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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PINAL COUNTY, a body politic in the State of Arizona; et al.,

Plaintiffs,

v.

BRAD MILLER, in his official capacity as Pinal County Attorney

No. CV2026-008061

REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

SNELL & WILMER

Introduction

The legal question in this action is very simple: does Pinal County Attorney Brad Miller have the authority to enter into *any* contract — much less, a "287(g) Task Force Model Memorandum of Agreement" (the "287(g) Agreement") with the Department of Homeland Security — without Pinal County Board of Supervisors approval? If he does not, then preliminary injunctive relief must be entered, as the County Attorney has no right to act outside the scope of his authority. *See e.g.*, Ariz. Const. art. XII § 4; *Peterson v. S. Ariz. Bank & Trust Co.*, 54 Ariz. 506, 514, 518 (1939).

Despite the primacy of this straightforward issue, the County Attorney fails to cite a *single* authority standing for the proposition that a county attorney may enter into contracts at all — much less standing for the authority that a county attorney, without board of

supervisor authorization, may enter into a contract requiring county employees to serve as *de facto* Immigration Customs Enforcement officers. Instead, he deflects. Unable to point to any legal authority supporting his own position, the County Attorney: (1) attempts to dodge the many authorities cited by the County showing that the 287(g) Agreement is invalid; (2) attempts to conjure up some sort of "implied" right to enter a 287(g) Agreement; and (3) claims that "preemption" prohibits the Board from challenging his illegal and ultra vires action. These arguments fail because they do not address the core problem: the County Attorney had no statutory right to enter into the 287(g) Agreement.

As the remaining injunctive factors — which the County need not even show— also favor the County, the Court should enter a preliminary injunction barring the County Attorney from taking any action under the 287(g) Agreement.

Argument

I. The County is Likely to Succeed on the Merits

The County is likely to succeed on the merits because: (1) the County Attorney lacks any authority to enter into a contract without Board approval; (2) the County is not "preempted" from challenging the 287(g) Agreement; and (3) the 287(g) Agreement violates 8 U.S.C. § 1357(g).

A. The County Attorney Lacks Authority to Enter Into a Contract Without Board Approval

In his Response, the County Attorney does not cite to any express statute or caselaw authorizing him to enter into contracts or commit county funds without Board approval. This is dispositive, as county officers possess only those powers "expressly or impliedly delegated" to them by the Arizona Constitution or statutes. *E.g.*, Ariz. Const. art. XII, § 4, *Assoc. Dairy Prods. Co. v. Page*, 68 Ariz. 393, 395-96 (1949). The County Attorney's attempt to sidestep this problem through "implied" powers also fail, as these "implied" powers infringe on powers expressly afforded to the Board or County Sheriff. His theory also cannot overcome the Board approval requirement in A.R.S. § 11-952(F).

1. Only the Board May Enter into Contracts on Behalf of the County

Initially, the 287(g) Agreement is invalid because the Legislature has vested "only" the Board with the power to "[m]ake such contracts . . . as may be necessary to the exercise of [the County's] powers" under A.R.S. § 11-201(A)(3). *See* MPI at 7. The County Attorney does not dispute that contracting is within the Board's authority. Instead, he argues (at 11-13) that the word "and" in Section 11-201(A) should be read "disjunctively" such that county powers may be exercised under *either* a board's authority *or* independently by county officers acting under "authority of law." But the "word 'and' is a conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first." *Bither v. Country Mut. Ins. Co.*, 226 Ariz. 198, 200¶ 10 (App. 2010) (quotation omitted); *see also de la Cruz v. State*, 192 Ariz. 122, 125 ¶ 11 (App. 1998).

