IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

No. 26 MR 1701

IN RE APPOINTMENT OF A SPECIAL PROSECUTOR

Hon. Judge Erica Reddick

COOK COUNTY STATE'S ATTORNEY'S OBJECTION TO THE PETITION TO APPOINT A SPECIAL PROSECUTOR

Now comes Eileen O'Neill Burke, Cook County States Attorney, through her Assistant(s), Enrique Abraham, Jessica Scheller, Jennifer Bagby and Yvette Loizon to object to the Petition to Appoint a Special Prosecutor to Investigate and Prosecute Federal Agent Wrongdoing During Operation Midway Blitz. In support of her objection, the State's Attorney states as follows:

I. INTRODUCTION

The State's Attorney, like many others in Cook County, is "horrified by the thuggish and inappropriate conduct of ICE agents" in Chicago and elsewhere.[1] But that horror does not mean that she—or any other prosecutor whether specially appointed or elected—can willfully violate the law. Illinois law simply does not permit prosecutors to initiate criminal investigations and bring prosecutions because the general public and elected officials would like them to. And it does not allow courts to prevent the elected State's Attorney from performing her statutory duties because a group of lawyers, elected officials, and community leaders determine that they do not agree with the way she performs those statutory duties.

[1] https://news.wttw.com/2026/03/10/chicago-coalition-pushing-special-prosecutor-investigate-ice-crimes-drawing-pushback (last accessed March 16, 2026).

Petitioners seek the appointment of a special prosecutor because they assert that the State's Attorney has an actual conflict of interest. The law permits the appointment of a special prosecutor for an actual conflict of interest in two distinct scenarios: where the elected prosecutor has a personal conflict of interest in the action at issue or where the elected prosecutor is personally involved in the action at issue. Neither scenario exists here.

Petitioners are asking this Court to ignore the law and appoint a special prosecutor citing public outrage and the will of multiple political figures as support for their position. They want federal immigration officers investigated by local prosecutors instead of law enforcement, despite restrictions clearly articulated in Illinois Supreme Court jurisprudence that strictly limit prosecutorial investigative action. They want federal immigration officers prosecuted based on information gleaned from newspaper accounts rather than properly collected and analyzed evidence without regard for significant federal law challenges that stem from the supremacy clause. And they are willing to present baseless allegations and gross misrepresentations of law to this Court to advance their agenda.

Although Petitioners purport that their pleading is a necessary response to the State's Attorney's "reluctance to investigate or prosecute federal agents for crimes committed against the people of Cook County" (Pet. 3), Petitioners readily agree that federal agents that violate Illinois law must be "investigated through the same procedures []traditionally used, prosecuted with due process and held accountable in [the] local court system." (Pet. 28), quoting Eric Rhinehart, (Lake County State's Attorney).[2] In Illinois, that means federal agents **must be investigated by law enforcement** (*People v. Ringland*, 2017 IL 119484 , at ¶ 24) and prosecuted by the elected

[2] State prosecutors must hold federal agents accountable when they break the law, CHICAGO TRIBUNE (Jan. 29, 2026), https://www.chicagotribune.com/2026/01/29/opinion-federal-immigration-agentsaccountable-renee-good-alex-pretti.

prosecutor only after all of the properly collected facts and evidence result in reasonable belief that felony charges are supported by probable cause, that the admissible evidence will be sufficient to support a conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice, in accordance with applicable law and prosecutors' ethical obligations. (American Bar Association (ABA) Criminal Justice Standard 3-4.3; Ill. Rule of Professional Resp. 3.8). Petitioners' failure to acknowledge these truths is detrimental not only to their request for a special prosecutor, but to their purported goal of seeking criminal accountability for federal law enforcement officers. Acting outside the bounds of the law comes with a price, and that price here would be compromising the prosecution's ability to obtain justice for victims and the community. Notably, Petitioners purposefully fail to acknowledge that the State's Attorney has made clear that she will hold federal law enforcement officers accountable for criminal conduct **within the bounds of Illinois law.** With the support of the Illinois State's Attorney's Association and the Attorney General, she set forth a Federal Immigration Enforcement Action Response Protocol to do just that. This Protocol ensures that all prosecutors and law enforcement officers in this state have clear guidance on how to "move forward with prosecuting ICE agents should a review of the evidence determine that felony criminal charges are warranted"[3] lawfully and with full consideration of all of the relevant challenges that come with this incredibly difficult task. As the State's Attorney explained, "If a federal law enforcement agent commits a crime, my office will not hesitate to act, **in accordance with state law**. This protocol establishes clear, **legally sound** guidelines to ensure we have a responsible and effective path to pursue accountability."[4]

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[3] https://www.cookcountystatesattorney.org/news/cook-county-states-attorneys-office-implements-charging-protocol-use-force-incidents-involving (last accessed March 16, 2026).

[4] (Emphasis added); *Id.*

The fabric of our democracy suffers when facts are manufactured and the rule of law is ignored. Our communities and the victims of crime that live in them deserve representation from advocates, like the State's Attorney and her Assistants, who honor the law and are committed to following it. Accordingly, Illinois courts have long recognized that the appointment of a special prosecutor is a serious decision that should occur in very distinct circumstances, none of which are present here. The petition before this Court is baseless, frivolous, and contrary to law. It must be denied.

