**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF INDIANA**
**INDIANAPOLIS DIVISION**

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| ANTONIO LOPEZ-AGUILAR,<br><br>Plaintiff,<br><br>v.<br><br>MARION COUNTY SHERIFF'S DEPARTMENT, et al.<br><br>Defendants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 1:16-cv-2457-SEB-TAB |

**STATE OF INDIANA'S MOTION TO INTERVENE**
**FOR THE LIMITED PURPOSE OF APPEAL**

On November 7, 2017, this Court approved and entered a consent decree between Plaintiff and Defendants that prohibits Defendants from cooperating with U.S. Immigration and Customs Enforcement (ICE) detention requests in whatever form unless certain prerequisites are met. *See* Memorandum Order, ECF 49; Judgment, ECF 50. The Court's order focuses primarily on analyzing whether the consent decree violates Indiana law, which is necessary because neither the parties nor the United States "acknowledge[d] this potentially dispositive issue." ECF 49 at 16–31. The State of Indiana, however, has not yet had an opportunity to provide its views concerning the Indiana statutes at issue. Accordingly, pursuant to Federal Rule of Civil Procedure 24, the State respectfully moves to intervene in this case for the purpose of appealing from this Court's judgment entering the consent decree.

## BACKGROUND

### *Enactment of Senate Bill 590*

In 2011, recognizing the importance of state communication and cooperation with federal authorities in the enforcement of immigration laws and related criminal matters, the Indiana

General Assembly enacted SB 590, which added Chapter 18.2, titled "Citizenship and Immigration Status Information and Enforcement of Federal Immigration Laws," to Title 5, Article 2, of the Indiana Code. Pub. L. No. 171-2011, § 2 (Ind. 2011).

As pertinent here, "[a] governmental body . . . may not enact or implement . . . a policy that prohibits or in any way restricts . . . a law enforcement officer . . . from taking the following actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual: (1) Communicating *or cooperating* with federal officials." Ind. Code § 5-2-18.2-3 (emphasis added). Moreover, "[a] governmental body . . . may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law." Ind. Code § 5-2-18.2-4. Every law enforcement officer shall be put on notice of "a *duty to cooperate* with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration." Ind. Code § 5-2-18.2-7 (emphasis added).

Taken together, these provisions bar prohibitions on cooperation with federal immigration enforcement and establish a "duty to cooperate" with federal immigration efforts.

***Procedural History***

On September 15, 2016, Plaintiff filed this suit under 42 U.S.C. § 1983, alleging Fourth Amendment and state law claims against the Marion County Sheriff's Office (MCSO), the MCSO Sheriff, and a MCSO sergeant. ECF 1. Plaintiff's claims are premised on the allegation that on or around September 18, 2014, Defendants illegally detained him at ICE's request. ECF 1 at 1–2. Other than an answer filed on behalf of all Defendants on November 2, 2016, ECF 12, no other substantive action took place in this matter until a motion for stipulated judgment was filed on July 10, 2017, ECF 37. This consent decree purports not just to grant specific relief to Plaintiff but also to permanently enjoin all Defendants "from seizing or detaining any person based solely on

detention requests from ICE (in whatever form) or removal orders from an immigration court unless ICE supplies a warrant signed by a judge or otherwise supplies probable cause that the individual identified in the detainer has committed a criminal offense." ECF 37 at 4.

The United States filed a statement of interest regarding this matter on August 4, 2017. ECF 42. This Court issued an order and judgment entering the proposed consent decree on November 7, 2017. ECF 49 and 50. As noted in that order, other than one brief mention of the Indiana statutes at issue, neither the parties nor the United States has briefed whether the consent decree violates those statutes. ECF 49 at 16. The Court undertook that analysis in its order and held that no Indiana statutes were violated. ECF 49 at 16–31. If this motion to intervene is not granted, a binding interpretation of Indiana statutes will be enshrined without ever hearing from the State, for it is unlikely the parties will appeal their own consent decree.

**ARGUMENT**

The State has compelling interests that justify intervention as of right or permissively for purposes of appealing the Court's final judgment entering a consent decree. The final judgment causes the State Article III injury that is redressable by a decision by the Court of Appeals, and the State otherwise satisfies the requirements for intervention as of right because this motion is timely, the State has a direct and substantial interest in the outcome of this case, its interests are impaired by the disposition of this action, and no party adequately represents the State's interests because no party intends to appeal their own consent decree.

