

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: April 15, 2024 8:19 AM FILING ID: 1E07D9E4B3EC8 CASE NUMBER: 2024CV31125</p> <p>(COURT USE ONLY)</p>
<p>DOUGLAS COUNTY, COLORADO acting through the BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY COLORADO, in their elected and official capacity, and the DOUGLAS COUNTY SHERIFF, DARREN WEEKLY, in his elected and official capacity EL PASO COUNTY, COLORADO, acting through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, in their elected and official capacity, and the EL PASO COUNTY SHERIFF, JOSEPH ROYBAL, in his elected and official capacity, Plaintiffs,</p> <p>v.</p> <p>STATE OF COLORADO, by and through JARED S. POLIS, in his official capacity as Governor of Colorado Defendants</p>	
<p>Attorneys for Douglas County, Colorado; Board of County Commissioners of Douglas County, Colorado; and the Douglas County Sheriff: Jeffrey Garcia #43295 County Attorney Amy Wilson #41977 Sr. Assistant County Attorney Andrew C. Steers #40139 Sr. Assistant County Attorney 100 Third Street, Castle Rock, CO 80104 Telephone: 303-660-7414 Fax: 303-484-0399 E-mail: jgarcia@douglas.co.us; awilson@douglas.co.us; asteers@douglas.co.us</p> <p>Attorneys for El Paso County, Colorado; Board of County Commissioners of El Paso County, Colorado; and the El Paso County Sheriff: Kenneth R. Hodges, #35205 County Attorney Office of the County Attorney of El Paso County, Colorado 200 S. Cascade Ave. Colorado Springs, CO 80903 (719) 520-6485, Fax (719) 520-6487 kennyhodges@elpasoco.com</p>	<p>Case No.:</p> <p>Courtroom/Division:</p>

COMPLAINT	

Plaintiffs, through undersigned counsel, hereby submit their Complaint against Defendants, the State of Colorado, by and through Jared S. Polis, in his official capacity as Governor (the “State”), allege as follows:

INTRODUCTION

The Colorado General Assembly enacted Colorado House Bills 19-1124 and 23-1100, which prohibit local governments from cooperating with the federal government in immigration matters.

These bills: 1.) prohibit local law enforcement from arresting and detaining illegal immigrants; 2.) prohibit state judicial officials from sharing information with federal immigration officials; and 3.) prohibit local governments from entering into agreements with the federal government for immigration enforcement.

The nation is facing an immigration crisis. The nation, the state, and local governments need to cooperate and share resources to address this crisis. Colorado House Bills 19-1124 and 23-1100 prohibit the necessary cooperation and create dangerous conditions for the State and migrants.

Moreover, the laws enacted by Colorado House Bill 19-1124 and 23-1100 are illegal and unconstitutional as they violate the Intergovernmental Relationships; Distribution of Powers; and Revival, Amendment or Extension of Laws Provisions of the Colorado State Constitution and are otherwise preempted by federal immigration laws and regulations.

JURISDICTION AND VENUE

1. The jurisdiction of this Court in this matter arises under the Colorado Constitution Article 6, §9, the Uniform Declaratory Judgments Law, C.R.S. §13-51-101 *et seq.*, and the C.R.C.P. 57 and 65.
2. The Court has personal jurisdiction over the Defendants, who are the State of Colorado and elected Colorado Governor.
3. Venue is proper in this Court under C.R.C.P. 98(c).

PARTIES

4. Douglas County, Colorado, is a statutory county established pursuant to the Colorado Constitution Article 14, C.R.S. § 30-5-120, and C.R.S. § 30-11-101.
5. El Paso County, Colorado, is a statutory county established pursuant to the Colorado Constitution Article 14, C.R.S. § 30-5-120, and C.R.S. § 30-11-101.

6. Pursuant to §30-11-103, the Board of County Commissioners exercise the power of the county as a political and corporate body.
7. County Sheriff is an office created by Article 14 §8 of the Colorado Constitution.
8. Darren Weekly is the elected Sheriff of Douglas County, Colorado.
9. Joseph Roybal is the elected Sheriff of El Paso County, Colorado.
10. Defendant State of Colorado operating through legislative and executive action, adopted the Colorado House Bill 19-1124 and 23-1100.
11. Defendant Jared S. Polis, sued in his official capacity, is the Governor of Colorado and, in that capacity, signed Colorado House Bill 19-1124 and 23-1100 into law, has the power to enforce the laws of the State of Colorado, and is required by the Colorado Constitution to ensure that all laws of the state are faithfully executed.

