers are issued is because the federal agency does not have enough information" both "is true" and "is not subject to verifiability." D0009 at 21. So too with his claim that immigration detainers violate the Fourth Amendment and Due Process Clause. He says that "[h]ow much process is 'due' is not subject to verifiable measurements," yet in the next sentence says that the statement "is true." D0009 at 21. Then, two pages later, he clarifies that "he was saying what he believed the Constitution legally required and what he hoped courts would adopt." D0009 at 23. That Marx's post-hoc re-characterizations are incoherent underscore the petition's allegations: "The Sheriff knows many of those inaccurate claims are wrong and thus discourage law enforcement." D0001 at ¶ 14; *see also* ¶¶ 11, 26, 28, 31 (similar).

Whether Marx's post was "an opinion" or a statement of fact is irrelevant to whether he intentionally discouraged enforcement of immigration law. A post stating that "it is my opinion that immigration detainers are unconstitutional, that we have an office policy of not complying with them, and we will actively try to thwart them" discourages enforcement of immigration detainers just as much as one that says,

"immigration detainers are unconstitutional, my office has a policy of not complying with them, and we actively try to thwart them." *See* D0001 at ¶ 12.

D. The petition stated a claim that Marx violated sections 27A.4(2)(*c*)–(*d*).

The petition also alleges that Marx violated sections 27A.4(2)(*c*) and (*d*), which are substantially similar to section 27A.4(1) discussed above.

Section 27A.4(2) states, "[a] local entity shall not prohibit or discourage a person who is a law enforcement officer . . . or other official who is employed by or otherwise under the direction or control of the local entity from doing any of the following," including "[a]ssisting or cooperating with a federal immigration officer," and "[p]ermitting a federal immigration officer to enter and conduct enforcement activities." Iowa Code § 27A.4(2)(*c*)–(*d*). The only difference between section 27A.4(2)'s language and section 27A.4(1) is that it refers to prohibitions or discouragement of law enforcement officers specifically, rather than just the general non-enforcement of immigration law. *See id.*

For the same reasons Marx's post intentionally prohibited or discouraged enforcement of immigration detainers, he also intentionally prohibited or discouraged the law enforcement officers he supervises and others from complying with immigration detainers. And because Marx intentionally prohibited or discouraged law enforcement officers from complying with immigration detainers, he prohibited or discouraged assisting federal immigration officers and permitting them to enter facilities to enforce immigration detainers. Iowa Code §§ 27A.4(2)(*c*)–(*d*).

CONCLUSION

The State respectfully asks this Court to deny Defendant Marx's motion to transfer the case and to dismiss.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

ERIC H. WESSAN
Solicitor General

/s/ *Jeffrey C. Peterzalek*
JEFFREY C. PETERZALEK
Deputy Attorney General
Iowa Department of Justice
1305 E. Walnut Street, 2nd Fl.
Des Moines, Iowa 50319
Ph: (515) 281-5164
jeffrey.peterzalek@ag.iowa.gov
eric.wessan@ag.iowa.gov
ATTORNEYS FOR PLAINTIFF
STATE OF IOWA

Copy electronically served on all parties of record.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on June 6, 2025:

☐ U.S. Mail	☒ Electronically
☐ Hand Delivery	☐ Overnight Courier
☐ Federal Express	☐ Other

Signature: /s/ Julie Sander