

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

DANIEL RENTERIA-VILLEGAS,

Plaintiff,

V.

DARON HALL, in his official capacity as Sheriff of Davidson County, and individually; METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY; and OFFICER RICKEY BEARDEN, in his individual capacity,

Defendants.

CASE NO. 11-32-II

Chancellor Carol McCoy

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT
OF HIS MOTION FOR A TEMPORARY INJUNCTION**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT.....	1
FACTUAL BACKGROUND	3
I. THE DCSO’S 287(g) CONTRACT.....	3
A. The Statutory Framework of 287(g).....	3
B. Law Enforcement Powers the 287(g) Contract Delegates.....	4
II. THE DCSO’S 287(g) INTERROGATION AND INVESTIGATION ACTIVITIES	4
A. Purpose	5
B. Process	5
C. Interrogation, Investigation, and Detention of Daniel Renteria	10
ARGUMENT	11
I. THERE IS A SUBSTANTIAL LIKELIHOOD RENTERIA WILL PREVAIL ON THE MERITS	12
A. Actions by Metro Government that Violate the Metro Charter are <i>Ultra Vires</i> and Void <i>Ab Initio</i>	12
B. The Metro Charter Prohibits The DSCO From Conducting Law Enforcement Activities That Are Not Necessary and Incidental To The Sheriff’s Duties.....	13
C. DCSO 287(g) Officers Perform Law Enforcement Functions When They Conduct Interrogations and Take and Consider Evidence.	15
D. The DCSO’s Law Enforcement Activities Under the 287(g) Contract Are Not Necessary and Incidental to the Sheriff’s Duties	18
II. RENTERIA IS THREATENED WITH IRREPARABLE HARM IF THE INJUNCTION IS NOT GRANTED.....	21
A. Renteria Is Presently Suffering Irreparable Harm	21
B. In The Absence of a Temporary Injunction, Defendants’ Acts and Omissions Will Tend To Render Any Final Judgment In Renteria’s Favor Ineffectual	22
III. THE THREATENED HARM TO RENTERIA OUTWEIGHS WHATEVER HARM A TEMPORARY INJUNCTION MIGHT CAUSE TO DEFENDANTS.....	22
IV. TEMPORARY INJUNCTIVE RELIEF WILL SERVE THE PUBLIC INTEREST.....	24
CONCLUSION	26

TABLE OF AUTHORITIES

Page

CASES

<i>Bailey v. County of Shelby</i> , 2005 Tenn. App. Lexis 725 (Tenn. Ct. App. 2005)	14
<i>Bailey v. County of Shelby</i> , 2006 Tenn. Lexis 208 (Tenn. 2006)	14
<i>Banks v. Jenkins</i> , 449 S.W.2d 712 (Tenn. 1969)	14
<i>Barnes v. Ingram</i> , 217 Tenn. 363 (Tenn. 1965)	21
<i>City of Lebanon v. Baird</i> , 756 S.W.2d 236 (Tenn. 1988)	2, 12, 13, 24
<i>Clark v. Martinez</i> , 543 U.S. 371 (2005)	3
<i>Eluhu v. HCA Health Servs of Tenn., Inc.</i> , 2009 Tenn. App. Lexis 712 (Tenn. Ct. App. 2009)	11
<i>Freelance Entertainment, LLC v. Sanders</i> , 280 F. Supp. 2d 533, 547 (N.D.Miss. 2003)	24
<i>Gentry v. McCain</i> , 2010 Tenn. App. Lexis 317 (Tenn. Ct. App. May 6, 2010)	11
<i>Metropolitan Government of Nashville & Davidson County v. Poe</i> , 383 S.W. 265 (Tenn. 1964)	1, 2, 12, 13, 14, 15
<i>Michigan State AFL-CIO v. Miller</i> , 103 F.3d 1240 (6th Cir. 1977)	11, 12
<i>North v. Rooney</i> , 2003 U.S. Dist. Lexis 11299 (D.N.J. 2003)	22
<i>S. Cent. R.R. v. Harakas</i> , 44 S.W.3d 912 (Tenn. Ct. App. 2000)	11

<i>Seretse-Kama v. Ashcroft</i> , 215 F. Supp. 2d 37, 53-54 (D.D.C. 2002)	22
<i>State v. Baker</i> , 2006 Tenn. Crim. App. Lexis 707 (Tenn. Crim. App. 2006)	20
<i>State v. Bohanan</i> , Tenn. Crim. App. Lexis 203 (Tenn. Crim. App. 2007)	19
<i>State v. Hakoda</i> , 2006 Crim. App. Lexis 774 (Tenn. Crim. App. 2006)	20
<i>State of Tennessee ex rel. Atkin v. City of Knoxville</i> , 315 S.W.2d 115 (Tenn. 1958)	13
<i>U.S. v. Balli-Solis</i> , 2010 U.S. App. Lexis 19261 (6th Cir. Sept. 15, 2010)	7
<i>United States v. Medlin</i> , 2010 U.S. Dist. Lexis 18089 (M.D.Tenn. Mar. 1, 2010)	20, 21
<i>United States v. Minker</i> , 350 U.S. 179 (1956)	16, 17

STATUTES

8 U.S.C. § 1302	9
8 U.S.C. § 1324c	9
8 U.S.C. § 1325	7, 9
8 U.S.C. § 1326	7, 9
8 U.S.C. § 1357(a)	7, 16, 17
8 U.S.C. § 1357(b)	18
8 U.S.C. § 1357(g)	1, 3, 4
8 U.S.C. § 1357(g)(1)	4
8 U.S.C. § 1357(g)(2)	4
8 U.S.C. § 1357(g)(8)	7

18 U.S.C. § 1001	7
18 U.S.C. § 911	9
18 U.S.C. § 1028	9

REGULATIONS

8 C.F.R. § 287.5(a)(1)	4, 7, 16, 17, 18
8 C.F.R. § 287.5(e)(3)	4
8 C.F.R. § 287.7	4
8 C.F.R. § 1240.8	8

PRELIMINARY STATEMENT

This is a case brought by Daniel Renteria-Villegas (“Renteria”), a natural-born citizen of the United States, to challenge the validity of a contract under the Metropolitan Charter of Nashville and Davidson County (“Metro Charter”). The contract in question is a 2009 Memorandum of Agreement between the Metropolitan Government of Nashville and Davidson County (“Metro Government”) and the United States Department of Homeland Security (“DHS”) – Bureau of Immigration and Customs Enforcement (“ICE”). Metro Government and ICE entered into this contract pursuant to Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g). The 287(g) contract empowers Davidson County Sheriff’s Office (“DCSO”) deputies to perform certain federal law enforcement functions, including interrogation and evidence collection.

