DISTRICT COURT, TELLER COUNTY, COLORADO Court address: **101 West Bennett Ave., P.O. Box 997, Cripple Creek, CO 80813** Phone Number: **(719) 689-7360**	DATE FILED: February 22, 2023 11:36 AM CASE NUMBER: 2019CV30051
BERCK NASH, et al., Plaintiffs, Vs JASON MIKESELL, in his official capacity as Sheriff of Teller County, Colorado, Defendant.	**Court Use Only** District Court Case Number: **2019CV30051** Division **11**

ORDER REGARDING CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF

THIS MATTER came before the Court for a court trial on January 24, 25 and 26, 2023. Plaintiffs were represented by Byeongsook Seo and Anna I. Kurtz. Defendant, Jason Mikesell appeared in his official capacity as Sheriff of Teller County, Colorado and was represented by Paul W. Hurcomb and Justin M. DeRosa. I have considered the testimony of witnesses, admitted exhibits, pleadings and arguments of counsel. I FIND and ORDER as follows:

STATEMENT OF CLAIMS AND DEFENSES

Plaintiffs' Claims and Defenses to Counterclaim

Plaintiffs, all of whom are Teller County residents, assert claims for declaratory and injunctive relief to address the illegality of Teller County Jail policies and practices under the purported authority of a written agreement between the Teller County Sheriff's Office ("TCSO") and U.S. Immigration and Customs Enforcement ("ICE") – the "287(g) Agreement." This agreement is predicated on Section 287(g) of the Immigration and Nationality Act, which created the "287(g) program." Under it, designated TCSO detention officers are trained, certified, and authorized by ICE to perform specified immigration enforcement functions within the Jail. The TCSO personnel certified to perform immigration functions at the Jail are known as "287(g) deputies" or "DIOs". The purpose of this arrangement is to identify, and process inmates booked at the Jail on local or state charges who may be subject to removal under ICE's civil immigration enforcement priorities.

Plaintiffs seek the following relief from the Court:

1) A declaration that Sheriff Mikesell's policies and practices under his 287(g) Agreement with ICE exceed the limits of the authority granted to him by the Colorado Constitution and statutes;

2) A declaration that the 287(g) Agreement does not authorize Teller County deputies, including 287(g) deputies, to perform immigration enforcement functions that are inconsistent with Colorado law;

3) A declaration that, notwithstanding the 287(g) Agreement, Sheriff Mikesell violates Article II, Section 7 of the Colorado Constitution and C.R.S. § 24-76.6-102(2) by authorizing his deputies to arrest or continue to detain persons, who would otherwise be released, on the basis of ICE documents that are not reviewed or signed by a judge, such as ICE Forms I-247A, I-200, I-205 and I-203;

4) A declaration that, notwithstanding the 287(g) Agreement, Sheriff Mikesell violates Article II, Section 19 of the Colorado Constitution and C.R.S. § 24-76.6-102(2) by authorizing his deputies to rely on ICE forms that are not signed by a judge, including ICE Forms I-247A, I-200, I-205, or I-203, as grounds not to release someone from the Teller County Detention Center who has posted bond on their pending criminal charges;

5) A declaration that Sheriff Mikesell cannot exempt himself or his deputies from the requirements of state law by entering into a 287(g) Agreement; and

6) An injunction enjoining Sheriff Mikesell from authorizing his deputies to rely on an ICE document not signed by a judge, including ICE Form I-247A, I-200, I-205, I-203, or any combination of such forms, as grounds for arresting or continuing to detain persons when they post bond, complete their sentence, or otherwise resolve their criminal charges and are eligible for release under Colorado law.

Defendant's Counterclaim and Defenses to the Claims

For his counterclaim, Sheriff Mikesell seeks declaratory relief related to the lawfulness of the 287(g) Agreement with ICE and the law enforcement functions performed thereunder.

The Sheriff seeks the following declaratory relief from this Court:

1. A declaration that Teller County Sheriff Mikesell has the legal authority to enter into the 287(g) Agreement with ICE;

2. A declaration that Colorado law does not prohibit the Teller County Sheriff from entering into a 287(g) Agreement with ICE;

3. A declaration that the functions performed under the 287(g) Agreement by trained and certified Teller County Sheriff's deputies and officers acting as Designated Immigration Officers under the supervision of ICE are lawful and consistent with Colorado law;

4. A declaration that the Teller County Sheriff's deputies and officers who are trained and certified by ICE are *de facto* federal officers when they are performing functions as Designated Immigration Officers under the 287(g) Agreement;

5. A declaration that a Form I-200, Warrant for Arrest of Alien, issued by an ICE officer is not a request but is a valid federal arrest warrant authorized by federal law at 8 U.S.C. § 1357(a) and 8 C.F.R. § 236.1 and that these federal arrest warrants do not have to be signed by a judge; and

6. A declaration that Teller County Sheriff's deputies and officers who perform functions under the 287(g) Agreement as Designated Immigration Officers do not arrest or detain an individual on the basis of a civil immigration detainer request because they only arrest or detain an individual by serving a valid federal arrest warrant issued by an ICE officer pursuant to 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3).

STIPULATED FACTS

I adopt the twenty-three stipulated facts in the Proposed Trial Management Order filed by the parties on January 20, 2023. The stipulations listed below establish the following undisputed facts:

1. Each of the Plaintiffs, Berck Nash, Joanna Nash, Rodney Saunders, Paul Michael Stewart, and Janet Gould, pays taxes that go into the Teller County General Fund.

2. Funds from the Teller County General Fund are paid into the Jail Enterprise Fund for the jail services provided by the Jail Enterprise Fund to the County.

3. The Jail Enterprise Fund pays for the salaries and benefits of the Teller County Jail officers and deputies, including those officers and deputies

who have been authorized to act as Designated Immigration Officers under the 287(g) Agreement.

4. Federal immigration authorities, through Immigrations and Customs Enforcement (ICE), sometimes request local sheriffs to continue to detain an inmate who is eligible for release from local custody.

5. ICE Form I-247A is titled "Immigration Detainer – Notice of Action." It is signed and issued by an "Immigration Officer."

6. ICE Form I-247A names a detainee being held in a local jail and states that the Department of Homeland Security (DHS) has determined that probable cause exists that the subject is a removable alien. The form includes a DHS request to the local jail that it notify DHS before the alien is released from custody by calling ICE and that it maintain custody of the alien for a period not to exceed 48 hours beyond the time when he/she would otherwise have been released from local custody to allow DHS to assume custody of the person.

