IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BRIAN McCANN,	)	
	)	
Plaintiff,	)	Case Number: 13 CH 10583
	)	Hon. Mary Anne Mason
vs.	)	
	)	
THOMAS J. DART, in his official capacity as Cook County Sheriff,	)	
	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S CORRECTED MEMORANDUM IN OPPOSITION TO DEFENDANT'S 2-619.1 MOTION TO DISMISS PLAINTIFF'S COMPLAINT IN CHANCERY FOR MANDAMUS AND DECLARATORY RELIEF

Plaintiff Brian McCann ("Plaintiff"), by counsel, respectfully submits this memorandum in opposition to Defendant's motion to dismiss. As grounds therefor, Plaintiff states as follows:

MEMORANDUM

I. Introduction.

Plaintiff, a lifelong resident and citizen of Cook County, brings this action to remedy the refusal of Cook County Sheriff Thomas J. Dart ("Defendant") to carry out his legal duties. Specifically, Plaintiff alleges that Defendant refuses to carry out two, specific legal duties imposed on him by federal and state law. First, Plaintiff's Complaint asserts that, when served with a notice of detainer by federal immigration officials, Defendant has a legal duty to maintain custody of an alien already in Defendant's custody for not more than 48 hours beyond the time that the alien would otherwise be released. Second, Plaintiff's Complaint asserts that Defendant has a legal duty to refrain from prohibiting or restricting communications or the exchange of information with federal immigration officials regarding the citizenship or immigration status of persons already in Defendant's custody.

Plaintiff brings two claims to remedy Defendant's refusal to carry out these clear, non-discretionary legal duties. The first seeks mandamus relief; the second seeks declaratory relief. Both claims rest on the long-established right of residents and citizens to bring suit to compel public officials to carry out their legal duties. Because Plaintiff has pled that he is a resident and citizen of Cook County and that Defendant, a Cook County public official, refuses to carry out his legal duties, Plaintiff's standing to bring this claim is unassailable. Because Plaintiff has amply pled claims for mandamus and declaratory relief, Plaintiff's Complaint is well-founded and Defendant's motion to dismiss must be denied.

II. Factual Background.

Since the fall of 2011, Defendant has refused to honor notices of detainer issued by U.S. Immigration and Customs Enforcement ("ICE") for aliens already in Defendant's custody. Complaint at ¶¶ 19 and 22-24. Defendant also refuses to allow ICE officials to review records of prisoners or interview prisoners in his custody in order to obtain information about prisoners' citizenship or immigration status. *Id.* at ¶ 20. Defendant purports to be acting pursuant to a Cook County ordinance. *Id.* at ¶¶ 16, 19 and 20. Nonetheless, Cook County has applied for and received millions of dollars from the federal government for incarcerating certain categories of unlawfully present criminal aliens, including aliens subject to immigration detainers, through a program known as the State Criminal Alien Assistance Program. *Id.* at ¶¶ 11 and 26. Plaintiff respectfully refers the Court to paragraphs 1, 2, and 16-26 of his Complaint, which he incorporates by reference, for a complete recitation of the factual basis for his claims.

III. Argument.

A. Plaintiff plainly has standing.

Plaintiff's standing to bring this action is unassailable. As a resident and citizen of Cook County, Plaintiff has standing to seek mandamus and declaratory relief to remedy the refusal of a Cook County public official to carry out his legal duties. *People ex rel. Newdelman v. Swank*, 131 Ill. App. 2d 73, 75 (1st Dist. 1970); *see also People ex rel. Gamber v. Board of Supervisors of the County of Gallatin*, 294 Ill. 579, 582 (1920); *People ex rel. Faulkner v. Harris*, 203 Ill. 272, 277 (1903); *Hill v. Butler*, 107 Ill. App. 3d 721, 725 (4th Dist. 1982). As the Court in *People ex rel. Newdelman* held, "Even though citizens may not have any legal rights directly affected by the failure of public officials to carry out their legal duties, nevertheless such persons as members of the public have the right to insist that public officials carry out their legal duties." *Id*. Defendant is a Cook County public official who refuses to comply with his legal duties. Plaintiff can sue him to insist that he does so. *Id.*

