STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2011

Rodrigo Esparza, et al.,
Respondents,

vs.

Nobles County, et al.,
Appellants.

Filed September 23, 2019
Affirmed
Bratvold, Judge

Nobles County District Court
File No. 53-CV-18-751

Norman H. Pentelovitch, Brooke D. Anthony, Anthony Ostlund Baer & Louwagie P.A., Minneapolis, Minnesota; and

Ian Bratlie, Teresa Nelson, American Civil Liberties Union of Minnesota, Mankato, Minnesota; and

Cody Wofsy (pro hac vice), American Civil Liberties Union Foundation, San Francisco, California (for respondents)

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Considered and decided by Bratvold, Presiding Judge; Halbrooks, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellants Nobles County (county) and Kent Wilkening (sheriff) seek review of an order granting a temporary injunction that precludes appellants from detaining individuals, after their release from state custody, "on behalf of" United States Immigration and Customs Enforcement (ICE) "without an arrest by an immigration officer or a valid arrest warrant" under Minnesota law. Respondents filed a putative class-action complaint and sought a temporary injunction on behalf of themselves and others similarly situated, alleging that appellants' practice of detaining individuals after their release from state custody is a new seizure under the Fourth Amendment of the United States Constitution and article I, section 10, of the Minnesota Constitution, and is unauthorized under Minnesota law. Appellants challenge the district court's determination that respondents are likely to succeed on the merits of their claims. Because we conclude that the district court did not clearly abuse its discretion by granting the temporary injunction while the court proceeds with a determination on the merits, we affirm.

FACTS

A. The parties

The county is a political subdivision of the State of Minnesota and operates Nobles County Jail (jail). Wilkening is the sheriff of Nobles County. Since 2002, the county has had a contract with the Department of Homeland Security (DHS) (or its predecessor, the Immigration and Naturalization Service (INS)) to provide services including housing for persons detained by ICE. Under the contract, DHS pays the county $89.69 per day for each detainee.

Respondents are noncitizens, who, at all relevant times, lived in Worthington and who were initially detained in jail on state criminal charges, released from state custody, and then held by appellants in jail.

B. Respondents' detention in jail after release from state custody

It is undisputed that each respondent remained in jail after their release from state custody for a variety of reasons—*e.g.*, imposition of a stayed sentence, bail, or dismissed charges. It is also undisputed that for each respondent ICE issued three form documents: a detainer (Form I-247A); a warrant (Form I-200 for arrest, or Form I-205 if subject to a final removal order); and an order (Form I-203). We describe each document briefly.

The form language in the I-247A detainer (ICE detainer), which is signed by an immigration officer, asks appellants to notify DHS "as early as practical" before "the alien is released" and to "maintain custody of the alien" for "a period NOT TO EXCEED 48 HOURS" after "he/she would otherwise have been released from your custody to allow DHS to assume custody."

The form language in the I-200 or I-205 warrant (ICE warrant), also signed by an immigration officer, is directed to "[a]ny immigration officer authorized . . . to serve warrants of arrest for immigration violations" and states that the signing immigration officer has determined that "there is probable cause to believe that" the named individual "is removable from the United States." The warrant commands the immigration officer to take "the above-named alien" into custody for removal proceedings. Finally, the I-203 order (ICE order) directs the county and sheriff to detain or release a named individual and is signed by an immigration official. The record includes greater detail about each respondents' detention in jail after being released from state custody.[1]

[1] Respondent Rodrigo Esparza is a lawful permanent resident of the United States. In April 2018, he was arrested for receiving stolen property and booked into the jail. Esparza's bail was set at $10,000. A few days after his arrest, the county received an ICE detainer and warrant for Esparza, which the jail served on him. In August 2018, Esparza pleaded guilty to a gross misdemeanor and was sentenced to time served. The county did not release Esparza, who remained in jail under ICE custody.

Respondent Maria de Jesus Pineda is a citizen and national of Honduras. She was arrested for identity theft in February 2018 and booked into the jail. Her bail was set at $10,000. About two weeks after her arrest, the county received an ICE detainer and warrant for Pineda, which were served on her. After Pineda posted bond on February 17, the county continued to hold her at the jail. An ICE agent took custody of Pineda on February 20, and she missed her next district court appearance. After the district court issued a bench warrant, ICE released her to state custody. She was released from state custody on March 9, 2018.