7. ICE Form I-200 is titled "Warrant for Arrest of Alien." It is signed by an "Authorized Immigration Officer" and is issued to "[a]ny immigration officer authorized pursuant to Sections 236 and 287 of the Immigration and Nationality Act and Part 287 of Title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations."

8. Current ICE policy number 10074.2, Section 2.4, effective April 2, 2017, requires that all issued Forms I-247A, Immigration Detainer – Notice of Action, be accompanied by either (1) a properly completed Form I-200 (Warrant for Arrest of Alien) signed by an authorized ICE immigration officer; or (2) a properly completed Form I-205 (Warrant of Removal/Deportation) signed by an authorized ICE immigration officer.

9. Since October 5, 2000, the Teller County Sheriff's Office ("TCSO") has been a party to an Intergovernmental Service Agreement for Housing Federal Detainees (the "IGSA") with the U.S. Department of Justice, Immigration & Naturalization Service. Under the IGSA, the Teller County Detention Center ("Jail") agrees to house persons detained by the United States Marshals Service, the United States Bureau of Prisons and the United States Immigration and Customs Enforcement (ICE) in exchange for a contracted detainee day rate.

10. Sheriff Jason Mikesell is the duly elected Sheriff of Teller County, Colorado. He was appointed by the Teller County Board of County Commissioners in May 2017. In 2018, he was elected to his first full term as Sheriff, and in November 2022 was elected to a second term as the Sheriff.

11. A 287(g) Agreement is a written agreement between ICE and a state or political subdivision of the state pursuant to the Immigration and Nationality Act ("INA") at 8 U.S.C. § 1357(g) under which ICE trains and certifies local law enforcement officers to perform certain delegated immigration officer duties under the supervision of an ICE officer.

12. Pursuant to the INA, 8 U.S.C. § 1357(g)(1). "...the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law."

13. In February 2018, Sheriff Mikesell submitted a request to the Deputy Director of ICE to participate in ICE's 287(g) Program.

14. ICE approved the request and the TCSO entered into a 287(g) Agreement with ICE effective January 6, 2019.

15. In May 2019, the Teller County 287(g) Agreement was extended by mutual agreement through June 30, 2020.

16. The Teller County 287(g) Agreement was further extended indefinitely on June 8, 2020.

17. The Teller County 287(g) Agreement is a Jail Enforcement Model.

18. To date, four law enforcement officers employed by TCSO, Lieutenant Laura Hammond, Officer Dominic Madronio, Officer Taylor Smith and Deputy David Rice, have completed training and each has been certified by ICE to act as a Designated Immigration Officer ("DIO").

19. Pursuant to the 287(g) Agreement, DIOs act under the supervision of an ICE officer when they perform duties under the 287(g) Agreement.

20. To date, the DIOs have noted 17 occasions when the DIOs have exercised duties under the 287(g) Agreement.

21. On November 1, 2019, Manuel Cordero-Reyes was arrested for driving under the influence.

    a. On November 2, 2019, ICE Immigration Officer Coultrip signed an I-200 Warrant for Arrest of Alien for Mr. Cordero-Reyes.

    b. A family member posted a $1000 bond for him on November 2, 2019.

    c. On November 2, 2019, DIO Hammond signed the certificate of service on the Form I-200 Warrant for Arrest of Alien naming Mr. Cordero-Reyes.

    d. Mr. Cordero-Reyes was not released from the Jail on November 2, 2019.

    e. Mr. Cordero-Reyes was housed in the Jail until November 10, 2019. TCSO billed ICE under the IGSA for his detention from November 2, 2019 until November 10, 2019, when he was transferred to the ICE detention facility in Aurora, Colorado.

22. On July 23, 2020, Guillermo Perez-Velazquez was arrested for attempting to influence a public servant, obstructing a peace officer, providing false information to law enforcement, no valid driver's license, and speeding and booked into the Teller County Jail at 10:46 p.m.

    a. His bond was initially set at $3,000 and the next day, July 24, 2020, the court reduced his $3,000 bond to $1,000.

    b. On July 24, 2020, ICE Immigration Officer Masopust signed an I-200 Warrant for Arrest of Alien for Mr. Perez-Velazquez.

    c. On July 24, 2020, DIO Madronio signed the certificate of service on the Form I-200 Warrant for Arrest of Alien naming Mr. Perez-Velazquez.

d. Mr. Perez-Velazquez posted the bond on his state charges himself on July 25, 2020 at 4:18 p.m. Although Mr. Perez posted bond on his pending criminal charge, he was not released from the Jail.

e. Mr. Perez was housed in the Jail until July 31, 2020. TCSO billed ICE under the IGSA for his detention from July 25, 2020 until July 31, 2020, when he was transferred to the ICE detention facility in Aurora, Colorado.

23. On July 8, 2021, Sergio Lazaro-Ramirez was booked into the Teller County Jail as a pre-trial detainee for Lake County, Colorado. Mr. Lazaro-Ramirez was being held on criminal charges of attempted murder, first - and second-degree assault and menacing.

a. On July 9, 2021, ICE Immigration Officer Bennie Salazar issued a Warrant for Arrest of Alien for his arrest.

b. On February 1, 2022, after a motions hearing, the Lake County district court judge dismissed the criminal charges against Mr. Lazaro-Ramirez.

c. On February 1, 2022, Mr. Lazaro-Ramirez had a personal recognizance bond issued for him from a remaining criminal charge for Failure to Appear in Eagle County.

d. On February 1, 2022, DIO Hammond signed the certificate of service on the Form I-200 Warrant for Arrest of Alien naming Mr. Lazaro-Ramirez.

e. Mr. Lazaro-Ramirez was not released from the Jail on February 1, 2022.

f. Mr. Lazaro-Ramirez was housed in the Jail until February 18, 2020. TCSO billed ICE under the IGSA for his detention from February 1, 2021 until February 18, 2022, 2020, when he was transferred to the ICE detention facility in Aurora, Colorado.

FINDINGS OF FACT REGARDING THE SCOPE AND APPLICATION OF 287(g) JAIL ENFORCEMENT MODEL

ICE and TCSO have had a 287(g) Agreement since January 2019. It is a modest program. Only 4 TCSO employees have been certified by ICE to act as DIOs. DIOs have only noted 17 occasions when the DIOs have exercised duties under the 287(g) Agreement. 3 inmates have been arrested by ICE since 2019. To date, 13 other inmates have had contact with DIOs under the 287(g) Agreement. None of the 13 were served or issued Form I-200 Warrant for Arrest of Alien. Those who had a "Hold" for ICE in their Jail file did not experience any continued detention within the Jail due to the existence of the "Hold". None of the 13 who had been issued or served a Form I-247A Immigration Detainer Notice of Action experienced any continued detention in the Jail due to Form I-247A.