The County Attorney's interpretation of A.R.S. § 11-201(A) also ignores the statutory text: "The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under ***its*** authority and authority of law." (emphasis added). The possessive term "its" makes clear that the powers in Section 11-201(A) may be exercised by only the Board, or by county officers as *directed* by the Board — *not* independent from Board control, as the County Attorney argues. *State v. Johnson*, 171 Ariz. 39, 41 (App.1992) ("[W]e must presume the legislature expressed itself in as clear a manner as possible and that it accorded words their natural and obvious meanings unless stating otherwise." (citations omitted)). This is confirmed by the remaining subsections in 11-201(A), nearly all of which also use the term "it" or "its" to refer to the *County* or the *Board*. *See e.g.*, A.R.S. §§ 11-201(A)(2) (the Board may purchase and lands "within its limits"); (A)(3) (the Board may "make such contracts … as may be necessary to the exercise of its powers"); (A)(5) (the Board may "[l]evy and collect taxes for purposes under its exclusive jurisdiction"); *see also Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019) (courts interpret statutory language "in view of the entire text").

Because the power to enter into contracts on behalf of the County is exclusively vested with the Board, the Court should grant injunctive relief.

2. Only the Board May Commit County Funds

The 287(g) Agreement also infringes on the Board's sole authority to spend, obligate, or encumber County funds. A.R.S. § 11-251(1), (11); MPI at 7 (detailing the many ways that the 287(g) Agreement spends or obligations County funds). The County Attorney does *not* dispute that the Board has the sole power to commit County funds and does *not* seriously dispute that the Agreement does, in fact, obligate or spend County funds. Instead, he argues (at 9-11, and in the MTD at 7-9) that the County has somehow "approved" the Agreement simply by "setting Miller's budget." Specifically, the County Attorney seems to contend that as long as he does not exceed the budget that the Board set, he is free to spend his budgeted funds in any way he sees fit. Not so.

A yearly budget is not a personal slush fund for county officers or agencies to use as they please. It is instead an intentional and detailed document that provides funds to these entities for specific anticipated expenditures in the upcoming year. *See* A.R.S. § 42-17103(A) (a county's yearly budget is generated based on the "the estimates of revenues and expenses" for the county); *see also Uniform Accounting Manual for Arizona Counties*, Ariz. Auditor General, at IV-2 ¶ 2 (June 2008) (stating that a budget is "[a]n estimate of the different amounts that will be required to meet the county's expenditures/expenses for the current fiscal year…") (hereinafter "UAMAC").[1] The budget is the result of a painstaking process that projects and controls revenues and expenses for the upcoming year. Budget estimates must be "fully itemized," include "[e]stimated amounts for each department, public office, or official," and provide a "statement of the estimated expenditures for the current fiscal year." UAMAC IV-2 ¶ 3. Counties must further ensure that their estimated total expenditures do not exceed the county's annually adjusted expenditure limitation, *id.*, IV-2 ¶ 4, and that total expenditures adopted in the final budget must not exceed total expenditures estimated in the proposed budget, *id.*, IV-2 ¶ 8 — among many other things.

[1] The UAMAC was developed by the Auditor General to A.R.S. § 41-1279.21(A)(5) to "prescribe[] internal controls for accounting and financial reporting by Arizona counties…" UAMAC, I. Having been developed at the Legislature's direction, it has the force of law. *See, e.g. , Ward v. Jackson*, 2020 WL 8617817, at *2 (Ariz. Dec. 8, 2020). It is available at: https://www.azauditor.gov/sites/default/files/2023-11/UAMAC.pdf

This fragile balance would collapse if every single county officer or entity were permitted to completely disregard the intended and approved expenditures in the budget. Unsurprisingly, there is no legal authority for this position. But there is authority for the reverse. Section 42-17106 imposes a statutory obligation on the Board to ensure that the County does not spend funds "for a purpose not included in the budget or in excess of the amount stated for each purpose." A.R.S. § 42-17106(A)(1). The Board may also "refuse to fund inappropriate activities" or coercively "use its power to withhold approval for capital expenditures, salary increases and the like." *U.S. v. Maricopa Cty.*, 151 F. Supp. 3d 998, 1015 (D. Ariz. 2015), aff'd, 889 F.3d 648 (9th Cir. 2018). And the UAMAC — which has the force and effect of law — requires the Board to "maintain" and "periodically review" accounts payable and other accounting records. UAMAC VI-C-7 through 10. Critically, the UAMAC also instructs the Board to ensure that "no individual performs all steps of the transaction" — which is precisely what has occurred here and what would occur if County entities were free to use their budget however they please. *Id.*, VI-F-6.

