

Michele Molinario, Bar #020594
John T. Masterson, Bar #007447
Derek R. Graffious, Bar #033486
Justin M. Ackerman, Bar #030726
JONES, SKELTON & HOCHULI, P.L.C.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004
Telephone: (602) 263-1700
Fax: (602) 200-7831
mmolinario@jshfirm.com
jmasterson@jshfirm.com
dgraffious@jshfirm.com
jackerman@jshfirm.com

Attorneys for Defendants Sheriff James
Driscoll and Commander Matt Figueroa

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Jose Montelongo-Morales, as an individual,
and on behalf of all others similarly situated,

Plaintiff,

v.

James Driscoll, Coconino County Sheriff; Matt
Figueroa, Jail Commander of the Coconino
County Jail, all in their official capacities,

Defendants.

NO.

**DEFENDANTS' NOTICE OF
REMOVAL**

Defendants James Driscoll and Matt Figueroa ("Defendants") have been served a copy of Plaintiff's Complaint for Declaratory Relief, Injunctive Relief, and Special Action filed in the Superior Court for the State of Arizona, in the County of Coconino, Case No. S0300-CV201900012. Defendants hereby notice the removal of the above-captioned case, from the Superior Court of the State of Arizona, in the County of Coconino, to this Court, the United States District Court, for the District of Arizona.

I. BACKGROUND.

On March 16, 2018, Plaintiff Jose Montelongo-Morales, as an individual, and on behalf of all others similarly situated, filed a Complaint for Declaratory Relief, Injunctive

1 Relief, and Special Action in the Superior Court of Coconino County, entitled
 2 *Montelongo-Morales, et al. v. James Driscoll, et al*, Case No. CV2019-00012 (the
 3 “Superior Court Action”). A true and accurate copy of the Complaint filed in the Superior
 4 Court Action is attached hereto as **Exhibit “A”**. Plaintiff seeks to challenge Coconino
 5 County Sheriff James Driscoll’s policy of holding inmates accused of state charges for up
 6 to 48 hours after their release in order to comply with ICE immigration detention requests
 7 and a warrant of removal/deportation.

8 Plaintiff, as an individual, and on behalf of all others similarly situated, also filed a
 9 Motion for Class Certification in the Coconino County Superior Court. A true and
 10 accurate copy of the Motion for Class Certification is attached hereto as **Exhibit “B”**.
 11 Defendants are filing the Response to the Motion for Class Certification simultaneously
 12 with this Notice of Removal. Based on the filing of this Notice of Removal, the Superior
 13 Court is divested of any power, authority, or jurisdiction to hear and decide Plaintiff’s
 14 motion pursuant to 28 U.S.C. §1446(d).

15 **II. JURISDICTION.**

16 This Court has original jurisdiction over “civil actions arising under the
 17 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. As a general
 18 matter, a claim falls within that grant of jurisdiction “only [in] those cases in which a
 19 well-pleaded complaint establishes either that federal law creates the cause of action or
 20 that the plaintiff’s right to relief necessarily depends on resolution of a substantial question
 21 of federal law.” *Franchise Tax Bd. v. Constr. Laborers Vacation Trust for S. Cal.*, 463
 22 U.S. 1, 27–28, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983). A corollary of the “well-pleaded
 23 complaint” rule, however, is the “artful pleading rule,” which provides that a plaintiff
 24 cannot avoid removal by declining to plead “necessary federal questions.” *See Rivet v.*
 25 *Regions Bank*, 522 U.S. 470, 475, 118 S.Ct. 921, 139 L.Ed.2d 912 (1998). “A federal
 26 court may exercise removal jurisdiction under the ‘artful pleading’ doctrine, even if a
 27 federal question does not appear on the face of a well-pleaded complaint, in three
 28 circumstances: (1) where federal law completely pre-empts state law; (2) where the claim

1 is necessarily federal in character; or (3) where the right to relief depends on the
 2 resolution of a substantial, disputed federal question.” *T & E Pastorino Nursery v. Duke*
 3 *Energy Trading and Marketing, L.L.C.*, 268 F.Supp.2d 1240, 1247 (S.D.Cal. 2003).

4 Plaintiff’s Complaint in this action is crafted to “artfully” avoid federal question
 5 jurisdiction and achieve an end run around a previous decision issued by Judge David G.
 6 Campbell in *Tenorio-Serrano v. Driscoll*, 324 F. Supp. 3d 1053, 1062 (D. Ariz. 2018). In
 7 that action, an inmate under many of the same conditions as Plaintiff in this case sought to
 8 challenge the constitutionality of the exact same policy at issue in this action under both
 9 Federal and Arizona state law. Judge Campbell, when ruling on Plaintiff’s motion for
 10 preliminary injunction, determined under both Arizona and federal law that Plaintiff failed
 11 to show a substantial likelihood of success on the merits, *id.* at 1060-64, and that the
 12 balance of hardship did not demonstrate that injunctive relief was proper in Plaintiff’s
 13 favor. *Id.* at 1067. Following this preliminary determination, the plaintiff in *Tenorio-*
 14 *Serrano* voluntarily dismissed his case.

15 Plaintiff has artfully drafted his Complaint in an attempt to allege only violations of
 16 Arizona state law, and frame the question of injunctive relief on whether Defendants have
 17 “exceed[ed] their state warrantless arrest authority granted [] by the [Arizona] state
 18 legislature” in order to avoid federal question jurisdiction. [Complaint at ¶ 82].¹
 19 However, what Plaintiff’s Complaint really seeks to challenge is an Arizona’s Sheriff’s
 20 compliance with the Federal government’s request for assistance in the enforcement of
 21 federal immigration law through the use of an immigration detainer Form I-247A and a
 22 warrant of removal Form I-205. [See Complaint at ¶¶ 39-49 (attacking the validity of
 23

24 ¹ Counsel for Plaintiff appears to have given an interview to a local Flagstaff, AZ
 25 paper regarding the Complaint filed in this lawsuit. Therein, he intimates that the current
 26 Complaint was filed in order to escape federal jurisdiction and the ruling issued by the
 27 Federal Court in a previous, related matter. See Arizona Daily Sun, New LawsUIT Filed
 28 Against Sheriff’s Office ICE Detainer Policy, attached as **Exhibit C** (“But Lee Phillips, a
 local lawyer representing Montelongo-Morales ... explains that this lawsuit is looking at
 the same issue from a different angle. Phillips explained that their new lawsuit alleges that
 Driscoll exceeded his authority under state law, while last year’s suit focused on the
 violation of a person’s civil rights under the federal constitution.”).

immigration detainer form I-247A); *id.* at ¶¶ 50-60 (attacking the validity of warrant of removal/deportation form I-205); *id.* at ¶ 85 (seeking “a declaration that Defendants’ policy and practice of preventing individuals from being released from custody because of a request by immigration officials, and without a judicial warrant or probable cause of a crime is contrary to Arizona law.”); *see also id.* at p. 13, ¶ G (requesting the Arizona Superior Court to preliminarily and permanently enjoin Defendants from “notifying or in any way communicating with ICE regarding the predicated or anticipated release date and release time of Plaintiff”); *id.* at p.15, ¶ K(b) (same). In other words, the core question posed by Plaintiffs’ Complaint is whether state law enforcement officers have any authority to arrest, detain, or prolong the detention of individuals of civil immigration violations at the request of the federal government. Under the artful pleading doctrine, this Court has federal question jurisdiction for three reasons:

1. Federal law completely pre-empts state law in this action.

“Complete preemption” applies where “the federal statutes at issue provide[] the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action.” Where this case differs from *Tenorio* is that Plaintiff is not subject to an I-200 Warrant for Arrest of Alien, but rather, an I-205 Warrant of Removal/Deportation. [See Complaint, Ex 4]. An I-205 Warrant, by necessity, already includes a previous adjudication that Plaintiff is subject to removal/deportation from the United States by a final order issued by an immigration judge. [*Id.*]. At least two courts have recognized that a state’s refusal to comply with an order of removal issued by ICE could be constitutionally preempted. *See Miranda-Olivares v. Clackamas Cty.*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *4, n.4 (D. Or. Apr. 11, 2014) (“Had ICE issued an order of removal or deportation for Miranda–Olivares, then a refusal by the County to comply could be constitutionally preempted.”); *People v. Xirum*, 45 Misc. 3d 785, n.1 (Sup. Ct. 2014) (same). The *Miranda-Olivares* court acknowledged that had an I-205 Warrant existed, the doctrine of field-preemption, “based on the implied ‘federal power to determine immigration policy,’ ” would have controlled and the County presumably

would not have been able to exercise any discretion in its enforcement of the order. *Id.* (citing *Arizona v. United States*, 567 US 387, 394-95 (2012)).² Because of the I-205 warrant in this action, federal law completely pre-empts any state law question of whether compliance with ICE's detainer request is constitutional, thereby providing federal question jurisdiction under 28 U.S.C. § 1331.

2. Plaintiff's requested injunctive relief is necessarily federal in character.

"A claim is necessarily federal when it falls within the express terms of a statute granting federal courts exclusive jurisdiction over the subject matter of the claim." *T & E Pastorino Nursery v. Duke Energy Trading & Mktg., L.L.C.*, 268 F. Supp. 2d 1240, 1248 (S.D. Cal. 2003); *Brennan v. Sw. Airlines Co.*, 134 F.3d 1405, 1409 (9th Cir.), amended sub nom. *Brennan v. Sw. Airlines*, 140 F.3d 849 (9th Cir. 1998). 8 U.S.C. § 1357(g)(8) provides that "[a]n officer or employee of a State ... acting under color of federal authority ... shall be 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" regardless of whether it is "brought under Federal or State law." Here, Defendants were acting under color and authority of federal law by "cooperate[ing] with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States" when they complied with ICE's detainer request and I-205 warrant. 8 U.S.C. § 1357(g)(10). As such, under 8 U.S.C. § 1357(g)(8), federal law controls whether Defendants have any liability in this action, making Plaintiffs' request for injunctive and declaratory relief necessarily federal in character.

In addition, Plaintiff also ambiguously pleads in his Complaint that Defendants' actions are in violation of his "rights" under Arizona law. [*See e.g.*, Complaint at ¶ 1 (alleging Defendants' policy deprives persons of their liberty); ¶ 82 (alleging Defendants acts exceed their state warrantless arrest authority); ¶ 85 (alleging generally that

² Indeed, Justice Alito in *Arizona* noted that "one of the Federal Government's highest priorities is the apprehension and removal of aliens who have failed to comply with a final order of removal." *Arizona v. United States*, 567 U.S. 387, 444 (2012) (Alito concurrence).

Defendants’ policy and practice of preventing individuals from being released from custody is contrary to “Arizona law”)]. To the extent this refers to certain rights under the Arizona Constitution, however, Arizona has not recognized a private right of action for alleged violations of the Arizona Constitution or the arrest statutes referred to in Plaintiff’s Complaint. [A.R.S. § 13-3898, A.R.S. § 13-3907, A.R.S. § 1-215 and the Arizona Rules of Criminal Procedure.] Rather, such an allegation is only cognizable as a violation of federal constitutional rights under 42 U.S.C. § 1983. By way of example, due process damage claims pursuant to the United States Constitution are permitted under federal law pursuant to 42 U.S.C. § 1983, which authorizes a private right of action against persons who deprive individuals of constitutional rights. 42 U.S.C. § 1983. However, the Arizona Legislature has never enacted a state counterpart to § 1983, nor is there a published Arizona decision that has created a damage remedy for general violations of state constitutional rights. Such an enabling statute is necessary to convey a private cause of action under the Arizona Constitution. *See Ferrer v. State*, 172 Misc.2d 1, 6-7, 655 N.Y.S.2d 900, 903-04 (Ct. Cl. 1996) (finding no private right of action under State Constitution); *Thibault v. Barkhamsted Fire Dist.*, 2013 WL 6038259 *4 (Conn. Super. Ct. 2013); *Bandoni v. State*, 715 A.2d 580, 601 (R.I. 1998) (“we hold that article 1, section 23, is not self-executing and that in order for a cause of action for damages to resonate from the deprivation of a crime victim’s rights, the Legislature must create specific provisions or mechanisms as mandated by the framers.”) Accordingly, in this case, to the extent Plaintiff seeks injunctive or declaratory relief to vindicate Arizona law constitutional or criminal statute violations, such requested injunctive relief, by definition, is federal in character as such a claim can only be brought under 42 U.S.C. § 1983.

3. Plaintiff’s right to relief depends on the resolution of substantial, disputed federal questions.

As to the third option under the artful pleading doctrine—the substantial federal question doctrine—the Supreme Court has specified that where a claim is based on state rather than federal law, there may be federal jurisdiction only where the “state-law claim

necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 314 (2005). Here, several substantial federal questions are raised in Plaintiff’s complaint.

