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IN THE FLORIDA CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY

CITY OF SOUTH MIAMI, and JAVIER FERNANDEZ, in his official capacity as Mayor of the City of South Miami, *Plaintiffs*, v. RON DESANTIS, in his official capacity as Governor of Florida, and JAMES UTHMEIER, in his official capacity as Attorney General of Florida, *Defendants*.	No. 2025-CA-505

DEFENDANTS' MOTION TO DISMISS

JAMES UTHMEIER
Attorney General

JEFFREY PAUL DESOUSA (FBN110951)
Acting Solicitor General
DAVID M. COSTELLO (FBN1045107)
Chief Deputy Solicitor General
CALEB STEPHENS (FBN1050554)
Assistant Solicitor General
WILLIAM H. STAFFORD III (FBN70394)
Special Counsel
OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, Florida 32399
(850) 414-3300
jeffrey.desousa@myfloridalegal.com
david.costello@myfloridalegal.com
caleb.stephens@myfloridalegal.com
william.stafford@myfloridalegal.com
jenna.hodges@myfloridalegal.com

Counsel for Defendants

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

The lax border-enforcement policies of the previous presidential administration have left the United States with an unprecedented immigration "[c]risis."[1] Those policies allowed millions of unlawful migrants "to enter our country illegally," "supercharg[ing] the already skyrocketing flow of illegal aliens," and "increas[ing] [the] drug, human, and sex trafficking" that often accompanies illegal immigration.[2] *Id.* Those harms have rippled across our Nation, straining the finite economic and social resources of every state.

Recognizing that all hands are needed to manage unlawful immigration, Florida passed Chapter 908. That chapter compels local governments to "cooperate and assist the federal government in the enforcement of federal immigration laws within this state." § 908.101, Fla. Stat. The statute's driving purpose is to outlaw so-called "sanctuary cities"—jurisdictions that refuse to assist or affirmatively frustrate federal immigration efforts.[3] *See also* § 908.103, Fla. Stat. (outlawing "[s]anctuary polic[ies]"). Yet another aim is to encourage local governments to enter "287(g)" agreements with federal

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[1] *Governor DeSantis Condemns Biden Administration's Termination of Title 42*, Executive Office of the Governor (April 4, 2022), https://www.flgov.com/eog/news/press/2022/governor-desantis-condemns-biden-administrations-termination-title-42.

[2] *Id.* (quotation omitted).

[3] *See* Fla. Sen. Staff Analysis, S.B. 168, at 3-4 (April 18, 2019), https://www.flsenate.gov/Session/Bill/2019/168/Analyses/2019s00168.rc.PDF.

immigration authorities, which allow local officers to receive federal training and to participate in federal immigration enforcement efforts. *Id.* § 908.1032(4)(c). To that end, Chapter 908 forbids local governments from enacting policies that block local law enforcement from "[p]articipating in" 287(g) agreements or "federal immigration operation[s]." *Id.* § 908.102(6)(d), (h). The law also empowers the Governor and the Attorney General to enforce its provisions through various methods. *Id.* § 908.107. That scheme has provided the "blueprint" for other states seeking to support federal immigration enforcement.[4] Indeed, Florida jurisdictions have executed two hundred and fifty-four 287(g) agreements, just under half of the total number of 287(g) agreements in the Nation.[5]

Though neither the Governor nor the Attorney General have threatened enforcement against them, the City of South Miami and its Mayor now seek sweeping declarations about their obligations under Chapter 908. Clinging mainly to a clause appended to the definition of "[s]anctuary policy" that cross-references a provision governing county officers, *see id.* § 908.102(6)(d) (citing Section 908.11), they seek a declaration that the sanctuary-policies law allows *municipalities* to—with impunity—bar

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[4] *State officials discuss how FHP officers are now making immigration arrests*, Florida Phoenix (May 12, 2025), https://floridaphoenix.com/2025/05/12/state-officials-discuss-how-fhp-officers-are-now-making-immigration-arrests/.

[5] *Participating Agencies 287(g),* U.S. Immigr. & Customs Enf't (May 6, 2025), https://www.ice.gov/identify-and-arrest/287g.

municipal law enforcement agencies from entering 287(g) agreements. They also ask this Court to hold that the Governor cannot enforce the sanctuary-policies law against a host of municipal officers.

The Court should have none of it. Most fundamentally, Plaintiffs lack standing to sue Defendants and their claims are unripe. Even if they could clear those hurdles, their claims fail on the merits. Chapter 908's ban on "sanctuary cities" applies to cities like South Miami, and none of the declarations Plaintiffs seek about the Governor's enforcement power are correct. The Court should dismiss the complaint.

BACKGROUND

A. To assist the federal government in deterring illegal immigration, Florida bans sanctuary policies.

Unlawful immigration into the United States is a national "crisis."[6] At the southern border alone during the Biden Administration, well over 2 million illegal migrants flooded into the country each year.[7] That rush of unauthorized entry costs the United States almost $150.7 billion annually,[8] and injects our country with a scourge of illicit

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[6] *Statement from President Joe Biden on the Bipartisan Senate Border Security Negotiations*, The White House (Jan. 26, 2024), https://tinyurl.com/338be9es.

[7] *Southwest Land Border Encounters*, U.S Customs and Border Patrol (last visited May 16, 2025), https://tinyurl.com/mwnx26f8.

