

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO 270 S. Tejon Street Colorado Springs, Colorado 80901</p>	
<p>Plaintiffs:</p> <p>Saul Cisneros, Rut Noemi Chavez Rodriguez,</p> <p>On behalf of themselves and all others similarly situated,</p> <p>v.</p> <p>Defendant:</p> <p>Bill Elder, in his official capacity as Sheriff of El Paso County, Colorado</p>	<p>▲COURT USE ONLY ▲</p> <hr/> <p>Case Number:</p> <p>Div.: Ctrm:</p>
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<p align="center">CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND INDIVIDUAL CLAIM FOR DAMAGES</p>	

INTRODUCTION

1. This suit challenges the El Paso 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 Elder holds prisoners in custody for days, weeks, and even months 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 Elder is regularly imprisoning individuals solely because they are suspected of being removable from the United States.

5. On behalf of themselves and a class of similarly situated persons, Plaintiffs seek temporary and permanent injunctive relief, as well as a declaratory judgment holding that the policies and practices challenged here exceed Sheriff Elder's authority under Colorado law. Plaintiff Cisneros further asks for damages for the months of false imprisonment he has endured as a result of Sheriff Elder's unlawful practices.

JURISDICTION AND VENUE

6. This Court has jurisdiction to grant declaratory and injunctive relief under the Uniform Declaratory Judgments Law, Colo. Rev. Stat. §§ 13-51-101, *et seq.*, and Colorado Rules of Civil Procedure 57 and 65, jurisdiction to grant mandamus relief under Colorado Rule of Civil Procedure 106(a)(2), and jurisdiction over Plaintiff Cisneros's tort claim under Colo. Rev. Stat. § 13-1-124(1)(b).

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

PARTIES

8. Plaintiff Saul Cisneros has lived in Colorado Springs, Colorado for more than 20 years. He is pretrial detainee in the El Paso County Criminal Justice Center (hereinafter, the "El Paso County Jail" or "the jail").

9. Plaintiff Rut Noemi Chavez Rodriguez has lived in Colorado Springs, Colorado, for more than five years. She is a pretrial detainee in the El Paso County Jail.

10. Defendant Bill Elder is the Sheriff of El Paso County. He is responsible for all policies and practices of the El Paso County Sheriff's Office (EPSO). He has ultimate supervisory responsibility for employees and deputies who work at the El Paso County Sheriff's Office. He is sued in his official capacity.

THE CHALLENGED PRACTICES

11. When Colorado law requires the release of prisoners who have posted bond, completed their sentence, or otherwise resolved their criminal case, Sheriff Elder nevertheless refuses to release them if federal immigration authorities have requested the prisoners' continued detention.

12. 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).

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

14. The requesting documents are standardized ICE forms. They include an immigration detainer, ICE Form I-247A; an administrative warrant, ICE Form I-200; and an I-203 Form. None of these forms is reviewed, approved, or signed by a judicial officer.

The Immigration Detainer, ICE Form I-247A

15. 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."

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

17. 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.

The Administrative Warrant, ICE Form I-200

18. 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 prisoner in Sheriff Elder's custody and asserts that ICE has grounds to believe that the subject is removable from the United States.

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 Notation: "ICE Hold"

20. When a prisoner is booked into the El Paso County Jail, fingerprints are sent to the Federal Bureau of Investigation and to ICE. In addition, in some cases, jail officials initiate contact with ICE directly when they believe that ICE may be interested in a particular prisoner.

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. At this point, the jail enters the notation "ICE hold" in its computer.

22. "ICE hold" is not a legal term. There is no legal significance to the notation "ICE hold" in the EPSO computer. Pursuant to Sheriff Elder's policies and practices, however, the notation "ICE hold" unjustifiably causes the continued imprisonment of detainees whose release is required by Colorado law.

The IGSA

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

24. 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.

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

26. The IGSA contemplates that ICE will bring certain detainees to the El Paso 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 El Paso County Jail. It does not purport to grant or delegate any authority to Sheriff Elder to initiate a seizure for the purpose of enforcing federal immigration law.

The I-203 Form

27. 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."

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

29. 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.