What is more, the State is entitled to permissive intervention under Rule 24(b) because its claim or defense on appeal "shares with the main action a common question of law or fact," and, independently, its claim or defense on appeal is based on a "statute . . . administered by [it.]" Fed. R. Civ. P. 24(b).

## I. The State Has Article III Standing to Ensure the Correct Interpretation of Its Laws

An intervenor must establish Article III standing apart from the other requirements of Rule 24. *See, e.g.*, *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571–72 (7th Cir. 2009); *accord Bond v. Utreras*, 585 F.3d 1061, 1072 (7th Cir. 2009). The State has Article III standing because it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

In particular, a State "has a legitimate interest in the continued enforceability of its own statutes," and that it possess standing to ensure its statutes are correctly interpreted even if the other parties are unwilling. *See, e.g.*, *Maine v. Taylor*, 477 U.S. 131, 136–37 (1986) (permitting Maine, an intervenor in the district court, to pursue an appeal even though the United States, which brought the original prosecution, abandoned it). If a State believes a court has misinterpreted its statutes, as here, it has suffered an injury sufficient to confer standing. *See id.* at 133.

Causation and redressability are also readily apparent. The consent decree was approved in large part due to the Court's analysis determining that it did not violate any Indiana statutes. *See* ECF 49 at 16–31 (declining to inquire as to whether the consent decree was necessary to remedy a probable violation of federal law). Because the State contends that the consent decree does in fact violate the Indiana statutes at issue, the harm to the State's proper enforcement of its statutes is both caused by the consent decree and remedied by its vacatur on appeal. Accordingly, the State has Article III standing to be an intervenor in this matter.

## II. The State Is Entitled to Intervene as of Right Under Rule 24(a)(2)

To intervene as of right under Rule 24(a)(2) the application must be timely; the applicant must have a direct and substantial interest in the subject matter of the litigation; the applicant's interest must be impaired by disposition of the action without the applicant's involvement; and the applicant's interest must not be represented adequately by one of the existing parties to the action. Fed. R. Civ. P. 24(a)(2).

"It is vital that district courts freely allow the intervention of [parties] who object to proposed settlements and want an option to appeal an adverse decision." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 715 (7th Cir. 2000); *accord iWork Software, LLC v. Corp. Exp., Inc.*, No. 02 C 6355, 2003 WL 22494851, at *1 (N.D. Ill. Nov. 4, 2003) ("Rule 24 should be liberally construed in favor of potential intervenors"). Moreover, the Court "must accept as true the non-conclusory allegations of the motion." *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995). "A motion to intervene as a matter of right, moreover, should not be dismissed unless it appears to a certainty that the intervenor is not entitled to relief under any set of facts . . . ." *Lake Investors Dev. Group, Inc. v. Egidi Dev. Group*, 715 F.2d 1256, 1258 (7th Cir. 1983); *Exec. Risk Specialty Ins. Co. v. Proliance* Energy, 2005 U.S. Dist. LEXIS 29033, *5-6 (S.D. Ind. Nov. 1, 2005) (McKinney, J.). The State satisfies the elements of this test.

### A. The motion to intervene is timely

Generally, "[t]imeliness is not limited to chronological considerations but is to be determined from all the circumstances." *City of Bloomington v. Westinghouse Elec. Corp.*, 824 F.2d 531 (7th Cir. 1987). The "critical fact" in assessing the timeliness of a motion to intervene for the limited purpose of filing an appeal turns on when the applicant seeks to enter the litigation after the entry of final judgment. *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977). As

the Supreme Court has explained in the context of a class action, so long as the motion to intervene is filed within the time within which the named plaintiffs could have taken an appeal, the motion is timely. *Id.* at 395-96.

