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

CASE NO. 2025 CA 000505

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 the State of Florida; and
JAMES UTHMEIER, in his official capacity as Attorney General of the State of Florida,

Defendants.
_____/

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs bring this action against Defendants for declaratory relief, and state as follows:

OVERVIEW

1. This is an action brought by the City of South Miami ("City" or "South Miami") and South Miami's Mayor, Javier Fernandez, in his official capacity ("Mayor"), seeking a declaration that the City is not required by Florida law to enter into a "287(g) agreement" with United States Immigration and Customs Enforcement ("ICE"), and seeking further related declarations.

2. The City of 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. Since the enactment of Chapter 908, 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, all while the City's Police Department advances its central mission of preventing crime, maintaining the peace, and protecting life and property in South Miami.

3. One of the possible ways for a municipality, like South Miami, to work with federal immigration authorities is to enter into a so-called "287(g) agreement," a type of agreement authorized by and made expressly voluntary under federal law. Such agreements authorize qualified officers of local law enforcement agencies to perform designated immigration officer functions.

4. Municipalities consider a variety of factors when choosing whether to execute a 287(g) agreement, including the potential fiscal impact upon the municipality, and the municipality's potential exposure to liability—and consequent impact upon taxpaying residents—arising out of its police officers' participation in federal immigration enforcement.

5. Governor DeSantis and Attorney General Uthmeier have taken the position that a municipality's entry into such a 287(g) agreement is *mandated* by Chapter 908, Florida Statutes.

6. Specifically, Attorney General Uthmeier has taken the position that a municipality's failure to approve such an agreement constitutes the adoption of an unlawful "sanctuary policy," subjecting the municipality and individual municipal officers to enforcement action pursuant to section 908.107, Florida Statutes.

7. Governor DeSantis and Attorney General Uthmeier have in fact threatened to use their enforcement powers against municipalities and municipal officers in an effort to coerce municipalities into executing 287(g) agreements.

8. Under the City's reading of Chapter 908, the City is <u>not</u> required by law to enter into a 287(g) agreement, for several reasons.

9. Among other things, section 908.11, Florida Statutes, specifically requires "the sheriff or the chief correctional officer operating a *county* detention facility" to enter into a 287(g) agreement (emphasis added). And Chapter 908's definition of a prohibited "sanctuary policy" correspondingly includes action of a local government entity that limits or prohibits entry into 287(g) agreements "*as required by s. 908.11*" (emphasis added); i.e., the provision requiring only *county* officers to enter into such agreements.

10. By contrast, the Legislature chose *not* to include any such requirement for *municipalities* to enter into a 287(g) agreement. Chapter 908 contains no express *requirement* that municipalities enter into 287(g) agreements; and the definition of "sanctuary policy" makes no reference to 287(g) agreements except as expressly limited to the *county* requirement. Therefore, the plain text of the statute does not support the Governor and Attorney General's expansive reading of the controlling statutes.

11. Further, while section 908.102(6)(h), Florida Statutes includes within the definition of "sanctuary policy" a policy that prohibits or impedes the City from "[p]articipating in a federal immigration operation with a federal immigration agency as permitted by federal and state law," the failure to sign a 287(g) agreement does not amount to such a policy for several reasons. First, simply not signing an agreement is not an affirmative act and does not constitute limiting or prohibiting any activity. Second, the failure to sign a 287(g) agreement cannot be impliedly read into the general statement in subsection (h), where the "sanctuary policy" definition 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. Finally, as the governing federal statute authorizing 287(g) agreements expressly recognizes, signing an agreement is not required for a local law enforcement agency "to communicate with [ICE] regarding the immigration status of any

individual, including reporting knowledge that a particular alien is not lawfully present in the United States"; or to "cooperate with [ICE] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States," broadly encompassing the range of any potential "immigration operation" in which a local law enforcement agency might participate. *See* 8 U.S.C. 1357(g)(10)(A)-(B).

12. Moreover, even if the failure to execute a 287(g) agreement is deemed to constitute adopting or having in effect a sanctuary policy, the Governor's enforcement authority is more constrained than the Attorney General contends the statute purports to allow, as follows:

a. The Governor may not take any enforcement action against any individual officer on the basis of a municipality adopting or having in effect a sanctuary policy because only a "municipal officer who violates his or her duties" under Chapter 908 is subject to the Governor's enforcement powers under section 908.107, Florida Statutes, and a municipality's adoption or allowance of a sanctuary policy violates no duty that Chapter 908 imposes upon individual municipal officers.

b. Section 908.107, Florida Statutes, applies only to an "executive or administrative . . . municipal officer" not an elected officer, and therefore does not authorize the Governor to suspend a local elected officer.

c. To the extent section 908.107, Florida Statutes, is otherwise construed to allow the Governor to suspend any elected municipal officer from office, then that application of section 908.107 invalidly exceeds the scope of Section 7, Article IV, of the Florida Constitution, which limits the circumstances under which the Governor may suspend elected municipal officers.

d. To the extent section 908.107, Florida Statutes, is otherwise construed to allow the Governor to suspend any non-elected municipal officer from office, he may not do so because section 908.107, Florida Statutes allows the Governor to take such action only "in the exercise of his or her authority under the State Constitution and state law," and currently no provision of the State Constitution or state law authorizes the Governor to suspend any non-elected municipal officer from office.

13. Accordingly, Plaintiffs seek relief under Florida's Declaratory Judgment Act, seeking declarations that:

a. Not executing a 287(g) agreement does not constitute adopting or having in effect a sanctuary policy, as defined in section 908.102(6), Florida Statutes, in violation of section 908.103, Florida Statutes.

b. If sections 908.102(6) and 908.103, Florida Statutes, are determined to require the City to execute a 287(g) agreement, the Governor's enforcement powers under section 908.107, Florida Statutes, are limited as follows:

i. The Governor may not take any enforcement action against any individual officer on the basis of a municipality adopting or having in effect a sanctuary policy because only a "municipal officer who violates his or her duties" under Chapter 908 is subject to the Governor's enforcement powers under section 908.107, Florida Statutes, and a municipality's adoption or allowance of a sanctuary policy violates no duty that Chapter 908 imposes upon individual municipal officers.

ii. Section 908.107, Florida Statutes, applies only to an "executive or administrative . . . municipal officer" not an elected officer, and therefore does not authorize the Governor to suspend a local elected officer.

iii. To the extent section 908.107, Florida Statutes, is otherwise construed to allow the Governor to suspend any elected municipal officer from office, then that application of section 908.107 invalidly exceeds the scope of Section 7, Article IV, of the Florida Constitution, which limits the circumstances under which the Governor may suspend elected municipal officers.

iv. To the extent section 908.107, Florida Statutes, is otherwise construed to allow the Governor to suspend any non-elected municipal officer from office, he may not do so because section 908.107, Florida Statutes allows the Governor to take such action only "in the exercise of his or her authority under the State Constitution and state law," and currently no provision of the State Constitution or state law authorizes the Governor to suspend any non-elected municipal officer from office.

JURISDICTION AND VENUE

14. The Court has jurisdiction over this action for declaratory relief. *See* § 86.011, Fla. Stat.; *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991).

15. Venue is proper in Leon County, which is the official residence of both Defendants.

THE PARTIES

16. Plaintiff City of South Miami is a municipality existing under the laws of the State of Florida and is located in Miami-Dade County, Florida.

17. South Miami is a municipality established pursuant to Article VIII, Section 2(a) of the Florida Constitution and is authorized to exercise home rule powers pursuant to Article VIII, Section 2(b) of the Florida Constitution.

18. Plaintiff Javier Fernandez is the duly elected Mayor of the City and sues in his official capacity.

19. Ron DeSantis is the Governor of the State of Florida and is sued in his official capacity.

20. James Uthmeier is the Attorney General of the State of Florida and is sued in his official capacity.

21. Defendants each have an actual, cognizable interest in the action.

FACTUAL ALLEGATIONS

A. The City of South Miami, Its Police Department, and Cooperation With Federal Immigration Authorities

22. Pursuant to Section 2-12 of South Miami's City Code, South Miami has a Police Department which, under the supervision of the police chief, performs the following traditional functions of a local law enforcement agency.

a. Enforce the laws and ordinances.
b. Prevent crime and maintain peace and order.
c. Protect lives and property from malicious damage and injury.
d. Maintain and care for all property assigned to the police department.
e. Prosecute all violations within its jurisdiction.
f. Prepare and maintain all records required by law and the city manager.
g. Install and maintain all traffic regulatory signs and signals.
h. Maintain all traffic control street markings.
i. Perform all other related functions as required.