II. BURDEN OF PROOF & GOVERNING PRINCIPLES

Under Illinois law, a state's attorney is a constitutional officer, and both the Constitution and the common law vest her with the authority to prosecute cases on behalf of the People who elected her in matters affecting their interests. *County of Cook ex rel. Rifkin v. Bear Stearns & Co.*, 215 Ill. 2d 466, 478 (2005); Ill. Const. 1970, Art. VI, §19. A State's Attorney has exclusive discretion in deciding what if any charges to bring and how to initiate and manage criminal prosecutions. *People v. Jamison*, 197 Ill. 2d 135, 161-62 (2001); *People v. Novak*, 163 Ill. 2d 93, 113 (1994); see also 55 ILCS 5/3-9005(a)(1) ("The duty of each State's Attorney shall be... [t]o commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for [her] county, in which the people of the State or county may be concerned"); see also *McCleskey v. Kemp*, 481 U.S. 279, 296, 311-12 (1987) (American law firmly recognizes that prosecutors have discretion to provide individualized justice). It follows that courts should not second-guess a state's attorney's charging decisions. *In re Derrico G.*, 2014 IL 114463, ¶¶ 62-63. A State's Attorney's authority cannot be transferred to another attorney unless very specific circumstances are proven to exist. *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶¶ 26-30; *People ex rel. Kunstman v. Shinsaku Nagano*, 389 Ill. 231, 249-50 (1945).

Nevertheless, there are some circumstances where a state's attorney may not be able to perform her duties, so the legislature created a limited mechanism through which an interested party may petition for appointment of a special prosecutor pursuant to 55 ILCS 5/3-9008, which states in part:

> (a-10) The court on its own motion, or an interested person in a cause, proceeding, or other matter arising under the State's Attorney's duties, civil or criminal, may file a petition alleging that the State's Attorney has an actual conflict of interest in the cause, proceeding, or other matter. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney has an actual conflict of interest in the cause, proceeding, or other matter. If the court finds that the petitioner has proven by sufficient facts and evidence that the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause, proceeding, or other matter.[5]

Petitioners ask for appointment of a special prosecutor under subsection (a-10), alleging that the State's Attorney has an "actual conflict of interest" although they present no facts that substantiate their claim. (Pet. 31-52). Illinois law does not define the phrase "actual conflict of interest," but courts have recognized a state's attorney may have an interest in an action in two

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[5] 55 ILCS 5/3-9008 also provides for a Special Prosecutor under the following circumstances:

(a-5) The court, on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney is sick, absent, or unable to fulfill the State's Attorney's duties. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney is sick, absent, or otherwise unable to fulfill the State's Attorney's duties. If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill the State's Attorney's duties, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-15) Notwithstanding subsections (a-5) and (a-10) of this Section, the State's Attorney may file a petition to recuse the State's Attorney from a cause or proceeding for any other reason the State's Attorney deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

scenarios: (1) as a private individual or (2) an actual party to the action. *People v. Abdul Malik Muhammad*, 2025 IL 130470, ¶ 52 (citing *In re Appointment of Special State's Attorney*, 2020 IL App (2d) 190845, ¶ 17). The appointment of a special prosecutor under a-10 "is permissible **only** where there is an actual conflict of interest." *Muhammad*, at ¶ 51 (emphasis added).

To "establish an actual conflict of interest, the movant must identify a specific deficiency in counsel's strategy, tactics, or decision-making that is attributable to the alleged conflict." *Id.* ¶ 52. "'Speculative allegations and conclusory statements are insufficient to establish an actual conflict of interest.'" *Id.* (quoting *People v. Yost*, 2021 IL 126187, ¶ 38). The burden rests on petitioners to present sufficient facts and evidence establishing an actual conflict of interest. *Id.* ¶ 51. Petitioners do not and cannot meet their burden because the alleged conflicts they present are wholly manufactured complaints that have no basis in reality and certainly no basis in the law.

The presentation of a frivolous claim like that before this Court should not be tolerated as it drains already scarce judicial and prosecutorial resources. Accordingly, their Petition must be denied.

III. ARGUMENT

A. There Is No Actual Conflict Of Interest and No Legal Basis For the Appointment of a Special Prosecutor.

Petitioners cannot meet the factual and legal burdens that are imposed by Illinois law to obtain the appointment of a special prosecutor because they do not allege or possess any facts that suggest the State's Attorney has a personal conflict in any action, or that she is an actual party to an action. Instead, Petitioners ignore Illinois law and seek the appointment of a special prosecutor because the State's Attorney has not initiated an investigation or brought a prosecution of federal immigration enforcement agents for their on-duty conduct despite: (1) "tremendous public support***stretching from individual citizens to elected officials;" (2) public demands by

