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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

RESPONSE TO MOTION TO DISMISS

SNELL & WILMER

I. INTRODUCTION

The County Attorney fails to point to any authority granting his office the power to enter into a contract on behalf of the County or act as an immigration enforcement agent without Board approval. His inability to point to any affirmative delegating powers supporting his 287(g) agreement with the Department of Homeland Security ("DHS" and the "PCAO Agreement") is dispositive because county officials may only act within the scope of their specific, prescribed, authority.

In the absence of any affirmative authority supporting his actions, the County Attorney attempts to fall back on two indirect sources of power, but neither support his actions. First, the mere fact that the County has approved a yearly budget does not give the County Attorney *carte blanche* to spend his appropriated funds in whatever way he pleases. A budget is an estimate of future expenditures, not a personal slush fund. Second, the

County Attorney's explicit powers in A.R.S. § 11-532(A) cannot be stretched to include immigration enforcement activities.

The PCAO Agreement is separately invalid because it violates several state and federal statutes, including:

- A.R.S. § 11-201(A)(3), which grants the Board of Supervisors exclusive power to "[m]ake … contracts" on behalf of the County;
- A.R.S. § 11-251(1), (11), which grant the Board of Supervisors the exclusive right to spend, obligate, or encumber County funds;
- A.R.S. § 11-952, which requires all Intergovernmental Agreements ("IGA") to be "authorized" by the Board of Supervisors;
- A.R.S. §§ 11-441(a)(1)-(2), which grants the County Sherrif the exclusive power to preserve the peace and make arrests; and
- 8 U.S.C. § 1357(g), which requires any 287(g) agreement to be signed between DHS and a "State" or "political subdivision" — of which the County Attorney is neither.

To the extent that the County attorney does address these, dispositive, issues, his arguments are novel and ineffective: *e.g.*, he takes the remarkable position that the County Attorney, an elected official, is somehow a "political subdivision" — despite numerous cases, statutes, and common dictionary definitions finding to the contrary. The County Attorney also attempts to avoid these issues altogether by claiming that some sort of "preemption" bars the County from suing to enjoin his *ultra vires* actions: but because the County is not restricting immigration enforcement by ensuring that any 287(g) agreements entered into by its officers are properly approved by the Board, any such "presumption" would not apply.

For all these reasons, the MTD should be denied.

II. BACKGROUND FACTS

Section 287 of the Immigration and Nationality Act permits DHS to "enter into a written agreement with a State, or any political subdivision of a State" allowing "an officer or employee of the State or subdivision" to "perform a function of an immigration officer

in relation to the investigation, apprehension, or detention of aliens in the United States…" 8 U.S.C. § 1357(g). When performing functions under a 287(g) agreement, "an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of [DHS]." 8 U.S.C. § 1357(g)(3). DHS typically delegates its authority to enter into 287(g) agreements to Immigration and Customs Enforcement ("ICE").

Since 2009, Pinal County Board of Supervisors has approved "Jail Enforcement Model" 287(g) agreements between the Pinal County Sheriff's Office and DHS. Ver. Compl. ¶ 28. Under these agreements, the Sheriff's office is empowered to check the immigration or citizenship status of aliens that were already arrested for some other crime. *Id.* at ¶¶ 26, 30. Because these agreements were consistent with the Sheriff's existing roles and responsibilities, they did not require large-scale re-orientation of County or Sheriff resources. *Id.* at ¶ 30. Moreover, these agreements were approved by the Board in open session, where the public is made aware of the agreements and is able to voice any concerns.

The County has ***never*** authorized, however, the County Attorney or any other person from the Pinal County Attorney's Office ("PCAO") to enter into a 287(g) agreement of any sort. *Id.* ¶ 31. Yet, on or around August 28, 2025, the County Attorney without authorization entered into a "Task Force Model" 287(g) agreement with DHS (the "PCAO Agreement"). *Id.* at ¶ 32. Unlike the prior, approved, 287(g) agreements between the Sheriff's office and DHS, the PCAO Agreement purports to grant PCAO investigators wide-ranging powers to act as *de facto* ICE officers, including by:

> (1) "interrogat[ing] any alien or person believed to be an alien as to his right to be or remain in the United States … and to process for immigration violations those individuals who have been arrested for State or Federal criminal offenses;
>
> (2) "arrest[ing] without warrant any alien entering or attempting to unlawfully enter the United States in the officer's presence or view, or any alien in the United States …";
>
> (3) "arrest[ing] without warrant for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens….";

> (4) "serv[ing] and execut[ing] warrants for arrest for immigration violations…";
>
> (5) "tak[ing] and maintain[ing] custody of aliens arrested by ICE, or another State or local law enforcement agency on behalf of ICE;" and
>
> (6) "transport[ing] … aliens" arrested pursuant to immigration laws "to ICE-approved detention facilities."

Id. at ¶ 35.[1] The PCAO Agreement also provides that the *County* "will be responsible and bear the costs" of any personal injury or property damage caused by PCAO investigators as part of their "immigration" duties. *Id.* at ¶¶ 36-37. And the PCAO Agreement requires the *County* to bear the costs of "salaries and benefits, including any overtime, of all its personnel being trained or performing duties under [the PCAO Agreement]." *Id.* at ¶ 36.

Nearly two months after he unilaterally executed the PCAO Agreement, the County Attorney sent the Board an email on December 11, 2025, disclosing for the first time that the PCAO entered the PCAO Agreement. *Id.* at ¶ 39. This December 11 correspondence stated that "if the Board … assume[s] that this office lacks the authority to execute [the PCAO Agreement], then provide a written explanation detailing the basis for that assumption." *Id.* at ¶ 40. Responding to that invitation, the Board sent the County Attorney a letter from outside counsel on January 21, 2026, explaining that he had "no legal authority" to enter the PCAO Agreement without Board approval. *Id.* at ¶¶ 42-44.

The County Attorney responded on January 27, 2026. *Id.* at ¶ 45. In that correspondence, the County Attorney stated he has "no intention of terminating the Section 287(g) Agreement with DHS." *Id.* Other than stating he "disagree[d] with [counsel's] legal analysis," the County Attorney did not provide *any* explanation or analysis as to how he had the authority to sign the PCAO Agreement without Board approval. *Id.* at Ex. E.

III. ARGUMENT

In "determining if a complaint states a claim on which relief can be granted, courts

[1] These authorized functions far exceed the reason the County Attorney has given as to why the PCAO Agreement is necessary: to share information with ICE. *Cf.* Defs. Resp. MPI, 3/27/2026, at 15

must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts…" *Coleman v. City of Mesa*, 230 Ariz. 352, 356 ¶ 9 (2012). Under this low threshold, the Verified Complaint easily states a claim for relief. Simply put, the County Attorney had no authority to enter into the PCAO Agreement; the PCAO Agreement violates several state and federal statutes; and "preemption" does not apply.

A. The County Attorney Fails to Identify Any Authority Authorizing Him to Enter into the PCAO Agreement Without Board Approval.

The fundamental question in this case is whether the County Attorney has any explicit or implicit legal right to enter into the PCAO Agreement. *See e.g.*, Ariz. Const. art. XII § 4 ("The duties, powers, and qualifications of [County] officers shall be as prescribed by law."); *Assoc. Dairy Prods. Co v. Page*, 68 Ariz. 393, 395-96 (1949); *Peterson v. S. Ariz. Bank & Trust Co.*, 54 Ariz. 506, 514, 518 (1939); *Boruch v. State ex rel. Halikowski*, 242 Ariz. 611, 618 ¶ 22 (App. 2017). Absent any such legal authority, the majority of the arguments raised in the MTD are simply irrelevant: if the County Attorney has no legal authority to enter into the PCAO Agreement to begin with, the analysis simply ends. And it would be irrelevant whether the PCAO Agreement separately violates the state and federal statutes (which it does) or whether the Board might somehow be "restricting" immigration enforcement efforts by initiating this lawsuit (which it is not).