Nowhere in *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462 (1988) did the Court purport to overturn at least eighty-five years of precedent holding that the residents and citizens of Illinois have standing to sue state and local public officials in Illinois who refuse to carry out their legal duties. *See*, *e.g.*, *People ex rel. Faulkner*, *supra.* The mere fact that *Newdelman* and the other cases cited by Plaintiff were decided before *Greer* does not mean that *Greer* overturned all of these earlier cases. The Court in *Greer* did not explicitly or even implicitly overturn them. *Greer* simply addressed a different theory of standing.

In *Greer*, homeowners living near the site of a proposed housing project for "very low-income" tenants challenged a decision by the Illinois Housing Development Authority ("IHDA") to provide funding for the project and the agency's approval of a tenant-selection plan. *Greer*,

122 Ill. 2d at 470, 487. The issue before the court was the "proper test for assessing standing to challenge the illegality of administrative action." *Id.* at 487. The IHDA argued that, in addition to injury in fact, the plaintiffs also needed to show that the interests they asserted in their complaint lay within the "zone of interests" protected by the statute in question, the Illinois Housing Development Act. *Id.* The Court held that a "zone of interests" analysis was not necessary and that the plaintiffs had standing. *Id.* at 491-92.

Plaintiff does not challenge "the illegality of an administrative action" of an agency. He challenges Defendant's refusal to comply with his clear, non-discretionary legal duties. Illinois law recognizes various types of standing. *Martini v. Netsch*, 272 Ill. App. 3d 693, 695 (1st Dist. 1995) ("The decision as to standing may differ depending on the issue involved and the nature of the relief sought. Whether the plaintiff has standing to sue is to be determined from the allegations contained in the complaint." (internal citations omitted)). The plaintiffs in *Greer* had standing under one legal theory. Plaintiff has standing under a different legal theory. Defendant's reliance on *Greer* compares apples to oranges. *Greer* is inapposite.

B. Plaintiff's Complaint plainly alleges that Defendant refuses to comply with two clear legal duties.

Plaintiff alleges that Defendant refuses to comply with two clear, specific, non-discretionary legal duties: (1) the duty to maintain custody of an alien, upon receipt of a notice of detainer issued by ICE, for a period not more than 48 hours beyond the time that the alien would otherwise be released; and (2) the duty to refrain from prohibiting or restricting communications or the exchange of information with federal immigration officials about a person's citizenship or immigration status.[1] Complaint at ¶¶ 9, 13-14, and 19-20. Defendant's

[1] In addition to these specific duties, Defendant has the general duties under Illinois law to comply with federal law, support the constitutions of the United States and the State of Illinois, faithfully

Motion ignores the latter duty, which arises under 8 U.S.C. §§ 1373 and 1644. He thus concedes that this duty exists. Defendant only challenges the former legal duty.

1. Defendant has a legal duty to maintain custody of an alien upon receipt of a notice of detainer.

The duty to maintain custody of an alien subject to a notice of detainer is set forth expressly in Title 26, Section 287.7 of the Code of Federal Regulations. Section 287.7 is divided into five subsections. Subsection (d) expressly addresses the temporary detention of aliens. The other subsections describe detainers generally and address matters such as the authority to issue notices of detainer and the transmission of records regarding an alien's status or conditions of release. 8 C.F.R. § 287.7(b)-(c). Subsection (d) states, in its entirety:

> Upon a determination by the [U.S. Department of Homeland Security] to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency ***shall maintain custody*** of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

8 C.F.R. § 287.7(d) (emphasis added).

Subsection (d) could not be any clearer. The only verb in the sentence is "shall maintain." On its face, a detainer issued under subsection (d) is a direction from the U.S. Department of Homeland Security ("DHS") – in particular, ICE – to a criminal justice agency – in this case Defendant – to do something. He must maintain custody of the alien subject to the detainer for not more than 48 hours beyond the time that the alien would otherwise be released. The duty could not be clearer, and it does not authorize, much less require, the exercise of any discretion or decision-making. All that a criminal justice agency – again, Defendant – must do is maintain custody of the alien for not more than 48 hours. It makes no difference what the

