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

BRIAN McCANN, Plaintiff, vs. THOMAS J. DART, in his official capacity as Cook County Sheriff, Defendant.	)	Case Number:

2013CH10583
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TIME 00:00
Declaratory Jdgmt
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DOROTHY BROWN
CLERK
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT
CHANCERY DIV.

COMPLAINT IN CHANCERY FOR MANDAMUS
AND DECLARATORY RELIEF

Plaintiff, Brian McCann, by and through his attorneys, brings this action for mandamus and declaratory relief against Thomas J. Dart, in his official capacity as Cook County Sheriff. As grounds therefor, Plaintiff alleges as follows:

PARTIES

1. Plaintiff is a lifelong resident and citizen of Chicago, Illinois, a municipality located in Cook County, Illinois. As a resident and citizen of Cook County, Plaintiff has standing to seek mandamus and declaratory relief to remedy the failure and/or refusal of Cook County public officials to carry out their legal duties. *People ex rel. Newdelman v. Swank*, 131 Ill. App. 2d 73, 75 (Ill. App. Ct. 1st Dist. 1970); *see also People ex rel. Gamber v. Board of Supervisors of the County of Gallatin*, 294 Ill. 579, 582 (Ill. 1920); *People ex rel. Faulkner v. Harris*, 203 Ill. 272, 277 (Ill. 1903); *Hill v. Butler*, 107 Ill. App. 3d 721, 725 (Ill App. Ct. 4th Dist. 1982).

2. Defendant Thomas J. Dart is the Sheriff of Cook County. As the Sheriff of Cook County, Defendant is a constitutional officer charged by law with authority over the

administration, operation, and supervision of the Cook County jail. *See, e.g., Moy v. County of Cook*, 244 Ill. App. 3d 1034, 1038-39 (Ill. App. Ct. 1st Dist. 1993); 55 Ill. Comp. Stat. 5/3-6017. Defendant is being sued in his official capacity only.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to Ill. Const., art. VI, § 9. Venue is proper in Cook County pursuant to 735 Ill. Comp. Stat. 5/2-101.

LEGAL BACKGROUND

4. "The Government of the United States 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 (U.S. 2012). "Federal governance of immigration and alien status is extensive and complex." *Id.* at 2499. Federal authority over immigration and "the regulation of aliens within our borders" 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.

5. Because immigration and alien status are federal issues, the U.S. Congress "has specified which aliens may be removed from the United States and the procedures for doing so." *Id.* at 2499. "Removal is a civil, not a criminal, matter." *Id.*

6. In this regard, the U.S. Congress has exercised its extensive authority over immigration, alien status, and removal by mandating that certain aliens in the custody of state or local law enforcement officials for criminal law enforcement purposes be committed to the custody of the U.S. Attorney General for immigration purposes. Such aliens include those who

have been arrested by state or local law enforcement officials for violation of any laws relating to controlled substances, have committed particular criminal offenses or particular types of criminal offenses, or are suspected terrorists. *See generally* 8 U.S.C. §§ 1226, 1226a, and 1357(d).

7. With respect to aliens who have committed specified criminal offenses or types of criminal offenses – typically aggravated felonies or two or more crimes involving moral turpitude – federal law mandates that such aliens be taken into federal custody for immigration purposes "when the alien is released" from the custody of state or local law enforcement officials for criminal law enforcement purposes "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). At a minimum, this statutory language "embodies the judgment of Congress that such an individual should not be returned to the community pending disposition of his removal proceedings." *Saysana v. Gillen*, 590 F.3d 7, 13 (1st Cir. 2009).

8. Taking such aliens into federal custody for immigration purposes when the aliens are already in the custody of state or local law enforcement officials for criminal law enforcement purposes necessarily requires coordination with state and local law enforcement officials.

9. Accordingly, the U.S. Department of Homeland Security ("DHS") has promulgated regulations that require state and local law enforcement agencies to detain aliens for up to 48 hours beyond the time when the aliens otherwise would be released from criminal custody. The regulations state, in pertinent part:

> 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). A state or local law enforcement agency's obligation to detain a criminal alien for an additional 48 hours is triggered by the issuance of an "Immigration Detainer – Notice of Action" (DHS Form I-247) to the agency.

10. The U.S. Supreme Court has held repeatedly that federal regulations can have preemptive effect. *See, e.g., Hillsborough County v. Automated Medical Laboratories*, 471 U.S. 707, 713 (1985).

11. The federal government also 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. The program through which this funding is administered is known as the State Criminal Alien Assistance Program ("SCAAP").