[8] *Real Life Impacts of the Border Crisis* 2, House Republican Policy Committee (2024), https://tinyurl.com/ycx6wkv8.

drugs. In 2024, Border Patrol seized over 27,000 pounds of fentanyl from illegal migrants—enough to kill every American several times over.[9]

Because the federal government cannot manage the immigration crisis alone, Congress has "passed a series of provisions designed to encourage cooperation between the federal government and the states in the enforcement of federal immigration laws." *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1300 (10th Cir. 1999). Among those provisions is 8 U.S.C. § 1357(g), also known as Section 287(g). That section authorizes the United States Attorney General to execute "a written agreement with a State, or any political subdivision of a State" empowering local law-enforcement officers "to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States." 8 U.S.C. § 1357(g)(1). Local officials need not sign a 287(g) agreement "to communicate with the Attorney General regarding" illegal immigration or "to cooperate with" her enforcement of the immigration laws. *Id.* § 1357(g)(10). But a 287(g) agreement enables local officers to provide an unparalleled level of federal-state cooperation, both by deputizing local officials to act in the name of the United States, *id.* § 1357(g)(8), and by allowing them to allocate their budgets to "carry out" federal immigration policy, *id.* § 1357(g)(1).

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[9] *Fact Sheet: DHS Shows Results in the Fight to Dismantle Cartels and Stop Fentanyl from Entering the U.S.*, DHS (last visited May 16, 2025), https://tinyurl.com/bf65z7n2; *see also Facts About Fentanyl*, DEA (last visited May 16, 2025), https://tinyurl.com/mte3r9px (explaining that just 2 milligrams of fentanyl "can be lethal").

Despite Congress's "clear invitation" for "local agencies to participate in the process of enforcing federal immigration law," *Vasquez-Alvarez*, 176 F.3d at 1300, some local governments have instead sought to *hinder* federal immigration enforcement. These localities—often called "sanctuary cities"—frustrate immigration enforcement by "significantly limit[ing]" their officials' "participation in the enforcement of federal immigration activities."[10] Such jurisdictions have arisen in virtually every state, including Florida.[11]

Until 2019, that is. That year, the Legislature enacted Chapter 908 to "ensure that no city or county jurisdiction [would] get in the way of Florida's cooperation with our federal partners to enforce immigration law."[12] *See also* Ch. 2019-102, Laws of Fla. That chapter declared it "an important state interest to cooperate and assist the federal government in the enforcement of federal immigration laws within this state." § 908.101, Fla. Stat. (2019). To advance that interest, the law required "local law enforcement" to "use best efforts to support the enforcement of federal immigration law." *Id.* § 908.104(1). And most relevant here, it forbade any "state entity, law enforcement

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[10] SB 168 Staff Analysis, *supra* note 3 at 3.

[11] *See id.* at 3-4.

[12] *Governor Ron DeSantis Signs SB 168: Federal Immigration Enforcement*, Executive Office of the Governor (June 14, 2019), https://www.flgov.com/eog/news/press/2019/governor-ron-desantis-signs-sb-168-federal-immigration-enforcement.

agency, or local governmental entity [from] adopt[ing] or hav[ing] in effect a sanctuary policy." *Id.* § 908.103 (the sanctuary-policies law).

When first enacted, Chapter 908 defined sanctuary policy broadly to cover any "law, policy, practice, procedure, or custom adopted or allowed by" local governments that "prohibits or impedes a law enforcement agency from . . . communicating or cooperating with a federal immigration agency so as to limit [that] agency in, or prohibit the agency from" partaking in various enumerated acts. § 908.102(6), Fla. Stat. (2019). One such protected act was "[p]articipating in" a 287(g) agreement. *Id.* § 908.102(6)(d) (2019). That ban on prohibiting 287(g) agreements applied to county and municipal governments and law-enforcement agencies. *See, e.g.*, *id.* § 908.102(5) (2019) (defining "[l]ocal government entity" to include counties and municipalities); *id.* § 908.102(4) (defining "[l]aw enforcement agency" to include "municipal police departments, sheriffs' offices, . . . [and] county correctional agencies"). And to ensure local compliance, the Legislature empowered the Governor to sue non-compliant state and local officers, and the Attorney General to sue non-compliant "local government[s]" and "law enforcement agenc[ies]" for "declaratory or injunctive relief." *Id.* § 908.107(1)-(2) (2019).

B. Florida expands Chapter 908 to require county law-enforcement agencies to execute 287(g) agreements.

Prompted by a "mass influx of illegal immigrants" under the Biden Administration,[13] Florida "expand[ed]" Chapter 908 in 2022.[14] *See also* Ch. 2022-193, Laws of Fla. The legislation "change[d] three areas of the existing immigration enforcement statutes."[15] First, it extended the definition of "sanctuary policy" to cover efforts to bar law-enforcement agencies from communicating with state entities about illegal immigration. § 908.102(6)(f), Fla. Stat. (2022). Second, it barred Florida governments from contracting with carriers that transport illegal immigrants. *Id.* § 908.111 (2022). Last, and most important here, it required "each law enforcement agency operating a county detention facility [to] enter into" a 287(g) agreement. *Id.* § 908.11(1) (2022). The Legislature later updated that provision to require specific county actors—local "sheriffs" and "chief correctional officer[s]"—to execute those agreements for their law-enforcement agencies. *Id.* § 908.11(1) (2025). For consistency, the Legislature also edited the list of sanctuary policies to include efforts to limit law enforcement from "[p]articipating in any program or agreement authorized under s. 287 of the Immigration and

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[13] *Governor DeSantis Condemns Biden Administration's Termination of Title 42*, *supra* note 1.

[14] Fla. Sen. Staff Analysis, SB 1808, at 1 (Jan. 21, 2022), https://www.flsenate.gov/Session/Bill/2022/1808/Analyses/2022s01808.ap.PDF.

[15] *Id.*

Nationality Act, 8 U.S.C. s. 1357 *as required by s. 908.11*." *Id.* § 908.102(6)(d) (2022) (added clause in italics).

