SUMMARY
July 3, 2024

2024COA68

No. 23CA0589, *Nash v. Mikesell* — Immigration — Delegation of Immigration Authority — 287(g) Agreement — Prioritizing State Enforcement of Civil Immigration Law — Civil Immigration Detainers

A division of the court of appeals considers whether Colorado law prohibits state or local law enforcement officers from performing the arrest and detention functions of federal immigration officers under an agreement executed pursuant to 8 U.S.C. § 1357(g). The division concludes that the agreement violates Colorado law. Specifically, it concludes that state or local law enforcement officers are prohibited from arresting and detaining individuals otherwise eligible for release under Colorado law on the basis of a civil immigration detainer as defined under section 24-76.6-101(1), C.R.S. 2023.

COLORADO COURT OF APPEALS **2024COA68**

Court of Appeals No. 23CA0589
Teller County District Court No. 19CV30051
Honorable Scott Sells, Judge

Berck Nash, Joanna Nash, Rodney Saunders, Paul Michael Stewart, and Janet Gould,

Plaintiffs-Appellants,

v.

Jason Mikesell, in his official capacity as Sheriff of Teller County, Colorado,

Defendant-Appellee.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division III
Opinion by JUDGE MOULTRIE
Dunn and Yun, JJ., concur

Announced July 3, 2024

Holland & Hart, LLP, Stephen G. Masciocchi, Alexandria Pierce, Hannah E. Armentrout, Denver, Colorado; Snell & Wilmer, LLP, Byeongsook Seo, Stephanie A. Kanan, Denver, Colorado; Mark Silverstein, Timothy R. Macdonald, Anna I. Kurtz, Denver, Colorado, for Plaintiffs-Appellants

Paul W. Hurcomb, County Attorney, Colorado Springs, Colorado, for Defendant-Appellee

¶ 1 Plaintiffs, Berck Nash, Joanna Nash, Rodney Saunders, Paul Michael Stewart, and Janet Gould, appeal the declaratory judgment entered in favor of defendant, Jason Mikesell, the elected sheriff of Teller County, determining that Colorado law authorizes Sheriff Mikesell to enter into an agreement with federal authorities to perform certain immigration functions.

¶ 2 Federal immigration authorities, through U.S. Immigration and Customs Enforcement (ICE), may request that state or local law enforcement authorities, like the Teller County Sheriff's Office (TCSO), continue to detain a person — who is otherwise eligible for release from state or local custody — when ICE believes the person is removable from the United States for violation of immigration laws.

¶ 3 A "287(g) agreement"[1] is a written agreement between ICE and a state, or any political subdivision of a state, under which ICE trains and certifies local law enforcement officers to perform certain immigration enforcement functions under the supervision of an ICE officer. At issue in this appeal is whether certain activities carried

[1] The name "287(g) agreement" refers to section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357.

out under TCSO's 287(g) agreement (TCSO's Agreement) with ICE are prohibited by sections 24-76.6-101 and -102, C.R.S. 2023, or article II, sections 7 and 19 of the Colorado Constitution. We conclude that sections 24-76.6-101 and -102 prohibit the arrests and detentions purportedly authorized by TCSO's Agreement. In light of this conclusion, we need not decide whether TCSO's Agreement violates the Colorado Constitution. Accordingly, we reverse the district court's judgment and remand with directions.

I. Background

¶ 4 Plaintiffs pay taxes in Teller County, which fund jail services in the county and the salaries and benefits of the officers and deputies who provide those services. In June 2019, plaintiffs filed a complaint in the district court seeking declaratory and injunctive relief regarding Sheriff Mikesell's authority to enter into TCSO's Agreement with ICE under 8 U.S.C. § 1357(g). Plaintiffs' original complaint sought a declaratory judgment that, "notwithstanding [TCSO's Agreement], Sheriff Mikesell violates the Colorado Constitution by arresting or detaining persons who would otherwise be released on the basis of ICE documents."