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discharge the duties of his office, and conserve the peace, prevent crime, and maintain the safety and order of the citizens of and in Cook County. Ill. Const., art. XIII, § 3 and 55 Ill. Comp. Stat. §§ 5/3-6004 and 5/3-6021.

detainer is called. Whether it is called a notice, a detainer, a communication, or something else, the duty is clear: the receiving agency or official "shall maintain custody of the alien for a period not to exceed 48 hours." Even Defendant seems to agree that the duty is obligatory. He refers to a detainer, albeit perhaps inadvertently, as being a requirement: "The ***48 hour detainer requirement*** is contained in 8 C.F.R. 287.7(d)." Def's Mot. at 2 (emphasis added).

This plain reading of subsection (d) is reinforced by at least three federal statutes, two of which, 8 U.S.C. §§ 1226 and 1357, are referenced expressly in Section 287.7 as authority for issuance of detainers. *See* 8 C.F.R. § 287.7(a). Congress has exercised its extensive authority over immigration and the status and removal of aliens by mandating that aliens who have committed specified criminal offenses or types of criminal offenses – typically aggravated felonies or two or more crimes involving moral turpitude – "shall" be taken into federal custody for immigration purposes when the alien is released from the custody of state or local law enforcement officials. 8 U.S.C. § 1226(c). Mandatory federal custody occurs "without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." 8 U.S.C. § 1226(c). Federal law also mandates that aliens suspected of terrorist activity or other activity that endangers national security "shall" be taken into federal custody, as "shall" aliens who have committed particular criminal offenses relating to controlled substances. 8 U.S.C. §§ 1226a and 1357(d). These statutes "embod[y] the judgment of Congress that such an individual should not be returned to the community pending disposition of his removal proceedings." *Saysana v. Gillen*, 509 F.3d 713 (1st Cir. 2009). The duty of state and local law enforcement agencies to honor 48-hour immigration detainers plainly furthers Congress's judgment that certain categories of aliens should not be returned to the community.

The only court that has ever actually ruled on the issue held that Section 287.7(d) imposes a mandatory duty. *Galarza v. Szalzxyk*, 2012 U.S. Dist. LEXIS 47023 (E.D. Pa. Mar. 30, 2012). At issue in *Galaraza* was a claim by an individual held pursuant to an immigration detainer. Specifically, the plaintiff in *Galaraza* alleged that his *Fourth Amendment* rights were violated when the Sheriff of Lehigh County continued to detain him in the county jail after the plaintiff had posted bail. In finding no *Fourth Amendment* violation, the Court held:

> In any event, Lehigh County did not maintain custody of plaintiff for more than the 48 hours **it was required to do so**. Pursuant to [DHS] Regulation 287.7(d), quoted above, because ICE issued a detainer for plaintiff, the Lehigh County Prison (a 'criminal justice agency') **was required to maintain custody** of him after he was 'not otherwise detained by a criminal justice agency' for a period not to exceed 48 hours . . . in order to permit assumption of his custody by [DHS].

Galarza, 2012 U.S. Dist. LEXIS at *56. Because the county sheriff was acting pursuant to an obligation imposed by federal regulations, the Court held that the county was not liable for the plaintiff's alleged deprivation of his *Fourth Amendment* rights.

Defendant tries to obfuscate the mandatory nature of the duty set forth in subsection (d) by citing to language in subsection (a) and a DHS form that uses the word "request" to describe an immigration detainer.[2] Defendant claims that using "request" as a synonym for an immigration detainer somehow changed the obligatory nature of the words "shall maintain custody" in Section 287.7(d) and makes compliance with immigration detainers purely voluntary. The word "request" does not appear anywhere in the text of subsection (d). Nor do the words "may," "voluntary," or "optional." In addition, while subsection (d) is clear in directing that criminal justice agencies "shall maintain custody" of aliens subject to immigration

