
IN THE SUPREME COURT OF THE STATE OF NEVADA

AMERICAN CIVIL LIBERTIES
UNION OF NEVADA, a domestic
non-profit organization; SERGIO
MORAIS-HECHAVARRIA, an
individual,

Appellants,

v.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT, a
governmental entity; KEVIN
MCMAHILL, in his official capacity
as Las Vegas Metropolitan Police
Department Sheriff,

Respondents.

Electronically Filed
Sep 17 2026 04:55 PM
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 92479

APPELLANTS' OPENING BRIEF

Appeal from Eighth Judicial District Court, Clark County
Case No. A-25-930343-W
Hon. Monica Trujillo, District Judge

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

The American Civil Liberties Union (“ACLU”) of Nevada Foundation, Inc., is a domestic nonprofit, non-stock corporation. It has no parent corporations, and no publicly held corporations have an ownership interest in it.

Sergio Morais-Hechavarria is an individual; therefore, there are no parent corporations or publicly held companies that own 10 percent or more of the party’s stock.

The undersigned counsel of record further certifies that the ACLU of Nevada, through its attorneys Sadmira Ramic and Christopher M. Peterson, and the ACLU Foundation, through its attorneys Julie A. Murray and Terry Ding, are the only attorneys who have appeared for Petitioners in the case (including proceedings in the district court) or who are expected to appear in this Court.

Dated: September 17, 2026

Respectfully submitted,

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JURISDICTIONAL STATEMENT

On March 6, 2026, the district court denied Petitioners the ACLU of Nevada and Sergio Morais-Hechavarria’s petition for writ of mandamus. That order was a “final judgment entered in an action or proceeding commenced in the court in which the judgment [was] rendered” pursuant to NRAP 3A(b)(1). On April 3, 2026, Petitioners timely filed their appeal of the order.

ROUTING STATEMENT

This matter should be retained by the Nevada Supreme Court. This case does not fall under any of the case categories described in NRAP 17(a) or (b) that are presumptively assigned to the Court of Appeals. It is appropriate for Supreme Court review pursuant to NRAP 17(d)(2) for several reasons.

First, this matter involves multiple issues of first impression, including whether local government actors—here, the Las Vegas Metropolitan Police Department (“LVMPD”) and its Sheriff Kevin McMahonill (together, “Respondents”)—have state statutory and constitutional authority to enter into an agreement with the federal government to enforce federal immigration law (a “287(g) agreement”). NRAP 17(d)(2)(A).

Second, the appeal presents questions of state constitutional interpretation, including whether the separation-of-powers guarantee in Article 3, Section 1 supports the ACLU of Nevada’s public-importance standing and bars the 287(g)

agreement at issue in this case, and whether Article 1, Section 18 bars state and local law enforcement from making civil immigration arrests. NRAP 17(d)(2)(C).

Third, the appeal presents the question of whether a local government's contract with a federal agency is invalid. NRAP 17(d)(2)(B).

Fourth, the appeal involves issues of statewide public importance as demonstrated by the ACLU of Nevada in its petition and found by the district court. NRAP 17(d)(2)(D).

ISSUES PRESENTED

1. Whether the district court erred by concluding that Morais-Hechavarria “lack[ed] standing to pursue any of the stated claims” because he was released and deported after he filed his petition for writ of mandamus. Appellants’ App’x (“A.A.”) 345–46, Vol. II.

2. Whether the district court erred in holding that petitioners in mandamus proceedings cannot establish standing through the public-importance doctrine.

3. Whether the district court erred in concluding that the ACLU of Nevada did not have standing under the public-importance doctrine because its claims did not raise a separation-of-powers conflict between the legislative and executive branches.

4. Whether the district court erred in concluding that the “capable of repetition, yet evading review” exception to the mootness doctrine did not apply to

Petitioners' claims even though Petitioners presented undisputed evidence that the issues they raised had impacted hundreds of other people and the plain language of the 287(g) agreement in dispute showed that the issue would arise again.

5. Whether the Legislature has provided county sheriffs with the authority to enter into 287(g) agreements with the federal government to hold civil immigration detainees in county jails.

6. Whether Sheriff McMahon and LVMPD violated NRS 211.060 by entering into a 287(g) agreement with the federal government to house civil immigration detainees in a county jail where LVMPD would be required to cover all costs incurred under the agreement.

7. Whether Nevada law authorizes LVMPD officers to arrest people for civil immigration violations.

8. Whether the provisions within the 287(g) agreement that authorize LVMPD to detain people for up to 48 hours past the time they would otherwise be released from custody based on warrants that are not issued by a "magistrate" as defined by Nevada law violate NRS 31.470's prohibition on civil arrests by peace officers and Article 1, Section 18 of the Nevada Constitution.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. The Sheriff and LVMPD

Respondents in this case are Kevin McMahonill, the Sheriff of Clark County, and LVMPD, the law enforcement agency that he leads. A.A. 006 ¶¶ 31–32, Vol. I.

County sheriffs are executive-branch officials whose existence and powers derive solely from the Legislature. Under the Nevada Constitution, the Legislature has the “power to increase, diminish, consolidate or abolish” the office of county sheriffs and to “fix by law their duties.” Nev. Const. art. IV, § 32. The Legislature prescribed the duties of county sheriffs in Chapter 248 of the Nevada Revised Statutes. *See* NRS 248.090–.250. The Legislature also designated sheriffs the custodians of jails in their counties and prescribed their duties relating to overseeing the jails. *See* NRS 211.010–.400. Thus, as Clark County sheriff, Sheriff McMahonill, and by extension LVMPD, are in charge of operating the Clark County Detention Center (“CCDC”).

Neither Chapter 248 nor any other Nevada statute authorizes Sheriff McMahonill or LVMPD to execute civil immigration warrants and arrests, detain people for purposes of enforcing federal immigration law, or enter into any contract with the federal government to effectuate such warrants or detention. To the contrary, the Nevada Legislature has limited sheriffs’ authority to do those things. NRS 31.470 prohibits peace officers from making arrests for civil violations except in narrow

circumstances not applicable here. *See* Argument III.B., *infra*. And NRS 211.060 allows sheriffs to contract with the federal government to detain only federal “prisoners” and only where the federal government pays all costs. *See* Argument III.A., *infra*.

II. The LVMPD’s 287(g) Agreement with ICE

Under Section 287(g) of the federal Immigration and Nationality Act, the U.S. Attorney General may delegate immigration enforcement powers to specific officers of a state or political subdivision by entering into a memorandum of agreement with that state or political subdivision. 8 U.S.C. § 1357(g). These agreements, commonly referred to as “287(g) agreements,” must be “consistent with State and local law.” *Id.* § 1357(g)(1). Where it would be inconsistent with state or local law for local officials to enter into these voluntary agreements, that state or local law prevails. *See Lunn v. Commonwealth*, 477 Mass. 517, 536, 78 N.E.3d 1143, 1159 (2017) (holding that local officials may “cooperate with [f]ederal immigration officers in immigration enforcement” under Section 287(g) only “to the extent they are authorized to do so by their State law”).