¶ 5 In April 2020, the district court dismissed the complaint, reasoning that plaintiffs lacked standing. A division of this court reversed the district court's judgment and remanded with directions to reinstate the case. *See Nash v. Mikesell*, 2021 COA 148M, ¶ 28. On remand, plaintiffs filed an amended complaint asserting that TCSO's Agreement violates article II, sections 7 and 19 of the Colorado Constitution and section 24-76.6-102. Plaintiffs requested declaratory relief establishing the same and enjoining Sheriff Mikesell and TCSO from continuing to arrest and detain people under TCSO's Agreement. Sheriff Mikesell filed an answer and counterclaim seeking a declaratory judgment that (among other things) he was authorized to enter into TCSO's Agreement and that TCSO's performance of duties under that agreement complies with Colorado law.

¶ 6 The parties stipulated to, and the district court adopted, several facts, which are recited below.

A. TCSO's Agreement

¶ 7 TCSO has been a party to a 287(g) agreement with ICE since January 2019. TCSO's Agreement memorializes the parties' obligations under ICE's delegation of authority to TCSO to perform

certain immigration enforcement functions under a jail enforcement model.[2]

¶ 8 Four deputies employed by TCSO completed training and were certified by ICE to act as designated immigration officers (DIOs). The DIOs exercised their duties under TCSO's Agreement several times, including by arresting on ICE's behalf three people housed at the Teller County Jail after they were eligible for release from state custody.

B. Relevant Forms

¶ 9 When ICE requests that a state or local jail maintain custody of an individual who it suspects is a "removable alien,"[3] immigration officers complete, and sometimes serve, standardized I-247A and I-200 forms from the U.S. Department of Homeland Security (DHS).

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[2] A jail enforcement model is a type of 287(g) agreement that "empowers participating personnel to issue civil immigration detainers, pursuant to which individuals already in custody whom ICE suspects are removable may be detained for an additional forty-eight hours after they would otherwise be released." *Nash v. Mikesell*, 2021 COA 148M, ¶ 4.

[3] Federal statute defines the term "alien" as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3).

1. Form I-247A

¶ 10 DHS Form I-247A, Immigration Detainer – Notice of Action (Mar. 2017), https://perma.cc/8WTU-LNHY, is signed and issued by an immigration officer, which includes DIOs. The form names an individual being held in a state or local jail and states that "DHS has determined that probable cause exists that the subject is a removable alien." *Id.*

¶ 11 The form includes requests by DHS that the local jail call ICE before the named individual's release and "[m]aintain custody of the alien for a period not to exceed 48 hours beyond the time when he/she would otherwise have been released from [the local jail's] custody to allow DHS to assume custody" of the individual. *Id.* (emphasis omitted).

¶ 12 Section 2.4 of ICE Policy Number 10074.2, Issuance of Immigration Detainers by ICE Immigration Officers (effective Apr. 2, 2017), https://perma.cc/87RK-7KGH, requires that all I-247A requests be accompanied by a properly completed Form I-200.

2. Form I-200

¶ 13 DHS Form I-200, Warrant for Arrest of Alien (revised Sept. 2016), https://perma.cc/W76T-MDBE, must be signed by an

authorized immigration officer. Form I-200 is directed to "[a]ny immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations,[4] to serve warrants of arrest for immigrations violations."

C. The District Court's Order Regarding Declaratory and Injunctive Relief

¶ 14 After a three-day bench trial, the district court issued an order granting Sheriff Mikesell's — and denying plaintiffs' — claims for declaratory judgment. The court found the following:

(1) Sheriff Mikesell has the legal authority to enter into TCSO's Agreement with ICE.

(2) Colorado law doesn't prohibit TCSO's Agreement.

(3) The functions performed by trained and certified TCSO deputies acting as DIOs under TCSO's Agreement and under the supervision of ICE are lawful and consistent with Colorado law.

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[4] 8 C.F.R. § 287.5(e)(2) (2023) lists fifty-three different immigration officers authorized or delegated authority to issue arrest warrants for immigration violations.

(4) TCSO deputies who are trained and certified by ICE are de facto federal officers when they are performing functions as DIOs under TCSO's Agreement.