FINDINGS OF FACT FROM SHERIFF MIKESELL'S TESTIMONY

- Sheriff Mikesell testified that he did not have personal authority to enforce federal immigration law. He did not review 287(g) files and was not familiar with the forms used.

- ICE paid for the training program for the DIOs. Without a 287(g) program, TCSO cannot reach out to INS. TCSO can hold an inmate but not just on a I-247A immigration detainer unless a warrant is signed. The 287(g) Agreement with ICE provides that TCSO employees are treated as federal employees when performing immigration duties for purposes of the Federal Tort Claims Act and Worker's compensation claims.

The Sheriff applied to participate in the 287(g) program because of his concern that Teller County was having an increase in crime, including organized criminal activity by out-of-state cartels and illegal grow operations by illegal aliens who were taking advantage of recreational marijuana laws to operate sophisticated illegal grow operations. He wanted to keep the county safe. He started the GOT (Get Out of Teller) program to scare or influence drug dealers and illegal immigrants to leave Teller. Exhibit 205 describes the 287(g) Jail Enforcement Model as a "...force multiplier to effectively identify noncitizens with criminal conditions or pending criminal charges who are arrested by state and local law enforcement agencies (LEAs)." The stated intent was to enhance public safety by reducing the number of criminal noncitizen offenders released back into the community.

The Sheriff understands his C.R.S. 30-10-516 statutory duty to preserve the peace. In addition to the 287(g) Agreement, TCSO has cooperative agreements with, or has worked with the DEA, FBI, Secret Service, U.S. Forest Service, Department of Interior and Dept. of Agriculture, CBI, Vice and Narcotics and multiple law enforcement agencies. TCSO does code enforcement, animal control and enforcement of civil law such as evictions and service of process. The Sheriff serves as the fire warden of Teller County, transports prisoners and is responsible for courthouse security as well as other duties.

FINDINGS OF FACT FROM THE TESTIMONY OF DETENTION COMMANDER KEVIN TEDESCO

Commander Tedesco is the Teller County Jail Commander who manages the detention officers, many of whom may not be post certified which means they cannot make arrest. He does not supervise DIO detention officers while they are performing 287(g) duties. If an undocumented person is booked into the Jail the booking officer would make a note in the inmate file and the 287(g) deputy would notify ICE and if ICE is interested in the person, a notice for ICE hold would be made in the inmate file. A 287(g) deputy is not always on duty at the Jail.

The TCSO custody manual contains the following language in Exhibit 27 at 2:

> The Teller County Jail will hold persons with active Immigration Warrants of Arrests (I-200) and those ordered to detain (I-203) by ICE. No individual should be held based solely on a federal immigration detainer (I-247) under 8 CFR 287.7 unless the detainer is accompanied by a warrant issued by a judge directing that the person be arrested (CRS § 24-76.6-102). Notification to the federal authority issuing the detainer should be made before the release.

Detention officers who are not 287(g) deputies cannot execute 287(g) arrest. 287(g) deputies cannot make an arrest outside of the Jail because the program is a Jail Enforcement Model and it would not be safe to let a person outside of the Jail and arrest that person on an INS warrant.

The Jail will accept bond from an inmate even if the inmate has a 287(g) hold. This process is similar to an inmate who may have multiple Colorado criminal warrants from multiple counties including Teller. An inmate might post bond in his/her Teller case, the Jail would notify the other county who would make arrangements to pick up the inmate and transfer the inmate to their jail.

An inmate who is in custody is required to appear before a court for bond setting within 48 hours after an arrestee arrives at the Jail. An inmate who posts a cash bond or who is granted a personal recognizance bond shall be released within 6 hours after the inmate is physically present in the Jail unless extraordinary circumstances exist. C.R.S. 16-4-102.

FINDINGS OF FACT REGARDING THE 287(G) OFFICERS AND THE INMATE BOOKING AND RELEASE PROCESS

To date, 4 law enforcement officers employed by the TCSO – Laura Hammond, Dominic Madronio, Taylor Smith, and David Rice – have completed training and been certified by ICE to act as DIOs within the Teller County Jail. Stipulated Facts ¶ 18. These officers all went through DIO training as part of their Jail work; they were permitted to miss work to participate, and TCSO paid them for their time spent in the training program.

The 4 officers' tenures as DIOs did not all overlap. At any one time, there were at most 2 DIOs on Jail staff. There was also a gap in which no Teller Jail detention officer was certified as a DIO under the 287(g) Agreement. As of the date of trial, David Rice was the only DIO still employed at the Jail.

3 of the four DIOs were not post certified during their tenure as DIOs. Post certification is a prerequisite to making an arrest as a law enforcement officer in Colorado. Post certification is not a prerequisite to being nominated to be or performing functions as a 287(g) officer.

The Court heard testimony from 3 of the 4 Teller DIOs: Laura Hammond, Dominic Madronio, and Taylor Smith. ICE provided and paid for the training for the 4 TCSO DIOs, including flights, room, board and training and refresher materials. The training period was approximately 4 weeks in duration, and training sessions occurred in-person for full business days. ICE training for the 4 DIOs culminated with an examination, the passing of which was required for DIO certification. All 4 TCSO DIOs passed the examination.

a. Laura Hammond completed her 287(g) training with ICE on September 27, 2019. Exhibit 211. She was designated as DIO on October 3, 2019 as authorized by ICE Field Office Director John Fabbricatore. Exhibits 212 and 213. She served as a DIO until the end of her employment with TCSO in approximately May 2022.

b. Dominic Madronio completed his 287(g) training with ICE on September 27, 2019. Exhibit 214. He was designated as DIO on October 3, 2019, as authorized by ICE Field Office Director John Fabbricatore. Exhibits

215 and 216. He served as a DIO until the end of his employment with TCSO in July 2021.

c. Taylor Smith competed his 287(g) training with ICE on April 1, 2021. Exhibit 17. He was designated as DIO and served as a DIO until the end of his employment with TCSO in August 2021.

d. David Rice completed his 287(g) training with ICE on August 18, 2022. Exhibit 218.

Of the 3 former DIOs who testified, Laura Hammond was employed by TCSO the longest. Laura Hammond worked for TCSO as a supervisor, including as a corporal and as a lieutenant within the Jail. She had the most encounters of the DIOs, presented trainings on the 287(g) program to non-DIO Jail staff, and recalled details of the 287(g) program and its operations better than the other former DIOs. Ms. Hammond's testimony is supported by the significant documentary evidence produced through the exhibits at trial. She is the most credible witness on the subject of Designated Immigration Officer training, functions, and duties, and the Court affords her testimony considerable weight in reaching the Court's findings of fact.

