

<b>DISTRICT COURT, TELLER COUNTY, COLORADO</b> 101 W. Bennett Avenue, Cripple Creek, Colorado 80813	
<b>Plaintiff:</b> LEONARDO CANSECO SALINAS,  v.  <b>Defendant:</b> JASON MIKESELL, in his official capacity as Sheriff of Teller County, Colorado.	
<b>Attorneys For Plaintiff:</b> Byeongsook Seo, # 30914 Stephanie A. Kanan, #42437 SNELL & WILMER , LLP 1200 17 <sup>th</sup> Street Suite 1900 Denver, CO 80202-5854 Telephone: 303-295-8000 Fax: 303-634-2020 <a href="mailto:bseo@swlaw.com">bseo@swlaw.com</a> <a href="mailto:skanan@swlaw.com">skanan@swlaw.com</a>  <i>In cooperation with the American Civil Liberties Union Foundation of Colorado</i>  Mark Silverstein, # 26979 Arash Jahanian, # 45754 AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO 303 E. Seventeenth Ave. Suite 350 Denver, Colorado 80203 Telephone: (303) 777-5482 Fax: (303) 777-1773 <a href="mailto:msilverstein@aclu-co.org">msilverstein@aclu-co.org</a> <a href="mailto:ajahanian@aclu-co.org">ajahanian@aclu-co.org</a>	
<b>▲ COURT USE ONLY ▲</b>	
Case Number:	
Div.:	Ctrm:
<b>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</b>	

Plaintiff states the following in support of this Complaint against Defendant Jason Mikesell, in his official capacity as Sheriff of Teller County, Colorado:

## **INTRODUCTION**

1. This suit challenges the Teller County Sheriff's policy and practice of unlawfully exceeding his authority under Colorado law by depriving persons of their liberty on the ground that they are suspected of civil violations of federal immigration law.

2. Sheriff Mikesell continues to hold prisoners in custody after state law requires their release. He carries out these lawless deprivations of liberty in the absence of a judicial warrant, without probable cause of a crime, and without any other valid legal authority.

3. Colorado sheriffs have limited authority and limited powers. They have only the authority that is provided in the Colorado Constitution and Colorado statutes. Colorado law provides Colorado sheriffs with no authority to enforce federal immigration law or to hold prisoners in custody for alleged civil violations of federal immigration law.

4. Being present in violation of the federal immigration laws is a civil matter, not a crime. Nevertheless, at the request of federal immigration authorities, Sheriff Mikesell is regularly imprisoning individuals solely because they are suspected of being removable from the United States.

5. Plaintiff Leonardo Canseco Salinas seeks temporary and permanent injunctive relief, as well as a declaratory judgment holding that the policies and practices challenged here exceed Sheriff Mikesell's authority under Colorado law.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction to grant declaratory and injunctive relief under the Uniform Declaratory Judgments Law, C.R.S. §§ 13-51-101, *et seq.*, and Colorado Rules of Civil Procedure 57 and 65, and jurisdiction to grant mandamus relief under Colorado Rule of Civil Procedure 106(a)(2).

7. Venue is proper in Teller County, pursuant to Colorado Rule of Civil Procedure 98(c).

## **PARTIES**

8. Plaintiff Leonardo Canseco Salinas is a pretrial detainee in the Teller County Jail.

9. Defendant Jason Mikesell is the Sheriff of Teller County. He is responsible for all policies and practices of the Teller County Sheriff's Office (TCSO). He has ultimate supervisory responsibility for employees and deputies who work at the Teller County Sheriff's Office. He is sued in his official capacity.

## **THE CHALLENGED PRACTICES**

10. When Colorado law requires the release of prisoners who have posted bond, completed their sentence, or otherwise resolved their criminal case, Sheriff Mikesell nevertheless

refuses to release them if federal immigration authorities have requested the prisoners' continued detention.

11. Requests for continued detention come from immigration enforcement officers employed by U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS).

12. The requests are formalized by documents that ICE officers send to TCSO regarding particular prisoners held in the jail.

13. The requesting documents are standardized ICE forms. They include an immigration detainer (ICE Form I-247A), and an administrative warrant (ICE Form I-200 or I-205). In some cases, ICE may also send an I-203 Form. None of these forms is reviewed, approved, or signed by a judicial officer.

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

14. An immigration detainer, ICE Form I-247A, identifies a prisoner being held in a local jail. It asserts that ICE believes that the prisoner may be removable from the United States. It asks the jail to continue to detain that prisoner for an additional 48 hours after he or she would otherwise be released, to allow time for ICE to take the prisoner into federal custody. Courts and law enforcement officers often refer to a Form I-247 detainer as an "ICE hold."