23. Although considered a "law enforcement agency" under section 908.102(4), Florida Statutes, South Miami's Police Department does not have authority to enter into agreements on its own; instead, agreements may only be entered into by the City.

24. The employment of police officers in the Police Department has been and continues to be the subject of collective bargaining agreements, to which the City is a party.

25. The City has insurance, which insures the City against, among other things, certain potential liabilities arising out of its police officers' acts and omissions in the performance of their law enforcement duties.

26. The City's Police Department currently cooperates with federal immigration authorities, including pursuant to section 908.104, Florida Statutes, by providing communication, information sharing, and support functions for federal immigration enforcement on an as-needed basis.

B. Section 287(g) of the U.S. Immigration and Nationality Act

27. One of the ways that a local law enforcement agency can work with federal immigration authorities was established by Section 287(g) of the U.S. Immigration and Nationality Act, codified in 8 U.S.C. § 1357(g).

28. Titled "Performance of immigration officer functions by State officers and employees," 8 U.S.C. § 1357(g) permits the delegation of certain immigration enforcement functions to state and local law enforcement agencies.

29. As relevant here, section 1357 authorizes the United States Attorney General "to enter into a written agreement" with a State or State subdivision, pursuant to which local law enforcement officers "may" carry out functions of an immigration officer "in relation to the investigation, apprehension, or detention of aliens in the United States . . . 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).

30. These written agreements are commonly referred to as 287(g) agreements; and the programs developed under this statutory grant of authority are commonly referred to as 287(g) programs.

31. 287(g) agreements are expressly voluntary, with the governing statute specifying that "Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection." 8 U.S.C. § 1357(g)(9).

32. Moreover, 8 U.S.C. § 1357 expressly provides that a 287(g) agreement is *not required* for local governments to share information or otherwise cooperate with federal immigration authorities:

> (10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or a political subdivision of a State—
>
> (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
>
> (B) to otherwise cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States."[1]

8 U.S.C. § 1357(g)(10)(A)-(B).

33. Since 287(g)'s enactment, there have been various "models" of 287(g) programs, the availability of which has changed from year to year or administration to administration.

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[1] Despite Section 287(g)'s specific references to the Attorney General, in practice, 287(g) agreements are made with ICE, which is under the purview of the Department of Homeland Security.

34. Currently there are three types, or models, of 287(g) agreements: (1) the Warrant Service Officer model; (2) the Jail Enforcement model; and (3) the Task Force model.

35. Each model provides different benefits to ICE, designates different authorized functions to local law enforcement agencies, and requires different levels of training, expense, and commitment for participating local law enforcement agencies.

36. These models each have different resource and oversight requirements, which help determine which model, if any, is the best fit for any particular local government.

37. The current Warrant Service Officer model authorizes "state and local law enforcement officers to execute civil immigration warrants," and requires for participating officers an eight-hour training.[2]

38. The current Jail Enforcement model delegates "certain immigration authorities to state and local law enforcement agencies to identify criminal aliens and immigration violators in state and local custody and place them into immigrations proceedings at the time of release from state or local custody and place them into immigration proceedings at the time of release from state or local custody." Among other things, for participating officers, this program involves an initial four-week training with a one-week refresher training as needed but not more frequently than every two years.[3]

39. The Task Force model "serves as a force multiplier by allowing state and local law enforcement agencies to enforce limited immigration authority during routine police enforcement duties. This model allows state and local agencies to carry out immigration enforcement activities in non-custodial settings while under ICE supervision and oversight." For participating officers,

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[2] https://www.ice.gov/doclib/about/offices/ero/287g/factsheetWSO.pdf.

[3] https://www.ice.gov/doclib/about/offices/ero/287g/factsheetJEM.pdf.

this model requires completing a 40-hour online course and having at least two years of law enforcement officer experience.[4, 5]

40. To participate in any of these 287(g) programs, a local law enforcement agency must sign a Letter of Interest (LOI) and Memorandum of Agreement (MOA), and submit them to ICE.

41. There is a standardized MOA for each of the three models, available on ice.gov as fillable form templates.

42. Filling in the form MOA leaves no room for amending the form, but only for local law enforcement agencies to fill in information such as party names, dates, and signatures.

43. While each of the MOAs are different, they all (among other provisions):

a. Require the local law enforcement agency to **bear certain costs and expenses**, including "the costs of participating LEA [local law enforcement agency] personnel with regard to their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability."

b. Provide that "Participating LEA personnel will be treated as Federal employees only for purposes of the Federal Tort Claims Act . . . and worker's compensation claims . . . ."

c. Result in participating law enforcement officers being "considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law," as set forth in 8 U.S.C. § 1357(g)(8), and as expressly incorporated into the MOAs for the Jail Enforcement Model and Task Force Model (providing that "participating LEA personnel performing a function on behalf of ICE authorized by this MOA will be considered acting under color of federal authority for purposes of determining liability and immunity from suit under federal or state law.").

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[4] https://www.ice.gov/doclib/about/offices/ero/287g/factsheetTFM.pdf.

[5] The Bill Analysis of Florida Senate Bill 2-C (2025), which was passed in the wake of Executive Order 14159 (discussed *infra*), and which amended Chapter 908 as described below, states there are only two program models, "the Jail Enforcement Model and the Warrant Service Officer program." It does not mention the Task Force model. *See* https://www.flsenate.gov/Session/Bill/2025C/2C/Analyses/2025s00002C.ap.PDF.

d. Have **no provision** for the federal government **indemnifying the local agency** for any liability of the local agency arising out of its officers' acts or omissions while operating under the MOA.

e. Allows the agreement to be terminated at will by either ICE or the participating local law enforcement agency.

C. Chapter 908, Florida Statutes, as Enacted in 2019 and Amended in 2022.

44. In 2019, the Florida Legislature passed Chapter 908, Florida Statutes, titled "Federal Immigration Enforcement."

45. Chapter 908, in language unchanged since its adoption, prohibits a state entity, law enforcement agency, or local governmental entity from adopting or having in effect a "sanctuary policy." Fla. Stat. § 908.103 (2025).

46. When first enacted in 2019, Chapter 908 defined "sanctuary policy" as follows, specifically referencing 287(g) agreements in subsection (d) of the definition:

> (6) "Sanctuary policy" means a law, policy, practice, procedure, or custom adopted or allowed by a state entity or local governmental entity which prohibits or impedes a law enforcement agency from complying with 8 U.S.C. s. 1373 or 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:
>
> (a) Complying with an immigration detainer;
>
> (b) Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in the custody of the law enforcement agency;
>
> (c) Providing a federal immigration agency access to an inmate for interview;
>
> (d) **Participating in any program or agreement authorized under section 287 of the Immigration and Nationality Act, 8 U.S.C. s. 1357**; or
>
> (e) Providing a federal immigration agency with an inmate's incarceration status or release date.

§ 908.102(6), Fla. Stat. (2019) (emphasis added).

47. Despite the reference to 287(g) agreements in the definition of "sanctuary policy," the 2019 version of Chapter 908 did not affirmatively require any entity or agency to enter into 287(g) agreements.

48. That changed in 2022, when the Florida Legislature passed various amendments to Chapter 908.

49. In the 2022 amendments, the Legislature added a new section, 908.11, which for the first time affirmatively required *certain* law enforcement agencies—specifically operators of *county* detention facilities—to enter into 287(g) agreements:

> (1) By January 1, 2023, *each law enforcement agency operating a county detention facility* must enter into a written agreement with the United States Immigration and Customs Enforcement to participate in the immigration program established under s. 287(g) of the Immigration and Nationality Act, 8 U.S.C. s. 1357. This subsection does not require a law enforcement agency to participate in a particular program model.