"individual citizens and federal, state, and local elected officials*** that federal agents be held accountable for criminal conduct;" (3) "outrage" by the Illinois Accountability Commission that has "called for referrals for the prosecution of federal agents that have committed misconduct;" (4) a resolution passed by the Chicago City Council "calling for investigation into federal agent misconduct in Chicago;" (5) "Toni Preckwinkle, President of the Cook County Board of Commissioners, and most of the Commissioners" calling for the State's Attorney to "'pursue all available charges" against federal agents;" (6) a federal court order and federal pleadings that "reflects the testimony and documentation of misconduct by Chicago community organizations, religious leaders, journalists, elected officials, and community members;" (7) "[t]he people of Cook County [who] are profoundly concerned with violent crimes that federal agents committed against their neighbors, elected officials, their clergy, and their journalists;" (8) "prosecutors in Illinois and around the country [who] have initiated investigations into similar conduct by federal agents within their jurisdiction, or announced **their intention** to investigate such conduct;[6] (9) the State's Attorney's statement that she would not review felony charges that were previously reviewed by the Mayor of Chicago's office (due to serious discovery concerns and the politicization of a prosecution—facts conveniently omitted by the Petitioners); and (10) the Petitioners' disagreement with the State's Attorney's Federal Immigration Enforcement Action Response Protocol, which was adopted by the Illinois State's Attorney's Association and Attorney General Kwame Raoul. (Pet. 23-29). Petitioners also assert that the State's Attorney's "normal collaboration" with federal law enforcement and the possibility of political retaliation if she

[6] Notably, Petitioners provide no evidence other than newspaper articles to support this position, and their assertion that an Illinois State's Attorney has initiated an investigation is wholly unsupported by anything other than rank speculation.

prosecuted a federal immigration enforcement officer are also bases for appointment of a special prosecutor. (Pet. 32).

Ultimately, Petitioners are seeking the appointment of a special prosecutor because they disagree with the State's Attorney's prosecutorial decisions and would prefer that she make those decisions based on public sentiment, political pressure, the urging of elected officials, and information gleaned from newspaper articles and civil pleadings rather than a criminal investigation conducted by law enforcement officers with access to evidence that has been properly collected and documented. Petitioners are claiming that the State's Attorney has an actual conflict because she is not abdicating her prosecutorial discretion to elected officials and the public or succumbing to political pressure. Petitioners cite no case that actually supports their petition because none exists. In fact, their petition does precisely what Illinois law forbids by presenting this Court with nothing more than rank speculation and conclusory statements about the State's Attorney's exercise of prosecutorial discretion, her work with other federal agencies, and vague threats of political retaliation. *Muhammad,* at 52; see also *Farmer*, 2019 IL App (1st) 173173, ¶¶ 47-48 (movant's broad allegations that the state's attorney is conflicted when investigating or prosecuting Chicago police officers was insufficient and failed to show specific facts and evidence that the state's attorney had an actual conflict of interest in his specific case).

Their pleading lacks any basis in facts or in law. It is frivolous and violates ethical rules that require "Meritorious Claims and Contentions." The Illinois Rules of Professional Responsibility are clear that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law." Ill. R. Prof. Cond. 3.1, Eff. Jan. 1, 2010. Petitioners' pleading has no basis in law or fact, is not

made in good faith, and does not seek a modification or reversal of existing law. It asks this Court to ignore Illinois law altogether and defy binding precedent. For these reasons, the petition must be denied.

i. The State's Attorney never abandoned a duty to investigate.

Petitioners' claim rests almost entirely on the misguided assertion that the State's Attorney has abdicated her responsibility to investigate allegations of criminal conduct against federal immigration enforcement agents. (Pet. 44-48). The law could not be more clear: no decision regarding such an investigation qualifies as an "actual conflict of interest" pursuant to 55 ILCS 5/3-9008(a-10) absent a showing that the state's attorney has a specific personal interest in a specific case, and petitioners have found none.

But even if this Court chooses to consider petitioners' allegations regarding the State's Attorney's investigative decisions, the relief they request cannot be granted because petitioners mischaracterize the "duty" of a state's attorney to investigate, ignore Illinois Supreme Court precedent that makes it clear that investigations be conducted by law enforcement, and distort the holdings in case law addressing investigations properly conducted by the office of the state's attorney.

The state's attorney has a limited duty and authority to investigate general criminal activity, which is ordinarily a function performed by other law enforcement agencies which may refer a case for prosecution. See *People v. Ringland*, 2017 IL 119484, ¶¶ 24-25 (discussing limited common law duty of a state's attorney to conduct investigations; 55 ILCS 5/3-9005(a)(1) (outlining powers and duties of the state's attorneys "[t]o commence and prosecute all actions"); contrast 55 ILCS 5/3-6021 (sheriff is "conservator of the peace" in the county) and 65 ILCS 5/11-1-2(a) (police officer is "conservators of the peace" in a municipality); see also *Buckley v. Fitzsimmons*,

509 U.S. 259, 273-74 (1993) (prosecutors have only qualified immunity, not absolute immunity, to conduct investigations normally performed by detectives or police officers because that is not their "function").