This case may thus be decided on this one, simple, fact: the County Attorney does not cite to any statute explicitly granting him right to: (1) sign a contract on behalf of the County without Board authorization or (2) exercise enforcement functions, like arresting or interrogating individuals suspected of violating crimes. Rather, he relies on two indirect sources of authority: the yearly County budget and "implied" powers in A.R.S. § 11-532(A). But he does not cite to any authority for the proposition that an indirect source of power can create, out of thin air, express powers. To the contrary, "[i]mplied powers *do not exist independently of the grant of express powers* and the only function of an implied power is to aid in carrying into effect a power expressly granted." *Vangilder v. Ariz. Dep't of Rev.*, 252 Ariz. 481, 488 ¶ 24 (2022) (emphasis added, quotation omitted).

Regardless, neither indirect source of power authorizes the PCAO Agreement.

1. The Budget Does Not "Authorize" County Officers to Spend Funds However They Please.

The County Attorney first argues (at 7-9) that the Board has indirectly "approved" the PCAO Agreement merely by providing the County Attorney with a yearly budget. At its core, the County Attorney's argument is that, as long as he does not exceed his annual budget, he is free to spend appropriated funds in any way he sees fit regardless of whether he has the authority to undertake these projects. Not so.

But yearly budget is not a "personal slush fund." Cty., 4/3/2026, RISO MPI at 4-5. It is rather "an intentional and detailed document" that approves specific, anticipated, expenses for the upcoming year. *Id.*; *see also* A.R.S. § 42-17103(A); *Uniform Accounting Manual for Arizona Counties*, Ariz. Auditor General, at IV-2 ¶¶ 2-4, 8; VI-C-7 through 10, VI-F-6 (June 2008). The County Attorney has no authority to use funds that have been designated for different expenses to support personal side-projects, and allowing him to spend funds in such a manner would make the fraught and delicate process to set a yearly budget impossible. *See* Cty. RISO MPI, 4/3/2026, at 4-5.

Even *if* the County Attorney were permitted to use County funds in any manner as long as his expenses do not exceed the budget (and he does not), his position would *still* fail. That's because the PCAO Agreement is not a one-off expenditure, but instead legally obligates the County to, among other things, bear the costs for any personal injury or property damage caused by PCAO investigators as part of their "immigration" duties and pay the "salaries and benefits, including any overtime, of all its personnel being trained or performing duties under [the PCAO Agreement]." Ver. Compl. at ¶¶ 36-37; *see also Sanchez v. Maricopa County*, 572 P.3d 101, 111 ¶ 36 (Ariz. 2025) ("[E]xpenses incurred in litigation concerning the duties of a county officer are considered a county charge."). These obligated *future* expenses may easily exceed the County Attorney's budgeted expenditures, especially in light of the fact that political subdivisions are often sued for civil rights violations committed pursuant to a 287(g) Agreement. *Id.* at ¶ 27. These

potential future funds might also cause the Board to violate A.R.S. § 42-17106(A)(1)-(2), which prevents a County from spending funds or incurring debts, liabilities, or obligations in excess of, or for a "purpose not included in," the yearly budget.

The only authority that the County Attorney cites (at 7-8) supporting his expansive view of the budgeting process is *Sanchez*. But, that case supports the County because it confirms that the Board retains "fiscal supervision" over county officials. *Sanchez*, 572 P.3d at 107 ¶ 13 (citing A.R.S. § 11-251(1)); *see also* MTD at 7-8 (conceding that A.R.S. § 11-251(1) "grants the Board fiscal supervisory authority over Miller."). The County Attorney (at 7-8) attempts to evade this issue by arguing that the Board has no "plenary" ability to "supervise" the County Attorney's in *other* ways — by, for instance, hiring, firing, disciplining, or controlling PCAO employees. But, the County Attorney does not explain how the Board exceeds its general right to exert "*fiscal* supervision" over the County Attorney by ensuring that the County Attorney only makes approved expenditures — this is the very definition of fiscal supervision. *See* A.R.S. 42-17106(A)(1)-(2).

The Board's yearly budget does not somehow "authorize" the PCAO Agreement.

2. The County Attorneys' "Implicit" Powers Do Not Include Contracting or Immigration Enforcement.

Second, the County Attorney (at 14) argues that he has "implied" powers to arrest individuals who have committed crimes. But even if he did (which he does not), this would not solve the broader issue: that the County Attorney lacks any legal authority to contractually bind the County without Board approval. *See Vangilder*, 252 Ariz. at 488 ¶ 24; *Boruch*, 242 Ariz. at 618 ¶ 22 (officials must act within the scope of their authority).