15. An immigration detainer is not reviewed, approved, or signed by a judge or judicial officer. Immigration detainers are issued and signed by ICE enforcement officers themselves.

16. For a number of years, local law enforcement authorities may have believed that compliance with the detainer's request for continued custody was a command from the federal government that they had a legal obligation to obey. Indeed, for many years, the wording of Form I-247 suggested that compliance with the federal request was mandatory. The wording of the I-247A Form has now changed. It is now clear, and federal officials and multiple court decisions agree, that these detainers represent a mere request from the federal government, not a command. ICE detainers impose no mandatory obligations.

#### **Administrative Warrants, ICE Forms I-200 and I-205**

17. In a further effort to enlist the assistance of local law enforcement, ICE began sending sheriffs an administrative warrant, ICE Form I-200, to accompany the I-247A detainer request. An administrative warrant names a particular individual and asserts that ICE has grounds to believe that the subject is removable from the United States.

18. In some cases, the I-247A Form is accompanied by a different administrative warrant, ICE Form I-205.

19. ICE administrative warrants are issued by ICE enforcement officers. They are not reviewed, approved, or signed by a judge or a judicial officer. Federal law states that ICE administrative warrants may be served or executed only by certain immigration officers who have received specialized training in immigration law. Colorado sheriffs have no authority to execute ICE administrative warrants.

### **The Jail's Cooperation with ICE**

20. When a prisoner is booked into the Teller County Jail, fingerprints are sent to the Federal Bureau of Investigation and to ICE. In addition, TCSO booking officers notify ICE directly when they believe that ICE may be interested in a particular detainee.

21. When ICE believes that a prisoner in the jail may be in violation of federal immigration law, ICE sends a detainer, ICE Form I-247A, as well as an administrative warrant, ICE Form I-200 or ICE Form I-205.

22. Sheriff Mikesell has no written policies that explain how his officers will respond when ICE sends an immigration detainer and/or an administrative warrant. In this lawsuit, Mr. Canseco challenges an unwritten policy and practice.

23. When TCSO receives an I-247A Form, TCSO staff impose what they refer to as an "ICE hold" or an "INS hold."

24. It is TCSO's regular practice to honor the detainer's request for continued detention even after the detainee has posted bond, completed his sentence, or otherwise resolved his criminal case.

25. "ICE hold" is not a legal term. There is no legal significance to the notation "ICE hold" or "INS hold" that TCSO uses. Pursuant to Sheriff Mikesell's policies and practices, however, the notation "ICE hold" or "INS hold" unjustifiably causes the continued imprisonment of detainees whose release is required by Colorado law.

### **The IGSA**

26. The Department of Homeland Security has signed a contract with Teller County that provides for housing ICE detainees at the Teller County Jail. This contract is called an Intergovernmental Service Agreement ("IGSA").

27. An IGSA is a contract between ICE and a state or local government for the purpose of arranging housing for federal detainees. The contract calls for ICE to pay a daily rate for each detainee housed in the local jail.

28. The IGSA between ICE and Teller County states that its purpose is "for the detention and care of persons detained under the authority of the Immigration and Nationality Act . . . ."

29. The IGSA contemplates that ICE will bring certain detainees to the Teller County Jail for temporary housing, at ICE's expense. It applies to persons who are already in the custody of ICE officers at the time that they arrive at the Teller County Jail. It does not purport to grant or delegate any authority to Sheriff Mikesell to initiate a seizure for the purpose of enforcing federal immigration law.

30. Mr. Canseco is not in federal custody, and he is not being held in the jail pursuant to the IGSA.

### **The I-203 Form**

31. To track detainees housed at its various contract detention facilities, ICE uses Form I-203. It is an internal administrative form signed by a deportation officer. It accompanies ICE detainees when ICE officers place them in, or remove them from, a particular detention facility. According to the portion of the ICE Detention Standards titled "Admissions Documentation," a Form I-203 must accompany every detainee who is brought into an ICE detention facility. Regarding releases, the ICE Detention Standards state that "a detainee's out-processing begins when release processing staff receive the Form I-203."<sup>1</sup>

32. In conjunction with an IGSA, the I-203 Form functions as documentation for billing purposes, so that TCSO can seek compensation from ICE at the daily rate for housing ICE detainees.

33. Although the I-203 Form bears the title "Order to Detain or Release Alien," is it not an order that is reviewed, authorized, approved, or signed by a judge or a judicial officer. It confers no authority on a Colorado sheriff to initiate custody of an individual who is not already in federal custody.