The Illinois Supreme Court clarified that **there are only two instances** where a state's attorney has an affirmative duty to investigate: (1) when a law enforcement agency's investigation is inadequate; and (2) when a law enforcement agency requests assistance. *Ringland*, 2017 IL 119484, ¶ 25. Petitioners make no effort to acknowledge the court's holding in *Ringland*, nor to do they present any facts to support their assertion that the State's Attorney has failed to investigate in either circumstance permitted by *Ringland.*

Petitioners do not allege that the actions of any law enforcement agency in Cook County which would normally investigate and refer cases for prosecution has been inadequate—in fact, they do not even acknowledge that investigation of criminal conduct by any law enforcement agent rests squarely in the hands of local and state police. Second, petitioners nowhere cite an instance of any law enforcement agency requesting assistance with a specific investigation—because none exists. Petitioners have therefore failed to show that the State's Attorney has a duty to investigate and certainly cannot show that she somehow abandoned that duty due to an actual conflict of interest in any case.

Petitioners likewise ignore that successfully prosecuting any cases arising out of Operation Midway Blitz requires ensuring that the State's Attorney's Office does not exercise plenary investigation powers which it does not have, **especially** after elected officials have asserted incredible political pressure demanding she overstep her legal authority that would further compromise any resulting prosecution. *Ringland* provides pointed instruction. In that case, cited throughout the petition, a state's attorney appointed a special investigator to conduct traffic stops

as part of a drug interdiction program. 2017 IL 119484, ¶¶ 4, 6. Some of the stops resulted in the discovery of controlled substances. *Id.* ¶ 4. The circuit court granted motions to suppress evidence filed by several defendants who were stopped by the prosecutor's special investigator. *Id.* ¶¶ 4-8. After discussing the "significant limitation" on the common law duty and authority of a state's attorney to investigate, the presumption of deference to law enforcement agencies, and the two narrow circumstances where the common law duty to investigate may arise, noted above, the Supreme Court affirmed the suppression of evidence because there was no showing that law enforcement agencies were conducting inadequate investigations or asked the state's attorney for assistance. *Id.* ¶¶ 24-25, 33.

Investigating and charging a case simply to have it dismissed before trial as in *Ringland* would bring no accountability for any criminal acts arising out of Operation Midway Blitz and does nothing to advance the public interest. As discussed above, the State's Attorney implemented a Protocol to prosecute federal agents for on-duty conduct and included the *Ringland* standard in the Protocol to promote the successful prosecutions of federal agents who violate state law. As the State's Attorney noted, "[m]y office's goal is not to merely charge, but to successfully prosecute and convict criminal ICE agents,"[7] and that requires properly following the law during any investigation. Furthermore, as noted above, a special prosecutor acting under state law would be subject to these same restraints and would compromise all hope for accountability by ignoring Illinois Supreme Court precedent and investigating when there is no indication that law enforcement is unwilling or unable to do their job. Put plainly, the relief Petitioners seek will only serve to thwart their purported goal of holding federal immigration officers accountable for criminal misconduct.

[7] https://news.wttw.com/2026/03/10/chicago-coalition-pushing-special-prosecutor-investigate-ice-crimes-drawing-pushback (last accessed March 16, 2026).

Petitioners make no effort to show that the State's Attorney's alleged failure to investigate any specific case arising out of Operation Midway Blitz qualifies as an actual conflict under the exacting *Muhammad* standard. Instead, petitioners presume that an actual conflict exists based on their misreading of an unpublished case, *Heidelberg v. People*, 2017 IL App (3d) 160561-U; (Pet. 45, 47). But the state's attorney in *Heidelberg* had an actual conflict in the case which affected his ability to properly investigate a pending post-conviction matter long after the defendant was convicted. Specifically, the defendant claimed prosecutors manufactured and destroyed evidence in his case, and the state's attorney's entire investigation comprised speaking with one of the named prosecutors, who was an old friend and mentor of the state's attorney. *Id.* ¶¶ 6-10. The Third District affirmed the circuit court's appointment of a special prosecutor under these circumstances because the state's attorney's "close, personal friendship" with a prosecutor accused of misconduct demonstrated a conflict of interest relating to the investigation. *Id.* ¶ 29.

Heidelberg does not stand for the broad proposition that an interested party can seek appointment of a special prosecutor simply by alleging that a state's attorney conducted an insufficient or improper investigation of general criminal activity—especially when the Illinois Supreme Court makes it clear that such investigations should be handled by law enforcement. *Heidelberg* dealt with an investigation related to a pending matter in postconviction litigation, and not the first-responder investigation of criminal conduct that would be presented for charges and prosecution of an individual. *Id.* ¶¶ 2, 8,14. Petitioners' claims that the State's Attorney refuses to investigate is merely second-guessing her decision to follow Illinois law and trust first responder police agencies, trained in conducting complex investigations and collection of evidence, to investigate, document, gather evidence, and seek the support of the prosecutor's office in

compliance with the Protocol the State's Attorney provided and all other Illinois state prosecutors affirmed.

Petitioners have not even attempted to show any specific personal interest that affected the State's Attorney's ability to investigate any specific criminal acts alleged as a result of Operation Midway Blitz like in *Heidelberg,* and certainly cannot establish that there is a specific personal interest affecting a specific case to prove a conflict as required by *Muhammad.* Instead, petitioners make broad allegations about the sufficiency of the State's Attorney's performance of her duties, and allegations of that nature are improper and insufficient. *Farmer* at ¶¶ 47-48.