First, as identified by Judge Campbell in *Tenorio*, the Court will also need to address whether 8 U.S.C. § 1357(g)(10) permits “cooperation” with “detention” in order to determine if declaratory and injunctive relief is proper under Arizona law. *Tenorio-Serrano*, 324 F. Supp. 3d at 1064. Under A.R.S. § 11-1051(A) “No official or agency of this state or a county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to ***less than the full extent permitted by federal law.***” (emphasis added). This provision was upheld in *Arizona v. United States*, 567 U.S. 387, 411-15 (2012). Accordingly, in order to answer whether law enforcement is permitted to cooperate with an ICE detainer request, per A.R.S. § 11-1051, this Court must explore the full extent that cooperation with federal immigration is permitted by federal law. Thus, in order to answer this question, the Court will, by necessity, need to examine various federal statutes and regulations regarding the federal government’s ability to request assistance from state or local governments in the enforcement of federal immigration law³ as well as decisions by the United States Supreme Court and other federal courts addressing the same⁴, and determine whether these authorities sufficiently confer on a state actor the legal authority to hold an

³ See e.g., 8 U.S.C. § 1357(g)(10) (authorizing state and local governments to “communicate with the [Secretary] regarding the immigration status of any individual” or “cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States,” when that cooperation is pursuant to a “request, approval, or other instruction from the Federal Government.”); see also 8 U.S.C. § 1226(a); 8 U.S.C. § 1231(a)(1)(A), (2); 8 U.S.C. § 1357(a)(1), (2).

⁴ See e.g., *Arizona v. United States*, 567 U.S. 387 (2012); see also *See Chung Young Chew v. Boyd*, 309 F.2d 857, 865 (9th Cir. 1962) (holding detainer filed on the basis of a warrant sufficient to establish “technical custody ... until the individual is released from the institution at which time actual custody is obtained.”).

1 individual for ICE. This review and analysis, by necessity, involves substantial federal
2 questions regarding the scope of cooperation permitted between local governments and
3 the federal government in the enforcement of federal immigration law.

4 **Second**, as identified by Judge Campbell in *Tenorio*, this Court will need to
5 determine whether state officers act with federal authority when they hold persons on
6 behalf of the federal government. *See* 8 U.S.C. § 1357(g)(8). If the measure of
7 Defendants authority to detain is based on a federal immigration officer's authority, then
8 that clearly implicates a federal question on the scope of a federal immigration officer's
9 authority to arrest and detain individuals subject to an I-205 warrant.

10 **Third**, as identified by Judge Campbell in *Tenorio*, federal law regarding whether
11 state officials could detain an individual based on a federal warrant would weigh on the
12 constitutionality of the policy at issue in this action. *Tenorio-Serrano v. Driscoll*, 324 F.
13 Supp. 3d 1053, 1065 (D. Ariz. 2018) ("future briefing should consider and address the
14 differences between unilateral arrests and continued detentions on the basis of federal
15 warrants.").

16 Thus, because this Court must squarely resolve intertwined federal questions in
17 order to determine whether Plaintiff is entitled to the relief requested in his Complaint,
18 Plaintiff cannot escape the federal questions by framing his Complaint as an attack on
19 Defendants' authority under Arizona law to comply with ICE detainer/warrant requests.
20 *See Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 308 (2005)
21 ("Federal-question jurisdiction is usually invoked by plaintiff's pleading a cause of action
22 created by federal law, but this Court has also long recognized that such jurisdiction will
23 lie over some state-law claims that implicate significant federal issues.... These
24 considerations have kept the Court from adopting a single test for jurisdiction over federal
25 issues embedded in state-law claims between nondiverse parties."); *see also Rivet v.*
26 *Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998) ("Allied as an 'independent
27 corollary' to the well-pleaded complaint rule is the further principle that 'a plaintiff may
28 not defeat removal by omitting to plead necessary federal questions.' If a court concludes

1 that a plaintiff has ‘artfully pleaded’ claims in this fashion, it may uphold removal even
2 though no federal question appears on the face of the plaintiff’s complaint. The artful
3 pleading doctrine allows removal where federal law completely preempts a plaintiff’s
4 state-law claim.”); *Sacks v. Dietrich*, 663 F.3d 1065, 1069 (9th Cir. 2011) (holding that
5 federal district court correctly found federal question jurisdiction “because application of
6 federal law is necessary to resolve each of the state law theories” despite the Complaint
7 being framed entirely under state law).

8 Based on the foregoing, this Court has original jurisdiction, and the Superior Court
9 Action must be removed to the United States District Court, for the District of Arizona.

10 **III. VENUE.**

11 Venue is proper in this district under 28 U.S.C. § 1441(a) because the District and
12 the division embrace Coconino County, Arizona, the place where the Superior Court
13 Action was filed.

14 **IV. COMPLIANCE WITH 28 U.S.C. § 1446**

15 Defendants James Driscoll and Matt Figueroa were served with the Complaint for
16 Declaratory Relief, Injunctive Relief and Special Action; and Plaintiff’s Motion for Class
17 Action Certification on January 15, 2019. (Service Affidavit Attached as **Exhibit “D”**).

18 In accordance with 28 U.S.C. § 1446(b), this Notice of Removal has been filed
19 within thirty (30) days of receipt of Plaintiffs’ Complaint, and within one year of the
20 commencement of the Superior Court Action.

21 Copies of all remaining pleadings currently on file with the Coconino County
22 Superior Court are attached as **Exhibit “E”**.

23 Notice of Removal to United States District Court, a true and correct copy of which
24 is attached as **Exhibit “F”**, will be filed in the Superior Court for the State of Arizona, in
25 the County of Coconino, Case No. CV2018-00144, on behalf of Defendants James
26 Driscoll and Matt Figueroa.

27 ///

28 ///

1 **V. CONCLUSION**

2 Removal of this action is proper under 28 U.S.C. § 1441(a) because this Court has
3 original jurisdiction pursuant to 28 U.S.C. § 1331. All defendants have consented to
4 removal, and Defendants hereby submit the subject notice of removal, a Notice of which
5 has also been filed with the Coconino County Superior Court.

6 DATED this 25th day of January 2019.

7 JONES, SKELTON & HOCHULI, P.L.C.

8
9 By /s/ Michele Molinario

10 Michele Molinario
11 John T. Masterson
12 Derek R. Graffious
13 Justin M. Ackerman
14 40 North Central Avenue, Suite 2700
15 Phoenix, Arizona 85004
16 Attorneys for Defendants Sheriff James
17 Driscoll and Commander Matt Figueroa

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on this 25th day of January 2019, I caused the foregoing
20 document to be filed electronically with the Clerk of Court through the CM/ECF System
21 for filing; and served on counsel of record via the Court's CM/ECF system.

22 I further certify that some of the participants in the case are not registered
23 CM/ECF users. I have mailed the foregoing document to the following non-CM/ECF
24 participants:

25 Lee Phillips
26 Robert S. Malone
27 Law Office of Lee Phillips, P.C.
28 209 N. Elden Street
 Flagstaff, AZ 86001
 Attorneys for Plaintiff

 Kathleen E. Brody
 William B. Peard
 ACLU Foundation of Arizona
 3707 North 7th Street, Suite 235
 Phoenix, AZ 8501
 Attorneys for Plaintiff

/s/ Cindy Castro

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff
(s): **Jose Montelongo-Morales**

County of Residence: Coconino

County Where Claim For Relief Arose: Coconino

Defendant James Driscoll , Sheriff; Matt
(s): **Figueroa , Commander**

County of Residence: Coconino

Plaintiff's Atty(s):

Lee Phillips
Law Office of Lee Phillips, P.C.
209 N. Elden Street
Flagstaff, Arizona 86001
(928) 779-1560

Defendant's Atty(s):

Michele Molinario
Jones, Skelton & Hochuli, PLC
40 N Central Avenue, Suite 2700
Phoenix, Arizona 85004
(602) 263-1746

REMOVAL FROM COCONINO COUNTY, CASE #S0300-CV201900012

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **2. Removed From State Court**

V. Nature of Suit: **440 Other Civil Rights**

VI.Cause of Action: **United States Constitution**

VII. Requested in Complaint
Class Action: **Yes**

Dollar Demand: **None**

Jury Demand: **No**

VIII. This case **is not related** to another case.

Signature: Michele Molinario

Date: 01/25/2019

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

**SUPPLEMENTAL CIVIL COVER SHEET
FOR CASES REMOVED FROM ANOTHER JURISDICTION**

This form must be attached to the Civil Cover Sheet at the time
the case is filed in the United States District Clerk's Office

Additional sheets may be used as necessary.

1. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party</u>	<u>Party Type</u>	<u>Attorney(s)</u>
Jose Montelongo-Morales	Plaintiff	Lee Phillips Robert S. Malone Law Office of Lee Phillips, P.C. 209 N. Elden Street Flagstaff, AZ 86001
Sheriff James Driscoll	Defendant	Michele Molinaro, Bar #020594 John T. Masterson, Bar #007447 Derek R. Graffious, Bar #033486 Justin M. Ackerman, Bar #030726 Jones, Skelton & Hochuli, P.L.C. 40 North Central Avenue, Suite 2700 Phoenix, AZ 85004
Commander Matt Figueroa	Defendant	Michele Molinaro, Bar #020594 John T. Masterson, Bar #007447 Derek R. Graffious, Bar #033486 Justin M. Ackerman, Bar #030726 Jones, Skelton & Hochuli, P.L.C. 40 North Central Avenue, Suite 2700 Phoenix, AZ 85004

2. Jury Demand:

Was a Jury Demand made in another jurisdiction? Yes ☐ No ☒
If "Yes," by which party and on what date?

3. Answer:

Was an Answer made in another jurisdiction? Yes ☐ No ☒
If "Yes," by which party and on what date?

4. Served Parties:

The following parties have been served at the time this case was removed:

<u>Party</u>	<u>Date Served</u>	<u>Method of Service</u>
Sheriff James Driscoll	January 15, 2019	Personal Service
Commander Matt Figueroa	January 15, 2019	Personal Service

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason Not Served</u>

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

<u>Party</u>	<u>Reason for Change</u>

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claims</u>
Sheriff James Driscoll	Plaintiff seeks injunctive relief that actions of a County Sheriff are unconstitutional.
Commander Matt Figueroa	Plaintiff seeks injunctive relief that actions of a County Sheriff are unconstitutional.

Pursuant to 28 USC § 1446(a) a copy of all process, pleadings, and orders served in another jurisdiction (State Court) shall be filed with this removal.

EXHIBIT “A”

FILED
Valerie Wyant
CLERK, SUPERIOR COURT
01/09/2019 8:08PM
BY: SCALANDRA
DEPUTY

Case No.: S0300CV201900012
HON. CATHLEEN BROWN NICHOLS

**LAW OFFICE OF
LEE PHILLIPS, P.C.**
209 N. Elden St.
Flagstaff, Arizona 86001
(928) 779-1560
(928) 779-2909 Facsimile
LeePhillips@LeePhillipsLaw.com
State Bar No. 009540

ROBERT S. MALONE
209 N. Elden St.
Flagstaff, Arizona 86001
(928) 779-1560
(928) 779-2909 Facsimile
bobsmalone@gmail.com
State Bar No. 017352
Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO**

JOSE MONTELONGO-MORALES, as an)
individual, and on behalf of all)
others similarly situated,)

Plaintiff,

v.

JAMES DRISCOLL, Coconino County)
Sheriff; MATT FIGUEROA, Jail)
Commander of the Coconino County Jail,)
all in their official capacities,)

Defendants.)

Case No.

CLASS ACTION COMPLAINT

**COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
SPECIAL ACTION**

**PETITION FOR SPECIAL ACTION & COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. This suit challenges Coconino County Sheriff Jim Driscoll's policy
and practice of unlawfully exceeding his authority under Arizona law by routinely

1 depriving persons of their liberty for suspected civil violations of federal
2 immigration law.

3 2. This policy and practice of preventing individuals from being
4 released from the Coconino County Detention Facility, solely because of a request
5 by immigration officials and without a judicial warrant or probable cause of a
6 crime, is contrary to Arizona law.

7 3. Arizona sheriffs' powers are strictly limited to those expressly
8 granted by the Arizona statutes. Requests made by immigration officials do not
9 confer state or local law enforcement officers with any authority to arrest, detain,
10 or prolong the detention of individuals for civil immigration violations. The
11 Coconino County's policy and practice of placing a U.S. Immigrations Customs
12 Enforcement detainer (sometimes referred to as "ICE hold" or "immigration
13 detainer") based on immigration requests made by the U.S. Immigration and
14 Customs Enforcement agency ("ICE") will result in Plaintiff invariably remaining
15 in jail longer than state law allows. This is true, even where the ICE request to the
16 Sheriff is accompanied by or otherwise styled as a "administrative warrant", "ICE
warrant", or "warrant of removal/deportation".

