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| **DISTRICT COURT, TELLER COUNTY, COLORADO**<br>101 W. Bennett Avenue<br>Cripple Creek, Colorado 80813 | |
| **Plaintiff:**<br>LEONARDO CANSECO SALINAS,<br><br>On behalf of himself and all others similarly situated,<br><br>v.<br><br>**Defendant:**<br>JASON MIKESELL, in his official capacity<br>as Sheriff of Teller County, Colorado | ▲COURT USE ONLY▲ |
| **Attorneys For Plaintiff:**<br><br>Byeongsook Seo, # 30914<br>Stephanie A. Kanan, #42437<br>SNELL & WILMER , LLP<br>1200 17th Street Suite 1900<br>Denver, CO 80202-5854<br>Telephone: 303-295-8000<br>Fax: 303-634-2020<br>bseo@swlaw.com<br>skanan@swlaw.com<br>*In cooperation with the American Civil Liberties Union Foundation of Colorado*<br><br>Mark Silverstein, # 26979<br>Arash Jahanian, # 45754<br>AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO<br>303 E. Seventeenth Ave. Suite 350<br>Denver, Colorado 80203<br>Telephone: (303) 777-5482<br>Fax: (303) 777-1773<br>msilverstein@aclu-co.org<br>ajahanian@aclu-co.org | Case No.<br><br>Div.: Ctrm: |
| **PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** | |

**Certificate of Conferral.** Pursuant to C.R.C.P. 121, § 1-15, on July 23, 2018, Plaintiff's counsel conferred with Teller County Attorney Paul Hurcomb. Defendant opposes the requests for interim injunctive relief but does not oppose an accelerated briefing schedule and a prompt date for an evidentiary hearing.

## INTRODUCTION

Plaintiff Leonardo Canseco Salinas is a pretrial detainee in the Teller County Jail. He is charged with two misdemeanors, and the Teller County Court has set his bond at $800. He has the money. He wants to post bond and secure his release. But pursuant to the unlawful practice challenged here, the Defendant, Teller County Sheriff Jason Mikesell, refuses to release him.

Deprived of his right to be free pending trial, Mr. Canseco suffers irreparable injury with every day that passes without this Court's intervention. He therefore requests an emergency temporary restraining order and a preliminary injunction pending final judgment on the merits.

The Teller County Sheriff's Office (TCSO) refuses to release certain pretrial detainees, including Mr. Canseco, who have posted bond, completed their sentences, or otherwise resolved their criminal cases, solely because federal immigration authorities have asked the Sheriff to keep the prisoners in custody. Even though Colorado law requires Sheriff Mikesell to release these prisoners, he continues to hold them, illegally, based on a claim that he has authority to jail prisoners who are suspected of civil violations of federal immigration law.

That authority does not exist. Colorado law provides the Sheriff with no authority to enforce immigration law. Under Colorado law, once prisoners have posted bond, completed their sentence, or otherwise resolved their case, the Sheriff must release them. His practice of jailing persons for suspected civil violations of immigration law is ultra vires. This practice ignores the Sheriff's mandatory legal duties under Colorado law, and it violates detainees' state constitutional rights to be free from unreasonable seizures and to post bond.

The issues raised in this Emergency Motion are identical to the issues in a currently-pending case in this judicial district against the El Paso County Sheriff. In a ruling issued on March 19, 2018, Judge Eric Bentley granted a preliminary injunction and held that the Sheriff:

> Is ENJOINED from relying on ICE immigration detainers or ICE administrative warrants as grounds for refusing to release the Plaintiffs from custody when they post bond, complete their sentences, or otherwise resolve their criminal cases. If Plaintiffs post bond, Defendant is ordered to release them pending resolution of their criminal matters.

*Cisneros v. Elder*, No. 18CV30549, slip. op. at 13 (Colo. 4th Dist. Ct. Mar. 19, 2018) (Order Granting Preliminary Injunction) ("*Cisneros*"). Judge Bentley's ruling is attached as Exhibit 1, and it is cited frequently in this Emergency Motion.