Sections 16.05 and 8.202 of the Metro Charter, however, take away the law enforcement authority of the Davidson County Sheriff and vest that authority in the Metropolitan Police Department. The Tennessee Supreme Court has held that these mandatory provisions prohibit the Sheriff from performing any law enforcement function, including “prevention and detection of crime” and “apprehension of criminals,” unless doing so is “necessary and incidental” to his duties as jail-keeper and civil process-server. *Metropolitan Government of Nashville & Davidson County v. Poe*, 383 S.W. 265, 275 (Tenn. 1964).

DCSO deputies subjected Renteria to a law enforcement investigation the Metro Charter forbids. The investigation included DCSO deputies placing Renteria under an “ICE Investigative Hold” when he arrived at the jail on August 22, 2010. It also included an interrogation of Renteria by a DCSO Jail Enforcement Officer on August 24, 2010. The Officer investigated Renteria for several federal crimes, including making a false claim to U.S. citizenship,

possession of a false identification document, use of a false social security number, and illegal entry into the United States. The Jail Enforcement Officer confiscated and considered as evidence Renteria's Tennessee state I.D. card, which the DCSO never returned.

Neither Metro Government nor Sheriff Daron Hall has ever argued that conducting law enforcement activities like the one Renteria faced is necessary to the Sheriff's duty under the Charter to oversee Metro's jails. To the contrary, the Sheriff and the DCSO consistently and uniformly describe the program's purpose as providing a "force multiplier" for federal immigration authorities, and as promoting public safety by removing criminal aliens from the community. Implementing the 287(g) contract is not incidental to the normal duties of DCSO deputies. To the contrary, it takes five weeks of preliminary training at the outset of the 287(g) program, followed by continuous federal supervision under a specially-tasked ICE agent and dozens of hours of refresher training by federal authorities to enable DCSO deputies to perform these complex federal law enforcement functions. *See* ICE 287(g) Training Materials, (**Exhibit 1 – pp. 1-376**).

DCSO's performance of these functions thus violates mandatory provisions in the Metro Charter and the Tennessee Supreme Court's decision in *Metro v. Poe*. Metro Government's approval of the 287(g) contract authorizing the Sheriff's Office to perform these law enforcement functions is consequently *ultra vires*. *See City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988). As a result, the contract itself is void *ab initio*. *Id.* Yet the DCSO has subjected over 13,500 inmates to these prohibited law enforcement investigations since the start of the 287(g) Program in Davidson County in April, 2007. In the process, it has eroded the trust of the majority of Latinos in and around Davidson County and seriously undermined the Metro Police Department's earnest efforts at community policing.

A Temporary Injunction is necessary to halt the DCSO's prohibited 287(g) law enforcement activities. Renteria faces immediate and irreparable harm if the program continues. Temporary injunctive relief is also necessary because allowing Metro Government and Sheriff Hall to continue violating the Metro Charter during the pendency of Renteria's case will tend to render any final judgment in this case ineffectual. The balance of factors this Court must address in considering Renteria's motion for temporary injunctive relief weighs heavily in favor of temporarily halting the 287(g) program.

FACTUAL BACKGROUND

I. THE DCSO'S 287(g) CONTRACT

A. The Statutory Framework of 287(g)

In 1996, Congress authorized the Attorney General¹ to enter into written agreements allowing qualified state and local government officers to carry out federal immigration enforcement functions under the training and supervision of federal authorities.² Section 287(g)(1) of the Immigration and Nationality Act ("INA") now provides for the "performance of immigration officer functions by State officers and employees." 8 U.S.C. § 1357(g)(1). This subsection and the authority it confers are commonly referred to as "287(g)" because of the subsection Congress added to Section 287 of the INA. Under INA Section 287(g)(1),

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

¹ The Department of Homeland Security Act of 2002 abolished the Immigration and Naturalization Service ("INS") and transferred its functions to the newly created Department of Homeland Security ("DHS"). Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 at 2142 (2002). With respect to legacy INS's interior immigration enforcement functions now vested in the Bureau of Immigration and Customs Enforcement, statutory references to the "Attorney General" are understood to refer to the "Secretary" of Homeland Security. *See e.g., Clark v. Martinez*, 543 U.S. 371, 374, n.1 (2005).

² *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. 104-208, 110 Stat. 3009-546 (1996). IIRAIRA amended Section 287 of the INA (codified at 8 U.S.C. § 1357(g)). Section 133 of IIRAIRA was entitled "Acceptance of State Services to Carry Out Immigration Enforcement." *See* Conference Report on [IIRAIRA], H.R. 104-828 at 17; *see also* 142 Cong. Rec. H11792 (Sept. 28, 1996).

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, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), 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) (emphasis added). Section 287(g)(2) requires that any State or local officer who is designated to perform federal immigration enforcement functions under Section 287(g)(1) must “receive adequate training regarding the enforcement of relevant Federal immigration laws.” 8 U.S.C. § 1357(g)(2).

B. Law Enforcement Powers the 287(g) Contract Delegates

Metro Government entered into its current 287(g) contract with ICE in October of 2009. The contract allows qualified DCSO deputies to be designated as 287(g) Jail Enforcement Officers. It delegates certain federal immigration law enforcement power and authority to these deputies. *See* 287(g) Contract at 4-5 (Exhibit 2 to the Complaint). They include “the power and authority to interrogate any person believed to be an alien as to his right to be in the United States (INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1))” and the “power and authority to administer oaths and to take and consider evidence (INA § 287(b) and 8 C.F.R. § 287.5(a)(2)).” 287(g) Contract, Appendix D. Other delegated law enforcement functions include the “power and authority to serve warrants of arrest for immigration violations pursuant to INA § 287(a) and 8 C.F.R. § 287.5(e)(3)[.]” *Id.* The contract also delegates to DCSO deputies “the power and authority to prepare charging documents,” and the “power and authority to issue immigration detainers (INA § 236, INA § 287, and 8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories established by ICE supervisors[.]” *Id.*

II. THE DCSO’S 287(g) INTERROGATION AND INVESTIGATION ACTIVITIES

A. Purpose

The 287(g) contract states the intent of the parties at the outset: “to enable the DCSO to identify and process immigration violators and conduct criminal investigations under ICE supervision[.]” 287(g) Contract at 1. The contract then describes its purpose as allowing DCSO’s collaboration with ICE “to enhance the safety and security of communities by focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community.” *Id.* Assessing the DCSO’s performance under its previous 287(g) contract, Sheriff Hall and the DCSO characterized the purpose of the program as follows:

The 287(g) initiative is designed to multiply the forces of U.S. Immigration and Customs Enforcement (ICE) through enhanced cooperation and communication with state and local law enforcement. Under the agreement, once approved, ICE provides training to deputies followed by authorization to identify, process, and when appropriate, detain criminal immigrants encountered in the booking process.