I had the opportunity to observe all 3 witnesses. I took into consideration their means of knowledge, strength of memory, consistency or lack of consistency in their testimony, their manner or demeanor upon the witness stand and whether their testimony has been contradicted by other evidence. DIO Smith testified for less than 3 minutes and did not provide any substantive testimony or evidence. DIO Madronio contradicted himself several times. He both agreed and disagreed the 287(g) program was a benefit to Teller County and had difficulty remembering whether he had served various ICE forms on inmates. In every case, I found the testimony of Laura Hammond to be more credible than DIO Madronio and DIO Smith regarding the 287(g) program, duties and accuracy of the 287(g) tracking sheet. Exhibits 224 and 36.

Laura Hammond is currently employed by ICE. She is a former TCSO detention deputy from 2017 until June of 2022. She received 4 weeks training as a 287(g) deputy at an ICE facility in 2019. She was never post certified. She was the first TCSO 287(g) deputy. She did annual training for Jail staff and new staff regarding the program. If she was not on duty at the Jail a deputy could call her or ICE if they had a question.

If she had information that an inmate was not a citizen, she would start an investigative process to determine "alienage and deportability." She would use her ICE provided computer to research an inmate's immigration status to

determine if the inmate was in the INS system and sometimes fingerprint the inmate using ICE fingerprint equipment. An inmate having a foreign place of birth is enough to trigger notification or investigation by a 287(g) officer.

She might interview the inmate if the inmate was willing to speak with her. She was never refused. She would report her information to ICE and ICE would determine which forms should be completed and whether ICE would issue a warrant. She was adamant that final decisions were made by ICE.

If she determined an inmate was illegal, she would prepare Form I-247A (Exhibit 219) which is an Immigration Detainer Notice of Action which would be placed in the inmate's file. The I-247A Form was usually completed when an inmate had entered the country illegally or remained illegally.

She also prepared Form I-203, Order to Detain or Release Alien (Exhibit 221) to detain "the body" which would be placed in the inmate's file. She testified that none of the forms used were signed by a judge. If she had placed a I-247A Immigration Detainer Form in the file, she would be notified by booking if the inmate had posted bond and was about to be released.

Exhibit 220 is the Warrant for Arrest of Alien. She did not have authority to sign the warrant. If an ICE authorized immigration officer signed the warrant, she would serve the warrant on the inmate before the inmate was released from Jail, usually after posting bond or whatever condition of release a Colorado judge had ordered.

When an inmate was about to be released she would "separate" herself from the booking area and approach the inmate, introduce herself as an ICE official and serve the warrant on the inmate and inform him he was not free to go and the inmate would be escorted back to his jail pod by a TCSO detention deputy.

Some 287(g) inmates were released to other counties with open warrants after posting the Teller County bond. Laura Hammond testified that inmates who posted bond were not held for an unreasonable period of time before she would execute the ICE arrest warrant. Jail staff did not have access to immigration forms unless provided by the 287(g) deputy. Laura Hammond's 7 duties as a 287(g) deputy are enumerated in Exhibit 212 and Exhibit 4 at 8-9.

Under the 287(g) program, if an inmate comes into the Jail and the officer stationed at booking has reason to believe the person might be undocumented, the booking officer is trained to notify a DIO. It is the official policy of the TCSO "to notify a 287(g) officer if a Deputy has probable cause to believe that an

arrestee is not legally present in the United States." Exhibit 27 at 2. The 287(g) officers train all other Jail detention officers regarding what information obtained during the booking process might provide reason to alert a 287(g) officer. 287(g) officers train all other Jail detention officers on the 287(g) program annually or bi-annually in a classroom within the Jail. The 287(g) officers also train new hires on the 287(g) program.

When an inmate arrives at the Jail, the booking officer must follow certain procedures to process the inmate's booking. The process includes, among other things, verifying that the appropriate paperwork is present, conducting an interview of the inmate, completing an initial housing classification survey, verifying the inmate's medical fitness for confinement, and taking and inventorying the inmate's personal clothing and other possessions, while checking out to them facility property, such as Jail uniforms and bedding.

The booking officer also serves as the "releasing officer" when an inmate is booked out of the Jail. The releasing officer must follow certain procedures before any inmate is released from the facility. The Custody Manual states the "[n]ecessary steps include completing and processing forms, files, returning personal property, reclaiming facility-issued clothing and bedding, and returning money." Exhibit 29 at 1. A release checklist that must be signed by a shift supervisor keeps track of the different steps that must be completed before a person is released from the Jail. Exhibit 29 at 1.

Part of the release process requires checking on any inmate holds. The first thing the releasing officer sees when they open an inmate's physical Jail file may be a Detainer and Warrant Hold form. Exhibit 42 at 16; Exhibit 47 at 50. The form contains a chart listing any agencies "holds" on the inmate, and notes either the associated bond amount or that the hold is a "no bond" hold. The purpose of the chart and its placement on the inner left cover of the Jail file jacket is to communicate immediately to any deputy who opens the Jail file that the subject should not be released if their chart lists a hold of some type. If a person set to be released from the Jail has a "no bond" hold for another agency listed in their file, then the release does not happen. The releasing officer must also check law enforcement databases to make sure no outstanding warrants or holds exist that are not reflected on the Detainer and Warrant Hold chart.

Commander Tedesco testified that he expects deputies to complete the release process in a timely manner. He testified that release is a priority in the Jail over other demands on officers' attention, with the exception of incidents that might jeopardize safety in the facility, such as a fight or an inmate needing medical help.

FINDINGS OF FACT REGARDING 287(g) ICE FORMS

I-203 ORDER TO DETAIN OR RELEASE ALIEN

The I-203, Exhibit 221, is an interagency form. It may be placed in an inmate file, but it has nothing to do with an arrest or for a reason to detain. It is a tracking document used by ICE if an inmate is housed at the Teller County Jail under the intergovernmental services agreement between ICE and TCSO. Ms. Hammond as a DIO would prepare the form and sign it but it would not be served on the inmate. It is not signed by a judge. Ms. Hammond described it as a receipt of asking or ordering to detain a person within a facility. It can be used in conjunction with the I-200 but is also used in non-287(g) situations. If ICE arrested a person outside of the Teller Jail and transported the person to the Jail to be housed at the Jail pending later transport to an ICE facility, it would be placed in the file to detain or release the person. I find this form was not the basis for a 287(g) hold of any of the involved inmates in this case.