On behalf of LVMPD, Sheriff McMahon signed a 287(g) agreement (“the Agreement”) with U.S. Immigration and Customs Enforcement (“ICE”) on May 30, 2025, and ICE finalized the Agreement on June 16, 2025. A.A. 092, Vol. I. The Agreement is specifically for LVMPD to participate in the Warrant Service Officer

Program. *Id.* at 093. Through this program, ICE trains and certifies LVMPD officers to serve and execute ICE warrants of removal (officially designated “ICE I-205 Forms”), which are used for individuals subject to final orders of removal, and warrants of arrest (officially designated “ICE I-200 Forms”), which are used for individuals deemed “removable” by ICE but not yet ordered removed by an immigration judge. *Id.* These “warrants” frequently accompany ICE detainers, which are requests to a state or local agency to notify ICE about an arrested person’s impending release from criminal custody and to voluntarily hold that person for ICE beyond the scheduled release. *See Lunn*, 477 Mass. at 524 n.17, 78 N.E.3d at 1151.

Although they are labeled “warrants,” ICE I-205 and I-200 Forms are signed by executive officials working for ICE and are therefore administrative, rather than judicial, in nature. 8 C.F.R. § 287.5(e)(2). In signing the Agreement, LVMPD committed to honor these “warrants,” holding the people targeted by ICE for up to 48 hours even when there is no basis for detention besides the ICE Forms. A.A. 092, Vol. I. Under Nevada law, such immigration holds beyond the end of a person’s criminal custody constitute an arrest. *See* NRS 171.104 (“An arrest is the taking of a person into custody, in a case and in the manner authorized by law.”); Argument III.B., *infra*. And because it is a civil, not criminal, violation that subjects an individual to removal, *see* 8 U.S.C. § 1227(a)(1)(B), the immigration holds are civil arrests.

Consistent with federal law requiring that expenses incurred under 287(g) agreements be covered by the local entity, 8 U.S.C. § 1357(g)(1), the Agreement makes LVMPD responsible for, *inter alia*, personnel expenses, administrative supplies, and incidents giving rise to liability under the Agreement. A.A. 088–89, Vol. I. The federal government is not required to provide LVMPD any compensation for holding people at ICE’s request. *See id.*

LVMPD does not dispute that the Agreement was fully executed by June 16, 2025, or that it has been complying with the Agreement’s terms. LVMPD’s own records show that, between June 16 and September 1, 2025, it received approximately 347 ICE warrants and detainers.¹

III. The LVMPD’s prolonged detention of Sergio Morais-Hechavarria

At least as of June 18, 2025, shortly after the Agreement was finalized, Petitioner Sergio Morais-Hechavarria was in LVMPD custody at CCDC on a criminal warrant in Las Vegas Township Justice Court. *See Court Minutes, State v. Morais-Hechavarria*, No. 23-CR-041490 (Las Vegas Twp. Just. Ct., Nev. June 18, 2025). On July 8, 2025, Morais-Hechavarria entered a plea in that case. A.A. 054,

¹ The LVMPD represents that it did not hold people for ICE prior to the execution of the Agreement. A.A. 155, Vol. I. Accordingly, using LVMPD tallies in the record, the 347 number is calculated by subtracting the number of ICE warrants and detainers that LVMPD received through June 9, 2025 (610), A.A. 304, Vol. II, from the total number of warrants and detainers it received through September 1, 2025 (957), A.A. 049, Vol. I.

Vol. I. His case was later bound over to the Eighth Judicial District Court under case number C-25-392542-1. *Id.*

On August 19, 2025, the district court overseeing Morais-Hechavarria's criminal case ordered him released on probation on the condition that he participate in an inpatient drug treatment program. *Id.* at 054–55. That same day, a social worker from the Clark County Public Defender's Office informed LVMPD that Morais-Hechavarria was “ready to go” to treatment as soon as a bed was available. *Id.* at 052. An LVMPD employee responded that LVMPD would not release Morais-Hechavarria to treatment because ICE had sent LVMPD an immigration warrant for him. *Id.* at 051–52; *see also id.* at 188–94 (copies of the ICE detainer and warrant of removal). On August 21, 2025, in response to an inquiry from a treatment facility worker, the LVMPD employee reiterated that Morais-Hechavarria would not be released because of the ICE warrant. *Id.* at 247–48, Vol. II.

On October 13, 2025, almost two months after the court ordered Morais-Hechavarria transferred to inpatient treatment, he and the ACLU of Nevada filed a Petition for a Writ of Mandamus (“the Petition”) challenging his continued detention and Respondents’ authority to detain people based on ICE warrants.² *Id.* at 001–29,

² Petitioners asked in the alternative for a writ of habeas corpus, but they are now proceeding solely on their mandamus petition. *See* A.A. 343, Vol. II. Morais-Hechavarria also attempted to challenge his detention in his criminal case, but that court held it lacked jurisdiction to terminate the immigration hold. A.A. 211, Vol. I.

Vol. I. Immediately after the Petition was filed, Respondents began “release processing” for Morais-Hechavarria. *Id.* at 128 (“When Petitioners filed this civil action on October 13, 2025, release processing resumed.”). LVMPD employees notified ICE that Morais-Hechavarria “was being processed for release,” and on the morning of October 16, 2025, instead of delivering him to inpatient treatment as contemplated by the earlier court order, LVMPD transferred him to ICE custody. *Id.* Shortly thereafter, ICE deported him.

IV. Procedural History

In the Petition, Morais-Hechavarria and the ACLU of Nevada asserted that Respondents lacked the authority to enter into the Agreement and, even if they had such authority, the actions they contracted to perform under the Agreement—executing ICE warrants and making civil immigration arrests—violate the statutes governing their duties. Specifically, the Petition alleged:

- (1) Respondents violated the Nevada Constitution’s separation-of-powers protections by entering a 287(g) agreement without authorization from the Legislature. A.A. 015–16, ¶¶ 95–98, 021–22, ¶¶ 132–39, Vol. I.
- (2) Respondents violated NRS 211.060 when they agreed to hold civil immigration detainees for the federal government and bear all costs of that detention. *Id.* at 019–20, ¶¶ 118–31.

(3) Respondents violated Article 1, Section 18 of the Nevada Constitution and NRS 31.470 when they entered into an agreement with the federal government to conduct civil immigration arrests based on warrants issued by federal executive-branch officials without authorization from the Legislature. *Id.* at 022–27, ¶¶ 140–72.

For relief, Petitioners sought a declaration that Respondents lacked authority to enter into the Agreement and to detain people, including Morais-Hechavarria, pursuant to immigration detainers or warrants, as well as a writ of mandamus ordering Respondents to terminate the Agreement and any actions taken pursuant to it, including the immigration hold imposed on Morais-Hechavarria. *Id.* at 027–29.

Morais-Hechavarria sought this relief for his injuries, including his continued detention. *Id.* at 004–05, ¶¶ 21–23, 007, ¶ 39. The ACLU of Nevada proceeded pursuant to its organizational purpose to defend and advance the civil liberties and civil rights of all Nevadans and its more than 5,000 members statewide, including their right under the Nevada Constitution to a government bound by the separation of powers. *Id.* at 008, ¶ 49, 014–15, ¶¶ 91–94.

In their response to the Petition, Respondents argued that their transfer of Morais-Hechavarria out of LVMPD custody mooted Petitioners’ claims. *Id.* at 134–35. They also fully briefed the merits issues raised in the Petition. *Id.* at 138–49.