(5) Form I-200, "Warrant for Arrest of Alien," issued by an ICE officer is not a request but is a valid federal arrest warrant authorized by federal law, *see* 8 U.S.C. § 1357(a); 8 C.F.R. § 236.1 (2023), that does not have to be signed by a judge.

(6) TCSO deputies who perform functions under TCSO's Agreement as DIOs don't arrest or detain individuals on the basis of civil immigration detainer requests because they only arrest or detain individuals by serving a valid federal arrest warrant issued by an ICE officer under 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3) (2023).

II. Standard of Review and Principles of Statutory Construction

¶ 15 We review the entry of a declaratory judgment for an abuse of discretion. A court abuses its discretion when its decision is manifestly arbitrary, unreasonable, unfair, or based on a misapplication of the law. *Adams Cnty. Hous. Auth. v. Panzlau*, 2022 COA 148, ¶ 17. When the basis for the declaratory judgment

is a matter of statutory interpretation, our review is de novo. *Mendoza v. Pioneer Gen. Ins. Co.*, 2014 COA 29, ¶ 9. Likewise, we review any statutory interpretation underlying a court's denial of injunctive relief de novo but defer to the court's factual findings if supported by the record. *Korean New Life Methodist Church v. Korean Methodist Church of the Ams.*, 2020 COA 20, ¶ 26; *see also Rome v. Mandel*, 2016 COA 192M, ¶ 60. We also review de novo whether a federal statute preempts a state statute. *Fuentes-Espinoza v. People*, 2017 CO 98, ¶ 20; *see also Kohn v. Burlington N. & Santa Fe R.R.*, 77 P.3d 809, 811 (Colo. App. 2003) ("Federal preemption is a question of law subject to de novo review by this court.").

¶ 16 In construing a statute, our primary objective is to ascertain and give effect to the intent of the legislature. *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47, 51 (Colo. 2001). We presume the entire statute is intended to be effective. § 2-4-201(1)(b), C.R.S. 2023; *Mishkin v. Young*, 107 P.3d 393, 396 (Colo. 2005). "If the statutory language unambiguously sets forth the legislative purpose, we need not apply additional rules of statutory construction to determine the statute's meaning."

Mishkin, 107 P.3d at 396. We construe words and phrases in accordance with their plain and ordinary meanings, *Ryser v. Shelter Mut. Ins. Co.*, 2021 CO 11, ¶ 14, and give each word independent effect and avoid interpretations that render words superfluous. *City & Cnty. of Denver v. Bd. of Cnty. Comm'rs*, 2024 CO 5, ¶ 35. Legislative intent prevails over a literal interpretation of the statute that would lead to an absurd result. *Showpiece Homes Corp.*, 38 P.3d at 51.

III. Applicable Law

A. Federal Law

1. Preemption Principles

¶ 17 The Supremacy Clause of the United States Constitution provides that federal law is the "supreme Law of the Land." U.S. Const. art. VI, cl. 2. Thus, "when federal and state law conflict, federal law prevails and state law is preempted." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 471 (2018).

¶ 18 In assessing whether federal law preempts state law, we (1) consider Congress's purpose in enacting the federal legislation — which is controlling — and (2) presume that Congress didn't intend to preempt the historic police powers of the states unless that was

the clear purpose of the federal legislation. *Colo. Div. of Ins. v. Statewide Bonding, Inc.*, 2022 COA 67, ¶ 31; *Arizona v. United States*, 567 U.S. 387, 400 (2012) (Courts should assume that "the historic police powers of the States" are not superseded "unless that was the clear and manifest purpose of Congress." (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947))). A state's law is conflict preempted (1) when compliance with both federal and state law is physically impossible and (2) in "instances where the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Fuentes-Espinoza*, ¶ 26 (citation omitted).