Regardless, the County Attorney stretches the concept of "implied" powers much too far. Implied powers exist to "aid in carrying out a power expressly granted." *Vangilder*, 252 Ariz. at 488 ¶ 24. Consistent with his role as a prosecutor, the County Attorney's "expressly granted" powers in A.R.S. § 11-532(A) all involve *legal proceedings*. A.R.S. § 11-532(A)(2)-(4). "To the extent that [these] power[s] somehow imply a right to 'arrest,' that right would inherently be tied to the prosecutorial process — *i.e.*, if a witness does not

attend trial." RISO MPI at 7. But the PCAO Agreement is not tied to the prosecutorial process. It purports to authorize PCAO investigators to act as roving federal immigration enforcement agents empowered to make warrantless arrests, execute warrants, interrogate persons, and take custody of arrested individuals. Ver. Compl. ¶ 35. This well exceeds whatever "implied" prosecutorial arrest powers the County Attorney might have. *Button v. Nevin*, 44 Ariz. 247, 257 (1934) ("Public officials may not violate the plain terms of a statute because in their opinion better results will be attained by doing so.").

The County Attorney also ignores the obvious conflict of interest that would arise if the PCAO acted as both an enforcer and prosecutor of a case. Prosecutors must 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); *Rhodes v. Smithers*, 939 F. Supp. 1256, 1273-74 (S.D. W. Va. 1995) (explaining that prosecutors must have the "ability to exercise independent judgment"). The County Attorney cannot exercise "independent" charging decisions if *his own office* initiated the arrest. *State v. Superior Court,* 186 Ariz. 294, 297 (App. 1996) (prosecutors lose absolute immunity if they act as "investigative officer[s].").

Because the County Attorney has no explicit or implicit authority to enter into the PCAO Agreement without Board consent, the Court need not go further: the County Attorney's actions are ultra vires and invalid on this ground, alone.

B. <u>The PCAO Agreement Violates State and Federal Law</u>

The Agreement is also separately invalid under both State and Federal law.

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

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." A.R.S. § 11-201(A)(3). The County Attorney does not dispute that the Board has contracting power. Rather, he argues (at 9-12) that the word "and" in A.R.S. § 11-201(A) should be read "disjunctively" such that the County's powers may be exercised under *either* a board's authority *or* independently by county officers acting under "authority of law." This

argument fails at the outset because 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). The County Attorney (at 10) cites to *Cave Creek Unified School District v. Ducey*, 231 Ariz. 342 (App. 2013) for the proposition that "and" can sometimes mean "or" — but that case is distinguishable because unlike here: (1) that case involved interpreting "or" as "and," not the other way around (which is relevant because "or" is often "used as a careless substitute for the word 'and'"); (2) the statutory language was ambiguous; and (3) the parties agreed that the "purpose, history, and past legislative treatment" of the statute at issue supported interpreting "or" as "and." 231 Ariz. at 352 ¶¶ 20, 29.

The County Attorney's argument also ignores the full text of A.R.S. § 11-201(A): "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); *see also Golder v. Dep't of Rev., State Bd. of Tax Appeals*, 123 Ariz. 260, 265 (1979) ("[W]ords of a statute must be construed in conjunction with the full text of the statute."). "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." RISO MPI at 3. The County's alternative reading — which effectively divorces the term "authority of law" from the term "its" — "strains credulity and is simply at odds with how possessive" words "in the English language function." *Wendover Prods. v. Paypal Inc.*, 2025 WL 3124338, Case No. 5:24-cv-09470-BLF, at *3 (N.D. Cal. Nov. 17, 2025). "No reasonable English speaker would interpret the phrase 'you use your pen and papers' as limiting 'your' to "pen,' such that the pen—but not the papers—belong to the subject." *Id.* But that is precisely what the County Attorney's interpretation does.