34. None of the forms that ICE provides to Sheriff Mikesell—an I-247A, an I-200 Form, or an I-203 Form—or any combination of them, justifies the refusal to release prisoners when the state-law authority for their detention has ended.

### **SPECIFIC EXAMPLES OF THE CHALLENGED PRACTICES**

35. It is TCSO's policy to refuse to release prisoners who have posted bond, completed their sentence, or resolved their criminal case whenever ICE has provided an immigration detainer (ICE form I-247A) and an administrative warrant (ICE Form I-200). Based on receipt of these documents, TCSO continues to imprison these prisoners, illegally.

### **Teodoro Rascon Arvizo**

36. On October 28, 2017, at 11:56 p.m., Teodoro Rascon Arvizo was booked into the Teller County Jail on misdemeanor charges. His bond was set at \$1,000.

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<sup>1</sup> ICE Performance-Based National Detention Standards, § 2.1 Admission and Release, available at <https://www.ice.gov/doclib/detention-standards/2011/2-1.pdf>.

37. The following morning, ICE faxed a Form I-247A detainer and Form I-200 administrative warrant to the jail.

38. In the I-247A form, ICE requested that the jail hold Mr. Rascon for up to 48 hours beyond the time when he would otherwise be released.

39. The next evening, October 29, 2017, Mr. Rascon's daughter, Myrna Rascon, visited her father in the jail. At 8:47 p.m., Myrna Rascon posted the bond for her father. A TCSO deputy accepted the payment of \$1000 plus a \$50 fee.

40. Although the deputy acknowledged that Myrna had paid the bond money, the deputy said he could not release her father, because of what the deputy called an "ICE hold." When Myrna asked for further explanation, the deputy went to get a higher-ranking officer, a corporal.

41. The corporal confirmed that TCSO would not release Mr. Rascon on bond, because of an "ICE hold."

42. TCSO refused to release Mr. Rascon. Although Colorado law required that it release Mr. Rascon after bond was posted, the jail continued to imprison him, illegally. The next day, TCSO turned Mr. Rascon over to ICE.

### **Alberto Cal Nieto**

43. On January 3, 2018, Alberto Cal Nieto, a pretrial detainee in the Teller County Jail, posted his bond at 5:12 p.m.

44. Despite the posting of bond, TCSO refused to release Mr. Cal, because ICE had sent an immigration detainer and an administrative warrant.

45. Mr. Cal was still in TCSO custody four days later, on January 7, 2018.

### **PLAINTIFF'S FACTS**

46. Leonardo Canseco Salinas is forty-four years old. He has lived in Colorado for 13 years.

47. Mr. Canseco was arrested for two misdemeanor offenses at 10:25 p.m. on July 14, 2018, and his bond was set at \$800.

48. Early the next morning, he was booked into the Teller County Jail.

49. Mr. Canseco has the money to post the \$800 bond. He wants to post bond and gain his pretrial release. When he posts the bond money, however, TCSO will not release him, pursuant to the unwritten policies and practices challenged in this lawsuit.

50. Jail officials have stated that Mr. Canseco can post bond but he will not be released, because of what the officials referred to as an “ICE hold” or an “INS hold.”

51. Documents confirm that TCSO regards Mr. Canseco as being subject to an “ICE hold” or an “INS hold.” A TCSO booking report notes that Mr. Canseco’s bond is \$800, but this document contains a section titled “holds.” It lists a “hold” from INS, ICE’s predecessor agency. Under a column titled “description,” it says “bond denied.”

Holds			
Agency Name	Bond Amount	Status	Bond Denied
Statute	Description		
INS	Bond Denied	Active	True

52. A document from Teller County Pretrial Services states that an investigation to consider recommending a personal recognizance bond was not completed “due to a no bond ICE hold on this individual.”

53. Mr. Canseco remains ready, willing, and able to post the \$800 bond set by the Teller County Court. Without intervention from this Court, however, the posting of bond will not result in Mr. Canseco’s release.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

54. Mr. Canseco has exhausted all available administrative remedies to the extent required by Section 13-17.5-102.3 of the Colorado Revised Statutes.

55. The statute requires exhaustion of available administrative remedies when an “inmate” brings a civil action “based upon prison conditions.” C.R.S. § 13-17.5-102.3(1).

56. This lawsuit is not “based upon prison conditions.” On the contrary, it challenges the fact of imprisonment itself. It challenges the legal basis for imprisonment after a prisoner has completed his sentence, posted bond, or otherwise resolved his criminal case.