C. Florida again broadens Chapter 908 to support President Trump's immigration policy.

To buttress President Trump's efforts to combat illegal immigration, Florida again "strengthen[ed]" Chapter 908 in 2025.[16] *See also* Ch. 2025-1, Laws of Fla. Three changes are relevant here. For starters, the 2025 law placed greater obligations on local governments to execute 287(g) agreements and gave them more tools to do so. It expanded the best-efforts provision to require not just law enforcement to use best efforts, but "any official responsible for directing or supervising" a "local law enforcement agenc[y]" to "use best efforts to support the enforcement of federal immigration law." § 908.104(1), Fla. Stat. It also created a "Local Law Enforcement Immigration Grant Program" to "reimburse[]" local law enforcement for expenses "related to 287(g)." *Id.* § 908.1033. And it founded the "State Immigration Enforcement Council"—comprised of local "police chief[s]" and "sheriffs"—to "enhance information sharing" between local, state, and federal agencies by "[r]ecommending" actions to encourage 287(g) participation. *Id.* § 908.1032.

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[16] Fla. Sen. Staff Analysis, S.B. 2-C, at 1 (Feb. 11, 2025), https://www.flsenate.gov/Session/Bill/2025C/2C/Analyses/2025s00002C.ap.PDF.

Next, the 2025 act again widened the definition of "[s]anctuary policy" to cover local efforts to block a law-enforcement agency from "[p]articipating in a federal immigration operation with a federal immigration agency as permitted by federal and state law." *Id.* § 908.102(6)(h).

Finally, the Legislature reiterated the Governor's enforcement powers by underscoring that he may suspend "[a]ny executive or administrative state, county, or municipal officer" for "violat[ing] his or her duties under [Chapter 908]." *Id.* § 908.107(1).

D. Before Defendants threaten any enforcement action against Plaintiffs, and with no indication that their law-enforcement agencies wish to sign a 287(g) agreement, Plaintiffs seek declarations about Chapter 908.

Plaintiffs are the City of South Miami and its elected mayor, Javier Fernandez. Compl. ¶ 1. A few months after the 2025 act passed, they sued the Governor and the Attorney General for declaratory relief. *See id.* ¶¶ 111, 124. Their complaint does not allege that the City's local police department wishes to execute a 287(g) agreement, that the City would prevent that agency from executing such an agreement, or that Defendants have threatened South Miami in any way. *See generally id.* Even so, Count I seeks a declaration that the City need not "enter into a 287(g) agreement" because failing to do so is not "a sanctuary policy." *Id.* ¶ 111. And Count II requests several declarations about the Governor's enforcement powers, including that:

- The Governor may not discipline a municipal actor for "adopt[ing] or allow[ing] a sanctuary policy" because doing so "violates no duty that Chapter 908 imposes" on that actor, *id.* ¶ 124a;
- The Governor may not suspend "local elected officer[s]" under Chapter 908 because they are neither "executive [nor] administrative" officers, *id.* ¶ 124b;
- The Governor's statutory suspension power under Section 908.107 "exceeds the scope of" his constitutional suspension authority as applied to "elected municipal officers," *id.* ¶ 124c; and
- The Governor may not suspend "non-elected municipal officer[s]" under Chapter 908 because no constitutional provision or state law currently "authorizes the Governor to suspend any non-elected municipal officer," *id.* ¶ 124d.

LEGAL STANDARD

A motion to dismiss "test[s] the legal sufficiency of the complaint." *The Florida Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006). The Court should dismiss if, "assuming all the allegations in the complaint to be true, the plaintiff would [not] be entitled to the relief requested." *Newberry Square Fla. Laundromat, LLC v. Jim's Coin Laundry & Dry Cleaners, Inc.*, 296 So. 3d 584, 589 (Fla. 1st DCA 2020).

ARGUMENT

I. Plaintiffs lack standing and their claims are not ripe.

Plaintiffs' complaint suffers a host of justiciability problems that bar the Court from granting Plaintiffs relief on the merits. They lack standing and their claims are unripe.

A. Plaintiffs have not alleged facts showing that they have enacted, or plan to enact, a sanctuary policy.

"Declaratory judgment is appropriate only when there is an actual controversy before the court; a court otherwise lacks jurisdiction." *Scott v. Francati*, 214 So. 3d 742, 747 (Fla. 1st DCA 2017). To establish a justiciable controversy, Plaintiffs must establish both standing to sue Defendants and that the controversy is ripe. *See Apthorp v. Detzner*, 162 So. 3d 236, 241-42 (Fla. 1st DCA 2015) (standing); *Santa Rosa Cnty. v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995) (ripeness).

That is a high bar in a pre-enforcement challenge like this one. Because "[t]he operation of [a] statute is better grasped when viewed in light of a particular application," *Texas v. United States*, 523 U.S. 296, 301 (1998), a plaintiff challenging a law before enforcement must do more than speculate at "*possible* future injury," *Clapper v. Amnesty Int'l*, 568 U.S. 398, 409 (2013), or raise vague "fear[s] that [he] will be . . . prosecuted," *Treasure Chest Poker, LLC v. DBPR*, 238 So. 3d 338, 341 (Fla. 2d DCA 2017). He must instead allege "present, ascertainable facts" showing that he "face[s] an imminent threat of prosecution" by the defendant. *Id.* (necessary for standing); *see also State v. Fla.*

Consumer Action Network, 830 So. 2d 148, 152 (Fla. 1st DCA 2002) (similar for ripeness); *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1202 n.2 (11th Cir. 2021) (noting that ripeness and standing "merge" when it comes to imminent injury). To establish an imminent threat of prosecution here, Plaintiffs must therefore show that they have enacted, or plan to enact, a sanctuary policy that Defendants may prosecute. *See D & W Oil Co., Inc. v. O'Malley*, 293 So. 2d 128, 130 (Fla. 1st DCA 1974) ("Only persons who can demonstrate that they are or will be affected by a legislative act have proper standing to [challenge] the constitutionality of such legislation."); *see also* § 908.107, Fla. Stat. (empowering Defendants to discipline Plaintiffs only if they violate Chapter 908).