FACTS

Colorado Enacted HB 19-1124 Prohibiting Law Enforcement from Arresting or Detaining Illegal Immigrants and Judicial Officers from Sharing Information with the Federal Government

12. During the 2019 legislative session, the Colorado General Assembly enacted House Bill 19-1124 (“HB 19-1124”).
13. Governor Polis signed HB 19-1124 on May 28, 2019.
14. HB 19-1124 created Article 76.6 of Title 24 of the Colorado Revised Statutes.

C.R.S. 24-76.6-102 Prohibits Law Enforcement from Arresting or Detaining Illegal Immigrants for Civil Immigration Enforcement

15. C.R.S. §24-76.6-102 prohibits Colorado law enforcement officers, including county sheriff’s offices from cooperating with the Federal Government by arresting, or retaining persons already in custody under a federal civil immigration detainer request.
16. HB 19-1124 codified C.R.S. §24-76.6-102 to state:

(2) A law enforcement officer shall not arrest or detain an individual on the basis of a civil immigration detainer request.

C.R.S. 24-76.6-103 Requires Probation Department Staff Withhold Information Regarding Illegal Immigrants from the Federal Government

17. C.R.S. §24-76.6-103 prohibits probation employees of the judicial branch from providing personal information about an individual to federal immigration authorities.
18. HB 19-1124 codified C.R.S. §24-76.6-103 to state:
 - (1) A probation officer or probation department employee shall not provide personal information about an individual to federal immigration authorities.
19. HB 19-1124 codified C.R.S. §24-76.6-101 to define “personal information” to include information related to an individual’s location and status in the corrections system:
 - (4) "Personal Information" means any confidential identifying information about an individual, including but not limited to home or work contact information; family or emergency contact information; probation meeting date and time; community corrections locations; community corrections meeting date and time; or the meeting date and time for criminal court-ordered classes, treatment, and appointments.

Colorado Enacted HB 23-1100 Prohibiting Local Governments from Entering an Immigration Enforcement Agreement with the Federal Government

20. During the 2023 legislative session, the Colorado General Assembly enacted House Bill 23-1100 (“HB 23-1100”).
21. Governor Polis signed HB 23-1100 on June 6, 2023.
22. HB 23-1100 created Article 76.7 of Title 24 of the Colorado Revised Statutes.

C.R.S. 24-76.7-103 Prohibits Intergovernmental Agreements with the Federal Government for Immigration Enforcement

23. C.R.S. §24-76.7-103 prohibits a local government from entering into an agreement with the federal government to detain persons for immigration purposes.
24. HB 23-1100 codified C.R.S. §24-76.7-103 to state:
 - (1) Beginning on January 1, 2024, a governmental entity shall not enter into or renew an immigration detention agreement.
25. HB 23-1100 codified C.R.S. §24-76.7-101 to define:

- (1) "Governmental Entity" means the state, any unit of local government, a county sheriff, or any agency, officer, employee, or agent thereof.
- (2) "Immigration Detention Agreement" means any contract, including but not limited to an intergovernmental service agreement, or portion thereof for payment to a governmental entity to detain individuals for federal civil immigration purposes. For a contract or intergovernmental service agreement that is only in part for the detention of individuals for federal immigration officials, this term only applies to the civil immigration detention portion of the contract.

FIRST CLAIM FOR RELIEF

(Violation of Intergovernmental Relationships Provision– Colorado Constitution Article 14, §18)

26. Plaintiffs incorporates paragraphs 1 through 25 as if stated herein.
27. HB 19-1124 and HB 23-1100 violate Article 14, §18 of the Colorado Constitution.
28. Article 14, §18 of the Colorado Constitution forbids the use of constitutional power to prohibit a political subdivision of the State from cooperating or contracting with the federal government.
29. Article 14, §18 of the Colorado Constitution states:
 - (2)(a) Nothing in this constitution shall be construed to prohibit the state or any of its political subdivisions from cooperating or contracting with one another or with the government of the United States to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt.

...
 - (c) Nothing in this constitution shall be construed to prohibit any political subdivision of the state from contracting with private persons, associations, or corporations for the provision of any legally authorized functions, services, or facilities within or without its boundaries.

