

DISTRICT COURT, TELLER COUNTY, COLORADO 101 W. Bennett Avenue, Cripple Creek, Colorado 80813	
Plaintiffs-Counterclaim Defendants: BERCK NASH; JOANNA NASH; RODNEY SAUNDERS; DARLENE SCHMURR-STEWART; PAUL MICHAEL STEWART; and JANET GOULD v. Defendant-Counterclaimant: JASON MIKESELL, in his official capacity as Sheriff of Teller County, Colorado	▲ COURT USE ONLY ▲
Attorneys for the Teller County Sheriff: Paul W. Hurcomb, Teller County Attorney, #32456 Eric V. Hall, #32028 Justin M. DeRosa, #49921 SPARKS WILLSON, P.C. 24 South Weber Street, Suite 400 Colorado Springs, CO 80903 Tel: 719-634-5700 Email: pwh@sparkswillson.com ; evh@sparkswillson.com ; jmd@sparkswillson.com	Case Number: 2019CV30051 Division: 11
ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM	

Jason Mikesell in his official capacity as Sheriff of Teller County, Colorado, through his attorneys, answers the Amended Complaint and asserts his Counterclaim for declaratory judgment as follows:

1. The Sheriff denies the allegations in ¶1 of the Amended Complaint.
2. The Sheriff admits he signed a 287(g) Memorandum of Agreement with U.S. Immigration and Customs Enforcement (ICE) and denies the remaining allegations in ¶2 of the Amended Complaint.
3. The Sheriff denies the allegations in ¶3 of the Amended Complaint.
4. The Sheriff denies the allegations in ¶4 of the Amended Complaint.

5. The Sheriff admits that at the time the Amended Complaint was filed Plaintiff Berck Nash was a resident of Teller County and denies the remaining allegations in ¶5 of the Amended Complaint.

6. The Sheriff admits that at the time the Amended Complaint was filed Plaintiff Joanna Nash was a resident of Teller County and denies the remaining allegations in ¶6 of the Amended Complaint.

7. The Sheriff admits that at the time the Amended Complaint was filed Plaintiff Rodney Saunders was a resident of Teller County and denies the remaining allegations in ¶7 of the Amended Complaint.

8. The Sheriff admits that at the time the Amended Complaint was filed Plaintiff Darlene Schmurr-Stewart was a resident of Teller County and denies the remaining allegations in ¶8 of the Amended Complaint.

9. The Sheriff admits that at the time the Amended Complaint was filed Plaintiff Paul Michael Stewart was a resident of Teller County and denies the remaining allegations in ¶9 of the Amended Complaint.

10. The Sheriff admits that at the time the Amended Complaint was filed Plaintiff Janet Gould was a resident of Teller County and denies the remaining allegations in ¶10 of the Amended Complaint.

11. The Sheriff admits the allegations in ¶11 of the Amended Complaint.

12. The Sheriff admits the allegations in ¶12 of the Amended Complaint.

13. The Sheriff admits the allegations in ¶13 of the Amended Complaint.

14. The Sheriff denies the allegations contained in the heading to section A of the Factual Allegations and admits the allegations in ¶14 of the Amended Complaint.

15. The Sheriff denies the allegations in ¶15 of the Amended Complaint.

16. The Sheriff denies the allegations in ¶16 of the Amended Complaint.

17. The Sheriff admits that ICE uses standardized ICE documents, which documents have been revised by ICE from time to time, and denies the remaining allegations in ¶17 of the Amended Complaint.

18. The Sheriff admits that ICE has published documents labeled as Form I-247A, I-200, I-205 and I-203 and denies the remaining allegations in ¶18 of the Amended Complaint.

19. The Sheriff admits that ICE uses Form I-247A and to the extent the allegations in ¶19 differ from the language in Form I-247A itself, they are denied.

20. The Sheriff admits that in approximately 2017, ICE started using Form I-200 and I-205.

21. The Sheriff admits ICE Form I-200 is titled “Warrant for Arrest of Alien” and Form I-205 is titled “Warrant of Removal/Deportation” and to the extent the allegations in ¶21 differ from the language in these forms they are denied.

22. The Sheriff admits that ICE administrative warrants are issued by ICE officers and denies the remaining allegations in ¶22 of the Amended Complaint.

23. The Sheriff admits that in October 2000, Teller County entered into an Intergovernmental Service Agreement (IGSA) with the U.S. Department of Justice, Immigration and Naturalization Service to provide housing for federal detainees at the Teller County Jail, which contract has since been assumed by the U.S. Department of Homeland Security, Immigration and Customs Enforcement.