17 4. Sheriff Driscoll holds people for up to 48 hours after state law
18 requires their release. Plaintiff and putative class members are likely – if not
19 almost certain – to fall victim to this prolonged and unlawful detention at the
20 Coconino County Detention Facility upon completing all of their conditions of
21 release under state law.

22 5. On behalf of himself and a class of similarly situated persons,
23 Plaintiff seeks preliminary and permanent injunctive relief, as well as a declaratory
24 judgment and special action relief determining that the policy and practice
25 challenged here exceeds Sheriff Driscoll's authority under Arizona law, and is
unlawful.

JURISDICTION AND VENUE

6. This Complaint raises a special action pursuant to the Arizona Rules of Procedure for Special Actions, the forbear to which (Writ of Mandamus) was authorized to be heard by this Court, pursuant to Article VI, § 18 of the Arizona Constitution and A.R.S. § 12-2021.

7. Special Action is appropriate because there is no equally plain, speedy, and adequate remedy available to Plaintiff.

8. Special Action is appropriate because Plaintiff seeks an order from this Court that Defendants perform a duty that:

- a. is ministerial in nature; and
- b. which the law specially imposes as a duty on Defendants; and
- c. Defendants have thus far refused to perform; and
- d. about which Defendants have no discretion.

9. This complaint seeks injunctive relief, which is authorized by A.R.S. § 12-1801.

10. This complaint seeks declaratory relief, which is authorized by A.R.S. § 12-1831.

11. The provisions of A.R.S. § 12-821.01 do not apply to this action because Plaintiff raises no claim for monetary damages against any Defendants and all prayers for relief are of an exclusively injunctive, declaratory, or extraordinary nature.

12. Venue is proper in this Court because the Plaintiff is currently detained within Coconino County, Plaintiff is in the custody of the Coconino County Sheriff, the public body and public officials who determined the matter to be reviewed in this action are officials of Coconino County, and a substantial part of the events or omissions giving rise to this claim occurred in Coconino County.

PARTIES

13. Plaintiff Jose Montelongo-Morales resides in Flagstaff, Arizona with his family, including his three small children.

14. Plaintiff is currently held as a detainee in the Coconino County Detention Facility, a county jail located at 951 E. Sawmill Road in Flagstaff, Arizona.

15. Plaintiff has been continuously held by the Coconino County Sheriff's Office since December 28, 2018.

16. Defendant Jim Driscoll is the Coconino County Sheriff and has served as the Coconino County Sheriff during all times relevant to this action. Mr. Driscoll is sued in his official capacity.

17. Mr. Driscoll's duties include taking charge of and keeping the county jail, as well as the prisoners in the county jail, pursuant to A.R.S. §§ 11-441(A)(5), 31-301, and 48-4002(F).

18. Defendant Matt Figueroa is an employee of Coconino County Sheriff's Office and serves as the Jail Commander of the Coconino County Detention Facility.

19. Defendant Matt Figueroa may formulate jail policy, subject to Defendant Driscoll's review and approval.

20. Defendant Matt Figueroa is responsible for overseeing the day-to-day operations of the Coconino County Detention Facility.

21. Defendant Matt Figueroa has supervisorial responsibility over all civilian Coconino County Sheriff's Office employees working at the Coconino County Detention Facility, including those civilian employees responsible for accepting and/or processing bail and fines.

STATEMENT OF FACTS

The Coconino County Sheriff's Office Local Policy

22. Upon information and belief, the Coconino County Sheriff's Office has had in place since at least January 2008 a written jail policy that sets out the appropriate steps for jail staff to take when encountering an inmate who is suspected of being in the United States without lawful immigration status.

23. On July 28, 2017, Defendant Matt Figueroa drafted the current version of the jail policy that forms the basis of the state law violations complained of in this action. (*See* Exhibit 1, Sheriff's Policy Re: "Suspected Illegal Immigrant Inmates.")

24. The current jail policy instructs Coconino County Detention Facility staff not to physically release detainees who are the subject of "ICE Detainers" for up to an additional 48 hours after the ICE detainee has satisfied all local conditions of release. This policy of delayed release allows ICE sufficient time to take custody of the detainee. Pursuant to this jail policy, a detainee subject to an ICE detainer is released prior to 48 hours only if ICE arrives within the 48 hours to take custody of the detainee or if ICE notifies jail staff that it has dropped the ICE detainer. (*See* Exhibit 2, Declaration of Samantha Seaman, Assistant Field Director, I.C.E. Phoenix Office).

25. The jail policy described above instructs Coconino County Sheriff's Office personnel to prolong the detention of a subset of detainees beyond the time that they would otherwise be held by Coconino County Sheriff's Office.

26. The jail policy described above requires Coconino County Sheriff's Office personnel to prolong the detention of a subset of detainees on the exclusive basis of the existence of an "ICE detainer" and an accompanying "ICE administrative warrant".

Plaintiff's Initial Arrest

27. Plaintiff was arrested by Flagstaff Police on December 28, 2018.

28. On December 28, 2018 Plaintiff was booked into the Coconino County Detention Facility on a failure to appear warrant previously issued by the Flagstaff Municipal Court.

29. On January 2, 2019, Plaintiff was arraigned before the Flagstaff Municipal Court and a show cause hearing was set in his case for January 16, 2019.

30. Plaintiff is currently being held in the Coconino County Detention Facility by order of the Flagstaff Municipal Court and pursuant to Arizona statutes.

31. At no time did Coconino County officials bring federal criminal charges against Plaintiff.

32. Upon information and belief, at no time have federal authorities communicated to Defendants or to Coconino County Sheriff's Office personnel that there is probable cause to believe that Plaintiff violated any criminal statutes.

33. Upon information and belief, Plaintiff does not have any outstanding criminal warrants for his arrest from other jurisdictions.

34. Plaintiff does not stand charged in any other state with a felony crime.

35. Plaintiff is currently being held in the Coconino County Detention Facility as a detainee of Coconino County Sheriff's Office and is fully under the custody of Coconino County Sheriff's Office.

36. Plaintiff is not currently being held in the Coconino County Detention Facility pursuant to an intergovernmental agreement with a federal agency.

37. Plaintiff is not currently a federal inmate.

ICE Involvement in Plaintiff's Case

38. On or about December 28, 2018, ICE officials located in Phoenix, Arizona became aware that Plaintiff was in the custody of the Coconino County Sheriff's Office.

39. On December 28th, 2018 ICE officials located in Phoenix, Arizona sent two documents to the Coconino County Detention Facility related to Plaintiff: one document entitled "Department of Homeland Security Immigration Detainer – Notice of Action" and imprinted with the form number "I-247A"; and a second document entitled "U.S. Department of Homeland Security Warrant of Removal/Deportation" and imprinted with the form number "I-205". (*See Exhibits 3, 4*)

40. Aside from the two documents referenced in Paragraph 40, above, Coconino County Sheriff's Office received no other documents from ICE related to Plaintiff.

41. The Form I-247A provided to the Coconino County Detention Facility on December 28th, 2018 nowhere indicates that ICE has formed probable cause to believe that Plaintiff violated any criminal laws.

42. Nowhere on the Form I-247A provided to the Coconino County Detention Facility on December 28th, 2018 appears the words "misdemeanor" or "felony".

43. The Form I-247A provided to the Coconino County Detention Facility on December 28th, 2018 is signed by an ICE "immigration officer".

44. The above-referenced immigration officer who signed the Form I-247A at issue in this action is an employee of ICE.

45. ICE is a law enforcement agency.

46. The immigration officer who signed the Form I-247A at issue in this action is a law enforcement officer.

1 47. The immigration officer who signed the Form I-247A at issue in this
2 action is not a judge.

3 48. The immigration officer who signed the Form I-247A at issue in this
4 action is not a “magistrate”, as that term is used in A.R.S. § 13-3898, A.R.S. § 13-
5 3907, A.R.S. § 1-215, and the Arizona Rules of Criminal Procedure.

6 49. The immigration officer who signed the Form I-247A at issue in this
7 action is personally involved in the investigation of violations of federal
8 immigration laws and is neither detached nor neutral.

9 50. The Form I-205 provided to the Coconino County Detention Facility
10 on December 28th, 2018 is titled a “Warrant of Removal/Deportation” and was
11 signed by an “immigration officer” employed by ICE.

12 51. The Form I-205 at issue in this action does not articulate any
13 reasonable suspicion or probable cause to believe that Plaintiff violated any
14 criminal laws.

15 52. Neither the word “misdemeanor” nor the word “felony” appears
16 anywhere on the Form I-205 at issue in this action.

17 53. The immigration officer who signed the Form I-205 at issue in this
18 action is a law enforcement officer.

19 54. The immigration officer who signed the Form I-205 at issue in this
20 action is an employee of ICE.

21 55. The immigration officer who signed the Form I-205 at issue in this
22 action is not a judge.

23 56. The immigration officer who signed the Form I-205 at issue in this
24 action is not a “magistrate”, as that term is used in A.R.S. § 13-3898, A.R.S. § 1-
25 215, and the Arizona Rules of Criminal Procedure.

 57. The Form I-205 at issue in this action was not signed by a judge or
by a magistrate.

1 58. The Form I-205 at issue in this action was not reviewed by a judge
2 or by a magistrate.

3 59. The Form I-205 at issue in this action was issued by an immigration
4 officer who is involved in the investigation of Plaintiff's alleged violation of
5 federal immigration laws, who is neither detached or neutral.

6 60. The Form I-205 at issue in this action was not supported by the oath
7 or affirmation of any government official as required by law.

8 61. Any future prolonged detention of Plaintiff based solely upon the
9 Forms I-247A and I-205 is a warrantless arrest for purposes of A.R.S. § 13-3883.

10 Coconino County Sheriff's Office Detention of Plaintiff

11 62. On January 2, 2019, the Flagstaff Municipal Court set conditions of
12 release.

13 63. Those conditions, in their totality were: that Plaintiff pay a \$200.00
14 cash bond.

15 64. By the terms of the Commitment/ Release Order issued in Plaintiff's
16 case on January 2, 2019, the above-mentioned conditions of release were the only
17 conditions of release set by the Flagstaff Municipal Court.

18 65. The Determination of Release Conditions described in Paragraphs
19 63 and 64, above, is still in force at this time and has not been rescinded, modified,
20 superseded or otherwise amended since its initial issuance on January 2, 2019.

21 66. The Flagstaff Municipal Court derives its authority to set conditions
22 of release from A.R.S. § 13-3967 and from Article II, Section 22 of the Arizona
23 Constitution, because Plaintiff was detained pursuant to a Failure to Appear
24 Warrant issued by the Flagstaff Municipal Court.

25 67. As it currently stands, without intervention by this Court, Plaintiff
will almost certainly be detained for up to an additional 48 hours, without lawful

1 authority, upon completion of all conditions of release described in Paragraphs 63-
2 64, above.

3 **CLASS ACTION ALLEGATIONS**

4 68. Pursuant to Arizona Rule of Civil Procedure 23, Plaintiff brings this
5 class action and seeks certification of the claims and certain issues in this action on
6 behalf of a Class defined as:

7 **All current and future detainees and inmates of Coconino County**
8 **Detention Facility who are currently or will be the subject of an ICE**
9 **detainer request and/or ICE administrative warrant sent to Defendants**

10 69. Plaintiff reserves the right to amend the Class definition if further
11 investigation and discovery indicates that the Class definition should be narrowed,
12 expanded, or otherwise modified.

13 70. Defendants' practices and omissions are being applied uniformly to
14 all members of the Class.

15 71. Absent relief granted by this Court, Plaintiff believes that all future
16 members of the Class will be treated similarly to Plaintiff and similarly to one
17 another.

18 72. All members of the Class are and will be similarly affected by the
19 unlawful practices of Defendants.

20 73. Based on public records available at this time, it is apparent that the
21 number of Class members is so large as to make joinder impractical, if not
22 impossible.

23 74. The claims asserted by Plaintiff in this action are typical of the
24 claims of the members of the Class, as the claims arise from the same course of
25 conduct by Defendants, and the relief sought within the Class is common to the
members of each.

1 75. Plaintiff will fairly and adequately represent and protect the interests
2 of the members of the Class.

3 **CAUSES OF ACTION**

4 **COUNT ONE:**

5 **SPECIAL ACTION PURSUANT TO A.R.S. § 12-2021 AND THE ARIZONA**
6 **RULES OF SPECIAL ACTION**

7 76. Special Action is appropriate because there is no equally plain,
8 speedy, and adequate remedy available to Plaintiff.

9 77. Special Action is appropriate because Plaintiff seeks an Order from
10 this Court requiring Defendants to perform a duty that is:

- 11 a. Ministerial in nature; and
12 b. The law specially imposes this duty on the Defendants' and
13 c. Defendants have thus far refused to perform this duty; and
14 d. About which Defendants have no discretion. Ariz. R. Spec. Act. P.
15 3(a).

16 78. Special Action is also appropriate because Defendants are acting
17 without legal authority. Ariz. R. Spec. Act. P. 3(b).