§ 908.11, Fla. Stat. (2022).

50. Simultaneously, the Legislature amended the definition of "sanctuary policy." Commensurate with the newly enacted section 908.11, the Legislature chose to *limit* the "sanctuary policy" definition's reference to 287(g) agreements required of *counties* by the new section 908.11:

> (6) "Sanctuary policy" means a law, policy, practice, procedure, or custom adopted or allowed by a state entity or local governmental entity which prohibits or impedes a law enforcement agency from complying with 8 U.S.C. s. 1373 or 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:
>
> (a) Complying with an immigration detainer;
>
> (b) Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in the custody of the law enforcement agency;
>
> (c) Providing a federal immigration agency access to an inmate for interview;
>
> (d) ***Participating in any program or agreement authorized under s. 287 of the Immigration and Nationality Act, 8 U.S.C. s. 1357~~; or~~ as required by s. 908.11***;

(e) Providing a federal immigration agency with an inmate's incarceration status or release date.; or

(f) Providing information to a state entity on the immigration status of an inmate or detainee in the custody of the law enforcement agency.

§ 908.102(6)(a)-(f) (2022) (emphasis added) (additions underlined; deletions in strike-through).

51. Thus, while Chapter 908's definition of "sanctuary policy," as initially enacted, included action of a local government entity that prohibits entry into 287(g) agreements, in 2022 the Legislature chose to specifically *limit* that subsection's application to 287(g) agreements "*as required by s. 908.11*" (emphasis added), i.e., the newly added provision requiring only operators of *county* detention facilities to execute 287(g) agreements.

52. The requirements and prohibitions of Chapter 908 are meant to be enforced by the Governor or Attorney General, as provided in 908.107, Florida Statutes. As enacted in 2019 (and not amended in 2022), section 908.107 stated:

(1) Any executive or administrative state, county, or municipal officer who violates his or her duties under this chapter may be subject to action by the Governor, in the exercise of his or her authority under the State Constitution and state law. Pursuant to s. 1(b), Art. IV of the State Constitution, the Governor may initiate judicial proceedings in the name of the state against such officers to enforce compliance with any duty under this chapter or restrain any unauthorized act contrary to this chapter.

(2) In addition, the Attorney General may file suit against a local governmental entity or local law enforcement agency in a court of competent jurisdiction for declaratory or injunctive relief for a violation of this chapter.

§ 908.107 (2019).

53. Section 908.107 further provides, in language adopted in 2019 and unchanged to this day, that "[i]f a local government entity or local law enforcement agency violates this chapter, the court must enjoin the unlawful sanctuary policy," and that "[a]n order approving a consent decree or granting an injunction must include written findings of fact that describe with specificity

the existence and nature of the sanctuary policy that violates this chapter." *See* § 908.107(3)-(4), Fla. Stat. (2019 & 2025).

D. President Donald Trump's Executive Order 14159

54. On January 20, 2025, President Donald Trump signed Executive Order 14159 ("EO 14159"), titled "Protecting the American People Against Invasion."

55. In pertinent part, EO 14159 encourages the Secretary of the Department of Homeland Security to take action to encourage state and local officials to enter into 287(g) agreements:

> Sec. 11. Federal-State Agreements. To ensure State and local law enforcement agencies across the United States can assist with the protection of the American people, the Secretary of Homeland Security shall, to the maximum extent permitted by law, and **with the consent of State or local officials** as appropriate, take appropriate action, through agreements under section 287(g) of the INA (8 U.S.C. 1357(g)) or otherwise, to authorize State and local law enforcement officials, as the Secretary of Homeland Security determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary of Homeland Security. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties. To the extent permitted by law, the Secretary of Homeland Security may structure each agreement under section 287(g) of the INA (8 U.S.C. 1357(g)) in the manner that provides the most effective model for enforcing Federal immigration laws in that jurisdiction.

EO 14159 (emphasis added).

E. Amendments to Chapter 908, in the Florida Legislature's 2025 Special Session.

56. Following the release of EO 14159, the Florida Legislature, in Florida Senate Bill 2-C (2025), made various amendments to Chapter 908.

57. One such amendment was to section 908.11, but only to specify *which* operators of *county* detention facilities must enter into 287(g) agreements:

> (1) The sheriff or the chief correctional officer ~~By January 1, 2023, each law enforcement agency~~ operating a county detention facility must enter into a written

> agreement with the United States Immigration and Customs Enforcement to participate in the immigration program established under s. 287(g) of the Immigration and Nationality Act, 8 U.S.C. s. 1357. The State Board of Immigration Enforcement must approve the termination of any such agreement. This subsection does not require a sheriff or chief correctional officer operating a county detention facility ~~law enforcement agency~~ to participate in a particular program model.

§ 908.11(1) (2025) (additions underlined; deletions in strike-through).

58. No amendments were made to section 908.11 adding any requirement that any municipal agencies or officers must enter into 287(g) agreements.

59. The 2025 amendments also added subsections (g) and (h) to the definition of "sanctuary policy," which now includes a policy that would limit or prohibit a law enforcement agency from:

> (g) Executing a lawful judicial warrant; or
>
> (h) Participating in a federal immigration operation with a federal immigration agency as permitted by federal and state law.

§ 908.102(6)(g)-(h) (2025).

60. The Legislature left unchanged subsection 908.102(6)(d), which still contains the limitation on the definition of "sanctuary policy" added in 2022: "Participating in any program or agreement authorized under s. 287 of the Immigration and Nationality Act, 8 U.S.C. s. 1357 *as required by s. 908.11*" (emphasis added), i.e., the provision requiring only certain operators of *county* detention facilities to execute 287(g) agreements.

61. Thus, in 2025, despite amending section 908.11 to specify those persons required to enter into 287(g) agreements, and despite amending the definition of "sanctuary policy," which includes a subsection specifically referencing 287(g) agreements, the Legislature chose not to

include municipalities as part of the mandate to enter into 287(g) agreements. *See* §§ 908.102(6) & 908.11, Fla. Stat. (2025).[6]

62. Finally, as relevant here, the 2025 amendments to Chapter 908 purported to expand the Governor's enforcement powers by enabling the Governor to *suspend a municipal officer from office* for violating "his or her duties" under Chapter 908:

> (1) Any executive or administrative state, county, or municipal officer who violates his or her duties under this chapter may be subject to action by the Governor, including potential suspension from office, in the exercise of his or her authority under the State Constitution and state law. Pursuant to s. 1(b), Art. IV of the State Constitution, the Governor may initiate judicial proceedings in the name of the state against such officers to enforce compliance with any duty under this chapter or restrain any unauthorized act contrary to this chapter.

§ 908.107(1), Fla. Stat. (2025) (additions underlined).

F. Governor DeSantis, Attorney General Uthmeier, and their Surrogates' Political Pressure Upon Local Law Enforcement Agencies to Enter Into 287(g) Agreements

63. On February 21, 2025, the Executive Director of the Florida Police Chiefs Association (FPCA) sent an e-mail to the FPCA's members, including South Miami Chief of Police Reo Hatfield. The FPCA e-mail encouraged its members to review bill analyses (of SB 2-C (2025) and SB 4-C (2025)) and "share as appropriate with your city manager/mayor and general counsel for your department and/or municipality." The e-mail was captioned "Green Alert."

64. The e-mail further explained that Larry Keefe, recently appointed as the Executive Director of the State Board of Immigration (an entity created by the 2025 amendments to Chapter 908), has provided the FPCA "with a template MOA for departments to review and consider regarding participation in in 287(g) programs." The e-mail concludes:

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[6] The Bill Analysis of Florida Senate Bill 2-C (2025) makes no mention of any new requirement directing municipalities to enter into a 287(g) agreement. https://www.flsenate.gov/Session/Bill/2025C/2C/Analyses/2025s00002C.ap.PDF.

> Director Keefe is seeking participation from as many municipalities as possible, as soon as possible. Please review the attached MOA and secondary guidance on how to transmit directly to ICE will be forthcoming. If you know you will be executing an MOA, please advise FPCA by email at jpritt@fpca.com.