Respondents expressly argued that the Agreement is lawful and that they acted within the scope of their authority in entering into it. *Id.*

In subsequent briefing, Petitioners explained why their claims were not moot, including because they raised issues capable of repetition, yet evading review. A.A. 232–37, 286–92, 330–39, Vol. II. They also detailed why they should prevail on the merits of those issues. *Id.* at 237–42.

On March 6, 2026, the district court “denied” the Petition on standing grounds, which Respondents did not raise, and on mootness grounds. *Id.* at 350 (capitalization omitted).

Specifically, the district court held that Morais-Hechavarria lacked standing to pursue any of his claims because he was released from LVMPD custody and deported after filing his petition. *Id.* at 345–46. Despite styling that holding as one grounded in standing doctrine, the court addressed Petitioners’ argument that Morais-Hechavarria’s claims were not moot because they were capable of repetition, yet evading review. The court applied the three-factor test governing this mootness exception and determined that two factors were satisfied because the duration of the challenged action here is relatively short, *id.* at 348, and the issues raised are important given their “profound constitutional implications,” *id.* at 350. But the court opined that the third factor was not met because there was not a likelihood that a similar issue would arise in the future. *Id.* at 348–50. In doing so, the court dismissed

record evidence showing that LVMPD was continuing to detain people at ICE's behest beyond their scheduled release from criminal custody and did not address the Agreement's express terms committing LVMPD to impose such detention. *See id.*

The district court also declined to find that the ACLU of Nevada had public-importance standing to advance its claims because "the Nevada Supreme Court ha[d] not previously addressed this [doctrine] solely in the context of mandamus proceedings." *Id.* at 345. The district court also opined that the ACLU of Nevada would not have standing under this doctrine even if it applied to mandamus proceedings. Though the court recognized that "the issues presented in the petition are of significant public importance and the ACLU arguably would be an appropriate party to assert the challenge," it determined that public-importance standing applies to separation-of-powers violations and Petitioners' claims did not implicate such a violation. *Id.* at 347–48.

The district court next analyzed the ACLU of Nevada's standing under the test generally applicable to mandamus proceedings, asking whether the organization "ha[d] a beneficial interest in obtaining writ relief." *Id.* at 344 (citing *Heller v. Leg. of State of Nev.*, 120 Nev. 456, 461, 93 P.3d 746, 749 (2004)). The court determined that the ACLU of Nevada lacked standing to assert a separation-of-powers claim because Respondents' "act of entering into an unlawful agreement does not necessarily result in a violation of civil liberties." *Id.* at 346. However, the court held

that the ACLU of Nevada *did* have standing as to claims that the Respondents (1) violated NRS 211.060 by entering into the Agreement and committing to bearing the costs of detaining people for the federal government, and (2) violated Article 1, Section 18 of the Nevada Constitution and NRS 31.470 because the Agreement requires Respondents to conduct arrests for civil immigration violations without authorization from the Legislature. *Id.* at 346–47.

Ultimately, however, the district court held even as to those claims for which the ACLU of Nevada had standing that the claims were “rendered moot” by Morais-Hechavarria’s “release[] from custody.” *Id.* at 348. The court did not address Petitioners’ contention that Morais-Hechavarria’s release had no bearing on the justiciability of the ACLU of Nevada’s claims. *See id.* at 288 n.1.

The district court subsequently dismissed the case. This appeal followed.

SUMMARY OF ARGUMENT

The district court erred in denying the Petition. To begin, both Petitioners have standing to challenge Respondents’ 287(g) agreement. Morais-Hechavarria unquestionably had standing when he filed the Petition because he was being detained pursuant to the Agreement. In holding that his subsequent release from Respondents’ custody deprived him of standing, the district court improperly conflated that doctrine with mootness.

The ACLU of Nevada independently has standing under this State's public-importance doctrine. Contrary to the district court's ruling, public-importance standing is available in mandamus actions just as it is in other civil actions. And the ACLU of Nevada meets all the requirements for invoking it: this case raises the important question whether Respondents may contract with the federal government to enforce federal immigration law without the Nevada Legislature's authorization; that question implicates the separation of powers and requires judicial guidance to resolve; and the ACLU of Nevada is an appropriate party to raise the issue because its interests are truly adverse to Respondents'. The ACLU of Nevada also has traditional mandamus standing because it has a beneficial interest in obtaining writ relief against Respondents' violations of the separation of powers and Nevada statutes circumscribing their authority to enforce federal immigration law.

Next, Petitioners' claims are not moot for at least two independent reasons. First, although Respondents turned Morais-Hechavarria over to ICE in response to this suit, that transfer did not moot the ACLU of Nevada's claims, which are grounded in the ACLU of Nevada's own interests in ensuring that Respondents are not violating Nevada law by engaging in federal immigration enforcement and doing so in reliance on public funds. Second, the transfer did not moot Morais-Hechavarria's claims because they raise issues that are capable of repetition, yet evading review. As LVMPD's own data and the Agreement's express terms confirm,

Respondents are detaining, at ICE’s behest, hundreds of people beyond their scheduled release from criminal custody. And the duration of the detainers—typically less than 48 hours—is too brief to allow for judicial resolution.

Finally, mandamus relief is warranted here. This Court should reach the merits of Petitioners’ claims because they raise urgent questions concerning the ongoing deprivation of liberty of many Nevadans. Respondents’ actions causing that deprivation are unlawful for two reasons. First, Respondents did not have authority to enter into the Agreement. Under the Nevada Constitution, Respondents have only the powers that the Legislature grants them. But far from granting Respondents authority to contract with the federal government to enforce federal immigration law, the Legislature has expressly limited it. NRS 211.060 permits sheriffs police to contract with the federal government to detain only “prisoners” in custody for criminal conduct, not people in civil immigration custody. NRS 211.060 also requires the federal government to bear all the costs of detention, but the Agreement here imposes all costs on the LVMPD, and in turn on Nevadans. Respondents thus exceeded their authority by entering into the Agreement.

Second, setting aside the unlawfulness of the Agreement itself, Respondents do not have the authority to take the actions they contracted to perform under the Agreement: executing ICE warrants and making civil immigration arrests. NRS 31.470, which enumerates the narrow circumstances in which Nevada law

enforcement agents may make civil arrests, does not authorize civil immigration arrests. Similarly, NRS 171.124, which enumerates the narrow circumstances in which agents may make arrests without a criminal warrant, does not permit arrests pursuant to administrative ICE warrants. Thus, by executing ICE warrants and detaining people for immigration purposes, Respondents are violating Nevada statute and Article 1, Section 18 of the Nevada Constitution.

Accordingly, this Court should reverse the district court's decision and grant the Petition.

STANDARD OF REVIEW

Whether a party has standing and whether a claim is moot are both questions of law reviewed de novo. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011); *Martinez-Hernandez v. State*, 132 Nev. 623, 625, 380 P.3d 861, 863 (2016). Where this Court reverses the denial of a mandamus petition on threshold grounds, it can resolve merits issues raised in the petition that were briefed below. *See Stockmeier v. Psych. Rev. Panel*, 122 Nev. 534, 543, 135 P.3d 807, 813 (2006). When those merits issues “involve[] questions of law, such as the constitutionality of” government actions, “this court will review the district court’s decision de novo.” *Malfitano v. Cnty. of Storey by & through Storey Cnty. Bd. of Cnty. Comm’rs*, 133 Nev. 276, 279, 396 P.3d 815, 817 (2017).