18 79. When Defendants' state-law authority to confine Plaintiff has ended,
19 Plaintiff has a clear legal right to release from the Coconino County Detention
20 Center.
21

22 80. Defendants lack discretion to prolong Plaintiff's detention beyond the
23 time when state law requires release. As such, Defendants' duty to promptly
24 release Plaintiff at the appropriate time is a ministerial function of their positions.
25

1 81. Defendants have stated their intention to exceed their state warrantless
2 arrest authority granted them by the state legislature.

3 **COUNT TWO:**
4 **INJUNCTIVE RELIEF**

5 82. The allegations described above constitute violations of Plaintiff's
6 rights, as Defendants have stated their intention to exceed their state warrantless
7 arrest authority granted them by the state legislature.

8 83. Plaintiff can demonstrate both a likelihood of success on the merits
9 and a probability (not merely possibility) of irreparable harm if the Court does not
10 grant relief.

11 84. Plaintiff can show that there will be no hardship to Defendants if
12 relief is granted, and that Plaintiff will suffer immeasurably if this Court does not
13 grant relief.

14 **COUNT THREE:**
15 **DECLARATORY RELIEF**

16 85. Plaintiff is entitled to a declaration that Defendants' policy and practice
17 of preventing individuals from being released from custody solely because of a
18 request by immigration officials, and without a judicial warrant or probable cause
19 of a crime is contrary to Arizona law.

20 **REQUEST FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment
22 in his favor and against Defendants, and award the following relief:
23
24
25

- 1 A. Certify this action as a class action, pursuant to Rule 23(b)(1) or 23(b)(2),
2 Ariz. R. Civ. P.;
- 3 B. Define the certified class, pursuant to Rule 23(c)(1)(B), Ariz. R. Civ. P., as
4 “all current and future detainees and inmates of Coconino County
5 Detention Facility who are currently or will be the subject of an ICE
6 detainer request and/or ICE administrative warrant sent to Defendants”
- 7 C. Include in such Order an award of attorneys’ fees and non-taxable costs,
8 pursuant to Rule 23(g)(1)(D) and 23(h), Ariz. R. Civ. P.;
- 9 D. Appoint undersigned counsel as class counsel, pursuant to Rule 23(g), Ariz.
10 R. Civ. P.;
- 11 E. Declare that the provisions of Defendants’ jail policy permitting Coconino
12 County Sheriff’s Office employees to prolong the detention of detainees and
13 inmates at the Coconino County Detention Facility for up to 48 additional hours
14 exceeds Defendants’ state law authority;
- 15 F. Preliminarily and permanently enjoin Defendants, their officers, agents,
16 servants, and employees from holding or otherwise detaining Plaintiff and class
17 members in excess of sixty (60) minutes beyond the moment that Coconino
18 County Sheriff’s Office confirms that Plaintiff has met all conditions of release set
19 by the Flagstaff City Court on January 2, 2019.
- 20 G. Preliminarily and permanently enjoin Defendants, their officers, agents,
21 servants, employees, and attorneys from notifying or in any way communicating
22 with ICE regarding the predicted or anticipated release date and release time of
23 Plaintiff, as any such communication in this instance would, by implication, be
24
25

1 done in a deliberate effort by Defendants to undermine other relief granted by this
2 Court;

3 H. Accept jurisdiction of a special action by finding that Plaintiff has standing
4 to bring a special action, that the matter is subject to judicial review, and that
5 Plaintiff properly pled that Defendants failed to perform a ministerial duty that
6 they were required by law to perform;
7

8 I. Order Defendants to show cause why Defendants should not be ordered by
9 this Court to release Plaintiff from the Coconino County Detention Facility
10 immediately upon Plaintiffs' completion of all conditions of release, as the law
11 requires Defendants to do and for which the law provides no discretion;
12

13 J. Order Defendants to show cause why Defendants should not be ordered to
14 release Plaintiff from the Coconino County Detention Facility in a specific
15 manner, as is permitted of the Superior Court in certain circumstances during
16 Special Actions (*See, e.g., Tovrea v. Superior Court*, 101 Ariz. 295 (1966);
17 *Southwest Forest Industries, Inc. v. Sullivan*, 100 Ariz. 336 (1966))
18

19 K. Pursuant to A.R.S. § 12-2028A, order Defendants to immediately release
20 Plaintiff from their custody upon completion of all conditions of release set by the
21 Flagstaff City Court on January 2, 2019, and that Defendants do so in the
22 following manner:

- 23 a. That Defendants effectuate Plaintiff's release no longer than sixty
24 (60) minutes from the moment that Plaintiff completes all conditions
25 of release set by the Flagstaff City Court on January 2, 2019; and

1 b. That Defendants release Plaintiff from their custody without
2 communicating to ICE about the anticipated release time or
3 anticipated release date of Plaintiff;

4 L. Award Plaintiffs their costs and reasonable attorneys' fees in this
5 action pursuant to A.R.S. § 12-2030 & Ariz. R. Civ. P. 23;

6 M. Grant Plaintiffs such other relief as this Court may deem just and
7 proper.

8 RESPECTFULLY SUBMITTED this 9 January 2019.

9
10 s/Lee Phillips
11 Lee Phillips
12 Attorney for Plaintiff

13 s/Robert S. Malone
14 Robert S. Malone
15 Attorney for Plaintiff

EXHIBIT 1

COCONINO COUNTY SHERIFF'S OFFICE
Detention Facility Policy and Procedure

Topic Suspected Illegal Immigrant Inmates	Effective Date 01/28/08	P & P No. R1.1a Page 1 of 2
Subtopic Holds/Detainers	Revised by Commander Matt Figueroa 07/28/17	Authorization Commander Braatz

POLICY:

Detention Staff will notify the Detention and Removal Office (DRO), a subsidiary of Immigration Custom Enforcement (ICE), immediately upon reasonable suspicion, notification or admission that an inmate in our facility is an alien and is unlawfully present in the United States.

In determining whether reasonable suspicion of unlawful presence exists, officers should consider all relevant factors, including, among others:

- Lack of or false identification, no date of birth, no social security number
- Possession of foreign identification
- Voluntary statements by the person regarding their citizenship or lawful presence
- Prior information about the person
- Inability to provide their residential address
- Providing inconsistent or illogical information
- Demeanor – for example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact
- Significant difficulty speaking English

PROCEDURE:

1. Detention Staff will notify the DRO immediately upon reasonable suspicion, notification or admission that an inmate in our facility is an alien and is unlawfully present in the United States.
2. Detention Staff will have the inmate in question speak to the DRO over the telephone.
3. If the DRO determines that the inmate in question is in fact in this country illegally, then the DRO/ICE will fax Immigration Detainer – Notice of Action form I-247A and either a Warrant for Arrest of Alien form I-200 or a Warrant of Removal/ Deportation form I-205 to be placed in the inmates file.
4. The bottom law enforcement agency portion of the Immigration Detainer – Notice of Action form I-247A will be filled out by our staff and faxed back to DRO/ICE.

5. A photocopy of the Immigration Detainer -- Notice of Action form I-247A and either a Warrant for Arrest of Alien form I-200 or a Warrant of Removal/ Deportation form I-205 notice will be given to the inmate.
6. The ICE Tab within our Jail Management System (JMS) in ILEADS will be utilized by staff to document the ICE Detainer and other pertinent information regarding the inmate. Staff will also document the reasonable suspicion or reason why ICE was notified in the notes field within the ICE tab. A "Hold for ICE" will then be placed on the inmate in JMS.
7. Inmates with an ICE Detainer will be allowed to post bond on their local charges.
8. Detention Staff will call the DRO/ICE at (602)257-5911 and notify them all local charges have been adjudicated or the bond is posted. The Immigration Detainer -- Notice of Action form I-247A in the inmate folder needs to be scanned and sent via email to phojailreleases@ice.dhs.gov or faxed to (602)379-4502 if an inmate is pending a release.
9. Once ICE is notified, staff will write the inmates name and other pertinent information along with the potential release date on the dry erase board in the Intake/Court Office area. The same information will also be documented in the notes field in JMS.
10. The detainer will remain in effect and the inmate will remain in custody until:
 - DRO/ICE advises and sends a Immigration Detainer -- Notice of Action form I-247A release notifying the Detention Facility to remove or drop the detainer or,
 - ICE takes custody of the Illegal Immigrant inmate or,
 - Until the detainer period expires.
 - A. The detainer period: The current legal detainer period shall not exceed 48 hours. The detainer period commences when the local or state criminal justice agency has no other legal basis for continuing the detention (e.g., when charges are dismissed, when bond is posted).
 - B. The detainer period exists for the purpose of complying with a timely legal request for temporary detention issued by the Department of Homeland Security/ICE as noted above. In the event DHS/ICE fails to assume actual physical custody of the detainee within 48 hours of the onset of the federal detainer (including Saturdays, Sundays and holidays) the detainee must be released.
 - C. In the event of release at the expiration of the detention period, the cause or reason for release shall be noted in the release comments in JMS.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GUILLERMO TENORIO-SERRANO,

Plaintiff,

vs.

JAMES DRISCOLL, et al,

Defendants.

Case No.: 18-CV-08075-DGC-BSB

DECLARATION OF SAMANTHA
SEAMAN

I, Samantha Seaman, hereby state and declare that the following statements are true and correct to the best of knowledge, information, and belief:

1. I am an Assistant Field Office Director at U.S. Immigration and Customs Enforcement (ICE) within the U.S. Department of Homeland Security (DHS). I have served as Assistant Field Office Director in Phoenix since November 27, 2016. I have been employed by ICE and the former Immigration and Naturalization Service continuously since July 6, 1996 and have worked in Enforcement and Removal Operations (ERO). In my capacity as Assistant Field Office Director, I am responsible for direction and oversight of ICE immigration enforcement operations in Arizona. My office is responsible for the identification, apprehension, and removal of illegal aliens from the United States, to include the detention of those determined to pose a risk of flight or danger to the community while they are going through removal proceedings.

DECLARATION OF SAMANTHA SEAMAN – 1

1 2. I have prepared this declaration at the request of the Department of
2 Justice, Office of Immigration Litigation, in connection with the above-captioned
3 action filed by the Plaintiff, Guillermo Tenorio-Serrano. The following
4 representations are based on my personal knowledge and a review of DHS records.
5

6 3. The Plaintiff, Guillermo Tenorio-Serrano, is a 32-year-old native and
7 citizen of Mexico. According to DHS records, he has never had lawful
8 immigration status in the United States.
9

10 4. According to the attached DHS record, on December 12, 2017, at
11 approximately 1:30 a.m., Coconino County Jail officials faxed a notification to
12 ICE stating that the Plaintiff did not have a social security card and admitted to
13 being born in Mexico and not being a United States citizen. The Plaintiff had been
14 arrested by the Flagstaff Police Department and booked into Coconino County Jail
15 custody based on a state criminal charges of driving under the influence (DUI).
16

17 5. After receiving this notification, ICE ERO Deportation Officer (DO)
18 Wagstaff telephonically interviewed the Plaintiff at the Coconino County Jail on
19 December 12, 2017. The Plaintiff admitted he was a citizen of Mexico and had no
20 valid immigration documents to reside legally in the United States. He also
21 admitted that he entered the United States without any inspection, admission, or
22 parole approximately eleven years ago through an unknown location in violation of
23 8 U.S.C. § 1325. DO Wagstaff performed a check of DHS records and confirmed
24
25
26
27
28

1 that the Plaintiff had no legal authorization to be in the United States. DO
2 Wagstaff subsequently presented this information about the Plaintiff to ICE ERO
3
4 Acting Supervisory Detention and Deportation Officer (ASDDO) Barry Jansen,
5 who also determined that the Plaintiff is an alien present in the United States with
6
7 no lawful immigration status and is removable from the United States under
8 Immigration and Nationality Act section 212(a)(6)(A)(i). Therefore, ASDDO
9
10 Jansen executed a DHS Warrant for Arrest of Alien (Form I-200), dated December
11 12, 2017.

12 6. DO Wagstaff faxed an ICE detainer (Form I-247A) and the executed
13
14 arrest warrant (Form I-200) to Coconino County Jail on December 12, 2017, at
15 approximately 2:36 a.m. in accordance with ICE's detainer policy. *See* ICE Policy
16 No. 10074.2, <https://www.ice.gov/detainer-policy>.
17

18 7. There is no release date at present for the Plaintiff because he is in
19
20 pre-trial detention at Coconino County Jail based on his state criminal charges.
21 After a release date is established for the Plaintiff or the Plaintiff posts bond
22 allowing his release from the Coconino County Jail, typically the Coconino County
23 Jail staff will notify the ICE Phoenix ERO office by phone. ICE officers will then
24 travel to the Coconino County Jail, arrest the Plaintiff, and transport him back to
25 Phoenix for processing and a determination of whether to further detain the
26
27 Plaintiff pending his removal from the United States.
28

1 8. Typically, Coconino County Jail officials will notify ICE that an alien
2 subject to an ICE detainer and administrative warrant will be released at a specified
3 date and time because the alien's state charges have been dismissed, the sentence
4 has been served, or bond has been posted. ICE Phoenix ERO officers then travel
5 to the Coconino County Jail and arrest the alien upon the alien's release from
6 Coconino County Jail. Once arrested, the ICE officers transport the alien to the
7 Phoenix ERO office for processing and if necessary, to a facility used for long-
8 term immigration detention while the alien is in removal proceedings.