12. Also in exercising the federal government's pre-eminent authority over immigration, the U.S. Congress has recognized that communication and "[c]onsultation between federal and state officials is an important feature of the immigration system." *Arizona*, 132 S. Ct. at 2508.

13. In this regard, federal law imposes a legal duty on state and local law enforcement agencies to refrain from prohibiting or in any way restricting communications or the exchanging of information with the federal immigration officials about a person's citizenship or immigration status. *See* 8 U.S.C. §§ 1373 and 1644.

14. Illinois law also imposes legal duties on state and local law enforcement officials, including sheriffs, to comply with federal law. Illinois law requires that every sheriff, "before entering upon the duties of his or her office," shall take an oath to "support the Constitution of

the United States, and the Constitution of the State of Illinois" and to "faithfully discharge the duties of the office of sheriff to the best of [his or her] ability." 55 Ill. Comp. Stat. 5/3-6004; Ill. Const. art. XIII, § 3.

15. Also under Illinois law, "Each sheriff shall be conservator of the peace in his or her county, and shall prevent crime and maintain the safety and order of the citizens of that county." 55 Ill. Comp. Stat. 5/3-6021. Conserving the peace, preventing crime, and maintaining safety and order encompasses a legal duty to cooperate with, and not obstruct, the efforts of other law enforcement officials, including federal immigration officials.

ALLEGATIONS OF FACT

16. On September 7, 2011, the Cook County Board of Commissioners ("the Board") enacted an ordinance entitled "Policy for responding to ICE detainers" ("the Ordinance") that purportedly directs Defendant to decline detainers issued by U.S. Immigration and Customs Enforcement ("ICE") and to deny federal agents access to Cook County facilities for investigative interviews. The Ordinance states:

> (a) The Sheriff of Cook County shall decline ICE detainer requests unless there is a written agreement with the federal government by which all costs incurred by Cook County in complying with the ICE detainer shall be reimbursed.
>
> (b) Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty.
>
> (c) There being no legal authority upon which the federal government may compel an expenditure of County resources to comply with an ICE detainer issued pursuant

> to 8 U.S.C. § 1226 or 8 U.S.C. § 1357(d), there shall be no expenditure of any County resources or efforts by on-duty County personnel for this purpose, except as expressly provided within this Ordinance.
>
> (d) Any person who alleges a violation of this Ordinance may file a written complaint for investigation with the Cook County Sheriff's Office of Professional Review.

Cook County, Ill. Code § 46-37.

17. In a letter from Cook County Board of Commissioners President Toni Preckwinkle to ICE Director John Morton, Preckwinkle wrote that the primary intent of the Ordinance "was not fiscal[,] rather it was passed to ensure that detainees in Cook County are granted fair and equitable access to justice, regardless of their immigration status." "What is troubling to me . . . is a policy which treats people differently under the law based upon their immigration status," Preckwinkle also wrote to Morton.

18. At a Cook County Board of Commissioners hearing on September 7, 2011 prior to the enactment of the Ordinance, Peter Kramer, Chief General Counsel for the Cook County Sheriff's Office ("CCSO") told the board that, if the Ordinance was enacted, Defendant would follow it.

19. Since the enactment of the Ordinance, Defendant has regularly and routinely refused to honor immigration detainers issued by ICE, citing the provisions of the Ordinance.

20. Since the enactment of the Ordinance, Defendant also has prohibited 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 has prohibited CCSO personnel or employees from responding to inquiries by federal immigration officials about prisoners' citizenship or immigration status and from communicating with the federal immigration officials

about the incarceration status or release dates of prisoners in his custody. As with the refusal to honor immigration detainers, Defendant has cited the Ordinance to justify his actions.

21. In a January 4, 2012 letter to Cook County Board of Commissioners President Preckwinkle, ICE Director Morton expressed "great concern" about the "serious impediment" that the Ordinance "poses to ICE's ability to promote public safety through the identification of deportable aliens."

22. At a public hearing on February 9, 2012 before the Board of Commissioners of Cook County, Defendant testified that, in the five month period between the enactment of the Ordinance on September 7, 2011 and February 9, 2012, Defendant released 346 prisoners in his custody who were the subjects of immigration detainers issued by ICE, and 11 of these persons subsequently committed new offenses.

23. By April 24, 2012, ICE had issued 432 immigration detainers to Defendant since the enactment of the Ordinance, but Defendant failed to honor any of the detainers. According to a letter from the U.S. Department of Homeland Security to then-U.S. Senator John Kyl on that date, Defendant's failure to honor ICE's immigration detainers had "prevented ICE from considering removal proceedings against all but 38 of these individuals whom ICE had to locate independently and arrest following their release into the community."