HB 19-1124 Violates the Intergovernmental Relationships Provision

30. HB 19-1124 prohibits local law enforcement from cooperating with federal immigration officials in the exercise of civil immigration detainer requests.
31. HB 19-1124 codifies C.R.S. §24-76.6-102(2) to state, “a law enforcement officer shall not arrest or detain an individual on the basis of a civil immigration detainer request.”
32. After the passage of HB 19-1124, the Douglas County Sheriff has received a federal civil immigration detainer request.
33. As a result of HB 19-1124, the Douglas County Sheriff is not able to comply with federal civil immigration detainer requests received.
34. Federal civil immigration detainer requests are requests to law enforcement to cooperate with the federal government.
35. Pursuant to Federal Regulation, “The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.” *See* 8 C.F.R. § 287.7.
36. HB 19-1124 violates the Intergovernmental Relationships Provision because it prohibits the state and its political subdivisions from cooperating with the government of the United States in immigration enforcement, a function the federal government is lawfully authorized to conduct.

HB 23-1100 Violates the Intergovernmental Relationships Provision

37. HB 23-1100 prohibits local governments of the state from entering contracts with the federal government.
38. HB 23-1100 codifies C.R.S. §24-76.7-102(2) to state, “a governmental entity shall not enter into or renew an immigration detention agreement.”
39. An immigration detention agreement under the bill and resulting statute being “any contract, including but not limited to an intergovernmental service agreement, or portion thereof for payment to a governmental entity to detain individuals for federal civil immigration purposes”. *See* C.R.S. §24-76.7-101(2).
40. The constitution is not a grant but a limitation on legislative power, so that the legislature may enact any law not expressly or inferentially prohibited by the Constitution of the state or nation. *Mauff v. People*, 52 Colo. 562 (Colo. 1912).

41. The General Assembly has no power to enact any law that denies a right specifically granted by the Colorado Constitution. *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161, 164 (Colo. 2008).
42. A law contrary to the Constitution may not be enforced. *Painter v. Shalala*, 97 F.3d 1351, 1359 (10th Cir. 1996).
43. The General Assembly’s authority to enact HB 19-1124 and HB 23-1100 arises from the Colorado Constitution. *See* Colorado Constitution Article 5, § 1(1).
44. The use of such authority to prohibit a subdivision of the state from cooperating and contracting with the federal government violates Article 14, §18 of the Colorado Constitution.
45. HB 23-1100 violates the Intergovernmental Relationships Provision because it prohibits the state and its political subdivisions from contracting with the government of the United States in immigration enforcement, a function the federal government is lawfully authorized to conduct.
46. Moreover, HB19-1124 and HB23-1100 are an unconstitutional exercise of legislative power to enact a law prohibited by the State Constitution and diminish a right granted by the State Constitution.

SECOND CLAIM FOR RELIEF

(Violation of Distribution of Powers – Colorado Constitution Article 3)

47. Plaintiffs incorporates paragraphs 1 through 46 as if stated herein.
48. HB 19-1124 violates Article 3 of the Colorado Constitution.
49. Article 3 of the Colorado Constitution limits the exercise of government power:

The powers of the government of this state are divided into three distinct departments, --the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

50. The “separation of powers” doctrine arising from Article 3 of the Colorado Constitution, “prohibits one branch of government from exercising powers that the constitution vests in another branch.” *Dee Enterprises v. Indus. Claim Appeals Off. of State of Colo.*, 89 P.3d 430, 433 (Colo. App. 2003).

HB 19-1124 Violates the Distribution of Powers Provision

51. Through HB 19-1124, the legislative branch exercises power constitutionally vested in the judicial branch, in violation of the State Constitution.
52. HB 19-1124 prohibits probation officers or probation department employees from providing personal information about an individual to federal immigration authorities.
53. HB 19-1124 codifies C.R.S. §24-76.6-103(1) to state, “A probation officer or probation department employee shall not provide personal information about an individual to federal immigration authorities.”
54. Article 6, §1 of the Colorado Constitution vests judicial power with the courts and judicial officers.
55. Probation officers and probation department employees are statutorily members of the judicial branch as officers of the court. *See* C.R.S, §16-11-208.
56. Colorado law requires counties to provide for probation facilities. *See C.R.S. §§ 13-3-108, 30-11-104, In re Ct. Facilities for Routt Cnty. ex rel. Bd. of Cnty. Comm'rs of Cnty. of Routt*, 107 P.3d 981, 983 (Colo. App. 2004).
57. Douglas County and El Paso County, Colorado fund probation facilities.
58. HB 19-1100 violates the Distribution of Powers Provision because through the bill and resulting law, the Legislature exercised powers vested in the Judiciary by directing and prohibiting the work of employees of the judicial branch.