Plaintiffs' complaint alleges nowhere near enough facts to assess whether they have enacted, or plan to enact, a sanctuary policy. Even under the broadest construction of "sanctuary policy," Plaintiffs must (a) have "adopted" or have "allowed" a subsidiary local entity to adopt (b) a "law, policy, practice, procedure, or custom" (c) that hampers law enforcement from "communicating or cooperating with a federal immigration agency" to execute a 287(g) agreement. § 908.102(6)(d), (h), Fla. Stat.; *see infra* 19-28 (explaining why 287(g) agreements fall within the "sanctuary policy" definition's list of enumerated activities).

But Plaintiffs do not allege that South Miami has "adopted" any policy, practice, or custom of blocking 287(g) agreements. Nor do they assert that they have "allowed" their local police department to enact any categorical ban on 287(g) agreements. And

they offer far from enough facts to assess whether South Miami has promulgated those policies "implicitly." *See* Compl. ¶ 75. Indeed, their 124-paragraph complaint expends just 5 paragraphs describing South Miami's own circumstances. And if anything, those few allegations suggest that South Miami does *not* have an implicit policy against 287(g) agreements. *See, e.g.*, *id.* ¶ 2 ("Neither the City Commission, nor its City Manager or Police Chief, have established any ordinance, policy, practice, or custom that in any way seeks to impede the City's police officers from cooperating with federal authorities in their immigration enforcement efforts."); *id.* (South Miami uses "best efforts to comply with the provisions of Chapter 908, Florida Statutes, and cooperate with federal immigration authorities to enforce immigration laws within the City's municipal limits.").

Plaintiffs' lack of factual support stems from their misinterpretation of how Defendants understand the sanctuary-policies law. On their telling, Defendants believe that any jurisdiction that has not yet "execute[d] a 287(g) agreement" has enacted a sanctuary policy. *See id.* ¶ 105. But that is wrong. Unlike Florida's requirements for county law-enforcement officers, *see* § 908.11, Fla. Stat., Chapter 908 does not invariably compel municipalities to execute 287(g) agreements. Rather, Chapter 908 forbids municipalities from "adopt[ing]," or "allow[ing]" local law enforcement to adopt, policies or customs *that limit local police* from executing 287(g) agreements. § 908.102(6)(d), (h), Fla. Stat. Thus, while failure to execute a 287(g) agreement may reveal an implicit ban on those agreements when assessed alongside other facts, *see* Compl. ¶¶ 70-72

(describing Fort Myers's implicit ban), the bare fact that South Miami has not executed a 287(g) agreement is not itself a sanctuary policy. Other facts are needed, and South Miami has not offered them.

Defendants' actions and public statements confirm that understanding of Chapter 908. *See* Compl. ¶¶ 63-78. For months, the Governor's Office has "work[ed]" tirelessly to encourage local "police departments to do agreements." *Id.* ¶ 76. To that end, the office has sent multiple emails to municipal law-enforcement agencies to obtain voluntary "participation from as many municipalities as possible" in the 287(g) program. *Id.* ¶ 68. Not once has either the Attorney General or the Governor said that they would categorically discipline a municipality merely for not having a 287(g) agreement in place.

To the contrary, Defendants have threatened enforcement only when the *circumstances surrounding* a city's refusal to execute a 287(g) agreement revealed that the municipality in fact banned or discouraged those agreements or is failing to use best efforts to support the enforcement of federal immigration law. In Fort Myers, for example, the City refused to execute a 287(g) agreement that its local police department strenuously recommended. *Id.* ¶¶ 70-72. "By failing to approve the [police department's] 287(g) agreement" despite the department's strong insistence, Fort Myers had evinced an "implicit[] . . . sanctuary policy" barring 287(g) agreements. *Id.* ¶ 75. But that is worlds different from the barebones hypothetical South Miami has proposed, most obviously

because nothing suggests that South Miami has rejected a 287(g) agreement proposed by its local police department.

To sum up, a municipality does not adopt a sanctuary policy simply because it has not yet "execute[d] a 287(g) agreement." *Id.* ¶ 105. The municipality must instead have adopted a policy or custom that prohibits or impedes local police from executing such agreements, or have allowed local police to adopt that policy or custom for themselves. Because Plaintiffs have alleged nothing of the sort, they have failed to establish "an imminent threat of prosecution" by Defendants. *Treasure Chest*, 238 So. 3d at 341.

B. The Governor does not enforce Chapter 908 against municipal entities, only "officers," and Plaintiff Fernandez has not alleged facts establishing his standing to sue the Governor.

At a minimum, Plaintiffs lack standing to sue the Governor, so the Court should dismiss Count II. Because the Governor may enforce the sanctuary-policies law against only "executive or administrative . . . officer[s]," § 908.107(1), Fla. Stat., the only plaintiff who the Governor could possibly "prosecut[e]" is Mayor Fernandez. *Treasure Chest*, 238 So. 3d at 341. Yet Plaintiffs offer no substantive facts at all about Mayor Fernandez, let alone facts suggesting that Mayor Fernandez would violate the sanctuary-policies law by voting down or blocking a 287(g) agreement. Without those "ascertainable facts," *id.*, Mayor Fernandez can offer only speculative "fears" of "future injury," *Clapper*, 568 U.S. at 420-21, which cannot establish standing.

