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IN THE SUPREME COURT OF WISCONSIN

APPEAL NO: 2025AP002121 OA

VOCES de la FRONTERA, INC.,

Petitioner,

v.

DAVE GERBER, Sheriff of Walworth County,
TODD DELAIN, Sheriff of Brown County,
CHAD BILLEB, Sheriff of Marathon County,
DAVID ZOERNER, Sheriff of Kenosha County, and
CHIP MEISTER, Sheriff of Sauk County,

Respondents.

On Petition For Original Action Before This Court

JOINT RESPONSE OF SHERIFF RESPONDENTS IN OPPOSITION TO PETITION FOR AN ORIGINAL ACTION

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INTRODUCTION

For years, many Wisconsin county sheriffs have assisted the United States Immigration and Customs Enforcement (ICE) by complying with federal immigration detainers and administrative warrants directed to the sheriffs by ICE. The immigration detainers and warrants permit the state authorities to work in conjunction with ICE and hold individuals for up to 48 hours at the request of ICE in the event an individual lawfully in state custody would otherwise be subject to release. It must be noted, however, that many of the individuals who have active ICE detainers are simultaneously lawfully being held in county jails on state criminal charges and the ICE detainers are not the basis for the individual being held. Rather they are being held pursuant to the underlying state criminal process.

Further, several sheriffs have entered into what are known as § 287(g) agreements for the Warrant Service Officer Program which allows ICE to train, certify, and authorize state and local law enforcement officials to serve administrative warrants in the county jails on persons who are being held in their custody at the time of their scheduled release. This has the effect of transferring the person into federal custody at the time of their scheduled release from state custody. When these sheriffs—of which the Brown County sheriff is one—follow this process there is no extension of a person's state custody beyond the time when they would otherwise be released; rather, the person is held in federal custody.

Petitioner brings this Petition for Original Action, asking the Court to declare that Wisconsin sheriffs lack authority under Wisconsin law to hold persons in custody past their release date pursuant to ICE detainers. But no exigent circumstances justify allowing Petitioner to skip the ordinary litigation process to bring its claims. Nor do the issues raised in this case have a statewide impact. And, the Petition greatly oversimplifies the dispute; indeed, the Petition makes no attempt even to address the constitutional, statutory, and common law duties and powers of Wisconsin sheriffs despite challenging the authority of Wisconsin sheriffs to engage

in a practice that has occurred for decades. And, this case implicates a highly-complicated area of the law—federal immigration law and the relationship between federal and state and local law enforcement—and presents complex disputes that would be best resolved and refined through the ordinary litigation process.

As will be explained further below, this Court should deny the Petition for Original Action.

STATEMENT

I. ICE DETAINERS IN GENERAL

The United States Immigration and Naturalization Service ("INS"), the predecessor to ICE, began issuing immigrations detainers in the 1950s.[1] The 1986 Anti-Drug Abuse Act "amended Section 287 of the [Immigration and Nationality Act] to address the issuance of detainers for aliens arrested for 'violation[s] of any law relating to controlled substances.'"[2] In response to this amendment, "the INS amended its regulations to address the issuance of detainers."[3] The INS promulgated two regulations, which were merged in 1997.[4] Codified as 8 C.F.R. § 287.7, the federal regulation outlining the ICE's detainer provisions has been in virtually its present form since 2003.[5] ICE's standard detainer form, Form 1-247, has been used since 1984.[6] If ICE believes a person is removable and is in custody by a state or local law enforcement officer, it may take custody of the person through an

[1] Kate M. Manuel, "Immigration Detainers: Legal Issues," Congressional Research Service, May 7, 2015, p. 4, https://fas.org/sgp/crs/homesec/R42690.pdf.
[2] *Id.*, p. 5 (quoting P.L. 99-570, §1751(d), 100 Stat. 3207-47 to 3207-48 (October 27, 1986)).
[3] *Id.*, p. 6.
[4] *Id.* (citing Dep't of Justice, INS, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 *Federal Register* 10312, 10392 (March 6, 1997)).
[5] *Compare* 68 FR 35279, June 13, 2003 *with* 76 FR 53797, Aug. 29, 2011.
[6] Manuel, "Immigration Detainers: Legal Issues," p. 7.

immigration detainer.[7] The detainers allow state law enforcement to hold the individual for up to 48 hours.[8]

An I-247 detainer is "[o]ne method in which the federal government requests the cooperation of state authorities[.]" *Lopez-Lopez v. Cnty. of Allegan*, 321 F. Supp. 3d 794, 797 (W.D. Mich. 2018). "An immigration detainer notifies a state or locality that ICE intends to take custody of a removable alien when the alien is released from that jurisdiction's custody." *Id.* "ICE issues the detainer to request that the state or locality to cooperate by notifying ICE of the alien's release date and by holding the alien for up to 48 hours—which is based on ICE's determination that . . . it has probable cause that the alien is removable." *Id.* (citing 8 C.F.R. § 287.7(a), (d)). "In April of 2017, ICE changed its policy so that ICE officers provided signed administrative warrants along with ICE detainers when they sought cooperation from local law enforcement to hold an individual for detention." *Id.* "Prior to this change in policy, officers issued only I-247 detainers to local law enforcement when it sought local cooperation to hold a suspected alien." *Id.*

"When ICE agents issue valid detainers and administrative warrants to local law enforcement, they are requesting that the local law enforcement 'provide operational support by executing a warrant.'" *Id.* at 799. Courts have found that holding a person pursuant to a valid detainer and administrative warrant does "not run afoul of the Fourth Amendment prohibition against unreasonable seizures." *Id.* at 801. This is because the "Supreme Court [has made] clear that when state and local law enforcement informally attempt to cooperate with federal immigration agents, they must act on a specific request from ICE agents, and they are limited to actions that do not involve their use of discretion." *Id.* (discussing *Arizona v. United States*, 567 U.S. 387, 410 (2012)). And, when "ICE issue[s] a facially valid