## THE CHALLENGED PRACTICE

Being present in the United States in violation of federal immigration law is a civil matter, not a crime. Nevertheless, at the request of immigration authorities, Sheriff Mikesell imprisons individuals solely because they are suspected of being removable from the country. By refusing to release prisoners when his state-law authority has ended, he carries out a new arrest, without a warrant, without probable cause of a crime, and without any lawful authority.

Officers of U.S. Immigration and Customs Enforcement (ICE) send formal requests for continued detention to TCSO through standardized ICE forms that name particular prisoners held in the jail. These forms include an immigration detainer, ICE Form I-247A, and an administrative warrant, ICE Form I-200. Neither form is reviewed, approved, or signed by a judicial officer. Sample detainers and administrative warrants are attached as Ex. 2 and Ex. 3.

### Immigration Detainer, ICE Form I-247A

An immigration detainer, ICE Form I-247A, names a prisoner being held in a local jail. It asserts that ICE believes the prisoner may be removable from the country. It asks the jail to

hold that prisoner for an additional 48 hours after she would otherwise be released, to allow time for ICE to take the prisoner into federal custody. *See Lunn v. Commonwealth*, 78 N.E.3d 1143, 1146 (Mass. 2017). Courts and law enforcement officers often refer to a detainer as an "ICE hold." *E.g., Gonzalez v. ICE*, 2014 U.S. Dist. LEXIS 185097, at *2 (C.D. Cal. July 28, 2014). Immigration detainers are issued by ICE enforcement officers. They are not warrants; they are not reviewed, approved, or signed by a judge or judicial officer. *Lunn*, 78 N.E.3d at 1146.

**Administrative Warrant, ICE Form I-200**

Although ICE administrative warrants feature the word "warrant," they are not reviewed, approved, or signed by a judicial officer. They are issued by ICE enforcement officers. *Lunn*, 78 N.E.3d at 1151 n.17. ICE administrative warrants are directed to federal immigration officers, *see* Ex. 3, and they may be served or executed only by certain immigration officers who have received specialized training in immigration law. *See Arizona v. United States*, 567 U.S. 387, 408 (2012). Colorado sheriffs have no authority to execute ICE administrative warrants.

**The TCSO's "ICE holds" or "INS holds"**

When a prisoner is booked into the Teller County Jail, the jail sends fingerprints to the FBI and ICE. In addition, TCSO officers notify ICE directly when they believe that ICE may be interested in a particular detainee. When ICE believes that a prisoner in the jail may be in violation of immigration law, ICE sends a detainer, Form I-247A. Since 2017, ICE has also sent an administrative warrant, Form I-200, along with the detainer. *Lunn*, 78 N.E.3d at 1151 n.17.[1]

[1] If the prisoner is subject to a prior order of removal, the I-247A Form is accompanied by a different administrative warrant, Form I-205. The I-205 is issued by immigration officers, not by a judge, and is not a criminal arrest warrant. *Lunn*, 78 N.E.3d at 1151 n.17.

When TCSO receives an I-247A form and/or an administrative warrant, deputies impose what they refer to as an "ICE hold" or "INS hold." It is the regular practice of the TCSO to honor the detainer's request for continued detention even after the prisoner has posted bond, completed his sentence, or otherwise resolved his criminal case. Sheriff Mikesell has no written policies that explain how his officers will respond when ICE sends an immigration detainer or an administrative warrant.[2] It is an unwritten policy that Mr. Canseco challenges here.

**The IGSA**

The TCSO is party to an Intergovernmental Service Agreement ("IGSA") with DHS. Ex. 8. It provides that ICE may temporarily house certain detainees at the jail, at ICE's expense. It applies to persons who are already in ICE custody when they arrive at the jail. *See* Ex. 8, Art. IV.A. It does not purport to grant TCSO any authority to initiate a seizure for the purpose of enforcing immigration law. Mr. Canseco is not in custody pursuant to the IGSA.

**SPECIFIC FACTS REGARDING MR. CANSECO**

Mr. Canseco has lived in Colorado for 13 years. On the evening of July 14, 2018, he was arrested for two misdemeanors, and his bond was set at $800. Ex. 9, Custody Report. Early the next morning, he was booked into the Teller County Jail. Ex. 10, Booking Report.