Even if Mayor Fernandez could surmount that hurdle for some of the declarations he seeks in Count II, he cannot do so for the relief sought in Paragraphs 124b-d,

which challenge the Governor's suspension power. To justify declarations about the suspension power, Mayor Fernandez must show that there is in fact an "imminent threat" that the Governor will suspend him. *Treasure Chest*, 238 So. 3d at 341. Since suspension is a uniquely "discretion[ary]" power that need not be exercised even where justified, *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019), Mayor Fernandez must offer substantial allegations showing "that Governor DeSantis would use his suspension authority" against the Mayor, *City of S. Miami v. Governor*, 65 F.4th 631, 643 (11th Cir. 2023). He has not come close. Nowhere in the complaint's few references to the Governor does he even hint at suspending an official, let alone officials in South Miami. Compl. ¶ 76. The closest Plaintiffs come is General Uthmeier's statement that non-compliant officials could be "remov[ed] from office by the Governor." *Id.* ¶ 75. But that statement, of course, did not come from the Governor. And regardless, that statement merely outlined the possible penalties a city *could* face for executing a sanctuary policy; it did not, and could not, promise that each penalty would come to pass.

One last point: In no event does Mayor Fernandez have standing to obtain the declaration sought in Paragraph 124d. That paragraph asks this Court to declare that the Governor may not suspend non-elected municipal officers under Section 908.107. *Id.* ¶ 124d. Mayor Fernandez, however, is an "elected" municipal officer, *id.* ¶ 18, so he lacks standing to seek that declaration, *see Hardage v. City of Jacksonville Beach*, 399 So. 2d

1077, 1079 (Fla. 1st DCA 1981) ("To have standing to challenge a portion of an ordinance, appellant must be affected by that portion he seeks to attack.").

II. Count II presents an improper vehicle to challenge the scope of the Governor's suspension power.

Count II asks this Court to issue various declarations about the proper scope of the Governor's suspension power. *See* Compl. ¶ 124b-d. But a declaratory-judgment action is "an improper vehicle for challenging" the suspension power. *Worrell v. DeSantis*, 386 So. 3d 867, 872 n.3 (Fla. 2024). Under current law, the sole judicial "'vehicle to challenge whether the Governor properly exercised the suspension power' is a petition for a writ of quo warranto." *Id.* (quoting *Warren v. DeSantis*, 365 So. 3d 1137, 1142 (Fla. 2023)). So this Court cannot provide the preemptive, declaratory relief that Plaintiffs seek in Paragraph 124b-d. A South Miami city official must instead raise those claims in a quo-warranto challenge to a suspension order, if that opportunity ever arises.

III. Plaintiffs fail to state a claim.

In all events, Plaintiffs' claims fail on the merits because the declarations they seek are wrong. Failing to execute a 287(g) agreement can certainly expose the existence of a sanctuary policy. And none of Plaintiffs' assertions about the Governor's enforcement power hold water.

A. Count I fails because a municipality's failure to execute a 287(g) agreement can indeed reveal a sanctuary policy.

In Count I, Plaintiffs request a declaration that a municipality's failure to execute a 287(g) agreement cannot violate the sanctuary-policies law. *See* Compl. ¶ 111. They

are mistaken. A municipality's failure to execute a 287(g) agreement can no doubt expose a forbidden sanctuary policy.

Start again with the text. The sanctuary-policies law forbids municipalities from "adopt[ing] or hav[ing] in effect a sanctuary policy." §§ 908.103, 908.102(5), Fla. Stat. A sanctuary policy is any "law, policy, practice, procedure, or custom adopted or allowed by a [municipality] which prohibits or impedes . . . a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit such law enforcement agency in, or prohibit the agency from" engaging in various enumerated acts. *Id.* § 908.102(6). Failure to execute a 287(g) agreement implicates at least two of those listed acts.

1. Most obvious, refusing to execute a 287(g) agreement may evince a "practice" or "custom" of "prohibit[ing] the [law-enforcement] agency from . . . [p]articipating in any program or agreement authorized under s. 287 of the Immigration and Nationality Act." *Id.* § 908.102(6)(d). The municipality's failure to approve an agreement when considered alongside other facts—like a police department's willingness to execute the agreement, *see* Compl. ¶¶ 70-72—can be strong evidence that the municipality has a categorical bar on 287(g) agreements, just as the sanctuary-policies law forbids. *See* § 908.102(6)(d), Fla. Stat.

Plaintiffs concede that, when first enacted in 2019, Section 908.102(6)(d) penalized *any* "local government entity that prohibits entry into 287(g) agreements." Compl.

¶ 51. But they claim that provision no longer applies to municipalities. By their lights, a 2022 amendment "limit[ed]" Section 908.102(6)(d) when it appended the clause "as required by s. 908.11" to the provision. *Id.* ¶ 50 (emphasis removed). Because Section 908.11 commands certain county law-enforcement officers to execute 287(g) agreements, *see id.* § 908.11, Fla. Stat., Plaintiffs contend that the "as required by" clause narrowed the otherwise broad definition of "sanctuary policy" to cover only efforts to block *county* officers from executing 287(g) agreements. Compl. ¶ 50.

That blinkered take on the 2022 amendment flouts its "historical context." *Raik v. Dep't of Legal Affairs, Bureau of Victim Comp.*, 344 So. 3d 540, 543 (Fla. 1st DCA 2022) (A statute "must be interpreted in its historical context."). Each time the Legislature has added to Chapter 908, it has *broadened* Florida's efforts to cooperate with federal immigration enforcement. *Supra* 5-11 (outlining the history of Chapter 908). The 2022 amendment was no different. The Legislature passed that act to abate the "mass influx of illegal immigrants" under the Biden Administration.[17] To achieve that end, the amendment "*[e]xpand[ed]*" Chapter 908; it did not limit it.[18] Nothing suggests that the Legislature, despite expanding the statute, also understood the act to carve out hundreds of local governments from Section 908.102(6)(d)'s reach. The Staff Analysis suggests just the opposite: It affirms that the Legislature read the 2022 amendment to change

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[17] Governor DeSantis Condemns Termination of Title 42, *supra* note 1.