9 9. The U.S. Marshals Service has an Intergovernmental Service
10 Agreement (IGSA) with Coconino County Jail to, among other things, detain
11 "persons charged with or convicted of violations of federal law." The IGSA
12 specifies that Coconino County "agrees to accept as federal prisoners those persons
13 committed by federal law enforcement officers for violation of federal laws only
14 upon presentation by the officer of proper law enforcement credentials." ICE is an
15 authorized rider on this IGSA. ICE has not presented any aliens to the Coconino
16 County Jail for detention pursuant to the terms of the IGSA since at least April
17 2017.

18 10. When Coconino County Jail informs ICE about an alien's release date
19 and time, and ICE is unable to arrive at the jail to take custody immediately upon
20 release, ICE's detainers request that Coconino County Jail hold the alien for up to
21

1 48 hours so that ICE can take custody of the alien. ICE does not request that
2 Coconino County Jail detain the alien pursuant to the terms of the IGSA, as ICE
3 must arrest an alien before the alien can be taken into Coconino County Jail
4 custody as a federal detainee under the IGSA.
5
6
7

8 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
9 foregoing declaration is true and correct.
10
11

12 DATED THIS 16th day of May, 2018, at Phoenix, Arizona.
13
14

15 *Samantha Seaman*
16 SAMANTHA SEAMAN
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3

INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY

TIME RECEIVED
December 28, 2018 at 3:19:51 PM MST

REMOTE CSID

DURATION
66PAGES
3STATUS
ReceivedDEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: 363460462

Event #: PRO1912001085

File No: 205 414 510

Date: December 28, 2018

TO: (Name and Title of Institution - OR Any Subsequent Law
Enforcement Agency)
COCHINO CO DETENTION FAC
981 E Sawmill Road
FLAGSTAFF, AZ 86001FROM: (Department of Homeland Security Office Address)
PHOENIX, AZ, DOCKET CONTROL OFFICE
ERO Phoenix Field Office
2035 N CENTRAL AVE
PHOENIX, AZ 85004

Name of Alien: MONTELONGO-MORALES, JOSE GUADALUPE

Date of Birth: 12/12/1990

Citizenship: MEXICO

Sex: M

DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS
DETERMINATION IS BASED ON COMPLAINTS bsr 1 or 2:

- ☐ A final order of removal against the alien;
- ☐ The pendency of ongoing removal proceedings against the alien;
- ☒ Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complaints bsr 1 or 2):

- ☐ Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- Notify DHS as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling ☒ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at 802-379-3235. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
 - Maintain custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien must be served with a copy of this form for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.
 - Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
 - Notify this office in the event of the alien's death, hospitalization or transfer to another institution.
- ☐ If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

GABRIEL LIMDROS - Deportation Officer

(Name and title of Immigration Officer)

(Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____

Local Booking/Inmate #: 2018-10734 Estimated release date/time: Unknown

Date of latest criminal charge/conviction: 12-28-18 Last offense charged/conviction: FTC WARRANT

This form was served upon the alien on 12-28-18. In the following manner:

- ☒ In person ☐ by inmate mail delivery ☐ other (please specify):

DSS Steele 451

(Name and title of Officer)

Steele 451

(Signature of Officer) (Sign in ink)

EXHIBIT 4

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

Subject ID: 363460462
File No: 205 414 510
Event No: PHO1912001085
Date: December 28, 2018

To any Immigration officer of the United States Department of Homeland Security:
JOSE GUADALUPE MONTELONGO-MORALES

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☒ an immigration judge in exclusion, deportation, or removal proceedings
☐ a designated official
☐ the Board of Immigration Appeals
☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:
241 (a) 95)

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:
Salaries and Expenses, Department of Homeland Security 2019

ENRIQUE M. LUCERO

(Signature of immigration officer)

Field Office Director

(Title of immigration officer)

(Date and office location)

EXHIBIT “B”

**LAW OFFICE OF
LEE PHILLIPS, P.C.**
209 N. Elden St.
Flagstaff, Arizona 86001
(928) 779-1560
(928) 779-2909 Facsimile
LeePhillips@LeePhillipsLaw.com
State Bar No. 009540

ROBERT S. MALONE
209 N. Elden St.
Flagstaff, Arizona 86001
(928) 779-1560
(928) 779-2909 Facsimile
bobsmalone@gmail.com
State Bar No. 017352
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

JOSE MONTELONGO-MORALES, as an)
individual, and on behalf of all)
others similarly situated,)
Plaintiff,)

Case No. S0300CV2019-00012

v.)

JAMES DRISCOLL, Coconino County)
Sheriff; MATT FIGUEROA, Jail)
Commander of the Coconino County Jail,)
all in their official capacities,)

**PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION PURSUANT TO
RULE 23(a) and Rule 23(b)(2) AND
SUPPORTING MEMORANDUM OF
LAW**

Defendants.)

Petitioner, Jose Montelongo-Morales ("Plaintiff" or "Montelongo-Morales"),
through counsel undersigned, and pursuant to Rule 23, Ariz. R. Civ. P., moves this Court
to certify this action as a class action.

This Motion is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

A class action lawsuit is appropriate to challenge Defendants' practice of unlawfully delaying the release of a class of jail detainees, on the sole basis of an "ICE detainer" request and accompanying administrative warrant received from the U.S. Department of Homeland Security that lacks both independent probable cause of a crime and the minimum hallmarks of a judicial warrant. In an effort to clarify the law for himself and for others who are currently and will in the future be subject to this unlawful practice, Plaintiff seeks to certify the following countywide class under Arizona R. Civ. P. 23(a) and 23(b)(2):

All current and future detainees and inmates of Coconino County Detention Facility who currently are or will be the subject(s) of an ICE detainer request and/or ICE administrative warrant sent to Defendants.

The proposed class readily satisfies the requirements of numerosity, commonality, typicality, and adequacy in Rule 23(a).¹

The proposed class includes potentially hundreds of individuals who are currently being harmed and will be harmed by Defendants' current policy and practice of prolonging jail detention without lawful authority. The class raises common legal questions that will generate common answers, including whether Defendants' challenged

¹ On September 2, 2016, the Arizona Supreme Court abrogated the then-current version of the Arizona Rules of Civil Procedure. The Court also adopted, with some modifications, the amended Arizona Rules of Civil Procedure which took effect January 1, 2017. As adopted, Ariz. R. Civ. P. 23 is an amended version of the abrogated Rule 23 which brings Arizona's class action rule largely in line with Fed. R. Civ. P. 23, the federal class action rule. See Daniel J. McAuliffe and Shirley J. McAuliffe, 2018 Arizona Civil Rules Handbook p. 454 (complete citation); see also "Prefatory Comments To The 2017 Amendments," 2017 Arizona Civil Rules Handbook ("If no good reason exists to depart from the newly restyled language of a federal rule, these amendments adopt the restyled federal wording verbatim. These amendments also renumber various subdivisions of Arizona rules to be consistent with the numbering of parallel federal subdivisions.").

1 policy and practice of delaying the release of jail detainees who are the subject of ICE
2 detainer requests exceeds the Defendants' lawful authority. The class also raises
3 common factual issues because Plaintiff and class members are subject to the same
4 unlawful practice and policy of unlawfully delaying detention absent probable cause of a
5 crime or a valid warrant under state law. Plaintiff's claims are typical of those whom
6 Plaintiff seeks to represent: class members, by definition, are currently suffering and will
7 in the future suffer the same type of unlawfully prolonged jail detention, on the same
8 unlawful basis, and by the same wrongdoers. Plaintiffs are also adequately represented
9 by Plaintiff's counsel, both of whom have significant experience litigating complex civil
10 matters, including successful class action civil rights lawsuits challenging ongoing
11 wrongful conduct by law enforcement agencies.
12

13
14 Plaintiff's proposed class likewise satisfies Rule 23(b)(2) because Defendants
15 have "acted or refused to act on grounds that apply generally to the class, so that final
16 injunctive relief or corresponding declaratory relief is appropriate respecting the class as
17 a whole." Rule 23(b)(2).² Because Defendants have a written policy, faithfully followed,
18 of unlawfully prolonging the detention of certain of its county inmates without
19 independent probable cause or a valid warrant, they are operating in a manner that is
20 common to Plaintiff and all class members. Consequently, injunctive and declaratory
21

22
23
24
25 ² Since Plaintiff seeks only injunctive and declaratory relief, the "requirement is relaxed and plaintiffs may rely on reasonable inference[s] arising from plaintiffs' other evidence that the number of unknown and future members of [the] proposed subclass...is sufficient to make joinder impracticable." *Arnott v. U.S. Citizenship & Immigration Servs.*, 290 F.R.D. 579, 586 (C.D. Cal. 2012) (quoting *Sueoka v. United States*, 101 Fed. App'x 649, 653 (9th Cir. 2004)).

1 relief in this case would have the effect of remedying at the same time the legal harm
 2 suffered by both Plaintiff and all class members.

3 Accordingly, this Court should grant class certification under Rule 23(b)(2) for
 4 purposes of entering Plaintiff's countywide preliminary and permanent injunctions.
 5

6 **LEGAL STANDARDS**

7 **A. Satisfying Rule 23(a) & (b) Entitles a Movant to Class Certification.**

8 Supreme Court case law holds that plaintiffs' suit is entitled to Rule 23 class certification
 9 if two conditions are met:

10 The suit must satisfy the criteria set forth in subdivision (a) (i.e., numerosity,
 11 commonality, typicality, and adequacy of representation), and it also must fit into one of
 12 the three categories described in subdivision (b). By its terms this creates a categorical
 rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a
 class action.

13 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010)
 14 (internal citation omitted).

15 State of Arizona procedure has an identical approach to class certification. *Ferrara*
 16 *v. 21st Century North Am. Ins. Co.*, 245 Ariz. 377 (Ct. App. 2018) ("Plaintiffs seeking
 17 class certification must meet all the requirements of Rule 23(a) and at least one of the
 18 requirements of Rule 23(b)."

19 **B. The Proposed Class Satisfies the Numerosity Requirement.**

20 Rule 23(a)(1) requires that a class be "so numerous that joinder of all members is
 21 impracticable." Fed. R. Civ. P. 23(a)(1). "There is no bright line rule regarding the
 22 number of class members that will satisfy the numerosity prerequisite of rule 23." *London*
 23 *v. Green Acres Tr.*, 159 Ariz. 136, 140 (Ct. App. 1988). Moreover, "It is a long-standing
 24 rule that 'impractical' does not mean 'impossible', rather, impracticability means only
 25 'the difficulty or inconvenience of joining all members of the class.'" *McCluskey v.*

1 *Trustees of Red Dot Corp. Employee Stock Ownership Plan & Tr.*, 268 F.R.D. 670, 675
 2 (W.D. Wash. 2010) (*quoting Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909,
 3 913-14 (9th Cir. 1964). District courts within the Ninth Circuit have determined that
 4 numerosity exists where there is evidence of at least 39 class members, *Patrick v.*
 5 *Marshall*, 460 F. Supp. 23, 26 (N.D. Cal. 1978); where there are at least 25-30 class
 6 members, *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000); and where there
 7 are 27 prospective class members. *McCluskey, supra*. 268 F.R.D. at 675.

8 While Plaintiff is not required to “state the exact number of potential class
 9 members”, *In re Rubber Chemicals Antitrust Litig.*, 232 F.R.D. 346, 350–51 (N.D. Cal.
 10 2005), he can show with some degree of specificity that the number of class members
 11 exceeds the presumptive requirements for numerosity. Public records obtained through
 12 the federal Freedom of Information Act³ and independent statements made by Defendant
 13 Driscoll both indicate that approximately 70 to 75 class members pass through the
 14 Coconino County Detention Facility each year.⁴

15 Moreover, in assessing the numerosity prong of smaller classes, courts will
 16 consider other “indicia of impracticability” such as “geographical diversity of class
 17 members, the ability of individual claimants to institute separate suits, and whether
 18 injunctive or declaratory relief is sought.” *Jordan v. Los Angeles Cty.*, 669 F.2d 1311,
 19 1319 (9th Cir. 1982), *cert. granted, judgment vacated on other grounds*, 459 U.S. 810
 20 (1982). Here, Plaintiff and proposed class members are and will be – by definition –
 21 suspected by ICE of being in the United States without lawful immigration status. *See*,

23 ³ TRAC Immigration: Latest Data: Immigration and Customs Enforcement Detainers, *available at*:
 24 <http://trac.syr.edu/phptools/immigration/detain/>

25 ⁴ “Sheriff Jim Driscoll Talks ICE Detainers”, THE JEFF ORAVITS SHOW (Sept. 28, 2018), *available at*:
<https://jefforavits.wordpress.com/2018/09/28/sheriff-jim-driscoll-talks-i-c-e-detainers/> (Interviewer: “On a given
 day, what’s the average number of detainees that you will be holding for ICE”. Driscoll: “We generally have about
 six or seven in custody at any one time that have current ICE holds on them. Annually, we average seventy to
 seventy-five.”)