30. Pursuant to the practices challenged in this case, Sheriff Elder regards prisoners as “IGSA holds” when state-law authority to hold the prisoners has ended and ICE has sent an I-203 Form in addition to an administrative warrant (ICE Form I-200) and/or an immigration detainer (ICE Form I-247A).

31. According to Sheriff Elder, the jail’s receipt by fax or email of an I-203 Form, in addition to an I-247A Form and/or an I-200 Form, transfers a detainee from state custody to federal custody.

32. To the contrary, neither an I-247A Form, an I-200 Form, nor an I-203 Form, nor any combination thereof, justifies Sheriff Elder’s refusal to release prisoners when the state-law authority for their detention has ended.

SPECIFIC EXAMPLES OF THE CHALLENGED PRACTICES

33. It is EPSO’s policy to refuse to release prisoners who have posted bond, completed their sentence, or resolved their criminal case whenever ICE has faxed or emailed an immigration detainer (ICE form I-247A), an administrative warrant (ICE Form I-200), and an ICE Form I-203. Based on receipt of these documents, EPSO labels these prisoners as “IGSA holds” and continues to imprison them, illegally.

Sentence Completed: Cesar Castellon

34. On August 31, 2017, Cesar Castellon was booked into the El Paso County Jail. On September 1, 2017, federal immigration authorities faxed the jail an immigration detainer, Form I-247A. This form, signed by an ICE deportation officer, asserted that there was probable cause to believe that Mr. Castellon was a removable alien. It requested that the jail keep Mr. Castellon in custody for an additional 48 hours after he would otherwise be released. On September 1, federal immigration authorities also sent ICE Form I-200 to the jail. This one-page form, an ICE administrative warrant, also asserted that there was probable cause to believe that Mr. Castellon was a removable alien. It was signed by the same deportation officer. Neither form was signed by a judge. Pursuant to the practices challenged in this case, the jail placed an “ICE hold” on Mr. Castellon.

35. Mr. Castellon resolved his criminal case with a sentence that he completed on December 31, 2017. Although Colorado law required Mr. Castellon to be released, the EPSO refused to release him. At 3:41 a.m. on December 31, Deputy Robert Kirkham wrote an email stating that Mr. Castellon had completed his sentence “and has transitioned from an ICE Hold to an IGSA Hold.” At 4:04 am on December 31, ICE faxed the jail an I-203 Form.

36. The EPSO continued to imprison Mr. Castellon unlawfully for more than two full additional days, until 12:03 p.m. on January 2, 2018.

Criminal Case Resolved: Jorge Quintana

37. Jorge Quintana was booked into the El Paso County Jail on December 9, 2017. At a court appearance on January 10, 2018, he resolved his criminal case with a sentence of time served. When he returned to the jail after court, Colorado law required that he be released. The jail did not release him. Federal immigration authorities had sent the jail an I-247A Form, an I-200 Form, and an I-203 Form. Instead of releasing Mr. Quintana, the jail imprisoned him and labeled Mr. Quintana as an “IGSA hold.” He remained unlawfully imprisoned in the jail for at least an additional two days.

Criminal Case Resolved: Rosalino Ruiz-Clemente

38. On December 25, 2017, Rosalino Ruiz-Clemente was booked into the El Paso County Jail. That day, ICE sent the jail an I-247A Form, an I-200 administrative detainer, and an I-203 Form. At the request of ICE, the jail imposed an “ICE hold.”

39. On the morning of February 6, 2018, Mr. Ruiz-Clemente resolved his criminal charges when the court sentenced him to time served. When he returned to the jail, Colorado law required that he be released. Instead of releasing Mr. Ruiz-Clemente, the jail imprisoned him and labeled him as an “IGSA hold.” On the inmate search portion of the jail’s website, Mr. Ruiz-Clemente was listed as “IGSA hold for illegal immigrants.” Mr. Ruiz-Clemente remained unlawfully imprisoned in the jail for an additional day.

Acquitted but Not Released: Sergio Chaparro-Mendias

40. On September 5, 2017, Sergio Chaparro-Mendias was booked into the El Paso County Jail. ICE sent the jail an I-247A Form, an I-200 administrative warrant, and an I-203 Form. At the request of ICE, the jail imposed an “ICE hold.”