24. The Sheriff admits the allegations in ¶24 of the Amended Complaint.

25. The Sheriff admits that ICE uses a Form I-203 titled “Order to Detain or Release Alien” to detain or release aliens and denies the remaining allegations in ¶25 of the Amended Complaint.

26. The Sheriff admits that the Form I-203 “Order to Detain or Release Alien” is not signed by a judge, denies that federal law requires this form to be signed by a judge, and denies the remaining allegations in ¶26 of the Amended Complaint.

27. The Sheriff denies the allegations in ¶27 of the Amended Complaint.

28. The Sheriff denies the allegations in the headings to sections B and B.i. and the allegation in ¶28 of the Amended Complaint. The Sheriff denies that the practices of the El Paso County Sheriff were similar to the actions of the Teller County Sheriff’s Office or Sheriff Mikesell, including but not limited to the fact that the El Paso County Sheriff did not have a formal 287(g) Agreement in effect. The court’s ruling in *Cisneros v. Elder* speaks for itself and to the extent the allegations in ¶28 differ from the actual case ruling, they are denied.

29. The Sheriff admits that HB19-1124 was signed by Governor Polis on May 28, 2019 and denies the remaining allegations in ¶29 of the Amended Complaint.

30. In response to the allegations in ¶30, to the extent the allegations in ¶30 differ from the actual text of C.R.S. §24-76.6-102(1), they are denied.

31. In response to the allegations in ¶31, to the extent the allegations in ¶31 differ from the actual text of C.R.S. §24-76.6-102(1), they are denied.

32. The Sheriff denies the allegations in ¶32 of the Amended Complaint.

33. The Sheriff denies the allegations in ¶33 of the Amended Complaint.

34. The Sheriff admits that copies of the 287(g) Agreement and the first extension thereto were attached to the Amended Complaint as Exhibits 1 and 2 and denies the remaining allegations in ¶34 of the Amended Complaint.

35. The Sheriff denies the allegations in ¶35 of the Amended Complaint.

36. The Sheriff admits the allegations in ¶36 of the Amended Complaint.

37. The Sheriff admits that certain Teller County Sheriff's Office deputies attended and successfully passed the 4 weeks of training provided by ICE at the Federal Law Enforcement Training Center in August and September 2019 and denies the remaining allegations in ¶37 of the Amended Complaint.

38. In response to ¶38, the Sheriff admits that after his deputies are trained by ICE they are authorized by law to act as federal officers under the supervision of an ICE officer and denies the remaining allegations in ¶38 of the Amended Complaint.

39. In response to ¶39, the 287(g) Agreement currently in effect speaks for itself and to the extent the allegations in ¶39 differ from the actual Agreement, they are denied.

40. In response to ¶40, the 287(g) Agreement speaks for itself and to the extent the allegations in ¶40 differ from the actual Agreement, they are denied.

41. In response to ¶41, the 287(g) Agreement speaks for itself and to the extent the allegations in ¶41 differ from the actual Agreement, they are denied.

42. The Sheriff denies the allegations in heading to section D and in ¶42 of the Amended Complaint.

43. The Sheriff denies the allegations in ¶43 of the Amended Complaint.

44. The Sheriff admits the Plaintiffs pay taxes in Teller County and denies the remaining allegations in ¶44 of the Amended Complaint.

45. The Sheriff denies the allegations in ¶45 of the Amended Complaint.

46. The Sheriff denies the allegations in ¶46 of the Amended Complaint.

47. The Sheriff denies the allegations in ¶47 of the Amended Complaint.

48. The Sheriff denies the allegations in the heading to section E and in ¶48 of the Amended Complaint.

49. The Sheriff is without information sufficient to form a belief as to the allegations in ¶49 of the Amended Complaint about a different sheriff's office in a different county and denies the same.

50. The Sheriff is without information sufficient to form a belief as to the allegations in ¶50 of the Amended Complaint about a different sheriff's office in a different county and denies the same.

51. The Sheriff is without information sufficient to form a belief as to the allegations in ¶51 of the Amended Complaint about different sheriffs' offices in different states and denies the same.

52. The Sheriff is without information sufficient to form a belief as to the allegations in ¶52 of the Amended Complaint about a different sheriff's office in a different county and denies the same.

53. The Sheriff is without information sufficient to form a belief as to the allegations in ¶53 of the Amended Complaint about different sheriffs' offices in different states and denies the same.