[18] SB 1808 Staff Analysis, *supra* note 14 at 1.

just "three areas" of Chapter 908,[19] none of which involved narrowing its applicability to municipalities.

Plaintiffs' reading also overlooks that other parts of Chapter 908 contemplate that municipal police departments will be able to execute 287(g) agreements. *See City of Jacksonville v. Smith*, 159 So. 3d 888, 891 (Fla. 1st DCA 2015) (Courts must "construe related statutory provisions in harmony with one another."). Chapter 908's "Local Law Enforcement Immigration Grant Program," for example, reimburses municipal police departments for "expenses . . . related to 287(g)." *Id.* § 908.1033(2)(b), Fla. Stat. And Chapter 908's "State Immigration Enforcement Council"—comprised of both municipal police and county sheriffs—must recommend what "expenses related to 287(g) . . . should be reimbursable" for municipalities and request federal guidance "to further 287(g) . . . program participation in the state." *Id.* § 908.1032(4)(b), (c). Those provisions innately presume that local governments will be unable to frustrate efforts by local police to execute 287(g) agreements.

Alongside all that, Plaintiffs' narrowing construction clashes with provisions in Chapter 908 that compel municipalities to offer maximum cooperation to federal immigration officials. The point of Chapter 908, after all, is to advance Florida's "important state interest" in "cooperat[ing with] and assist[ing] the federal government in

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[19] SB 1808 Staff Analysis, *supra* note 14 at 1.

the enforcement of federal immigration laws." *Id.* § 908.101. The chapter thus compels municipalities to "use best efforts to support the enforcement of federal immigration law." *Id.* § 908.104(1). Categorical policies barring 287(g) agreements, however, stunt local law enforcement from giving their "best effort[]" to "cooperate" with and "assist" the federal government. Construed together with those provisions, the best reading of Section 908.102(6)(d) is that it forecloses categorical bans on 287(g) agreements. *See Smith*, 159 So. 3d at 891.

All said, to buy Plaintiffs' theory, this Court would need to conclude that the Legislature unwittingly narrowed a statute that it has expanded at every turn and that it has riddled with references to municipal 287(g) agreements. That reading is fanciful. The "as required by" clause was added merely to recognize the creation of Section 908.11 and to cross-reference that section as an example of the type of 287(g) agreements covered by Section 908.102(6)(d). That section therefore continues to preclude "local government entit[ies]" from "prohibit[ing] entry into 287(g) agreements." Compl. ¶ 51.

2. Failure to execute a 287(g) agreement can also lay bare a policy or custom of barring law enforcement from "[p]articipating in a federal immigration operation with a federal immigration agency as permitted by federal and state law"—another forbidden form of sanctuary policy. § 908.102(6)(h), Fla. Stat. The statute does not define "federal immigration operation," but "operation" commonly means "[o]ne or more acts

designed to further a purpose or achieve an effect; a set of activities planned for a specific objective." *Operation*, Black's Law Dictionary (12th ed. 2024). In context, then, a federal immigration operation is any act designed to "further . . . or achieve [the] effect" of enforcing federal immigration law. *See id.* That broad reading tracks Chapter 908's driving goal—to maximize state efforts "to cooperate and assist the federal government in the enforcement of federal immigration laws." § 908.101, Fla. Stat. And indeed, that is how both courts and the Department of Homeland Security have used the term "immigration operation." *See Texas v. U.S. Dep't of Homeland Sec.*, 123 F.4th 186, 208 (5th Cir. 2024); *United States v. Andrew*, 417 F. App'x 158, 162 (3d Cir. 2011); *see also Enforcement and Removal Operations*, U.S. Immigr. & Customs Enf't, https://www.ice.gov/about-ice/ero (visited May 16, 2025).

Applying that definition, an outright bar on 287(g) agreements stunts police from participating in scores of federal immigration activities. Among other things, without a 287(g) agreement, municipal officers may not independently:

- "interrogate any alien or person believed to be an alien as to his right to be or remain in the United States" or "process for immigration violations those individuals who have been arrested for State or Federal criminal offenses";
- "arrest without a warrant any alien entering or attempting to unlawfully enter the United States";

- "arrest without warrant for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens";
- "serve and execute warrants of arrest for immigration violations under [federal law]"; or
- "administer oaths and to take and consider evidence . . . to complete required alien processing," including "fingerprinting, photographing, and interviewing, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review";
- "prepare charging documents . . . including the preparation of the Notice to Appear (NTA) or other charging document, as appropriate, for the signature of an ICE officer";
- "issue immigration detainers . . . for aliens in categories established by ICE supervisors";
- "take and maintain custody of aliens arrested by ICE, or another State or local law enforcement agency on behalf of ICE"; and
- "take and maintain custody of aliens arrested pursuant to the immigration laws and transport . . . such aliens to ICE-approved detention facilities." Compl. Ex 1. at 2-3.

There are thus many federal immigration operations that police may not "[p]articipat[e] in" without a 287(g) agreement. § 908.102(6)(h), Fla. Stat. So Section 908.102(6)(h) impliedly prohibits a municipality from barring law-enforcement agencies from executing 287(g) agreements.

