IMMIGRATION LAW — LOCAL ENFORCEMENT — MASSACHUSETTS SUPREME JUDICIAL COURT HOLDS THAT LOCAL LAW ENFORCEMENT LACKS AUTHORITY TO DETAIN PURSUANT TO ICE DETAINERS. — *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017).

When U.S. Immigration and Customs Enforcement (ICE) determines that an individual held in state or local custody may be removed from the United States, it commonly issues an immigration detainer.[1] Detainers inform local law enforcement agencies (LLEAs) of ICE's intent to assume custody and request notice before any release.[2] Controversially, they also request LLEAs to "maintain custody . . . for a period not to exceed 48 hours beyond the time [an individual] . . . would otherwise have been released."[3] Detainers cannot compel unwilling LLEAs to hold individuals otherwise eligible for release,[4] nor can LLEAs, on their own initiative, detain individuals solely due to suspected removability.[5] What is less clear is whether ICE detainers enable willing LLEAs to maintain custody over individuals when other bases for detention have lapsed. Though ICE routinely asks LLEAs to do just that, a series of federal court decisions have questioned LLEA compliance on statutory and constitutional grounds.[6] Recently, in *Lunn*

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[1] *See* 8 C.F.R. § 287.7 (2017); U.S. IMMIGRATION & CUSTOMS ENF'T, POLICY NUMBER 10074.2: ISSUANCE OF IMMIGRATION DETAINERS BY ICE IMMIGRATION OFFICERS 2 (2017) [hereinafter POLICY NO. 10074.2], https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf [https://perma.cc/4B7K-JUHH]. In the early months of the Trump Administration, ICE issued approximately 11,000 immigration detainers per month. Caitlin Dickerson, *Trump Administration Moves to Expand Deportation Dragnet to Jails*, N.Y. TIMES (Aug. 21, 2017), https://nyti.ms/2vhpcFW [https://perma.cc/DGY3-SVJD].

[2] POLICY NO. 10074.2, *supra* note 1, at 3; DEP'T OF HOMELAND SEC., FORM I-247A, IMMIGRATION DETAINER - NOTICE OF ACTION 1 (2017) [hereinafter FORM I-247A], https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf [https://perma.cc/C566-GDLZ].

[3] FORM I-247A, *supra* note 2, at 1 (emphasis omitted).

[4] *See, e.g.*, Galarza v. Szalczyk, 745 F.3d 634, 640–41, 645 (3d Cir. 2014) (following every court of appeals to have considered ICE detainers and construing them as requests). ICE itself now styles detainers as "request[s]." FORM I-247A, *supra* note 2, at 1.

[5] *See* Arizona v. United States, 567 U.S. 387, 408–10 (2012). The Court further stated that "it is not a crime for a removable alien to remain present in the United States." *Id.* at 407.

[6] By 2014, several courts had held that LLEAs lacked probable cause to detain individuals subject to ICE detainers, which at that time stated only that ICE was investigating an individual's immigration status. *See, e.g.*, Miranda-Olivares v. Clackamas County, No. 3:12-cv-02317, 2014 WL 1414305, at *1, *11 (D. Or. Apr. 11, 2014); Morales v. Chadbourne, 996 F. Supp. 2d 19, 29 (D.R.I. 2014); *see also* Moreno v. Napolitano, 213 F. Supp. 3d 999, 1009 (N.D. Ill. 2016) (holding that ICE's issuance of detainers without accompanying immigration arrest warrants exceeded its statutory authority). In response, then–Secretary of Homeland Security Jeh Johnson revised ICE's detainer policy, requesting continued detention only when ICE officers could specify a "probable cause" basis to believe that an individual was subject to removal proceedings. Memorandum from Jeh Charles Johnson, Sec'y, Dep't of Homeland Sec., to Thomas S. Winkowski, Acting Dir., ICE, et al. 2 (Nov. 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf [https://perma.cc/5MH7-T9X2]; *see also* FORM I-247A, *supra* note 2, at 1. Additionally, ICE began

v. Commonwealth,[7] the Massachusetts Supreme Judicial Court took a different approach, holding that state law enforcement lacked authority to detain individuals subject to ICE detainers under state law.[8] *Lunn* is the first ruling by a state's highest court addressing ICE detainer compliance[9] and, because of its grounding in Massachusetts law, seems to offer few lessons beyond the state's borders. However, by enforcing the long-standing common law limits on warrantless arrest authority underlying the Fourth Amendment, *Lunn* found a state law mechanism for addressing the constitutional concerns raised by ICE detainers while avoiding thorny questions of how Fourth Amendment protections and federal sovereignty principles play out in the immigration context.