57. In addition, Mr. Canseco, a pretrial detainee, is not an “inmate” who is required to exhaust administrative remedies. The statute defines “inmate” as “a person who is sentenced or is awaiting sentencing to any detaining facility.” C.R.S. § 13-17.5-102(2). Mr. Canseco, a pretrial detainee, has not been sentenced, nor is he awaiting sentencing.

## **CLAIMS FOR RELIEF**

### **First Claim For Relief**

(Ultra Vires Actions - Rules 57 and 65, Declaratory and Injunctive Relief)

58. Mr. Canseco hereby incorporates all other paragraphs of this Complaint as if fully set forth in this claim.

59. It has long been understood that “the power possessed by the sheriff is conferred by the statutes; and no power exists in him, except such as is expressly so conferred, or may be fairly implied.” *McArthur v. Boynton*, 74 P. 540, 541 (Colo. Ct. App. 1903).

60. The Colorado Supreme Court has held that sheriffs are limited to the express powers granted them by legislation 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.*

61. Neither the Colorado Constitution, nor any Colorado statutes, provide a Colorado sheriff with authority to enforce federal immigration law.

62. The Sheriff’s decision to hold a prisoner who would otherwise be released is the equivalent of a new arrest that must comply with the statutory and constitutional requirements for depriving persons of liberty.

63. The limited authority of a Colorado sheriff to make an arrest or otherwise deprive a person of liberty derives from, and is limited by, the Colorado Constitution and the statutes enacted by the legislature.

64. A peace officer may arrest a person when he has a warrant commanding the person’s arrest. C.R.S. § 16-3-102(1)(A). The legislature has defined 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).

65. The forms sent by ICE to Sheriff Mikesell that purport to justify the arrest or detention of Mr. Canseco do not include a warrant signed by a judge. Neither an I-247A Form nor an administrative warrant is reviewed or signed by a judge or a judicial officer.

66. A peace officer may make a warrantless arrest only when he has probable cause to believe a crime was committed and probable cause to believe that the suspect committed it. C.R.S. § 16-3-102 (1)(c). 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. “As a general rule, it is not a crime for a removable alien to remain present in the United States.” *Arizona v. United States*, 567 U.S. 387, 407 (2012).



67. Thus, neither statute authorizes Sheriff Mikesell to hold Mr. Canseco in custody when Colorado law otherwise requires his release. There is no Colorado statute that authorizes Sheriff Mikesell to deprive persons of liberty on the ground that they are suspected of civil violations of federal immigration law.

68. The IGSA does not purport to confer any authority on Sheriff Mikesell to initiate custody or make an arrest for immigration enforcement.

69. An actual and immediate controversy exists between Mr. Canseco and Sheriff Mikesell. Sheriff Mikesell asserts that he has the legal authority to continue the policies and practices challenged in this action. Sheriff Mikesell believes that he has the legal authority to refuse to release Mr. Canseco when he has posted bond, completed his sentence, or otherwise resolved his pending criminal case. On the contrary, Sheriff Mikesell has no such authority.

70. Sheriff Mikesell has threatened and continues to threaten Mr. Canseco with arrest and detention that is not authorized by any valid legal authority.

71. Sheriff Mikesell has acted and is threatening to continue acting under color of law, but in excess of his legal authority, to deprive Mr. Canseco of his liberty.

72. Mr. Canseco faces a real and immediate threat of irreparable injury as a result of the actions and threatened actions of Sheriff Mikesell and the existence, operation, and threat of unjustified deprivation of liberty posed by the policies and practices challenged in this action.

73. Wherefore, Mr. Canseco requests a declaratory judgment, temporary and permanent injunctive relief, and any additional relief the Court deems just.

### **Second Claim for Relief**

(Relief in the nature of mandamus, Rule 106(a)(2))

74. Mr. Canseco hereby incorporates all other paragraphs of this Complaint as if fully set forth in this claim.

75. When Sheriff Mikesell's state-law authority to confine Mr. Canseco has ended, Mr. Canseco has a clear legal right to release from the Teller County Jail.

76. Sheriff Mikesell has a clear and mandatory legal duty to release Mr. Canseco when the state-law authority for his confinement has ended.

77. Mr. Canseco has no adequate legal remedy to secure his release.

78. Wherefore, Mr. Canseco requests interim injunctive relief and relief in the nature of mandamus, and any additional relief the Court deems just.

**Third Claim for Relief**

(Unreasonable seizure, Colorado Constitution, Article II, Section 7; Rules 57 and 65,  
Declaratory and Injunctive relief)

79. Mr. Canseco hereby incorporates all other paragraphs of this Complaint as if fully set forth in this claim.

80. An arrest without legal authority is an unreasonable seizure, in violation of Article II, Section 7 of the Colorado Constitution.