Here, the Court issued its judgment November 7, 2017, and the time to file an appeal runs on December 7, 2017. The Office of the Attorney General of Indiana (OAG) was not involved in, or notified of, the pendency of this matter until after the entry of judgment and is moving to intervene as soon as practicable after becoming aware of the consent decree and its implications to Indiana law. As the Seventh Circuit has held, a motion to intervene "even though not filed until the district judge had entered his final judgment, was timely—assuming that all the [putative intervenor] wants is to take an appeal." *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009); *see Alaska v. Suburban Propane Gas Corp.*, 123 F.3d 1317, 1320 (9th Cir. 1997) ("[S]o long as the motion to intervene is filed within the time within which the named plaintiffs could have taken an appeal, the motion is timely as a matter of law."). Indeed, the Seventh Circuit has stated that a party is "entitled to intervene even after judgment, in order to pursue an appeal, if they do not learn until after judgment of the circumstance [] that calls for intervention." *In re Navigant*, 275 F.3d at 618.

The circumstance that calls for intervention here is the Court's analysis of Indiana statutes, which was not present in the stipulated judgment or otherwise arise in any meaningful way during the case. *Peruta v. City of San Diego*, 824 F.3d 919 at 940; *City of Bangor* v. *Citizens Communications Co.*, 532 F.3d 70 at 84. The State's motion to intervene will not surprise any party, given the application and analysis of Indiana law in the order. The State is not moving to intervene in order to present evidence or take testimony, but only for the limited purpose of appeal.

**B. The State has a direct and substantial interest**

An intervenor's interest must be direct, significant, and legally protectable. *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Engineers*, 101 F.3d 503, 506 (7th Cir. 1996). The State has a direct, significant, and substantial interest in the subject matter of the litigation. As noted above, Indiana law establishes that state and local law enforcement have a duty to cooperate with federal immigration enforcement, which includes cooperation with immigration detainers. *See, e.g., Flying J.*, 578 F.3d at 572 (explaining party has substantial interest in litigation where that party is "someone whom the law on which his claim is founded was intended to protect"). The Court's order deprives the State of the guidance provided to Indiana law enforcement by Ind. Code ch. 5-2-18.2, and deprives the United States of desired and expected cooperation.

By interpreting an Indiana statute, which establishes a duty of cooperation with federal immigration enforcement efforts, as not permitting such cooperation and declaring unconstitutional a key enforcement mechanism the United States uses in the immigration context—facilitation of immigration detainers by state and local law enforcement—the consent decree severely impacts the State's ability to balance cooperation with federal law enforcement while shielding Indiana law enforcement from civil lawsuits which could arise from the decision in the consent decree. In addition, the consent decree impacts Indiana law enforcement's ability to work with federal officials to safely and efficiently apprehend removable illegal aliens.

**C. The state's interests are impaired by the disposition of this case**

The State has a substantial interest that will be impaired by disposition of the consent decree without its involvement. The consent decree affects its interests in clear application of Ind. Code ch. 5-2-18.2, and its ability to properly guide Indiana law enforcement when faced with immigration law issues as they pertain to cooperation and communication with federal law

enforcement. "[U]nless intervention is permitted, there is no way in which the district court's decision in this case could be appealed," *Flying J*, 578 F.3d at 573, so there would be no way for the State to pursue its substantial and weighty interests by seeking vacatur of the consent decree. *See, e.g.*, *Pellegrino v. Nesbit*, 203 F.2d 463, 465-66 (9th Cir. 1953) (stating that "intervention should be allowed even after a final judgment where it is necessary to preserve some right which cannot otherwise be protected" and that "such a right which cannot otherwise be protected than by intervention is the right to appeal from the judgments entered on the merits by the District Court"). The impairment of the State's interests can only be cured by "an opportunity to litigate an appeal." *Flying J*, 578 F.3d at 573.

**D. The State's interests are not adequately represented by an existing party**

The interests of the State of Indiana are not represented adequately by the existing parties to the action; the parties mutually sought the consent decree, and neither party will appeal it. *See Flying J*, 578 F.3d at 573. Accordingly, Indiana satisfies all of the Rule 24(a) criteria and should be allowed to intervene for the limited purpose of appeal.

**E. The State's motion to intervene meets the four-factor test as outlined by the Seventh Circuit**

The Seventh Circuit has outlined a four-factor test when considering motions to intervene, generally. Although the four-factor analysis is not necessitated in the present case, where the State seeks simply to appeal, even applying this more rigorous standard, the State's motion satisfies each of the four prongs of the analysis: (1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; and (4) any other unusual circumstances. *City of Bloomington*, 824 F.2d 531, 534 (7th Cir. 1987). However, it is not clear that this standard applies to motions to intervene for the sole purpose of *appeal* of an underlying settlement or

judgment. *See, e.g.*, *Flying J.*, 578 F.3d at 572; *accord Crawford v. Equifax Payment Servs*., 201 F.3d 877, 881 (7th Cir. 2000).