[7] *Immigration Detainers: Background and Recent Legal Developments*, Congress. Gov (Oct. 10, 2020), https://www.congress.gov/crs-product/LSB10375
[8] *Id.*

administrative warrant for [an individual's] arrest, based on a determination that there was probable cause to believe [an individual] was removable . . . [and] ICE request[s] that the localities detain [the individual] through the use of an I-247 detainer—which also recite[s] the basis for probable cause"—the Fourth Amendment is satisfied. *Id.*

II. WISCONSIN COUNTIES HANDLE ICE DETAINERS DIFFERENTLY

Wisconsin counties do not handle ICE detainers in a uniform manner. Even among Respondents, counties differ in their legal relationship with ICE. As the Petitioner acknowledges in its Petition, some counties, including Brown County, maintain active Warrant Service Officer 287(g) agreements with ICE, pursuant to 8 U.S.C. § 1357(g). *See* (Petition, ¶ 39 n.15). In 2025, Walworth County entered into a 287(g) Memorandum of Agreement with ICE.[9] Other counties, such as Kenosha, Marathon, and Sauk, have not entered into 287(g) agreements. *See, e.g.* (Petition, ¶ 27 n.12). As discussed further below in Section II.F., the variable presence or absence of a 287(g) agreement between counties complicates the legal and factual analysis of Petitioner's claims.

III. ICE DETAINERS HAVE BEEN USED IN WISCONSIN FOR DECADES

The use of ICE detainers in Wisconsin has prevailed for many years. Between 2006 to 2020, approximately 12,000 immigrants living in Wisconsin were legally deported after ICE retrieved them from jails and prisons across the state.[10]

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[9] Further highlighting the factual issues in this case, the two men taken into custody in Walworth County on July 15, 2025 were arrested by federal agents, not Walworth County deputies. *Compare* (Petition, ¶ 23) *with* Scott Bauer, *Wisconsin court commissioner in Walworth County resigns after dispute over immigration warrant*, Wisconsin Watch (August 21, 2025) https://wisconsinwatch.org/2025/08/wisconsin-court-commissioner-navis-walworth-county-immigration-arrest-warrant/

[10] *Report: Wisconsin's Jail-to-Deportation Pipeline*, ACLU WISCONSIN, (August 25, 2022), https://www.aclu-wi.org/publications/icereport/.

ICE's utilization of immigration detainers has ebbed and flowed from year to year and, contrary to Petitioners' assertions, has not increased at a steady pace. For example, from September 2022 to September 2023 the number of detainers increased from 474 to 853. [11] From September 2023 to December 2023, an additional 438 detainers were issued statewide. [12] In 2024, 1,260 total detainers were issued statewide.[13] In 2025, through late July, a total of 1,067 detainers have been issued so far.[14] Not including detainers issued to state prisons, the number of detainers issued to Wisconsin County Sheriffs in 2024 was approximately 780 and the number issued so far in 2025 was approximately 770.[15]

ARGUMENT

This Court considers three factors when considering whether to grant a petition for an original action. *See generally* Wis. Const. art. VII, § 3. The circumstances underlying the petition must demonstrate some "exigency," *Petition of Heil*, 230 Wis. 428, 443-46, 284 N.W. 42, 48-50 (1939), to justify the departure from the conventional course of litigation, which circumstances will cause the petitioner "great and irreparable hardship," without the Court's exercise of original jurisdiction. *Application of Sherper's Inc.*, 253 Wis. 224, 228, 33 N.W.2d 178 (1948). Further, an original action is only appropriate when it presents limited material factual disputes, such that this Court can reach "a speedy and authoritative determination" on the legal questions presented in the petition. *Heil*, 230 Wis. at 446; *see also State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 683, 264 N.W.2d 539

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[11] *Update Report: The Jail-to-Deportation Pipeline in Wisconsin*, ACLU WISCONSIN, (July 29, 2025), https://www.aclu-wi.org/publications/deportreport/.

[12] *Immigration and Customer Enforcement: Detainers*, DEPORTATION DATA PROJECT, https://deportationdata.org/data/ice.html (last accessed Oct. 7, 2025). The most recent data sets concerning data include data through late July 2025. This data includes data regarding detainers issued to state prison authorities.

[13] *Id.*

[14] *Id.*

[15] *Id.*

(1978). Finally, an original action petition must raise questions of statewide "importance" or "*publici juris*." *Heil*, 230 Wis. at 443-46; *Wis. Prof'l Police Ass'n v. Lightbourn*, 2001 WI 59, ¶ 4, 243 Wis. 2d 512, 627 N.W.2d 807 ("significantly affect[ ] the community at large").

I. EXIGENCY AND *PUBLICI JURIS* DO NOT SUPPORT ACCEPTANCE OF THIS PETITION.

Although the Petitioner asserts that its claims require a "prompt and authoritative" determination by this Court, the Petitioner has not demonstrated the existence of a current exigency requiring that this Court abandon the normal litigation process. Nor is the matter one that significantly affects the community at large. Even if it might, no exigency exists to permit this Court to exercise original jurisdiction.

A. Petitioners' Claim Is Not a Matter of *Publici Juris* That Would Permit This Court to Accept Original Jurisdiction.

"The supreme court limits its exercise of original jurisdiction to exceptional cases in which a judgment by the court significantly affects the community at large." *Wis. Pro. Police Ass'n, Inc.*, 2001 WI 59, ¶ 4. "Matters which are *publici juris* are matters which by definition are assumed to be of paramount importance." *State ex rel. Swan v. Elections Bd.*, 133 Wis.2d 87, 94, 394 N.W.2d 732, 735 (1986).