Massachusetts prosecutors arraigned Sreynuon Lunn on one count of unarmed robbery in Boston on October 24, 2016.[10] Having failed to post bail, Lunn was held in jail until February 6, 2017, when he was brought to court for trial.[11] When Massachusetts proved unready to make its case, the judge dismissed the charge for lack of prosecution.[12] With no criminal charges pending, Lunn would ordinarily have been released. However, having learned that Lunn was subject to an ICE detainer, the judge declined to release Lunn.[13] Hours later, ICE officers arrived at the courthouse and arrested him.[14]

The next morning, Lunn's lawyer filed an emergency petition with Justice Lenk of the Massachusetts Supreme Judicial Court challenging the municipal court's authority to hold Lunn.[15] Because Lunn was by then in ICE custody, the issue was already moot; however, "recognizing the important, recurring, and time-sensitive legal issues" ICE detainers raised, Justice Lenk nonetheless raised the case with the full court.[16] In the ensuing litigation, Massachusetts and the Suffolk County Sherriff

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including immigration arrest warrants or removal orders with detainers requesting continued detention. POLICY NUMBER 10074.2, *supra* note 1, at 2. Even after these changes, courts continued to question the constitutionality of LLEA compliance with ICE detainers. *See* City of El Cenizo v. Texas, No. 17-CV-404, 2017 WL 3763098 (W.D. Tex. Aug. 30, 2017); Santoyo v. United States, No. 5:16-CV-855, 2017 WL 2896021 (W.D. Tex. June 5, 2017); Mercado v. Dallas County, 229 F. Supp. 3d 501 (N.D. Tex. 2017); Orellana v. Nobles County, 230 F. Supp. 3d 934 (D. Minn. 2017).

7 78 N.E.3d 1143 (Mass. 2017).

8 *Id.* at 1160 (per curiam).

9 Ohio and Kansas courts had ruled that speedy trial statutes could not be tolled because of ICE detainers, as they provided no state law basis for detention; however, they did not comment on the permissibility of that detention. *See* State v. Montes-Mata, 253 P.3d 354 (Kan. 2011); State v. Sanchez, 853 N.E.2d 283 (Ohio 2006).

10 *Lunn*, 78 N.E.3d at 1147 (per curiam).

11 *Id.*

12 *Id.* at 1147–48.

13 *Id.* at 1148.

14 *Id.*

15 *Id.* at 1145, 1148.

16 *Id.* at 1148.

disclaimed authority to detain individuals subject to ICE detainers, siding with Lunn to argue that compliance with such requests was unauthorized by state law and "raise[d] serious constitutional concerns."[17] Stepping in to defend ICE detainers, the United States as amicus curiae argued that history and constitutional structure confirmed LLEAs' "inherent authority" to cooperate with the federal government in enforcing immigration law.[18]

In a per curiam opinion, the court held that Massachusetts law enforcement lacked authority under state law to detain individuals solely on the basis of ICE detainers.[19] It first determined that the detainer at issue was civil in nature, as it related to removal proceedings rather than prosecution.[20] Additionally, the court concluded that under the Immigration and Nationality Act[21] (INA) and the Tenth Amendment, state authorities were not required to comply with ICE detainers.[22]

The court then addressed whether LLEAs *could* comply with ICE detainers if they so wished. It first determined that Lunn's continued detention after the criminal charge against him was dropped constituted a new and warrantless arrest.[23] Unconvinced by the United States' argument that LLEAs possessed "inherent authority" to effect such arrests,[24] the court held that either federal or Massachusetts state law must affirmatively grant that authority.[25] The Court looked to Massachusetts common and statutory law to determine the circumstances under which LLEA officers may make warrantless arrests and found no provision authorizing such arrests for civil immigration violations.[26] Though Massachusetts common law authorized warrantless arrests when an LLEA officer had probable cause to believe someone had committed a felony — or personally witnessed a misdemeanor involving a breach of the peace — the common law did not authorize warrantless arrests for noncriminal offenses.[27] Similarly, while specific Massachusetts statutes authorized warrantless or civil arrests in particular circumstances, no

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17 Brief of the Commonwealth of Massachusetts & the Suffolk County Sherriff at 30, *Lunn*, 78 N.E.3d 1143 (No. SJC-12276), 2017 WL 1134243, at *30; *see also id.* at 19–30. Lunn went further and argued that compliance with detainers was forbidden by the state and federal constitutions. *See* Brief & Record Appendix for Petitioner-Appellant Sreynuon Lunn at 29–47, *Lunn*, 78 N.E.3d 1143 (No. SJC-12276), 2017 WL 960081, at *29–47.