[2] Defendant also cites to Operating Procedures of uncertain date for a DHS program known as "Secure Communities" in which DHS "requests cooperation" from local law enforcement agencies and declares that such cooperation is vital. Plaintiff agrees that such cooperation is vital. Plaintiff disputes that either a government form or an agency's operating procedures have the force of law or can transform a duty imposed by law into a purely voluntary request for cooperation.

detainers, on its face subsection (a) refers to such agencies advising federal immigration officials "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." 8 C.F.R. § 287.7(a). As is evident from the plain language of subsection (a), the provision does not address the federal government's order for temporary detention of certain aliens by state or local law enforcement agencies. It addresses when and why state and local law enforcement agencies should inform federal immigration officials about aliens in their custody. The two provisions, although related, are distinct in purpose and substance. Defendant's attempt to equate them is misplaced.

Nor does the decision in *Buquer v. City of Indianapolis*, 2011 U.S. Dist. LEXIS 68326 (S.D. Ind. June 24, 2011) save Defendant. At issue in *Buquer* were two provisions of a new Indiana law that purported to authorize state and local law enforcement officers to make warrantless arrests of certain aliens and created a new infraction for persons who knowingly or intentionally offer or accept consular identification cards as valid forms of identification. The plaintiffs in *Buquer* sought a preliminary injunction to prevent the new provisions from going into effect pending a final determination on their constitutionality. The case did not call upon the Court to decide – as a matter of fact or as a matter of law – whether compliance with immigration detainers is mandatory or purely voluntary. Rather, the language cited by Defendant merely attempted to summarize terms used in federal immigration regulations that had been incorporated into the challenged state law. *Buquer*, 2011 U.S. Dist. LEXIS 68326 at *7 ("An understanding of the materials phrases in this statute is necessary; that discussion ensues[.]"). At no point did the Court in *Buquer* actually adjudicate whether, upon receipt of an immigration detainer, state and local law enforcement agencies are obligated to detain aliens for

up to 48 hours beyond the time when the aliens would otherwise be released from criminal custody. In addition to being incorrect – it ignored the crucial "shall maintain custody" language in the regulation – the Court's summary of immigration terms was nothing more than that.

In sum, the plain language of 8 C.F.R § 287.7(d) mandates that state and local law enforcement agencies honor immigration detainers. None of the language in the regulation, on forms or in guidance manuals cited by Defendant changes the mandatory nature of the direction to criminal justice agencies that, upon receipt of an immigration detainer, these agencies "shall maintain custody" of an alien subject to a detainer for not more than 48 hours beyond the time when the alien would otherwise be released. There is nothing voluntary about the words "shall maintain custody" as used in the regulation.

2. *Printz v. United States* does not apply.

Defendant's other argument by which he seeks to avoid the legal duty imposed on him by 8 C.F.R. § 287.7(d) is to claim that the duty is unconstitutional. Defendant does not dispute that the federal government has "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, __ U.S. __, 132 S. Ct. 2492, 2498 (2012). Nor does he dispute that Congress has plenary power to enact statutes concerning the subject of immigration and the status of aliens. Nor does he seriously contend that federal agencies cannot promulgate regulations concerning immigration and the status of aliens, or that any such regulations do not have preemptive effect. They do. *See*, *e.g.*, *Hillsborogh County v. Automated Medical Laboratories*, 471 U.S. 707, 713 (1985). Rather, Defendant asserts that that federal government may not compel him to administer or enforce a federal regulatory program. The error in Defendant's argument is that he is not being compelled to administer or enforce a federal regulatory program. He is not being compelled to enforce or administer immigration law. The

duty imposed on him by 8 C.F.R. § 287.7(d) is a duty to do nothing more than what he already does as Sheriff, which is run the Cook County jail system. Complaint at ¶ 2. Enforcing immigration law is and remains the province of the federal government.

In this regard, Defendant's reliance on *Printz v. United States*, 521 U.S. 898 (1997) is misplaced. At issue in *Printz* was the validity of the Brady Act, a federal law that, among other things, required local law enforcement agencies to receive and review certain firearm transfer forms from firearm dealers, perform background checks, and determine whether a proposed firearm transfer was legal or illegal. The Brady Act also required local law enforcement agencies to prepare written statements in support of any finding of firearm ineligibility. None of these tasks were tasks that local law enforcement agencies had been already performing. They were new tasks created by a new federal statute, but imposed on local law enforcement agencies.