2. Federal Administrative Warrant Authority, Immigration Detainer Authority, and 287(g) Agreement Authority

¶ 19 The United States Attorney General (Attorney General) and the Secretary of Homeland Security — through DHS's subagency ICE — share immigration law enforcement duties. *See* 8 U.S.C. § 1103; *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 n.1 (2021) (noting Congress has empowered the Attorney General and the Secretary of Homeland Security to enforce the Immigration and Nationality Act); Homeland Security Act of 2002, Pub. L. No. 107-296, § 441, 116

Stat. 2135, 2192 (establishing DHS and relocating immigration enforcement duties); *see also* ICE, *Honoring the History of ICE*, https://perma.cc/E497-N48E (documenting DHS and ICE creation timeline); Name Change From the Bureau of Immigration and Customs Enforcement to U.S. Immigration and Customs Enforcement, 72 Fed. Reg. 20,131 (Apr. 23, 2007).

¶ 20 The Attorney General and his delegates are authorized to issue civil administrative warrants to arrest aliens who are awaiting deportation proceedings. *Abel v. United States*, 362 U.S. 217, 232 (1960); *Arizona*, 567 U.S. at 396 ("Removal is a civil, not criminal, matter."); *see* 8 U.S.C. § 1226. These warrants are not judicial warrants within the scope of the Fourth Amendment. *Abel*, 362 U.S. at 232. Rather, specified immigration officials are authorized to sign and issue administrative arrest warrants — namely, Form I-200. *See* 8 C.F.R. §§ 236.1(b), 287.5(e)(2).

¶ 21 A detainer, such as Form I-247A, which accompanies a Form I-200, "serves to advise another law enforcement agency that [DHS] seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien." 8 C.F.R. § 287.7(a) (2023). *See Galarza v. Szalczyk*, 745 F.3d 634, 639-43

(3d Cir. 2014) (noting detainers are advisory, non-mandatory requests to local law enforcement).

¶ 22 8 U.S.C. § 1357(g) authorizes the Attorney General to enter into 287(g) agreements with state and local law enforcement agencies, and provides that

> the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, detention of aliens in the United States . . . may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

8 U.S.C. § 1357(g)(1).

¶ 23 Though 287(g) agreements are authorized by this section, states and their political subdivisions are not required to enter into them. 8 U.S.C. § 1357(g)(9).

B. Colorado Law

1. House Bill 19-1124

¶ 24 In May 2019, Governor Jared Polis signed House Bill 19-1124 into law, which was codified, as relevant here, at sections 24-76.6-101 and -102.

¶ 25 Section 24-76.6-101 defines a "civil immigration detainer" as

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

§ 24-76.6-101(1).

¶ 26 Section 24-76.6-102 then states, in part, that

- requests for civil immigration detainers are not warrants under Colorado law;
- consistent with the definition in section 16-1-104(18), C.R.S. 2023, a warrant is a written order by a judge directed to a law enforcement officer commanding the arrest of the person named;

- none of the civil immigration detainer requests received from federal immigration authorities are reviewed, approved, or signed by a judge as required by Colorado law;
- continued detention of an inmate at the request of federal immigration authorities beyond when he or she would otherwise be released constitutes a warrantless arrest, which is unconstitutional;
- a law enforcement officer shall not arrest or detain an individual on the basis of a civil immigration detainer request;
- the authority of law enforcement is limited to the express authority granted in state law; and
- nothing in section 24-76.6-102 precludes any law enforcement officer or employee from cooperating with or assisting federal immigration enforcement authorities in the execution of a warrant issued by a federal judge or magistrate.

§ 24-76.6-102(1)(b), (2)-(4).

2. A Sheriff's Constitutional and Statutory Authority

¶ 27 Article XIV, section 18 of the Colorado Constitution authorizes sheriffs to contract with other governmental entities, including the United States. *See* Colo. Const. art. XIV, § 18(2)(a); *see also* § 29-1-201, C.R.S. 2023 (implementing article XIV, section 18(2)(a) and (2)(b)).