1 e.g., Compl. at ¶ 22. Many class members do not speak English as their native language
2 and will find it difficult to locate a civil rights attorney to fight their extended detentions
3 (in addition to their likely need for both a criminal defense attorney and immigration
4 attorney). Furthermore, proposed class members are and will be – by definition –
5 detained in a county jail and lack uninhibited access to the internet and phone calls to
6 maintain contact with the outside world. *Valdez v. Rosenbaum*, 302 F.3d 1039, 1045 (9th
7 Cir. 2002) (noting that many inmates, of necessity, have incredibly limited phone access).
8 Finally, case law confirms that where plaintiffs seek only injunctive and declaratory
9 relief, as opposed to monetary damages, the numerosity requirement is relaxed. *Sueoka*
10 *v. United States*, 101 Fed. App'x 649, 653 (9th Cir. 2004).

11 Not only does this class include those like Plaintiff, who are currently being
12 detained, but it also encompasses untold numbers not yet aggrieved by Defendants'
13 unlawful policy. The presence of such future class members renders joinder inherently
14 impractical, thereby satisfying the purpose behind the numerosity requirement. *See, e.g.*,
15 *Ali v. Ashcroft*, 213 F.R.D. 390, 408 (W.D. Wash. 2003) (“[W]here the class includes
16 unnamed, unknown future members, joinder of such unknown individuals is
17 impracticable and the numerosity requirement is therefore met, regardless of class size.”)
18 (quoting *Nat'l Ass'n of Radiation Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal.
19 1986)). Even where numerosity is a close question, a court should still certify the class at
20 this initial stage, subject to decertification if the class turns out to be much smaller. *See*
21 *Stewart v. associates Consumer Discount Co.*, 183 F.R.D. 189, 194 (E.D. 1998).

22 **C. The Class Presents Common Questions of Law and Fact.**

23 To satisfy commonality, Plaintiff must show that “there are questions of law or
24 fact common to the class.” Ariz. R. Civ. P. 23(a)(2). A Plaintiff “need not show . . . that
25 every question in the case, or even a preponderance of questions, is capable of class wide

1 resolution.” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014): Rather, even one shared
2 legal issue can be sufficient. See e.g., *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257
3 (C.D. Cal. 2008) (“Courts have found that a single common issue of law or fact is
4 sufficient.”) (citation omitted); *Sweet v. Pfizer*, 232 F.R.D. 360, 367 (C.D. Cal. 2005)
5 (“there must only be one single issue common to the proposed class”) (quotation and
6 citation omitted).

8 Moreover, “individual variation among plaintiffs’ questions of law and fact does
9 not defeat underlying legal commonality, because ‘the existence of shared legal issues
10 with divergent factual predicates is sufficient’ to satisfy Rule 23.” *Santillan v. Ashcroft*,
11 2004 WL 2297990, at *10 (N.D. Cal. Oct. 12, 2004).

13 In other words, commonality exists where there is found a “common core of
14 factual or legal issues with the rest of the class”, even though “the circumstances of each
15 particular class member vary,” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015,
16 1029 (9th Cir. 2012); See also, *Arnott v. U.S. Citizenship & Immigration Servs.*, 290
17 F.R.D. 579, 588 (C.D. Cal. 2012). Here, Plaintiff and all class members are challenging a
18 common policy that exists at the same jail facility and is being implemented by the same
19 individuals.

21 For example, the fact that class members may each be facing different underlying
22 criminal charges does not change the common thread of an unlawfully prolonged
23 detention in the county facility. Similarly, the fact that class members may each have
24 been given different bail amounts or other non-monetary conditions of release does not
25 alter the underlying issue in this case – that upon fulfilling all conditions set by the local

1 judge, Defendants will nevertheless refuse to effectuate their release as they are required
2 to do by law. *See, e.g., Lyon v. ICE*, 300 F.R.D. 628, 642 (N.D. Cal. 2014) (finding
3 commonality where Plaintiffs showed that the challenged prison policy was in place at all
4 three prison facilities identified in the class definition)

5
6 Plaintiff and proposed class members thus “have suffered [or will suffer] the same
7 injury” – unlawful detention. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)
8 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). And that common
9 injury is clearly “capable of classwide resolution.” *Id.* Should the Court agree that
10 Defendants’ policies or practices violate Plaintiff’s rights, all who fall within the class
11 will benefit from the requested relief: an injunction preventing Defendants from
12 unlawfully prolonging their detention.. Thus, a common answer as to the legality of the
13 challenged policies and practices will “drive the resolution of the litigation.” *Ellis v.*
14 *Costco Wholesale Corp.*, 657 F. 3d 970, 981 (9th Cir. 2011) (quoting *Wal-Mart*).

15
16 **D. Plaintiff’s Claims are Typical of Class Members’ Claims.**

17 Rule 23(a)(3) requires that “the claims or defenses of the representative parties
18 [be] typical of the claims or defenses of the class.” The purpose of the typicality
19 requirement is to “assure that the interest of the named representative aligns with the
20 interests of the class” as a whole. *Hanon v. Dataproducts Corp.*, 976 F. 2d 497, 508 (9th
21 Cir. 1992). “Under the rule’s permissive standards, representative claims are ‘typical’ if
22 they are reasonably coextensive with those of the absent class members.” *Parsons v.*
23 *Ryan*, 754 F.3d 657, 685 (9th Cir. 2014).

24 In assessing whether the “typicality” requirement is satisfied, the Arizona courts,
25 relying on federal case law, have examined whether: (1) common issues of law and/or

1 fact are presented; (2) the interests of the proposed class representative are antagonistic to
2 those of members of the putative class; and (3) absent class members have suffered the
3 same type of injury as the class representative. *Lennon v. First Nat. Bank of Arizona*, 21
4 Ariz. App. 306, 518 P.2d 1230 (App. 1974).

5 Plaintiff's claims are typical of the claims of the proposed class, for largely the
6 same reasons that the class presents common questions of law and fact. Each proposed
7 class member has suffered or will suffer the same injury (unlawfully prolonged
8 detention), based on the same government practice.

9 Moreover, as with commonality, any factual differences between Plaintiff and
10 proposed class members are not material enough to defeat typicality. *LaDuke v. Nelson*,
11 762 F. 2d 1318, 1332 (9th Cir. 1985) (The minor differences in the manner in which the
12 representative's rights were violated does not render their claims atypical of those of the
13 class.). In this case, Plaintiff's claims with respect to the government's prolonging his
14 detention are not just typical of other class members. They are the same.

15 **E. Plaintiff Will Adequately Protect the Interests of the Proposed Class, and**
16 **Plaintiff's Counsel Is Qualified to Litigate this Action.**

17 Rule 23(a)(4) requires that "[t]he representative parties will fairly and adequately
18 protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy depends on "the
19 qualifications of counsel for the representatives, an absence of antagonism, a sharing of
20 interests between representatives and absentees, and the unlikelihood that the suit is
21 collusive." *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2009) (internal quotation
22 marks omitted). "Adequacy of representation tends to be assured if the representative's
23 individual interests are the same or similar to other class members." *Persky v. Turley*,
24 1991 WL 329564, at *3 (D. Ariz. Dec. 20, 1991).
25

1 Here, Plaintiff's individual interest is perfectly aligned with that of the absent class
2 members – to be held as detainees in Coconino County and experiencing an unlawfully
3 prolonged detention as the sole result of an ICE detainer and accompanying ICE
4 administrative warrant. Plaintiff does not seek any unique or additional benefit from this
5 litigation that may make his interests different from or adverse to those of absent class
6 members. Indeed, Plaintiff seeks exclusively injunctive and declaratory relief and does
7 not seek any monetary damages whatsoever. Instead, Plaintiff's aim is to secure relief
8 that will protect both his own rights and those of future detainees who are likely to find
9 themselves in a similar – if not identical – predicament with regard to Coconino County
10 jail policy. Accordingly, Plaintiff lacks any antagonism with the class, his interests align
11 squarely with the other proposed class members, and no collusion is present.
12

14 With respect to counsel, they are considered qualified under Rule 23(a)(4) when
15 they have experience in previous class actions and cases involving the same field of law.
16 See *Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984); *Marcus v. Heckler*, 620 F.
17 Supp. 1218, 1223-24 (N.D. Ill. 1985); *Adams v. Califano*, 474 F. Supp. 974, 979 (D. Md.
18 1979). Plaintiff's proposed class counsel have extensive experience litigating class action
19 lawsuits and other complex cases in state and federal court, including civil rights class
20 action lawsuits. See, e.g., *Arnold v. Arizona Dep't of Pub. Safety*, 2006 WL 2168637, at *1
21 (D. Ariz. July 31, 2006) (undersigned counsel Lee Phillips as lead counsel in a class
22 action lawsuit against a state law enforcement agency); *Manybeads v. United States of*
23 *America*, 209 F.3d 1164 (9th Cir. 2000) (undersigned counsel Lee Phillips as lead
24 plaintiff counsel in a class action lawsuit against the federal government).
25

1 **F. Plaintiff Meets the Criteria of Rule 23(b)**

2 One of the three authorized categories of class actions listed in Rule 23(b) are suits
 3 where “the party opposing the class has acted or refused to act on grounds that apply
 4 generally to the class, so that final injunctive relief or corresponding declaratory relief is
 5 appropriate respecting the class as a whole.” Ariz.R.Civ.P. 23(b)(2). Where, as here, the
 6 purpose of a lawsuit “is not the amount of monetary recovery, but the challenge to the
 7 policies”, a 23(b)(2) class action is appropriate. *Godbey v. Roosevelt Sch. Dist. No. 66 of*
 8 *Maricopa Cty.*, 131 Ariz. 13, 17 (Ct. App. 1981).

9 Indeed, this case is the quintessential 23(b)(2) class action: a civil rights lawsuit
 10 challenging the ongoing enforcement of a uniformly-enforced illegal policy. *Walters v.*
 11 *Reino*, 145 F.3d 1032, 1047 (9th Cir. 1998). Class membership is expressly defined by
 12 Defendants’ conduct applicable to all class members – i.e., unlawful policy and practice
 13 of prolonging the detention of those detainees for whom the County has received an “ICE
 14 detainer” request from the U.S. Department of Homeland Security. Regardless of what
 15 this court ultimately rules, the same County policy and practice applies to all class
 16 members – so the same final injunctive relief and corresponding declaratory relief is
 17 appropriate respecting the class as a whole.

18 **CONCLUSION**

19 For the reasons set forth above, the Class as described at page 2 of this Motion,
 20 and at ¶ 68 of Plaintiff’s Complaint, is entitled to class certification under Arizona R.
 21 Civ. P. 23(a) and 23(b)(2). Accordingly, Plaintiff requests that this Court grant this
 22 Motion for Class Certification, and thus:
 23
 24
 25

1 A. Certify the following Class:

2 **All current and future detainees and inmates of Coconino County Detention**
3 **Facility who are currently or will be the subject of an ICE detainer request**
4 **and/or ICE administrative warrant sent to Defendants**

5 B. Designate Plaintiff Jose Montelongo-Morales as representative of the above
6 defined Class, and appoint his counsel as class counsel.