81. Sheriff Mikesell has acted and is threatening to continue acting under color of law but without legal authority, to carry out the unreasonable seizure of Mr. Canseco.

82. Wherefore, Mr. Canseco requests a declaratory judgment, temporary and permanent injunctive relief, and any additional relief the Court deems just.

**Fourth Claim for Relief**

(Procedural and substantive due process, Colorado Constitution, Article II, Section 25;  
Rules 57 and 65 - Declaratory and Injunctive Relief)

83. Mr. Canseco hereby incorporates all other paragraphs of this Complaint as if fully set forth in this claim.

84. Sheriff Mikesell's policies do not provide Mr. Canseco with meaningful notice and opportunity to be heard to contest the unreasonable detentions challenged in this lawsuit.

85. For example, TCSO deputies do not provide detainees in the jail with notice that ICE has sent the jail an I-247A Form.

86. Deprivations of liberty carried out without notice and opportunity to be heard deprive Mr. Canseco of procedural due process, in violation of Article II, Section 25 of the Colorado Constitution.

87. Deprivations of liberty carried out without lawful authority constitute deprivations of substantive due process, in violation of Article II, Section 25 of the Colorado Constitution. "In a constitutional sense, how much more basic could it get—jails cannot confine people without the authority to do so." *Armstrong v. Squadrito*, 152 F.3d 564, 578 (7<sup>th</sup> Cir. 1998).

88. Sheriff Mikesell has acted and is threatening to continue acting under color of law but without legal authority, to deprive Mr. Canseco of his right to procedural and substantive due process of law.

89. Wherefore, Mr. Canseco requests a declaratory judgment; temporary and permanent injunctive relief, and any additional relief the Court deems just.

**Fifth Claim for Relief**

(Right to Bail, Colorado Constitution, Article II, Section 19;  
Rules 57 and Rule 65, Prospective Relief)

90. Mr. Canseco hereby incorporates all other paragraphs of this Complaint as if fully set forth in this claim.

91. The challenged policies violate the right to pretrial release on bail, in violation of Article II, section 19 of the Colorado Constitution.

92. Sheriff Mikesell has acted and is threatening to continue acting under color of law but without legal authority, to deprive Mr. Canseco of his right to release on bond.

93. Wherefore, Mr. Canseco requests a declaratory judgment, temporary and permanent injunctive relief, and any additional relief the Court deems just.

**PRAYER FOR RELIEF**

94. Wherefore, Mr. Canseco requests that the Court:

- A. Issue a judgment declaring that Sheriff Mikesell exceeds his authority under Colorado law when he relies on ICE detainers and/or ICE administrative warrants as grounds for refusing to release prisoners who post bond, complete their sentence, or otherwise resolve their state criminal case;
- B. Issue a judgment declaring that Mr. Canseco has a clear right to release from the Teller County Jail when he posts his bond or otherwise resolves his criminal case, and that Sheriff Mikesell has a clear and mandatory legal duty to release Mr. Canseco when the state-law authority for his confinement has ended;
- C. Issue a judgment declaring that Sheriff Mikesell violates the Colorado constitutional right to be free of unreasonable seizures when he relies on ICE detainers and/or ICE administrative warrants as grounds for refusing to release prisoners who post bond, complete their sentence, or otherwise resolve their state criminal case;
- D. Issue a judgment declaring that Sheriff Mikesell violates the Colorado constitutional right to due process of law when he relies on ICE detainers and/or ICE administrative warrants as grounds for refusing to release prisoners who post bond, complete their sentence, or otherwise resolve their state criminal case;
- E. Issue a judgment declaring that Sheriff Mikesell violates the Colorado constitutional right to bail when he relies on ICE detainers and/or ICE administrative warrants as grounds for refusing to release pretrial detainees who post bond;

- F. Award interim and permanent injunctive relief, and relief in the nature of mandamus; and
- G. Provide any additional relief the Court deems just.

Respectfully submitted this 23rd day of July, 2018.

*s/Byeongsook Seo*  
Byeongsook Seo, # 30914  
Stephanie A. Kanan, #42437  
SNELL & WILMER , LLP  
*In cooperation with the American Civil  
Liberties Union Foundation of Colorado*

*s/Mark Silverstein*  
Mark Silverstein, # 26979  
Arash Jahanian, # 45754  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF COLORADO

Plaintiff Leonardo Canseco Salinas  
Address: Teller County Sheriff's Office  
288 Weaverville Rd.  
Divide, CO 80814