ARGUMENT

I. Both Petitioners have standing.

A. Morais-Hechavarria has standing to pursue his claims, and the district court erroneously conflated standing and mootness in ruling otherwise.

The district court erred in ruling that Morais-Hechavarria's release from Respondents' custody and subsequent deportation deprived him of standing. *See* A.A. 345–46, Vol. II. That ruling improperly conflated standing, which is about whether the proper party is before the court at the time suit is filed, *see Morency v. Dep't of Educ.*, 137 Nev. 622, 625, 496 P.3d 584, 587 (2021), with mootness, which is about whether a case “present[s] a live controversy” throughout the course of litigation, *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). The district court's error caused it to deny Morais-Hechavarria's petition without any consideration of whether a mootness exception allowed the court to reach his claims notwithstanding his release.

Morais-Hechavarria unquestionably has standing because, at the time he filed the Petition, Respondents were detaining him pursuant to the challenged Agreement. He would have gained a “direct benefit from [the] issuance” of a writ, *Heller v. Leg. of State of Nev.*, 120 Nev. 456, 461, 93 P.3d 746, 749 (2004), because it would have “order[ed] LVMPD to immediately lift any [immigration] holds” on him and LVMPD had no other basis to hold him, A.A. 028, Vol. I. The impact of Morais-

Hechavarria’s subsequent transfer to ICE custody was about mootness, not standing—a distinction Respondents recognized. *See id.* at 134 (arguing that Petitioners’ “claims against LVMPD [were] mooted by Mr. Morais-Hechavarria’s release”); *see also Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 174 (2000) (cautioning against “conflat[ing] . . . initial standing to bring suit” with “postcommencement mootness” (citations omitted)); *N.C.A.A. v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) (“Cases presenting real controversies at the time of their institution may become moot by the happening of subsequent events.”).

This Court’s decision in *Valdez-Jimenez v. Eighth Judicial District Court* illustrates the point. 136 Nev. 155, 460 P.3d 976 (2020). The *Valdez-Jimenez* petitioners challenged their bail settings but were released from pretrial detention before the Court could issue a ruling. *Id.* at 158, 460 P.3d at 981. This Court did not discuss standing, instead asking whether the petitioners’ claims were “rendered moot” by their release and ultimately concluding that an exception to mootness for claims capable of repetition yet evading review applied. *Id.* at 158–61, 460 P.3d at 981–84; *see also Johnston v. Eighth Jud. Dist. Ct.*, 138 Nev. 700, 703, 518 P.3d 94, 99 (2022) (considering whether claims of a petitioner who was “no longer in custody” were moot and whether “an exception to the mootness doctrine” applied); Argument II.B., *infra*. Like in *Valdez-Jimenez* and *Johnston*, the impact of Morais-

Hechavarria's release is a question of mootness, so the district court's reliance on it with respect to a threshold standing analysis was erroneous.

B. The ACLU of Nevada has standing under this Court's public-importance doctrine.

The ACLU of Nevada has standing to assert its claims under the public-importance doctrine described in *Nevada Policy Research Institute, Inc. v. Cannizzaro*, 138 Nev. 259, 507 P.3d 1203 (2022) ("*NPRI*"), because this case concerns Nevadans' "interest in their form of government" and presents important issues "that are likely to recur and for which there is a need for future guidance." *Id.* at 263, 507 P.3d at 1208 (citation and internal quotation marks omitted).

This Court first recognized the public-importance doctrine in *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016). *Schwartz* held that Nevadans have standing to raise constitutional challenges to legislative expenditures or appropriations without a showing of a special injury, creating an "exception" to the traditional standing requirement that "a party must show a personal injury." 132 Nev. at 743, 382 P.3d at 894. In *NPRI*, the Court then extended the doctrine to claims involving separation-of-powers questions because such questions "affect[], in a fundamental way, the sovereignty of the state, its franchises or prerogatives, or the liberties of its people." 138 Nev. at 262, 507 P.3d at 1207–08 (quoting *State ex rel. Coll v. Johnson*, 128 N.M. 154, 161, 990 P.2d 1277, 1284 (1999)). "[T]he ability of an appropriate party to obtain judicial review of a public official's actions serves an

essential role in maintaining the constitutional structure of the state government and preventing government actors from either overstepping or abdicating their public duties.” *Id.* at 262–63, 507 P.3d at 1208.

Accordingly, pursuant to *NPRI*, a plaintiff has standing if: “(1) the case presents ‘an issue of significant public importance,’” (2) the plaintiff is “an ‘appropriate’ party to bring the action,” (3) the plaintiff seeks “vindication of the Nevada Constitution’s separation-of-powers clause,” and (4) the issue is “likely to recur” and gives rise to a need for “future guidance.” *Id.* at 262–64, 507 P.3d at 1208.

In this case, the district court correctly ruled that the ACLU of Nevada satisfied three of *NPRI*’s four factors but erred in ruling, as a threshold matter, that the public-importance doctrine does not apply in mandamus proceedings and, with respect to the remaining *NPRI* factor, that this case does not implicate Nevada’s separation-of-powers clause. *See* A.A. 347, Vol. II.

1. The public-importance doctrine applies in mandamus actions just as it does in any other civil action.

The district court declined to recognize the ACLU of Nevada’s public-importance standing because this “Court ha[d] not previously addressed this [doctrine] solely in the context of mandamus proceedings.” A.A. 344–45, Vol. II. That ruling was erroneous because this Court has never suggested that the public-importance doctrine contains a carveout for mandamus actions. To the contrary, this

Court’s rationale for recognizing public-importance standing applies with as much, if not more, force in mandamus actions as in other actions.

This Court observed in *NPRI* that the public-importance doctrine must be capable of addressing separation-of-powers issues that would otherwise escape judicial review in order to “maintain[] the constitutional structure of the state government and prevent[] government actors from either overstepping or abdicating their public duties.” *NPRI*, 138 Nev. at 263, 507 P.3d at 1208. The very purpose of a writ of mandamus is “to compel the performance of an act which the law requires as a [governmental] duty . . . or to control a manifest abuse or an arbitrary or capricious exercise of [governmental] discretion.” *Segovia v. Eighth Jud. Dist. Court*, 133 Nev. 910, 912, 407 P.3d 783, 785 (2017) (quoting NRS 34.170 and NRS 34.330). Given that mandamus petitions are used to prevent government actors from “overstepping or abdicating their public duties” without considering damages, *NPRI*, 138 Nev. at 263, 407 P.3d at 1208, they are a particularly important vehicle for addressing issues for which the public-importance doctrine was designed to ensure judicial review.

There is therefore no basis to preclude application of the public-importance doctrine in mandamus proceedings.

2. The ACLU of Nevada’s claims implicate separation of powers because they concern Executive-branch encroachment on legislative authority.

Petitioners allege that Sheriff McMahon, an Executive-branch official, and LVMPD, an Executive-branch agency,³ usurped the Legislature’s powers by unilaterally entering into the Agreement without legislative authorization. *See* A.A. 002–29, Vol. I. Petitioners are therefore “seek[ing] vindication of the Nevada Constitution’s separation-of-powers clause,” *NPRI*, 138 Nev. at 263, 507 P.3d at 1208, and have—at minimum—public-importance standing to bring their claims.