Respondent Timoteo Martin Morales is a citizen and national of Guatemala. He was arrested for two counts of criminal sexual conduct in March 2018 and booked into the jail. The county received an ICE detainer and warrant on March 15, which were served on Morales. Morales attempted to post bond on March 26, but he revoked his request after learning that he could be kept in jail on an immigration hold. The county attorney dismissed the charges against Morales on July 24, 2018, but the county continued to detain Morales in the jail under ICE custody. On July 25, the county received an ICE order to release, instructing jail staff to "release [Morales] to the street" because he had posted bail with ICE. The state refiled the charges against Morales and he was again placed in state custody.

In their brief to this court, appellants describe their usual practice with regard to noncitizen detainees. Initially, appellants state that "jail staff notify ICE when the jail books an individual who may meet criteria that trigger an interest by ICE." Appellants also contend that the jail administrator's testimony established the following relevant facts:

- "The jail relies on the probable cause determinations" as stated in the ICE detainer and warrant.
- "The jail consider[s] an individual processed [by ICE] if the detainer and arrest warrant or an order for deportation were in the jail file."
- "If an individual in state custody had been processed by ICE, at the time of his or her release from state custody, he or she would immediately [be] transfer[red] to ICE's custody under the housing contract."
- "[T]here is no gap between state custody and ICE custody for an individual processed by ICE. . . . In its record system, the jail changes the authority holding the individual to ICE and removes the individual's name from the jail website . . . ICE personnel do not attend in person to oversee the change in the computer database from state custody to ICE custody on persons they previously processed."

Respondent Oscar Basavez Conseco is a citizen and national of Mexico. He was arrested for drug offenses in May 2018 and booked into the jail. The county received an ICE detainer and warrant on May 7, which the jail served on Conseco. A state court ordered Morales to be released before trial on certain conditions on August 15, 2018. However, the county continued to detain Conseco under ICE custody, and he was released to another facility under ICE's authority two days later.

- "If ICE had not processed an individual subject to release from state custody, the jail release[s] the individual . . . . In other words, the jail only holds individuals under ICE custody or state custody, nothing in between."

B. Procedural history

On August 16, 2018, respondents sued appellants, filing a putative class-action complaint and request for declaratory and other relief on behalf of themselves and all others similarly situated. The complaint alleged, in relevant part, that the powers of Minnesota sheriffs "are limited to those expressly granted by the Minnesota Constitution and Minnesota [S]tatutes," and that a sheriff is not authorized to arrest or detain an individual after they have been released from state custody based solely on an ICE detainer and warrant. The complaint asked the district court to issue a temporary restraining order (TRO) and temporary injunction pending a decision on the merits. On the same day they filed the complaint, respondents moved for a TRO and temporary injunction.[2] Respondents' proposed order asked the district court to prohibit appellants "from relying on ICE immigration detainers, ICE administrative warrants, or Form I-203 as grounds for refusing to release" respondents, or others similarly situated, "from custody when they post bond, complete their sentences, or otherwise resolve their criminal cases."

Appellants filed an answer denying most allegations in the complaint and filed a memorandum in opposition to a TRO and temporary injunction. Additionally, appellants

[2] Although class certification is not before this court, we note that, also on the same day they filed their complaint, respondents filed a motion for class certification. The district court granted respondents' certification motion on January 31, 2019.

submitted affidavits by the sheriff and county jail administrator, along with a number of exhibits.

The district court conducted an evidentiary hearing on respondents' request for a TRO and temporary injunction. The district court received testimony from the county jail administrator along with various exhibits, including the county's contract with ICE, and ICE detainers, warrants, and orders for each respondent. After taking the matter under advisement, the district court granted respondents' motion, in part, and temporarily enjoined appellants "from detaining individuals on behalf of ICE without an arrest by an immigration officer or a valid arrest warrant or detainer pursuant to Minnesota law and Fourth Amendment protections." The district court's order specifically noted that the injunction "precludes the continued detention of persons based solely on Forms I-247A and I-200."

The district court's order denied relief, in part, stating that the injunction did not preclude "other forms of cooperation and communication." The order stated: the county "may continue to notify ICE regarding anyone in the jail, provide information as to release and court dates, and exchange other information between the two." The district court denied appellants' motion to stay the temporary injunction pending appeal.