In contrast, the only authority that the County Attorney cites (at 9-10) in support of his position is *Sanchez v. Maricopa County*, 572 P.3d 101 (Ariz. 2025). But that case *confirms* that the Board retains "fiscal supervision" over county officials. *Sanchez*, 572 P.3d at 107 ¶ 13 (citing A.R.S. § 11-251(1)). As the County Attorney did not include the 287(g) Agreement activities as a projected expense as part of the County's yearly budgeting process, and because the County did not budget for these expenses, the 287(g) Agreement is actually separately invalid under A.R.S. § 11-251.

3. The 287(g) Agreement is an IGA Subject to Board Approval

The County Attorney's actions were independently improper because the 287(g) Agreement is an Intergovernmental Agreement ("IGA") subject to Board approval under A.R.S. § 11-952(F). MPI at 8. The County Attorney (at 13-14) argues that A.R.S. § 11-952 does not apply because the County Attorney does not "jointly h[o]ld" immigration power with ICE. The County Attorney cites (and at 15-16 in his Motion to Dismiss) a 1985 Attorney General Opinion, Ariz. Op. Atty. Gen. No. I85-050 (1985) (hereinafter, "Hawke"),

for this position — but Hawke supports the County's position, not the County Attorney's.

In Hawke, the Attorney General evaluated "water service subcontracts among Arizona municipalities, the Central Arizona Water Conservation District, and the United States pursuant to the Central Arizona Project." Hawke at *1. Under these subcontracts, each entity had a distinct role: the United States delivered the water; CAWCD managed distribution; and the municipalities used and disposed of the water. *Id.* Because each entity held "separate but complementary powers" the Attorney General concluded it was not an IGA subject to A.R.S.§ 11-951, *et seq. Id.* at *2.

The situation here is different. Under the 287(g) agreement, PCAO investigators are not exercising distinct or separate powers from ICE; they are exercising ICE's immigration enforcement authority jointly with ICE and under ICE's "direction and supervision." Ver. Compl. Ex. A. These joint operations are the "touchstone" of agreements subject to A.R.S. § 11-951, *et seq. See* Hawke at * 2 ("[T]he touchstone of an intergovernmental agreement, then, is that it involves the *joint exercise* of a governmental or proprietary function common to the contracting parties." (citation modified and emphasis added)).

The County Attorney also argues that even if the Agreement is subject to A.R.S. § 11-952, he has "not violated the statute" for two reasons, both of which fail. First, the County Attorney argues that it is a "public agency" that can sign IGAs under A.R.S. § 11-952(A). MTD at 15-16. This ignores that the Board still must "approve" IGAs executed by "public agencies" under Section 11-952(F).[2] Second, the County Attorney argues that the Board authorized the 287(g) by simply approving the County Attorney's budget. This argument fails for reasons stated, *supra* Section I.A.3. And the County Attorney cites no

[2] The County Attorney's view that it is a "public agency" is also premised on the notion that it qualifies as a "political subdivision entity" under A.R.S. § 38-711(29). *See* MTD at 16. This is at odds with the County Attorney's other argument that it is a "political subdivision," as a "political subdivision entity" must be "created in whole or in part by political subdivisions." *See* A.R.S. § 38-711(29)(b). The County Attorney's argument (at MTD 16 n. 7) that the four factors in Section 38-711(29) are "independent" is absurd, as it would result in any "entity … that is located in this state" being defined as a "political subdivision entity, rendering Sections 38-711 (29)(b)-(d) superfluous. *State v. Serrato*, 259 Ariz. 493, 791 ¶ 19 (2025) (courts avoid interpretations that render language superfluous); *State v. Estrada*, 201 Ariz. 247, 251 ¶ 17 (2001) (absurdity).

authority for the proposition that the Board could impliedly "authorize" an IGA under § 11-952(F) merely by approving a yearly budget for the County Attorney. *Cf Authorize*, Black's Law Dictionary (12th ed. 2024) (defining "authorize" to mean "to formally approve").