The County's reading is supported by the structure of Title 11, which contains a Chapter dedicated to "Board of Supervisors (Chapter 2) and a *separate* Chapter dedicated to "County Officers" (Chapter 3). A.R.S. § 11-201 is located in Chapter 2, suggesting that the powers in Section 11-201 belong to the Board, not to County Officers. *See State v.*

Eagle, 196 Ariz. 188, 190 ¶ 7 (2000) ("[T]he title may be used to aid in the interpretation of the statute."). In contrast, the County Attorney's express powers in A.R.S. § 11-532 are contained in Chapter 3, Article 6 — titled "County Attorney."

The County Attorney is also incorrect (at 11) that a "disjunctive" reading of A.R.S. § 11-201(A) would comport with "the structure of county governance." The County Attorney's interpretation would actually perversely lead to the *collapse* of any government structure by allowing every single County Officer to independently assert interlapping powers and rights. For instance, the Board, Treasurer, Sheriff, and County Attorney could all independently, "levy and collect taxes," set county budgets, or issue "orders for the disposition or use" of County property. *Cf.* A.R.S. §§ 11-201(A)(4)-(6). Because County Officers, unlike the Board, are not subject to the Open Meetings Law, the County Attorney's interpretation would also allow officers to make important decisions that impact all County citizens — like entering a 287(g) agreement—in secret and *without* public input. *Cf.* A.R.S. § 38-431, *et seq.* This cannot have been what the Legislature intended. *See In re Estate of Winn*, 214 Ariz. 149, 151 ¶ 8 (2007) ("Our primary task in interpreting statutes is to give effect to the intent of the legislature."). The better view is that the Legislature limited the Board and County Officers' powers to their specific statutory enumerations in A.R.S. §§ 11-201, 251 (the Board); A.R.S. § 11-532 (County Attorney); A.R.S. § 11-441 (County Sheriff); etc.

2. Only the Board May Commit County Funds or Resources

The PCAO Agreement separately violates A.R.S. § 11-251(1), (11) by infringing on the Board's sole authority to spend, obligate, or encumber County funds. *See* A.R.S. §§ 11-251(1) (Board may exercise fiscal supervision over all county officers), 11-251(11) (Board has the power to "[e]xamine, settle and allow all accounts legally chargeable against the county"). The PCAO Agreement spends, obligates, or encumbers County funds without authorization in several ways, including by (1) requiring County employees to devote time that would otherwise be spent on County matters to immigration enforcement; (2) by requiring the County to provide supplies for immigration-related enforcement activities;

and (3) by making the County potentially liable for "expenses incurred by reason of death, injury, or [other] incidents" occurring under the Agreement. Ver. Compl. ¶¶ 27, 36-37.

The only response the County Attorney makes to this issue (at 7-9) is that the Board has "authorized" the PCAO Agreement by approving the County Attorney's yearly budget and that there is no allegation in the Complaint that the County Attorney would exceed that budget. These argument fail for reasons explained *supra* Section III.A1. The County's yearly budget is not a blank check for the County Attorney to use however he pleases.

3. The PCAO Agreement is an IGA Subject to Board Approval

The PCAO Agreement is invalid for an, independent, third reason: it is an "Intergovernmental Agreement" ("IGA") that has not been "authorized" by the Board pursuant to A.R.S. § 11-952. *See* A.R.S. §§ 11-952(A) ("*If authorized by their legislative or other governing bodies*, two or more public agencies" may enter into an IGA (emphasis added)); 11-952(F) (IGA is only effective after "[a]ppropriate action by ordinance or resolution" by "the governing bodies of the participating agencies..."). The County Attorney makes three arguments on this point, all of which fail.

First, the County Attorney argues (at 15) that the PCAO Agreement is not an IGA because it "governs PCAO's and ICE's separate but complementary powers regarding immigration enforcement, not powers that are 'jointly held by the contracting parties.'" The only authority that the County Attorney cites supporting this proposition is a 1985 Attorney General Opinion, Ariz. Op. Atty. Gen. No. I85-050 (1985) (hereinafter, "Hawke"). But Hawke supports the *County's* position, not the County Attorneys'.

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. Importantly, 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 quite different. Under the PCAO 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 quintessential IGA 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)).

Second, the County Attorney argues (at 15-16) that, even if the PCAO Agreement is an IGA, it does not require Board approval because the PCAO is a "public agency" that can sign IGAs under A.R.S. § 11-952(A). But the Board must still "authorize[]" IGAs executed by "public agencies" — so even if the PCAO were a public agency, this point would be irrelevant. *See* A.R.S. § 11-952(A)).