18 Brief of the United States as Amicus Curiae in Support of Neither Party at 24–31, *Lunn*, 78 N.E.3d 1143 (No. SJC-12276), 2017 WL 1240651, at *24–31.

19 *Lunn*, 78 N.E.3d at 1160 (per curiam).

20 *Id.* at 1151.

21 8 U.S.C. §§ 1101–1157 (2012).

22 *Lunn*, 78 N.E.3d at 1152–53.

23 *Id.* at 1153–54.

24 *Id.* at 1156; *see id.* at 1154.

25 *See id.* at 1156.

26 *Id.* at 1154–56.

27 *Id.* at 1154–55.

statute authorized such arrests for federal immigration violations.[28] Finally, the court concluded that the INA did not "affirmatively grant[] authority" for LLEAs to make warrantless arrests pursuant to ICE detainers.[29] Moreover, the lack of ordinary procedural safeguards for individuals held on ICE detainers — notably, the absence of a prompt determination of probable cause by a neutral magistrate[30] — counseled against inferring an "inherent" civil arrest authority not clearly specified by state common law or statute.[31]

In holding that Massachusetts law did not authorize warrantless arrests for civil immigration violations, *Lunn* voiced many of the concerns that have led other courts to conclude that LLEA compliance with ICE detainers violates the Fourth Amendment.[32] However, rulings based in the Fourth Amendment sit in tension with the broad authority over immigration detention that courts have historically afforded the federal government. Whether and to what degree the federal government may assert such authority at the expense of individuals' constitutional rights — let alone delegate that authority to states — remains a complex and unsettled question of federal law. By instead shifting focus back to the common law constraints on warrantless arrest authority that gave rise to Fourth Amendment guarantees in the first place, *Lunn* identified a state law framework for protecting rights threatened by ICE detainers.

Several courts have held that warrantless immigration arrests by LLEAs pursuant to ICE detainers — such as the one at issue in *Lunn* — violate the Fourth Amendment's guarantee of freedom from "unreasonable searches and seizures" and arrest warrants not backed up by "probable cause."[33] The amendment's limits on warrantless arrests have generally been construed in light of common law rules similar to those described in *Lunn*[34] — and in particular, as a restraint on the authority of law enforcement to make warrantless arrests without probable cause

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[28] *Id.* at 1156.

[29] *Id.* at 1159; *id.* at 1158–59.

[30] *See id.* at 1157 n.24.

[31] *See id.* at 1157–58.

[32] *Compare id.* at 1154–56 (emphasizing the lack of state law authority to make warrantless arrests based on probable cause of civil immigration violations), *with* Santoyo v. United States, No. 5:16-CV-855, 2017 WL 2896021, at *7 (W.D. Tex. June 5, 2017) (holding that probable cause of civil removability was insufficient to warrant LLEA detention pursuant to an ICE detainer under the Fourth Amendment), *and* Mercado v. Dallas County, 229 F. Supp. 3d 501, 511 (N.D. Tex. 2017) (same).

[33] U.S. CONST. amend. IV; *supra* note 6.

[34] *Compare Lunn*, 78 N.E.3d at 1154–55 (describing law enforcement's common law warrantless arrest authority as limited to cases where officers have probable cause to suspect a felony or personally witnessed a misdemeanor threatening a breach of the peace), *with* 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 5.1(b), at 15–20 (5th ed. 2012) (describing this basic structure as the "common law rule," *id.* at 15, though noting that most states have statutorily enlarged warrantless arrest authority to cover a broader array of criminal misdemeanors).

to suspect commission of a felony or misdemeanor.[35] The Supreme Court has also interpreted the Fourth Amendment to require that a neutral magistrate review an officer's probable cause determination, either before or soon after an arrest.[36] ICE detainers, which ask LLEAs to prolong arrests based only on ICE's assertions that an individual is civilly removable, therefore offer ample grounds for finding Fourth Amendment deficiencies for much the same reasons that the *Lunn* court concluded such arrests were unauthorized under common law: the absence of individualized determinations of probable cause[37] or prompt review by a neutral magistrate,[38] and the very use of warrantless arrests for civil offenses.[39]