4. The Agreement Infringes on the Sheriff's Authority

Even if the Agreement somehow did not infringe on the Board's authority (and it does), it would *still* be void because it *also* infringes on the County Sheriff's sole authority to "preserve the peace" and "arrest … all persons who attempt to commit or who have committed a public offense." A.R.S. §§ 11-441(A)(1)-(2); MPI at 8. In response, the County Attorney does not identify any statutory authority giving *him* the power to make arrests or preserve the peace: rather, he argues that these powers are "implied" based on *Vangilder v. Arizona Department of Revenue*, 252 Ariz. 481, 488 ¶ 24 (2022).

But under *Vangilder* implied powers must be based on a "grant of *express* power[]" and the implied power may only be used to "aid in carrying into effect a power expressly granted." *Vangilder*, 252 Ariz. at 488 ¶ 24. The County Attorney seems to argue (at 7) that the power to make immigration "arrests" is implied from his powers in A.R.S. § 11-532(A)(2)-(4). These powers, however, are limited to instituting *legal proceedings* that may lead to arrests — a role which is consistent with that of a *prosecutor*. *See* A.R.S. § 11-532(A)(2) ("The county attorney … shall…institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses…"), 11-532(A)(3) (county attorney shall "attend on the magistrates in cases of arrest if required by them, and attend before and give advice to the grand jury"). To the extent that this power somehow implies a right to "arrest," that right would inherently be tied to the prosecutorial process — *i.e.*, if a witness does not attend trial. The Agreement, on the other hand, transforms PCAO investigators from prosecutorial support personnel[3] into *de facto* federal immigration enforcement agents who are empowered to make warrantless arrests, execute warrants, interrogate persons, and take custody of arrested individuals — these are

[3] The County Attorney provides no support for its claims that the County's description of the "traditional" role of PCAO investigators are "unsubstantiated assertions" of counsel or "contested facts." *C.f.*, Resp. at 9 n. 2.

enforcement actions, not prosecutorial support. [4]

If PCAO investigators did serve as *de facto* enforcement agents, a clear conflict of interest would arise. Prosecutors "should maintain respectful *yet independent* judgment when interacting with law enforcement personnel." Am. Bar Assoc., *Criminal Justice Standards for the Prosecution Function* § 3-3.2(a) (4th ed. 2017) (emphasis added). The County Attorney cannot make "independent" charging decisions if it was involved in the arrest decision to begin with. *See State v. Superior Court,* 186 Ariz. 294, 297 (App. 1996) (prosecutors lose absolute immunity if they act as "investigative officer[s].").

The County Attorney (at 7-8) makes much of a job posting on the County's website for a PCAO investigator position. But, a broad job posting does not override the statutes or on-point judicial authority related to divested powers. Even if it could, the job posting is of no help to the County Attorney because it merely confirms that the PCAO investigator's "arrest" powers are tied to the investigator's delineated role as *support staff* for the County Attorney. *See e.g.*, Resp., Ex. B at 1 ("Job Summary: Investigate and resolve criminal and civil cases *for the Pinal County Attorney's Office*." (emphasis added)); *Id.* ("Enforce local, state, and Federal laws, *according to [PCAO] policies and procedures*…" (emphasis added)). This job posting also makes clear that a PCAO investigator's interaction with "Federal … Law Enforcement Agencies" is limited to "coordinat[ing] investigations." *Id.* Nothing in this job posting suggests that the County Attorney can unilaterally offer PCAO investigators to ICE or DHS to act as a roving immigration enforcement agents.