DCSO 287(g) Program Two-Year Review (**Ex. 2, p. 377**).

B. Process

When law enforcement officers make an arrest in Davidson County, they normally complete an arrest report indicating the arrestee’s place of birth. *See* Amada Armenta, *From Sheriff’s Deputies to Immigration Officers: Screening Immigrant Status in a Tennessee Jail*, Comparative Center for Immigration Studies Working Paper No. at 9 (2010) (**Ex. 3, p. 401**). Once the arrestee arrives at the DCSO for booking, sheriff’s deputies may inquire about the arrestee’s nationality as part of the biographic information they collect during the booking process. *See* DCSO Policy and Procedure 1-4.100, Inmate Admission and Orientation (**Ex. 4, p. 426**). If information obtained during arrest and booking indicates that an arrestee may be foreign-born, a DCSO booking deputy places a red stamp that reads, “ICE” on the arrestee’s paperwork.

See (Ex. 3, p. 426). That paperwork is then placed in a queue for further investigation by a DCSO Jail Enforcement Officer. *Id.*

Jail Enforcement Officers (“JEOs”), under the supervision of a federal ICE official, initiate an investigation to determine each inmate in the queue’s right to be and remain in the United States, and whether the inmate has violated any immigration-related criminal laws. Pursuant to the 287(g) contract, JEOs may prepare and issue a federal immigration detainer, “Form I-247, Immigration Detainer – Notice of Action.” *See* Sample Form I-247 (**Ex. 5, p. 435-36**). The detainer – also called an “ICE Hold” – requests that the DCSO to keep the inmate in custody while ICE investigates his or her immigration status. A box is checked on Form I-247 next to a sentence that reads, “Investigation has been initiated to determine whether this person is subject to removal from the United States.” DCSO personnel add a note to the inmate’s Jail Management System (JMS) record indicating he or she is subject to an “ICE Investigative hold.” *See e.g.,* Renteria JMS Log (**Ex. 6, p. 437**).

The federal investigation into an arrestee’s immigration status occurs primarily through an interrogation by a DCSO 287(g) Jail Enforcement Officer. The interrogation is also referred to internally as an “ICE Interview,” a “287(g) screening,” or “287(g) interview.” The interrogation is a separate event in time and place from the booking process. It normally takes place in a small office within an administrative area of the DCSO at the Criminal Justice Center. This office is specially reserved for the 287(g) program. Above the office door is a sign that reads “ICE Office.” *See* Photographs of “ICE Office” (**Ex. 7, p. 444**).

Inside the ICE Office, a DCSO Jail Enforcement Officer interrogates each inmate individually. The JEO conducts the interrogation pursuant to the federal law enforcement authority delegated in Appendix D of the contract. *See* INA Section 287(a)(1); 8 U.S.C. §

1357(a)(1); 8 C.F.R. § 287.5(a)(1). This interrogation includes questions about biographic data. The inmate's answer may be entered into ICE's IDENT/ENFORCE computer system, which cross-checks the subject's information with existing records. The interrogation also includes several questions specifically designed by ICE to elicit information about the subject's immigration status and immigration-related crimes he or she may have committed, such as document fraud, human trafficking or criminal reentry. *See* Sample ICE Interview Data Collection Sheet (**Ex. 8, p. 447**). These questions include, "When did you cross the border?" (a violation of 8 U.S.C. § 1325); "Did you pay a smuggler?; How much?"; and "Prior deports?" (a violation of 8 U.S.C. § 1326). Because the Jail Enforcement Officer is exercising federal law enforcement authority and acting under color of federal law, *see* 8 U.S.C. § 1357(g)(8), lying to a JEO during this interrogation could subject the inmate to criminal prosecution under 18 U.S.C. § 1001 for lying to a federal agent.

"Upon completion of an investigation, DCSO ICE deputies recommend individuals for removal (deportation) and a federal ICE agent working in the CJC signs that recommendation if approved." Davidson County Sheriff's Office 287(g) Two-Year Review. (**Ex. 2, p. 382**). In addition to civil immigration consequences such as removal from the United States, DCSO 287(g) interrogations can also result in criminal prosecution for violations of federal law such as the criminal reentry statute, 8 U.S.C. §§ 1326(a) and 1326(b)(2). *See e.g., U.S. v. Balli-Solis*, 2010 U.S. App. Lexis 19261 at *2 (6th Cir. Sept. 15, 2010) (considering appeal from criminal reentry prosecution that took place after a DCSO 287(g) interrogation).

If the federal ICE Supervisor approves the DCSO Jail Enforcement Officer's recommendation to place the inmate into immigration proceedings, the JEO typically prepares a "Removal Packet." A copy of this packet accompanies the arrestee as she is processed through

federal detention centers and the immigration court system. The “Removal Packet Worksheet” contains a checklist of documents that should be included, along with areas for the JEO to initial next to each required form. *See* Sample Removal Packet Worksheet (**Ex. 9, p. 449**). These documents constitute the record DHS will use against the inmate in removal proceedings.

One of these documents is “Form I-213, Record of Deportable/Inadmissible Alien.” *See* Sample Form I-213 (**Ex. 10, p. 450**). The DCSO Jail Enforcement Officer prepares this record and presents it to the ICE Supervisor for review, approval, and signature. In its 287(g) ICE Academy training materials, ICE describes the I-213’s critical role in removal proceedings:

The use of the I-213 creates a historical record of information which, since it is used as evidence in removal proceedings, must be complete and accurate. A properly completed I-213 then provides the basis for successful processing of the alien and stands as primary evidence of alienage and removability.