However, finding that ICE detainers violate the Fourth Amendment would cast doubt on the constitutionality of immigration detention generally, because many of the problems posed by detainers persist *after*

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[35] *See, e.g.*, United States v. Watson, 423 U.S. 411, 418 (1976) ("The cases construing the Fourth Amendment thus reflect the ancient common-law rule that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in his presence if there was reasonable ground for making the arrest."); *see also* MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 120.1 (AM. LAW INST. 1975) (authorizing warrantless arrest when an officer has "reasonable cause" — equated with the Fourth Amendment's "probable cause," *id.* § 120.1 note at 14 — to believe a person committed a felony, committed a misdemeanor *and* threatened to cause injury or escape apprehension, or committed a misdemeanor that the arresting officer personally witnessed). The Supreme Court has held that the Fourth Amendment does not limit a state's ability to extend warrantless arrest authority to more criminal misdemeanors than covered by common law, though the Court based its departure from common law rules on state criminal statutes. *See* Atwater v. City of Lago Vista, 532 U.S. 318, 338–40, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Id.* at 354.).

[36] *See* Gerstein v. Pugh, 420 U.S. 103, 114 (1975) (holding that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest").

[37] *See, e.g.*, Orellana v. Nobles County, 230 F. Supp. 3d 934, 946 (D. Minn. 2017).

[38] *See, e.g.*, Buquer v. City of Indianapolis, No. 1:11-cv-00708, 2013 WL 1332158, at *10 (S.D. Ind. Mar. 28, 2013) (finding an Indiana law authorizing warrantless immigration arrests violated the Fourth Amendment, in part due to the lack of "any requirement that the arrested person be brought forthwith before a judge for consideration of detention or release"). *But see* Roy v. County of Los Angeles, No. CV 12-09012, 2017 WL 2559616, at *10 (C.D. Cal. June 12, 2017) (holding that the Fourth Amendment does not require judicial review of probable cause determinations made for the purposes of ICE detainers).

[39] *See, e.g.*, City of El Cenizo v. Texas, No. 17-CV-404, 2017 WL 3763098, at *33 (W.D. Tex. Aug. 30, 2017) (pointing to the absence of "any provision of law — within the INA, Texas statute, or some other legal authority — that authorizes" LLEAs to make immigration arrests in holding that mandatory detainer compliance violates the Fourth Amendment); Santoyo v. United States, No. 5:16-CV-855, 2017 WL 2896021, at *7 (W.D. Tex. June 5, 2017) ("[N]either the mere removability of an individual nor the entry of a final removal order against them equates to a showing of probable cause that they have committed a crime."); Mercado v. Dallas County, 229 F. Supp. 3d 501, 511 (N.D. Tex. 2017) ("Generally, a reasonable belief that the suspect has committed or is committing a *civil* offense is insufficient to withstand Fourth Amendment scrutiny.").

ICE takes custody or when it initiates an arrest on its own.[40] Even if the administrative immigration judges who determine removability are considered neutral,[41] they do not authorize immigration arrest "warrants" or review the subjects of warrantless arrests.[42] The civil nature of federal immigration detention does not obviously justify this deficiency.[43] However, while the Supreme Court has never explicitly addressed whether the federal government's system of immigration detention passes Fourth Amendment muster,[44] federal power over immigration has always incorporated detention[45] and long operated outside ordinary levels of judicial scrutiny.[46] This broad immigration power supposedly derives from fundamental attributes of sovereignty, rather than affirmative constitutional provisions.[47] Even when the Court showed some willingness to interfere to prevent possibly limitless immigration detention, it couched its intervention in terms of statutory interpretation, rather than its evident constitutional concerns.[48] Courts may therefore worry that deciding that ICE detainers violate the Fourth

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[40] *See* Michael Kagan, *Immigration Law's Looming Fourth Amendment Problem*, 104 GEO. L.J. 125, 156–65 (2015); Travis Silva, Note, *Toward a Constitutionalized Theory of Immigration Detention*, 31 YALE L. & POL'Y REV. 227, 238–43 (2012) (detailing the process of administrative immigration detention). *See generally* César Cuauhtémoc García Hernández, *Naturalizing Immigration Imprisonment*, 103 CALIF. L. REV. 1449 (2015) (describing and criticizing the system of immigration-related incarceration).