The potential issues raised by Petitioner do not rise to the level of statewide concern, significantly affecting the community at large. *See Wisconsin Legislature v. Palm*, 2020 WI 42, ¶ 11, 391 Wis.2d 497, 942 N.W.2d 900 (this Court accepted original jurisdiction for a dispute regarding an order issued by DHS "that impact[ed] every person in Wisconsin, as well as persons who come into Wisconsin, and every 'non-essential' business", significantly impacting millions of people); *see also Wis. Prof'l Police Ass'n*, 2001 WI 59 (finding that the challenges to Act 11 impacted the pension interests of hundreds of thousands of people in the system as well as the fiscal responsibilities of Wisconsin and all government employees whose employers

participated in the system which was enough for this Court to exercise jurisdiction because judgment on the issue would significantly affect the community at large); *see also Jefferson v. Dane County*, 2020 WI 90, 394 Wis.2d 602, 951 N.W.2d 556 (accepting original jurisdiction because the matter at issue dealt with Wisconsin election laws which affect all Wisconsin voters).

Petitioner alleges "*at least* all of the estimated 308,000 foreign-born persons living in [Wisconsin]" are affected by the use of the immigration detainers, and the issue may even affect more than that. (Petition, p. 28). However, that estimated number of people impacted is inflated because the conduct the Petition challenges—a sheriff's compliance with a federal immigration detainer by maintaining custody over a person after all state law bases for custody have ended for up to 48 hours—only potentially affects the individuals who come in contact with the criminal justice system and are being held in state custody for other reasons.

Even accepting Petitioners' contention that the estimated 308,000 foreign-born individuals living in Wisconsin are affected by this issue, that is only approximately 5.22% of the total population in Wisconsin.[16] Judgment by this Court would not significantly affect the community at large. Unlike the cases where this Court has exercised original jurisdiction in the past over issues which affect the entire population of Wisconsin, this matter only potentially affects a small number of people. As such, it is not a matter of *publici juris*, and this Court should deny the Petition for Original Jurisdiction.

B. No Exigency Exists to Permit that this Court Decide Petitioners' Claims in the First Instance.

As set forth in *Heil*, this Court will accept original jurisdiction when the "questions presented are of such importance as under the circumstances to call for a speedy and authoritative determination by this court in the first instance." 230 Wis.

[16] *Wisconsin Population*, WORLD POPULATION REVIEW, https://worldpopulationreview.com/states/wisconsin#sources (last accessed October 6, 2025).

at 446. This Court is more likely to exercise its original jurisdiction when a petition presents exigent circumstances, which circumstances may prohibit this Court's effective review of the questions in the petition in the ordinary course. *Id*. at 447. For example, where the failure to assert original jurisdiction would cause the petitioner "great and irreparable hardship." *Sherper's, Inc.*, 253 Wis. at 228, such that "remedy in the circuit court [would be] inadequate." *Heil*, 230 Wis. at 447. "Mere expedition of causes, convenience of parties to actions, and the prevention of multiplicity of suits are matters which form no basis for the exercise of original jurisdiction in this court." *Id*. at 448. The party seeking to invoke the Court's original jurisdiction should demonstrate that an exigency exists, with reference to factual evidence and/or legal support, where appropriate. *See* Order, *Wis. Voters All. V. Wis. Elec. Comm'n*, No. 2020AP1930-OA (Dec. 4, 2020) (Hagedorn, J., joined by A.W. Bradley, Dallet, and Karofsky, JJ., concurring).

While Petitioner asserts that its claims require a "prompt and authoritative" determination by this Court, it does not demonstrate the existence of a current exigency requiring that this Court abandon the normal litigation process. *See Heil*, 230 Wis. at 442-43.

First, the Petitioner could have raised the claims in this petition years ago. Any exigency that Petitioner believes now exists is wholly self-created. Wisconsin sheriffs have been cooperating with ICE by honoring federal immigration detainers for decades.[17] In fact, the ACLU of Wisconsin, which appears to be representing the Petitioner in this case via the ACLU of Wisconsin Foundation, Inc., has been monitoring this topic since at least 2018 and published several reports and articles

[17] *ACLU of Wisconsin Releases Report on Immigration Enforcement in Wisconsin, Exposing the Jail-to-Deportation Pipeline,* ACLU WISCONSIN, (August 25, 2022), https://www.aclu-wi.org/press-releases/aclu-wisconsin-releases-report-immigration-enforcement-wisconsin-exposing-jail/.

on the issue.[18] The 2018 report discussed the same immigration detainers referenced in this Petition and flagged what the ACLU believed to be possible legal issues with the compliance of such detainers.[19] Further, the report includes a model policy which ACLU of Wisconsin provided to the sheriff's office in every county in Wisconsin which specifically discusses civil immigration warrants and states "Wisconsin law enforcement agencies do not have authority to enforce civil immigration law."[20] This is the same position that Petitioner now takes, albeit seven years later.

In 2022, the ACLU of Wisconsin issued another report entitled "Wisconsin's Jail-to-Deportation Pipeline".[21] On the first page of the report, it states "the ACLU of Wisconsin has paid close attention to cooperation between local law enforcement and ICE" based on ICE's deportation of 12,000 immigrants living in Wisconsin from 2006-2020.[22] Again, the ACLU stated it believes Wisconsin law enforcement agencies do not have the legal authority under Wisconsin law to hold persons pursuant to the immigration detainers.[23] Furthermore, the exact argument that Petitioner now makes, that holding individuals pursuant to these detainers, is a new "arrest," is made in the 2022 report.

Simply put, the conduct at issue in this case has been ongoing for decades and the Petitioner could have brought its claims many times throughout the past but chose not to. For this reason, the issues raised by Petitioner do not demonstrate the existence of a current exigency requiring this Court to abandon the normal litigation process.

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[18] ACLU Wisconsin, *2018 Report – Fixing Wisconsin Sheriff Policies on Immigration Enforcement* (July 20, 2018), https://www.aclu-wi.org/publications/2018-report-fixing-wisconsin-sheriff-policies/.
[19] *Id*.
[20] *Id*. at p. 14.
[21] *Report: Wisconsin's Jail-to-Deportation Pipeline*, ACLU WISCONSIN, (August 25, 2022), https://www.aclu-wi.org/publications/icereport/.
[22] *Id*. at p. 1.
[23] *Id*. at p. 8.