65. The template MOA attached to the e-mail, which Director Keefe has provided to the FPCA and is encouraging municipalities such as South Miami to adopt, is the 287(g) Task Force model—the same template for which a link is provided on ICE's website, at https://www.ice.gov/identify-and-arrest/287g. A true and correct copy of the template Task Force MOA (as downloaded on March 27, 2025) is attached hereto as **Exhibit 1**.

66. As recommended by Director Keefe and the FPCA, South Miami Police Chief Hatfield forwarded the e-mail to City officials and attorneys, including the City Manager and Deputy City Manager.

67. The FPCA has sent repeated follow-up e-mails to its members, including Chief Hatfield, who in turn has forwarded the e-mails to City officials and attorneys. Over the last few weeks, the e-mails have increased in urgency, and are now captioned "Red Alert." Many of the e-mails include listings and statistics as to which agencies have executed 287(g) agreements, with the implication that future "Red Alert" e-mails may contain listings of agencies who have yet to sign 287(g) agreements.

68. One such e-mail, dated February 25, 2025, reattaches the Task Force MOA and reiterates that "Director Keefe is seeking participation from as many municipalities as possible, as soon as possible."

69. One municipality that, like the City of South Miami, was receiving communications and recommendations to enter into the Task Force MOA, was the City of Fort Myers.

70. Consistent with the recommendations of Director Keefe and the FPCA, City of Fort Myers Chief of Police Jason Fields recommended to Fort Myers the approval of the Task Force MOA.

71. On March 17, 2025, during a regularly scheduled meeting of the Fort Myers City Council, the Council voted whether to approve the Task Force MOA.

72. The Fort Myers City Council voted 3-3, which resulted in the Task Force MOA not being approved by operation of the Fort Myers City Code, which dictated that such a tie vote results in an item failing.

73. The next day, on March 18, 2025, in response to Fort Myers' vote, Attorney General Uthmeier wrote a letter to the Fort Myers City Council stating that its failure to approve the 287(g) agreement is an "action [which] constitutes a serious and direct violation of Florida Law." A true and correct copy of this letter is attached hereto as **Exhibit 2**.

74. The Attorney General's letter cited to Chapter 908, summarizing that it "prohibits law enforcement and local government entities from adopting or having in effect any sanctuary policy." He then referred to portions of the definition of sanctuary policy, citing only to subsection (h), which discusses not prohibiting a law enforcement agency from participating in a federal immigration operation with a federal immigration agency.

75. The Attorney General's letter then states:

> By **failing to approve** the Department's **287(g) agreement**, Fort Myers is ***implicitly* implementing a sanctuary policy**. Prohibiting city police officers from receiving the necessary federal training to adequately enforce U.S. immigration laws **not only prevents** city **police from enforcing** current **federal immigration law** but **effectively prevents** the city police **department from participating in federal immigration operations**.
>
> Sanctuary policies are not tolerated or lawful in Florida. Immediate corrective action is required. Failure to correct the Council's actions will result in the enforcement of all applicable civil and criminal penalties, including but not limited

> to being held in contempt, declaratory or injunctive relief, and **removal from office by the Governor pursuant to section 908.107, Florida Statutes and the Florida Constitution**.

(emphasis added).

76. Two days later, on March 20, 2025, Governor DeSantis posted on X a video of a discussion he participated in concerning immigration enforcement at New College of Florida. Among the Governor's remarks were:

> Under this 287(g), we've said, all jurisdictions in Florida must assist with immigration enforcement. So we have 67 counties. All 67 sheriffs have signed agreements with ICE. . . . **But we imposed a legal duty on them to do it. Same thing at the municipal level.** We're now working through getting police departments to do agreements. And if ICE doesn't want to do an agreement with one . . . then obviously, but if ICE wants to help then we're gonna do it. You saw this thing where the city council's fighting the mayor and the police chief about whether Fort Myers PD should be involved in it. **And it's not a policy question at this point whether they should be involved in it. Under our law, they must be involved in it and that will happen one way or another and we will get that done**.

(emphasis added).

77. Thereafter, on March 21, 2025—one day after Governor DeSantis made those remarks, and three days after the Attorney General's letter—the Fort Myers City Council reconvened for a special meeting.

78. This time, in the face of the Attorney General's and Governor's threats, Fort Myers approved the Task Force MOA unanimously.

G. The Present Controversy

79. As of the filing of this action, the City of South Miami has not approved entering into a 287(g) agreement.

80. The Governor's and Attorney General's actions and statements, including overt threatened enforcement against municipalities for failing to approve entry into a 287(g)

agreement, have placed South Miami in reasonable fear of enforcement action based on its failure to approve entering into a 287(g) agreement.

81. Several material considerations bear on the City's decision whether to approve entering into a 287(g) agreement, having nothing to do with agreement or disagreement with federal immigration policy or a desire to avoid cooperation with federal immigration authorities as provided by law. These include:

a. The increased cost for increased police functions that are ultimately the responsibility of the taxpayer.

b. Increased potential liability of South Miami for its officers' acts and omissions while operating under color of federal authority under a 287(g) agreement.

c. Whether any workplace injuries of officers operating under a 287(g) agreement would expose the City to competing federal and state workers' compensation claims; or whether the 287(g) agreement's requirement that federal worker's compensation law applies violates existing obligations owed by the City to its police officers who can currently file under state worker's compensation protections.

d. The lack of any provision for indemnification from the federal government for any increased liability.

e. Whether the City is covered by existing insurance for its officers' acts and omissions while operating under color of federal authority under a 287(g) agreement.

f. Whether the increased responsibility or job duties given to police officers operating under a 287(g) agreement is permitted by, or exposes the City under, any existing collective bargaining agreement.

82. A material consideration for the City of South Miami and its officials is also whether the entry into such an agreement is required by law.

83. The Governor and Attorney General contend that entering into a 287(g) agreement is required by Chapter 908, Florida Statutes, and specifically that failing to approve a 287(g) agreement constitutes adopting or having in effect an unlawful "sanctuary policy," subjecting the

municipality and individual municipal officers to enforcement action pursuant to section 908.107, Florida Statutes.

84. South Miami contends that the Defendants' reading is not supported by the plain language of the statute, and is contrary to an express limitation that the Legislature chose to place upon the definition of "sanctuary policy" in 2022.

85. Section 908.102(6) defines a sanctuary policy as a

> a law, policy, practice, procedure, or custom adopted or allowed by a state entity or local governmental entity which prohibits or impedes a law enforcement agency from complying with 8 U.S.C. s. 1373 or 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 [performing certain enumerated functions].

§ 908.102(6) (2025).

86. As an initial, general matter, 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.

87. More pointedly, Section 908.11, Florida Statutes, requires officers operating *county detention facilities* to enter into 287(g) agreements, and Chapter 908's definition of a prohibited "sanctuary policy" correspondingly includes action of a local government entity that prohibits entry into 287(g) agreements "*as required by s. 908.11*" (emphasis added), i.e., the provision requiring only operators of county detention facilities to execute 287(g) agreements.

88. By contrast, the Legislature chose *not* to include any such requirement for municipalities to enter into a 287(g) agreement. Chapter 908 contains no requirement that municipalities enter into 287(g) agreements.

89. The fact that the Legislature required county-level agencies to enter into 287(g) agreements shows that it knew how to enact that requirement if it wanted to. As compelled by

applicable interpretive canons, including the principle *expressio unius est exclusio alterius*, the Legislature's express specification that a failure to enter into a 287(g) agreement by only operators of county facilities can constitute a sanctuary policy, while failing to make any mention or requirement of municipalities, shows a contrary intention as to municipalities.

90. Further, while section 908.102(6)(h), Florida Statutes, includes within the definition of "sanctuary policy" a policy that prohibits or impedes the City from "[p]articipating in a federal immigration operation with a federal immigration agency as permitted by federal and state law," the failure to sign a 287(g) agreement does not amount to such a policy for several reasons. First, simply not signing an agreement is not an affirmative act and does not constitute limiting or prohibiting any activity. Second, the failure to sign a 287(g) agreement cannot be impliedly read into the general statement in subsection (h), where the "sanctuary policy" definition 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. Finally, as the governing federal statute authorizing 287(g) agreements expressly recognizes, signing an agreement is not required for a local law enforcement agency "to communicate with [ICE] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States"; or to "cooperate with [ICE] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States," broadly encompassing the range of any potential "immigration operation" in which a local law enforcement agency might participate. *See* 8 U.S.C. 1357(g)(10)(A)-(B).

