IN THE SUPREME COURT OF WISCONSIN

No. 2025AP2121-OA

VOCES DE LA FRONTERA, INC.,
On behalf of itself and its members,

Petitioner,

v.

DAVE GERBER, in his official capacity as
Sheriff of Walworth County;
TODD J. DELAIN, in his official capacity as
Sheriff of Brown County;
CHAD BILLEB, in his official capacity as
Sheriff of Marathon County;
DAVID ZOERNER, in his official capacity as
Sheriff of Kenosha County; and
CHIP MEISTER, in his official capacity as
Sheriff of Sauk County,

Respondents.

MEMORANDUM OF PETITIONER VOCES DE LA FRONTERA OPPOSING MOTION TO STAY

INTRODUCTION AND BACKGROUND

Respondents' Motion to Stay should be denied because a stay will only further delay consideration of the merits in this case and because the only justification offered for such delay—the preservation of judicial resources—is without merit.

The Respondents in this case are Wisconsin law enforcement officers whose position as sheriffs is created by the Wisconsin Constitution, yet they have spent

months in an ongoing effort to avoid having this Court rule on their obligations under Wisconsin law. More than 100 days after being served with the Petition, and after this Court rejected their arguments that this case should not be heard, Respondents attempted to remove the matter to the federal district court for the Western District of Wisconsin.

The District Court ruled that Respondents had delayed too long in filing their notice of removal, rejecting the idea that Respondents could remove the case so long after they were served with the Petition for an Original Action. The court wrote, "[P]etitioner has *by far the more persuasive argument*." *See* Certified Copy of Dkt. Sheet & Remand Ord. at 10, May 21, 2026 (emphasis added). That court went on to say, "[R]espondents cite *no* authority for the argument that their success or lack of success in opposing the petition should be what triggered the time to remove, perhaps because the law is completely to the contrary." *Id*. at 13.

While this case made its detour to federal court, detainer requests from U.S. Immigration and Customs Enforcement (ICE) to Wisconsin sheriffs continued weekly. The Deportation Data Project makes available ICE detainer data received under Freedom of Information Act requests, current through March 10, 2026. In just the period from December 30, 2025—the day Respondents removed this case to federal court, *see* Resp'ts' Notice of Removal of Action to U.S. Dist. Ct., Dec. 30, 2025—to March 10, 2026, ICE prepared 395 detainers for persons detained in facilities across the State of Wisconsin. Of those, 104 were prepared for persons in the jails operated by the five Sheriff Respondents in this case.[1]

Each week that passes without a resolution determining the legality of the sheriffs' civil immigration arrests causes a tangible injury. Delaying resolution of

[1] *See* Deportation Data Project, *Immigration and Customs Enforcement* (last accessed June 22, 2026), https://deportationdata.org/data/ice.html. Tallies of detainer data are produced from ICE original data filename "2026-ICLI-00005_Detainers_FY26_20260311_Redacted.xlsx" and using data fields "Detainer_Prepare_Date" later than 12/29/2025, "Facility State" = Wisconsin, and "Detainer Facility" = Jails of the five Respondents

this matter has real human costs for immigrants who are deprived of their liberty each time the Respondents honor another detainer they receive from ICE.

Now, nine months after they were served with the Petition, Respondents seek to delay even further any proceedings in this Court by asking for a stay while their attempt to reverse the district court's decision is heard. Their request for further delay should be rejected. If the federal courts reach the state-law issue here, they will only be *aided* by this Court weighing in on the issue beforehand. Indeed, if the Court does not reach the issues before it, the Seventh Circuit may well ask it to via certified question. And, no matter the outcome of the appeal, this Court will ultimately be asked to decide whether honoring immigration detainers violates Wisconsin law because federal interpretations of state law are not binding. Because the challenged practice is ongoing and proceeding to briefing can only help the federal courts and save judicial resources, and since this Court will need to reach the issue eventually, this Court should not delay its work.