This appeal follows.

D E C I S I O N

The district court has broad discretion to grant or deny a temporary injunction, and appellate courts will reverse only for "clear abuse of that discretion." *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). A district court's

grant of a temporary injunction "serves only to maintain the status quo until a case can be decided on the merits" and "neither establishes the law of the case nor constitutes an adjudication of the issues on the merits." *Vill. of Blaine v. Indep. Sch. Dist. No. 12, Anoka Cty.*, 121 N.W.2d 183, 187 (Minn. 1963).

Five factors guide a district court's decision to issue a temporary injunction. *See Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965). These factors are (1) the relationship and background of the relationship between the parties before the dispute, (2) the balancing of harms to both parties, (3) the likelihood of the plaintiff's success on the merits, (4) public policy considerations expressed in state and federal statutes, and (5) any administrative burdens involved in judicial enforcement of the temporary injunction. *Id.*

Appellants challenge only the third *Dahlberg* factor—the likelihood of the respondents' success on the merits.[3] "A primary factor in determining whether to issue a temporary injunction is the proponent's probability of success in the underlying action." *Minneapolis Fed'n of Teachers, AFL-CIO, Local 59 v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. App. 1994), *review denied*, (Minn. March 31, 1994); *see also Dalco Corp. v. Dixon*, 338 N.W.2d 437, 439 (Minn. 1983) (affirming

[3] Appellants do not challenge the district court's determinations on the other *Dahlberg* factors. The district court determined that (1) there is an "obvious power disparity" between respondents and appellants; (2) respondents "suffer harm" from the "present practice of relying on ICE detainers to continue incarceration" while appellants suffer "little if any harm . . . if the practice is temporarily halted"; (4) immigration is an important public policy and "voluntary communication and cooperation between local law enforcement entities and ICE is important"; and (5) there is no administrative burden for judicial supervision of the temporary injunction.

district court's order denying a temporary injunction based on the probability-of-success factor). If a plaintiff fails to show *any* likelihood of winning their case on the merits, district courts may not grant an injunction. *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 164 (Minn. App. 1993). However, when a plaintiff's right to permanent relief is doubtful, it is proper to "maintain the status quo" with a temporary injunction when the plaintiff shows a strong showing of irreparable harm. *Dahlberg*, 137 N.W.2d at 321 n.13; *see also Sanborn*, 500 N.W.2d at 164-65 ("Where plaintiffs make a strong showing of irreparable harm, but a doubtful showing that they are likely to win the case, trial courts may properly decide to grant an injunction to preserve the status quo until trial.").

I. The district court did not clearly abuse its discretion by granting respondents' motion for temporary injunctive relief.

Appellants argue that respondents cannot succeed on the merits of their claim as a matter of law. The parties discuss two issues central to the likelihood of respondents' success on the merits: (A) whether appellants' detention of an individual after release from state custody is a new seizure under the Fourth Amendment; and (B) if the continued detention is a seizure, whether state or federal law authorize appellants to do so based on an ICE detainer and warrant. We review each issue in turn.

A. Whether appellants seized respondents anew after they were released from state custody

Appellants assert that "the transfer of an individual from state custody to ICE custody" is not a new seizure by the county, and therefore the transfer does not require a warrant or a new probable-cause determination. Appellants contend that the "custodial transfer" from state custody to ICE custody is a "mere reclassification of [the] processed

individuals already in custody." Respondents argue that the county's continued detention of an individual after release from state custody is "a new arrest, and therefore requires arrest authority and probable cause." This issue is a question of first impression for Minnesota courts.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. "The ultimate test to be used in determining whether a suspect was under arrest is whether a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984); *see also Florida v. Royer*, 460 U.S. 491, 502, 103 S. Ct. 1319, 1326 (1983) (applying the "free to leave" test).

Other state and federal courts have determined that state and local officers seize an individual anew under the Fourth Amendment when they continue detention after an individual has been released from state custody. *See, e.g.*, *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015) (holding that if an individual is "kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification"); *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1153 (Mass. 2017) (concluding that "hold[ing] a person for up to two days after he or she would otherwise be entitled to release from State custody, constitutes an arrest as a matter of Massachusetts law"); *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31 (N.Y. App. Div. 2018) ("A continued detention on the basis of an immigration detainer after an inmate is entitled to release constitutes a new arrest and seizure under both New York law and the Fourth Amendment.").