7 RESPECTFULLY SUBMITTED this 14 January 2019.

8 s/Lee Phillips
9 Lee Phillips
10 Attorney for Plaintiff

11 s/Robert S. Malone
12 Robert S. Malone
13 Attorney for Plaintiff

Latest Data: Immigration and Customs Enforcement Detainers

trac.syr.edu/phpools/immigration/detain/

Search

Latest Data: Immigration and Customs Enforcement Detainers

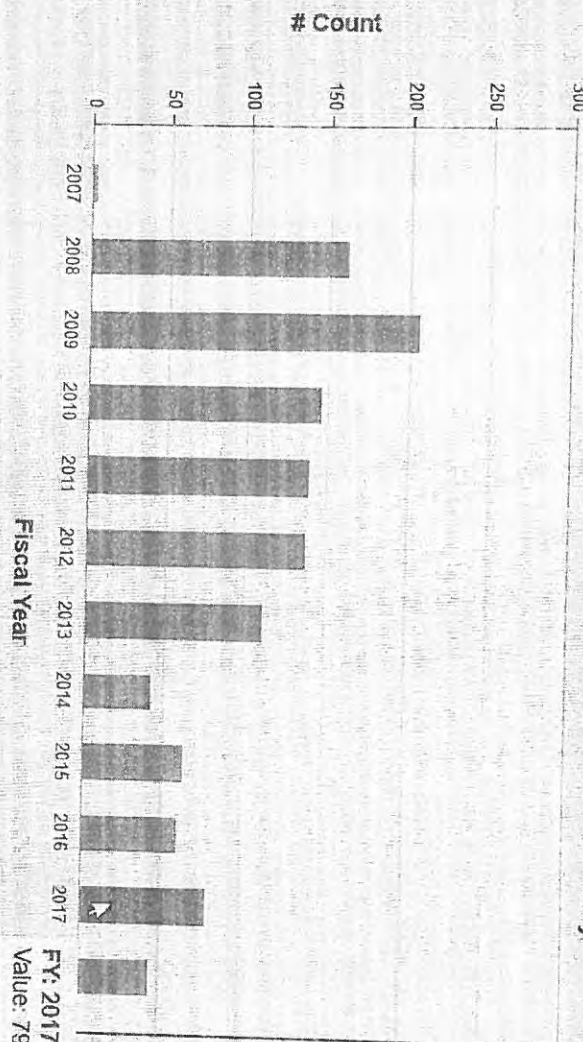
ICE Data through April 2018 — see About the Data

Graph Time Scale:

by Month

by Fiscal Year

Arizona - Coconino County - Coconino Co Detention Facility



Time Series:

Number

Percent

State

click on column headings to sort

County-Facility Detainer Sent

State= Arizona

click on column headings to sort

ICE Assumed Custody After Detainer Issued

State= Arizona, County-Facility Detainer Sent=Coconino County - Coconino Co Detention Facility

click on column headings to sort

State	Total
Arizona	2,203,490
California	505,610
Florida	395,450
Illinois	148,002
Indiana	112,767
Iowa	104,341
Michigan	90,099
New York	83,224

County-Facility Detainer Sent	Total
Pima County - Pima County Jail	7,365
MariCopa County - Meso Madison Facility	3,590
Pinal County - Pinal County Jail	2,937
MariCopa County - MariCopa Co Lower Buckeye Jail	2,690
Pima County - US Marshal - Tucson	1,867
Pima County - Tucson Fed. Cor Inst.	1,502
Yavapai County - Yavapai County Juvenile Detention	1,397
MariCopa County - Tempe City Jail	1,304
Cococino County - Cococino Co Detention Facility	1,193

ICE Assumed Custody After Detainer Issued

ICE Assumed Custody After Detainer Issued	Total
All	1,193
ICE withheld	1,193

ICE now withholding this information.

**LAW OFFICE OF
LEE PHILLIPS, P.C.**
209 N. Elden St.
Flagstaff, Arizona 86001
(928) 779-1560
(928) 779-2909 Facsimile
LeePhillips@LeePhillipsLaw.com
State Bar No. 009540

ROBERT S. MALONE
209 N. Elden St.
Flagstaff, Arizona 86001
(928) 779-1560
(928) 779-2909 Facsimile
bobsmalone@gmail.com
State Bar No. 017352
Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO**

JOSE MONTELONGO-MORALES, as an)
individual, and on behalf of all)
others similarly situated,)
Plaintiff,)

Case No. S0300CV2019-00012

v.)

JAMES DRISCOLL, Coconino County)
Sheriff; MATT FIGUEROA, Jail)
Commander of the Coconino County Jail,)
all in their official capacities,)

**DECLARATION OF LEE PHILLIPS
IN SUPPORT OF PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

Defendants.)

I, Lee Phillips, declare, in support of my request to be appointed lead class counsel in this matter, the following regarding my experience with Rule 23(b)(2) civil rights class actions and other complex litigation in state and federal court.

1. I was admitted to practice in Arizona and Ohio in 1983.

1 2. I am admitted to practice in state, tribal and federal courts including the Arizona
2 Superior Court, Arizona Court of Appeals, Arizona Supreme Court, U.S. District
3 Court and the Court of Appeals for the Ninth Circuit.

4 3. My experience as lead class counsel in Rule 23(b)(2) civil rights class action
5 lawsuits challenging uniformly-enforced illegal policy includes:
6

- 7 • Arnold v. DPS 2006 WL 2168637 (July 31, 2006) (Ninth Cir. 03-
8 15915/District Court CIV-01-1463 PCT-LOA) (Class action racial profiling
9 lawsuit on behalf of African-American and Latino motorists resulting in
10 landmark statewide agreement to collect and analyze data of all traffic
11 stops, searches and arrests conducted by state police, requirement that
12 traffic stops be videotaped and that all consent searches be documented by
13 written consent form and the establishment of Governor's Citizen Advisory
14 Board to monitor traffic stops and searches by state police in Arizona).
15 Successfully litigated Rule 23 issue of first impression involving Magistrate
16 Judge's jurisdiction to preside over a Rule 23 class action.
17
- 18 • Manybeads v. United States of America, 730 F. Supp. 1515 (D. Ariz.
19 1989), aff'd 209 F.3d 1164 (9th Cir. 2000) (Lead counsel in class action
20 lawsuit challenging the forced relocation provisions of the Navajo – Hopi
21 Indian Land Settlement Act of 1974 as a violation of the Free Exercise
22 Clause of the First Amendment. Dismissed by the district court for failure
23 to join an indispensable party, the Hopi Tribe. On appeal a settlement
24 agreement was reached between the individual Navajo Plaintiffs, the United
25

1 States, the Navajo Nation and the Hopi Tribe following five years of
2 mediation conducted by the Ninth Circuit's Mediation Program. The
3 Manybeads settlement agreement was approved by Congress in 1996).

- 4 • Attakai v. United States of America, 746 F. Supp. 1395 (D. Ariz. 1990)
5 (Lead counsel in class action lawsuit challenging federal construction
6 projects on Indian land which desecrated Navajo burial and other sacred
7 sites, as a violation of the First Amendment and the National Historic
8 Preservation Act. TRO obtained to halt construction on 1.8 million acres of
9 reservation land. Court later found historic preservation law's requirement
10 of notice and consultation prior to government construction projects applied
11 to traditional Native American cultural sites. Counsel developed and
12 implemented a notice and consultation process between Department of
13 Interior, Navajo Nation, Hopi Tribe and the class of individual practitioners
14 of traditional Navajo religion).

15 4. My additional complex litigation experience includes:

- 16 • State of Arizona v. Norberto Ramos-Madrid, CR2014-0635 (2015) (Client
17 and three others charged with "gang related" murder, aggravated assault (2)
18 and membership in a criminal street gang. Client was charged with
19 stabbing victim 23 times in a street fight with rival gang members.
20 Following 17 month investigation and 6 week jury trial client acquitted of
21 all charges. Co-defendants convicted in separate trials).

- 1 • Tutty v. Mohave County, CV13-08201-PHX-DJH (2015) (Federal civil
2 rights lawsuit on behalf of two young women who were sexually assaulted
3 by a detention officer while in the custody of the Mohave County Detention
4 Center. Represented victims in the criminal cases where Detention Officer
5 was convicted of both assaults and sentenced to prison. Civil rights lawsuit
6 successfully settled with significant monetary awards provided to both
7 victims).
- 8 • State of Arizona v. Alvin Sweeney, 224 Ariz. 107 (2010) (Appellate
9 decision reversing denial of motion to suppress, conviction and prison
10 sentence and establishing guidelines for traffic stops and detention of
11 motorists by Arizona Department of Public Safety drug interdiction
12 officers).
- 13 • State of Arizona v. Fish, 1 CA-CR 06-0675 (2010) (Appellate decision
14 reversing murder conviction of retired school teacher attacked by another
15 man while hiking in northern Arizona. Established new law governing the
16 admission of a “victim’s” prior acts of violence in self-defense cases).
- 17 • Frazier v. City of Flagstaff, CV07-08040-NVW (2009) (Federal civil rights
18 lawsuit by anti-war activist threatened with criminal prosecution for selling
19 t-shirts which contained the names of soldiers killed in Iraq war.
20 Successfully challenged Arizona statute as a violation of client’s First
21 Amendment rights).

- 1 • Begay v. United States of America, Claims Court No. 268-85L; Fed. Cir.
2 No. 88-1011; (Breach of trust, statutory and contractual duty to Navajo
3 Indians by federal relocation program. Resulted in development of
4 guidelines and regulations for the construction of “decent safe and sanitary”
5 housing and pre and post relocation counseling for thousands of Navajo and
6 Hopi Indians relocated by the federal government).
- 7 • Davis v. Richards, CIV 76-278 (Class action civil rights/jail conditions
8 lawsuit resulting in construction of a new jail facility and creation of inmate
9 advocate attorney position. Counsel served as co-counsel for inmate
10 population at the original trial in 1983-84 and later successfully brought
11 contempt action in mid-1990’s on behalf of inmates for the jail’s failure to
12 provide inmates with adequate access to the courts).
- 13 • Burrell v. City of Flagstaff, CIV96-1503 PCT SMM (Civil rights/excessive
14 force case on behalf of female officer assaulted by male detective while
15 attempting to protect a handcuffed African-American inmate from being
16 assaulted by the detective; detective fired and settlement reached through
17 mediation).
- 18 • Jones v. Sterling (210 Ariz. 308 (2005)) (Established race-based selective
19 enforcement as a defense to criminal charges and standards for the
20 appointment of experts in racial profiling cases in Arizona state courts).

21 5. Based on my co-representation with Attorney Robert S. Malone in this matter and
22 in Manybeads v. United States of America, a Rule 23(b)(2) civil rights case, it is
23
24
25

1 my belief that Mr. Malone is likewise committed to the vigorous, effective and
2 efficient prosecution of this matter.

3 6. Plaintiff's counsel have agreed to act jointly as class counsel, if the Court so
4 designate them.
5

6 I declare under the penalty of perjury that the forgoing is true and correct to the
7 best of my knowledge.

8 Executed this 14th day of January, 2019 in Flagstaff, Arizona

9 s/Lee Phillips
10 Lee Phillips
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT “C”

BREAKING Trump announces deal to temporarily reopen government, end longest shutdo...

https://azdailysun.com/news/new-lawsuit-filed-against-sheriff-s-office-ice-detainer-policy/article_eb07c4d2-5d45-5d44-8be4-768fec60841c.html

New lawsuit filed against Sheriff's Office ICE detainer policy

SCOTT BUFFON Sun Staff Reporter Jan 17, 2019



Coconino County Sheriff Jim Driscoll speaks during a community forum in 2017. Driscoll has defended his office's compliance with federal requests to detain inmates suspected of being undocumented for an additional 48 hours beyond their release date. A lawsuit has been filed challenging the constitutionality of that jail policy.

Taylor Mahoney, Arizona Daily Sun

TRY 1 MONTH FOR 99¢

Jose Montelongo-Morales was detained in the Coconino County Detention Facility after he did not make a court-ordered payment for being found guilty of driving under the influence in 2015.

But a new class-action lawsuit filed last week alleges that Montelongo-Morales is being “unlawfully” held on an ICE detainer due to his suspected status as an undocumented immigrant.

This is the second lawsuit in the past two years filed against the Coconino County Sheriff’s Office for their longstanding policy on ICE detainers, where the Sheriff’s Office detains a person suspected of being undocumented for 48 hours to allow the United States Immigration and Customs Enforcement, or ICE, to pick them up.

Coconino County Sheriff Jim Driscoll said he had not yet retrieved notice of the document when asked on Tuesday afternoon. Driscoll is named in the lawsuit with jail commander Matt Figueroa.

Some groups in the county have pushed their view in courts to Flagstaff City Council that these ICE detainers are illegal. Last year, a federal judge dismissed a case filed against the Sheriff’s Office policy, leaving it intact.

But Lee Phillips, a local lawyer representing Montelongo-Morales who has lived in Flagstaff since he was about 7 years old, explains that this lawsuit is looking at the same issue from a different angle. Phillips explained that their

new lawsuit alleges that Driscoll exceeded his authority under state law, while last year's suit focused on the violation of a person's civil rights under the federal constitution.

The lawsuit alleges that the current policy does not require a judicial warrant or probable cause to detain a subject beyond their original charges.

"Requests made by immigration officials do not confer state or local law enforcement officers with any authority to arrest, detain or prolong the detention of individuals of civil immigration violations," according to Montelongo-Morales' lawsuit.

Phillips alleges that the policy asks officers to determine reasonable suspicion if an inmate in the detention facility is unlawfully present in the country. This includes having officers ask questions about an inmate's social security, foreign identification and difficulty speaking English.

"You can't keep someone in jail because you have a personal view that you suspect they're in the country unlawfully," Phillips said. "If they want to change the law, I wouldn't like that, but we wouldn't be suing the sheriff if he had any legal authority to do what he's doing."