Article 3, Section 1 of the Nevada Constitution divides the government into the legislative, executive, and judicial departments, and commands that “no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions[] appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.” Nev. Const. art. III, § 1. “The purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch.” *Comm’n on Ethics v. Hardy*, 125 Nev. 285, 292, 212 P.3d 1098, 1103 (2009) (citing *Clinton v. Jones*,

³ *See Del Papa v. Steffen*, 112 Nev. 369, 377, 915 P.2d 245, 250 (1996) (“The executive power extends to the carrying out and enforcing the laws enacted by the [L]egislature.” (citation omitted)); LVMPD Pet. for Writ of Mandamus at 33–44, *LVMPD v. Just. Ct. of Las Vegas Twp.*, No. 92261 (Nev. filed March 9, 2026) (Respondents asserting that they are part of the Executive branch under Article 3, Section 1).

520 U.S. 681, 699 (1997)). The doctrine is “particularly applicable when [the] constitution expressly grants authorization to one branch of government.” *Id.* (citing *Heller*, 120 Nev. at 466, 93 P.3d at 753).

As relevant here, Petitioners argue that Article 4, Section 32 of the Nevada Constitution expressly grants the Legislature the “power to increase, diminish, consolidate or abolish” the office of county sheriffs and “shall . . . fix by law their duties.” Nev. Const. art. IV, § 32. Thus, the Legislature prescribes Respondents’ duties through enacted statutes. And Petitioners’ claims assert that the Legislature has not expressly authorized Respondents to enter into 287(g) agreements, carry out civil immigration arrests, or house civil detainees—and that, in fact, Nevada’s Constitution and statutes prohibited the Respondents’ actions here. A.A. 001–29, Vol. I; *see* Argument III, *infra*.

Petitioners’ claims therefore implicate the constitutional parameters separating the legislative and executive branches and, in turn, “the liberties of [Nevada’s] people.” *NPRI*, 138 Nev. at 264, 507 P.3d at 1209. And lawsuits like this are exactly why this Court extended the public-importance doctrine in *NPRI*: Petitioners’ “ability . . . to obtain judicial review” of LVMPD’s actions “serves an essential role in . . . preventing government actors” from “overstepping” their duties. *Id.* at 262–63, 507 P.3d at 1208. Accordingly, Petitioners have met *NPRI*’s separation-of-powers requirement.

3. The district court correctly held that Petitioners' claims raise important public issues on which guidance is needed but erred in ruling that those issues are unlikely to recur.

The issues Petitioners raise are of significant public importance and are likely to recur because they concern not only the constitutional separation of powers, *see* Argument I.B.2., *supra*, but also the rights of hundreds of Nevadans who are being unlawfully detained by LVMPD with no recourse to challenge their detention.

Under the Agreement, LVMPD continues to detain people even after their sentences are over or judges overseeing their criminal cases order their release. *See* A.A. 040, Vol. I (Agreement providing that “the alien *will continue to be held* in the [LVMPD’s] jail/correctional facilities” for up to 48 hours after their scheduled release from criminal custody (emphasis added)). The typical duration of the ICE holds—48 hours from when they come into effect—is short and plainly does not provide enough time for someone to learn of the hold, find counsel to challenge its lawfulness, file a petition, and obtain relief.⁴ Indeed, under the district court’s rationale, even if a person managed to file a legal challenge within that short window, LVMPD could expedite their transfer to ICE then argue that their claims were moot, as LVMPD openly did here. *See id.* at 128 (Respondents admitting that “[w]hen

⁴ The two-month ICE hold on Morais-Hechavarria that gave him time to file this challenge was the product of unusual circumstances. LVMPD refused to release him to a treatment facility expressly due to his immigration hold but also did not release him to ICE because LVMPD apparently believed doing so would violate the criminal court’s order directing that he be sent to a treatment facility.

Petitioners filed this civil action on October 13, 2025, release processing resumed”). Compounding the problem, the threat that LVMPD may expedite their transfer to ICE custody would chill any normal person from pursuing a petition.

Moreover, as Morais-Hechavarria’s case demonstrates, it remains unclear how a person detained on an immigration hold can seek relief through the criminal legal system. Morais-Hechavarria attempted to challenge his unlawful detention in his criminal case, but the judge overseeing that case held that it did not have jurisdiction over the immigration hold. A.A. 211, Vol. I.

The record evidence also shows that these holds are not just certain to recur, but they *are* recurring so long as the Agreement remains in place. Petitioners identified other cases in which individuals alleged they were unlawfully held by LVMPD pursuant to ICE warrants and submitted LVMPD’s own data on the number of ICE warrants it received. For example, a “Weekly DSD Immigration Report” showed that during one week in August 2025 alone, LVMPD received 21 ICE I-200 Forms⁵ and 2 ICE I-205 Forms requesting that the Department hold people on ICE’s behalf, with year-to-date totals of 661 and 252, respectively. A.A. 102, Vol. I. The Agreement makes clear that Respondents’ standard practice is to comply with these

⁵ The DSD report labeled these as “I-200 Detainers,” but the I-200 Form is a warrant of arrest, not a detainer. See A.A. 100, Vol. I.

requests, just as they did with Morais-Hechavarria. *Id.* at 040; *see also id.* at 193–94.

In addition, the impact of these 287(g) agreements extends far beyond this case, as several other counties have entered into similar contracts, *id.* at 008, ¶ 47, further demonstrating the need for future guidance on these issues.

4. The district court correctly determined that the ACLU of Nevada is an appropriate party to bring the action.

In the context of the public-importance doctrine, “appropriateness has three main facets: the plaintiff must not be a ‘sham plaintiff’ with no true adversity of interest; he or she must be capable of competently advocating his or her position; and he or she may still be denied standing if ‘there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit.’” *NPRI*, 138 Nev. at 265–66, 507 P.3d at 1210. All three considerations confirm the ACLU of Nevada is an appropriate petitioner here.

First, there is no dispute that the ACLU of Nevada’s interests are truly adverse to Respondents’. As part of its mission to defend and advance the civil liberties, civil rights, and other fundamental human rights of all Nevadans, the ACLU of Nevada has litigated and continues to litigate numerous lawsuits seeking to ensure government actors are acting transparently and within the bounds of Nevada law with respect to immigration enforcement. A.A. 233, Vol. II.

Second, the ACLU of Nevada is “capable of fully advocating [for its] position.” *Schwartz*, 132 Nev. at 743, 382 P.3d at 895. The organization has extensive experience litigating issues related to immigration, against the Respondents, and before this Court. *See, e.g., Ramirez v. Noem*, 823 F. Supp. 3d 1182, 1220 (D. Nev. 2026) (certifying ACLU of Nevada as class counsel for detained noncitizens); *Semper v. LVMPD*, No. 2:20-CV-1875 JCM (EJY), 2025 WL 947542, at *9 (D. Nev. Mar. 28, 2025) (granting ACLU of Nevada clients partial summary judgment against LVMPD); *In re Pub. Recs. Requests to LVMPD*, 569 P.3d 624, 141 Nev. Adv. Op. 26 (2025) (prevailing in litigation against LVMPD before this Court).