The Petitioner suggests that exigent circumstances now exist because of the "dramatic surge" in 2025 of the use of these detainers, but this argument should still fail. The Petitioner exaggerates the "dramatic surge" in the use of immigration detainers. In 2024, the total number of immigration detainers issued was 1260.[24] So far, in 2025, 1067 detainers have been issued.[25] While these numbers include detainers issued to Wisconsin state prisons, it does not reflect a "dramatic surge" as the Petitioners allege.

Even using the data in the ACLU's 2025 Update report of the number of detainers issued since October 2021, which vary slightly from the Deportation Data Project Data, there is still not a significant spike in deportations.[26] From September 2022 to September 2023 the number of detainers increased from 474 to 853 which is a 79.96% increase.[27] From September 2024 to December 2024, the number increased from 853 to 942 which was a 10.43% increase. [28] From December 2024 to June 10, 2025, the number increased from 942 to 1,065 which was a 13.06% increase.[29] While current increase for 2025 only includes data through the first six months, that data does not support a "dramatic surge" as the Petitioner contends, especially considering the prior almost 80% increase from 2022 to 2023. Again, it is disingenuous for Petitioners to now claim exigency requiring the Court to exercise original jurisdiction.

Moreover, to the extent Petitioner seeks to challenge the ability of Wisconsin sheriffs to enter into § 287(g) agreements with ICE, the ACLU's 2022 report

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[24] *Immigration and Customer Enforcement: Detainers*, DEPORTATION DATA PROJECT, https://deportationdata.org/data/ice.html (last accessed Oct. 7, 2025). The most recent data sets concerning data include data through late July 2025. This data includes data regarding detainers issued to state prison authorities.
[25] *Id.*
[26] ACLU Wisconsin, *Update Report: The Jail-to-Deportation Pipeline in Wisconsin* (July 29, 2025), https://www.aclu-wi.org/publications/deportreport/.
[27] *Id.* at p. 5.
[28] *Id.*
[29] *Id.*

claimed that the use of such agreements "dramatically expanded" across Wisconsin in 2020.[30] Again, this demonstrates that there is no unique exigency today that warrants an exercise of this Court's original jurisdiction. The Petitioner is raising issues it could have raised years ago.

Finally, the Petitioner argues this Court should step in now because going through the normal litigation process would perpetuate a patchwork of rights. As an initial matter, this Court has been clear that the need to prevent a multiplicity of lawsuits is not grounds for this Court to exercise its original jurisdiction. Further, Wisconsin sheriffs have handled the immigration detainers in different ways than one another for years. Nothing has changed that now requires this Court to promptly address the issue. Exigency does not exist to justify abandoning the traditional legal process just because county sheriff's departments differ in how they handle immigration detainers.

Further, that some sheriffs in the State do not comply with federal immigration detainers does not mean there is "an unworkable patchwork of rights across the state." To the contrary, it is well-established that "in the area of criminal and civil investigative and enforcement activities, government actors invariably employ discretion[.]" *Klein v. Wis. Dep't of Revenue*, 2020 WI App 56, ¶ 41, 394 Wis. 2d 66, 949 N.W.2d 608; *see also Galuska v. Kornwolf*, 142 Wis. 2d 733, 419 N.W.2d 307 (Ct. App. 1987) (a sheriff's duty to enforce the criminal statutes is discretionary). Wisconsin sheriffs enjoy wide discretion in terms of how to allocate their resources and what law enforcement issues to make a priority. Simply because different sheriffs reach different conclusions as to whether they will comply with federal immigration detainers does not mean an exigency warranting the extraordinary exercise of this Court's original jurisdiction exists. Otherwise, this Court would be called upon to exercise its original jurisdiction to resolve legal issues

[30] *Id.* at p. 2-3.

whenever such issues have a connection to a matter on which different sheriffs have exercised their individual discretion—as they are entitled to do—by enforcing or not enforcing a particular statute. In short, this case is not one that requires a "prompt" or "speedy" determination by this Court. The ACLU of Wisconsin has been flagging the same issues Petitioner now raises since at least 2018. If no exigency existed then, or when the use of 287(g) agreements "dramatically expanded" in 2020, it is difficult to see how there is now an exigency requiring this Court to exercise original jurisdiction.

II. THE PETITION RAISES COMPLEX LEGAL ISSUES WARRANTING THE ORDINARY FACT-FINDING LITIGATION PROCESS

The merits of Petitioner's claims are not currently at issue. Still, this Court will not take jurisdiction over an original action in "doubtful cases." *Heil*, 284 N.W. at 51. "No trivial grounds should impel this court" to take original jurisdiction, and this Court has suggested it is only the "flagrant and patent" defiance of constitutional commands that will justify such action by this Court. *State ex rel. Bolens v. Frear: The Income Tax Cases*, 148 Wis. 456, 134 N.W. 673, 687 (1912); *see also Heil*, 284 N.W. at 50 ("[T]his court will only take the exceptional or flagrant cases.").

The respondent Sheriffs will not address the merits of Petitioner's claims in depth at this time, but the following discussion should demonstrate that Petitioner's claims are of questionable merit. The Petition does not present a "flagrant" violation of our Constitution as would ordinarily justify an exercise of this Court's original jurisdiction. Moreover, the issues presented are not nearly as clean as Petitioner suggests—there is no uniform approach to how detainers are handled and each approach is riddled with factual nuances that significantly impact the Court's analysis. The Petition presents an over-simplified version of the complex legal issues that are implicated by the Petitioner's arguments. This is not a case that presents one or two well-defined legal issues that would be well-suited for this Court's immediate review. Rather, this dispute raises several complex issues the

Sheriffs believe would benefit from the refining effect of the ordinary litigation process.

A. The Petition Ignores the Unique Duties and Powers of a Wisconsin Sheriff.

The first shortcoming of the Petition is its failure to acknowledge or address the unique nature of a Wisconsin sheriff, a sheriff's constitutional and common law prerogative, or the statutes under which sheriffs operate. Indeed, although the Petition asks this Court to issue a declaration as to the ability of "Wisconsin law enforcement officers" to detain individuals in compliance with federal immigration detainers and administrative warrants once the grounds for state law custody have ended, the Petition only names as respondents five Wisconsin sheriffs. It is thus the duties and powers of a Wisconsin sheriff that are at issue in this case, not law enforcement officers generally.