91. The Florida Legislature's lack of intention to require municipalities to enter into 287(g) agreements is clear.

92. The Legislature made its intention clear in 2022, when it created section 908.11, requiring only operators of *county* detention facilities to sign 287(g) agreements, and correspondingly placing an express limitation on the definition of "sanctuary policy," limiting its reference to 287(g) agreements to those "required by s. 908.11."

93. The Legislature confirmed its intention in 2025, when it further amended Chapter 908 in a special session, in the wake of EO 14159. There, the Legislature made changes specifically to the definition of "sanctuary policy" and to section 908.11. The Legislature had the opportunity, if it so intended, to require municipalities to execute 287(g) agreements. But the Legislature chose not to require municipalities to enter into 287(g) agreements as it did for county-level agencies.

94. Moreover, as to any contention that Chapter 908 requires municipalities not only to enter into a 287(g) agreement, but the Task Force Model specifically, as Defendants have contended with respect to Fort Myers, that position is undermined by the SB 2-C (2025) Bill Analysis, which ignores the very existence of the Task Force Model, discussing only the other two.

95. It makes sense that the SB 2-C (2025) Bill Analysis discussed only the Jail Enforcement Model and Warrant Service Officer Model, in light of the facts that those models concern aliens in jail/correctional facilities, and the *only* persons Chapter 908 requires to execute 287(g) agreements are certain operators of "a county detention facility." § 908.11, Fla. Stat.

96. South Miami's position is further supported by the enabling federal legislation, which expressly provides that "[n]othing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection[,]" and that "[n]othing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or a political subdivision of a

State—(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or (B) to otherwise cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." *See* 8 U.S.C. § 1357(g)(9), (10)(A)-(B).

97. In other words, the very federal law enabling 287(g) agreements makes clear that entry into 287(g) agreement is voluntary, *and* that such agreements are not necessary for information sharing or cooperation between local law enforcement agencies and ICE.

98. Even if Chapter 908 is interpreted to mean that a failure to enter into a 287(g) agreement constitutes adopting or having in effect a sanctuary policy, then the Governor would nevertheless be more limited in his ability to exercise his enforcement powers under section 908.107, Florida Statutes, than the Attorney General contends the law purports to allow.

99. Specifically:

a. The Governor may not take any enforcement action against any individual officer on the basis of a municipality adopting or having in effect a sanctuary policy because only a "municipal officer who violates his or her duties" under Chapter 908 is subject to the Governor's enforcement powers under section 908.107, Florida Statutes, and a municipality's adoption or allowance of a sanctuary policy violates no duty that Chapter 908 imposes upon individual municipal officers.

b. Section 908.107, Florida Statutes, applies only to an "executive or administrative . . . municipal officer" not an elected officer, and therefore does not authorize the Governor to suspend a local elected officer.

c. To the extent section 908.107, Florida Statutes is otherwise construed to allow the Governor to suspend any elected municipal officer from office, then that application of section 908.107 invalidly exceeds the scope of Section 7, Article IV, of the Florida Constitution, which limits the circumstances under which the Governor may suspend elected municipal officers.

d. To the extent section 908.107, Florida Statutes, is otherwise construed to allow the Governor to suspend any non-elected municipal officer from office, he may not do so because section 908.107, Florida Statutes allows the Governor to take such action only "in the exercise of his or her authority under the State Constitution and

state law," and currently no provision of the State Constitution or state law authorizes the Governor to suspend any non-elected municipal officer from office.

COUNT I – DECLARATORY RELIEF

100. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 99, as if fully set forth herein.

101. This count is an action for declaratory judgment, pursuant to Section 86.011, et seq., Florida Statutes.

102. All elements necessary to support a cause of action for declaratory relief are present.

103. There is a bona fide, actual, present need for a declaration concerning South Miami's failure to enter into a 287(g) agreement.

104. The Governor and Attorney General have expressly taken the position that a municipality's entry into a 287(g) agreement is *required* by Chapter 908, Florida Statutes, and specifically that failure to approve such an agreement constitutes adopting or having in effect an unlawful "sanctuary policy," subjecting the municipality and individual municipal officers to enforcement action pursuant to section 908.107, Florida Statutes.

105. Plaintiffs contend that Governor DeSantis' and Attorney General Uthmeier's interpretation is not supported by the plain language of Chapter 908, including specifically that the City of South Miami is not obligated by law to execute a 287(g) agreement.

106. Plaintiffs contend that Governor DeSantis' and Attorney General Uthmeier's interpretation is contrary to an express limitation the Legislature chose to place upon the statutory definition of "sanctuary policy" in 2022, and chose to leave in place in 2025.

107. The declaration sought deals with a present controversy as to an ascertainable set of facts.

108. Plaintiffs' rights and privileges are dependent upon the law applicable to the facts.

109. The City of South Miami, the Mayor, the Governor, and the Attorney General have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.

110. The antagonistic and adverse interests are all before this Court.

111. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor, and that this Court enter the following declarations and grant any such other and further relief as this Court deems just and proper:

(1) The City of South Miami is not obligated to enter into a 287(g) agreement;

(2) Not executing a 287(g) agreement does not constitute adopting or having in effect a sanctuary policy, as defined in section 908.102(6), Florida Statutes, in violation of section 908.103, Florida Statutes.

COUNT II – DECLARATORY RELIEF

112. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 99, as if fully set forth herein.

113. This count is an action for declaratory judgment, pursuant to Section 86.011, et seq., Florida Statutes.

114. All elements necessary to support a cause of action for declaratory relief are present.

115. In the event the Court declares South Miami is required under Chapter 908, Florida Statutes, to enter into a 287(g) agreement, there is a bona fide, actual, present need for a declaration concerning the Governor's enforcement authority pursuant to section 908.107, Florida statutes.

116. The Governor and Attorney General have expressly taken the position that a municipality's entry into a 287(g) agreement is *required* by Chapter 908, Florida Statutes, and specifically that failure to approve such an agreement constitutes adopting or having in effect an unlawful "sanctuary policy," subjecting the municipality and individual municipal officers to enforcement action pursuant to section 908.107, Florida Statutes.

117. Governor DeSantis and Attorney General Uthmeier have in fact threatened to use their enforcement powers against municipalities and municipal officers in an effort to coerce municipalities into approving the entry into 287(g) agreements, and have already successfully coerced one municipality into signing an MOA (and likely others among those that have already executed agreements) under threat of enforcement action based on their interpretation of Chapter 908.

118. Plaintiffs contend that Governor DeSantis' and Attorney General Uthmeier's interpretation of Chapter 908 is not supported by the plain language of Chapter 908, including specifically that even if the City fails to approve entering into a 287(g) agreement, the Governor's enforcement powers are more limited than the Governor contends.

119. Plaintiffs contend that Governor DeSantis' and Attorney General Uthmeier's interpretation of Chapter 908, if correct, would make certain applications of section 908.107 invalidly exceed the limits the Florida Constitution places upon the Governor's authority to suspend municipal officers.

120. The declaration sought deals with a present controversy as to an ascertainable set of facts.

121. Plaintiffs' rights and privileges are dependent upon the law applicable to the facts.

122. The City of South Miami, the Mayor, the Governor, and the Attorney General have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.