Here, the district court concluded that respondents would likely succeed on the merits of their claim that appellants' continued detention of respondents was a seizure. Under Minnesota law, but for the appellants' practice of continuing detention after receiving an ICE detainer and warrant, respondents would have been "free to go" because each had been released from state custody. *See Beckman*, 354 N.W.2d at 436. Appellants concede that they held respondents after their release from state custody, which is analogous to the situations in *Morales*, *Lunn*, and *Wells*—all cases that concluded similar detentions were seizures. *See Morales*, 793 F.3d at 213 (plaintiff held in state jail on ICE detainer after being "released from criminal custody"); *Lunn*, 78 N.E.3d at 1148 (plaintiff held by court officers on ICE detainer after district court dismissed his criminal charges); *Wells*, 168 A.D.3d at 40 (plaintiff held in county jail on ICE detainer and warrant after being released from state custody). This caselaw supports the district court's decision that respondents are likely to prevail on the first issue.

We also observe that the jail's own practice of serving ICE detainers and warrants on respondents before their release from state custody assumes a new probable-cause justification is needed for their continued detention. The ICE warrant states that an ICE officer has "determined that *there is probable cause* to believe that [respondent] is removable from the United States." (Emphasis added.)

Still, appellants contend that they have avoided a new seizure of respondents because the housing contract "establish[es] ICE custody" immediately. But the housing contract provides that appellants can "only" receive ICE detainees from "properly identified [ICE] personnel or other properly identified Federal law enforcement officials."

Cases cited by appellants underscore this point because they hold that no new seizure occurs when an ICE agent holds and transports an individual. *See United States v. Laville*, 480 F.3d 187, 196 (3d Cir. 2007) (ICE officers took custody of defendants from state officers); *Abriq v. Metro. Gov't of Nashville*, 333 F. Supp. 3d 783, 785-87 (M.D. Tenn. 2018) (concluding that the county "did not arrest or 'seize' [p]laintiff; ICE did").

We conclude that the district court did not clearly abuse its discretion in determining that respondents are likely to prevail on the issue that appellants' continued detention of respondents after their release from state custody is a new seizure.

B. Whether state or federal law authorize appellants to seize respondents based on ICE detainers and warrants

Appellants argue that, even if the county's detention and transfer of respondents to ICE custody is a new seizure, local officers can do so based on ICE detainers and warrants because "other courts have upheld ICE arrest warrants as valid warrants" that are supported by probable cause and "constitutional under the Fourth Amendment." Respondents argue that the constitutional validity of the ICE detainers and warrants when executed by federal immigration officers is irrelevant because neither state nor federal law authorizes appellants to continue detention based on these documents, or to make warrantless arrests for civil immigration violations.

The constitutional validity of ICE detainers and warrants when executed by federal immigration officers is established. In *Abel v. United States*, ICE's predecessor, INS, arrested the plaintiff in a hotel room because it believed he was an illegal alien and suspected him of espionage. 362 U.S. 217, 221, 80 S. Ct. 683, 688 (1960). The United

States Supreme Court held that INS's "arrest procedure . . . fully complied with the statute and regulations" at issue and did not violate the Fourth Amendment. *Id.* at 232-33, 80 S. Ct. at 694. The Supreme Court acknowledged that "a deportation arrest warrant is not a judicial warrant" under the Fourth Amendment but held that Congress gave "authority to the Attorney General or his delegate to arrest aliens pending deportation proceedings under an administrative warrant." *Id.* at 232, 236, 80 S. Ct. at 693, 696.

We agree with respondents, however, that *Abel* does not address the central issue in this case. The parties contest whether respondents are likely to prevail on their claim that neither state nor federal law authorize appellants to seize respondents based on ICE detainers and warrants. We first address state law and, second, consider federal law.