First, the State, by filing its motion to intervene as soon as practicable after learning of the outcome of the consent decree and its implication to Indiana law "has acted expeditiously since learning how its interests were imperiled by the Court's decision." *City of Bangor v. Citizens Communs. Co.*, 532 F.3d 70, 84 (1st Cir. 2008). "The appropriate starting point for the timeliness inquiry [regarding a motion to intervene] is not the date that the would-be intervener became aware of the existence of the litigation, but the date the intervener became aware of the implications of the litigation." *Roeder v. Islamic Republic of Iran*, 195 F. Supp. 2d 140 (D.D.C. 2002)), *aff'd*, 333 F.3d 228 (D.C. Cir. 2003).

Regarding the second factor, the prejudice caused to the original parties by the delay, there is no prejudice caused to the original parties by the delay in moving to intervene. The State's filing does not alter the parties' filings or submissions in any way. *Bryant v. Yellen*, 447 U.S. 352, 368 (1980) (holding that there "is no prejudice to [the parties], because [they] could not have assumed that, if [they] won in the district court, there would be no appeal" where intervenors "had a sufficient stake in the outcome of the controversy to afford them standing to appeal"). Granting intervention is also an efficient use of resources, as it allows the State to challenge the consent decree within this existing litigation, rather than by bringing a new lawsuit. "[T]o make the [the State] start over, when all it really seeks by way of intervention [] is an opportunity to litigate an appeal, would impose substantial inconvenience on [it] with no offsetting gain that we can see. That inconvenience is an 'impediment' that can be removed, without prejudice to its opponent, by allowing intervention." *Flying J*, 578 F.3d at 573. It is also important to have the issue of the correct interpretation of the scope of Indiana Code sections 5-2-18.2-3 and 5-2-15.2-4, as they

apply to cooperation and communication of Indiana law enforcement with federal law enforcement. It would be prejudicial to the parties should it later be determined that the consent decree violates federal or Indiana law.

In considering the third factor, the prejudice to the intervenor if the motion is denied, the prejudice to the State is substantial. The Court held that the Indiana law designed to require cooperation with federal immigration enforcement, Indiana Code section 5-2-18.2-4, did not in fact so require. This interpretation of Indiana law runs contrary to the expectations of law enforcement who are prohibited by that provision from "limiting or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law." This holding severely limits the statutory preference to cooperate with federal officials to achieve immigration enforcement goals. Thus, the State has a direct and significant interest in having this issue considered and decided by the Seventh Circuit—which can only be accomplished through intervention—and will be substantially prejudiced if not permitted to do so.

In analyzing the fourth factor, any other unusual circumstances, the State points to the strong interest in the consistent interpretation of its statutes regarding immigration. *Williams v. Taylor*, 529 U.S. 362, 389-90 (2000) (Courts have a "well-recognized interest in ensuring that federal courts interpret federal law in a uniform way"). The consent decree contributes to inconsistency in the interpretation of federal and Indiana law and opens up Indiana law enforcement to confusion and possible numerous civil lawsuits.

## III. Permissive Intervention Under Fed. R. Civ. P. 24(b)(1) and (2) Is Also Warranted

### A. The State's position shares common questions with the main action

The Court may allow intervention of a party who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Permissive

intervention is allowed under Rule 24(b), when the application is timely, when there is no undue delay or prejudice to the parties, and where an applicant's claim or defense and the main action have a question of law or fact in common. *City of Chicago*, 660 F.3d at 986; *Heartwood*, 316 F.3d at 701; *Buquer v. City of Indianapolis*, 2013 U.S. Dist. LEXIS 45087, *23-24 (S.D. Ind. 2013). The intervenor must also demonstrate "independent jurisdiction." *Security Ins. Co. v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995).