24. Between April 24, 2012 and March 1, 2013, Defendant received approximately 503 additional immigration detainers issued by ICE, and, on information and belief, has declined to honor any of them, resulting in the release into the community of hundreds of additional prisoners sought by ICE.

25. A March 13, 2013 news release issued by ICE presents a particularly egregious example of the harm that Defendant's refusal to honor ICE immigration detainers or to allow

ICE agents access to Cook County jails to interview inmates, review inmate records, or obtain information about inmates' citizenship or immigration status is causing the public. According to the release, Nassar Issa Ibrahim Nassar, a Jordanian citizen with more than a dozen criminal convictions in Illinois ranging from felony sexual assault to unlawfully carrying a weapon, was incarcerated in the Cook County jail in October 2011 on an outstanding criminal warrant for assault and battery. ICE issued an immigration detainer for Nassar while he was in Defendant's custody, but Defendant nonetheless released him the following day. ICE ultimately located Nassar again more than six months later and arrested him at a Cook County residence, and, according to ICE's news release, Nassar was deported on March 12, 2013. The ICE news release quotes ERO Chicago Field Office Director Ricardo Wong as stating, "The daily release of criminal aliens into the streets, rather than into ICE custody, demonstrates how dangerous the current Cook County ordinance is to public safety[.] Due to the current ordinance barring local law enforcement from honoring ICE's detainers, egregious criminals are released to continue their criminal activities and endanger innocent people."

26. Despite Defendant's refusal to honor ICE's immigration detainers, Cook County applied for and received nearly $2.3 million in SCAAP funds from the federal government in 2011 and over $1.7 million in SCAAP funds in 2012. Over the five year period from 2008 to 2012, Cook County applied for and received nearly $15 million in SCAAP funds from the federal government.

COUNT ONE
(Mandamus Relief)

27. Plaintiff reaffirms paragraphs 1-26 as though fully restated herein.

28. Defendant has a legal duty to detain certain aliens in Defendant's custody for a period not to exceed 48 hours beyond the time that the aliens would otherwise be released in order to allow federal immigration officials to take custody of the aliens. This duty arises from 8 U.S.C. §§ 1226, 1226a, and 1357(d); 8 C.F.R. § 287.7(d), 55 Ill. Comp. Stat. 5/3-6004; and 55 Ill. Comp. Stat. 5/3-6021, among other sources of law.

29. Defendant also has a legal duty under 8 U.S.C. §§ 1373 and 1644 to refrain from prohibiting or in any way restricting communications with federal immigration officials regarding the citizenship or immigration status of persons in Defendant's custody.

30. By refusing to honor immigration detainers issued by ICE, Defendant has failed and is failing to carry out his legal duties under both federal and state law.

31. 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, in order to obtain information about prisoners' citizenship or immigration status, Defendant also has failed and is failing to carry out his legal duties under 8 U.S.C. §§ 1373 and 1644.

32. Defendant's failure to carry out his legal duties under both federal and state law is not authorized, excused, or justified by the Ordinance because the Ordinance is preempted by federal law.

33. Defendant's failure to carry out his legal duties under both federal and state law also is not authorized, excused, or justified by the Ordinance because, as Defendant is a constitutional officer charged by law with authority over the administration, operation, and

supervision of the Cook County jail, the Cook County Board of Commissioners has no power to alter or limit Defendant's authority and the Ordinance is an *ultra vires* enactment as a result.

COUNT TWO
(Declaratory Relief)

34. Plaintiff reaffirms paragraphs 1-33 as though fully restated herein.

35. An actual controversy exists between Plaintiff and Defendant. Plaintiff contends that Defendant is failing to carry out his legal duties under both federal and state law and that the Ordinance on which Defendant relies is preempted by federal law and is an *ultra vires* enactment by the Cook County Board of Commissioners. On information and belief, Defendant contends that he is obeying the Ordinance and that the Ordinance is not preempted by federal law.

36. As a resident and citizen of Cook County, Plaintiff is an interested party in the controversy.

37. The issuance of a judgment declaring the rights of the parties will terminate the controversy.

WHEREFORE, Plaintiff prays that the Court award him the following relief:

A. Issue a writ of mandamus to compel Defendant to carry out the legal duties described herein;

B. Declare Defendant's failure and/or refusal to carry out the legal duties described herein to be unlawful;

C. Declare the Ordinance to be preempted by federal law and an *ultra vires* enactment by the Cook County Board of Commissioners;

D. Award Plaintiff reasonable attorneys' fees and costs; and

E. Order such other and further relief as the Court finds just and equitable.

Dated: April 22, 2013

Respectfully submitted,

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