1. State law

Appellants recognize that their continued detention of respondents on immigration violations is not a criminal detention, but "a civil immigration detention." Minnesota law generally provides that peace officers may seize an individual with or without a warrant *only* as authorized by state statute. *See Hilla v. Jensen*, 182 N.W. 902, 903 (Minn. 1921) (arrest); *see also State v. Grunewald*, 300 N.W. 206, 207 (Minn. 1941) (without a warrant); *see generally Wahl v. Walton*, 16 N.W. 397, 397-98 (Minn. 1883) (statute replaced common-law authority to arrest). Accordingly, Minnesota statutes on civil seizures guide our analysis.[4]

[4] Appellants generally cite to Minn. Stat. § 629.30 as authorizing "arrests pursuant to warrants," and also refer to Minn. Stat. § 629.34 as authorizing warrantless arrests. But both statutes target "public offense[s]" and state requirements for *criminal* arrests with or without a warrant. *See id.* Appellants appear to agree with respondents that these statutes

Minnesota statutes permit state and local officers to conduct administrative searches and seizures both with and without a warrant, but only in certain circumstances. First, for civil seizures *with a warrant*, most statutes require a judge to issue a warrant or order and follow statutory criteria. For example, under Minn. Stat. § 253B.07 (2018), a court may order a peace officer to take a "proposed [mental health] patient into custody and transport the proposed patient to a treatment facility" when the petitioner demonstrates specific criteria. Other statutes have the same general requirements. *See* Minn. Stat. § 253B.10 (2018) (requiring the district court to "issue a warrant or an order . . . stat[ing] that the patient meets the statutory criteria for civil commitment" to civilly commit a mental health patient); *see also* Minn. Stat. § 299F.08 (2018) (providing that an administrative search warrant is "issued by a judge" after reviewing several statutory factors). Second, statutes authorize civil seizures *without a warrant* only under certain circumstances. *See, e.g.*, Minn. Stat. § 253B.141 (2018) (authorizing peace officers to detain and transport a

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do not apply, arguing that the district court erred to the extent that it examined the validity of the ICE warrant under Minnesota's criminal laws because "the immigration context . . . is a civil proceeding." We agree that statutes authorizing criminal arrests with and without a warrant are largely irrelevant to our analysis. "As a general rule, it is not a crime for a removable alien to remain present in the United States." *Arizona v. United States*, 567 U.S. 387, 407, 132 S. Ct. 2492, 2505 (2012).

Even if we were to apply sections 629.30 and 629.34, we would conclude that the district court did not abuse its discretion on this issue. To seize a person under a criminal warrant pursuant to section 629.30, an officer must make an oath or affirmation attesting to probable cause and obtain a warrant from a neutral and impartial magistrate. *State v. Mohs*, 743 N.W.2d 607, 611 (Minn. 2008). The ICE detainers and warrants issued for respondents were not signed by a judge and were directed at immigration officers, not state and local officers. And section 629.34, which applies to warrantless arrests, only applies when officers have probable cause that a new crime has been committed, which is not the case here.

civilly-committed patient who leaves a treatment facility without authorization). Based on our review and the detailed written submissions of these parties and several amici curiae, we conclude that no Minnesota statute explicitly authorizes state and local officers to seize an individual for an immigration violation with or without a warrant.

Appellants concede that "there is no explicit Minnesota Statute authorizing or prohibiting local authorities from executing an ICE arrest warrant," but then cite two statutes, arguing that they implicitly permit a state officer to cooperate with ICE and enforce an ICE detainer and warrant. We conclude that neither statute is relevant.

First, Minn. Stat. § 387.03 (2018), provides that sheriffs should "keep and preserve the peace of the county" and "pursue and apprehend all felons, execute all processes, writs, precepts, and orders issued or made by lawful authority." Appellants argue that ICE is a "lawful authority," and therefore, the sheriff can execute ICE detainers and warrants. But the plain language of the statute refers to "apprehend[ing] all felons" and keeping the peace. Thus, we conclude that section 387.03 does not confer any authority on sheriffs to execute civil immigration warrants issued by federal immigration officers. Second, Minn. Stat. § 629.32 (2018) is Minnesota's collective-knowledge statute, leading appellants to argue that they may rely on the knowledge of immigration officers in seizing respondents. But this statute limits state officers to acting on information from "any other peace officer in the *state*," and the statute is in Minnesota's criminal procedure statutes. *Id.* (emphasis added). We conclude that section 629.32 is limited to criminal arrest warrants.