As explained above, the Court has jurisdiction because the United States has Article III standing. *See supra* Part I. Further, the timeliness and prejudice factors are satisfied because the State moved to intervene as soon as practicable after learning of the consent decree, and because the parties suffer no cognizable prejudice by virtue of an impacted party seeking to intervene solely for the purpose of appealing. *See supra* Part II.A. Moreover, the undue-delay factor is satisfied because intervention "might head off a second suit." *City of Chicago*, 660 F.3d at 986; *Flying J.*, 578 F.3d 569 ("permissive intervention" permitted where "all [a party] really seeks by way of intervention . . . is an opportunity to litigate an appeal," and no undue delay even if filed after judgment). Indeed, Plaintiff "can hardly be said to be prejudiced by having to prove a lawsuit it chose to initiate." *Security Ins.*, 69 F.3d at 1381. And Defendants are not prejudiced, because they remain subject to the consent decree, and unless and until the Seventh Circuit, should it choose to, issues a decision, will not be subject to inconsistent obligations. *See Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1236 (D.C. Cir 2004) (no undue delay or prejudice where "consent decree was already in place" pending appeal).

In addition, the State's position and the main action have a question of law or fact in common. Plaintiff alleged that cooperation with ICE requests for assistance in detaining removable aliens violated the Fourth Amendment. ECF 1 at 4–5. As a defense, Defendants asserted that such

cooperation is consistent "with their authority under state and federal law." Answer, Affirmative Defenses, ¶¶ 3, 18-19. The State would argue on appeal that a localities' cooperation with federal immigration officials as directed by Ind. Code ch. 5-2-18.2 is authorized by the INA and 8 C.F.R. § 287.7. Thus, by definition, the State "has a claim or defense that shares with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1), because it seeks to argue the very same defenses advanced by the County in its answer. *See, e.g., Flying J.*, 57 8 F.3d at 573 ("That requirement is satisfied because the [putative intervenor] wants to present the same defense that the defendants presented").

Indeed, permissive intervention is particularly appropriate here. As the Seventh Circuit has explained, "[p]erhaps the most obvious benefits of intervention in general are the efficiency and consistency that result from resolving related issues in a single proceeding." *Security Ins.*, 69 F.3d at 1381. Here, "denial of intervention [will] in all likelihood [create] additional litigation and the possibility of conflicting results." *Id.* The more efficient course is for one single adjudication of the issues raised by the Court's consent decree, which remains in place and governs the parties conduct during that appeal, in the Court of Appeals. *See, e.g.*, *Microsoft Corp.*, 373 F.3d at 1236. Moreover, the State does not seek to inject new claims or defenses into this suit. It simply seeks to vindicate its own rights that turn on the very same defenses already raised by Defendants in their Answer. Accordingly, permissive intervention is also warranted under Rule 24(b)(1).

**B. Intervention is warranted because the Court's decision affects a statute administered by the State**

Further, even if the State could not intervene of right under Rule 24(a), or permissively under Rule 24(b)(1), it has an independent basis to intervene under Rule 24(b)(2). Rule 24(b)(2) permits intervention by a "federal or state governmental officer or agency" where "a party's claim or defense" is "based on" a "statute or executive order administered by the officer or agency," or

"any regulation, order, requirement, or agreement issued or made under the statute or executive order." The Rule was added to "expand[] the concept of 'claim or defense' insofar as intervention by a governmental officer or agency is concerned." *Nuesse v. Camp*, 385 F.2d 694, 705 (D.C. Cir. 1967). The Rule is premised on the notion that "[w]hile a public official may not intrude in a purely private controversy, permissive intervention is available when sought because an aspect of the public interest with which he is officially concerned is involved in the litigation." *Nuesse*, 385 F.2d at 705. "[T]he whole thrust of the [Rule] is in the direction of allowing intervention liberally to governmental agencies and officers seeking to speak for the public interest." 7C Wright & Miller, Federal Practice & Procedure § 1912, at 471–72 (2007); *accord Blowers v. Lawyers Coop. Publishing Co.*, 527 F.2d 333, 334 (2d Cir. 1975) (stating that courts should take a "hospitable attitude" toward "allowing a government agency to intervene in cases involving a statute it is required to enforce").

The criteria for intervention under Rule 24(b)(2) are met here. As noted, one of the County's defenses is premised on the legality of 8 C.F.R. § 287.7, and that its actions were consistent with that regulation and the INA. ECF 12 at ¶¶ 3, 11, 18-19. The State would argue on appeal that the consent decree hinders Indiana law enforcement's ability to cooperate and communicate with federal immigration officials as authorized by the INA and its implementing regulations, including 8 C.F.R. § 287.7. Here, too, by definition, the County's "claim or defense" is based on the very statute the State implements.