[41] For an argument that they should not be, see Stephen H. Legomsky, *Deportation and the War on Independence*, 91 CORNELL L. REV. 369 (2006), which argues that changes after September 11th eliminated immigration judges' independence.

[42] 8 C.F.R. § 287.5(e)(2) (2017) (authorizing non-neutral "immigration officials" involved in investigations to issue immigration arrest warrants); 8 C.F.R. § 287.3 (allowing any "officer other than the arresting officer" to examine the basis for detention following a warrantless arrest).

[43] While the Supreme Court has held that "various protections that apply in the context of a criminal trial do not apply" in removal proceedings, INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984), it has never held that the underlying immigration arrests could escape constitutional scrutiny and instead has assumed that "unlawful, warrantless arrest[s]," *id.* at 1040, in the immigration context, might violate the Fourth Amendment. *See id.* at 1044, 1050.

[44] In *Abel v. United States*, 362 U.S. 217 (1960), the Court declined to consider this question, as the party raising it failed to do so earlier in the litigation. *Id.* at 230–34. However, the Court noted that administrative immigration arrests had the "sanction of time." *Id.* at 230.

[45] *See, e.g.*, Wong Wing v. United States, 163 U.S. 228, 235 (1896) ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid.").

[46] *See, e.g.*, *id.* at 237 ("No limits can be put by the courts upon the power of Congress . . . to expel [aliens] if they have already found their way into our land and unlawfully remain therein.").

[47] *See* Fong Yue Ting v. United States, 149 U.S. 698, 711 (1893) ("The right to exclude or expel all aliens . . . [is] an inherent and inalienable right of every sovereign and independent nation . . . ."); Kleindienst v. Mandel, 408 U.S. 753, 769–70 (1972) ("[P]lenary congressional power to make policies and rules for exclusion of aliens has long been firmly established."); David S. Rubenstein & Pratheepan Gulasekaram, *Immigration Exceptionalism*, 111 NW. U. L. REV. 583 (2017) (describing the Court's "special immigration doctrines that depart from mainstream constitutional norms," *id.* at 584).

[48] *See* Zadvydas v. Davis, 533 U.S. 678, 700–01 (2001) (reading a presumptive time limit into the INA's civil-detention provisions, notwithstanding the lack of any explicit limitations).

Amendment would be inconsistent with the historical deference shown to the government in immigration enforcement and would threaten to undermine that enforcement in other contexts.

The basis in sovereignty of enhanced federal immigration arrest and detention authority — if, indeed, such authority exists[49] — thus further complicates any Fourth Amendment detainer analysis. In *Arizona v. United States*,[50] the Court rejected Justice Scalia's view of the states as cosovereigns with their own rights to exclude individuals on the basis of immigration status.[51] Instead, the majority determined that Arizona could not unilaterally arrest people who lacked lawful immigration status, even pursuant to a state statute purporting to define a criminal violation under state law.[52] This rejection of sovereignty-based immigration powers for states thus implies that whatever might be the extent of LLEAs' "inherent authority"[53] to cooperate with federal authorities, such authority is at least constrained by ordinary Fourth Amendment principles.[54] Despite this implication, the Court has historically proved reluctant to allow Fourth Amendment concerns to upset federal immigration enforcement,[55] of which detainers are one facet.

Lunn points a way out of this mess by bringing to the surface the common law restraints on arrest authority through which the Fourth Amendment is understood, particularly with respect to the types of offenses eligible for warrantless arrests.[56] As *Lunn* makes clear, the constitutionality of ICE detainers matters only if state or federal law authorizes LLEAs to hold individuals on ICE detainers in the first place.[57] And whether or not ICE's determination that an individual is civilly removable may constitute probable cause for an LLEA arrest, arrests made solely on that basis exceed common law rules of warrantless arrest

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[49] For an argument that it might not, see Louis Henkin, Essay, *The Constitution and United States Sovereignty: A Century of* Chinese Exclusion *and Its Progeny*, 100 HARV. L. REV. 853, 854–63 (1987) which criticizes the extraconstitutional and racist origins of the plenary power doctrine.

[50] 567 U.S. 387 (2012).

[51] *Id.* at 416–17 (Scalia, J., concurring in part and dissenting in part).

[52] *Id.* at 407–10 (majority opinion).