I-247 DEPARTMENT OF HOMELAND SECURITY IMMIGRATION DETAINER NOTICE OF ACTION, EXHIBIT 219

The parties described this form in Stipulated Facts 5 and 6.

This form was used in the 287(g) cases. It might be filled out by a DIO like Hammond or a representative of ICE or DHS that probable cause exists that someone is removable. A DIO would place this form in the Jail inmate file. It is not signed by a state or federal judge. It functioned as an alert to Jail booking that a person had INS involvement but was not a basis by itself to detain an inmate after posting bond or being eligible for release. The TCSO custody manual is explicit that an individual cannot be held based solely on a I-247A, federal immigration detainer, Exhibit 27 at pg. 2. The policy is reproduced below:

> The Teller County Jail will hold persons with active immigration Warrants of Arrests (I-200) and those ordered to detain (I-203) by ICE. No individual should be held based solely on a federal immigration detainer (I247) under 8 CFR 287.7 unless the detainer is accompanied by a warrant issued by a judge directing that the person be arrested (CRS § 24-76.6-102). Notification to the federal authority issuing the detainer should be made before the release.

Several inmates who were identified on the tracking sheet had a I-247A form in their file but were not detained or experienced any further detention after posting bond or being eligible for release. In fact, the 3 individuals who were

detained after being arrested were detained on the basis of form I-200, not the I-247A.

Despite the title of immigration detainer in form I-247, I find it is not a legal basis to detain a person and TCSO never detained an inmate solely because of a I-247A and only did so if a I-200 warrant had been issued.

I-200 U.S. DEPARTMENT OF HOMELAND SECURITY WARRANT FOR ARREST OF ALIEN, EXHIBIT 220

Plaintiffs concede that this form can be used for lawful authority to affect an arrest under the INA if done by an ICE officer. This is the form the DIO served on the inmate when he was eligible for release. The form must be signed by an authorized immigration officer and not a DIO. The DIO could and did serve the form inside the Teller Jail prohibiting 3 inmates from being released.

Form I-200, Warrant for Arrest of Alien, issued by an ICE officer is a valid federal arrest warrant authorized by federal law at 8 U.S.C. § 1357(a) and 8 C.F.R. § 236.1

Federal law authorizes immigration officers to issue arrest warrants using a Form I-200, Warrant for Arrest of Alien. This power to arrest has been granted by the Attorney General to immigration officers under 8 U.S.C. § 1357(a) and 8 C.F.R. § 236.1. This includes authority to interview, arrest, and detain removable aliens. *See,* e.g., 8 U.S.C. § 1226(a) (Secretary of Homeland Security may issue administrative arrest warrants and may arrest and detain aliens pending a decision on removal);

An ICE warrant signed by an immigration officer is a valid warrant pursuant to federal law. *Abel v. United States*, 362 U.S. 217, 233 (1960); *Lopez v. INS*, 758 F.2d 1390 1393 (10th Cir. 1985). Aliens may be arrested [by] administrative warrant issued without an order of a magistrate. Legislation giving authority to the Attorney General or his delegate to arrest aliens pending deportation proceedings under an administrative warrant, not a judicial warrant within the scope of the Fourth Amendment, "has existed from almost the beginning of the Nation." *Abel*, 362 U.S. at 234. "It is undisputed that federal immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability."

ARTICLE 76.6

Prioritizing State Enforcement of Civil Immigration Law

Cross references: For the legislative declaration in HB 19-1124, see section 1 of chapter 299, Session Laws of Colorado 2019.

24-76.6-101. Definitions. As used in this article 76.6, unless the context otherwise requires:

(1) "Civil immigration detainer" means a written request issued by federal immigration enforcement authorities pursuant to 8 CFR 287.7 to law enforcement officers to maintain custody of an individual beyond the time when the individual is eligible for release from custody, including any request for law enforcement agency action, warrant for arrest of alien, order to detain or release alien, or warrant of removal/deportation on any form promulgated by federal immigration enforcement authorities.

(2) "Eligible for release from custody" means that an individual may be released from custody because one of the following conditions has occurred:

(a) All criminal charges against the individual have been dropped or dismissed;

(b) The individual has been acquitted of all criminal charges filed against him or her;

(c) The individual has served all the time required for his or her sentence;

(d) The individual has posted a bond or has been released on his or her own recognizance;

(e) The individual has been referred to pretrial diversion services; or

(f) The individual is otherwise eligible for release under state or municipal law.

(3) "Law enforcement officer" means a peace officer employed by the Colorado state patrol, a municipal police department, a town marshal's office, or a county sheriff's office.

(4) "Personal information" means any confidential identifying information about an individual, including but not limited to home or work contact information; family or emergency contact information; probation meeting date and time; community corrections locations; community corrections meeting date and time; or the meeting date and time for criminal court-ordered classes, treatment, and appointments.

24-76.6-102. Civil immigration detainers - legislative declaration. (1) The general assembly finds and declares that:

(a) Federal immigration authorities at times submit requests to state and local law enforcement agencies to detain an inmate after the inmate is eligible for release from custody. Continued detention of an inmate under a federal civil immigration detainer constitutes a new arrest under state law and a seizure under the fourth amendment of the United States constitution.

(b) Requests for civil immigration detainers are not warrants under Colorado law. A warrant is a written order by a judge directed to a law enforcement officer commanding the arrest of the person named, as defined in section 16-1-104 (18). None of the civil immigration detainer requests received from the federal immigration authorities are reviewed, approved, or signed by a judge as required by Colorado law. The continued detention of an inmate at the request of federal immigration authorities beyond when he or she would otherwise be released constitutes a warrantless arrest, which is unconstitutional, *People v. Burns*, 615 P.2d 686, 688 (Colo. 1980).

(2) A law enforcement officer shall not arrest or detain an individual on the basis of a civil immigration detainer request.

(3) The authority of law enforcement is limited to the express authority granted in state law.

(4) Nothing in this section precludes any law enforcement officer or employee from cooperating or assisting federal immigration enforcement authorities in the execution of a warrant issued by a federal judge or magistrate or honoring any writ issued by any state or federal judge concerning the transfer of a prisoner to or from federal custody.

(5) Nothing in this section precludes any law enforcement officer from investigating or enforcing any criminal law or from participating in coordinated law enforcement actions with federal law enforcement agencies in the enforcement of local, state, or federal criminal laws.

The issue is whether the 287(g) program violates the above statutes.

Plaintiffs have conceded that the statutes are inartfully drafted. The word "request" is used throughout the statute.