The instant petition is a heavy-handed attempt by its signatories to direct the operations of the Cook County State's Attorney's Office and usurp the authority of the elected prosecutor. The petitioners are asking this court to give them the authority to influence the selection of a special prosecutor even though Illinois law contemplates a much different process and does not provide an opportunity for the selection decisions to be made by anyone other than the judiciary.

Illinois law does not contemplate the appointment of a special prosecutor based on the allegations presented by Petitioners here, and with good reason. The victims of crime deserve the advocacy of prosecutors that know and follow the law and take all necessary lawful steps to prosecute cases based on evidence that has been properly collected by trained law enforcement officers. See *Muhammad*, 2025 IL 130470, ¶ 86 (Neville, J., dissenting) ("The appointment of a partisan special prosecutor is not in the interest of the fair and impartial trial guaranteed by the Constitution") (brackets and quotation omitted).

Interestingly, Petitioners make several complaints about the State's Attorney's Protocol which accurately sets forth Illinois law, specifically criticizing its scope, potential cases which might not be covered, and its lack of "commitment" to investigate past crimes, lamenting that the

State's Attorney has "not opened any investigation or even stated that her office plans to open an investigation into any of the alleged criminal conduct of federal agents listed in this petition." (Pet. 46-47). Yet they never acknowledge the true holding of *Ringland*, supremacy clause considerations in the prosecution of federal agents, or the fact that law enforcement is free to investigate alleged criminal conduct of federal immigration enforcement officers with the full support of the CCSAO's Law Enforcement Review Unit (LERU) which is specially trained and experienced at handling criminal cases involving on-duty law enforcement officers. And although petitioners attempt to point to the bold words of other prosecutors in other states, they cite no other state or county office which has successfully charged a federal agent with violating a state statute—on duty or off duty. Nor do they acknowledge that any state's attorney—elected or special—should be loath to provide information on any ongoing investigation and would be legally prohibited from sharing information related to any investigation being conducted by a Grand Jury.

ii. The State's Attorney's collaboration with federal agencies on wholly unrelated matters does not show a conflict.

Petitioners' next argument, that collaboration with federal agents creates a *per se* conflict of interest, is contrary to law. In cases where a state's attorney is tasked with investigating members of a law enforcement agency, allegations regarding the state's attorney's general relationship with and reliance on that agency have repeatedly been held insufficient to establish a conflict of interest. *McCall v. Devine*, 334 Ill. App. 3d 192 (1st Dist. 2002); *Farmer*, 2019 IL App (1st) 173173. Instead, a petitioner must allege "specific facts" establishing a relationship that would "make it improbable that [the State's Attorney] would conduct an unbiased investigation and prosecution." *McCall*, 334 Ill. App. 3d at 200 (citing *Baxter v. Peterlin*, 156 Ill. App. 3d 564, 566-567 (3d Dist. 1987)). Illinois courts have "flatly reject[ed]" the idea that the appointment of a special prosecutor is necessary when a law enforcement officer is accused of

wrongdoing based merely on the general relationship between a state's attorney and the officer's agency. *McCall*, 334 Ill. App. 3d 192 at 202.

Petitioners do not cite a single case involving circumstances like those before this court, where no *per se* conflict has been alleged. Petitioners first cite to *People v. Courtney*, 288 Ill. App. 3d 1025, 1032 (3d Dist. 1997), a case in which the petitioner's criminal defense attorney became Kankakee County State's Attorney, the head of the office prosecuting his case. The court found a *per se* conflict of interest based specifically on that prior representation and the fact that the record did not reflect what, if any, personal involvement the state's attorney had in the prosecution of the petitioner's case. *Id.* at 1034. No such *per se* conflict of interest exists here.

Of the three supposedly "comparable, recent" examples cited by petitioners, two were decided before the 2016 amendment to 5/3-9008(a-10) requiring an "actual conflict." (Pet. Ex. 5, p. 6). In the third, decided shortly after the amendment, the order attached by Petitioners consists of one sentence containing no analysis. (Pet. Ex. 7). More importantly, all three cases involve the appointment of special prosecutors to specific cases *after* investigations into specific alleged crimes had already been undertaken and where the petitioners alleged specific actions and relationships that called the state's attorney impartiality into question. (Pet. 49; Ex. 5, 6, 7). In the opinion attached at Exhibit 5, the petitioners pointed to the state's attorney's contradictory statements and actions concerning the appointment of a special prosecutor, the inability to locate files, and the allegations of wrongdoing against an ASA to establish a conflict of interest. (Pet. Ex. 5, *In re Appointment of Special Prosecutor*, Case No. 11 Misc. 46 ("*Koschman*")).

The alleged conflict in the *Koschman* case upon which Petitioners so heavily rely despite it being clearly distinguishable and wholly unrelated to the issues at hand was not based on the State's Attorney's relationship with the Chicago Police Department ("CPD"), nor did it arise from

an alleged reluctance of the State's Attorney to investigate law enforcement. Rather, as the court stated, the "alleged institutional conflict arises from the conduct of [a felony review ASA] as a participant in the Koschman investigation as well as a witness." (Pet. Ex. 5, p. 26). Specifically, the felony review ASA responding to the original investigation could potentially be both a prosecutor and a witness, and the petitioners were calling for an investigation into the State's Attorney's handling of the matter alongside CPD's. (Pet. Ex. 5, p. 17-19).