54. The Sheriff denies that the 287(g) Agreement between his office and ICE has a negative impact on public safety in Teller County, Colorado. The Sheriff is without sufficient evidence to form a belief as to the remaining allegations in ¶54 about different sheriffs' offices in different states or in a different country and denies the same.

55. The Sheriff denies the allegation in ¶55 of the Amended Complaint.

**Answer to Claim for Relief
(Seeking declaratory and injunctive relief under C.R.C.P. 57 and 65)**

56. The Sheriff incorporates his answers to ¶¶1-55 above as if fully stated herein.

57. The Sheriff denies the allegations in ¶57 of the Amended Complaint.

58. The Sheriff admits he executed and implemented a 287(g) Agreement with ICE and denies the remaining allegations in ¶58.

59. The Sheriff denies the allegations and legal arguments in ¶59 of the Amended Complaint.

60. The Sheriff denies the allegations and legal arguments in ¶60 of the Amended Complaint.

61. The Sheriff denies the allegations and legal arguments in ¶61 of the Amended Complaint.

62. The Sheriff denies the allegations and legal arguments in ¶62 of the Amended Complaint.

63. The Sheriff denies the allegations and legal arguments in ¶63 of the Amended Complaint.

64. The Sheriff denies the allegations and legal arguments in ¶64 of the Amended Complaint.

65. The Sheriff denies the allegations and legal arguments in ¶65 of the Amended Complaint.

66. The Sheriff denies the allegations in ¶66 of the Amended Complaint.

67. The Sheriff denies the allegation in ¶67 of the Amended Complaint.

68. The Sheriff denies each and every allegation in the Amended Complaint not specifically addressed above, including the allegations in the headings to the sections and subsections of the Amended Complaint.

Defenses and Affirmative Defenses

The Plaintiffs claims are barred in whole or in part by the following defenses and affirmative defenses.

1. The allegations and claims stated in ¶¶14-32 are moot because those allegations are related to informal cooperation between local law enforcement agencies and ICE where no formal 287(g) Agreement exists and where local law enforcement officers have not been trained and certified to act as federal immigration officers under the supervision of an ICE officer. Since January 2019, Sheriff Mikesell's cooperation with ICE is done pursuant to the formal 287(g) Agreement expressly authorized by federal law so none of the allegations in ¶¶14-32 apply to the present facts at issue.

2. Failure to state a claim upon which relief may be granted.

3. To the extent that Teller County Sheriff's deputies or officers are acting pursuant to the 287(g) Agreement they are acting as federal officers and this court lacks jurisdiction over the acts of federal officers.

COUNTERCLAIM¹ **Declaratory Judgment**

For the Sheriff's counterclaim seeking a declaratory judgment, the Sheriff states as follows.

1. This Court has jurisdiction under Article VI, Section 9(1) of the Colorado Constitution, the Uniform Declaratory Judgments Law at C.R.S. § 13-51-101 et seq., and C.R.C.P. 57.

2. Venue is proper in this Court under C.R.C.P. 98(c).

3. Sheriff Jason Mikesell is the duly elected Sheriff of Teller County, Colorado. He was appointed Sheriff by the Teller County Board of County Commissioners in May 2017 and in 2018, Sheriff Mikesell was elected to his first full term as the Teller County Sheriff.

4. The Teller County Sheriff's Office has two main divisions, Operations and Detention. The Operation Division is responsible for patrol, dispatch, investigations, animal control, and administration. The Detention Division is responsible for managing the Teller County Jail and for court transport.

5. Sheriff Mikesell's central duty and function as a sheriff is to keep and preserve peace in Teller County as required by C.R.S. § 30-10-516, which states: "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."

6. Sheriff Mikesell's oath of office reiterates his duties and requires him to swear that he "will support the constitution of the United States, the constitution of the state of Colorado, and the laws of the state of Colorado, and will faithfully perform the duties of the office of the Sheriff of Teller County...." See C.R.S. §§ 12-12-101 and 30-10-110.

7. One of Sheriff Mikesell's main law enforcement priorities during his time in office has been to eradicate the illegal marijuana grow operations in Teller County.

8. In 2017 Sheriff Mikesell created the Get Out of Teller (GOT) program to help fight the illegal marijuana operations in Teller County.

¹ No amendments have been made to the Sheriff's Counterclaim. As discussed in the Case Management Conference on May 31, 2022, Plaintiffs-Counterclaimants have already filed their Answer to the Counterclaim, so no additional Answer is required to be filed.