The TCSO booking report contains a section titled "holds." It lists a "hold" from INS, ICE's predecessor agency, and under "description," it says "bond denied." Ex. 10. Teller

[2] Invoking the open records laws last fall, Plaintiff's counsel asked for documents reflecting TCSO's "policies and practices related to . . . responding to requests from ICE to hold prisoners on ICE holds, detainers, and/or I-247 forms." Ex. 4. On November 8, the Teller County Attorney replied by producing a copy of Jail Policy No. 1066, attached as Ex. 5. He noted that "this policy is outdated since it was not updated after the repeal of C.R.S. 29-29-101 to 103 in 2013." Ex. 6. On July 12, 2018, the County Attorney stated in an email that "the Sheriff's office has not yet implemented a new policy . . . . Teller County Jail Policy No. 1066[] is the only document of a policy that you have requested." Ex. 7.

County Pretrial Services declined to evaluate whether to recommend a personal recognizance bond "due to a no bond ICE hold on this individual." Ex. 11, PR Bond Investigation.

On July 19, Brendan Greene, Director of Campaigns for the Colorado Immigrant Rights Coalition, made several telephone calls to the TCSO on Mr. Canseco's behalf. In separate conversations, he spoke with a corporal and a lieutenant, both of whom stated that Mr. Canseco had an "ICE hold" and would not be released if and when he posted the bond set for his misdemeanors. Lt. Sloan explained that Mr. Canseco was named in an I-247A Form and an I-200 Form from ICE. Lt. Sloan said that a few days earlier, Mr. Canseco had begun to pay the bond but had decided against it when he learned he would not be released. Lt. Sloan said that Mr. Canseco "can post bond any time he wants to, but he is not leaving this facility." If he posts bond, Lt. Sloan said, "we will not release him until ICE tells us to." Ex 12, Greene Aff.

Mr. Canseco remains ready, willing, and able to post the $800 bond and exercise his right to pretrial release, but he cannot do so without this Court's intervention.[3]

**ARGUMENT**

Mr. Canseco invokes the time-honored power of a court of equity to restrain unlawful actions of executive officials. *See Cnty. of Denver v. Pitcher*, 129 P. 1015, 1023 (Colo. 1913) (holding that equity courts may enjoin illegal acts in excess of authority). Interim injunctive relief is necessary to remedy the Sheriff's ultra vires deprivation of Mr. Canseco's liberty, to compel him to release Mr. Canseco when he posts bond or otherwise resolves his pending misdemeanors, and to protect his state constitutional rights to be free from unreasonable seizures

[3] In a letter to Sheriff Mikesell dated July 19, counsel for Plaintiff explained Mr. Canseco's situation, enclosed the *Cisneros* ruling, and asked for a reply by July 20 assuring that Mr. Canseco would be released when he posted bond. Ex. 13. No reply was received.

and to post bail. Mr. Canseco meets the requirements for interim relief: (1) he has a reasonable probability of success on the merits; (2) there is a danger of real, immediate and irreparable injury that may be prevented by injunctive relief; (3) there is no plain, speedy, and adequate remedy at law; (4) the granting of a temporary injunction will not disserve the public interest; (5) the balance of equities favors the injunction; and (6) the injunction will preserve the status quo pending trial on the merits. *See Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982).

## I. MR. CANSECO HAS A SUBSTANTIAL PROBABILITY OF SUCCESS ON THE MERITS.

By relying on ICE documents as grounds for refusing to release Mr. Canseco when he posts bond or resolves his criminal case, Sheriff Mikesell carries out a new arrest, for civil violations of federal immigration law, without legal authority. Section I.A., *infra*. Because Sheriff Mikesell has a clear legal duty to release Mr. Canseco when the state-law authority to confine him has ended, Mr. Canseco is entitled to relief in the nature of mandamus. Section I.B., *infra*. By carrying out arrests without legal authority, Sheriff Mikesell violates Mr. Canseco's rights under Colorado Constitution Article II, section 7. Section I.C., *infra*. And by failing to release Mr. Canseco when he posts the bond set by the county court, Sheriff Mikesell also violates Article II, section 19. Section I.D., *infra*.