First, unlike in *Printz*, it is the federal government, not Defendant, that is administering and enforcing immigration laws. Defendant is not being compelled to receive and review immigration records or documentation about an alien, identify an alien's immigration status, determine whether an alien has violated any immigration laws, or decide whether an alien is subject to removal from the United States. Nor is he being required to undertake any other task that constitutes administering and enforcing immigration laws. Defendant is only being required to maintain custody of persons already in his custody for up to 48 hours beyond when such persons would otherwise be released.[3]

Second, Defendant already has custody of these persons. Immigration detainers only require Defendant to continue to maintain custody of them for not more than 48 hours ***instead of***

[3] Of course, it is possible that federal immigration officials will be available to take custody of an alien subject to an immigration detainer in less than 48 hours. In reality, Defendant may only be required to hold the individual for a very brief, additional period of time.

releasing them into the community. In this instance, the federal government is not requiring Defendant to locate the alien, arrest the alien, investigate and prosecute the alien, or even take custody of the alien. It merely is ordering Defendant to continue what he is already doing for at-most two more days so that federal immigration officials have the opportunity to take custody of the alien, after which the federal immigration authorities, not Defendant, will determine whether to enforce – or not enforce – the immigration laws against the alien.

Third, *Printz* did not arise in the context of a field in which federal authority is preeminent. Gun control is a subject matter over which the states and the federal government share concurrent powers. The federal government, however, "has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona*, 132 S. Ct. at 2498. "Federal governance of immigration and alien status is extensive and complex." *Id.* at 2499. Federal authority over immigration has long been described as "preeminent." *Toll v. Moreno*, 458 U.S. 1, 10 (1982); *Plyler v. Doe*, 427 U.S. 202, 235-36 (1982) (Blackmun, J., concurring). "This authority rests, in part, on the [federal] government's constitutional power to 'establish an uniform Rule of Naturalization,' U.S. Const., Art. I, § 8, cl. 4, and its inherent power as a sovereign to control and conduct relations with foreign nations." *Arizona*, 132 S. Ct. at 2498. The fact that 2 U.S.C. § 287.7(d) arises in the context of immigration law, a field in which federal authority is preeminent, makes *Printz* readily distinguishable.

Fourth, and also unlike with the Brady Act, Defendant is not being forced "to absorb the financial burden of implementing a federal regulatory program." *Printz*, 521 U.S. at 929. As Plaintiff alleges in his Complaint, the federal government provides funding to state and local governments that incarcerate certain categories of undocumented criminal aliens, including undocumented criminal aliens who are being held pursuant to an immigration detainer.

Complaint at ¶ 11. Because the Court must accept "all well pleaded facts and all reasonable inferences able to be drawn from those facts," the Court is to assume that Defendant would not be financially burdened if he were to maintain custody of the aliens for not more than 48 hours. *See Iverson v. Scholl, Inc.*, 136 Ill. App. 3d 962, 965 (1st Dist. 1985).

Defendant's constitutional argument has been tried previously and was soundly rejected. In *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999), the Court rejected a constitutional challenge to two federal statutes – 8 U.S.C. §§ 1373 and 1644 – asserted by New York City. Eleven days after Sections 1373 and 1644 were enacted by Congress, New York City filed suit for declaratory and injunctive relief claiming that the two federal statutes violated the *Tenth Amendment*. *Id*. at 33. Specifically, New York City argued that "the scope of state sovereignty under the Amendment includes the power to choose not to participate in federal regulatory programs and that such power in turn includes the authority to forbid state or local agencies, officials, and employees from aiding such a program even on a voluntary basis." *Id*. at 34. In rejecting New York City's argument and holding that Sections 1373 and 1644 did not violate the sovereignty principles set forth in *Printz*, the Court declared:

> In the case of [Sections 1373 and 1644], Congress has not compelled state and local governments to enact or administer any federal regulatory program. Nor has it affirmatively conscripted states, localities, or their employees into the federal government's service. These Sections do not directly compel states or localities to require or prohibit anything. Rather, they prohibit state and local governmental entities or officials only from directly restricting the voluntary exchange of immigration information with the INS.