Third, the ACLU of Nevada “will serve as a true and strong adversary” in this case, *NPRI*, 138 Nev. at 266, 507 P.3d at 1210, notwithstanding Respondents’ contention that “the best-positioned litigants are detainees who face an actual restraint,” A.A. 322, Vol. II. “The mere possibility that other individuals may have a more direct interest in bringing a challenge . . . does not mean that [the ACLU of Nevada] is an inappropriate party to do so.” *NPRI*, 138 Nev. at 266, 507 P.3d at 1210. “[T]he crucial inquiry is whether [any] more directly concerned potential plaintiff has sued or seems likely to sue in the foreseeable future.” *Id.* at 266–67, 507 P.3d at 1210–11 (citation omitted); *see also id.* at 267, 507 P.3d at 1211 (“[M]ore than one party may be appropriate and a party is not required to have the greatest interest to have standing.” (citation omitted)). As explained above, it is exceedingly

difficult, if not impossible, for people detained pursuant to ICE holds to file legal challenges to their detention in the brief time the holds are in place, much less to obtain relief. *See* Argument I.B.3., *supra*. Moreover, Respondents’ own actions in transferring Morais-Hechavarria—a “detainee[] who face[d] an actual restraint,” A.A. 322, Vol. II—then relying on those actions to argue mootness underscores the importance of the ACLU of Nevada’s independent ability to obtain judicial review.

Accordingly, the ACLU of Nevada has standing under the public-importance doctrine.

II. Petitioners’ claims are not moot.

Morais-Hechavarria’s transfer to ICE custody did not render Petitioners’ claims moot. First, his transfer did not moot the ACLU of Nevada’s organizational claims, which are grounded in the ACLU of Nevada’s own interests. Second, Respondents cannot stymie judicial review of Morais-Hechavarria’s claims by transferring him to ICE for deportation immediately after he filed this case because his claims raise important issues that are capable of repetition, yet evading review. Accordingly, this Court can—and should—address both Petitioners’ claims on the merits.

A. Morais-Hechavarria’s release did not affect the justiciability of the ACLU of Nevada’s claims.

Although the district court recognized the ACLU of Nevada had standing to assert at least some of its claims, the court believed that those claims were mooted

by Morais-Hechavarria’s transfer to ICE custody. *See* A.A. 348, Vol. II (“This *case* has been rendered moot as Morais-Hechavarria was released from custody.” (emphasis added)); *id.* at 350 (“[W]hile the ACLU has standing to pursue claims one, three and four, the issues asserted in the petition are moot and no exception to the mootness doctrine applies.”). That was error. The ACLU of Nevada’s standing in this case reflects that it has its own “sufficient interest in the litigation,” *Morency*, 137 Nev. at 625, 496 P.3d at 588—specifically, its own interest in ensuring that LVMPD does not overstep its authority by contracting with ICE to execute immigration arrests and detainers in violation of Nevada law. *See* Argument I.B., *supra*; A.A. 058–59, Vol. I (declaration detailing interests of ACLU of Nevada and its 5,000 members). That interest is independent of Morais-Hechavarria’s interest in challenging the legal basis of his prolonged detention and remains the same regardless of his custody status.⁶ Thus, the ACLU of Nevada’s claims are live independently from the justiciability of Morais-Hechavarria’s claims.

B. Morais-Hechavarria’s claims raise important legal issues that are capable of repetition, yet evading review.

Respondents’ decision to abruptly transfer Morais-Hechavarria out of their custody within days of the petition being filed also does not prevent this Court from adjudicating his claims. A court may consider an ostensibly moot claim if “(1) the

⁶ Petitioners pointed this out to the district court, *see* A.A. 288 n.1, Vol. II, but the court did not address this point in its Order.

duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important.” *Valdez-Jimenez*, 136 Nev. at 158, 460 P.3d at 982 (quoting *Bisch v. LVMPD*, 129 Nev. 328, 334–35, 302 P.3d 1108, 1113 (2013)).

These factors in many respects overlap with those that pertain to public-importance standing. Accordingly, for similar reasons as those detailed in Part I.B., all three factors are present here.

As to the first factor, the district court correctly concluded that “the duration of the challenged action here is relatively short” because, under the Agreement, the LVMPD holds individuals at ICE’s request for up to 48 hours after their scheduled release from criminal custody. A.A. 364, Vol. II; A.A. 040, Vol. I. That period of detention is “by nature temporary” and comparable to the “brevity of pretrial detention” that this Court has repeatedly held to be sufficiently short to “meet[] this consideration.” *Johnston*, 138 Nev. at 704, 518 P.3d at 100 (citation omitted); *see also, e.g., State v. Washoe Cnty. Pub. Def.*, 105 Nev. 299, 300–01, 775 P.2d 217, 218 (1989) (noting that the 72 hours “between a suspect’s arrest and his appearance before a magistrate” was a “very abbreviated time period” satisfying this factor). Even in the outlier case of *Morais-Hechavarria*, the two months he was detained due to an immigration hold did not provide enough time for the courts to rule on his petition, especially since LVMPD took affirmative steps to moot his claims. *See*

Haney v. State, 124 Nev. 408, 411, 185 P.3d 350, 352 (2008) (holding that a 12-month sentence “evades review because . . . it is unlikely that this court will have time to reach a final determination on the merits” during the sentence).

The district court also correctly determined that, as to the third factor, “there is no doubt that the issues raised in this Petition are important.” A.A. 366, Vol. II. The “[i]mmigration and detention issues” that Respondents’ Agreement raises “affect many criminal defendants on a daily basis” and have “profound constitutional implications” with respect to separation of powers and the authority of Nevada’s local law enforcement agencies to engage in federal immigration enforcement. *Id.*; see Argument I.B.3., *supra*; e.g., *Johnston*, 138 Nev. at 705, 518 P.3d at 100.

The district court erred, however, in concluding as to the remaining “capable of repetition” factor that issues raised in the Petition are not likely to arise going forward. The gist of the court’s rationale appears to be that, although immigration detainees “will likely continue to affect criminal defendants,” it is unclear “whether the CCDC release[s] a person at the conclusion of his or her criminal case or h[olds] that person after a release date as a result of the ICE hold.” A.A. 349–50, Vol. II. This rationale is uniformly at odds with the record and precedent.

First, the Agreement’s express terms state that its very purpose is to allow LVMPD to detain people at ICE’s behest for longer than LVMPD has authority under Nevada law to detain them: it is “designed to facilitate the custodial transfer of

designated aliens in [LVMPD's] jail/correctional facilities to ICE *within 48 hours of alien's release from criminal custody.*" A.A. 040, Vol. I (emphasis added). Thus, upon ICE's request, "the alien *will continue to be held* in [LVMPD's] jail/correctional facilities" for up to "48 hours" after their scheduled release from criminal custody. *Id.* (emphasis added). This Court has found a likelihood of recurrence when the terms of a contract indicate the same problem will continue to arise, as the terms of the Agreement do here. *See, e.g., Solid v. Eighth Jud. Dist. Ct.*, 133 Nev. 118, 120, 393 P.3d 666, 670 (2017) (finding, in dispute over filming of television show, that "the remaining shows on the current production contract, as well as episodes on any future seasons, will present many of the same issues of widespread importance").