9. In 2017 and 2018, the Teller County Sheriff's Office investigated and arrested numerous persons in Teller County engaged in illegal marijuana operations, including but not limited to the following investigations:

a. On January 2, 2018, the Teller County Sheriff's Office executed its first search warrant under the GOT program for a large illegal marijuana grow inside the basement of a home near Divide, Colorado, resulting in the seizure of approximately 175 marijuana plants and equipment, the arrests of four adults, and the turnover of two juveniles in the home to the Department of Human Services. The Sheriff's investigation discovered that this illegal operation had ties to organized crime elements in the state of Florida. One of the adult males taken into custody is a Cuban national who had previously been deported from the United States.

b. In late January 2018, the Teller County Sheriff's Office raided three illegal marijuana grows connected to a Cuban drug cartel, arrested five persons, and seized marijuana with a street value of over \$1 million.

c. In March 2018, the Teller County Sheriff's Office arrested two Cuban citizens involved in an illegal marijuana grow north of Divide, Colorado which resulted in the seizure of several dozen marijuana plants plus 42 pounds of processed and 36 pounds of unprocessed marijuana.

d. In June 2018, the Teller County Sheriff's Office and Woodland Park Police conducted a joint marijuana raid in Woodland Park, which netted over 288 pounds of illegal marijuana and 86 live marijuana plants worth approximately \$1.4 million and resulted in the arrest of a Ukrainian citizen.

10. Based in part on these serious criminal activities in Teller County which involved illegal aliens, Sheriff Mikesell decided to enhance his law enforcement relationship and cooperation with ICE.

11. Local law enforcement agencies may cooperate informally with ICE, meaning they do so without a formal written agreement. Alternatively, local law enforcement agencies may cooperate formally with ICE through a long-established federal program codified at 8 U.S.C. § 1357(g) and known as the 287(g) Program that trains local law enforcement officers to perform limited immigration officer duties under the supervision of an ICE officer.

12. In February 2018, Sheriff Mikesell submitted a request to the Deputy Director of ICE to participate in ICE's 287(g) Program to assist with combatting the increase in crime in Teller County, including organized criminal activity by out of state cartels and illegal aliens who take advantage of Colorado's recreational marijuana laws to operate sophisticated illegal grow operations.

13. As noted in the Plaintiffs' Complaint at ¶28, in 2018 a class action lawsuit was filed against El Paso County Sheriff Elder to challenge his informal cooperation with ICE by honoring ICE detainer requests. On December 6, 2018, El Paso County District Court Judge Bentley issued an order that enjoined El Paso County Sheriff Elder from informally cooperating with ICE and from honoring ICE's detainer requests. Judge Bentley noted that "Sheriff Elder could re-enter into the formal 287(g) agreement his office previously enjoyed with ICE; and doing so could arguably supply the missing authority to honor ICE's detainer requests (an issue that is not before this Court)." *Cisneros v. Elder*, No. 18CV30549, (2018 Colo. Dist. Ct. Dec. 6, 2018).

14. While the *Cisneros* case was pending in El Paso County District Court, Sheriff Mikesell was defending a lawsuit filed in the Teller County District Court in July 2018 by the ACLU challenging Sheriff Mikesell's informal cooperation with ICE in *Leonardo Canseco Salinas v. Mikesell*, 18CV30057.

15. Based on the court ruling in *Cisneros*, Sheriff Mikesell decided that if ICE accepted his office's application to participate in the 287(g) Program, his office would enter into a formal 287(g) Agreement with ICE because informal cooperation without a 287(g) Agreement would likely result in further litigation.

16. Shortly after the *Cisneros* order, Sheriff Mikesell was notified that his office's application had been accepted by ICE. On December 19, 2018, Sheriff Mikesell signed the initial Teller County 287(g) Agreement which was countersigned by ICE on January 6, 2019.

17. On February 1, 2018, Sheriff Mikesell, through counsel, and Mr. Canseco Salinas, through his counsel, filed a stipulation for dismissal of that lawsuit. The stipulation for dismissal informed the Teller County District Court that:

a. The parties have conferred about potential mootness based on Plaintiff's release from Teller County's custody on September 3, 2018 after he posted bond and the Teller County Sheriff's Office's acceptance into the ICE 287(g) program, memorialized in the 287(g) Memorandum of Agreement between ICE and the Teller County Sheriff's Office, signed by the Sheriff on December 19, 2018 and countersigned by ICE on January 6, 2019.

b. In an effort to conserve legal and judicial resources, the parties have agreed to stipulate to this dismissal and have reached an agreement under which Defendant will provide certain records to Plaintiff's counsel pertaining to the Sheriff's Office's participation in the 287(g) program.