ARGUMENT

Regardless of how Respondents' Seventh Circuit appeal is resolved, briefing the merits now will not "needlessly duplicate work," as Respondents contend. Respondents' Motion to Stay ("Resp'ts' Br.") at 4. In fact, even if the District Court's remand order is reversed, proceeding with briefing now will aid the federal courts.

In the most likely scenario—the Seventh Circuit affirms the district court's ruling on timeliness—this case will simply continue where it left off in this Court: merits briefing. Staying briefing now will only delay this Court's resolution of the issue.

In the unlikely event that the remand order is reversed, the District Court and Seventh Circuit will have to decide whether there is a jurisdictional basis for removal under 28 U.S.C. § 1441 (federal-issue) or 28 U.S.C. § 1442 (federal-officer). In doing so, they will have to interpret Wisconsin law; specifically, they will have to decide whether Wisconsin law allows sheriffs to make civil

immigration arrests based on detainers. Because no Wisconsin court has ruled on this issue, the federal courts will have little guidance—unless and until this Court rules on the issue.

As a first step, to decide whether a timely removal was proper, the federal courts will have to decide whether the state-law claim "necessarily raise[s]" a federal issue, and can therefore be removed under Section 1441. *See Gunn v. Minton*, 568 U.S. 251, 258 (2013). This will require interpreting state law. The relevant state-law claim here—that sheriffs cannot make civil immigration arrests unless the legislature explicitly authorizes it or the Wisconsin Constitution grants them that authority—cannot "necessarily raise" a federal issue if Respondents are correct that state law already allows sheriffs to make civil immigration arrests.[2] In that case, it does not matter whether federal law also allows sheriffs to make those arrests, so the question is not "necessarily raise[d]."

The same is true of federal-officer jurisdiction. Federal-officer jurisdiction requires showing, among other things, a "colorable federal defense." *Ruppel v. CBS Corp.*, 701 F.3d 1176, 1180–81 (7th Cir. 2012) (quoting 28 U.S.C. § 1442(a)). Respondents' federal defense is that, *if* Wisconsin law bars sheriffs from making civil immigration arrests, federal law preempts it. *See* Ex. A, Resp'ts' Br. Opp'n Pet'r's Mot. to Remand at 27, *Voces de la Frontera, Inc. v. Gerber*, Case No. 25-CV-1070, Dkt. No. 13 (W.D. Wis.). The preemption defense thus hinges on an interpretation of Wisconsin law.

To decide whether Wisconsin law bars sheriffs from making civil immigration arrests, the District Court and Seventh Circuit will interpret "the law as it believes the Wisconsin Supreme Court would." *Hayes v. Wis. & S. R.R., LLC*, 514 F. Supp. 3d 1055, 1059 (E.D. Wis. 2021) (citing *Doermer v. Callen*, 847 F.3d 522, 527 (7th Cir. 2017)). Absent a ruling from this Court, though, neither the

[2] Petitioner, of course, believes that the state-law claim does not raise a federal issue in any event, regardless of which party has the correct interpretation of state law. But even accepting Respondents' view of the case, Petitioner's state-law claim does not raise a federal issue if state law *does* allow sheriffs to make civil immigration arrests.

District Court nor Seventh Circuit will have any guidance in making that prediction. There are no other state court decisions, let alone Wisconsin appellate court or Supreme Court decisions, on this issue. *See Stevens v. Interactive Fin. Advisors, Inc.*, 830 F.3d 735, 741 (7th Cir. 2016) (citing *Fid. Union Tr. Co. v. Field*, 311 U.S. 169, 177–78 (1940)) (holding that if a state supreme court has not decided an issue, federal court should look to decisions of intermediate state courts to predict how state supreme court would rule). The District Court and Seventh Circuit will have to rely on the reasoning of other states' courts. *See In re Zimmer, NexGen Knee Implant Prods. Liab. Lit.*, 884 F.3d 746, 751 (7th Cir. 2018) ("[A]bsent any authority from the relevant state courts, [the federal court] . . . shall examine the reasoning of courts in other jurisdictions addressing the same issue." (citation and quotations omitted)).