THIRD CLAIM FOR RELIEF

(Violation of Revival, Amendment or Extension of Laws Provision– Colorado Constitution Article 5, §24)

59. Plaintiffs incorporate paragraphs 1 through 58 as if stated herein.
60. HB 19-1124 and HB 23-1100 violate the Article 5, §24 of the Colorado Constitution.
61. Article 5, §24 of the Colorado Constitution requires where law is revived, amended, or extended, the amended law be published at length.
62. Article 5, §24 of the Colorado Constitution states:

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred, shall be re-enacted and published at length.

63. The purpose of restrictions against amending of laws by reference only is to prevent confusion and uncertainty, which prevailed as the result of amendment of statutes and ordinances by reference to title only, or by interpolating words without re-stating the part amended, often resulting in the legislative body itself being in ignorance of its own enactment. *Thiele v. City and County of Denver*, 312 P.2d 786, 793 (Colo. 1957).

HB 19-1124 and HB 23-1100 Violate the Revival, Amendment or Extension of Laws Provision

64. In HB 19-1124 and HB 23-1100, the State amended existing Colorado law related to the Sheriff's duties and authority to keep the peace and operate the county jail, and granting the County Board of County Commissioners authority to contract and use/dispose of county property without properly referencing the statutes that were amended.
65. County Sheriff is an office created by Article 14, §8 of the Colorado Constitution.
66. Part 5, Article 10 of Title 30 of the Colorado Revised Statutes prescribes the duties of a County Sheriff in Colorado.
67. Pursuant to C.R.S. §30-10-516, it is the County Sheriff's duty to maintain the peace, including apprehending and securing any person who breaches the peace.
68. Pursuant to C.R.S. §30-10-511, the County Sheriff has charge and custody of the county jail.
69. Pursuant to C.R.S. §30-10-514, the County Sheriff is responsible for the transportation of prisoners.
70. Pursuant to C.R.S. § 17-26-123, county sheriffs, as keepers of the jail, have the duty "to receive into the jail every person duly committed thereto for any offense against the United States, by any court or officer¹ of the United States, and to confine every such person in the jail until he is duly discharged, the United States paying all the expenses of the confinement, safekeeping, and custody of such person, including the keeper's fees, at the rate established by the board of county commissioners of the county where such jail is situated."
71. Board of County Commissioner is a local government body created by Article 14, §6 of the Colorado Constitution.
72. County commissioners are constitutional officers with executive, legislative and quasi-judicial responsibilities. *Beacom In & For Seventeenth Jud. Dist., Adams Cnty. v. Bd. of Cnty. Comm'rs of Adams Cnty.*, 657 P.2d 440, 445 (Colo. 1983).
73. Pursuant to §30-11-103, the Board of County Commissioners exercise the power of the county as a political and corporate body.

¹ See C.R.S. § 16-2.5-147; 8 C.F.R. § 1.2.

74. Part 1, Article 11 of Title 30 of the Colorado Revised Statutes lists the powers of a county, including entering contracts, and disposing of or holding for use of county property.
75. Despite directing the operation of local government jails, and the use and sell of county land and property, the State in enacting HB 19-1124 and HB 23-1100 makes no reference to the statutes they are amending, any statute on jail operations, local government property, or immigration.
76. Instead of properly referencing the effected and amended laws, the State misplaces these restrictions on jail operations and local government property in the “Restrictions on Public Benefits” portion of the Colorado Revised Statutes.
77. The failure of HB 19-1124 and HB 23-1100 to identify and properly reference the effected laws being amended and failure to republish the effected statutes at length create uncertainty and confusion.
78. HB 19-1124 and HB 23-1100 violate the Revival, Amendment or Extension of Laws Provision because the bills fail to properly reference the laws they seek to amend and fail to publish those laws at length.