¶ 28 Sheriffs have a statutory duty to "keep and preserve the peace in their respective counties." § 30-10-516, C.R.S. 2023. As part of this statutory duty, sheriffs and their deputies are empowered to serve process in civil and criminal matters. *Id.*

¶ 29 While a sheriff's authority is generally created by legislative enactment, a sheriff also retains implied powers reasonably necessary to execute express powers. *People v. Buckallew*, 848 P.2d 904, 908 (Colo. 1993); *see also Douglass v. Kelton*, 199 Colo. 446, 447, 610 P.2d 1067, 1068 (1980). And the test for determining whether a power is implicit within a sheriff's express authority is whether the sheriff can fully perform his functions without the implied power. *Buckallew*, 848 P.2d at 908.

IV. Discussion

A. Sections 24-76.6-101 and -102 are not Preempted by 8 U.S.C. § 1357(g)(1)

¶ 30 The district court concluded the prohibitions on law enforcement officers in sections 24-76.6-101 and -102 "do not — and cannot, under the doctrine of obstacle preemption — apply to [TCSO] DIOs" because the DIOs are federal officers, not state officers, when performing functions under TCSO's Agreement. We disagree.

¶ 31 We reject the notion that because TCSO's Agreement delegates to TCSO DIOs certain immigration enforcement powers, they are subject to *only* federal law when performing those functions.

¶ 32 First, by the plain language of 8 U.S.C. § 1357(g), state and local law enforcement officers who perform immigration functions remain employees of their specific locales. Subsection (g) — titled "Performance of immigration officer functions by State officers and employees" — says that 287(g) agreements must not "displace any Federal employee" and must operate at state expense.

8 U.S.C. § 1357(g)(1), (6). Section 1357(g) and TCSO's Agreement make clear that the DIOs are federal employees for some purposes

(such as tort or workers' compensation claims arising out of the performance of their delegated ICE functions), but not for other purposes (such as payment of salaries and benefits, provision of security equipment, and supervision of non-immigration enforcement duties).

¶ 33 In other words, TCSO DIOs remain subject to Colorado law even though they are *also* subject to federal law while performing immigration enforcement functions. And TCSO's Agreement says as much. A provision in that agreement says the DIOs are expected to abide by other legal restrictions and should otherwise "maintain the [law enforcement agency's] rules, standards[,] or policies" while engaged in immigration enforcement activities. Thus, we disagree with the district court's conclusion that the DIOs are federal officers solely accountable to federal law while performing immigration enforcement functions.

¶ 34 Second, the plain language of 8 U.S.C. § 1357(g)(1) makes clear that participation in a 287(g) agreement by either the federal government or a state is voluntary. Given the discretionary, not compulsory, language of 8 U.S.C. § 1357(g)(1), we conclude that Congress didn't clearly intend to supersede state law in this area.

See Murphy, 584 U.S. at 472. Instead, the language of § 1357(g)(1) expressly considers the ability of a state or local law enforcement officer to carry out immigration functions so long as exercising those functions is consistent with state and local law. *See* 8 U.S.C. § 1357(g)(1).

¶ 35 We find authority from other jurisdictions that have considered similar state legislation to be persuasive. In *United States v. California*, 921 F.3d 865 (9th Cir. 2019), the Ninth Circuit Court of Appeals concluded a California law[5] limiting cooperation between state and local law enforcement and federal immigration authorities wasn't preempted because federal law "provides states and localities the *option*, not the *requirement*," of assisting federal immigration authorities. *Id.* at 889. As the Ninth Circuit Court of Appeals reasoned, a state's choice to refrain from participation "cannot be invalid under the doctrine of obstacle preemption where

[5] California Senate Bill 54, 2017-2018 Reg. Sess. (Ca. 2017), codified at section 7284.6 of the California Government Code (West 2023), prohibits, among other things, California law enforcement agencies from making arrests based on civil immigration warrants, performing immigration officer functions pursuant to 8 U.S.C. § 1357(g), or transferring individuals to immigration authorities unless authorized by a judicial warrant.