### A. Sheriff Mikesell Exceeds His Authority Under Colorado Law.

After a thorough analysis, the Supreme Judicial Court of Massachusetts concluded that state law provided no authority for state or local law enforcement officials to hold a prisoner on the basis of an immigration detainer. The court explained that Massachusetts law did not provide authority to hold prisoners for civil violations of federal immigration law. *Lunn*, 78 N.E.3d

1143. In *Cisneros*, Judge Bentley reached the same conclusion as a matter of Colorado law. The same result is required here.

Colorado sheriffs are limited to the express powers granted them by the Legislature and the implied powers "reasonably necessary to execute those express powers." *People v. Buckallew*, 848 P.2d 904, 908 (Colo. 1993). Powers will be implied only when the sheriff cannot "fully perform his functions without the implied power." *Id.* at 909. The Colorado Supreme Court has applied this principle strictly. *See Douglass v. Kelton*, 610 P.2d 1067 (Colo. 1980). The issue in *Douglass* was whether a sheriff could issue a concealed carry permit. *Id*. at 1068. The statute that prohibited carrying a concealed weapon provided an affirmative defense if the defendant had a written permit for concealed carry issued by a sheriff. *Id*. at 1069. The Court noted that the legislature must have "contemplated" that sheriffs might have the power to issue concealed carry permits. Nevertheless, the court held, the legislature had failed to expressly authorize sheriffs to do so. The court explained that sheriffs and other public officials "have only such power and authority as are *clearly conferred* by law." *Id.* (emphasis in original). The creation of an affirmative defense in the statute did not "clearly confer" to sheriffs the power or authority to issue concealed carry permits. *Id.* The principles of *Buckallew* and *Douglass* clearly apply here. Neither the Colorado Constitution, nor any Colorado statute, provides Colorado sheriffs with authority to enforce federal immigration law or to refuse to release prisoners when they post bond or otherwise resolve their criminal cases. *Accord Cisneros*, slip op. at 10-11.[4]

[4] In explaining that Sheriff Elder lacked state-law authority to hold prisoners on the basis of immigration detainers, the *Cisneros* ruling suggested, in dicta, that the missing authority might be supplied if the sheriff entered into a formal agreement with ICE pursuant to 8 U.S.C. §

As shown below, Sheriff Mikesell is not required to honor ICE detainer requests. He has made a choice—a choice forbidden under Colorado law. By refusing to release Mr. Canseco, he carries out a new arrest, an arrest that exceeds his authority under Colorado law.

**1. Sheriff Mikesell is choosing to honor ICE requests.**

Nothing in federal law compels local law enforcement to hold prisoners whom ICE suspects are removable. Immigration detainers are requests, not commands. *See, e.g.*, *Galarza v. Szalczyk*, 745 F.3d 634, 644-45 (3rd Cir. 2014) (explaining that if detainers *were* regarded as commands, they would violate the Tenth Amendment's anti-commandeering principle); *Lunn*, 78 N.E.3d at 1152. In addition, ICE administrative warrants are directed to federal officers, not to county sheriffs, and federal law specifies that only certain federal officers are authorized to execute these administrative warrants. *Id*. at 1151 n.17; *see* 8 C.F.R. § 287.5(e)(3). Sheriff Mikesell thus has no legal obligation to honor ICE's requests to hold prisoners who would otherwise be released. He has made a choice—a choice that Colorado law does not authorize.

**2. Sheriff Mikesell's decision to keep Mr. Canseco in custody is a new arrest.**

Courts analyzing ICE detainers agree that the decision to hold a prisoner who would otherwise be released is the equivalent of a new arrest that must comply with the legal requirements for depriving persons of liberty. *See, e.g.*, *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015) ("Because Morales was kept in custody for a new purpose after she was

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1357(g)(1), which is known as a 287(g) agreement. *Cisneros*, slip op. at 10. But even if a 287(g) agreement could supply *federal*-law authority, the principles of *Buckallew* and *Douglass* require that Colorado sheriffs must *also* have explicit *state*-law authority to enforce immigration law before they may enter into such an agreement. Moreover, a 287(g) agreement could not even provide federal-law authority here, because a 287(g) agreement can confer arrest authority only if that authority is "consistent with State and local law." 8 U.S.C. 1357(g)(1). Whether Colorado sheriffs have authority under Colorado law to enter into 287(g) agreements was neither briefed nor argued in *Cisneros*.

entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification."); *Cisneros*, slip op. at 4 (citing *Morales* and noting Sheriff Elder's concession that "a decision to keep prisoners in custody, who would otherwise be released, constitutes a new arrest"). By refusing to release Mr. Canseco upon posting of bond, Sheriff Mikesell carries out a new arrest without legal justification.