FOURTH CLAIM FOR RELIEF

(Violation of Supremacy Clause – United States Constitution Article 6, Clause 2)

79. Plaintiffs incorporate paragraphs 1 through 78 as if stated herein.
80. HB 19-1124 violates Article 6, Clause 2 of the United States Constitution.
81. Under Article 6, Clause 2 of the United States Constitution, federal law preempts state law.
82. Article 6, Clause 2 of the United States Constitution states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
83. Federal law preempts state law when the two conflict, even when the two only arguably conflict. *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 143 S. Ct. 1404, 1407, (2023).

HB 19-1124 Violates the Supremacy Clause

84. HB 19-1124 directs state, county, and municipal employees to conceal and shield illegal immigrants from detection in violation of federal immigration and criminal law by withholding the identities and locations of illegal immigrants.
 85. The County has complied with the laws created by HB 19-1124.
 86. As previously stated, HB 19-1124 codifies C.R.S. §24-76.6-103(1) to state, “A probation officer or probation department employee shall not provide personal information about an individual to federal immigration authorities.”
 87. The State in defining “personal information” extended the definition to include information federal immigration officials could use to locate and detain illegal immigrants, including work locations, probation meeting dates and times, community corrections locations, community correction meeting dates and times, and the dates and times of Court-ordered classes, treatment, and appointments. *See* C.R.S. §24-76.6-101(4).
 88. The United States has broad, undoubted power over the subject of immigration and the status of aliens, and federal governance of immigration and alien status is extensive and complex. *Fuentes-Espinoza v. People*, 408 P.3d 445, 451 (Colo. 2017).
 89. Federal immigration law identifies concealing and shielding from detection aliens illegally in the United States as a crime and imposes criminal penalties:
 - (a) Criminal penalties
 - (1)(A) Any person who—
 - ...
 - (iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; . . .
- See* 8 U.S.C.A. § 1324.
90. Under Federal immigration law, the term “person” means an individual or an organization. *See* 8 U.S.C.A. § 1101.
 91. The Court has held, “shield from detection” within the meaning of 8 U.S.C.A. § 1324 makes it an offense to willfully shield an illegal alien from detection, including assisting an illegal alien from having their illegal status identified and determined by federal immigration authorities. *United States v. Rubio-Gonzalez*, 674 F.2d 1067, 1072 (5th Cir. 1982).

92. The Court has held, “shield from detection” for purposes of 8 U.S.C.A. § 1324 to mean the use of any means to prevent the detection of illegal aliens in the United States by the government or to protect from or to ward off discovery. *United States v. Ye*, 588 F.3d 411, 415 (7th Cir. 2009).
93. The Court has held, the prohibition shielding illegal aliens from detection does not prohibit only smuggling-related activity, but also activity tending substantially to facilitate alien's remaining in the United States illegally. *United States v. Cantu*, 557 F.2d 1173, 1180 (5th Cir. 1977).
94. The Court has held, violations of 8 U.S.C.A. § 1324 need not be secretive or clandestine but can be open and obvious. *United States v. George*, 779 F.3d 113, 119 (2d Cir. 2015).
95. Through HB 19-1124, the State has established a scheme to withhold information from federal immigration officials, concealing, harboring, and shielding from detection illegal aliens in state and local government custody to assist in preventing illegal aliens’ status being identified and determined by federal immigration authorities and facilitate aliens remaining in the United States illegally in violation of federal immigration law.
96. HB 19-1124 violates the Supremacy Clause because it enacts laws requiring state and local government employees to withhold information from federal immigration authorities in violation of federal law.

PRAYER FOR RELIEF

WHEREFORE, the County and Sheriff pray the Court grants the following relief:

- A. Judgment in favor of the Plaintiffs and against the Defendants on all claims.
- B. A final declaratory judgment determining the C.R.S. §24-76.6-102 prohibition on local governments from cooperating with the federal government in civil immigration matters unconstitutional.
- C. A final declaratory judgment determining the C.R.S. §24-76.6-103 requirement probation officers and probation department staff withhold information from the federal government unconstitutional.
- D. A final declaratory judgment determining the C.R.S. §24-76.7-103 prohibition on agreements with the federal government for immigration enforcement unconstitutional.
- E. Such other relief as the Court deems just and reasonable, including the County’s costs and fees in prosecuting this action as permitted by law.

Respectfully submitted this 15th day of April 2024.

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