41. Several of the initial charges against Mr. Chaparro-Mendias were dismissed. He went to trial on the remaining charge on February 6, 2018. He was found not guilty. Upon his return to the jail, Colorado law required that he be released. The jail did not release him, but rather imprisoned him and labeled him as an “IGSA hold.” The inmate search page of the jail’s website listed Mr. Chaparro-Mendias as having an “IGSA hold for illegal immigrants.” He remained unlawfully imprisoned in the jail for three additional days.

Discouraging Posting of Bonds: Sergio Chaparro-Mendias and Rosalino Ruiz-Clemente

42. Pursuant to the practices challenged in this case, jail deputies actively discourage friends and family members from posting bond for pretrial detainees who have “ICE holds.” Deputies tell friends or family members that they will be wasting their money if they post bond. They explain that posting bond will not result in the prisoner’s release, because the jail will hold the detainee for ICE.

43. For example, soon after Mr. Chaparro-Mendias was arrested, his family members called the jail to inquire about posting bond. They were told the bond was \$2000, which is a sum they were ready and willing to post to secure his release. But they were also told that Mr.

Chaparro-Mendias would not be released even if they posted the bond, because he would be held for ICE. As a result, they did not try to post bond.

44. Adelina Lopez received the same treatment when she went to the jail to post \$1000 bond for her husband, Rosalino Ruiz-Clemente. The front desk employee said there was no point in posting the bond, as Rosalino was being held for ICE. Ms. Lopez said she wanted to pay the bond, because she didn't want her husband sitting in jail. The employee replied that posting the bond was not going to change the time that Rosalino was going to be picked by ICE. Ms. Lopez said she still wanted to pay, but the employee insisted that posting bond would not change anything. So Ms. Lopez did not post the bond for her husband.

Bond Posted but Not Released: Omar Antonio Valdez-Lerma

45. When jail employees do not succeed in discouraging the posting of bond, they will accept the bond money, but the jail will not release the prisoner. For example, on January 25, 2018, Gretchen Hoff went to the jail to post bond for her boyfriend, Omar Antonio Valdez-Lerma, whom the jail listed as having an "ICE hold." The deputies at the jail accepted the \$4000 that Gretchen Hoff posted, and they filed the bond paperwork with the state court.

46. Pursuant to the policies challenged in this case, however, the jail refused to release Mr. Valdez-Lerma. Although Colorado law required that it release Mr. Valdez-Lerma after bond was posted, the jail continued to imprison him illegally for six additional days, until January 31, 2018. The EPSO did not refund Ms. Hoff's \$4000.

Bond Processing Delayed For "Foreign Born Nationals"

47. Even when a prisoner does not have an "ICE hold," Sheriff Elder's written policies require deputies to delay the processing of bond paperwork when the prisoner is a "foreign born national." According to Defendant's policies, deputies must notify ICE that the jail has been asked to release a "foreign born national" on bond. The written policy states that the jail will delay the prisoner's release on bond so that ICE has an opportunity "to place a hold" with an I-247A Form. Thus, Sheriff Elder intentionally and unjustifiably delays the release on bond of "foreign born nationals," a group that includes legal permanent residents and numerous additional categories of noncitizens who are legally present in the United States.

48. Pursuant to Sheriff Elder's practices, a prisoner who has no "ICE hold" and whose bond is being processed will not be released if ICE responds to the jail's inquiry by indicating that it wants the jail to hold the prisoner. At that point, at the request of ICE, deputies will place an "ICE hold" on the prisoner, and the jail will refuse to release the prisoner on bond. That is what happened to Plaintiff Saul Cisneros, as explained in the following paragraphs.

PLAINTIFFS' FACTS

Saul Cisneros

49. Saul Cisneros is 47 years old. He has lived in Colorado Springs for more than 20 years. He has three children in Colorado Springs, ages 20, 14, and 10.

50. On November 24, 2017, Mr. Cisneros was booked into the El Paso County Jail. He was charged with two misdemeanor offenses. Mr. Cisneros has never been convicted of a crime.

51. The court set bond for Mr. Cisneros at \$2000. On November 28, 2017, Gloria Cisneros, Saul's eldest daughter, went to the jail to post bond for her father. She posted the money and obtained a receipt, but her father was not released.