18. On February 1, 2019, the Teller County District Court approved the parties' stipulation and dismissed the lawsuit.

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

20. The Teller County 287(g) Agreement was further extended indefinitely on June 8, 2020. A true and accurate copy of the current 287(g) Agreement is attached hereto and incorporated herein as Exhibit A.

The 287(g) Program.

21. The 287(g) program has existed since 1996 when Congress added it to the Immigration and Nationality Act as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and is codified at 8 U.S.C. § 1357(g).

22. When the 287(g) program was enacted in 1996, it was administered by the United States Immigration and Naturalization Service (INS) as an agency of the Department of Justice.

23. In the aftermath of the September 11, 2001 terrorist attacks on the United States, the federal government created the Department of Homeland Security (DHS) on March 1, 2003 as part of a major government reorganization. DHS took over the responsibilities of the INS through three new entities – U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP).

24. Federal law, 8 U.S.C. § 1357(g)(3) authorizes DHS to enter into 287(g) agreements for DHS to cooperate with states and local agencies under which state and local officers may perform the “functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens,” *id.* § 1357(g)(1), under the “direction and supervision of the [Secretary].”

25. Under 287(g) agreements, participating local law enforcement officers receive appropriate training from ICE to perform limited immigration law enforcement functions under the supervision of ICE officers.

26. Under 8 U.S.C. § 1357(g)(8), “[a]n officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.”

27. The purpose of the 287(g) Program is to enhance the safety and security of communities by creating federal partnerships with state and local law enforcement agencies to identify and remove noncitizens who are amenable to removal from the United States.

28. Those noncitizens deemed amenable to removal are identified while still secure in state or local custody, potentially reducing the time the noncitizen spends in ICE custody.

29. The state and local partners benefit from the 287(g) Program by reducing the number of criminal offenders that are released back into the community without being screened for immigration violations. For example, gang members, sex offenders, and murderers have been identified and taken into ICE custody after serving their criminal sentences, thus resulting in their removal from local communities.

30. The efficiency and safety of the 287(g) Program allows ICE to actively engage criminal noncitizen offenders while they are incarcerated in a secure and controlled environment such as a local jail as opposed to the alternative of conducting at-large arrests in public which can pose safety concerns for the officers and the community and may result in collateral arrests.

31. The 287(g) Program is one piece of the overall undertaking by the federal government to identify and remove hundreds of thousands of aliens who violate immigration laws each year.

**Teller County Sheriff's deputies have been trained and certified
as immigration officers under the 287(g) Agreement.**

32. After acceptance into the 287(g) Program, local law enforcement officers must be trained and certified by ICE at the Federal Law Enforcement Training Center ICE Academy in Charleston, South Carolina.

33. Under the 287(g) Agreement, qualified Teller County Sheriff's deputies must attend and pass the Immigration Authority Delegation Program ("IADP") training provided by ICE and be certified as official immigration officers before they are authorized to perform immigration officer functions.

34. To date, three Teller County Sheriff's deputies have attended the specialized training and have been certified by ICE.

35. Presently, one of the three trained and certified deputies is still employed with the Teller County Sheriff's Office and has successfully completed ICE's refresher training.

36. Certified deputies are issued official immigration officer credentials.

37. A certified deputy is authorized to perform only those immigration officer functions set forth in the Standard Operation Procedures detailed in Appendix A to the 287(g) Agreement and under the supervision of an ICE officer.

38. A certified deputy under the 287(g) Agreement is treated as a federal employee for purposes of the Federal Tort Claims Act and worker's compensation claims when performing functions on behalf of ICE as authorized by the 287(g) Agreement.

39. A certified deputy under the 287(g) Agreement performing functions on behalf of ICE as authorized by the 287(g) Agreement acts under the color of federal authority for purposes of determining liability and immunity from suit under Federal and State law.

40. The Teller County Sheriff's deputies who perform functions under the 287(g) agreement do not act as local or state officers but act as federal officers performing immigration functions under federal authority.

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

41. One of the programs under 287(g) Program is the Jail Enforcement Model, which is designed to identify and process removable noncitizens with criminal or pending criminal charges who are arrested by state or local law enforcement agencies.

42. The Jail Enforcement Model Program is supervised by the local ICE Office of Enforcement and Removal Operations Field Office.

43. Under the Jail Enforcement Model, state and local law enforcement officers are trained, certified, and authorized by ICE to perform only those immigration functions that are established in the Standard Operating Procedures (SOP) of the Memorandum of Understanding.