Id. at 35 (*citing Printz*, 521 U.S. at 917). Defendant's constitutional challenge to Section 287.7(d) fares no better. Section 287.7(d) does not compel Defendant to enact or administer any federal regulatory program. Nor does it affirmatively conscript Defendant into the federal government's service. It only requires Defendant to do what he already does, which is hold

prisoners already in his custody, albeit for a brief period of time after he would otherwise release them, in order to allow federal immigration authorities to assume custody.

3. Defendant has a legal duty to refrain from restricting communications or the exchange of information.

Although Defendant does not challenge that he has legal duties under 8 U.S.C. §§ 1373 and 1644, those duties clearly exist. Federal law indisputably imposes a legal duty on Defendant to refrain from prohibiting or in any way restricting communications or the exchanging of information with federal immigration officials about a person's citizenship or immigration status. 8 U.S.C. §§ 1373 and 1644. Specifically, Section 1373(a) states:

> Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration officials] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

With respect to Section 1373(a)'s application in this case, Defendant, a Cook County official, may not prohibit or in any way restrict the Cook County Sheriff's Office ("CCSO"), a government entity, or any official of the CCSO, from sending to, or receiving from, federal immigration officials any information about citizenship or immigration status, lawful or unlawful, of any person in his custody.

Similarly, Section 1644 states:

> Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from [federal immigration officials] information regarding the immigration status, lawful or unlawful, of an alien in the United States.

Thus, under 8 U.S.C. § 1644 as well, Defendant may not prohibit or in any way restrict the CCSO, which, again, is a local government entity, from sending to, or receiving from, federal

immigration officials information regarding the immigration status, lawful or unlawful, of any alien in his custody.

In addition, Section 1373(b) states:

> Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
>
> (1) Sending such information to, or requesting or receiving such information from, [federal immigration officials].
> (2) Maintaining such information.
> (3) Exchanging such information with any other Federal, State, or local government entity.

Under this provision, Defendant also may not prohibit, or in any way restrict, the CCSO, which, again, is a local government entity, from sending, requesting, or receiving information from federal immigration officials about the immigration status, lawful or unlawful, of any alien in Defendant's custody. Nor may he prohibit or in any way restrict the CCSO from exchanging such information with federal immigration officials.

Plaintiff's Complaint plainly alleges that Defendant refuses to comply with these duties by prohibiting federal immigration officials from having access to prisoners or the records of prisoners in Defendant's custody. Complaint at ¶ 20. Plaintiff's Complaint also plainly alleges that Defendant prohibits CCSO personnel and employees from responding to inquiries by federal immigration officials about prisoners' citizenship or immigration status and from communicating with federal immigration officials about the incarceration status or release dates of prisoners in his custody. Complaint at ¶ 20.

Each of these statutes imposes clear and mandatory legal duties on Defendant. By prohibiting CCSO personnel or employees from responding to inquiries by federal immigration officials about prisoners' citizenship or immigration status, Defendant is defying his duties under

Sections 1373(a), (b)(1), and (b)(3) and Section 1644. By prohibiting federal immigration officials from having access to prisoners or the records of prisoners in Defendant's custody or using CCSO facilities for investigative interviews to obtain information about prisoners' citizenship or immigration status, Defendant also is defying his duties under Section 1373(b)(3).

Defendant cannot complain, as he does with respect to his duty to maintain custody of aliens subject to 48-hour immigration detainers under Section 287.7, that Congress cannot impose such duties on him. Again, the Court in *City of New York* expressly rejected such a challenge. Plaintiff's claim for mandamus and declaratory relief arising from Defendant's refusal to carry out his legal duties under Sections 1373 and 1644 is well-pled.

IV. Conclusion.

For the foregoing reasons, Plaintiff respectfully requests that Defendant's motion to dismiss be denied.

Dated: July 2, 2013

Respectfully submitted,

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