None of Plaintiffs' arguments overcomes that plain-text reading of Section 908.102(6)(h). *See* Compl. ¶ 90. They first submit that failing to sign a 287(g) "agreement is not an affirmative act and does not constitute limiting or prohibiting any activity." *Id.* But Section 908.103 does not prohibit merely failing to execute a 287(g) agreement; it prohibits having a *policy* against 287(g) agreements that a city can reveal by failing to sign an agreement, *see* § 908.102(6), Fla. Stat., and creating such a policy is surely an affirmative act. Plus, Plaintiffs are wrong in their premise. Inaction can surely "limit[] or prohibit[]" others from acting. Failure to sign a medical consent form, for example, can prohibit doctors from performing a medical procedure, just as failing to grant a security clearance can prevent one from accessing classified documents. And as described above, failing to execute a 287(g) agreement limits and prohibits local police from partaking in an array of federal immigration operations.

Plaintiffs next say that Section 908.102(6)(h) cannot apply to 287(g) agreements because the statute "specifically addresses the failure to sign 287(g) agreements in subsection (d) and makes that failure applicable only to counties as required by section 908.11." Compl. ¶ 90. But as discussed, subsection (d) is *not* limited to county-level

287(g) agreements; it applies to municipal 287(g) agreements as well. *Supra* 20-23. Nor does it matter that subsection (d) specifically addresses 287(g) agreements. "[S]tatutes are not necessarily written so that one and only one statute can apply at a time." *United States v. Carona*, 660 F.3d 360, 369 (9th Cir. 2011). "To the contrary, statutes often contain overlapping provisions," *id.*, particularly when the Legislature enacts a "capacious statute" to "close[s] loopholes," *United States v. Jones*, 965 F.3d 190, 195 n.3 (2d Cir. 2020). Here, the Legislature enacted subsection (h) as a catch-all to ensure that local governments "cooperate and assist the federal government" to the maximal degree. § 908.101, Fla. Stat.; *see* SB 2-C Staff Analysis, *supra* note 16 at 1 (noting that the 2025 amendment "strengthen[ed] the state's approach to illegal immigration"). That subsection (h) "overlap[s]" with or "duplicat[es]" some aspects of subsection (d) is no reason to stifle its plain meaning. *Jones*, 965 F.3d at 195 n.3; see also *State v. Gadsden Cnty.*, 58 So. 232, 235 (Fla. 1912) ("If the two [statutes] may operate upon the same subject without positive inconsistency or repugnancy in their practical effect and consequences, they should each be given the effect designed for them unless a contrary intent clearly appears.").

Last up, Plaintiffs say that failing to execute a 287(g) does not stymie participation in federal immigration operations because law enforcement need not sign an agreement to "communicate" or "cooperate" with federal immigration authorities. Compl. ¶ 90 (quoting 8 U.S.C. 1357(g)(10)(A)-(B)). But even if local police may communicate

or cooperate to some degree, a municipality still violates subsection (h) if it adopts or allows a policy that bars law enforcement from engaging in certain "federal immigration operations." *See* 908.102(6)(h), Fla. Stat. And as mentioned, categorically barring police from executing 287(g) agreements boxes them out of many federal immigration activities.

3. In a final effort, Plaintiffs posit that "the mere failure to approve the entry into a 287(g) agreement does not constitute a 'policy, practice, procedure, or custom adopted or allowed' by a municipality." Compl. ¶ 86. They are mistaken. The failure to approve a 287(g) agreement, particularly one proposed by local police, is significant evidence of an overarching "practice," "custom," or "policy" of rejecting 287(g) agreements. *See, e.g.*, *Raben-Pastal v. City of Coconut Creek*, 573 So. 2d 298, 300 (Fla. 1990) ("[A] decision on a single occasion is sufficient to establish an unconstitutional policy for which the city could be held liable."); *see also* Compl. ¶ 70-75 (in which the Attorney General determined that Fort Myers's refusal to approve a 287(g) agreement proposed by local police revealed the City's "implicit[]" ban on 287(g) agreements). Indeed, if unrebutted by mitigating circumstances, the municipality's refusal to approve a 287(g) agreement proposed by its law-enforcement agency presumptively indicates that the municipality employs a forbidden sanctuary policy.

B. Count II fails because none of the declarations that Plaintiffs seek about the Governor's enforcement powers are correct.

Plaintiffs' arguments in support of Count II are no more persuasive.

1. Plaintiffs first ask this Court to declare that municipal officers violate "no duty" under the sanctuary-policies law when they compel their municipalities to adopt a sanctuary policy. Compl. ¶ 124a. As they see it, Chapter 908 imposes only on *municipalities* the duty not to enact sanctuary policies. *See id.* So even when the municipality violates the sanctuary-policies law, its officers do not, and thus they cannot be subject to discipline by the Governor. *See id.*

That argument misunderstands the role of municipal officers. A municipal "corporation can only act through its agents." *State ex rel. Gulf Life Ins. Co. v. City of Live Oak*, 170 So. 608, 609 (Fla. 1936). For that reason, legal duties imposed on a municipality "operate upon the agents" responsible for the corporation's functions. *Id.*; *see id.* ("[T]he members of the board are but the agents who perform its duties."). And if those agents "fail to obey" commands issued to the municipality, they are equally "guilty of disobedience" and may be "punished in their natural capacities for failure to do what the law requires of them as the representatives of the corporation." *Id.* Were that not so, court injunctions against municipalities would impose no binding duties on their officers, leaving them immune from judicial "contempt" power. *Id.*

Plaintiffs' myopic view of municipal officers' "duties" under Chapter 908 also ignores the law's "[s]tatutory purpose." *Ellison v. Willoughby*, 373 So. 3d 1117, 1123 (Fla. 2023) (Muniz, C.J.) ("Statutory purpose, if it is knowable and capable of being defined with sufficient specificity, can be an important ingredient in statutory interpretation.").