See ICE 287(g) Participant Workbook – I-213 Preparation (**Ex. 11, p. 455**). Form I-213 is the principal – and often, the only – piece of evidence DHS uses in immigration court against inmates identified through DCSO’s 287(g) interrogations. This is because when ICE initiates proceedings against someone who has allegedly entered the United States without being lawfully admitted or paroled, DHS “must first establish the alienage of the respondent.” 8 C.F.R. 1240.8. Establishing alienage is the primary burden the government bears in a removal proceeding. Form I-213 is the primary means of carrying that burden. Once DHS establishes alienage, the burden then shifts to the respondent to demonstrate that she was lawfully admitted, or else to prove “clearly and beyond a doubt” that she is entitled to remain the United States. *See id.* DCSO Jail Enforcement Officers thus prepare the primary piece of evidence used by the government in removal proceedings.³

³ Form I-213 also requires the DCSO 287(g) Jail Enforcement Officer to initial and date a field that reads, “Alien has been advised of communication privileges.” One of the communication privileges covered by this

In addition to the I-213, DCSO 287(g) Jail Enforcement Officers are also authorized to prepare and sign Form I-877, Record of Sworn Statement. *See* Sample Form I-877 (**Ex. 12, p. 506**). The first full paragraph of text on the first page of Form I-877 reads:

I am an officer of the United States Immigration and Naturalization Service [sic], authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to take your sworn statement regarding: Immigration status, criminal record and criminal conduct.

Id. Lying to a DCSO Jail Enforcement Officer after being placed under oath constitutes perjury. *See* 18 U.S.C. § 911. The following nine pages of Form I-877 contain questions designed by ICE to elicit admissions of civil and criminal liability on a wide range of immigration-related topics. These questions include: “How did you enter the United States, legal or illegal?” *see* 8 U.S.C. § 1325 (improper entry by alien); “Where did you cross the border, near what city in the United States?” *see id.*; “Do you have any documents that permit you to legally reside or work in the United States?” *see* 8 U.S.C. § 1302 (registration of aliens); “Do you have any false documents that permit you to reside or work in the United States?” *see* 8 U.S.C. § 1324c (penalties for document fraud), *see also* 18 U.S.C. §§ 1028 (document fraud), 1028A (aggravated identity theft); “Have you ever been deported?” *see* 8 U.S.C. § 1326(b) (criminal reentry). The second question on Form I-877 is “Do you wish to have a lawyer or any other person present to advise you?”

DCSO Jail Enforcement Officers also prepare, sign, and present to the subjects of their investigations other law enforcement documents, including the Notice to Appear in Immigration Court (a charging document), the Warrant for Arrest of Alien, and possibly a Notice of Intent/Determination to Reinstate a Prior Removal Order. *See* Sample Removal Forms, (**Ex. 13**,

requirement is the right of the inmate to contact an attorney – a right that does not attach during the normal course of booking interviews.

p. 515). With all these documents, as with the I-213 and I-877, the JEO uses the 287(g) interrogation and the evidence it elicits to determine whether the subject has violated federal immigration and criminal laws, and if so, to begin the process of enforcing these laws by recommending the subject for removal, criminal prosecution, or both.

C. Interrogation, Investigation, and Detention of Daniel Renteria

During his time in DCSO custody from August 22, 2010 until September 4, 2010, Renteria was the subject of a federal law enforcement investigation by DCSO Jail Enforcement Officers. Because of a discrepancy between the Place of Birth indicated on his Arrest Report and Renteria's response to a question at booking, a DCSO booking employee named K. Cash placed an "ICE Hold" on Renteria's Jail Management System ("JMS") Record. (Ex. 6, p. 437). This Hold was then converted to an "ICE Investigative Hold." *Id.* The notation on Renteria's JMS record prevented him from being released until almost twelve hours after the DCSO learned that the judge dismissed his charge. (Verified Complaint ¶¶120-21).

On August 24, 2010, DCSO Jail Enforcement Officer Marty Patterson scheduled Renteria for an interrogation in the ICE Office. (Compl. ¶86). During this interrogation, a JEO asked Renteria a series of questions aimed at eliciting specific incriminating information. (Compl. ¶¶93-114). First, the JEO did not believe Renteria was a natural-born United States citizen. (Compl. ¶93). He quizzed Renteria on the city and hospital where he was born. (Compl. ¶¶95-96). Next, the JEO informed Renteria that his social security number did not match a previous record. (Compl. ¶¶103-108). Even after Renteria provided his correct social security number and the JEO verified it using a computer database, the questioning continued. (Compl. ¶¶107-114). Third, the JEO showed Renteria his Tennessee state I.D. card and asked questions suggesting the JEO suspected Renteria of having obtained the card fraudulently. (Compl. ¶¶112-

116). The JEO specifically asked which documents Renteria presented when he applied for the I.D. card. (Compl. ¶113). Finally, the JEO asked Renteria a number of probing questions regarding the names and locations of his family members. (Compl. ¶109). Neither this Officer nor anyone else at the DCSO lifted the ICE Investigative Hold at the conclusion of the interrogation. (Compl. ¶117). This ultimately forced Renteria's family to produce his original U.S. passport and birth certificate in order to free him from prolonged detention by the DCSO. (Compl. ¶122).

ARGUMENT

Renteria is entitled to a Temporary Injunction halting the DCSO's 287(g) program. Rule 65 of the Tennessee Rules of Civil Procedure provides:

A temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omission of the adverse party will tend to render such final judgment ineffectual.

Tenn. R. Civ. P. 65.04(2). Courts consider the following four factors when determining whether to grant temporary injunctive relief: (1) the likelihood of success on the merits; (2) the threat of irreparable harm to the Plaintiff if the injunction is not granted; (3) the relative harm that would result to each party as a result of the disposition of the application for injunction; and (4) the impact on the public interest. *See, e.g., Gentry v. McCain*, 2010 Tenn. App. Lexis 317 *16 (Tenn. Ct. App. May 6, 2010) *quoting S. Cent. R.R. v. Harakas*, 44 S.W.3d 912, 922 n.6 (Tenn. Ct. App. 2000). *See also* Banks and Entman, *Tennessee Civil Procedure*, § 4-3(1) (1999)). These factors are not prerequisites, but rather factors that must be balanced as part of the decision whether to grant injunctive relief. *See e.g., Eluhu v. HCA Health Servs of Tenn., Inc.*, 2009 Tenn. App. Lexis 712 *17 (Tenn. Ct. App. 2009). Thus, not all factors need to be established for an injunction to be proper, and no single factor is to be given controlling weight. *Michigan State*

AFL-CIO v. Miller, 103 F.3d 1240, 1249 (6th Cir. 1977). In this case, each of the four factors weighs heavily in favor of granting a temporary injunction.