B. <u>The Board is Not "Preempted" From Challenging the Agreement.</u>

Recognizing that he has no express or implied power to enter into the Agreement, the County Attorney (at 6-7) attempts to avoid this issue by arguing that, somehow, state law "preempts" the Board from attempting to "enjoin Miller from entering into and/or acting pursuant to the Agreement." He argues this "preemption" stems from A.R.S. § 11-1051(A), which states that "No ….county show…. [m]ay limit or restrict the enforcement

[4] Although the County Attorney says in his declaration that he is only sharing information with ICE, he qualifies this statement by indicating it only applies "as of the date of" his declaration. *See* Resp., Ex. A at ¶¶ 11-20.

of federal immigration laws to less than the full extent permitted by federal law." [5]

Other than simply citing this statute, however, the County Attorney does not explain how the County has somehow "restrict[ed] the enforcement of federal immigration laws." Requiring that any 287(g) agreement be properly approved by the correct authorities is not "restricting" laws — it is enforcing them. Indeed, 8 U.S.C. § 1357(g) — the statute authorizing 287(g) agreements — itself requires that 287(g) functions be carried out "to the extent consistent with State and local law." And it can hardly be said that the County is restricting immigration enforcement efforts: the County has approved several 287(g) Agreements, most recently in January 2026. Ver. Compl. at ¶¶ 28-29.

In his declaration, the County Attorney claims that ICE will not share information absent a 287(g) agreement. *See* Resp., Ex. A at ¶ 12. The County Attorney does not cite to any statement from ICE or DHS supporting this claim. And it lacks any basis in law, as A.R.S. § 11-1051(F) clearly permits information sharing between county officers and federal immigration authorities. A 287(g) agreement is not necessary to share information between law enforcement agencies.

The County Attorney also cites to *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588 (2017) (at 4, MTD at 6-7) for the proposition that the Board cannot "override state law." *Brnovich*, however, addressed a narrow issue that is not in play here: whether a charter city could adopt a local policy regarding firearms that conflicted with a state statute. 242 Ariz. at 598-99 ¶¶ 37-38. To the extent that *Brnovich* is relevant, it favors the County because the Court explained that the proper way to raise a "preemption" argument against local action is by raising the issue with the Attorney General under A.R.S. § 41-194.01(A), not by invoking "preemption" as a defense to illegal actions. *Id.* at 242 Ariz. at 592-94 ¶¶ 12-20.[6]

The County Attorney's position that the County has no right to challenge the

[5] The County Attorney did not make the argument that A.R.S. § 11-1051 "preempts" the County until *after* this lawsuit was filed. The County Attorney's newfound reliance on this statute is thus a failed post hac rationalization and should be rejected for this reason alone.

[6] In 2017, a state legislator used this process to argue certain City of Phoenix police policies violated A.R.S. § 11-1051. *See* Arizona Attorney General Investigative Report No. 17-002, available at 17-002-Investigative_Report_10-16-2017.pdf.

Agreement, if correct, would also raise serious concerns under the anti-commandeering doctrine. That doctrine, based on the Tenth Amendment of the U.S. Constitution, holds that the Federal Government cannot "compel the States to require or prohibit" any acts. *See Murphy v. N.C.A.A.*, 584 U.S. 453, 471 (2018) (quotation omitted). Under the County Attorney's interpretation, 8 U.S.C. § 1357(g) would directly implicate this doctrine by *requiring* state subdivisions (*e.g.*, counties and cities) to provide the federal government with enforcement personnel. *See Printz v. United States*, 521 U.S. 898 (1997)(striking down federal law that required local sheriffs to perform firearms background checks because the federal government may not "conscript[] the State's officers directly").

C. <u>The 287(g) Agreement is Invalid Under Federal Law</u>

Even if the County Attorney somehow evaded all of these problems (and he cannot), the Agreement would still be invalid as a matter of law because 8 U.S.C. § 1357(g) only permits DHS to enter into 287(g) agreements with "a State" or "any political subdivision of a state." MPI at 9. In confronting this plain language, the County Attorney makes the novel claim that the "PCAO qualifies as a political subdivision."