[states] retain[] the right of refusal." *Id.* at 890; *see also City of El Cenizo v. Texas*, 890 F.3d 164, 178 (5th Cir. 2018) (concluding that (1) federal law doesn't provide a "clear and manifest" intent to prevent states from regulating whether their localities cooperate in immigration enforcement, (2) 8 U.S.C. § 1357 doesn't require a state's cooperation, and (3) the savings clause that allows a state's cooperation without a 287(g) agreement indicates that some state and local regulation of cooperation is permissible). Thus, sections 24-76.6-101 and -102 are consistent with Colorado's prerogative to regulate its police powers and aren't preempted by federal law. *See Murphy*, 584 U.S. 472. We therefore reject the district court's finding that sections 24-76.6-101 and -102 don't apply to TCSO DIOs' activities.

¶ 36 Based on that conclusion, we turn next to these statutes' impact on 287(g) agreements.

B. TCSO's Arrests and Detentions of Individuals under the 287(g) Agreement are Prohibited by Sections 24-76.6-101 and -102

¶ 37 Sheriff Mikesell argues that (1) section 24-76.6-101's definition of "civil immigration detainer" prohibits only the use of Form I-247 as the sole basis for detaining someone; (2) the

legislature's use of the word "request" throughout that section is controlling; and (3) Form I-200 is a "valid arrest warrant . . . consistent with Colorado law."[6]

¶ 38 The district court, agreeing with Sherriff Mikesell, reasoned that TCSO's Agreement lawfully authorizes DIOs to arrest and detain individuals because section 24-76.6-102(2) only prohibits arrests and detentions made on the basis of "requests" to detain. And because the DIOs arrest and detain individuals using Form I-200, which — rather than a request — is "a command by their supervising ICE immigration officer" under a "valid federal warrant that does not need to be signed or reviewed by a judge," the statutory prohibitions in sections 24-76.6-101 and -102 don't apply to DIOs. We disagree with this interpretation.

¶ 39 This interpretation of section 24-76.6-101 disregards its plain language. Colorado's definition of a civil immigration detainer explicitly includes a "warrant for arrest of alien" — otherwise known as Form I-200. § 24-76.6-101(1). The district court's analysis

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[6] Two of the three individuals detained at the Teller County Jail at ICE's request after they were eligible for release had Form I-247A in their files. All three were served with Form I-200 by a TCSO DIO.

excluded Form I-200 from section 24-76.6-101 by reasoning that the DIOs are federal officers responding to commands from a supervising federal officer when engaged in functions authorized by TCSO's Agreement. But this reasoning ignores the fact that compliance with local law is a condition precedent to local law enforcement's performance of immigration enforcement functions under a 287(g) agreement. *See Durango Transp., Inc. v. City of Durango*, 824 P.2d 48, 51 (Colo. App. 1991) (concluding that a government entity must have the authority to perform the activity subject to the contract).

¶ 40 Because section 24-76.6-101(1) expressly defines "warrant for arrest of alien," which is what Form I-200 is, as a civil immigration detainer, we reject the district court's statutory construction excluding Form I-200 from that definition.

C. Arrest and Detention Functions Under TCSO's Agreement are not Authorized by Sheriff Mikesell's Statutory Duty to Keep the Peace

¶ 41 Sheriff Mikesell testified he was able to fulfill his statutory peacekeeping duties before TCSO's Agreement. TCSO also didn't have any DIOs performing functions under that 287(g) agreement for a time. And Sheriff Mikesell testified that he couldn't remember

any issues with his ability to perform his duties during the time TCSO didn't have any DIOs performing immigration officer functions under TCSO's Agreement.

¶ 42 Despite this, the district court concluded that TCSO's Agreement furthered Sheriff Mikesell's general authority to preserve the peace, that he was authorized by that authority to enter into the agreement, and that "the functions of [TCSO's Agreement] help keep and preserve the peace in Teller County." In reaching this conclusion, the district court relied heavily on *City of Los Angeles v. Barr*, 929 F.3d 1163 (9th Cir. 2019), which stated 287(g) agreements are effective tools that law enforcement can use to further public safety goals.

¶ 43 A Colorado sheriff's peacekeeping duties date back to Colorado's territorial statutes. *See* R.S. 1868, ch. XXI, art. 4, § 9. But when a general statutory provision conflicts with a special provision, and both provisions can't be given effect, the special provision prevails "unless the general provision is the later adopt[ed] and the manifest intent is that the general provision prevail." § 2-4-205, C.R.S. 2023.