I. THERE IS A SUBSTANTIAL LIKELIHOOD RENTERIA WILL PREVAIL ON THE MERITS

Renteria is likely to succeed on the merits because the 287(g) contract violates the Metro Charter and is therefore void *ab initio*. The Tennessee Supreme Court held in *Metro v. Poe* that mandatory provisions of the Metro Charter vest law enforcement authority in the Metropolitan Police Department. 383 S.W.2d 265 (Tenn. 1964). According to *Poe*, Sections 16.05 and 8.202 of the Charter permit the Sheriff to perform law enforcement functions only when doing so is necessary and incidental to his duty of housing inmates and serving civil process. *Id.* at 275. The 287(g) contract and the Metro Council Resolution approving it are void because the contract authorizes DCSO deputies to perform law enforcement investigative functions that are not necessary and incidental to the Sheriff's duties. These functions include the power and authority to interrogate any inmate DCSO deputies suspect is foreign-born, as well as the power and authority to take and consider evidence. Performance of these functions pursuant to the 287(g) contract violates Sections 16.05 and 8.202 of the Metro Charter. The DCSO has subjected Renteria – and over 13,500 others – to interrogation, investigation, and detention under the claimed authority of an unlawful, invalid Agreement.

A. Actions by Metro Government that Violate the Metro Charter are *Ultra Vires* and Void *Ab Initio*.

The Metro Charter “is the organic law of the municipality to which all [Metro Government's] actions are subordinate.” *Baird*, 756 S.W.2d at 241 (Tenn. 1988). Provisions in the Metro Charter “are mandatory, and must be obeyed by [Metro Government] and its agents,” including the Metro Council, Sheriff Hall, and the DCSO. *Id.* Because these provisions are

“mandatory[,] [t]hey must be strictly[,] not just substantially complied with.” *Poe*, 383 S.W.2d at 271, quoting *State of Tennessee ex rel. Atkin v. City of Knoxville*, 315 S.W.2d 115, 116 (Tenn. 1958). An action by Metro Government that fails to comply with the Metro Charter is therefore *ultra vires* and consequently void or voidable.” *Baird*, 756 S.W.2d at 241.

B. The Metro Charter Prohibits The DSCO From Conducting Law Enforcement Activities That Are Not Necessary and Incidental To The Sheriff’s Duties.

The Metro Charter only permits the Davidson County Sheriff to exercise law enforcement power within the jail – including “prevention and detection of crime and apprehension of criminals” – if doing so is necessary to his duty to keep charge and custody of the jail, and only if the law enforcement function the sheriff exercises is incidental to this duty. *Poe*, 383 S.W.2d 265, 277. The Charter stripped the Sheriff of his traditional, constitutional role as principal conservator of the peace. Metro Charter §§ 16.05, 8.202. *See also*, *Poe*, 383 S.W.2d at 276 (Tenn. 1964). Section 16.05 of the Charter makes the Sheriff an officer of Metro government and specifies:

He shall have such duties as are prescribed by the Tennessee Code Annotated, section 8-8-201, or by other provisions of general law; except, that within the area of the metropolitan government the sheriff shall not be the principal conservator of the peace.

Section 16.05 then states: “The function as principal conservator of the peace is hereby transferred and assigned to the metropolitan chief of police, provided for by article 8, chapter 2 of this Chapter.” Article 8, chapter 2 describes the specific law enforcement powers of the metropolitan chief of police:

The department of the metropolitan police shall be responsible within the area of the metropolitan government for the preservation of the public peace, prevention and detection of crime, apprehension of criminals, protection of personal and property rights, and enforcement of laws of the State of Tennessee and ordinances of metropolitan government.

Charter § 8.202 (1963).

Soon after the Metro Charter took effect, the Tennessee Supreme Court rejected a challenge to the Charter's constitutionality by then-Davidson County Sheriff Robert R. Poe. *Poe*, 383 S.W.2d 265. The Court phrased Sheriff Poe's challenge to the Charter's removal of his law enforcement powers as follows: "Are the criminal law enforcement powers and authority in the area of the Metropolitan Government vested in the Metropolitan Chief of Police?" *Id.* at 267. The Court answered unanimously: "The duties of the Sheriff of Davidson County in regard to criminal law enforcement have been taken away from him by the Charter[.]" *Id.* at 276. It was "plain" from the Charter's text, the Court held,

that it is the purpose and intent of the Charter to take away from the Sheriff the responsibility for the preservation of the public peace, prevention and detection of crime, apprehension of criminals, protection of personal and property rights except as may be necessary and incidental to his general duties as outlined in T.C.A. § 8-8-110 and to transfer such duties to the Department of the Police of the Metropolitan Government.

Id. at 275. One commentator observed shortly after *Poe* that "[t]he court upheld provisions of the charter which transferred to the metropolitan chief of police the powers of the sheriff as principal conservator of the peace and law enforcement officer of the county, leaving him his powers as custodian of the jail[.]" James C. Kirby, Jr., *Constitutional Law—1964 Tennessee Survey*, 18 Vand. L. Rev. 1103, 1112 (1965).

Poe remains binding precedent on the Davidson County Sheriff and Metro Government. The Tennessee Supreme Court and other Tennessee courts have repeatedly confirmed the continuing validity of the *Poe* decision as to the powers of the Sheriff under the Charter. *See e.g., Banks v. Jenkins*, 449 S.W.2d 712, 716 (Tenn. 1969) (noting the *Poe* court "saw no constitutional interdiction to removal of the duty of preservation of peace from the Sheriff."); *see also Bailey v. County of Shelby*, 2005 Tenn. App. Lexis 725 (Tenn. Ct. App. 2005) ("In [*Poe*], the court upheld a charter provision transferring some duties of the county sheriff to the Nashville Chief of Police.") *rev'd on other grounds, Bailey v. County of Shelby*, 2006 Tenn.

Lexis 208 (Tenn. 2006). The Metro Law Department has also acknowledged the continuing validity of *Poe*'s holding regarding the constraints on the Sheriff's power: "According to *Poe*, section 16.05 of the Charter makes . . . an exclusive vesting of criminal law enforcement duties in the Metropolitan Chief of Police. *Poe*, 383 S.W.2d at 275." See Metro Legal Opinion No. 2004-04 (**Ex. 14, p. 525**). The Law Department prepared this opinion at the request of Sheriff Hall.

Thus, according to the Metro Charter and nearly a half century of well-settled Tennessee Supreme Court precedent, the DCSO has no legal authority to perform law enforcement functions that involve "preservation of the public peace, prevention and detection of crime, apprehension of criminals, and protection of personal property rights" unless performance of those functions is "necessary and incidental" to the Sheriff's role in the Metro Charter as custodian of Metro's jails and civil process-server.

C. DCSO 287(g) Officers Perform Law Enforcement Functions When They Conduct Interrogations and Take and Consider Evidence.

Conducting interrogations and collecting evidence are quintessential law enforcement functions. The Metro Charter stripped these functions from the Sheriff and vested them exclusively in the MNPd. The language of the DCSO's 287(g) contract and the federal law governing the delegated powers to interrogate and collect evidence demonstrate conclusively that DCSO Jail Enforcement Officers perform law enforcement functions the Charter and *Poe* prohibit.