Finally, we observe that the legislature knows how to authorize state and local officers to cooperate with ICE. Minn. Stat. § 631.50 (2018) requires that state and local

officers "immediately notify the United States immigration officer in charge of the district" when a detainee "appears" to be an alien, is convicted of a felony or deemed mentally ill, and is placed in a publicly-funded state or local institution. Because the legislature has authorized state and local officers to cooperate with federal immigration officers, but has not authorized state and local officers to detain or execute federal immigration warrants, we conclude that Minnesota Statutes do not authorize the appellants' seizure of respondents based on ICE detainers and warrants. *See generally In re Wang*, 441 N.W.2d 488, 496 (Minn. 1989) ("Plainly, the legislature knows how to specifically authorize the recovery of attorney fees and investigation costs when it intends such recovery. No such clear authorization appears in the instant statute.").

Based on our review of Minnesota Statutes and the arguments presented by the parties, the district court did not abuse its discretion in concluding that respondents are likely to succeed on their claim that Minnesota Statutes do not authorize appellants to seize respondents with or without an ICE detainer and warrant.[5]

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[5] In its amicus curiae brief filed with this court, the United States argues that Minnesota sheriffs have inherent arrest authority under the common law to cooperate with other federal and state authorities, and this common-law power cannot be limited by the state legislature. The county mentions a similar argument for the first time in its reply brief. Generally, "an amicus must accept the case before the court with the issues made by the parties, [thus] an amicus ordinarily cannot inject new issues into a case that have not been presented by the parties." *Kline v. Berg Drywall, Inc*., 685 N.W.2d 12, 23 n.9 (Minn. 2004). Also, we generally do not consider issues raised for the first time in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010).

Even if we were to consider this issue, the Minnesota Supreme Court implicitly rejected a sheriff's inherent arrest authority when it held that "[t]he circumstances under which peace officers may arrest without a warrant are defined in the statutes of the state." *Hilla*, 182 N.W. at 903. Moreover, neither the United States nor the county identify any Minnesota caselaw recognizing that sheriffs have common-law authority to cooperate with

2. Federal law

Appellants argue that even if Minnesota law does not expressly permit state and local officers to detain individuals for civil immigration violations, they are permitted to do so under federal law, which authorizes state and local officers to cooperate with ICE in the apprehension, detention, and removal of illegal aliens.

The parties agree that federal immigration officers can seize an individual pursuant to a civil immigration warrant. Specifically, ICE officers may arrest and detain an alien pending a removal decision. 8 U.S.C. § 1226 (2012). Generally, however, only "immigration officers who have successfully completed basic immigration law enforcement training" are authorized to execute an ICE warrant and arrest an individual for civil immigration violations. *See, e.g.*, 8 C.F.R. § 287.5 (2018) (requiring immigration officers to have training to serve arrest warrants for immigration violations); 8 C.F.R. § 236.1 (2018) (providing that only designated immigration officers with training can take immigrants into custody "under the authority of Form I-200").

State officers may also play a role in immigration enforcement. "Federal law specifies limited circumstances in which state officers may perform the functions of an immigration officer." *Arizona*, 567 U.S. at 408, 132 S. Ct. at 2506. A formal agreement, commonly referred to as a "287(g) agreement," allows state and county officers to perform the duties of an immigration officer. DHS can "enter into a written agreement with a State,

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federal authorities and make civil immigration arrests. Without any common-law authority, we cannot conclude that the district court clearly abused its discretion in determining that Minnesota law does not authorize Minnesota officers, including sheriffs, to seize respondents.

or any political subdivision of a State" to permit qualified individuals to "perform a function of an immigration officer," such as "apprehension[] or detention of aliens." 8 U.S.C. § 1357(g)(1) (2012). A 287(g) agreement allows state officers to become "de facto immigration officers, competent to act on their own initiative." *City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 180 (5th Cir. 2018). State officers must receive adequate training and are subject to the supervision of DHS. 8 U.S.C. § 1357(g)(1-3) (2012). Once properly certified, state and local officers can carry out federal immigration functions under a 287(g) agreement "to the extent consistent with State and local law." *Id.*

The county does not have a 287(g) agreement with DHS. But the absence of such an agreement does not prevent a state or its political subdivision from "otherwise [] cooperat[ing] 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) (2012). Appellants contend that section 1357(g)(10)(B) provides authority for state and local officers to seize and detain aliens subject to removal because the statute says state and local officers may "cooperate" with the federal government without a formal agreement.