¶ 44 A sheriff's general grant of authority under section 30-10-516 directly conflicts with the special prohibitions contained in sections 24-76.6-101 and -102. *See* § 24-76.6-102(3) ("The authority of law enforcement is limited to the express authority granted in state law."). Thus, as the later provisions, sections 24-76.6-101 and -102 prevail. By precluding law enforcement officers — which includes sheriff's deputies — from arresting or detaining individuals on the basis of civil immigration detainers, the legislature has made clear its intent for the special provisions to prevail.

¶ 45 None of the provisions of sections 24-76.6-101 and -102 prevent sheriffs from keeping and preserving the peace in their jurisdictions. Indeed, by his own admission, Sheriff Mikesell was able to perform his statutory duties before the execution of TCSO's Agreement and when he didn't have a DIO available. *See Buckallew*, 848 P.2d at 908.

¶ 46 The district court also concluded that the arrests challenged by plaintiffs are "effected by the service of process" of Form I-200 on individuals, and Sheriff Mikesell has authority to serve process under section 30-10-516. But sections 24-76.6-101 and -102 don't prevent sheriffs from performing their statutory duty to serve

process in civil matters — even federal immigration matters. Rather, sections 24-76.6-101 and -102 prevent sheriffs from *arresting or detaining* the individuals served solely on the basis of a civil immigration detainer. And we disagree with the district court's conclusion that the service of Form I-200 on an individual necessarily effectuates a seizure amounting to an arrest. *See People v. Threlkel*, 2019 CO 18, ¶ 16 (noting that individuals are constitutionally protected from unreasonable searches and seizures by law enforcement, not all contact of citizens by law enforcement); *see also Williams v. Chai-Hsu Lu*, 335 F.3d 807, 809 (8th Cir. 2003) ("[M]ere acquisition of jurisdiction over a person in a civil case by service of process is not a seizure under the [F]ourth [A]mendment."); *see also Immigr. & Naturalization Serv. v. Delgado*, 466 U.S. 210, 220 (1984) (limited encounter with Immigration and Naturalization Service official didn't amount to a seizure implicating the Fourth Amendment).

¶ 47 Relying on the above reasoning regarding Sheriff Mikesell's authority to keep the peace and serve process, the district court concluded that plaintiffs' legal interpretation would lead to "chaos" because a person awaiting removal proceedings could bond out of

the Teller County Jail, only to be immediately served with an immigration warrant by a waiting ICE officer and reincarcerated.[7] Though a procedure that requires ICE officers to directly arrest and detain aliens — rather than delegating such authority to local law enforcement — would require ICE to exercise more effort to apprehend and detain aliens, it was the legislature's prerogative to require immigration officials to put forth that effort in Colorado. *See California*, 921 F.3d at 872; *Rudnicki v. Bianco*, 2023 COA 103, ¶ 52 (noting courts will not second-guess the legislature's policy determinations).

D. Plaintiffs' Constitutional Arguments

¶ 48 Because we conclude that sections 24-76.6-101 and -102 prohibit Sheriff Mikesell and TCSO from arresting or detaining individuals solely based on civil immigration detainers, we decline to address plaintiffs' arguments that these activities also violate

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[7] TCSO has also been a party to an "Intergovernmental Service Agreement for Housing Federal Detainees" since October 2000. That agreement is not before us, but we note that the applicable statutes require that all such agreements be terminated or phased out as of January 1, 2024, or as soon as possible thereafter as is permitted by the terms of the agreement. *See* §§ 24-76.7-101, -102, and -103, C.R.S. 2023.

article II, sections 7 and 19 of the Colorado Constitution. *See Developmental Pathways v. Ritter*, 178 P.3d 524, 535 (Colo. 2008) ("Perhaps most importantly, the principle of judicial restraint requires us to 'avoid reaching constitutional questions in advance of the necessity of deciding them.'" (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988))).