Throughout the text of the 287(g) contract, the parties explicitly state that DCSO deputies will be performing law enforcement functions. The very first paragraph on the very first page of the contract states "ICE delegates to nominated, trained, certified, and authorized DCSO personnel to perform certain immigration enforcement functions[.]" 287(g) MOA at 1, ¶ 1. The

same paragraph explains that it is the intention of the parties that the “delegated authorities enable DCSO to identify and process immigration violators and conduct criminal investigations within its area of responsibility.” *Id.* Section I of the contract – “Purpose” – also makes clear that it allows “the exercise of immigration enforcement authority.” *Id.* at ¶ 2. *See also* Section VIII, “Certification and Authorization,” *Id.* at 4 (mandating that DCSO JEOs complete an ICE training program “in the enforcement of Federal immigration law and policies”); Section X, “ICE Supervision,” *id.* at 6 (preserving ICE’s authority to supervise and direct the DCSO JEOs’ “immigration enforcement activities,” and limiting this supervision to their “immigration enforcement functions” and “investigations conducted in conjunction” with these functions).

Jail Enforcement Officers perform law enforcement functions when they conduct interrogations under the 287(g) Agreement. The contract grants DCSO’s Jail Enforcement Officers the “power and authority to interrogate any person believed to be an alien as to his right to be or remain in the United States (INA § 287(a)(1), 8 U.S.C. § 1357(a)(1), 8 C.F.R. § 287.5(a)(1)).” The United States Supreme Court analyzed this power to interrogate and concluded that officers who conduct interrogations pursuant to 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.5 are acting in a capacity that is “precisely the same as that of a policeman, constable, sheriff, or [FBI] agent” conducting a criminal law enforcement investigation. *United States v. Minker*, 350 U.S. 179, 191 (1956) Black, J., *concurring*.

In *Minker*, the Court considered whether federal immigration officers had the power to issue administrative subpoenas to question two U.S. citizens the government wanted to denaturalize. 350 U.S. at 180-81. Justice Black concurred with the Court’s holding that no such subpoena authority exists over U.S. citizens. He also examined the nature of the interrogation power and concluded that the immigration agent “was acting under his broad power as a law

enforcement officer to follow up clues and find information that might be useful in later civil or criminal prosecutions brought against persons suspected of violating immigration and naturalization laws.” *Id.* at 190-91, *citing* 8 U.S.C. § 1357 and 8 C.F.R. §§ 287.1-287.5. The officer’s purpose “was to interrogate” the citizen “to try to elicit information ‘relating to the possible institution of [immigration] proceedings.’” *Id.* at 191. Justice Black noted “[i]nformation so obtained might be used in some circumstances in court to take away Minker’s citizenship or convict him of perjury or some other crime.” Black therefore concluded that when the officer sought to conduct an interrogation under 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5, “the capacity in which this immigration officer was acting was precisely the same as that of a policeman, constable, sheriff, or Federal Bureau of Investigation agent who interrogates a person, perhaps himself a suspect, in connection with a murder or some other crime.” *Id.*

Sheriff Hall has expressed a nearly identical understanding. Describing under oath what Jail Enforcement Officers do as part of the 287(g) interrogation, Defendant Hall offered an assessment that mirrors the Justice Black’s description in *Minker*:

Well, the way I understand it, it’s just like a Police Department, or, you know, taking their charges to a district attorney, for example; here’s what we believe happened, here are the facts surrounding this case; and then it’s determined whether to pursue charges. Charges, in my analogy, is that the federal agent then takes that case to a federal judge. Very similar to that. We’re doing the grunt work of the case and we’re turning in what we have on the individual[.]

See Excerpt of Deposition of Daron Hall (**Ex. 15, p. 528**).

In Renteria’s case, the Jail Enforcement Officer performed at § 1357(a) interrogation to investigate multiple suspected violations of federal criminal and immigration laws. The object of this interrogation was to determine whether sufficient evidence existed to show Renteria violated federal laws. If there had been evidence to that effect, the JEO would have worked with the ICE supervisor to initiate federal enforcement proceedings against Renteria. This interrogation was

therefore “precisely the same,” or, to use Sheriff Hall’s phraseology, “just like” that which be carried out by a police department.

The power to take and consider evidence pursuant to INA Section 287(b) is also a quintessential law enforcement function. *See* 8 U.S.C. § 1357(b), 8 C.F.R. § 287.5(a)(2). Federal law explicitly provides that officers exercising this power may “take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of [the Immigration and Nationality] Act and the administration of [DHS].” 8 U.S.C. § 1357(b). The plain language of the statute thus marries the JEO’s taking and consideration of evidence to the express purpose of enforcing federal immigration law. *See also* 8 C.F.R. § 287.5(a)(2).

The DCSO Jail Enforcement Officer’s seizure, examination, and retention of Renteria’s Tennessee state I.D. card occurred under the delegated authority to take and consider evidence. By its terms, that authority requires the evidence taken and considered to be “material or relevant to the enforcement” of the INA and the administration of DHS. As with the interrogation, these actions constitute law enforcement activities by the DCSO.

D. The DCSO’s Law Enforcement Activities Under the 287(g) Contract Are Not Necessary and Incidental to the Sheriff’s Duties

The interrogation and evidence collection functions DCSO’s Jail Enforcement Officers perform are not necessary and incidental to the Sheriff’s duty to maintain custody and control of Metro’s jails. Neither the Metro Charter nor the Tennessee Constitution imposes a duty on the Davidson County Sheriff to enforce federal immigration law. As such, interrogation and evidence collection cannot possibly be necessary and incidental to the Sheriff’s duties.

By contrast, there are numerous instances where performing a law enforcement function is necessary and incidental to the Sheriff’s duties. For example, the Sheriff may interrogate and

collect evidence during the fresh pursuit of an escapee. *See* Metro Legal Opinion 2004-04 (**Ex. 14, p. 525**) (“Incident to exercising [custody and control over the jail], the Sheriff retains the common law duty and authority to pursue and apprehend inmates attempting to escape.”). In *State v. Bohanan*, the Sheriff conducted these activities following an inmate’s escape from a DCSO facility. The court described the DCSO’s investigation of the jailbreak as being limited to a “perimeter check.” After that, however, a Metro Police Department officer was assigned to the case. 2007 Tenn. Crim. App. Lexis 203 *2-3 (Tenn. Crim. App. 2007).