Even if the point were relevant, moreover, the PCAO is not a "public agency" under the IGA statute. The County Attorney (at 15) argues that the PCAO qualifies as a "public agency" because it is a "[p]olitical subdivision entit[y] as defined in section 38-711." *See* A.R.S. § 11-951(11). But under A.R.S. § 38-711(29), a "political subdivision entity" must meet four criteria: (1) it must be "located in this state;" (2) it must be "created in whole or in part by political subdivisions, including instrumentalities of political subdivisions"; (3) the "majority of the membership of the entity is composed of political subdivisions;" and (4) the "primary purpose" of the entity must be a "government-related service." A.R.S. § 38-711(29)(a)-(d). The PCAO does not meet these criteria because it was not created by, and the the majority of its membership is not "composed of," political subdivisions.

In a footnote (at 16 n. 7) the County Attorney argues that the four factors in A.R.S. § 38-711(29) are "independent[]." Not so. Reading each Section 38-711(29) factor "independently" would render Sections 38-711(29)(b)–(d) superfluous because 38-711(29)(a) would make every single entity "in this state" a "political subdivision entity" by default. *See State v. Serrato*, 259 Ariz. 493, 791 ¶ 19 (2025) (courts avoid interpretations that render language superfluous). Such a broad reading of A.R.S. § 38-711(29) would also

mean that every government entity "in this state" is a political subdivision entity — plainly an absurd result. *See State v. Estrada*, 201 Ariz. 247, 251 ¶ 17 (2001) (courts will not interpret statutory language in a way that leads to absurd results).

Third, the County Attorney, again, argues that the Board authorized the PCAO Agreement pursuant to A.R.S. § 11-952 by approving the County Attorney's yearly budget. This argument fails for reasons discussed, *supra*, Section III.A.1. And the County Attorney cites no authority for the proposition that the Board could impliedly "authorize" an IGA simply by approving a budget. *Cf Authorize*, Black's Law Dictionary (12th ed. 2024) (defining "authorize" to mean "to formally approve").

4. The PCAO Agreement Infringes on the Sheriff's Authority

By allowing PCAO investigators to act as *de facto* ICE agents with the authority to arrest, interrogate, and take custody of persons suspected of violating immigration laws, the PCAO Agreement 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). The County Attorney (at 13-15) argues that he has "implied" powers to arrest, but that argument fails for reasons discussed *supra* Section II.A.2. The County Attorney is a prosecutor, not a law enforcement agent.

5. The PCAO Agreement is Invalid under 8 U.S.C. § 1357

The PCAO Agreement is invalid as a matter of law because 8 U.S.C. § 1357(g) — the federal statute authorizing 287(g) agreements — only permits DHS to enter into 287(g) agreements with a "State" or "any political subdivision of a state." The County Attorney (at 17) makes the novel argument that the "PCAO is a political subdivision" under both state and federal law. But elected officials simply do not fall under any recognized definition of "political subdivisions."

Start with the dictionary definition. A "political subdivision" is a "*division* of a state that exists primarily to discharge some function of local government." *Political Subdivision*, Black's Law Dictionary (12th ed. 2024) (emphasis added); *Subdivision*, Black's Law Dictionary (12th ed. 2024) ("the *division* of a thing into a smaller part."

(emphasis added)). Local governmental *entities* — like counties, cities, and local fire or school districts — easily fall under this definition because they are divisions of the state that "discharge[e] some function of local government" in a "prescribed area." *McClanahan v. Cochise Coll.*, 25 Ariz. App. 13, 16 (1975) (discussing the "attributes" of a political subdivision).[2] Elected officials, in contrast, are not "divisions" of the state. They are instead individuals that *administer* those divisions. *See McClanahan*, 25 Ariz. App. at 16 (explaining that a "political subdivision" possesses "authority" over subordinate "officers"); *Voices for Int'l Business and Educ., Inc. v. NLRB*, 905 F.3d 770, 773-774 (5th Cir. 2018) (explaining that the "common meaning of 'political subdivision'" includes an entity that is "*controlled* by public officials" (emphasis added).