This is important because the office of sheriff is a constitutional office, with constitutional duties and powers. For example, this Court has held that certain of a sheriff's powers are constitutionally protected —those "immemorial, principal, and important duties … that are peculiar to the office of sheriff and that characterize and distinguish the office." *Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 2007 WI 72, ¶ 39, 732 N.W.2d 828. Among such duties are the operation of the jail, attendance on the courts, maintaining law and order, and preserving the peace. *Id.* at ¶¶ 52-57. Wisconsin courts have held that "law enforcement and preserving the peace" are constitutionally protected duties of the office of sheriff because they are "duties that gave character and distinction to the office of sheriff at common law." *Washington Cty. v. Washington Cty. Deputy Sheriff's Ass'n*, 192 Wis. 2d 728, 739, 531 N.W.2d 468 (Ct. App. 1995). This Court has observed that the "primary duty" of a county sheriff is "to preserve law and order throughout his county." *Andreski v. Industrial Commission*, 261 Wis. 234, 241, 52 N.W.2d 135 (1952). It is equally well-established that the sheriff is entitled to "choose[] his own ways and means of

performing" this duty. *Andreski*, 261 Wis. at 240; *see also Wisconsin Professional Police Association/Law Enforcement Employee Relations Division v. Dane Cty.*, 149 Wis. 2d 699, 710, 439 N.W.2d 625 (Ct. App. 1989) ("If the duty is one of those immemorial principal and important duties that characterized and distinguished the office of sheriff at common law, the sheriff chooses his own ways and means of performing it." (internal quotation marks omitted)). As this Court explained in *Andreski*:

> Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of his county, though he may be removed by the governor for cause. No other county official supervises his work or can require a report or an accounting from him concerning his performance of his duty. He chooses his own ways and means of performing it. He divides his time according to his own judgment of what is necessary and desirable but is always subject to call and is eternally [c]harged with maintaining the peace of the county and the apprehension of those who break it. In the performance of this duty he is detective and patrolman, as well as executive and administrator, and he is emphatically one of those who may serve though they only stand and wait.

261 Wis. at 240.

In addition to constitutional duties and powers, Wisconsin sheriffs also have various common law and statutory duties and authority. For example, unless altered by statute, a Wisconsin sheriff retains those common law powers that are not otherwise constitutionally protected. *See, e.g.*, *State ex rel. Milwaukee Cty. v. Buech*, 171 Wis. 474, 177 N.W. 781, 784 (1920); *see also* Art. XIV, § 13, Wis. Const. ("Such parts of the common law as are now in force in the territory of Wisconsin, not inconsistent with this constitution, shall be and continue part of the law of this state until altered or suspended by the legislature."). Moreover, among the sheriff's statutory duties are serving and executing "all processes, writs, precepts and orders issued or made by lawful authority and delivered to the sheriff," Wis. Stat. § 59.27(4), and keeping and preserving the peace in their respective counties, Wis. Stat. § 59.28. Indeed, notwithstanding the Petition's reliance on Wis. Stat. §§ 818.01-818.04 and 968.07, courts have held that Wis. Stat. § 59.28 grants sheriffs

authority to arrest persons within their territorial jurisdiction. *See State v. Zivcic*, 229 Wis. 2d 119, 127, 598 N.W.2d 565, 569 (Ct. App. 1999) (explaining that Wis. Stat. § 59.28(1) "plainly states that the sheriff's department has general jurisdiction throughout Milwaukee County to issue citations, make arrests, and conduct other investigations that are necessary to preserve the peace within the county" and that "the sheriff's department does not need any additional authority to arrest a person within their territorial jurisdiction").

Here, the Petition makes no attempt to address the constitutional, statutory, or common law duties and authority of Wisconsin sheriffs. The Respondent Sheriffs should not be required at this stage to make the Petitioner's arguments for it or to respond to arguments the Petitioner has not made. Nevertheless, the Respondent Sheriffs emphasize that—whether grounded in the constitution, common law, or statute—the duties and powers of a sheriff would include the ability to cooperate with federal government officers who provide a sheriff with a warrant that meets the requirements of the Fourth Amendment and ask the sheriff to detain the subject until federal officials can take custody of the individual.

First, and despite the Petition's repeated suggestion that an administrative warrant is not really a "warrant"—"in the immigration context, federal law enforcement officers have a long history of using administrative warrants and arrests for purposes of deportation, dating back to 1798." *Lopez-Lopez v. Cty. of Allegan*, 321 F. Supp. 3d 794, 799 (W.D. Mich. 2018) (citing *Abel v. United States*, 362 U.S. 217, 233 (1960)). Accordingly, several courts have held that federal immigration detainers when coupled with administrative warrants satisfy the Fourth Amendment. *Id.*; *see also Castrejon v. Jerome Cty.*, No. 1:20-cv-00462, 2022 WL 2869046 (D. Idaho, July 21, 2022); *Tenorio-Serrano v. Driscoll*, 324 F. Supp. 3d 1053, 1066 (D. Ariz. 2018). As the Court explained in *Tenorio-Serrano*: "[t]he Supreme Court noted more than 50 years ago that there is overwhelming historical

legislative recognition of the propriety of administrative arrest for deportable aliens." 324 F. Supp. 3d at 1066 (internal quotation marks omitted).

Second, there is reason to believe the constitutional, statutory, and/or common law duties and powers of a Wisconsin sheriff would have included cooperating with federal officials in the enforcement of federal law. As one federal appeals court recently observed, "most federal law-enforcement agencies are of recent vintage" and "historically enforcement of federal law was often left to state officials." *United States v. Whitlow*, 134 F.4th 914, 920 (6th Cir. 2025). "[T]he history supports state officers *voluntarily* enforcing federal law." *Id.* And, in Wisconsin specifically, our attorney general has previously opined, for example, that Wisconsin law enforcement officers "have the right and duty to arrest persons committing federal offenses in their presence on the Menominee Reservation." 66 Wis. Op. Atty. Gen. 115, 1977 WL 36125 (Wis. A.G. April 7, 1977).