The statute states: "A law enforcement officer shall not arrest or detain an individual on the basis of a civil immigration detainer request." C.R.S. § 26-76.6-102(2) (emphasis added). Also, the definition section in C.R.S. § 26-76.6-101 specifically states that a "Civil immigration detainer means a written request issued by federal immigration enforcement authorities ...." The word "request" is a critical word because, under the 287(g) program, the Teller County DIOs do not arrest anyone based on a "request." Instead, they serve valid federal arrest warrants on individuals. ICE requests to detain are made via the ICE Form I-247A and under the Teller County 287(g) program, no individual has been arrested or detained based on a civil immigration detainer request.

The legislature could have used a different word than request but did not. Plaintiffs and Defendant agree the legislature could have specifically prohibited sheriffs from having 287(g) programs but did not. The I-200 warrant is not a request. Consequently, I conclude the functions performed under the 287(g) Agreement are not prohibited by Colorado law, are lawful and consistent with Colorado law.

DIOs ARE *DE FACTO* FEDERAL IMMIGRATION OFFICERS

I find it significant that neither the Sheriff or Jail Commander have authority to enforce immigration law or supervise the TCSO deputy when he or she is acting as a DIO under the 287(g) Jail Enforcement Model.

Under Teller County's 287(g) Agreement, a Teller County Sheriff's officer is delegated federal authority as a Designated Immigration Officer to serve an issued Form I-200 Warrant for Arrest of Alien to effect the federal arrest for ICE. In addition to the Memorandum of Agreement, federal authority conferred by 8 U.S.C. §§ 1357(a) and (g), 8 C.F.R. § 287.5(e)(3), and each DIO's Designated Immigration Officer Form 70-006 authorizes trained and certified DIOs to serve an issued Form I-200 Warrant for Arrest of Alien. These Teller County Sheriff's officers are trained, certified, and authorized as DIOs by ICE to engage in specified immigration enforcement functions, including serving an issued Form I-200 Warrant for Arrest of Alien on any Teller County inmate, for whom a supervisory ICE officer has determined probable cause exists as to that inmate's removability from the United States.

Importantly, the Teller County Sheriff's officers who are engaged in their duties pursuant to the 287(g) Agreement and their federal authorization do not act as local or state officers, but act as federal officers performing immigration functions under federal authority. *Arizona v. U.S.*, 567 U.S. 387, 408, 132 S.Ct. 2492, 2506 (2012) ("[f]ederal law specifies limited circumstances in which state officers may perform the functions of an immigration officer. A principal example is when the Attorney General has granted that authority to specific officers in a formal [287(g)] agreement with a state or local government"). "Under [287(g)] agreements, state and local officials become *de facto* immigration officers, competent to act on their own initiative." *City of El Cenzio, Texas v. Texas*, 890 F.3d 164, 180 (5th Cir. 2018). *See also Chavez v. McFadden*, 843 S.E.2d 139, 151 (N.C. 2020) ("...local and state law enforcement officers performing certain federal immigration functions pursuant to a 287(g) agreement between the federal government and a local law enforcement agency are acting under color of federal authority and, while acting in accordance with such an agreement, should be treated as federal, rather than state, officers.") (Internal citations and quotations omitted) (emphasis added). The Court adopts this authority and the reasoning behind it and finds that DIOs are *de facto* federal officers when acting pursuant to the 287(g) Agreement.

As *de facto* federal immigration officers, trained, authorized, and credentialed by federal law and the 287(g) Agreement, DIOs serve valid federal warrants in their federal capacity. Because the DIOs possess clear federal authority to act as federal officers and effect federal arrests, the analysis next turns to Colorado law to determine if these functions are "consistent with State and local law" as required by 8 U.S.C. § 1357(g). Plaintiffs first challenge the Sheriff's authority under state law to enter into a 287(g) Agreement, and then challenge the Sheriff's state authority to engage in the functions of the 287(g) Agreement. As such, this Court turns to the determination of Sheriff Mikesell's authority granted to him under Colorado law.

Sheriff Mikesell has authority under Colorado law to enter into a 287(g) Agreement.

> It is the duty of the sheriffs, undersheriffs, and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and unlawful assemblies and insurrections. For that purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner, may call to their aid such person of their county as they may deem necessary. C.R.S. 30-10-516

A county sheriff "is authorized by law to perform any other acts necessary to carry out his express responsibilities. *People v. Buckallew*, 848 P.2d 904, 908 (Colo. 1993) ("Although a sheriff's authority is generally created by legislative enactment, a sheriff also has those implied powers which are reasonably necessary to execute those express powers"). "The test for determining whether a power is implicit within a sheriff's express authority is whether or not the sheriff can fully perform his functions without the implied power." *Id.* at 908.

The 287(g) Agreement is a function of the Sheriff's statutory duty to keep and preserve the peace

The Sheriff points to his broad statutory duty to keep and preserve the peace as the justification for his authority under Colorado law to enter into the 287(g) Agreement. The "presumption of regularity" supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." *U.S. v. Chemical Foundation*, 272 U.S. 1, 14-15 (1926); *Public Utilities Commission v. Dist. Ct. In and For Arapahoe County*, 431 P.2d 773, 776-777 (Colo. 1967). Sheriff Mikesell testified that he applied to participate in the 287(g) Agreement because the cooperation with ICE furthers his duty to keep and preserve the peace, and that the Agreement is, in fact, necessary to carry out that duty. The Sheriff cited in particular to the prevalence of illegal marijuana growing operations in Teller County, the involvement of aliens in those operations, and the important deterrent effect the 287(g) Agreement has had on both the number of those operations and the number of aliens involved in crime in Teller County.

Recently, the Ninth Circuit Court of Appeals in *City of Los Angeles v. Barr,* specifically stated that 287(g) Agreements are effective tools that law enforcement can use to further the goal of achieving public safety:

> The public safety issues that arise from illegal immigration can be addressed through collaborative interactions and information flow between law enforcement and the community, just as with any other sort of public safety issue, such as those arising from "violent crime problems" and other focus areas. If a jurisdiction selects an illegal immigration focus due to community concerns, it is reasonable to consider that officers may be more effective in addressing such issues if they act pursuant to § 287(g) partnerships, which allow state or local officers to perform immigration officer functions, *see* 8 U.S.C. § 1357(g)(1). 929 F.3d 1163, 1178-1179 (9th Cir. 2019) (emphasis added).

Based on Sheriff Mikesell's testimony and the presumption of regularity, the Court concludes the Sheriff has the authority to enter into the 287(g) Agreement with ICE in furtherance of his duty to keep and preserve the peace in Teller County. Plaintiffs presented no evidence to contradict the Sheriff's testimony that the 287(g) Agreement was entered into for the purpose of, and has had the effect of, enhancing public safety in Teller County.