44. The Teller County Sheriff's Office's agreement with ICE at issue in this case is a Jail Enforcement Model Agreement.

45. As of November 2021, ICE had 287(g) Jail Enforcement Model agreements with 66 law enforcement agencies in 19 states, including the Teller County Sheriff's Office.

46. As a Jail Enforcement Model, Sheriff Mikesell's 287(g) Agreement is designed to identify and process aliens within the Teller County Jail who are subject to removal from the United States pursuant to ICE's civil immigration enforcement priorities.

47. Under this Jail Enforcement Officer model, Teller County's trained and certified deputies assigned to detention duties are delegated certain immigration enforcement powers as stated in the Standard Operating Procedure at Appendix A to the 287(g) Agreement.

48. The authorized functions for Teller County trained and certified deputies include the following:

- a. The power and authority to interrogate any person detained in the Teller County jail who the officer believes to be an alien about his or her right to be or remain in the United States and to process for immigration violations any removable alien who has been arrested for violating a Federal, State, or local offense;

b. The power and authority to serve warrants of arrest for immigration violations on designated aliens in the Teller County jail at the time of the alien's scheduled release from criminal custody in order to transfer custody of the alien to ICE;

c. The power and authority to serve warrants of removal on designated aliens in the Teller County jail at the time of the alien's scheduled release from criminal custody that executes the custodial transfer of the alien to ICE for removal purposes;

d. The power and authority to administer oaths, take and consider evidence to complete required alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review;

e. The power and authority to prepare charging documents for the signature of an ICE officer;

f. The power and authority to detain and transport arrested aliens subject to removal to ICE-approved detention facilities; and

g. The power and authority to issue immigration detainers for processing aliens.

49. Sheriff Mikesell's decision to formally cooperate with ICE and have Teller County deputies trained by ICE has and will continue to directly assist Sheriff Mikesell to preserve and protect the peace in Teller County by assisting ICE in the identification of aliens who are already in the jail for criminal offenses and who are subject to removal from the United States.

50. The Colorado Constitution does not prohibit Sheriff Mikesell from entering into the 287(g) Agreement.

51. No Colorado statute prohibits Sheriff Mikesell from entering into the 287(g) Agreement.

52. The El Paso County district court ruling in *Cisneros v. Elder*, No. 18CV30549, 2018 Colo. Dist. Ct. Dec. 6, 2018) does not prohibit Sheriff Mikesell from entering into the 287(g) Agreement.

53. Colorado House Bill 19-1124, signed and codified at C.R.S. § 24-76.6-101 et seq. does not prohibit Sheriff Mikesell from entering into the 287(g) Agreement.

54. In the earlier briefing on legal issues in this case, the Plaintiffs admitted that no Colorado statute prohibits Sheriff Mikesell from entering into the 287(g) Agreement.

55. There is an actual, present controversy as to whether the Sheriff is authorized to enter into the 287(g) Agreement with ICE.

56. A judicial declaration of the Sheriff's authority to enter into the 287(g) Agreement with ICE will terminate the controversy.

57. The Sheriff is entitled to declaratory judgment pursuant to C.R.S. §13-51-101, et seq. and C.R.C.P. 57.

PRAYER FOR RELIEF

WHEREFORE, Jason Mikesell, in his official capacity as the Sheriff of Teller County, Colorado seeks judgment in his favor and respectfully requests that the Court:

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

B. Declare that the functions performed under the 287(g) Agreement by trained and certified Teller County Sheriff's deputies under the supervision of ICE are lawful;

C. Declare that the Sheriff's deputies who are trained and certified by ICE act as federal officers when they are performing functions under the 287(g) Agreement;

D. Declare that the Teller County Sheriff's deputies who perform functions under the 287(g) agreement do not act as local or state officers but act as federal officers performing immigration functions under federal authority; and

E. Grant further relief as this Court deems just and proper.

Dated: July 7, 2022.

SPARKS WILLSON, P.C.



*/s/ Paul W. Hurcomb

Paul W. Hurcomb

Eric V. Hall

Justin M. DeRosa

Counterclaimant's address:
11400 US Highway 24
Divide, CO 80814

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2022, a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIM** was filed and served via the Colorado Courts E-Filing system on the following:

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*/s/ Misty A. Parker
Misty A. Parker

**Electronically filed. Pursuant to C.R.C.P. 121, Section 1-26, a duly signed original is on file at the offices of Sparks Willson, P.C.*