As will be explained in more detail below, there is no express prohibition in Wisconsin law on Wisconsin sheriffs complying with federal immigration detainers and administrative warrants upon expiration of the state law bases for detention. And, such authority can be found in the Wisconsin Constitution and the statutes setting forth the duties and powers of Wisconsin sheriffs, including Wis. Stat. §§ 59.27 and 59.28. At worst, the statutes are silent on this question, which would leave a court to resort to common law in determining whether sheriffs may so comply. And, one leading treatise on which this Court has previously relied has this to say about detainers:

> If a prisoner is arrested upon valid process by an officer of the law and at the time there are other writs in his possession against the same party, the officer may detain him after his discharge from the first arrest to answer to other writs upon which he has not been arrested. It would be a useless and idle ceremony to discharge him and immediately arrest him upon the other process held by the officer.

1 W. Anderson, *A Treatise on the Law of Sheriffs, Coroners, and Constables*, 143, § 146 (1941)

Under these circumstances, it is hardly clear that a Wisconsin sheriff would not have the authority under the Constitution, statute, or common law to comply with a federal immigration detainer, especially when that detainer together with an administrative warrant would suffice to meet the warrant requirement of the Fourth Amendment.

Again, the Sheriffs will not make arguments for the Petition. And the Sheriffs should not be required at this time to fully brief the merits of these issues. And, it is not the Sheriffs' intention to argue the merits of these issues at this stage of the proceeding and reserve their right to make additional arguments in support of the propriety of their compliance with federal immigration detainers and administrative warrants.

Rather, the purpose here is to point out that the Petition, by omitting any discussion of these constitutional, statutory, and common law duties and powers of Wisconsin sheriffs vastly oversimplifies this dispute. The Petition makes no attempt to reference the history of Wisconsin's Constitution or the historical common law powers of a sheriff. And, the Petition fails to even mention the statutes governing the duties and powers of sheriffs. *See, e.g.*, Wis. Stat. §§ 59.26, 59.27, 59.28. These are all issues that will arise in the course of this litigation and may benefit from the winnowing process of the ordinary litigation process. Regardless, a Petition that makes no attempt to address these issues hardly suffices to demonstrate that Wisconsin sheriffs are "flagrantly" acting outside their authority.

B. The Petitioner's Arguments Do Not Foreclose a Wisconsin Sheriff From Honoring ICE Detainers and Administrative Warrants.

No Wisconsin law prohibits a sheriff from cooperating with federal immigration officials by complying with a federal immigration detainer request and administrative warrant. The Petition tries to portray Wisconsin law as prohibiting such cooperation, but the Petition's arguments ultimately do not so demonstrate.

The Petition's argument proceeds in three steps. First, the Petition argues that, once the state law grounds for detaining an individual have ended, the continued detention of that person by a sheriff in response to a federal immigration detainer is a new arrest. The Petition then argues the power to arrest in Wisconsin must be authorized by statute. And, the Petition concludes by arguing there is no statute authorizing sheriffs to arrest individuals for civil immigration violations and, according to Plaintiffs, Wis. Stat. § 818.01 expressly prohibits such arrests. Even if one accepts the initial proposition that a continued detention of a person in response to a federal immigration detainer is a new arrest—a proposition the respondent Sheriffs reserve the right to challenge if the Court accepts jurisdiction of this case—there are several problems with the Petitioner's argument.

1. The power to arrest need not always be set forth in statute and, regardless, statutory authorization exists here.

The Petition cites *City of Madison v. Two Crow*, 88 Wis. 2d 156, 159, 276 N.W.2d 359, 361 (Ct. App. 1979) and *State v. Wilks*, 117 Wis. 2d 495, 500, 345 N.W.2d 498, 500 (Ct. App. 1984), for the proposition that the power to arrest in Wisconsin must be set forth in statute. Close review of the lineage of these cases, however, shows they descend from *Gibbs v. Larrabee*, 23 Wis. 495 (1868), which cited R.S. ch. 127, § 1 (1858), for the proposition that "[t]here can be no arrest in a civil action in this state, except as prescribed by the statute." That statute, like Wis. Stat. § 818.01 today, dealt with the ability to arrest persons in a civil action in the courts of this State. When a sheriff complies with a federal immigration detainer and administrative warrant, the sheriff is not making an arrest in a civil action in a Wisconsin court; these statutes simply are not applicable to the situation presented here. Moreover, applying a rule that the Legislature must statutorily authorize a sheriff to make arrests raises serious constitutional concerns to the extent a sheriff has the common-law power to make arrests. Regardless, as discussed above, a

sheriff's arrest power is contained, at minimum, in the statutes setting forth the respective duties and powers of a Wisconsin sheriff.

2. The Petitioner's reliance on Wis. Stat. §§ 818.01-818.04 is misplaced.

The Petition asks this Court to declare that Wis. Stat. § 818.01—which provides that "[n]o person may be arrested in a civil action except as prescribed by this chapter"—prohibits the sheriffs from cooperating with federal immigration detainers and administrative warrants because (1) federal civil immigration violations are not a type of action identified in Wis. Stat. § 818.02 and (2) an administrative warrant issued by a federal immigration official does not meet the requirements of Wis. Stat. §§ 818.03 and 818.04. The statutes on which the Petition relies simply do not apply when a sheriff cooperates with federal immigration authorities and continues to detain a person after receiving a federal immigration detainer and administrative warrant.

Wis. Stat. § 801.01, for example, expressly states that "Chapters 801 to 847 *govern procedure and practice in circuit courts of this state* in all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where different procedure is prescribed by statute or rule." (emphasis added). Wis. Stat. § 818.01's prohibition on arrests in civil actions must be read with this scope in mind. Section 818.01 is a limitation on arrests in civil actions before this state's circuit courts. Section 818.02 identifies the types of actions before Wisconsin circuit courts in which an arrest may be made. And Sections 818.03 and 818.04 impose requirements on how orders for arrest in such actions—those before our circuit courts—are issued.