Accordingly, intervention is permitted on this basis as well. *See, e.g.*, *Nuess*, 385 F.2d at 705 ("intervention to promote a relevant public interest is permissible when the public official charged with primary responsibility for vindicating that interest seeks to defend it"). Here, the Indiana Attorney General fulfills this responsibility and should be permitted to intervene.

## IV. Possible Grounds for Appeal

The State's grounds for appeal are concrete and substantial, and may yet grow as the State has sufficient time to consider its interests. First, it has had no prior opportunity to contest this Court's holding that the consent decree does not violate Indiana law. It will argue on appeal that the consent decree conflicts with the broad mandate to cooperate with federal immigration enforcement in Indiana Code section 5-2-18.2-3 and the duty to refrain from limiting or restricting such enforcement in Indiana Code section 5-2-18.2-4. *See Arizona v. United States*, 567 U.S. 387, 410 (2012) (listing "provid[ing] operational support in executing a warrant," "allow[ing] federal immigration officials to gain access to detainees held in state facilities" and "responding to requests for information about when an alien will be released from [states'] custody" as examples of allowable state and federal cooperation pursuant to the INA).

Although the Court attempted to save the consent decree by reading those statutes narrowly, the State should be the final interpreter of its own laws. It is worth noting that the Supreme Court viewed "cooperation" as not including "unilateral decision[s] of state officers," and this Court similarly disapproved of "unilateral discretion" in *Buquer v. City of Indianapolis*, No. 1:11-cv-00708-SEB-MJD, at *9 (S.D. Ind. Mar. 28, 2013). But that is not what is at issue here, as the duty to cooperate with federal immigration enforcement entails *responding* to federal officers' requests, not unilateral actions by state actors. In a similar light, that no detention order or warrant was ever issued in this matter further advocates against acceptance of a blanket consent decree that is already in conflict with Indiana law. ECF 49 at 5.

The Seventh Circuit has expressly stated that consent decrees "cannot agree to disregard valid state laws[.]" *Perkins v. City of Chicago Heights*, 47 F.3d 212, 216 (7th Cir. 1995) (internal

quotation marks and citation omitted). Moreover, any parties entering into a consent decree "cannot consent to do something together that they lack the power to do individually." *Id.* Both prohibitions are implicated here, as the consent decree is in conflict with the duty to cooperate with federal immigration enforcement in Indiana law, and neither the Plaintiff nor the Defendants could individually effect a binding interpretation of state law at odds with the State's interpretation. To be sure, this Court could theoretically approve the consent decree regardless, but it declined to address the necessary step of finding "such a remedy is *necessary* to rectify a *violation of federal law*[.]" *Id.*; ECF 49 at 31.

Appeal is of utmost importance here because, as this Court recognized, Defendants had no desire or motivation to cooperate with federal immigration officials. *See* ECF 49 at 34 (acknowledging "the [] obvious fact that Marion County would prefer to cease its cooperation with the government's immigration detainers"). The proper remedy at this juncture for the State's proper enforcement of its laws is the ability to appeal as an intervenor.

Second, appeal is also warranted because consent decrees are improper vehicles for parties to propose, and courts to approve, judicially enforced agreements that "bind state and local officials to the policy preferences of their predecessors and may thereby improperly deprive future officials of their designated legislative and executive powers." *Horne v. Flores*, 557 U.S. 433, 449 (2009); *see Perkins*, 47 F.3d at 216 (explaining that "[s]ome rules of law are designed to limit the authority of public officeholders, to make them return to other branches of government or to the voters for permission to engage in certain acts"). Since Plaintiff and Defendants reached consensus, a justiciable controversy no longer exists between them, and this Court should have dismissed the lawsuit rather than enter a substantive order that permanently modifies the parties' rights and obligations. This is especially true where the consent decree violates the underlying state law, and

the parties did not undertake to analyze that issue at all. Enforcement of state law should not be ossified by local officials' interests in resolving a single case.

**CONCLUSION**

The State should be permitted to intervene in this matter for purposes of appeal.

I certify that I am admitted to practice in this Court.

CURTIS T. HILL, JR.
Indiana Attorney General

Dated: December 4, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

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