"Political subdivisions" are governing bodies who discharge their authority *through* officers; officers are not, themselves, "political subdivisions." *E.g.*, *McClanahan v. Cochise Coll.*, 25 Ariz. App. 13, 16 (1975) (explaining that one the main "attributes" of a political subdivision is that it exercises authority over "subordinate… officers"). This is confirmed by numerous statutory provisions and cases that distinguish between "officers," on the one hand, and "political subdivisions," on the other. *E.g.*, A.R.S. § 11-532(E) ("The county attorney may provide civil legal services to another county or other political subdivision of this state or an officer…"); *Sanchez*, 572 P.3d at 110 ¶ 29 (recognizing that a county sheriff is not encompassed by the term "political subdivision" used in A.R.S. § 12-820(7)). This distinction is also recognized in the federal-based "tests" referenced by the County Attorney (in his MTD at 17). *See N.L.R.B. v. Natural Gas Utility Dist. of Hawkins Cty., Tenn.*, 402 U.S. 600, 605 (1971) (under the two-pronged "political subdivision" test administered by the NLRB, a "political subdivision" is an entity that is *administered by*

"public officials").

Interestingly, the County Attorney (in its MTD at 16-17) does not seem to actually argue that an "officer" is a "political subdivision." Rather, he attempts a sleight of hand: by arguing that the *PCAO* — rather than the County Attorney himself — is a political subdivision because it is "administered by people who are responsible to … Miller." But unlike other offices that have been established by the Legislature for certain elected officials — specifically, the Department of State (established for the Secretary of State under A.R.S. § 41-121.02) and the Department of Law (established for the Attorney General under A.R.S. § 41-193) — the Legislature has *not* created a separate "county attorney *office*" that is separate or distinct from the county attorney itself. *See* A.R.S. §§ 11-531 through 539.

Moreover, the Legislature has *not* granted the County Attorney many of the powers typically associated with a "political subdivision." Political subdivisions have the power to levy taxes, enter into contracts with the federal government, set budgets for the entire subdivision, establish a procurement code, etc. *See e.g.*, A.R.S. §§ 11-251 (granting these powers to the Board of Supervisors), 11-661 (similar), 42-17101 (similar); 48-805(17) (authorizing fire districts, which are statutorily defined as "public subdivisions" under § 48-805.01(B)(1), to enter into IGAs), 48-172 (authorizing utilities districts to "enter into contracts or agreements with the federal government"). The County Attorney has none of these powers.

If the Legislature wanted the County Attorney to be considered a "political subdivision" it "could easily have said so." *Walters v. Maricopa Cty.*, 195 Ariz. 476, 479 ¶ 15 (App. 1999). It has not. The 287(g) Agreement is invalid under 8 U.S.C. § 1357(g).

II. The Remaining Injunctive Factors Favor Relief

Because the County succeeds on the merits, it need not show that the remaining three preliminary injunction factors tip in his favor. *Ariz. Pub. Integrity All. v. Fontes,* 250 Ariz. 58, 64 ¶ 26 (2020). Regardless, these factors are met here.

First, the County Attorney does not dispute that the Board would suffer irreparable harm if its authority to approve contracts and control County finances under A.R.S. §§ 11-

201(A)(3), 11-251(1), (11) were usurped by the Agreement. *See* MPI at 9. The County Attorney's view (at 14-16) that *he* would suffer irreparable harm if he could not share information with federal immigration authorities misses the point: no party disputes that he can engage in this type of information sharing under A.R.S. § 11-1051(F). The remaining arguments that the County Attorney makes on this point simply repeat his legal arguments, which fail for reasons stated *supra*.

Second, when government entities are involved, it is appropriate to consider the balance of equities and public interest together. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). The County Attorney (at 16) states that the public has an interest in "the arrest and deportation of individuals who have violated federal immigration law…" The County agrees: which is why it has authorized several 287(g) agreements in the past. What the public interest does *not* support is county officers acting as vigilantes outside the bounds of their appropriate, statutory authority. *See Am. Library Assoc. v. Sonderling*, 783 F.Supp.3d 57, 60-61 (D.D.C. 2025) (the public's interest in "compliance with [a law]" outweighs governmental policy view that the law was "unnecessary").

Conclusion

For all these reasons, the Court should grant preliminary injunctive relief.

DATED this 3rd day of April, 2026.

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