When a Wisconsin sheriff complies with a federal immigration detainer and administrative warrant, there is no civil action before a Wisconsin circuit court. And nothing in Wis. Stat. §§ 818.01-818.04 indicates any intent to include within the scope of those statutes matters that are not before the circuit courts of this state. Nor

do these statutes express any intent to abrogate any common law powers that Wisconsin sheriffs have to cooperate with the United States or other sovereigns. Indeed, reading these statutes as such a limitation would likely run afoul of the well-established proposition that a statute abrogating common law powers "must do so with clear, unambiguous, and peremptory language" and that this Court will strictly construe such statutes "to minimize their effect on the common law." *United America, LLC v. Wisconsin Department of Transportation*, 2021 WI 44, ¶ 15, 397 Wis. 2d 42, 959 N.W.2d 317 (cleaned up); *cf. Desjarlais v. State*, 73 Wis. 2d 480, 488, 243 N.W.2d 453, 457 (1976) ("[T]his court has recognized that the enabling procedure of the Uniform Act was not intended to repudiate the common law rule that an arrest may be made on probable cause to believe the subject had committed a crime in another state irrespective of a lack of complaint or warrant in that state.").

3. The Petition's reliance on Wis. Stat. § 968.07(1) is similarly misplaced.

The Petition also asks the Court to declare that Wis. Stat. § 968.07(1) does not authorize compliance with federal immigration detainers and administrative warrants. This argument suffers from similar defects to the Petition's argument in reliance on Wis. Stat. §§ 818.01-818.04. When a sheriff complies with a federal immigration detainer and administrative warrant, Wisconsin's rules of criminal procedure, including Wis. Stat. § 968.07(1), do not impose requirements on a federal administrative warrant that would not otherwise exist. Nor do Wisconsin's rules of criminal procedure otherwise purport to limit a Wisconsin sheriff's ability to cooperate with federal immigration officials pursuant to a sheriff's constitutional, statutory, and common law duties and powers. Again, the Petition presents this Court with the wrong questions, and omits any discussion of the right ones. Absent a demonstration by the Petition that there is any plausible merit to its claims—which would require some attempt to discuss the constitutional, statutory, and common

law duties and powers of Wisconsin sheriffs—the Court should deny the petition and leave this dispute to the ordinary litigation process.

C. The Petition Skirts the Issues Raised by 287(g) Agreements.

Not all Wisconsin sheriffs are similarly situated in terms of their relationship with ICE and the authority under which they act when they detain subjects after receiving detainers and administrative warrants from ICE. For example, "[t]he INA … authorizes the Department of Homeland Security to enter into formal cooperative agreements with state and local law enforcement, essentially deputizing them to carry out federal immigration law." *Lopez-Lopez*, 321 F. Supp. 3d at 797 (citing 8 U.S.C. § 1357(g)). "Under these agreements, state and local authorities are subject to the supervision of the Secretary and perform specific immigration enforcement functions like investigating, apprehending, and detaining aliens." *Id.* (citing § 1357(g)(1)-(9)). Even in the absence of such a formal cooperative agreement, "local authorities may still 'communicate with [ICE] regarding the immigration status of any individual…or otherwise cooperate with [ICE] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.'" *Id.* (quoting § 1357(g)(10)(A)-(B)).

Of the five sheriffs named as respondents in this action, four of them do not have any formal cooperative agreements with ICE under the 287(g) program. This does not mean these sheriffs cannot comply with federal immigration detainers and administrative warrants. As already noted, even in the absence of a formal cooperative agreement, federal law expressly allows for state and local authorities to "cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(B). Rather, the absence of a formal cooperative agreement simply means that, when these sheriffs continue to detain a person once all state law bases for custody have ended, in response to a federal immigration detainer and administrative warrant, the person is not yet in federal custody. Rather, the person

remains in state custody until a federal immigration official serves the administrative warrant on the person and takes them into federal custody.[31]

The Brown County Sheriff, however, does have a formal cooperative agreement with ICE.[32] So do several other sheriffs not named as respondents in this action.[33] This is important because, under the terms of the Brown County Sheriff's agreement with ICE, the Brown County Sheriff has the power and authority to serve and execute warrants for arrest for immigration violations and to serve warrants of removal on designated aliens in the county jail at the time of the alien's scheduled release from criminal custody. The Brown County Sheriff is acting under a delegation of federal authority when it serves such warrants. And service of those warrants has the effect of executing the custodial transfer to ICE for removal purposes. Thus, in the case of the Brown County Sheriff (and other similarly situated sheriffs), there never is a new "arrest" under state law in which the person remains in state custody beyond person's scheduled release as a result of a federal immigration detainer and administrative warrant. Rather, the Brown County Sheriff has been delegated federal immigration authority to serve the administrative warrant and doing so effects a transfer of the person from state to federal custody.

The Petitioner acknowledges the existence of § 287(g) agreements only in a footnote and presents an undeveloped argument that Wisconsin sheriffs cannot execute such agreements. Specifically, the Petitioner cites language in the federal statute that state and local authorities may perform federal immigration functions under such agreements "to the extent consistent with State and local law" and argues

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[31] Once the person is in federal custody, the person may nevertheless remain in a county jail subject to a housing agreement between a County Sheriff and ICE. The Respondents do not understand the Petition to be challenging such agreements, but rather to be challenging the continued custody of persons before a federal immigration official serves the administrative warrant and processes them into federal custody

[32] *Available at* https://www.ice.gov/doclib/287gMOA/287gWSO_BrownCoWI_10-16-2020.pdf