In *Arizona v. United States*, the Unites States Supreme Court considered whether section 1357(g)(10) allowed Arizona to enact a law that, in part, permitted state and local officers to conduct a warrantless arrest "if the officer has probable cause to believe . . . [the person] has committed any public offense that makes [him] removable from the United States." 567 U.S. at 407, 132 S. Ct. at 2505. Arizona argued that, in enacting this law, it was "cooperating" with the federal government pursuant to 8 U.S.C. § 1357(g)(10). *Id.* at

410, 132 S. Ct. at 2507. The Supreme Court rejected this argument, holding that "no coherent understanding of ['cooperate' in section 1357(g)(10)] would incorporate the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." *Id.* The Supreme Court concluded that Arizona's law was an obstacle to federal immigration authority and, therefore, preempted. *Id.* The Supreme Court reasoned that "[t]here may be some ambiguity as to what constitutes cooperation under the federal law; but no coherent understanding of the term would incorporate the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." *Id.*

Since *Arizona*, courts have disagreed on what "cooperation" with the federal government means under section 1357(g)(10). Appellants rely on *Lopez-Lopez v. County of Allegan* to argue that state and local officers may cooperate by seizing and detaining a removable alien with appropriate direction from federal immigration officers in the form of an ICE detainer and warrant. 321 F. Supp. 3d 794 (W.D. Mich. 2018). In *Lopez-Lopez*, a plaintiff posted bail after being jailed for a crime, but the jail continued to detain plaintiff on the basis of an ICE detainer and warrant. *Id.* at 796. Plaintiff sued the county, arguing that the county violated his right to be free from unreasonable searches and seizures under the Fourth Amendment. *Id.* The county filed a motion to dismiss, which the district court granted. *Id. Lopez-Lopez* held, in part, that under section 1357(g)(10), state and local officers can "cooperate[] by complying with the federal government's request" to hold a

removable alien for ICE. *Id.* at 801. *Lopez-Lopez* distinguished its facts from those in *Arizona* because the county acted at ICE's request. *Id.*

Respondents rely on *Lunn v. Commonwealth* to argue that section 1357(g)(10) does not authorize state and local officers to seize and detain jail inmates based on an ICE detainer and warrant. 78 N.E.3d 1143 (Mass. 2017). In *Lunn*, a district court dismissed plaintiff's criminal charges, but local law enforcement continued to detain plaintiff in jail based on an ICE detainer. *Id.* at 1148. Several hours later, an ICE agent physically took plaintiff into federal custody. *Id.* Plaintiff alleged that his continued detention violated his constitutional rights. *Id. Lunn* held that section 1357(g)(10) did not authorize local officers to detain plaintiff after the dismissal of his criminal charges. *Id.* at 1159. *Lunn* reasoned that, because section 1357(g) authorized state and local officers to detain and seize removable aliens under formal 287(g) agreements, "it is not reasonable to interpret § 1357(g)(10) as affirmatively granting authority to all State and local officers to make arrests that are not otherwise authorized by State law."[6] *Id.*

The district court agreed with *Lunn*'s analysis and concluded that "it does not appear that [appellants'] interpretation of communication and cooperation [under section 1357(g)(10)] will likely prevail on the merits." The district court reasoned that section

[6] Appellants distinguish *Lunn* because it did not "consider[] the effect of an [ICE warrant] paired with the [immigration detainer]," arguing that officers in *Lunn* only acted on an immigration detainer and did not have an ICE warrant. But *Lunn* specifically addressed ICE's policy to require ICE warrants (or an I-200) in addition to ICE detainers and noted that, like an ICE detainer, an ICE warrant is a "civil administrative warrant[] approved by, and directed to, Federal immigration officials," does not "require[] the authorization of a judge," and is not a "criminal arrest warrant or a criminal detainer." *Lunn*, 78 N.E.3d at 1151 n.17.

1357(g)(10) does not expressly authorize state and county officers to seize and detain individuals on ICE detainers and warrants after they would otherwise be released from state custody.