Similarly, in *People v. Plummer, et al.*, Case No. 90 CR 12036, attached by petitioners as Exhibit 6, the conflict of interest arose because the State's Attorney, Richard Devine, tasked with prosecuting CPD Commander Jon Burge and with prosecuting cases Burge had been involved with, had been Burge's defense attorney prior to becoming State's Attorney. (Pet. Ex. 6, p. 2). Devine recused himself personally and appointed ASA Patrick Driscoll to supervise all Burge-related actions. (Pet. Ex. 6, p. 5). The court found that Devine's recusal had come too late, however, and his *per se* conflict was imputed to ASA Driscoll and the entire office. *Id.* The conflict was also imputed to the successor State's Attorney, Anita Alvarez, because she, like ASA Driscoll, had worked as an ASA under Devine before his recusal. (Pet. Ex. 6, p. 15). In that case, a true conflict based on an attorney-client relationship existed. Again, the court's decision was not based on any alleged ongoing or collaborative relationship between the State's Attorney and CPD or Burge himself.

The facts in *Koschman* and *Plummer* are a far cry from Petitioners' allegations here, which point to no specific conduct by the State's Attorney and rest only on the fact that there have not been prosecutions of ICE agents and Petitioners' speculation as to why that is which is entirely manufactured and has no factual support. The lack of any specific factual basis makes clear that

there is no actual conflict. Instead, petitioners are simply challenging the State's Attorney's authority to make prosecutorial decisions with which they disagree and angling to usurp that authority by seeking the appointment of a special prosecutor appointed on their recommendation in direct contravention of Illinois law.

Petitioners also argue without factual support that the State's Attorney's Office's general "involvement" with federal law enforcement "creates a public appearance of comity and potential unwillingness to prosecute." (Pet. 48-49). Yet petitioners cite no case where public perception has been the sole basis for appointment of a special prosecutor, or even a factor when no specific suspected misconduct has been identified. Moreover, in *Muhammad*, the Illinois Supreme Court found that an appearance of impropriety alone is insufficient to remove a prosecutor or special prosecutor under 5/3-9008(a-10). *Muhammad*, 2025 IL 130470, ¶ 52; see also *Farmer*, 2019 IL App (1st) 173173, ¶ 39 (the appearance of impropriety alone is not an "actual conflict" and is not sufficient to allow the appointment of a special prosecutor).

Petitioners' citation to *Courtney* offers no support to their argument to the contrary. In that case, the discussion of the appearance of impropriety was undertaken where it had already been determined that a *per se* conflict existed, but it was not clear to the court whether any improper actions had actually occurred. 288 Ill. App. 3d at 1034. The "rigid rule" petitioners point to is the rule that an attorney "cannot represent conflicting interests or undertake to discharge inconsistent duties." (Pet. 49) (citing 288 Ill. App. 3d at 1032). The State's Attorney owes no duty to federal agents, nor does she represent a "conflicting interest" when she prosecutes crimes where federal law enforcement assisted, supported, or otherwise participated in a criminal investigation. Indeed, the "performance of one's official functions will not create a conflict of

interest." *McCall*, 334 Ill. App. 3d at 202 (quoting *People v. Dall*, 207 Ill. App. 3d 508, 530 (4th Dist. 1991)).

Petitioners do not identify any factual basis on which to base their assertion that the public perceives "comity," between the State's Attorney and federal law enforcement, nor do they specify between which agencies the public might perceive comity to exist. Presumably, petitioners argue that the public may believe comity exists between the State's Attorney and ICE because the State's Attorney works with other federal law enforcement agencies on certain matters. However, in making this argument, Petitioners once again ignore the parts of Illinois law that do not fit their narrative, specifically, the TRUST Act, enacted in 2017, that restricts local law enforcement, which would include the State's Attorney, from collaborating with federal immigration authorities. See 5 ILCS 805 / 15 (h)(1). The TRUST Act vests authority to investigate violations of the Act in the Office of the Illinois Attorney General. See 5 ILCS 805/30(a). Under the Act, the Attorney General "may maintain an enforcement action for declaratory, injunctive or any other equitable relief . . . against any law enforcement agency [or] law enforcement official . . . who violates any provision of [the] Act." 5 ILCS 805/30(b). The State's Attorney does not pick and choose which aspects of Illinois law she will follow, and therefore, follows the dictates of the TRUST Act. Petitioners' "comity" argument given the strict parameters of this legislation, is baseless, illogical, and once again frivolous. See Ill. R. Prof. Cond. 3.1. Petitioners' argument that a conflict of interest exists because of unrelated collaboration between the State's Attorney and the federal government is incorrect under the law, and their allegations fail to sufficiently establish even the possibility of a *per se* conflict of interest.

iii. The State's Attorney is not intimidated by a vague threat of political retaliation.