Second, LVMPD's own data show that the Department has received at least hundreds of warrants from ICE—an average of approximately 30 per week between June 16 and September 1, 2025. *See* Statement of Facts II, *supra*; A.A. 049, Vol. I; A.A. 304, Vol. II. Respondents do not dispute that this data on the volume of warrants is accurate, and particularly when viewed in light of the Agreement, they demonstrate a likelihood of recurrence. *See, e.g., Chittenden v. Just. Ct. of Pahrump Twp.*, 140 Nev. 47, 51, 544 P.3d 919, 926 (Nev. App. 2024) ("Given that all criminal defendants charged by criminal complaint with a gross misdemeanor or felony are

statutorily entitled to a preliminary hearing, there is a substantial likelihood that a similar issue will arise in the future based on the volume of cases alone.”).

Third, as the district court was aware, *see* A.A. 291–92, 334, Vol. II, LVMPD’s imposition of immigration holds has been challenged in at least two other criminal cases. *See Johnston*, 138 Nev. at 704, 518 P.3d at 100 (finding, in challenge to pretrial release protocols, that “issues are likely to arise in the future, as Johnston has illustrated with examples in three other criminal cases . . .”). Petitioners pointed the district court to *State v. Fedorov*, in which the court noted that CCDC was “not releasing Deft due to ICE hold; therefore, Deft would not be able to complete the Adult Drug Court Program.” Minutes on Order to Show Cause, No. C-25-388634-1 (Eighth Jud. Dist. Ct., Nev. June 10, 2025); *see* A.A. 334, Vol. II. And they flagged *State v. Ortiz*, where the defendant was held on an ICE warrant despite being ordered released by the Justice Court. *See* No. 19-F-08292X (Las Vegas Twp. Just. Ct., Nev. July 2, 2025); A.A. 291–92 Vol. II.

The district court dismissed the import of *Fedorov* and *Ortiz*, suggesting that more “supporting documentation” was necessary. A.A. 349, Vol. II. But Petitioners specified the docket numbers, explained that they concerned the same legal issue as in this case, and quoted a minute order in which the court identified that legal issue. *See* A.A. 291–92, 334, Vol. II. That information was more than sufficient to demonstrate their existence. *See* NRS 47.130(2)(b) (recognizing that a court may

take judicial notice of facts “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”).

In sum, the capable of repetition, yet evading review exception to mootness applies to Morais-Hechavarria’s claims, and all of Petitioners’ claims are justiciable.

III. As Petitioners’ claims are justiciable, the Court should exercise its discretion to resolve the claims on the merits and grant the Petition.

The merits issues before this Court are purely legal, of pressing importance, and were fully briefed before the district court. Accordingly, those issues warrant this Court’s consideration without further delay on remand.

This Court has the discretion to consider issues that the district court did not reach. Exercising that discretion, this Court has ruled on the merits of a mandamus petition after reversing the district court’s denial of the petition on threshold grounds. *See, e.g., Stockmeier*, 122 Nev. 534, 135 P.3d 807 (reversing the district court’s determination that the petitioner was statutorily prohibited from filing the petition and ordering the district court to grant the petition). Further, this Court has repeatedly “consider[ed] constitutional issues” not addressed by the district court, *Tam v. Eighth Jud. Dist. Ct.*, 131 Nev. 792, 798, 358 P.3d 234, 239 (2015); *see also, e.g., Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. 28, 29, 388 P.3d 970, 971 (2017); *Shapiro v. Welt*, 133 Nev. 35, 37, 389 P.3d 262, 266 (2017), and ruled on important legal questions even when they were not raised below, *see, e.g., Durango Fire Prot., Inc. v. Troncoso*, 120 Nev. 658, 661–62,

98 P.3d 691, 693 (2004) (addressing newly raised issue on appeal to clarify a provision of the Nevada Rules of Civil Procedure); *Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. 15, 19, 293 P.3d 869, 871–72 (2013) (addressing new argument on appeal to reconcile a prior decision with a U.S. Supreme Court case).

There are multiple reasons for the Court to resolve the merits arguments in this matter now. First, this case raises important constitutional issues concerning LVMPD’s authority to enter into 287(g) agreements and to arrest and detain people for civil immigration violations. *See* Argument I.B.3., *supra*. Second, the parties fully briefed all the merits issues before the district court, *see* A.A. 061–82, 138–49, Vol. I; A.A. 237–42, Vol. II, and the court denied the petition in full, A.A. 350, Vol. II, putting all of the issues within the scope of this appeal, *see* Nev. R. App. P. 3A(a)–(b)(1) (permitting appeals from a “final judgment”); *e.g.*, *Stockmeier*, 122 Nev. 534, 135 P.3d 807; *Jones v. LVMPD*, 873 F.3d 1123, 1129–30 (9th Cir. 2017) (reversing district court’s procedural ruling and resolving constitutional merits issues because they were fully briefed). Third, whether Respondents can enter into a 287(g) agreement or conduct civil immigration arrests are purely legal issues and do not require resolution of any factual questions. Finally, this Court’s intervention is urgently needed because Respondents are unlawfully depriving Nevadans of their liberty and will continue to do so until enjoined.

On the merits, this Court should grant the Petition because Respondents did not have the authority to enter into the Agreement or to conduct civil immigration arrests under it.

A. The Nevada Legislature has not granted Respondents the authority to enter into 287(g) agreements.

The Nevada Constitution expressly entrusts the Legislature to “fix by law” the “duties” of county sheriffs. Nev. Const. art. IV, § 32. This means that Respondents have only the authority affirmatively conferred by statute.

Respondents have not identified a Nevada statute that grants them the authority to enter into the Agreement, *see generally* A.A. 121–49, Vol. I; A.A. 308–23, Vol. II, nor could they. The statutes the Nevada Legislature has passed governing the powers and duties of county sheriffs and LVMPD do not authorize them to contract with the federal government to detain people on the local government’s dime. *See* NRS 248.090–.250 (outlining the duties and powers of sheriffs); NRS 211.010–.400 (outlining the duties of sheriffs as custodians of jails).

Notably, in attempting to find the requisite source of authority, Respondents have never relied on the only Nevada statute that expressly delineates when sheriffs can contract with the federal government. NRS 211.060, titled “Detention of United States prisoners in county jails,” provides:

A person may be committed under the authority of the United States to any county jail if a contract has been concluded between the United States and the sheriff of the county, upon payment of:

(a) All actual and reasonably necessary costs of his or her confinement, including the direct cost of his or her support and an allocated share of the cost of maintaining the jail and guarding the prisoners, as compensation to the county for the use of the jail; and

(b) All legal fees of the jailer.

Under the canon of construction *expressio unius est exclusio alterius*—“the expression of one thing is the exclusion of another,” *State v. Javier C.*, 128 Nev. 536, 541, 289 P.3d 1194, 1197 (2012)—NRS 211.060 indicates that there are no circumstances under which the sheriff can contract with the federal government other than those specified in the statute. As such, Respondents can contract with the federal government to house people within county jails only when (1) it is housing “prisoners,” and (2) all actual and reasonably necessary costs and legal fees of the jailer are paid by the United States.

Sheriff McMahon exceeded his legislatively delegated power to contract with the federal government and violated NRS 211.060 when he entered into the Agreement in two independent ways.

First, the Agreement is not a contract to house “prisoners” within the meaning of NRS 211.060. NRS 208.085 defines “prisoner” as a “person held in custody under process of law, or under lawful arrest.” *See* NRS 208.015 (specifying that this definition applies throughout Title 16, including NRS 211.060). And this Court has determined that the exact same definition of “prisoner” in NRS 193.022 “only

applies to individuals in custody for criminal conduct, and not to persons in civil protective custody.” *Robinson v. State*, 117 Nev. 97, 98, 17 P.3d 420, 421 (2001).