**3. Sheriff Mikesell has no authority to make arrests for civil violations of federal immigration law.**

Sheriff Mikesell's limited authority to make an arrest or otherwise deprive a person of liberty derives from, and is limited by, the Colorado Constitution and Colorado statutes. *See Buckallew*, 848 P.2d at 908. Neither the statute authorizing arrest on a warrant, nor the statute authorizing warrantless arrests, authorizes or justifies arrest for a civil violation of federal immigration law. Neither statute authorizes arrest based on an I-247A Form or an I-200 Form.

**a. The Colorado statute authorizing arrest on a warrant provides no authority for Sheriff Mikesell to hold Mr. Canseco at ICE's request.**

Sheriffs are peace officers. C.R.S. § 16-2.5-103. A peace officer may arrest a person based on a warrant. C.R.S. § 16-3-102(1)(A). The Legislature defines a "warrant" as "a written order issued by a judge of a court of record directed to any peace officer commanding the arrest of the person named or described in the order." C.R.S. § 16-1-104(18) (emphasis added).

The forms sent by ICE to the jail are not judicial warrants. Neither an immigration detainer nor an administrative warrant is reviewed or signed by a judge. As Judge Bentley noted, these ICE documents do not qualify as "warrants" under Colorado law. *Cisneros*, slip op. at 5. Thus, the statute authorizing arrests on the basis of a warrant does not authorize Sheriff Mikesell to hold Mr. Canseco on the basis of an I-247 Form or an I-200 Form.

**b. The statute authorizing certain warrantless arrests provides no authority for Sheriff Mikesell to hold Mr. Canseco at ICE's request.**

Because the ICE documents are not warrants, an arrest in reliance on them constitutes a warrantless arrest. "Continued detention of a local inmate at the request of federal immigration authorities, beyond when he or she would otherwise be released, constitutes a warrantless arrest." *Cisneros*, slip op. at 5; *see also Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1005 (N.D. Ill. Sept. 30, 2016) (reporting ICE's concession that detention pursuant to an immigration detainer is a warrantless arrest); *Lunn*, 78 N.E. 3d at 1153 (noting the same concession by the United States).

A peace officer may make a warrantless arrest only when he has "probable cause to believe an *offense* was committed" by the suspect in question. C.R.S. § 16-3-102(1)(c) (emphasis added). The term "offense" means "crime." *See* C.R.S. § 18-1-104(1) ("The terms 'offense' and 'crime' are synonymous"); C.R.S. § 16-1-105(2) (stating that the definitions in Title 18 (the criminal code) apply to Title 16 (the code of criminal procedure)). The new arrests that Sheriff Mikesell will carry out when Mr. Canseco posts bond or resolves his misdemeanor cases do not fit within this statutory exception to the warrant requirement, because suspicion of removability is not suspicion of a crime.

Even when ICE asserts that it has probable cause to believe a person is removable from the country, that is a civil matter, not a crime. *See Cisneros*, slip op. at 5 (noting that a deportation proceeding is a civil proceeding); *Arizona*, 567 U.S. at 407 ("As a general rule, it is not a crime for a removable alien to remain present in the United States."); *id.* at 396 (noting that the administrative removal process "is a civil, not criminal matter.").

Mr. Canseco is suspected only of violating a civil provision of federal immigration law, not a crime. The warrantless arrest statute thus provides no authority for Sheriff Mikesell to

refuse to release Mr. Canseco when he posts bond or otherwise resolves his pending misdemeanor cases. *See Cisneros*, slip op. at 6 ("[A] federal officer's finding that an individual may be removable from the United States does not authorize the Sheriff, under the warrantless-arrest statute, to deprive that individual of liberty."); *Lunn*, 78 N.E. 3d at 1146 (holding same with respect to Massachusetts statute authorizing warrantless arrests).