The DCSO’s current policies and procedures further illustrate the sorts of law enforcement activity that are necessary and incidental to carrying out the Sheriff’s duties. Policy Number 1-3.142, for instance, lists the specific events which call for DCSO personnel to secure evidence and conduct investigations. *See* DCSO Policy No. 1-3.142 (attached to hereto as **Ex. 16, p. 530**). Among the triggers listed in this Policy are: escape, discharge of a firearm, discovery of contraband, or an inmate suicide. These events – which all take place in or around the jail, and which all threaten the safety and security of inmates and DCSO personnel – are clearly distinct from federal immigration and criminal laws, which were enacted by a different sovereign, and which have absolutely no causal link to the safety and security of Metro’s jails.

A recent case that garnered media attention exemplifies the type of situation in which the Sheriff’s performance of law enforcement functions is both necessary and incidental to maintaining the jail. An inmate was arrested and brought to the Criminal Justice Center after making an appearance in night court, according to media reports. *See* William Williams, Sheriff’s Office Discovers Loaded Gun With Arrested Woman, *Nashville City Paper*, (Dec. 13, 2010) (**Ex. 17, p. 532**). She reportedly managed to slip through an initial layer of DCSO security before a deputy in the booking area discovered a loaded pistol with two .25-caliber rounds inside

her purse. The inmate was charged with one count of Possession of Contraband, While Present In a Penal Institution Where Prisoners Are Quartered, Without the Consent of the Chief Administrator of the Institution, in violation of T.C.A. § 39-16-201. *See* Criminal Complaint Number 2010-989919 (**Ex. 18, p. 534**). Her arrest warrant states that the pistol “was turned over to police custody, where it was inventoried and placed into the property and evidence section of the department.” The power to search an incoming inmate’s possessions for contraband and bring charges when it is found is without question both necessary and incidental to the Sheriff’s duty as jail-keeper. Moreover, the very nature of the criminal charge – being found in possession of contraband *in a penal institution* – seems to require the keeper of the penal institution, the DCSO in this case, to engage in an investigation to discover contraband.

Several decisions from Tennessee’s criminal courts further illustrate the sharp distinction between 287(g) investigations and the performance of legitimate law enforcement functions that are necessary and incidental to maintain the Sheriff’s custody and control of Metro’s jails. One line of cases reveals that DCSO “Investigators” are tasked with listening to and keeping track of inmate phone calls, but that this activity is done under for the purpose of keeping “business records” for inspection by “law enforcement.” In *State v. Baker*, for instance, the court described the deposition of Michelle Knight, “an investigator with the Davidson County Sheriff’s Office” who “had recorded a telephone conversation.” 2006 Tenn. Crim. App Lexis 707, *8 (Tenn. Crim. App. 2006). It was not Knight, but a Metro Police Detective who had to obtain a warrant and seek charges against the inmate. Similarly, in *State v. Hakoda*, “Investigator Kevin Carroll with the Davidson County Sheriff’s Department testified that every phone call made by jail inmates was recorded in the normal course of business.” 2006 Crim. App. Lexis 774 *2 (Tenn. Crim. App. 2006). *See also United States v. Medlin*, 2010 U.S. Dist. Lexis 18089 *2 (M.D.Tenn. Mar.

1, 2010).

Finally, Sheriff Hall and the DCSO have never asserted that the 287(g) Program is necessary and incidental to operating Metro's Jails. Instead, Defendants have always justified the program exclusively on public safety grounds. The DCSO's Two-Year Review of the 287(g) Program stated: "The 287(g) initiative is designed to multiply the forces of U.S. Immigration and Customs Enforcement (ICE) through enhanced cooperation and communication with state and local law enforcement." DCSO 287(g) Two-Year Review (**Ex. 2, p. 380**).

In sum, the factual record in this case supports a finding that the 287(g) contract violates mandatory provisions of the Metro Charter by allowing DCSO deputies to perform law enforcement functions that are not necessary and incidental to the Sheriff's duties as jail-keeper. Metro Government therefore acted *ultra vires* by approving this contract. The contract is consequently void *ab initio*. Renteria has thus demonstrated a strong likelihood that he will succeed on the merits of his claim.

II. RENTERIA IS THREATENED WITH IRREPARABLE HARM IF THE INJUNCTION IS NOT GRANTED

It is "clear" as a matter of Tennessee law that "equity will enjoin a municipal officer from doing irreparable harm to someone by doing some act 'not authorized by the Constitution or laws of this State.'" *Barnes v. Ingram*, 217 Tenn. 363, 371 (Tenn. 1965) *quoting* Gibson, Suits in Chancery § 861 (6th ed. 1956). "This rule would apply, it would seem, therefore, to acts unauthorized by city charters or ordinances." *Id.*

A. Renteria Is Presently Suffering Irreparable Harm

As a result of the DCSO's federal law enforcement investigation, Renteria's name and biographical information are currently in a federal law enforcement encounter database. (Compl. ¶¶89-90). His Tennessee state I.D. card is unaccounted for. (Compl. ¶¶132-134). So are two sets

of photocopies of his original birth certificate and U.S. passport. (Compl. ¶134). A file to which Renteria's I.D. card was paper-clipped, and upon which the Jail Enforcement Officer relied in conducting Renteria's interrogation, is also missing. (Compl. ¶134).

The DCSO has refused to produce any documentary record of its law enforcement investigation of Renteria. It may even deny such investigation was conducted at all. But it was conducted, and as a consequence, Renteria's biographic information, and that of his family members, is now in a federal database and subject to further investigation by federal and state law enforcement in the future. This constitutes an ongoing and irreparable harm to Renteria.

B. In The Absence of a Temporary Injunction, Defendants' Acts and Omissions Will Tend To Render Any Final Judgment In Renteria's Favor Ineffectual

Restraint of liberty unquestionably constitutes irreparable harm. *See e.g., North v. Rooney*, 2003 U.S. Dist. Lexis 11299 *20 (D.N.J. 2003); *Seretse-Kama v. Ashcroft*, 215 F. Supp. 2d 37, 53-54 (D.D.C. 2002). There is a distinct possibility that Renteria could end up back in the DCSO's jail if indictments in either of his two pending criminal charges are returned against him by the grand jury, or if the prosecutor in the aggravated assault case decides to bring a new charge on a different theory of criminal liability. (Compl. ¶138). Once Renteria returns to DCSO custody, there is nothing to stop the DCSO's Jail Enforcement Officers from re-opening an investigation against him. The DCSO has twice required Renteria's family members to present original documents proving his U.S. citizenship in order to secure his release. There is little reason to believe the next time he is placed in DCSO custody will be any different.