52. Gloria made several calls to the jail the next day. She was told that after she posted the bond money, ICE put a "hold" on her father, so the jail would not release him. Later that day, another jail deputy explained that with an "ICE hold" on her father, he could not get out on bond.

53. Gloria was able to obtain the return of the money she had posted in her unsuccessful attempt to secure her father's release on bond.

54. The inmate search portion of the jail's website now states that Mr. Cisneros has an "ICE hold."

55. Gloria Cisneros remains willing and able to again post the \$2,000 bond to secure her father's release from jail pending trial on his misdemeanor charges. Because of Sheriff Elder's policies that are challenged in this lawsuit, she cannot secure her father's release without the intervention of this Court.

Rut Noemi Chavez Rodriguez

56. Rut Noemi Chavez Rodriguez is 21 years old. She has lived in Colorado Springs for almost five years. On November 18, 2017, she was arrested and booked into the El Paso County Jail. She had never been arrested before. Her bond is set at \$1000. The jail lists her as having an "ICE hold."

57. Rut attends services at Calvary Chapel Eastside in Colorado Springs. Pastor Juan Fragoso of Calvary Chapel, and his wife Leonor Fragoso, have been concerned about Rut's incarceration. They have visited Rut regularly at the El Paso County Jail.

58. Two days after Rut was arrested, they went to the jail to ask about posting bond for Rut. They were told it was not possible to post bond.

59. On February 15, 2018, Leonor went to the jail again to ask about posting bond for Rut. She was accompanied by Siena Mann. At the jail, they explained that they came to post bond for Rut. The woman at the desk looked Rut up and confirmed that the bond was \$1,000 plus a \$10 fee. When a different jail employee came to assist, Siena explained that she and Leonor were aware that Rut had an "ICE hold." Siena and Leonor were then told that if they posted bond, Rut would not be released.

60. Leonor Fragoso remains willing and able to post bond for Rut. She will do so if this Court grants Plaintiffs' request to prohibit Sheriff Elder from relying on the "ICE hold" as grounds for blocking Rut's release.

CLASS ACTION ALLEGATIONS

61. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Colorado Rules of Civil Procedure 23(a) and (b)(2).

62. Each of the Plaintiffs seeks to represent a class defined as:

all current and future prisoners in the El Paso County Jail who are, or will be, the subjects of immigration detainers (ICE Form I-247A) and/or administrative warrants (ICE Form I-200) sent to the Jail by officers of United States Immigration and Customs Enforcement.

Pursuant to Sheriff Elder's policies, these prisoners are labeled in the jail's computer with the notation "ICE hold."

63. The proposed class is so numerous and so fluid that joinder of all members is impracticable. An electronic roster in Xcel format obtained from the El Paso Sheriff's Office contains information on all 2017 bookings plus the first 23 days of January, 2018. It reveals that 180 prisoners were listed as having "ICE holds" during that time period. At any one point in time, at least four dozen prisoners have "ICE holds." For example, on January 23, 2018, the roster lists 59 prisoners as having "ICE holds."

64. There are questions of law and fact common to members of the plaintiff class. These questions include, but are not limited to, the following:

- Whether Sheriff Elder has the authority under Colorado law to hold prisoners suspected of civil violations of federal immigration law after Colorado law otherwise requires their release because they have posted bond, completed their sentence, or otherwise resolved their state criminal charge.
- Whether Sheriff Elder has authority under Colorado law to rely on the receipt of ICE Form I-247A as grounds to hold prisoners after Colorado law otherwise requires their release.
- Whether Sheriff Elder has authority under Colorado law to rely on the receipt of ICE Form I-200 as grounds to hold prisoners after Colorado law otherwise requires their release.
- Whether Sheriff Elder has authority under Colorado law to rely on the receipt of ICE Form I-203 as grounds to hold prisoners after Colorado law otherwise requires their release.
- Whether Sheriff Elder has authority under Colorado law to rely on the receipt of any combination of the above ICE Forms as grounds to hold prisoners after Colorado law otherwise requires their release.
- Whether Plaintiffs have a clear legal right to release when Sheriff Elder's state-law authority to confine them has ended, and whether Sheriff Elder has a clear and mandatory legal duty to release the Plaintiffs when the state-law authority for their confinement has ended.
- Whether Sheriff Elder's policy and practice of holding prisoners at the request of ICE after they have posted bond, completed their sentence, or otherwise resolved their state criminal charge constitutes an unreasonable seizure, in violation of Article II, Section 7 of the Colorado Constitution.