Second, even if civil immigration detainees could be considered “prisoners” under NRS 211.060, the statute permits a sheriff to hold prisoners for federal government only where the latter pays for “all actual and reasonably necessary costs” of “confinement” and “[a]ll legal fees of the jailer.” NRS 211.060(1)(a)–(b). But the Agreement requires LVMPD to bear the costs associated with detaining people on immigration holds. A.A. 035–36, Vol. I.

Looking elsewhere for support, Respondents have relied on two statutes that make no reference to immigration or detention: (1) NRS 248.090, which states that the Sheriff has a duty to “keep and preserve the peace in their respective counties,” “quiet and suppress all affrays, riots and insurrections,” and serve “process in civil or criminal cases,” and further refers to “apprehending or securing any person for felony”; and (2) NRS 277.110, which sets forth Nevada’s Interlocal Cooperation Act. A.A. 143–45, Vol. I. Neither is applicable here.

As to NRS 248.090, Respondents have never explained how the Sheriff’s general duties to “preserve the peace” and “serve process”—in the context of a statute that refers to “apprehending or securing any person for felony”—encompass the authority to contract with the federal government to detain people for violations of federal civil immigration law when LVMPD otherwise has no basis to hold them.

See Esparza v. Nobles Cnty., No. A18-2011, 2019 WL 4594512, at *7 (Minn. Ct. App. Sept. 23, 2019) (rejecting argument that a state statute providing that sheriffs may “keep and preserve the peace of the county,” “pursue and apprehend all felons,” and “execute all processes” “confer[s] any authority on sheriffs to execute civil immigration warrants”).⁷ In any event, “when a specific statute is in conflict with a general one, the specific statute will take precedence.” *Sheriff v. Witzenburg*, 122 Nev. 1056, 1061, 145 P.3d 1002, 1005 (2006). NRS 211.060 specifically limits Respondents’ power to detain people for the federal government. It therefore controls over NRS 248.090’s general descriptions of sheriffs’ duties. If NRS 248.090 were read otherwise, statutes like NRS 211.060 that authorize sheriffs to take specific action would be rendered superfluous.

The Interlocal Cooperation Act likewise does not confer on Respondents the authority to enter into 287(g) agreements. The Act provides:

Any power, privilege or authority exercised or capable of exercise by a public agency of this State, including, but not limited to, law enforcement, may be exercised jointly with any other public agency of this State, and jointly with any public agency of any other state or of

⁷ Other courts have rejected similar arguments by state or local officials where state law did not specifically confer on them the authority to make civil immigration arrests. *See, e.g., Lunn*, 477 Mass. at 530–32, 78 N.E.3d at 1155–56 (finding no state law “authority to arrest specifically for Federal civil immigration matters”); *Ramon v. Short*, 399 Mont. 254, 275–77, 460 P.3d 867, 879–81 (2020) (finding state laws “do not provide authority for warrantless civil immigration arrests”); *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 43, 88 N.Y.S.3d 518, 529 (N.Y. App. Div. 2018) (“New York statutes do not authorize state and local law enforcement to effectuate warrantless arrests for civil immigration law violations.”).

the United States to the extent that the laws of such other state or of the United States permit such joint exercise.

NRS 277.110(1). By its plain terms, this statute allows public agencies to jointly exercise powers “exercised or capable of exercise by a public agency *of this State*.” *Id.* (emphasis added). It does not allow a state or local agency to exercise the powers of a *federal* agency. Thus, as Respondents admit, “[i]t is not a new font of police power.” A.A. 144, Vol. I. Nevada law prohibits Respondents from contracting with the federal government to detain people for civil immigration violations and to do so on Nevadans’ dime, *see* NRS 211.060, and NRS 277.110 does not change that.

Moreover, NRS 277.110’s requirement that any joint exercise of a state or local agency’s authority be “permit[ted]” by “the laws . . . of the United States,” NRS 277.110(1), compels the same conclusion. Federal law mandates that 287(g) agreements must be “consistent with State and local law.” 8 U.S.C. § 1357(g)(1). Nevada law allows Respondents to contract with the federal government only to detain “prisoners” at the federal government’s expense. NRS 211.060. The Agreement defies those restrictions and therefore violates the Interlocal Cooperation Act for that reason, too.

B. The Nevada Legislature has not granted Respondents the authority to conduct civil immigration arrests and, in fact, expressly prohibits them from doing so.

Even if Respondents had the authority to enter into the Agreement, the actions Respondents contracted to perform—executing ICE warrants and conducting civil

immigration arrests—have not been authorized by the Nevada Legislature and directly violate the statutes governing Respondents’ duties.

Under the Agreement, when a person in LVMPD’s custody is eligible for release on their state criminal charges, instead of releasing them, LVMPD keeps them in custody for up to 48 hours if ICE produces an administrative warrant. *See* A.A. 040, Vol. I. This hold constitutes an arrest. *See* NRS 171.104 (“An arrest is the taking of a person into custody, in a case and in the manner authorized by law.”); *see also* NRS 171.123 (“A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes.”); *United States v. Place*, 462 U.S. 696, 709–10 (1983) (observing that the Supreme Court has never held detention of 90 minutes or more to be anything short of arrest). And because “it is not a crime for a removable alien to remain present in the United States,” *Arizona v. United States*, 567 U.S. 387, 407 (2012), and it is a civil violation that subjects the individual to removal, 8 U.S.C. § 1227(a)(1)(B), Respondents are conducting arrests for civil violations.

Nevada law, however, bars Respondents from making civil immigration arrests. NRS 31.470 prohibits peace officers—which include county sheriffs, their deputies, and correctional officers, *see* NRS 289.150—from making civil arrests except in narrow circumstances not applicable here. *See* NRS 31.470 (“No person shall be arrested in a civil action except as prescribed by this chapter.”). And the

Nevada statute pertaining to a peace officer's authority to make *criminal* arrests, *see* NRS 171.124(1), with or without a "warrant" signed by a "magistrate" in compliance with NRS 171.108(1), cannot possibly apply given the *civil* nature of immigration violations and ICE administrative warrants. *See Arizona*, 567 U.S. at 396 ("Removal is a civil, not criminal, matter.").

In sum, the Nevada Legislature has expressly prohibited peace officers from making civil arrests unless they fall into a limited exception. *See* NRS 31.470; NRS 171.124(1). There is no exception for arrests for civil immigration violations. *See id.* Accordingly, Respondents directly violate Nevada law and Article 1, Section 18 when they execute ICE warrants and hold people for ICE beyond their release from criminal custody. *See State v. Bayard*, 119 Nev. 241, 247, 71 P.3d 498, 502 (2003) (holding that arrests made in violation of Nevada law violates a person's "right to be free from unlawful searches and seizures under Article 1, Section 18").

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's decision and grant the Petition.

Dated: September 17, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared using Microsoft Word in 14-point Times New Roman, a proportionally spaced typeface.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because it contains 9,435 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e)(1), if applicable, which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: September 17, 2026

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CERTIFICATE OF SERVICE

I certify that on September 17, 2026, I electronically filed the foregoing Appellants' Opening Brief with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system and I served a true and correct copy of the same via the Court's e-service system.

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