Petitioners next allege that the general threat of federal retaliation against prosecutors has chilled the State's Attorney's investigation into federal agents' criminal conduct in Cook County, thus creating a conflict of interest. Setting aside Petitioners' refusal to accept the holding in *Ringland*, petitioners fail to allege any real threat of retaliation which would constitute an actual conflict that would warrant the State's Attorney's removal. Petitioners do not point to any threat of political retaliation levied against *this* State's Attorney, at least none by the federal government, and a general warning that "activities that are inconsistent with Executive Branch immigration initiatives... 'may be met with legal action,'" (Pet. 51), is not specific enough to suggest a conflict. Indeed, the State's Attorney is not conflicted from handling future cases that may be brought against federal law enforcement officers based on the instant legal action that was brought because the State's Attorney's decision to adhere to state and federal law is inconsistent with the political machinations of numerous local politicians. It is common for people to threaten the State's Attorney or her Assistants, and those threats generally do not engender any concern from outside parties or prompt the filing of a petition to appoint a special prosecutor.

Petitioners present no evidence that the State's Attorney has felt pressured into inaction by some vague threat of retaliation which would even suggest a conflict of interest under the exacting *Muhammad* standard discussed above. And such a suggestion is contradicted by the State's Attorney's previous actions in response to this administration. In February of 2025, the federal government filed suit against Cook County, the city of Chicago, and the State of Illinois, claiming that their so-called "sanctuary policies" are unconstitutional and impermissibly interfere with federal immigration law. The State's Attorney zealously defended the cited ordinance and successfully moved to dismiss the action. See *United States v. State of Illinois, et al.*, 796 F. Supp. 3d 494 (N.D. Ill. 2025) (on appeal).

These allegations that the State's Attorney is intimidated or pressured into inaction are mere conjecture and have no basis in reality. Moreover, petitioners fail to explain how a special prosecutor will withstand the same pressure and intimidation of the federal government, especially since private law firms have famously not been exempt from the administration's purported retaliation[8] or immune to its threats. An independent special prosecutor would be no more shielded from retaliation than the State's Attorney, thus there is no basis to argue an actual conflict of interest. Petitioners further allege, without any specific facts, that the State's Attorney faces pressure from other elected officials seeking prosecution of federal agents and that the special prosecutor would be immune from such pressure. (Pet. 52). But this cursory allegation is not enough to sustain their burden. As discussed above, such speculative allegations do not establish an actual conflict; the "movant must identify a specific deficiency in counsel's strategy, tactics, or decision-making that is attributable to the alleged conflict." *Muhammad*, 2025 IL 130470, ¶ 52.

Petitioners likewise argue that a special prosecutor is needed to "preserve prosecutorial discretion," but it is exercise of prosecutorial discretion with which petitioners do not agree that has prompted them to seek the State's Attorney removal. As discussed above, petitioners make no allegation that the State's Attorney has been presented with any credible evidence from law enforcement which she refused to charge but instead fault her with not investigating criminal conduct, where they have not established it is her duty to investigate.

Petitioners' citation to *Hranka v. Johnson (In re Appointment of a Special Prosecutor)*, 2024 IL App (4th) 231295-U, is surprising given that this case wholly undermines their position. The *Hranka* court noted: "petitioner's only real complaint with the state's attorney's office is its

[8] Carrie Johnson, *Trump administration reverses course on law firms, vowing to appeal*, NPR (March 3, 2026), https://www.npr.org/2026/03/03/nx-s1-5733945/trump-administration-reverses-course-on-law-firms-vowing-to-appeal.

failure to act, but the decision whether to act is the state's attorney's prerogative absent truly exceptional circumstances." *Id.* ¶ 27 (citing *People ex rel. Daley v. Moran*, 94 Ill. 2d 41, 46 (1983)). The court then affirmed the trial court's denial of the petition for a special prosecutor because the "petitioner's allegations of inaction by the state's attorney's office are not the kind of extreme and particularized allegations of interest necessary" to appoint a special prosecutor. *Id.* ¶ 28. Likewise, petitioners' allegations here fail to establish any actual conflict of interest that would necessitate the State's Attorney's removal, and Hranka offers absolutely no support for Petitioners' claims.

Based upon the reasons set forth above, State's Attorney Burke does not have an actual conflict of interest under 5/3-9008(a-10), and petitioners have not and cannot identify a specific deficiency in strategy, tactics, or decision-making that is attributable to an alleged conflict, which *Muhammad* requires. See *Muhammad*, 2025 IL 130470, ¶ 52. Petitioners are merely unhappy with the State's Attorney's policy of following well-established law and declining to succumb to political pressure. See *Ringland*, 2017 IL 119484, ¶¶ 24-25.

C. Petitioners' counsel should not be permitted to participate in the selection of a special prosecutor.

Petitioners have failed to show an actual conflict of interest for the reasons discussed above. Accordingly, that should be the end of it. However, Petitioners boldly request input in the selection of a special prosecutor if their petition is granted. (Pet. 53). Petitioners' request "to present a list of candidates before the appointment is made, or otherwise have input into the selection process," (Pet. 53), is without legal authority or precedent for good reason. First, it violates the cannon of ethics that attorneys cannot ignore the law, and second, petitioners' counsel has again violated the Rules of Professional Conduct by their blatant misrepresentation of the outcome of a case that it

cites for precedent. See Ill. R. Prof. Cond. 3.3(a)(2), Candor Toward the Tribunal, Eff. Jan. 1, 2010.