- Whether Sheriff Elder’s policy and practice of holding prisoners at the request of ICE after they have posted bond, completed their sentence, or otherwise resolved their state criminal charge deprives them of procedural due process, in violation of Article II, Section 25 of the Colorado Constitution.

65. The claims of the representative parties, the named plaintiffs, are typical of the claims of the members of the class.

66. The representative parties will fairly and adequately protect the interests of the class.

67. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

68. Plaintiffs have exhausted all available administrative remedies to the extent required by Section 13-17.5-102.3 of the Colorado Revised Statutes.

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

70. 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.

71. In addition, the Plaintiffs who are pretrial detainees are not “inmates” who are required to exhaust administrative remedies. The statute defines “inmate” as “a person who is sentenced or is awaiting sentencing to any detaining facility.” 13-17.5-102(2). The Plaintiffs who are pretrial detainees have not been sentenced, nor are they awaiting sentencing.

CLAIMS FOR RELIEF

First Claim For Relief

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

(Asserted on Behalf of Plaintiffs and the Class)

72. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

73. In a case involving the El Paso County Sheriff, the Colorado Court of Appeals confirmed 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).

74. 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.*

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

76. 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.

77. 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.

78. 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).

79. The forms sent by ICE to Sheriff Elder that purport to justify the arrest or detention of the Plaintiffs do not include a warrant signed by a judge. Neither an I-247A Form, nor an I-200 Form, nor an I-203 Form is reviewed or signed by a judge or a judicial officer.

80. 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).

81. Thus, neither statute authorizes Sheriff Elder to hold the Plaintiffs in custody when Colorado law otherwise requires their release. There is no Colorado statute that authorizes Sheriff Elder to deprive persons of liberty on the ground that they are suspected of civil violations of federal immigration law.

82. The IGSA contract does not purport to confer any authority on Sheriff Elder to initiate custody or make an arrest for immigration enforcement. The terms of the IGSA contract are limited to the housing of prisoners who are already in ICE custody at the time that they arrive at the El Paso County Jail. The contract states that EPSO "shall receive and discharge detainees only to and from properly identified ICE Personnel Presentation of U.S. Government identification shall constitute 'proper identification.'" In order to "properly identify" an ICE officer who wishes to house an ICE prisoner in the jail, EPSO deputies must be able to see the ICE officer and match the officer's face to the photograph on the proffered government-issued identification. The IGSA contract does not authorize converting a prisoner from state to federal custody by fax or email.

83. An actual and immediate controversy exists between Plaintiffs and Sheriff Elder. Sheriff Elder asserts that he has the legal authority to continue the policies and practices challenged in this action. Sheriff Elder believes that he has the legal authority to refuse to

release the Plaintiffs when they have posted bond, completed their sentence, or otherwise resolved their pending criminal cases. On the contrary, Sheriff Elder has no such authority.

84. Sheriff Elder has threatened and continues to threaten Plaintiffs with arrest and detention that is not authorized by any valid legal authority.

85. Sheriff Elder has acted and is threatening to continue acting under color of law, but in excess of his legal authority, to deprive Plaintiffs and the Plaintiff class of their liberty.

86. Plaintiffs face a real and immediate threat of irreparable injury as a result of the actions and threatened actions of the Defendant and the existence, operation, and threat of unjustified deprivation of liberty posed by the policies and practices challenged in this action.

87. Wherefore, Plaintiffs request 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))

(Asserted on Behalf of Plaintiffs and the Class)

88. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

89. When Sheriff Elder's state-law authority to confine Plaintiffs has ended, Plaintiffs have a clear legal right to release from the El Paso County Jail.

90. Sheriff Elder has a clear and mandatory legal duty to release the Plaintiffs when the state-law authority for their confinement has ended.

91. Plaintiffs have no adequate legal remedy to secure their release.

92. Wherefore, Plaintiffs request 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)

(Asserted on Behalf of Plaintiffs and the Class)

93. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

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

95. Sheriff Elder has acted and is threatening to continue acting under color of law but without legal authority, to carry out unreasonable seizures of the Plaintiffs and members of the Plaintiff class.