123. The antagonistic and adverse interests are all before this Court.

124. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor, and that this Court enter the following declarations and grant any such other and further relief as this Court deems just and proper:

If under Chapter 908, Florida Statutes, the failure to execute a 287(g) agreement constitutes adopting or having in effect a sanctuary policy in violation of section 908.103, Florida Statutes, then, nevertheless:

a. The Governor may not take any enforcement action against any individual officer on the basis of a municipality adopting or having in effect a sanctuary policy because only a "municipal officer who violates his or her duties" under Chapter 908 is subject to the Governor's enforcement powers under section 908.107, Florida Statutes, and a municipality's adoption or allowance of a sanctuary policy violates no duty that Chapter 908 imposes upon individual municipal officers.

b. Section 908.107, Florida Statutes, applies only to an "executive or administrative . . . municipal officer" not an elected officer, and therefore does not authorize the Governor to suspend a local elected officer.

c. To the extent section 908.107, Florida Statutes, is otherwise construed to allow the Governor to suspend any elected municipal officer from office, then that application of section 908.107 invalidly exceeds the scope of Section 7, Article IV, of the Florida Constitution, which limits the circumstances under which the Governor may suspend elected municipal officers.

d. To the extent section 908.107, Florida Statutes, is otherwise construed to allow the Governor to suspend any non-elected municipal officer from office, he may not do so because section 908.107, Florida Statutes allows the Governor to take such action only "in the exercise of his or her authority under the State Constitution and state law," and currently no provision of the State Constitution or state law authorizes the Governor to suspend any non-elected municipal officer from office.

Dated March 27, 2025.

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Exhibit 1

MEMORANDUM OF AGREEMENT
287(g) Task Force Model

This Memorandum of Agreement (MOA) constitutes an agreement between United States Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and the NAME OF LAW ENFORCEMENT AGENCY and STATE, pursuant to which ICE delegates to nominated, trained, and certified officers or employees of the NAME OF LAW ENFORCEMENT AGENCY and STATE (hereinafter interchangeably referred to as "Law Enforcement Agency" (LEA)), the authority to perform certain immigration enforcement functions as specified herein. The LEA represents NAME OF LAW ENFORCEMENT AGENCY and STATE in the implementation and administration of this MOA. The LEA and ICE enter into this MOA in good faith and agree to abide by the terms and conditions contained herein. The ICE and LEA points of contact for purposes of this MOA are identified in Appendix A.

I. PURPOSE

The purpose of this MOA is to set forth the terms and conditions pursuant to which selected LEA personnel (participating LEA personnel) will be nominated, trained, and thereafter be approved by ICE to perform certain functions of an immigration officer under the direction and supervision of ICE within the LEA's jurisdiction. This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating LEA personnel to perform. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating LEA personnel as members of the LEA. However, the exercise of the immigration enforcement authority granted under this MOA to participating LEA personnel shall occur only as provided in this MOA. This MOA also describes the complaint procedures available to members of the public regarding immigration enforcement actions taken pursuant to this agreement by participating LEA personnel.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of Homeland Security, or her designee, to enter into written agreements with a State or any political subdivision of a State so that qualified officers and employees can perform certain functions of an immigration officer. This MOA constitutes such a written agreement.

III. POLICY

This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating LEA personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating LEA personnel be subject to ICE direction and supervision while performing delegated immigration officer functions pursuant to this MOA. For the purposes of this MOA, ICE officers will provide direction and supervision for participating LEA personnel only as to immigration enforcement functions as authorized in this MOA. The LEA retains supervision of all other aspects of the employment and performance of duties of participating LEA personnel.

IV. TRAINING AND ASSIGNMENTS

Before participating LEA personnel receive authorization to perform immigration officer functions granted under this MOA, they must successfully complete mandatory training on relevant administrative, legal, and operational issues tailored to the immigration enforcement functions to be performed as provided by ICE instructors and thereafter pass examinations equivalent to those given to ICE officers. The mandatory training may be made available to the LEA in both in-person and online, recorded or virtual-meeting formats, as determined by ICE. Only participating LEA personnel who are nominated, trained, certified, and authorized, as set out herein, have authority pursuant to this MOA to conduct the delegated immigration officer functions, under ICE direction and supervision, enumerated in this MOA.

Upon the LEA's agreement, participating LEA personnel performing immigration-related duties pursuant to this MOA will be assigned to various units, teams, or task forces designated by ICE.

V. DESIGNATION OF AUTHORIZED FUNCTIONS

For the purposes of this MOA, participating LEA personnel are authorized to perform the following functions pursuant to the stated authorities, subject to the limitations contained in this MOA:

- The power and authority to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States (INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(l)) and to process for immigration violations those individuals who have been arrested for State or Federal criminal offenses.

- The power and authority to arrest without a warrant any alien entering or attempting to unlawfully enter the United States in the officer's presence or view, or any alien in the United States, if the officer has reason to believe the alien to be arrested is in the United States in violation of law and is likely to escape before a warrant can be obtained. INA § 287(a)(2) and 8 C.F.R. § 287.5(c)(1). Subsequent to such arrest, the arresting officer must take the alien without unnecessary delay for examination before an immigration officer having authority to examine aliens as to their right to enter or remain in the United States.

- The power to 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, if the officer has reason to believe the alien to be arrested is in the United States in violation of law and is likely to escape before a warrant can be obtained. INA § 287(a)(4) and 8 C.F.R. § 287.5(c)(2).

- The power to serve and execute warrants of arrest for immigration violations under INA § 287(a) and 8 C.F.R. § 287.5(e)(3).

- 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)) to complete required alien processing to include fingerprinting,

photographing, and interviewing, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review.

- The power and authority to prepare charging documents (INA § 239, 8 C.F.R. § 239.1; INA § 238, 8 C.F.R § 238.1; INA § 241(a)(5), 8 C.F.R § 241.8; INA § 235(b)(l), 8 C.F.R. § 235.3) including the preparation of the Notice to Appear (NTA) or other charging document, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors.

- The power and authority to issue immigration detainers (8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for aliens in categories established by ICE supervisors.

- The power and authority to take and maintain custody of aliens arrested by ICE, or another State or local law enforcement agency on behalf of ICE. (8 C.F.R. § 287.5(c)(6))

- The power and authority to take and maintain custody of aliens arrested pursuant to the immigration laws and transport (8 C.F.R. § 287.5(c)(6)) such aliens to ICE-approved detention facilities.

VI. RESOLUTION OF LOCAL CHARGES

The LEA is expected to pursue to completion prosecution of any state or local charges that caused the alien to be taken into custody. ICE may assume custody of aliens who have been convicted of a state or local offense only after such aliens have concluded service of any sentence of incarceration. The ICE Enforcement and Removal Operations Field Office Director or designee shall assess on a case-by-case basis the appropriate actions for aliens who do not meet the above criteria based on special interests or other circumstances after processing by the LEA.

After notification to and coordination with the ICE supervisor, the alien whom participating LEA personnel have determined to be removable will be arrested on behalf of ICE by participating LEA personnel and be transported by the LEA on the same day to the relevant ICE detention office or facility.

VII. NOMINATION OF PERSONNEL

The chief officer of the LEA will nominate candidates for initial training and certification under this MOA. For each candidate, ICE may request any information necessary for a background check and to evaluate a candidate's suitability to participate in the enforcement of immigration authorities under this MOA. All candidates must be United States citizens. All candidates must have at least two years of LEA work experience. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances and access to appropriate DHS and ICE databases/systems and associated applications.

Should a candidate not be approved, a substitute candidate may be submitted if time permits such substitution to occur without delaying the start of training. Any subsequent expansion in the number of participating LEA personnel or scheduling of additional training classes may be based

on an oral agreement of the parties but will be subject to all the requirements of this MOA.

VIII. TRAINING OF PERSONNEL

ICE will provide participating LEA personnel with the mandatory training tailored to the immigration functions to be performed. The mandatory training may be made available to the LEA in both in-person and online, recorded or virtual-meeting formats, as determined by ICE.

Training will include, among other things: (i) discussion of the terms and limitations of this MOA; (ii) the scope of immigration officer authority; (iii) relevant immigration law; (iv) the ICE Use of Force Policy; (v) civil rights laws; (vi) the detention of aliens; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) the obligations under federal law, including applicable treaties or international agreements, to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating LEA personnel are trained and certified, ICE may provide additional updated training on relevant administrative, legal, and operational issues related to the performance of immigration officer functions, unless either party terminates this MOA pursuant to Section XVIII below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or a designated team leader.