Other courts have reached the same conclusion as *Lunn* and the district court. For example, as one federal district court reviewing a county's immigration detainer policy stated,

> [I]f "otherwise cooperate" under Section 1357(g)(10), a catch-all provision, were read to allow local law enforcement to arrest individuals for civil immigration violations at the request of ICE, the training, supervision and certification pursuant to a formal agreement between DHS and state officers described in the remaining provisions of Section 1357(g) would be rendered meaningless.

Creedle v. Miami-Dade County, 349 F. Supp. 3d 1276, 1304 (S.D. Fla. 2018). In another federal district court decision, a county had an expired 287(g) agreement with DHS, and yet the county jail continued to seize and hold removable aliens for ICE after the agreement's expiration. *Abriq v. Hall*, 295 F. Supp. 3d 874, 877 (M.D. Tenn. 2018). *Abriq* held that only state officers "acting under color of federal authority—that is, as directed, supervised, trained, certified and authorized by the federal government—may . . . effect constitutionally reasonable seizures for civil immigration violations." *Id.* at 880-81. *Abriq* rejected section 1357(g)(10) as providing one of the "limited circumstances" in which state officers may enforce federal immigration law. *Id.*; *see also Wells*, 168 A.D.3d at 52 (relying in part on the Tenth Amendment and rejecting section 1357(g)(10) as authority to detain individuals on ICE warrants because "we cannot accede to the view that the Congress, through its provision for voluntary informal cooperation, thereby

authorized state and local law enforcement officers to undertake actions not allowed them by state law").

Our review of the caselaw summarized above leads us to conclude that the district court acted within its discretion in determining that respondents' "interpretation of communication and cooperation" under section 1357(g)(10) "will likely prevail on the merits."[7] Generally, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Hibbs v. Winn*, 542 U.S. 88, 101, 124 S. Ct. 2276, 2286 (2004). Appellants' interpretation of section 1357(g)(10) as authorizing state and local officers to seize and detain removable aliens renders superfluous Congress's express authorization that state and local officers exercise these powers under formal 287(g) agreements with training and supervision from DHS.

Lopez-Lopez reached a different conclusion, but it did not consider the argument that a broad reading of section 1357(g)(10) renders 287(g) agreements superfluous. *Lopez-Lopez* also did not consider whether state statutes authorized state and local officers to detain immigrants under ICE detainers and warrants. Even 287(g) agreements must be

[7] We observe that the parties do not cite to, and the court has not found, any federal circuit court or U.S. Supreme Court decision establishing that section 1357(g)(10), in the absence of authorizing state laws, permits state officers to seize individuals under an ICE detainer and warrant. Appellants rely on *El Cenizo*, which held that section 1357(g)(10) expressly authorized Texas to enact a law that, in part, required local entities and police departments in Texas to provide "enforcement assistance" to ICE for detainer requests. 890 F.3d at 177-78, 185. But, in *El Cenizo*, Texas law authorized—and required—state officers to assist in the enforcement of ICE detainers and warrants. *Id.* at 185. There is no Minnesota law analogous to the Texas law upheld in *El Cenizo*.

consistent with state law. *See* 8 U.S.C. § 1357(g)(1) (providing that DHS can enter into a formal written agreement with a state or political subdivision allowing state and local officers to perform the function of an immigration officer "*to the extent consistent with State and local law*" (emphasis added)). If we were to conclude that section 1357(g)(10) authorizes state and local officers to seize and detain removable aliens *irrespective of state law*, then we would render meaningless the federal requirement that 287(g) agreements be consistent with state and local law. In short, *Lopez-Lopez* is not persuasive.

We conclude that the district court did not clearly abuse its discretion in determining that respondents are likely to prevail on the contested issues that (A) appellants' continued detention of respondents after their release from state custody is a new seizure, and (B) state and federal law do not authorize appellants to seize respondents based on ICE detainers and warrants. Thus, we conclude that the district court did not clearly abuse its discretion in granting a temporary injunction in favor of respondents.

We note, particularly, the district court's determination that respondents, and others similarly situated, will "suffer harm" by appellants' "practice of relying on ICE detainers to continue incarceration" after respondents have been released from state custody, and that there "is little if any harm" to appellants if this practice is temporarily halted. Because appellants do not challenge the district court's finding of harm, we conclude that reversal of the temporary injunction is not warranted. *See Sanborn*, 500 N.W.2d at 164 (providing that where there is a strong showing of harm, even a small chance of prevailing on the merits will suffice).

Affirmed.