Next look at the statutory language. Statutes that provide definitions of "political subdivisions" routinely define them to include only political entities, like county, city, or town governments. *See* 42 U.S.C. § 247b-21(e) (defining the term "political subdivision" to mean the "local political jurisdiction immediately below the level of State government, including counties, parishes, and boroughs"). Many other statutes explicitly distinguish between "political subdivision[s]" and elected officers. *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…"); 11-251 (using the term "political subdivision" separately from "county treasurer," "county attorney" and "sheriff"); 38-847(A)(1) (distinguishing between political subdivisions and elected officials); 2 U.S.C. § 1220(a) (similar); 29 U.S.C. § 630(f) (the term "employee" does "not include any person elected to public office in any State ***or*** political subdivision of any State" (emphasis added).

Moreover, Courts have explained that "in order to be considered a political subdivision" an entity must be "authorized to exercise some sovereign powers." *Texas Learning Tech. Grp. v. C.I.R.*, 958 F.2d 122, 124 (5th Cir. 1992). "The power to tax, the power of eminent domain, and the police power are the generally acknowledged sovereign

[2] It is well established that counties and municipalities are political subdivisions. *E.g.*, *Gosvenor Holdings L.C. v. Figueroa*, 222 Ariz. 588, 595 ¶ 15 (App. 2009) (counties); *City of Tucson v. Pima Cty.*, 199 Ariz. 509, 515 ¶ 19 (App. 2001) (municipalities).

powers."[3] *Id.* This is similar to Article 9, Section 24, of the Arizona Constitution which grants taxing authorities to "any county, city, town, municipality or *other political subdivision of the state*." (Emphasis added). The County Attorney does not have *any* of the three sovereign powers. *See* A.R.S. § 11-532(A).

In contrast, the County Attorney does not cite to a single statute or case referring to an elected official or its office as a "political subdivision." He (at 17) cross-references his argument that the PCAO is a "political subdivision entity" under A.R.S. § 37-711(29). But the County Attorney is not a "political subdivision entity." *See supra* Section III.B.3. And this citation undercuts the point that the County Attorney is trying to make: like many of the statutes cited above, A.R.S. § 37-711(29) differentiates between "political subdivisions," on the one hand, and "political subdivision entities," on the other. *See* A.R.S. § 37-711(29) (b), (c) (explaining that "political subdivision entities" are "created ... by political subdivisions" and that a majority of their members are "composed of political subdivisions"). This means that the County Attorney or PCAO cannot be *both* a "political subdivision" (for purposes of 8 U.S.C. § 1357) *and* a "political subdivision entity" (for purposes of the IGA statute). *Herman v. City of Tucson*, 197 Ariz. 430, 434 ¶ 14 (App. 1999) (courts must give independent meaning to words and phrases in statute).

The County Attorney also cites (at 17) to *Museum Associates v. NLRB*, 688 F.2d 1278 (9th Cir. 1982) and *Ysursa v. Pocatello Education Association* 555 U.S. 353 (2009), but neither supports his position. For one, both cases evaluated the term "political subdivision" in the context of specific federal or state statutes not applicable here. *Museum Assocs.*, 688 F.2d at 1280 (analyzing "political subdivision" exception in the National Labor Relations Act, 29 U.S.C. § 152(2)); *Ysursa*, 555 U.S. at 356 (evaluating the term "political subdivision" in Idaho's Right to Work Act, Idaho Code § 44-2001 *et seq.*). More importantly, the definitions of "political subdivision" in both cases only confirm that a "political subdivision" is a local governmental *entity*, not an elected official. *Ysursa*, 555

[3] In this context, the term "police power" is the ability to enact "regulations" designed to promote public health, morals, safety, convenience, or prosperity. *Philadelphia Nat. Bank v. U.S.*, 666 F.2d 834, 840 (3d Cir. 1981).

U.S. at 363 ("A political subdivision … is a subordinate *unit* of government created by the State to carry out delegated governmental functions" (emphasis added)); *Museum Assocs.*, 688 F.2d at 1280 (political subdivision includes an "entity administered by individuals who are responsible to public officials or to the general public").