The Plaintiffs have neither overcome the presumption of regularity nor carried their burden as Plaintiffs to demonstrate that the functions of the 287(g) Agreement are unlawful because they are not necessary for the Sheriff to carry out his statutory duty to keep and preserve the peace. The evidence at trial was that the functions of the 287(g) Agreement help keep and preserve the peace in Teller County. Thus, the Sheriff has statutory authority to perform the functions it enumerates unless specifically prohibited by another Colorado law.

MANUEL CORDERO-REYES, GUILLERMO PEREZ-VELAZQUEZ and SERGIO LAZARO-RAMIREZ

To date, these3 inmates in the Jail have been arrested by DIOs under the 287(g) Agreement. As noted in Stipulations 21, 22 and 23, the above 3 men were arrested on various state criminal charges. All 3 posted bond but were not released due to a Form I-200 for their arrest having been issued and continued to be housed in the Jail under the IGSA.

Mr. Manuel Cordero-Reyes bond was posted on November 2, 2019. There is no record of what time the bond was posted. DIO Hammond served a valid Form I-200 warrant for arrest on him immediately upon bond being posted and he became a federal ICE detainee. He was released from the Teller Jail on November 10, 2011 when he was transferred to an ICE detention facility.

Mr. Guillermo Perez-Velazquez was arrested on July 23, 2020. On July 24, 2020 an ICE immigration officer signed an I-200 Warrant for Arrest of Alien for him and DIO Madronio signed the certificate of service of the warrant on him. Mr. Perez-Velazquez posted bond on his state charges the following day on July 25, 2020. He was not released. He was housed in the Jail until July 31, 2020 and TCSO billed ICE under the IGSA for his detention from July 25, 2020 until July 31, 2020 when he was transferred to an ICE detention facility. DIO Madronio testified he did not personally serve the I-Form 200 on him but did inform him he was being detained by ICE. However, Exhibit 233, pg. 778 is a certificate of personal service of Form I-200 Warrant for Arrest signed by DIO Madronio on 7-24-2020. As previously found, I did not find Mr. Madronio the most credible witness and I find that he did serve the warrant and rejected his

denial or uncertainty of service two and a half years later at trial that he did not serve him.

Mr. Sergio Lazaro-Ramirez was booked into the Teller County Jail on July 8, 2021 on criminal charges from Lake County, Colorado. On July 9, 2021 an INS Authorized Immigration Officer signed a Form I-200 Warrant for Arrest of Alien (Exhibit 236 at 930).

On February 1, 2020 he was ordered released on a personal recognizance bond on his remaining Eagle County charges. DIO Hammond served him with the warrant on that same day in the booking area as he was completing his bond paperwork. He remained in the Teller County Jail until February 18, 2020 and TCSO billed ICE for his detention under the IGSA from February 1, 2022 until February 18, when ICE transferred him to a different facility.

The above three inmates were arrested pursuant to a valid federal warrant shortly after posting bond within the 6-hour time period as required by C.R.S. 16-4-102. I find no statutory or constitutional violation of their respective rights.

Of the remaining 13 inmates encountered by DIOs at the Teller County Jail performing 287(g) Agreement duties none were served a Form I-200 Warrant for Arrest for Alien and not a single one of the 13 who a "Hold" for ICE or who had been issued or served a Form I-247A Immigration Detainer Notice of Action experienced any continued detention in the Jail after posting bond or being eligible for release due to Form I-247A under the 287(g) Agreement.

Serving an Issued Form I-200 Warrant for Arrest of Alien constitutes service of process

Separately and independently, the Sheriff has express authority under C.R.S. § 30-10-516 to serve process in civil or criminal cases, which is not limited to service of process for Colorado state cases. DIOs are thus expressly authorized by both federal law (8 C.F.R. § 287.5(e)) and Colorado law (C.R.S. § 30-10-516) to serve an issued Form I-200 Warrant for Arrest of Alien regardless of whether such service will initiate a criminal or civil proceeding. The arrest - the primary function of the 287(g) Agreement which Plaintiffs challenge – is effected by the service of process of an issued Form I-200 Warrant for Arrest of Alien by a DIO on the inmate named in the warrant. That the service of process results in an arrest for ICE, rather than a state law enforcement agency, is irrelevant to the determination that the Sheriff possess express authority under Colorado law to serve process.

WHAT PLAINTIFFS DO NOT CHALLENGE AND THE CONSEQUENCE IF THEY PREVAIL

Plaintiffs do not challenge the I-200 administrative warrant is valid under federal law to effect arrest under the INA.

Plaintiffs do not challenge whether ICE officers can execute that warrant under federal law in Colorado.

Plaintiffs admit the Colorado legislature could have prohibited 287(g) Agreements. Plaintiffs admit the Colorado legislature tried and failed to do so in 2019 and because of that failure there is no Colorado law that prohibits a 287(g) Agreement.

Plaintiffs do not challenge the 22-year TCSO Agreement with IGSA to house ICE detainees.

Plaintiffs do not challenge that an ICE officer can come to the Jail and serve the I-200 Warrant for Arrest of Alien and they recognize the lawful authority of ICE to do so.

If Plaintiffs prevail, the consequence would be a system where an inmate walks out of the Jail after posting bond, possibly being met by family members in the Jail parking lot and then being arrested by ICE officials. This would result in the just released inmate being taken back into the Teller County Jail under an ICE arrest they do not contest. Plaintiffs give no consideration of how their preferred procedure might affect the safety of the inmate, family, ICE officer, TCSO deputies or the public. The irony of Plaintiffs' position is that the 287(g) Agreement Jail Enforcement Model is specifically designed to avoid that type of chaos. I find the 287(g) Agreement Jail Enforcement Model is consistent with the duty of Sheriff Mikesell to preserve the peace.

CISNEROS v. ELDER

Plaintiffs rely heavily upon a case from El Paso County to support their legal argument. I find crucial factual distinctions between this action and *Cisneros v. Elder*, 18CV30549 (12-6-2019) in which the District Court of El Paso County, Colorado addressed the El Paso County Sheriff's informal cooperation with ICE. The El Paso County Sheriff did not operate under a 287(g) Agreement, whereas this action is based on the activities of the Teller County Sheriff's Office that have occurred with a 287(g) Agreement in effect. None of the El Paso County Sheriff's deputies were trained or authorized by ICE to act as Designated Immigration Officers and none of those deputies were supervised by ICE officers.