Chapter 908 seeks to compel local governments "to cooperate and assist the federal government's" immigration efforts. § 908.101, Fla. Stat. To meet that end, Section 908.107 supplies consequences for municipal officers who undermine the State's collaboration efforts. Yet on Plaintiffs' reading, the Legislature excused hundreds of municipal officers from liability, even when they direct the municipalities they control to adopt sanctuary policies. That construction hamstrings the Governor from compelling local officials to faithfully cooperate with federal immigration enforcement, contrary to Chapter 908's stated purpose.

2. Plaintiffs claim next that because the Governor may suspend only "executive or administrative" officers for violating Section 908.107, he may not suspend "local elected officers." Compl. ¶ 124b. That borders on absurd. *Of course* an "executive or administrative" officer can also be an "elected officer." Governor DeSantis and President Trump are elected chief "executive[s]." Art. IV, § 1, Fla. Const.; *see* U.S. Const. art. II, § 1, cl. 1. And countless Florida administrative officers stand for election, from the Clerks of Court, Art. VIII, § 1, Fla. Const., to the Supervisors of Elections, § 98.015(1), Fla. Stat.

Plaintiffs' theory also forgets that Section 908.107 does not grant freestanding suspension power. Rather, that statute declares that violating one's duties under Chapter 908 can merit suspension under *other* suspension "authorit[ies]," *id.* § 908.107(1), like the general statute empowering the Governor to suspend municipal officers for

"neglect of duty," *id.* § 112.51(1). Yet that general suspension statute indeed enables the Governor to suspend "*elected* . . . municipal officials," no matter if they are executive or administrative. *Id.* (emphasis added).

The ramifications of Plaintiffs' theory further disprove it. In their eyes, legions of local officers may violate Chapter 908 without consequence merely because they are elected—even locally elected sheriffs that fail to fulfill their duties to execute 287(g) agreements under Section 908.11. A Legislature seeking to maximize local "cooperat[ion]" with the federal government would not have enacted such a toothless enforcement scheme. § 908.101, Fla. Stat.

3. For their third ask, Plaintiffs seek a declaration that Section 908.107 violates Article IV, Section 7(c) of Florida's Constitution if it enables the Governor to suspend local elected officers. Compl. ¶ 124c. But that constitutional provision does not limit the Legislature's power to authorize suspensions by statute; it merely grants the Governor constitutional power to suspend municipal officers indicted for a crime:

> By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter.
>
> Art. IV, § 7(c), Fla. Const.

Far from limiting the cases in which the Legislature may enable the Governor to suspend municipal officers, Section 7(c) endows the Governor constitutional power to suspend indicted municipal officers absent contrary legislation. *See In re Advisory Opinion*

to the Governor Request of July 12, 1976, 336 So. 2d 97, 99 (Fla. 1976). That provision does not purport to upend the longstanding rule that "municipal officers [may be] removed or expelled . . . in such manner and by such authority as the Legislature shall by statute fix and determine." *In re Opinion of the Justices*, 163 So. 410, 411 (Fla. 1935); *see Nelson v. Lindsey*, 10 So. 2d 131, 134 (Fla. 1942) (similar); *cf. Crist v. Fla. Ass'n of Crim. Def. Laws.*, 978 So. 2d 134, 141 (Fla. 2008). The Legislature always retains "ample power to prescribe the conditions under which municipal or other officers may be appointed or removed." *Bryan v. Landis*, 142 So. 650, 652 (Fla. 1932). That is all the Legislature did in Section 908.107(1). Any holding otherwise would jeopardize the Legislature's decades-old suspension statute for municipal officers, which is the primary mechanism through which the Governor may suspend municipal officers under Chapter 908. *See* § 112.51(1), Fla. Stat.

4. In their parting bid, Plaintiffs note that Section 908.107 enables the Governor to suspend non-elected municipal officers only "in the exercise of his or her authority under the State Constitution and state law." Compl. ¶ 124d. According to Plaintiffs, "no provision of the State Constitution or state law [currently] authorizes the Governor to suspend any non-elected municipal officer from office," so he may not suspend for violations of Chapter 908.

That is incorrect. As discussed, the general suspension statute for municipal officers authorizes the Governor to suspend any "elected or *appointed* municipal officer."

§ 112.52(1), Fla. Stat. (emphasis added). Municipal officers are either elected or appointed. There is thus a "state law" that "authorizes the Governor" to suspend non-elected—i.e., appointed—municipal officers for violating Chapter 908.

CONCLUSION

The Court should dismiss the complaint because Plaintiffs lack standing, their case is not ripe, and their claims fail on the merits. At the least, the Court should dismiss all counts against the Governor because no Plaintiff has standing to sue him. And in all events, it should dismiss the parts of Count II that challenge the Governor's suspension power because a declaratory-judgment action is an improper vehicle to assess that power.

May 16, 2025

Respectfully submitted,

JAMES UTHMEIER
Attorney General

/s/ David M. Costello
JEFFREY PAUL DESOUSA (FBN110951)
Acting Solicitor General
DAVID M. COSTELLO (FBN1045107)
Chief Deputy Solicitor General
CALEB STEPHENS (FBN1050554)
Assistant Solicitor General
WILLIAM H. STAFFORD III (FBN70394)
Special Counsel
OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, Florida 32399
(850) 414-3300
jeffrey.desousa@myfloridalegal.com
david.costello@myfloridalegal.com
caleb.stephens@myfloridalegal.com
william.stafford@myfloridalegal.com
jenna.hodges@myfloridalegal.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2025, a true and correct copy of the foregoing was served on all parties.

/s/ David M. Costello
Chief Deputy Solicitor General