Seemingly realizing this issue, the County Attorney (at 16-17) suggests that the PCAO — as distinct from the County Attorney himself — is a "political subdivision." But the County Attorney cites to no authority supporting the view that the PCAO is a separate entity from the "County Attorney." Unlike the Department of Law (established for the Attorney General under A.R.S. § 41-193) or the Department of State (established for the Secretary of State under A.R.S. § 41-121.02), the Legislature has not established the "office" of a county attorney as a separate, stand alone, department that is distinct from the County Attorney itself. *See* A.R.S. §§ 11-531 through 539. Moreover, the Supreme Court in *Sanchez* explained that there is a distinction between the administrative office created to conduct the business of a county officer and the constitutional office held by the county officer, itself. 572 P.3d at 111, ¶ 31 (discussing the office of the county sheriff). This applies here, as the Pinal County Attorney's office is an administrative creation of the Pinal County Attorney and not a statutory body.

The Legislature has routinely designated governmental entities as "political subdivisions." *See e.g.*, A.R.S. § § 48-805.01(B)(1) ("A separate legal entity identified pursuant to this subsection…is a political subdivision of this state…"). Had the Legislature wanted to label a county attorney as a political subdivision, it "could easily have said so." *Walters v. Maricopa Cty.*, 195 Ariz. 476, 479 ¶ 15 (App. 1999). Because it has not, the PCAO Agreement is invalid under 8 U.S.C. § 1357(g).

C. Preemption Does Not Apply

The County Attorney argues (at 5-7) that A.R.S. § 11-1051(A) "expressly prohibits the Board from taking any action that limits or restricts the enforcement of federal

immigration law 'to less than the full extent permitted by federal law.'"[4] But even if A.R.S. § 11-1051(A) applied (which it does not), this would not remedy the County Attorney's fundamental issue: that he lacks any explicit or implicit authority to enter into the PCAO Agreement to begin with. *E.g.*, Ariz. Const. art. XII § 4.

Regardless, the County Attorney is incorrect that A.R.S. § 11-1051(A) applies. As the County Attorney notes, Section 11-1051(A) only restricts local governments from limiting or restricting the enforcement of immigration laws "to less than the full extent permitted by federal law." The relevant "federal law" here — 8 U.S.C. § 1357(g) — explicitly requires that 287(g) functions be carried out "to the extent consistent with State and local law." Here, the Board argues that the PCAO Agreement is *not* consistent with State law because it was not approved by the proper authorities. 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.

Although not entirely clear, the County Attorney suggests that some sort of federal preemption applies in the area of immigration. *Cf.* MTD at 2, 7 (citing *Arizona v. United States*, 567 U.S. 387 (2012) for the proposition that "[f]ederal law also preempts Plaintiffs' attempts to limit ICE's ability to enter into the Agreement"). Other than vaguely averring to this topic, the County Attorney does not explain how it would apply to a lawsuit initiated by the County to invalidate a 287(g) agreement on the grounds that it was not properly authorized under state law. In the immigration context, federal preemption applies to laws that obstruct or conflict with the federal immigration regulatory regime. *Ariz.*, 567 U.S. at 399-400. The Board is not obstructing the 287(g) process by arguing that this one, specific, 287(g) agreement was not properly authorized under state law.

In fact, the County Attorney's position that "federal law" somehow prohibits the County from challenging the PCAO Agreement, if accurate, would raise serious concerns under the anti-commandeering doctrine. That doctrine holds that the Federal Government

[4] Taken to its extreme, the County Attorney's interpretation of A.R.S. § 11-1051(A) would absurdly mean that every county and municipality in Arizona that has not entered into a 287(g) agreement would be violating the law. *See Estrada*, 201 Ariz. at 251 ¶ 17.

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, 925-33 (1997) (striking down federal law that required local sheriffs to perform firearms background checks on nondelegation grounds).

Preemption does not somehow allow the County Attorney's ultra vires actions.

IV. CONCLUSION

The Board agrees with the County Attorney that it is important for local officials to coordinate with, and support, federal immigration enforcement. But equally important is ensuring that County officers, like the County Attorney, act in accordance with law. Because the PCAO Agreement well exceeds the scope of the County Attorney's authority and violates several state and federal statutes, the MTD should be denied.

DATED this 15th day of April, 2026.

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