E. The Declaratory Judgments Entered in Favor of Sheriff Mikesell are Reversed and Plaintiffs' Requested Declaratory Judgments are Partially Granted

¶ 49 The district court entered judgment in favor of Sheriff Mikesell declaring TCSO DIOs' actions pursuant to TCSO's Agreement lawful under Colorado law. *See supra* Part I.C. By contrast, plaintiffs asked the court to declare, among other things, that Sheriff Mikesell's policies and practices exceed his authority under Colorado law. Plaintiffs request that we reverse the declarations in favor of Sheriff Mikesell and enter their requested contrary declarations that Sheriff Mikesell's "policies and practices under [the] 287(g) agreement with ICE exceed the limits of authority granted to him by the Colorado Constitution and statutes."

¶ 50 The purpose of declaratory judgments is to afford parties with "relief from uncertainty and insecurity" with respect to rights,

status, and other legal relations. *Citizens Progressive All. v. Sw. Water Conservation Dist.*, 97 P.3d 308, 310 (Colo. App. 2004). A party may seek — and any district or higher court in Colorado may issue — declaratory judgments requesting resolution of questions regarding the validity or interpretation of a piece of legislation. C.R.C.P. 57(a); *City of Boulder v. Pub. Serv. Co. of Colo.*, 2018 CO 59, ¶ 28.

¶ 51 We decline to adopt plaintiffs' proposed declarations. Rather — consistent with our discussion above — we hold that (1) sections 24-76.6-101 and -102 are not preempted; (2) per the plain language of 8 U.S.C. § 1357(g), a 287(g) agreement must comply with Colorado statutory law; (3) sections 24-76.6-101 and -102 prohibit TCSO from arresting individuals on the basis of civil immigration detainers as that term is defined in section 24-76.6-101; and (4) therefore any portions of TCSO's Agreement purporting to authorize TCSO deputies to arrest or detain individuals on the basis of civil immigration detainers are invalid.

F. Plaintiffs Demonstrated Actual Success on the Merits for a Permanent Injunction

¶ 52 The district court denied plaintiffs' request for permanent injunctive relief. In doing so, the court found that plaintiffs "have not met their burden of proof by a preponderance of evidence on any of their respective claims" and concluded that "[a]ll [plaintiffs'] claims . . . are denied for reasons stated in this [o]rder."

¶ 53 A party seeking permanent injunctive relief must demonstrate that "(1) the party has achieved actual success on the merits; (2) irreparable harm will result unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause to the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest." *Langlois v. Bd. of Cnty. Comm'rs*, 78 P.3d 1154, 1158 (Colo. App. 2003).

¶ 54 Plaintiffs argue they met their burden with respect to each of the four *Langlois* factors.

¶ 55 A district court must make detailed factual findings and legal conclusions when granting or denying a request for injunctive relief so that a reviewing court has a clear understanding of the grounds

for the court's decision. *Gitlitz v. Bellock*, 171 P.3d 1274, 1278 (Colo. App. 2007); *see also* C.R.C.P. 52.

¶ 56 As discussed above, the district court erroneously concluded that sections 24-76.6-101 and -102 are preempted by federal law and TCSO's Agreement. Thus, plaintiffs have demonstrated actual success on the merits of the case.

¶ 57 But the district court failed to make specific findings related to the remaining three *Langlois* factors.

¶ 58 Accordingly, remand is appropriate for the district court to make detailed findings and conclusions regarding whether plaintiffs have met their burden for a permanent injunction. On remand, the court may make this determination on the existing record or, in its discretion, receive additional evidence or arguments on this limited issue. *See Plummer v. Struby-Estabrooke Mercantile Co.*, 23 Colo. 190, 194, 47 P. 294, 295 (1896) (concluding that the trial court's discretion permits the reopening of a case to receive additional evidence "whenever the ends of justice can be advanced thereby").

V. Disposition

¶ 59 The judgment of the district court is reversed, and the case is remanded to the district court for further proceedings consistent with this opinion.

JUDGE DUNN and JUDGE YUN concur.