**4. The IGSA provides no authority for Sheriff Mikesell to refuse to release Mr. Canseco when he posts bond or otherwise resolves his misdemeanor cases.**

The terms of the IGSA do not purport to confer any authority on the Sheriff to initiate custody or make an arrest for immigration enforcement. Its terms are limited to housing of prisoners who *already* are in ICE custody when they arrive at the Teller County Jail. Mr. Canseco arrived at the jail for state charges; he was not and has not been in federal custody.

**B. Mr. Canseco Is Entitled to Relief in the Nature of Mandamus**

Relief in the nature of mandamus under Rule 106(a)(2) is available when the plaintiff has a clear right to the relief sought, when the defendant has a clear duty to perform the act requested, and when there is no other adequate legal remedy. *Gramiger v. Crowley*, 660 P.2d 1279, 1281 (Colo. 1983). All three conditions are met here. *See Cisneros*, slip op. at 11.

As explained in Section I.A., Sheriff Mikesell must carry out his mandatory legal duty under Colorado law to release Mr. Canseco when Colorado law so requires. He cannot rely on ICE documents as grounds for refusing to release Mr. Canseco. Mr. Canseco has no adequate remedy at law. *See* Section II.B., *infra*. Accordingly, Mr. Canseco has a substantial probability of prevailing on his claim that he is entitled to relief in the nature of mandamus.

**C. By Depriving Mr. Canseco of Liberty Without Legal Authority, Sheriff Mikesell Carries Out an Unreasonable Seizure in Violation of Article II, Section 7.**

As explained in Section I.A., the Sheriff threatens Mr. Canseco with a new arrest that is not authorized by any valid legal authority. An arrest without legal authority is an unreasonable seizure. Accordingly, Mr. Canseco has a substantial probability of success on his claim under Article II, section 7, which forbids unreasonable seizures. *Accord Cisneros*, slip op. at 10-11.

### D. By Failing to Release Mr. Canseco When He Has Posted Bond, Sheriff Mikesell Violates Article II, Section 19.

Finally, under Colorado Constitution Article II, section 19, "[a]ll persons shall be bailable by sufficient sureties pending disposition of charges," with exceptions not relevant here. As the Colorado Supreme Court has observed, this provision "unequivocally" allows non-excepted persons like Mr. Canseco to bond out of jail pending disposition of charges. *People v. Jones*, 346 P.3d 44, 52 (Colo. 2015) (holding that even petitioner's alleged commission of separate felony while released on bond did not justify revoking his bail). By refusing to release Mr. Canseco even after he has posted bond, Sheriff Mikesell is violating his constitutional right to bail. *See id.*; *cf. Gaylor v. Does*, 105 F.3d 572, 576 (10th Cir. 1997) (once magistrate set defendant's bond at $1,000, defendant "obtained a liberty interest in being freed of detention").

Here, the court set bond for Mr. Canseco. Thus, the court determined that a relatively small bond of $800 was sufficient to reasonably ensure both court appearance and public safety. *See Jones*, 346 P.3d at 52 (citing C.R.S. § 16-4-103(3)(a)). Mr. Canseco has an unequivocal right to post bond and secure his release *now*. *Accord Cisneros*, slip op. at 11.

## II. MR. CANSECO SATISFIES THE ADDITIONAL *RATHKE* REQUIREMENTS

"A preliminary injunction is designed to preserve the status quo or protect rights pending the final determination of a cause." *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004); *see Cisneros*, slip op. at 11 ("An injunction will both preserve the status quo and protect Plaintiffs'

rights."). This is a clear case where "fundamental constitutional rights are being destroyed or threatened with destruction," *Rathke*, 648 P.2d at 652, thus warranting interim injunctive relief. The following sections establish the additional *Rathke* requirements.