IX. CERTIFICATION AND AUTHORIZATION

ICE will certify in writing the names of those LEA personnel who successfully complete training and pass all required testing. Upon certification, ICE will provide the participating LEA personnel with a signed authorization to perform specified functions of an immigration officer for an initial period of two years from the date of the authorization. ICE will also provide a copy of the authorization to the LEA. The ICE supervisory officer, or designated team leader, will evaluate the activities of all personnel certified under this MOA.

Authorization of participating LEA personnel to act pursuant to this MOA may be revoked at any time and for any reason by ICE or the LEA. Such revocation will require notification to the other party to this MOA within 48 hours. The chief officer of the LEA and ICE will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA, pursuant to Section XVIII below, shall constitute revocation of all immigration enforcement authorizations delegated herein.

X. COSTS AND EXPENDITURES

Participating LEA personnel will carry out designated functions at the LEA's expense, including salaries and benefits, local transportation, and official issue material. Whether or not the LEA receives financial reimbursement for such costs through a federal grant or other funding mechanism is not material to this MOA.

ICE is responsible for the installation and maintenance of the Information Technology (IT) infrastructure. The use of the IT infrastructure and the DHS/ICE IT security policies are

defined in the Interconnection Security Agreement (ISA). The ISA is the agreement between ICE's Chief Information Security Officer and the LEA's Designated Accreditation Authority. The LEA agrees that each of its sites using an ICE-provided network access or equipment will sign the ISA, which defines the DHS ICE 4300A Sensitive System Policy and Rules of Behavior for each user granted access to the DHS network and software applications. Failure to adhere to the terms of the ISA could result in the loss of all user privileges.

The LEA is responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material used in the execution of the LEA's mission. ICE will provide instructors and training materials. The LEA is responsible for the salaries and benefits, including any overtime, of all its personnel being trained or performing duties under this MOA and of those personnel performing the regular functions of the participating LEA personnel while they are receiving training. ICE is responsible for the costs of the LEA personnel's travel expenses while in a training status, as authorized by the Federal Travel Regulation and the ICE Travel Handbook. These expenses include housing, per diem and all transportation costs associated with getting to and from training. ICE is responsible for the salaries and benefits of all ICE personnel, including instructors and supervisors.

The LEA is responsible for providing all administrative supplies (e.g. paper, printer toner) necessary for normal office operations. The LEA is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints, etc.

XI. ICE SUPERVISION

Immigration enforcement activities conducted by participating LEA personnel will be supervised and directed by ICE. Participating LEA personnel are not authorized to perform immigration officer functions except when working under the supervision or direction of ICE.

When operating in the field, participating LEA personnel shall contact an ICE supervisor at the time of exercising the authority in this MOA, or as soon as is practicable thereafter, for guidance. The actions of participating LEA personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for that specific individual.

For the purposes of this MOA, ICE officers will provide supervision of participating LEA personnel only as to immigration enforcement functions. The LEA retains supervision of all other aspects of the employment of and performance of duties by participating LEA personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating LEA personnel in exercising these authorities shall be DHS and ICE policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating LEA personnel will be expected or required to violate or otherwise fail to maintain the LEA's rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law unless doing so would violate

federal law.

If a conflict arises between an order or direction of an ICE supervisory officer and LEA rules, standards, or policies, the conflict shall be promptly reported to ICE, and the chief officer of the LEA, or designee, when circumstances safely allow the concern to be raised. ICE and the chief officer of the LEA shall attempt to resolve the conflict.

Whenever possible, the LEA will deconflict all addresses, telephone numbers, and known or suspected identities of violators of the INA with ICE's Homeland Security Investigations or ICE's Enforcement and Removal Operations prior to taking any enforcement action. This deconfliction will, at a minimum include wants/warrants, criminal history, and a person's address, and vehicle check through TECS II or any successor system.

LEA participating personnel authorized pursuant to this MOA may be assigned and/or co-located with ICE as task force officers to assist ICE with criminal investigations.

XII. REPORTING REQUIREMENTS

The LEA will be responsible for tracking and maintaining accurate data and statistical information for their 287(g) program, including any specific tracking data requested by ICE. Upon ICE's request, such data and information shall be provided to ICE for comparison and verification with ICE's own data and statistical information, as well as for ICE's statistical reporting requirements and to assess the progress and success of the LEA's 287(g) program.

XIII. RELEASE OF INFORMATION TO THIRD PARTIES

The LEA may, at its discretion, communicate the substance of this agreement to the media and other parties expressing an interest in the law enforcement activities to be engaged in under this MOA. It is the practice of ICE to provide a copy of this MOA, only after it has been signed, to requesting media outlets; the LEA is authorized to do the same.

The LEA hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOA. For releases of information to the media, the LEA must coordinate in advance of release with the ICE Office of Public Affairs, which will consult with ICE Privacy Office for approval prior to any release. The points of contact for ICE and the LEA for this purpose are identified in Appendix C. For releases of information to all other parties, the LEA must coordinate in advance of release with the FOD or the FOD's representative.

Information obtained or developed as a result of this MOA, including any documents created by the LEA that contain information developed or obtained as a result of this MOA, is under the control of ICE and shall not be disclosed unless: 1) permitted by applicable laws, regulations, or executive orders; and 2) the LEA has coordinated in advance of release with (a) the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval, prior to any release to the media, or (b) an ICE officer prior to releases to all other parties. LEA questions regarding the

applicability of this section to requests for release of information shall be directed to an ICE officer.

Nothing herein limits LEA's compliance with state public records laws regarding those records that are solely state records and not ICE records.

The points of contact for ICE and the LEA for the above purposes are identified in Appendix C.

XIV. LIABILITY AND RESPONSIBILITY

Except as otherwise noted in this MOA or allowed by federal law, and to the extent required by 8 U.S.C. § 1357(g)(7) and (8), the LEA will be responsible and bear the costs of participating LEA personnel regarding their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating LEA personnel will be treated as Federal employees for purposes of the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1), 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function on behalf of ICE as authorized by this MOA. *See* 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671. In addition, it is the understanding of the parties to this MOA that participating LEA personnel performing a function on behalf of ICE authorized by this MOA will be considered acting under color of federal authority for purposes of determining liability and immunity from suit under federal or state law. *See* 8 U.S.C. § 1357(g)(8).

Participating LEA personnel named as personal-capacity defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. *See* 28 C.F.R. § 50.15. Absent exceptional circumstances, such requests must be made in writing. LEA personnel who wish to submit a request for representation shall notify the local ICE Office of the Principal Legal Advisor (OPLA) field location at OPLA Address---to be completed by ICE. OPLA, through its headquarters, will assist LEA personnel with the request for representation, including the appropriate forms and instructions. Unless OPLA concludes that representation clearly is unwarranted, it will forward the request for representation, any supporting documentation, and an advisory statement opining whether: 1) the requesting individual was acting within the scope of his/her authority under 8 U.S.C. § 1357(g) and this MOA; and, 2) such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Tort Litigation Section, Civil Division, Department of Justice (DOJ). Representation is granted at the discretion of DOJ; it is not an entitlement. *See* 28 C.F.R. § 50.15.

The LEA agrees to cooperate with any federal investigation related to this MOA to the full extent of its available powers, including providing access to appropriate databases, personnel, individuals in custody and documents. Failure to do so may result in the termination of this MOA. Failure of any participating LEA employee to cooperate in any federal investigation related to this MOA may result in revocation of such individual's authority provided under this MOA. The LEA agrees to cooperate with federal personnel conducting reviews to ensure compliance with the terms of this MOA and to provide access to appropriate databases, personnel, and documents necessary to complete such compliance review. It is understood that information provided by any LEA personnel under threat of disciplinary action in an administrative investigation cannot be

used against that individual in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967), and its progeny.

As the activities of participating LEA personnel under this MOA derive from federal authority, the participating LEA personnel will comply with federal standards relating to the Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny, which govern the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

The LEA and ICE are each responsible for compliance with the Privacy Act of 1974, 5 U.S.C. § 552a, DHS Privacy Act regulations, 6 C.F.R. §§ 5.20-5.36, as applicable, and related system of records notices regarding data collection and use of information under this MOA.

XV. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by participating LEA personnel, regarding activities undertaken under the authority of this MOA, is included at Appendix B.