The El Paso County Sheriff's policy and practice as challenged in *Cisneros* was to detain an inmate who had posted his or her state bond if ICE had sent the El Paso jail requests via a copy of Form I-247A Immigration Detainer – Notice of Action and/or Form I-200 Warrant for Arrest of Alien for that particular inmate, without regard to whether or when those forms were ever served on that inmate by an immigration officer. As such, in *Cisneros*, inmates were detained solely on requests from ICE. In contrast, in Teller County, all 3 inmates who experienced continued detention from the United States. 8 U.S.C. § 1357(a) and 8 C.F.R. § 236.1 expressly authorize warrants to be issued by ICE officers without any requirement of judicial review or approval.

DISCUSSION AND CONCLUSION

The Form I-200 Warrant for Arrest of Alien is not a request. It is a valid federal warrant that does not need to be signed or reviewed by a judge. Colorado law does not and cannot invalidate federal arrest warrants. When DIOs are acting under the 287(g) Agreement they are not supervised by the Teller County Sheriff or Jail commander. They are acting as *de facto* federal immigration officers. The legislature did not prohibit Colorado sheriffs from entering into 287(g) Agreements. Sheriff Mikesell has the authority to enter into the Agreement under his authority to keep the peace as per C.R.S. 30-10-516.

Because DIOs are federal officers, not state officers, when acting in this capacity, the definition of "law enforcement officer" and prohibitions on law enforcement officer activity in C.R.S. §§ 24-76.6-101 and 102 do not – and cannot, under the doctrine of obstacle preemption – apply to DIOs.

The issued Form I-200 Warrant for Arrest of Alien further reads: "You are commanded to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien". Exhibit 220. (Emphasis added).

"[W]hen the legislature defines a term in a statute, that definition governs". *Farmers Ins. Exch. v. Bill Boom Inc.,* 961 P.2d 465, 470 (Colo. 1998). The legislature's express language prohibits arrest or detention of an individual based upon a *request*. This prohibition does not apply to DIOs, who make an arrest, not pursuant to a request, but pursuant to a command by their supervising ICE immigration officer who issues the Form I-200 Warrant for Arrest of Alien.

Plaintiffs cite the Tenth Amendment to the United States Constitution to argue that such a command from a federal to a state authority is unconstitutional. However, because DIOs acting under the authority of the 287(g) Agreement are acting as federal, not state, officers, the federal government is not commanding a

state officer to do anything, so the Tenth Amendment is not implicated. Further, Sheriff Mikesell entered the 287(g) Agreement voluntarily, and he or any subsequent Teller County Sheriff can terminate the 287(g) Agreement at any time.

In contrast, a state law enforcement officer who is not trained, certified, and authorized to act as a federal officer is prohibited by C.R.S. §§ 24-76.6-101 and 102 to make arrests or continued detentions on the basis of an issued Form I-200 Warrant for Arrest of Alien, or any other ICE form because they are law enforcement officers as defined in C.R.S. § 24-76.6-101(3); and to non-DIOs, the issued ICE Form I-200 Warrant for Arrest of Aliens are only requests. For example, any arrest or continued detention effected by a non-DIO on the basis of service of a Form I-247A Immigration Detainer – Notice of Action, or service of an issued Form I-200 Warrant for Arrest of Alien would violate C.R.S. § 24-76.6-102(2) because to a non-DIO state officer, those documents were mere requests. However, all arrests made under Sheriff Mikesell's 287(g) Agreement involved the service of an issued Form I-200 Warrant for Arrest of Alien by a DIO.

Each of these analyses, separately and independently results in the conclusion that DIOs who serve an issued Form I-200 Warrant for Arrest of Alien do so in accordance with federal law under their federal authority and are not violative of the prohibitions contained in C.R.S. §§ 24-76.6-101 and 102. Finally, because DIOs are *de facto* federal officers who serve valid federal warrants when they serve an issued Form I-200 Warrant for Arrest of Alien, they comport with the warrant requirement codified in C.R.S. § 16-3-102, and no exception to the warrant requirement is necessary because an issued Form I-200 is in fact a warrant for arrest, contrary to Plaintiffs' assertions.

The evidence also clearly demonstrated that none of the 3 inmates who were arrested by a DIO experienced 6 hours or more of detention between the completion of the state bond-posting process and being served with the issued Form-I-200 Warrant for Arrest of Alien, in accordance with C.R.S. § 16-4-102. The Sheriff's entering into the 287(g) Agreement, as well as the 287(g) Agreement's functions and effects, are therefore all consistent with Colorado law.

Sheriff Mikesell has met his burden of proof by a preponderance of evidence that the 287(g) Agreement and the activities of the Teller County Sheriff's officers performed thereunder are lawful.

CONCLUSION

I find Plaintiffs have not met their burden of proof by a preponderance of evidence on any of their respective claims. All 6 claims on page 2 of this Order are denied for reasons stated in this Order. I GRANT all 6 claims of Sheriff Mikesell.

As per C.R.C.P. Rule 57, declaratory judgments are granted as to the following issues:

1. That Teller County Sheriff Mikesell has the legal authority to enter into the 287(g) Agreement with ICE;

2. That Colorado law does not prohibit the Teller County Sheriff from entering into a 287(g) Agreement with ICE;

3. That the functions performed under the 287(g) Agreement by trained and certified Teller County Sheriff's deputies and officers acting as Designated Immigration Officers under the supervision of ICE are lawful and consistent with Colorado law.

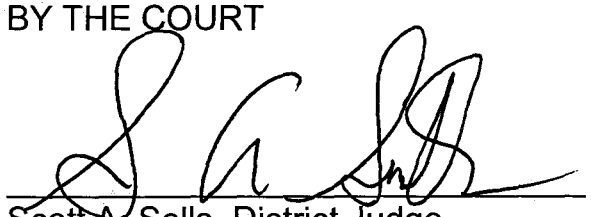
4. That the Teller County Sheriff's deputies and officers who are trained and certified by ICE are *de facto* federal officers when they are performing functions as Designated Immigration Officers under the 287(g) Agreement;

5. That a Form I-200, Warrant for Arrest of Alien, issued by an ICE officer is not a request but is a valid federal arrest warrant authorized by federal law at 8 U.S.C. § 1357(a) and 8 C.F.R. § 236.1 and that these federal arrest warrants do not have to be signed by a judge; and

6. That Teller County Sheriff's deputies and officers who perform functions under the 287(g) Agreement as Designated Immigration Officers do not arrest or detain an individual on the basis of a civil immigration detainer request because they only arrest or detain an individual by serving a valid federal arrest warrant issued by an ICE officer pursuant to 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3).

SO ORDERED this 22nd day of February 2023.

BY THE COURT



Scott A. Sells, District Judge