[53] *See* Brief of the United States as Amicus Curiae in Support of Neither Party, *supra* note 18, at 24–31, 2017 WL 1240651, at *24–31.

[54] *See Arizona*, 567 U.S. at 407 (noting that "the usual predicate for an arrest is absent" where the police detain solely for suspected removability).

[55] *E.g.*, Abel v. United States, 362 U.S. 217, 230 (1960) ("Statutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time . . . [and] uncontested historical legitimacy . . . ."). In *Arizona*, the majority opinion pointedly avoided any mention of the Fourth Amendment when it alluded to its concerns about unauthorized arrests. 567 U.S. at 407–10.

[56] *See Lunn*, 78 N.E.3d at 1154–58.

[57] *See* United States v. Di Re, 332 U.S. 581, 589 (1948) ("[I]n the absence of an applicable federal statute the law of the state where an arrest without warrant takes place determines its validity.").

authority.[58] While many states have statutorily amplified that authority with respect to criminal misdemeanors,[59] states have not, by and large, extended it to civil immigration violations.[60] Whether a state constitutionally *could* authorize LLEAs to make immigration arrests in cooperation with federal authorities where a federal statute has not done so is an open question — but one that comes up only once a state has tried.

Lunn thus provides a way to address the rights infringed by ICE's detainer process without deciding a sensitive constitutional question that implicates federal power and sovereignty as much as standard Fourth Amendment principles. Its approach, moreover, gives state political actors the chance in the first instance to determine whether to commit the state's warrantless arrest authority toward the enforcement of federal immigration laws.[61] Whether or not such a step is constitutional, *Lunn* was right to conclude that it should not be taken absent explicit state authorization.

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[58] *See* 3 LAFAVE, *supra* note 34, § 5.1(b), at 15–20. To be sure, arrests for civil offenses are not categorically precluded by the Fourth Amendment, at least for certain offenses with a historical tradition of arrest authority. *See, e.g.*, United States v. Phillips, 834 F.3d 1176, 1181 (11th Cir. 2016) (treating a "writ of bodily attachment" for civil contempt as an arrest warrant supported by probable cause within the meaning of the Fourth Amendment). *But see* Orin Kerr, *Does the Fourth Amendment Allow Arrest Warrants for Civil Offenses?*, WASH. POST: VOLOKH CONSPIRACY (Aug. 24, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/08/24/does-the-fourth-amendment-allow-arrest-warrants-for-civil-offenses [https://perma.cc/HSE3-ARQN] (cautioning against extending civil arrest authority to warrantless arrests for civil offenses not substantially similar to criminal ones).

[59] *See* Atwater v. City of Lago Vista, 532 U.S. 318 app. at 355–60 (2001) (collecting statutes authorizing warrantless arrests for the fifty states and the District of Columbia, all of which authorize warrantless arrests based on probable cause of a felony and, under varying circumstances, a criminal misdemeanor); *see, e.g.*, ARK. CODE. ANN. § 16-81-106(b) (2017) (authorizing warrantless misdemeanor arrests for "public offense[s]" committed in an officer's presence, or upon probable cause of a misdemeanor involving battery, "evidence of bodily harm," and immediate danger).

[60] In *Arizona*, the Supreme Court of course struck down as preempted the provision of Arizona law seeking to unilaterally authorize LLEAs to make warrantless arrests for "any public offense that makes the person removable from the United States." ARIZ. REV. STAT. ANN. § 13-3883 (2017), *invalidated by Arizona*, 567 U.S. 387; *see Arizona*, 567 U.S. at 408–10. A district court relied on similar concerns to strike down provisions of an Indiana law authorizing LLEAs to make warrantless immigration arrests. Buquer v. Indianapolis, No. 1:11-CV-00708, 2013 WL 1332158, at *8 (S.D. Ind. Mar. 28, 2013). However, both courts expressed concern that LLEA immigration arrests might interfere with federal priorities. *See Arizona*, 567 U.S. at 409–10; *Buquer*, 2013 WL 1334158, at *8. This concern may apply with less force when the federal government requests LLEA action.

[61] *See, e.g.*, Jess Bidgood, *Court Officers Can't Hold People Solely Under ICE Detainers, Massachusetts Justices Rule*, N.Y. TIMES (July 24, 2017), https://nyti.ms/2tVhUa6 [https://perma.cc/P9M5-M86B] (describing efforts by a state sheriff and Republican legislators to authorize compliance with ICE detainers in the wake of *Lunn*'s ruling).