33 A spreadsheet identifying all 287(g) participating agencies is available here: https://www.ice.gov/doclib/about/offices/ero/287g/participatingAgencies10012025am.xlsx

that such agreements violate Wis. Stat. § 818.01(1). As already discussed, Wis. Stat. § 818.01 is only a limitation on arrests in civil actions pending before this state's circuit courts. It simply is not implicated when a sheriff maintains custody of a person in response to a federal immigration detainer and administrative warrant. And it certainly does not by its terms prohibit a Wisconsin sheriff from entering into a cooperative agreement with the federal government under which the sheriff will perform federal immigration functions under the supervision of the federal government. Indeed, even the primary cases from other jurisdictions on which the Petitioner relies to support its argument that local law enforcement lacks authority to comply with federal immigration detainers and administrative warrants do not address the question of whether local law enforcement can do so subject to a formal cooperative agreement under § 287(g). *See Lunn v. Commonwealth*, 477 Mass. 517, 78 N.E.3d 1143 (Mass. 2017) (addressing question of local law enforcement authority in the absence of formal cooperative agreement); *People ex rel. Wells v. DeMarco*, 88 N.Y.S.3d 518 (App. Div. 2018) (same); *Ramon v. Short*, 460 P.3d 867 (Mont. 2020) (same); *Esparza v. Nobles Cnty.*, Case No. A18-2011, 2019 WL 4594512, at *4–*5 (Minn. App. Ct. Sep. 23, 2019) (same).

III. PETITIONER'S CLAIMS ARE BARRED FOR FAILURE TO COMPLY WITH WIS. STAT. § 893.80(1D).

Finally, Petitioner's request should be denied because their claims are barred for failure to comply with the prerequisite notice requirements set forth in Wis. Stat. § 893.80(1d)(a)-(b). Claims against government agents and employees are governed by Wis. Stat. § 893.80, which states:

> (1d) … no action may be brought or maintained against any … governmental subdivision or agency thereof nor against any officer, official, agent or employee of the corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless:
>
> Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the … governmental subdivision or agency and on the officer, official, agent or employee under s. 801.11. Failure to give the requisite notice shall not bar

> action on the claim if the … subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant … subdivision or agency or to the defendant officer, official, agent or employee; and
>
> A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant . . . subdivision or agency and the claim is disallowed.

Wis. Stat. § 893.80(1d)(a)-(b). These written notice requirements serve "twin purposes . . . [:] 'to give governmental entities the opportunity to investigate and evaluate potential claims' and 'to afford governmental entities the opportunity to compromise and budget for potential settlement or litigation[.]'" *Benson v. City of Madison*, 2017 WI 65, ¶ 60, 376 Wis. 2d 35, 897 N.W.2d 16. The notice of claim requirement set forth in Wis. Stat. § 893.80(1d)(b) provides that, "[a] notice of claim must state the requested relief in terms of a specific dollar amount" in order to "provide enough information to apprise a governmental entity of the budget it will need to set aside in case of litigation or settlement." *Thorp v. Town of Lebanon*, 2000 WI 60, ¶¶ 28, 30, 235 Wis. 2d 610, 612 N.W.2d 59.

Because Petitioner failed to provide any Respondents with either a written notice of circumstances or a notice of claim, their claims are barred unless their claims fall under some exception to the requirements of Wis. Stat. § 893.80(1d). As will be shown below, they do not.

As this Court has held:

> three factors should be considered when determining whether to exempt a specific statute from the notice of claim requirements: (1) whether there is a specific statutory scheme for which the plaintiff seeks exemption; (2) whether enforcement of the notice of claim requirements found in Wis. Stat. § 893.80 would hinder a legislative preference for a prompt resolution of the type of claim under consideration; and (3) whether the purposes for which § 893.80 was enacted would be furthered by requiring that a notice of claim be filed.

E-Z Roll Off, LLC v. Cnty. of Oneida, 2011 WI 71, ¶ 23, 335 Wis. 2d 720, 800 N.W.2d 421 (discussing *Town of Burke v. City of Madison*, 225 Wis. 2d 615, 625, 593 N.W.2d 822, 826 (Ct. App. 1999)). As the Court held in *E-Z Roll Off, LLC*,

Wisconsin's Uniform Declaratory Judgment Act, Wis. Stat. § 806.04(2), under which Petitioner pleads both of its claims, *see* (Petition, ¶¶ 47-51), is *not* exempt from "the general notice of claim requirements found in Wis. Stat. § 893.80." 2011 WI 71, ¶ 28. This is so because, "declaratory relief is not, by its nature, in conflict with providing governmental entities a 120–day period to review a claim." *Id.*

Moreover, Petitioner's request that this Court take jurisdiction of an original action does not create an exception to Wis. Stat. § 893.80(1d)'s requirements. First, the Court's jurisdiction over original actions does not flow from a specific statutory scheme, but rather Wisconsin's Constitution. This weighs *heavily* against finding an exception to Wis. Stat. § 893.80(1d). For instance, in *City of Racine v. Waste Facility Siting Board*, the Court held that, "[b]ecause there are no specific enforcement procedures inconsistent with § 893.80(1)(b) in this case, the notice requirements of § 893.80(1)(b) *must* apply." 216 Wis. 2d 616, 627, 575 N.W.2d 712, 716 (1998) (emphasis added). Second, again because the Court's power to hear an original action does not flow from a statute, there can be no "statute with specific enforcement methods and time limits [that] will trump § 893.80[.]" *Gamroth v. Vill. of Jackson*, 215 Wis. 2d 251, 258, 571 N.W.2d 917, 919 (Ct. App. 1997). Third, and finally, the purpose of Wis. Stat. § 893.80(1d), "to 'afford[ ] the municipality an opportunity to compromise and settle [the] claim without litigation,'" would be furthered by requiring Petitioner to comply with the statute. *Figgs v. City of Milwaukee*, 121 Wis. 2d 44, 53, 357 N.W.2d 548, 553 (1984).

For all of these reasons, Petitioner cannot show that its claims are excepted from the requirements of Wis. Stat. § 893.80(1d), with which they have not complied. For these additional reasons, this Court should decline to take jurisdiction over this case as an original action.

CONCLUSION

For all of the foregoing reasons, this Court should deny the Petition for Original Action.

Respectfully submitted this 7th day of October, 2025.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §§ 809.70 and 809.81. The length of this brief is 8,308 words.

Dated this 7th day of October, 2025.

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