### A. Mr. Canseco is Suffering Real, Immediate, and Irreparable Injury That May Be Prevented by Injunctive Relief.

Sheriff Mikesell refuses to release Mr. Canseco from pretrial detention on bond. As a result, the Sheriff deprives Mr. Canseco of his right to liberty. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Constitution] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Mr. Canseco will continue to suffer irreparable injury every day that passes without this Court's intervention. *See Ochoa v. Campbell*, 2017 U.S. Dist. LEXIS 131727, at *49-50 (E.D. Wash. July 31, 2017) (granting TRO on behalf of pretrial detainee wishing to post bond and forbidding sheriff to deny release on basis of "ICE hold").

"A plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain." *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012); *see also Gitlitz v. Bellock*, 171 P.3d 1274, 1278-79 (Colo. App. 2007) (injury is irreparable "where there exists no certain pecuniary standard for the measurement of the damages"). Here, monetary damages would be difficult to ascertain and could not compensate adequately for the ongoing violations and threatened violations of Mr. Canseco's right to liberty. "Unnecessary deprivation of liberty clearly constitutes irreparable harm." *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1988). "Few injuries are more real, immediate, or irreparable than being deprived of one's personal liberty." *Cisneros*, slip op. at 12.

As explained above, Mr. Canseco is suffering violations of his state constitutional right to post bail and to be free of unreasonable seizures. "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." Wright, Miller and Kane, 11A Fed. Prac. & Proc. Civ. 2d § 2948.1 (2008).

**B. Mr. Canseco Has No Plain, Speedy, or Adequate Remedy at Law.**

A possible award of damages is not an adequate remedy for unjustified loss of liberty. "[W]hen injury cannot be rectified by award of damages, an action at law is an inadequate remedy." *Herstam v. Bd. of Dir. of Silvercreek Water & Sanitation Dist*., 895 P.2d 1131, 1139 (Colo. App. 1995). "Monetary damages . . . could not compensate adequately for the ongoing violations and threatened violations" of Mr. Canseco's constitutional rights to "liberty and freedom from unjustified imprisonment." *Cisneros*, slip op. at 12. Moreover, any possible award of damages is plainly not a "speedy" remedy.

**C. A Temporary Injunction Will Not Disserve the Public Interest.**

It is the *denial* of interim relief that would disserve the public interest. "It is always in the public interest to prevent the violation of a party's constitutional rights." *Awad*, 670 F.3d at 1131; *see also Cisneros*, slip op. at 12.

**D. The Balance of Equities Favors a Grant of Interim Relief.**

The balance of equities strongly favors Mr. Canseco. He has a right to release when he posts the bond set by the Teller County Court. The relatively low bond demonstrates that he is not regarded as a flight risk or a danger to public safety. *See Cisneros*, slip op. at 12. Sheriff Mikesell has no legitimate interest in imprisoning Mr. Canseco after the state-law authority to detain has ended. Sheriff Mikesell will not be harmed by releasing Mr. Canseco on bond.

**E. Interim Injunctive Relief Will Preserve the Status Quo Pending Trial.**

The status quo is "the last uncontested status between the parties which preceded the controversy." *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001). Here, the requested relief will preserve the status quo that existed when Mr. Canseco was first booked into the jail—before TCSO imposed an "ICE hold" and before ICE sent any documents to the jail. *Accord Cisneros*, slip op. at 12.

**F. Security Bond Should Be Waived or Set at $1.**

Sheriff Mikesell will not suffer any compensable loss if it were later determined that the requested injunctive relief was wrongfully issued. Accordingly, this Court should waive the requirement to post a security bond or should set the amount, at the most, at one dollar. *See Kaiser v. Market Square Discount Liquors, Inc.*, 992 P.2d 636, 643 (Colo. App. 1999).

**CONCLUSION**

For the foregoing reasons, Mr. Canseco respectfully asks this Court to (1) set an accelerated briefing schedule and a prompt date for an evidentiary hearing on the issues Mr. Canseco raises here, (2) issue an immediate temporary restraining order—to be effective until the Court conducts an evidentiary hearing—that Sheriff Mikesell is prohibited from relying on an ICE immigration detainer or an ICE administrative warrant, or any other ICE form, as grounds for refusing to release Mr. Canseco from custody when he posts bond or otherwise resolves his criminal case, and (3) after a hearing, issue a preliminary injunction ordering the same relief.

Respectfully submitted this 23rd day of July, 2018.

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