XVI. CIVIL RIGHTS STANDARDS

Participating LEA personnel who perform certain federal immigration enforcement functions are bound by all applicable federal civil rights statutes and regulations.

Participating LEA personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the LEA as needed.

XVII. MODIFICATION OF THIS MOA

Modifications of this MOA must be proposed in writing and approved by the signatories.

XVIII. EFFECTIVE DATE, SUSPENSION, AND TERMINATION OF THIS MOA

This MOA becomes effective upon signature of both parties and will remain in effect until either party terminates or suspends the MOA. Termination by the LEA shall be provided, in writing, to the local Field Office.

In instances where serious misconduct or violations of the terms of the MOA come to the attention of ICE, the ICE Director may, upon recommendation of the Executive Associate Director for Enforcement and Removal Operations, elect to immediately suspend the MOA pending investigation of the misconduct and/or violations.

Notice of the suspension will be provided to the LEA, and the notice will include, at a minimum, (1) an overview of the reason(s) that ICE is suspending the 287(g) agreement, (2) the length of the temporary suspension, and (3) how the LEA can provide ICE with information regarding the alleged

misconduct and/or violations, as well as any corrective measures it has undertaken.

ICE shall provide the LEA with a reasonable opportunity to respond to the alleged misconduct and/or violations and to take actions to implement corrective measures (e.g., replace the officer(s) who are the focus of the allegations). ICE will provide the LEA timely notice of a suspension being extended or vacated.

If the LEA is working to take corrective measures, ICE will generally not terminate an agreement. The termination of an agreement is generally reserved for instances involving problems that are unresolvable and detrimental to the 287(g) Program.

If ICE decides to move from suspension to termination, ICE will provide the LEA a 90-day notice in advance of the partnership being terminated. The notice will include, at a minimum: (1) An overview of the reason(s) that ICE seeks to terminate the 287(g) agreement; (2) All available data on the total number of aliens identified under the 287(g) agreement; and (3) Examples of egregious criminal aliens identified under the 287(g) agreement. ICE's decision to terminate a MOA will be published on ICE's website 90 days in advance of the MOA's termination.

This MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOA, each party represents it is fully authorized to enter into this MOA, accepts the terms, responsibilities, obligations, and limitations of this MOA, and agrees to be bound thereto to the fullest extent allowed by law.

For the LEA:

Date: _____

Signature: _____

Name: NAME OF SIGNATORY

Title: Title of Signatory

Agency: NAME OF LAW ENFORCEMENT AGENCY and STATE

For ICE:

Date: _____

Signature: _____

Name: _____

Title: _____

Agency: Enforcement and Removal Operations

U.S. Immigration and Customs Enforcement

Department of Homeland Security

APPENDIX A

POINTS OF CONTACT

The ICE and LEA points of contact for purposes of implementation of this MOA are:

For ICE:

Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations
Assistant Director for Enforcement
Washington DC

For the LEA:

POC Name

Title

Phone Number

Address

Email

APPENDIX B

COMPLAINT PROCEDURE

This MOA is an agreement between ICE and the NAME OF LAW ENFORCEMENT AGENCY and STATE, hereinafter referred to as the "Law Enforcement Agency" (LEA), in which selected LEA personnel are authorized to perform immigration enforcement duties in specific situations under federal authority. As such, the training, supervision, and performance of participating LEA personnel pursuant to the MOA, as well as the protections for individuals' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOA have agreed to follow.

If any participating LEA personnel are the subject of a complaint or allegation involving the violation of the terms of this MOA the LEA shall, to the extent allowed by state law, make timely notification to ICE.

Further, if the LEA is aware of a complaint or allegation of any sort that may result in that individual receiving professional discipline or becoming the subject of a criminal investigation or civil lawsuit, the LEA shall remove the designated LEA personnel from the program, until such time that the LEA has adjudicated the allegation.

The LEA will handle complaints filed against LEA personnel who are not designated and certified pursuant to this MOA but are acting in immigration functions in violation of this MOA. Any such complaints regarding non-designated LEA personnel acting in immigration functions must be forwarded to the ICE Office of Professional Responsibility (OPR) at ICEOPRIntake@ice.dhs.gov.

1. Complaint Reporting Procedures

Complaint reporting procedures shall be disseminated as appropriate by the LEA within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures. Complaints will be accepted from any source (e.g., ICE, LEA, participating LEA personnel, inmates, and the public).

Complaints may be reported to federal authorities as follows:

A. Telephonically to the ICE OPR at the toll-free number l-833-4ICE-OPR; or

B. Via email at ICEOPRIntake@ice.dhs.gov.

Complaints may also be referred to and accepted by any of the following LEA entities:

A. The LEA Internal Affairs Division; or
B. The supervisor of any participating LEA personnel.

2. Review of Complaints

All complaints (written or oral) reported to the LEA directly, which involve activities connected to immigration enforcement activities authorized under this MOA, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOA with the assistance of ICE. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures.

In all instances, the ICE OPR, as appropriate, will make an initial determination regarding DHS investigative jurisdiction and refer the complaint to the appropriate office for action as soon as possible, given the nature of the complaint.

Complaints reported directly to the ICE OPR will be shared with the LEA's Internal Affairs Division when the complaint involves LEA personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

3. Complaint Resolution Procedures

Upon receipt of any complaint the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or another legally required entity. Complaints will be resolved using the existing procedures, supplemented as follows:

A. Referral of Complaints to LEA Internal Affairs Division.

The ICE OPR will refer complaints, as appropriate, involving LEA personnel to the LEA's Internal Affairs Division for resolution. The Internal Affairs Division Commander will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

B. Interim Action Pending Complaint Resolution

Whenever any participating LEA personnel are under investigation and subject to interrogation by the LEA for any reason that could lead to disciplinary action, demotion, or dismissal, the policy requirements of the LEA shall he honored. If appropriate, an individual may he removed from participation in the activities covered under the MOA pending resolution of an inquiry.

C. Time Parameters for Resolution of Complaints

It is expected that any complaint received will be resolved within 90 days. However, this will depend upon the nature and complexity of the substance of the complaint itself.

D. Notification of Resolution of a Complaint

ICE OPR will coordinate with the LEA's Internal Affairs Division to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

Pursuant to Section XIII of this MOA, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

For the LEA:

PAO's Name
Title
Phone number
Address
Email

For ICE:

Department of Homeland Security
Immigration and Customs Enforcement
Office of Public Affairs

Exhibit 2

OFFICE OF THE ATTORNEY GENERAL

JAMES UTHMEIER
ATTORNEY GENERAL
STATE OF FLORIDA

PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300
Fax (850) 487-0168
https://www.myfloridalegal.com

March 18, 2025

The City of Fort Myers
2200 Second Street
Fort Myers, FL 33901

RE: Immediate Compliance with State Immigration Laws

Dear City Council:

On March 17, 2025, the Fort Myers City Council voted not to approve the Fort Myers Police Department's 287(g) agreement with the United States Immigration and Customs Enforcement. This action constitutes a serious and direct violation of Florida Law.

Section 908.103, Florida Statutes, prohibits law enforcement and local government entities from adopting or having in effect any sanctuary policy. "Sanctuary policy" means a law, policy, practice, procedure, or custom adopted or allowed by a state or local governmental entity which prohibits or impedes a law enforcement agency from complying with 8 U.S.C. § 1373 or 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 participating in a federal immigration operation with a federal immigration agency as permitted by federal and state law (§§ 908.102(6), 908.102(6)(h), Fla. Stat.).

By failing to approve the Department's 287(g) agreement, Fort Myers is implicitly implementing a sanctuary policy. Prohibiting city police officers from receiving the necessary federal training to adequately enforce U.S. immigration laws not only prevents city police from enforcing current federal immigration law but effectively prevents the city police department from participating in federal immigration operations.

Sanctuary policies are not tolerated or lawful in Florida. Immediate corrective action is required. Failure to correct the Council's actions will result in the enforcement of all applicable civil and criminal penalties, including but not limited to being held in contempt, declaratory or injunctive relief, and removal from office by the Governor pursuant to section 908.107, Florida Statutes and the Florida Constitution.

Sincerely,

James Uthmeier
Florida Attorney General