III. THE THREATENED HARM TO RENTERIA OUTWEIGHS WHATEVER HARM A TEMPORARY INJUNCTION MIGHT CAUSE TO DEFENDANTS

The availability of numerous viable alternatives to the 287(g) program that do not violate the Metro Charter minimizes any possible harm temporary injunctive relief could cause the

Defendants. Harm to the Defendants from a temporary suspension of the 287(g) program should be measured by the DCSO's stated program objectives. Defendants have consistently stated the program's primary objective is identifying for removal criminal aliens who come into contact with Metro law enforcement. *See* DCSO 287(g) Two-Year Review (**Ex. 2, p. 380-81**). This end can be accomplished using several alternative means.

For instance, a Secure Communities Agreement is currently in effect between ICE and Davidson County. *See* ICE Secure Communities Activated Jurisdictions (Jan. 11, 2011) (**Ex. 19, p. 535**). *See also* Sample Secure Communities Memorandum of Understanding (**Ex. 20, p. 537**). This Agreement allows the DCSO to run any inmate's biometric information through the ICE database as a part of the booking process. *See* Michelle Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, Immigration Policy Center (Nov. 2010) (**Ex. 21, p. 547**). If the system returns a "hit," ICE agents place an immigration hold the DCSO inmate, flagging the case for further investigation.

Even if Secure Communities were not in place, DCSO deputies have access to ICE's Law Enforcement Support Center ("LESC"). *See* ICE Law Enforcement Support Center Website Front Page (**Ex. 22, p. 566**). The LESC operates twenty-four hours a day, seven days a week. *Id.* It runs immigration records through a database containing over one hundred million individuals and returns results to law enforcement agencies within minutes. It can also forward those results to an ICE Enforcement and Removal Operations office so the inmate can be promptly placed under an ICE hold. Finally, the DCSO can enter into a written agreement to task a DCSO Deputy to facilitate law enforcement investigations of DCSO inmates by duly-authorized ICE officers. *See e.g.*, ICE-Maury County Agreement (**Ex. 23, p. 568**). Given these readily available alternatives, any possible harm to the Defendants, when weighed against the irreparable harm to

Renteria, does not present a compelling reason for allowing the DCSO to continue violating the Metro Charter.

IV. TEMPORARY INJUNCTIVE RELIEF WILL SERVE THE PUBLIC INTEREST

Temporarily enjoining the DCSO from performing 287(g) law enforcement activities will promote the public interest. As a general matter, it is in the public interest to ensure Metro Government and its officers and agencies adhere to the mandatory provisions of the Metro Charter and comply with state and federal law. *See generally Baird*, 756 S.W.2d at 242-43. Similarly, “it is in the public’s interest to protect rights guaranteed under the Constitution of the United States,” including the right to be free of unlawful search, seizure, and imprisonment. *Freelance Entertainment, LLC v. Sanders*, 280 F. Supp. 2d 533, 547 (N.D.Miss. 2003). Jail Enforcement Officers place ICE holds and investigate thousands of DCSO inmates each year. The prospect of other natural-born U.S. citizen inmates being subjected to unlawful investigation similar to that Renteria withstood is clearly adverse to the public interest. Preventing such treatment weighs heavily in favor of granting temporary injunctive relief.

Moreover, empirical data collected since the DCSO 287(g) program’s inception in 2007 reveal that it has undermined public safety. These studies show the program has eroded trust in law enforcement and interfered with community policing. A 2008 survey of Davidson County residents revealed that “more than half (54%) of the respondents in the Latino community said they would choose not to call the police” if they saw a crime happening. *See A. Elena Lacayo, The Impact of Section 287(g) of the Immigration and Nationality Act on the Latino Community*, National Council of La Raza Issue Brief No. 21 (2010) (**Ex. 24, p. 591**). The same survey also reported that 42% of Latinos in Davidson County “said they knew of a crime that had not been reported to the police.” (**Ex. 24, p. 591**). A separate survey conducted by the Tennessee

Immigrant and Refugee Rights Coalition a little over a year ago reportedly “found that 73% of Latinos in Davidson County are unwilling to contact police if they’re victims of a crime because of 287(g).” *See* Lucas L. Johnson II, Associated Press, Attorney Challenges Law Enforcement of Sheriff, Jan. 7, 2011 (**Ex. 25, p. 601**). The Metropolitan Police Department has acknowledged the troubling phenomenon of criminals that “prey upon Hispanic citizens . . . because they know that Hispanic citizens, especially when undocumented, generally will not report robberies to police.” *See e.g.*, MNPD Press Release, October 28, 2010 (**Ex. 26, p. 603**). These citizens’ reluctance to interact with the police is no coincidence. It is the product of 287(g).

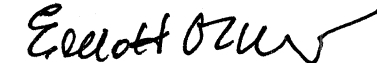
The experiences of Davidson County’s Latinos are consistent with those predicted and observed in other 287(g) jurisdictions. *See e.g.*, Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, The Police Foundation (Apr. 2009) (**Ex. 27, pp. 606, 625, 647-50, 654-55, 669-70, 672, 674, 693, 765, 771, 795, 823-27**). *See also* *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina*, ACLU of North Carolina and Immigration & Human Rights Policy Clinic, University of North Carolina at Chapel Hill (Feb. 2009) (**Ex. 28, p. 900-903**); U.S. House, *Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws*, Serial No. 111-19 (Apr. 2, 2009) (**Ex. 29, p. 1038-39**). The failure of ICE to adequately train and supervise 287(g) officers in a number of jurisdictions across the country may account for the similarities between shortcomings of the DCSO’s 287(g) program and documented abuses in other jurisdictions. *See* Department of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements* at 27 (Mar. 2010) (“287(g) Training Does Not Fully Prepare Officers For Immigration Enforcement Duties”) (**Ex. 30, p. 1440**). *See also*, U.S. Government Accountability Office, *Immigration Enforcement: Better Controls*

Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws, GAO-09-109 (Jan. 2009) (Ex. 31, p. 1540). Halting the 287(g) program will allow the community to begin the process of restoring trust in law enforcement among Davidson County's Latino population. *See e.g.*, Karen Lee Ziner, State Police Withdraw From Partnership with ICE, *The Providence Journal* (Jan 7, 2011) (Ex. 32, 1582). The public interest thus weighs heavily in favor of issuing a Temporary Injunction.

CONCLUSION

Renteria has clearly demonstrated injunctive relief is not just appropriate, but necessary. Accordingly, this Court should GRANT his Motion for a Temporary Injunction.
DATED this 18th day of January, 2011.

Respectfully submitted,



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