55 ILCS 5/3-9008 is clear about the process to appoint any special prosecutor:

> (a-20) Prior to appointing a private attorney under this Section, the court shall contact public agencies, including, but not limited to, the Office of Attorney General, Office of the State's Attorneys Appellate Prosecutor, or local State's Attorney's Offices throughout the State, to determine a public prosecutor's availability to serve as a special prosecutor at no cost to the county and shall appoint a public agency if they are able and willing to accept the appointment. An attorney so appointed shall have the same power and authority in relation to the cause or proceeding as the State's Attorney would have if present and attending to the cause or proceedings.

Illinois law requires that the Attorney General and other local State's Attorney's Offices be contacted to serve as a Special Prosecutor should the need exist. Petitioners ignore this aspect of the law, and once again seek to circumvent well-settled Illinois jurisprudence when it does not suit their objectives.

Moreover, Petitioners should have no influence on any appointment made by this Court or any other given their complete disregard of Illinois law, the Illinois Rules of Professional Conduct, and their responsibilities as attorneys. Petitioners tout their work in *Chicago Headline Club*, but put simply, this experienced firm's failure to take seriously a cornerstone principle of federal law in such a case involving the public interest—even after that principle was expressly raised by their opponent—played a significant role in the complete undoing of literally everything they supposedly sought to achieve in the *Chicago Headline Club* litigation, invalidating a favorable injunction at the expense of their clients. Notably, this is not the first time that these lawyers failed to take seriously the strict requirements of proof for prospective Article III standing and thus had a favorable injunction vacated. See *Goldhamer v. Nagode*, 621 F.3d 581 (7th Cir. 2010) (vacating injunctive relief for lack of Article III standing). This lack of tactical competence yields precisely

the result the State's Attorney seeks to avoid in any potential Operation Midway Blitz prosecutions: meritorious claims being tossed out of court due to clear legal deficiencies which were readily ascertainable from the inception of the case.

Notably, the Seventh Circuit found that Petitioners' counsel (1) failed to appreciate the heightened evidentiary burden necessary to show Article III standing in cases seeking prospective relief and (2) failed to act in a manner necessary to protect the interests of a certified class, such that the district court was compelled to decertify the class *sua sponte* to avoid negative preclusive effects on future litigation. See *Chicago Headline Club v. Noem*, No. 25-3023, 2025 U.S. App. LEXIS 34532, at *5 (7th Cir. Nov. 19, 2025) ("*Chicago Headline Club I*"); *Chicago Headline Club v. Noem*, No. 25-3023, 2026 U.S. App. LEXIS 6598, at *17-*18 (7th Cir. Mar. 5, 2026) ("*Chicago Headline Club II*"). It is undisputed that Petitioners' counsel took an unjustified risk with the claims of an entire class of individuals that the district court found, in (an albeit vacated) 233-page decision that their tactics ultimately did nothing but create risk for their clients—the public. *Chicago Headline Club II*, 2026 U.S. App. LEXIS 6598, at *17-18. The Seventh Circuit noted that Petitioners' counsel "quickly and voluntarily withdrew" their case "at the first sign of trouble." *Id.* at *14-15. Ultimately, the Seventh Circuit was so concerned by the procedural history—including the abrupt abandonment of the claims of a certified class—that it held "[v]acatur is therefore proper to ensure the district court's injunction order does not affect future litigation, which would present its own facts and legal issues." *Id.* at *15.

In spite of the Seventh Circuit's admonishments not to cite the Opinion and Order attached as Exhibit 1 to the Petition, it is particularly egregious that petitioners' counsel chose to do so here, holding out the very same vacated Opinion and Order as precedential with nary a reference to its vacatur, arguably another ethical violation as Illinois Rule of Professional Conduct 3.3(a)(2) states

that "[a] lawyer shall not knowingly . . . (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." (Pet. 2)

These times call for serious people. Not those who cut and run "at the first sign of trouble." *Chicago Headline Club II*, 2026 U.S. App. LEXIS 6598, at *20. Managing litigation on behalf of the People of the State of Illinois requires more caution and care than petitioners' counsel demonstrated in *Chicago Headline Club*, and they certainly should not be given authority to provide input on the appointment of a special prosecutor when they have repeatedly demonstrated a complete lack of respect for Illinois law or the rules of professional conduct. As the State's Attorney explained, "The stakes are too high for us to get this wrong."[9]

IV. CONCLUSION

For the foregoing reasons, petitioners failed to meet their burden under Section 3-9008 to establish a basis for disqualifying the State's Attorney or for appointing a special prosecutor. As such, this Court should deny the petition.

Respectfully submitted,

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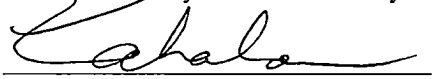
By: 

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[9] https://news.wttw.com/2026/03/10/chicago-coalition-pushing-special-prosecutor-investigate-ice-crimes-drawing-pushback (last accessed March 16, 2026).