96. Wherefore, Plaintiffs request 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)

(Asserted on behalf of Plaintiffs and the Class)

97. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

98. Sheriff Elder’s policies do not provide Plaintiffs with meaningful notice and opportunity to be heard to contest the unreasonable detentions challenged in this lawsuit.

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

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

101. 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 (7th Cir. 1998).

102. Sheriff Elder has acted and is threatening to continue acting under color of law but without legal authority, to deprive the Plaintiffs and members of the Plaintiff class of their right to procedural and substantive due process of law.

103. Wherefore, Plaintiffs request 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)

(Asserted on behalf of Plaintiffs Cisneros and Chavez)

104. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

105. With regard to pretrial detainees such as Plaintiffs Cisneros and Chavez, the challenged policies violate the Plaintiffs’ right to pretrial release on bail, in violation of Article II, section 19 of the Colorado Constitution.

106. Sheriff Elder has acted and is threatening to continue acting under color of law but without legal authority, to deprive the Plaintiffs and members of the Plaintiff class of their right to release on bond.

107. Wherefore, Plaintiffs request a declaratory judgment; temporary and permanent injunctive relief, and any additional relief the Court deems just.

Sixth Claim for Relief

(False Imprisonment)

(Asserted by Plaintiff Saul Cisneros)

108. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth in this claim.

109. Plaintiff Cisneros is a pre-trial detainee in Defendant's custody. His bond is set at \$2,000.

110. On November 28, 2017, Gloria Cisneros, Saul's eldest daughter, went to the jail to post bond for her father. She posted the money and obtained a receipt.

111. As a result of Sheriff Elder's unlawful policies, Mr. Cisneros was not released on bond. He remained, and remains, imprisoned in the El Paso County Jail.

112. Sheriff Elder knowingly and intentionally restricted Mr. Cisneros's freedom of movement. Mr. Cisneros was aware that his freedom of movement was restricted.

113. Sheriff Elder restricted Mr. Cisneros's freedom of movement without legal justification.

114. Sheriff Elder is liable to Mr. Cisneros for false imprisonment.

115. At the time of the false imprisonment, Plaintiff Cisneros was not incarcerated pursuant to a conviction for a crime. He was not awaiting sentencing.

116. Wherefore, Plaintiff is entitled to damages for false imprisonment, and any additional relief the Court deems just.

PRAYER FOR RELIEF

117. Wherefore, Plaintiffs request that the Court:

- A. Certify, pursuant to Colorado Rules of Civil Procedure 23(a) and (b)(2), a class defined as "all current and future prisoners in the El Paso County Jail who are, or will be, the subjects of immigration detainers (ICE Form I-247A) and/or administrative warrants (ICE Form I-200) sent to the Jail by officers of United States Immigration and Customs Enforcement."
- B. Issue a judgment declaring that Defendant Elder exceeds his authority under Colorado law when he relies on ICE detainers or ICE administrative warrants or I-203 Forms, or any combination thereof, as grounds for refusing to release prisoners who post bond, complete their sentence, or otherwise resolve their state criminal case;
- C. Issue a judgment declaring that Sheriff Elder violates the Colorado constitutional right to be free of unreasonable seizures when he relies on ICE

detainers or ICE administrative warrants or I-203 Forms, or any combination thereof, 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 Elder violates the Colorado constitutional right to due process of law when he relies on ICE detainers or ICE administrative warrants or I-203 Forms, or any combination thereof, 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 Elder violates the Colorado constitutional right to bail when he relies on ICE detainers 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;
- G. Schedule a jury trial on Plaintiff Cisneros's claim of false imprisonment;
- H. Award costs and prejudgment interest on Plaintiff Cisneros's claim of false imprisonment; and
- I. Provide any additional relief the Court deems just.

s/Stephen G. Masciocchi

Stephen G. Masciocchi, # 19873

Claire E. Wells Hanson, # 47072

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*In cooperation with the American Civil
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s/Mark Silverstein

Mark Silverstein, # 26979

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AMERICAN CIVIL LIBERTIES UNION
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Plaintiff Saul Cisneros

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Plaintiff Rut Noemi Chavez Rodriguez

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