For that reason, Respondents are wrong that continuing with these proceedings would lead this Court or the federal courts to "needlessly duplicate work." Resp'ts' Br. at 4. When a state supreme court decides an issue, it "eliminates the need [for the federal courts] to expend judicial resources predicting how another court will decide a question." *Nat'l Cycle, Inc. v. Savoy Reinsurance Co. Ltd.*, 938 F.2d 61, 64 (7th Cir. 1991) (noting, in context of certifying a question to state supreme court, that when state supreme courts decide a state-law issue, it saves federal court resources). If this Court decides the issue by proceeding with briefing now, it will only aid the District Court and Seventh Circuit if those courts ultimately reach the jurisdictional questions.

In the even more unlikely event that the federal courts reach the merits in this case, the District Court and Seventh Circuit will face the same exact problem as described above—trying to interpret a state law without guidance from state courts. As is true of deciding the jurisdictional issues, these courts will benefit from a decision from this Court. In fact, the Seventh Circuit might *ask* this Court to weigh in by certified question. *Cf. Indiana Right to Life Victory Fund v. Morales*, 66 F.4th 625, 627 (7th Cir. 2023) (noting, in case where litigant's federal standing depended

on meaning of provisions in Indiana Election Code, that "the most prudent course is to invite the opinion of the only body that can definitively construe the Indiana Election Code—the Indiana Supreme Court"); *see* Seventh Cir. Rule 52(a) ("When the rules of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court, this court . . . may certify such a question to the state court."); Wis. Stat. § 821.01 (providing criteria for certification to this Court). Indeed, almost all the factors weighing in favor of certification are present here. *See State Farm Mut. Auto Ins. Co. v. Pate*, 275 F.3d 666, 672 (7th Cir. 2001) (noting certification is appropriate when the case is about "a matter of vital public concern, where the issue will likely recur in other cases, where resolution of the question to be certified is outcome determinative of the case, []where the state supreme court has yet to have an opportunity to illuminate a clear path on the issue . . . [and when] the issue is of interest to the state supreme court in its development of state law," and certification is "more likely when the result of the decision will almost exclusively impact citizens of that state . . . or it is an issue of first impression" (citation and quotations omitted)).

If this Court were to grant Respondents' Motion to Stay only for the Seventh Circuit to later certify the state-law question to this Court, this case would be back where it started, with only one difference: months of delay while hundreds of detainers are prepared for persons in Respondents' jails.

Finally, even if the federal courts do weigh in on whether Wisconsin law bars sheriffs from making civil immigration arrests—either in addressing the jurisdictional questions or in reaching the merits—the issue may yet need to be relitigated in Wisconsin state courts. That's because "[s]tate courts are not bound by federal courts' interpretations of state law." *Diginet, Inc. v. W. Union ATS, Inc.*, 958 F.2d 1388, 1395 (7th Cir. 1992). The only court that can provide a binding interpretation of Wisconsin state law is this one. *See Indiana Right to Life Victory Fund*, 66 F.4th at 627. Because this issue is likely to recur, is a "matter of vital

public concern," and "is of interest to [this Court] in its development of state law, *State Farm Mut. Auto. Ins. Co.*, 275 F.3d at 672, this Court should weigh in on it regardless of whether the district court or Seventh Circuit does, too. And there is no reason to stay briefing in a matter that the Court will take up no matter what.

CONCLUSION

Granting Respondents' motion will only delay the inevitable. Denying it will prevent delay and only aid the federal courts. For that reason, Petitioner respectfully requests that this Court deny Respondents' Motion to Stay.

Dated: June 23, 2026 *Electronically signed by Hannah R. Schwarz*

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CERTIFICATION

I hereby certify that his brief conforms to the rules contained in Wis. Stat.

§ 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 2,001 words.

Electronically signed by Hannah R. Schwarz

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