The class-action lawsuit poses this legal question as a representative party for any detainee that is the subject of an ICE detainer or ICE administrative warrant sent to the defendants Driscoll or Figueroa.

Driscoll said at the time of the first lawsuit that he would comply with whatever order a judge decided.

MORE INFORMATION



ICE protests in Flagstaff leave three protesters arrested

- Coconino County sheriff's policy on ICE holds survives initial round of federal court challenge

EXHIBIT “D”

IN THE SUPERIOR COURT, OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

JOSE MONTELONGO-MORALES, as an
individual, and on behalf of all
others similarly situated,

Case Number: SO300CV2019-00012

Plaintiff,

DECLARATION OF SERVICE

vs

JAMES DRISCOLL, Coconino County
Sheriff, MATT FIGUEROA, Jail
Commander of the Coconino County Jail,

all in their official capacities,

Defendants.

The undersigned certifies under penalty of perjury that I am fully qualified pursuant to RCP 4 (d), 4 (e), and 45 (b), to serve process in this case.

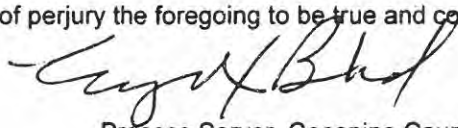
On January 15, 2019, I received the documents listed below from: Law Office of LEE B. PHILLIPS, P.C. SUMMONS, To: JAMES DRISCOLL, Coconino County Sheriff, SUMMONS, To: MATT FIGUEROA, Jail Commander of the Coconino County Jail, COMPLAINT FOR DECLARATORY RELIEF, INJUNCTION RELIEF, AND SPECIAL ACTION, CERTIFICATE OF COMPULSORY ARBITRATION, PLAINTIFF'S MOTION FOR CLASS CERTIFICATION PURSUANT TO RULE 23(a) AND RULE 23(b)(2) AND SUPPORTING MEMORANDUM OF LAW,

Entity Served: LYDIA LANGSTON, Administrative Secretary, Coconino County Sheriff
Address where Served: 911 Sawmill Rd., Flagstaff, AZ 86001
Date and Time: January 15, 2019 at 4:01 p.m.
Manner of Service: AUTHORIZED TO ACCEPT

- (X) Personal upon: LYDIA LANGSTON, Administrative Secretary, Coconino County Sheriff
() Substitute upon:
() Posted on door after attempting personal service.
() Certified mail return receipt requested on:

Military Status: n/a. Physical Description: Female White, 30 years, 5'7", 125 lbs., Black hair.

I declare under penalty of perjury the foregoing to be true and correct.


Process Server, Coconino County

Executed On: January 15, 2019
Eugene Bernhard CN-PS 201600002
Bernhard Investigations
(661) 222-7650
Flagstaff, AZ 86004

Service Fee	\$ 75.00
Total	\$ 75.00

EXHIBIT “E”

Person/Attorney Filing: Lee B Phillips
Mailing Address: 209 N. Elden Street
City, State, Zip Code: Flagstaff, AZ 86001
Phone Number: (928) 779-1560
E-Mail Address: leephillips@leephillipslaw.com
☐ Representing Self, Without an Attorney
(If Attorney) State Bar Number: 009540, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

Jose Montelongo-Morales

Plaintiff(s),

Case No. S0300CV201900012

v.

James Driscoll Coconino County

SUMMONS

Sheriff, et al.

Defendant(s).

To: Matt Figueroa Jail Commander of the Coconino County Jail

WARNING: THIS AN OFFICIAL DOCUMENT FROM THE COURT THAT AFFECTS YOUR RIGHTS. READ THIS SUMMONS CAREFULLY. IF YOU DO NOT UNDERSTAND IT, CONTACT AN ATTORNEY FOR LEGAL ADVICE.

1. A lawsuit has been filed against you. A copy of the lawsuit and other court papers were served on you with this Summons.
2. If you do not want a judgment taken against you without your input, you must file an Answer in writing with the Court, and you must pay the required filing fee. To file your Answer, take or send the papers to Clerk of the Superior Court, 200 N. San Francisco St., Flagstaff, Arizona 86001 or electronically file your Answer through one of Arizona's approved electronic filing systems at <http://www.azcourts.gov/efilinginformation>. Mail a copy of the Answer to the other party, the Plaintiff, at the address listed on the top of this Summons.
Note: If you do not file electronically you will not have electronic access to the documents in this case.
3. If this Summons and the other court papers were served on you within the State of Arizona, your Answer must be filed within TWENTY (20) CALENDAR DAYS from the date of service, not counting the day of service. If this Summons and the other court papers were served on you outside the State of Arizona, your Answer must be filed within THIRTY (30) CALENDAR DAYS from the date of service, not counting the day of service.

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

GIVEN under my hand and the Seal of the Superior Court of the State of Arizona in and for the County of COCONINO

SIGNED AND SEALED this date: *January 9, 2019*

Valerie Wyant
Clerk of Superior Court

By: *SCALANDRA*
Deputy Clerk



Person/Attorney Filing: Lee B Phillips
Mailing Address: 209 N. Elden Street
City, State, Zip Code: Flagstaff, AZ 86001
Phone Number: (928) 779-1560
E-Mail Address: leephillips@leephillipslaw.com
[] Representing Self, Without an Attorney
(If Attorney) State Bar Number: 009540, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

Jose Montelongo-Morales
Plaintiff(s),

Case No. S0300CV201900012

v.

James Driscoll Coconino County
Sheriff, et al.
Defendant(s).

SUMMONS

To: James Driscoll Coconino County Sheriff

WARNING: THIS AN OFFICIAL DOCUMENT FROM THE COURT THAT AFFECTS YOUR RIGHTS. READ THIS SUMMONS CAREFULLY. IF YOU DO NOT UNDERSTAND IT, CONTACT AN ATTORNEY FOR LEGAL ADVICE.

1. A lawsuit has been filed against you. A copy of the lawsuit and other court papers were served on you with this Summons.
2. If you do not want a judgment taken against you without your input, you must file an Answer in writing with the Court, and you must pay the required filing fee. To file your Answer, take or send the papers to Clerk of the Superior Court, 200 N. San Francisco St., Flagstaff, Arizona 86001 or electronically file your Answer through one of Arizona's approved electronic filing systems at <http://www.azcourts.gov/efilinginformation>. Mail a copy of the Answer to the other party, the Plaintiff, at the address listed on the top of this Summons.
Note: If you do not file electronically you will not have electronic access to the documents in this case.
3. If this Summons and the other court papers were served on you within the State of Arizona, your Answer must be filed within TWENTY (20) CALENDAR DAYS from the date of service, not counting the day of service. If this Summons and the other court papers were served on you outside the State of Arizona, your Answer must be filed within THIRTY (30) CALENDAR DAYS from the date of service, not counting the day of service.

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

GIVEN under my hand and the Seal of the Superior Court of the State of Arizona in and for the County of COCONINO

SIGNED AND SEALED this date: *January 9, 2019*

Valerie Wyant
Clerk of Superior Court

By: *SCALANDRA*
Deputy Clerk



FILED
Valerie Wyant
CLERK, SUPERIOR COURT
01/09/2019 8:08PM
BY: SCALANDRA
DEPUTY

Case No.: S0300CV201900012
HON. CATHLEEN BROWN NICHOLS

Person/Attorney Filing: Lee B Phillips
Mailing Address: 209 N. Elden Street
City, State, Zip Code: Flagstaff, AZ 86001
Phone Number: (928) 779-1560
E-Mail Address: leephillips@leephillipslaw.com
[☐] Representing Self, Without an Attorney
(If Attorney) State Bar Number: 009540, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

Jose Montelongo-Morales
Plaintiff(s),

Case No.

v.

James Driscoll Coconino County
Sheriff, et al.
Defendant(s).

**CERTIFICATE OF
COMPULSORY ARBITRATION**

I certify that I am aware of the dollar limits and any other limitations set forth by the Local Rules of Practice for the Coconino County Superior Court, and I further certify that this case IS NOT subject to compulsory arbitration, as provided by Rules 72 through 77 of the Arizona Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this

By: Lee B Phillips /s/
Plaintiff/Attorney for Plaintiff

EXHIBIT “F”

1 Michele Molinario, Bar #020594
John T. Masterson, Bar #007447
2 Derek R. Graffious, Bar #033486
Justin M. Ackerman, Bar #030726
3 JONES, SKELTON & HOCHULI, P.L.C.
40 North Central Avenue, Suite 2700
4 Phoenix, Arizona 85004
Telephone: (602) 263-1746
5 Fax: (602) 200-7831
mmolinario@jshfirm.com
6 jmasterson@jshfirm.com
dgraffious@jshfirm.com
7 jackerman@jshfirm.com
minuteentries@jshfirm.com

8 Attorneys for Defendants Sheriff James
9 Driscoll and Commander Matt Figueroa

10 **SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **COUNTY OF COCONINO**

12 JOSE MONTELONGO-MORALES, as an
13 individual, and on behalf of all others similarly
14 situated,

15 Plaintiff,

16 v.

17 JAMES DRISCOLL, Coconino County
18 Sheriff; MATT FIGUEROA, Jail Commander
of the Coconino County Jail, all in their
official capacities,

19 Defendants.

NO. S0300-CV201900012

**DEFENDANTS' NOTICE OF
REMOVAL TO UNITED STATES
DISTRICT COURT**

(Assigned to the Honorable Cathleen Brown
Nichols)

20
21 TO: Clerk of Court
Superior Court of Arizona – Coconino County

22 Please take notice that Respondents James Driscoll and Matt Figueroa, on April 2, 2018,
23 have filed a Notice of Removal to the United States District Court, for the District of Arizona.
24 A copy of said Notice of Removal (exclusive of exhibits), electronically filed with the United
25 States District Court, District of Arizona, is attached hereto as **Exhibit "A"**.

1 Please also take notice that Defendants filed their Response in Opposition to Plaintiff's
2 Application for Class Certification, with the United States District Court, simultaneously with
3 the subject Notice of Removal on , and that the filing of the Notice of Removal divests this
4 Court of all jurisdiction, including the power to rule on Plaintiff's request for a injunctive relief
5 or class certification.

6 Pursuant to 28 U.S.C. §1446(d), the filing of a Notice of Removal and service of this
7 pleading on the Court and opposing counsel divests the Court of all jurisdiction to continue any
8 matter in this case, including ruling on Plaintiff's request for a temporary restraining order. 28
9 U.S.C § 1446(d) ("Notice to adverse parties and State court.--Promptly after the filing of such
10 notice of removal of a civil action the defendant or defendants shall give written notice thereof
11 to all adverse parties and shall file a copy of the notice with the clerk of such State court, which
12 shall effect the removal and ***the State court shall proceed no further unless and until the case***
13 ***is remanded.***") (Emphasis added). In *Adair Pipeline Co. v Pipeliners Local Union*, 325 F2d 206
14 (5th Cir. 1963), the 5th Circuit Court of Appeals, in a per curiam opinion, stated that it agreed
15 with, approved the opinion of, and affirmed the judgment of the district judge in *Adair Pipeline*
16 *Co. v Pipeliners Local Union*, 203 F Supp 434, 437 (S.D. Tex 1962), wherein the District Court
17 found that a temporary injunction and final judgment issued by a state judge in a state case, in
18 which plaintiff was seeking damages and an injunction against picketing, boycotting, and other
19 alleged acts being performed by the defendants against the plaintiff company, were void where
20 the temporary injunction and final judgment were issued by the state judge after the defendants'
21 petition for removal was filed in the federal court and a copy thereof was hand-delivered both to
22 the state court judge and to opposing counsel by the attorney for the defendants. *See also Styers*
23 *v. Pico, Inc.*, 236 Ga. 258, 259, 223 S.E.2d 656, 657 (1976) ("There is substantial case
24 precedent that removal to a federal court pursuant to 28 U.S.C.A. § 1446 halts all further
25 proceedings in the state court, which thereupon loses jurisdiction unless and until the case is
26

1 remanded.”)¹; *Case Indus. Supply Co., Inc. v. Truck Drivers & Helpers Local 317*, 43 A.D.2d
 2 1012, 1012, 352 N.Y.S.2d 314, 315 (1974) (“Before Special Term granted the preliminary
 3 injunction the appellants moved for removal of the matter to Federal court and complied with
 4 the requirements of 28 U.S.C. s 1441 et seq. to effectuate that removal. Accordingly, Special
 5 Term was without jurisdiction in the matter and its preliminary injunction is void and the order
 6 granting it is reversed.”).

7 Accordingly, Defendants note that any hearing currently set regarding Plaintiff’s Request
 8 for injunctive relief or class certification must be vacated, and that this matter is removed to the
 9 United States District Court, District of Arizona, pursuant to 28 U.S.C. §§ 1331, 1441, 1446.

10 DATED this 25th day of January 2019.

11 JONES, SKELTON & HOCHULI, P.L.C.

12
 13 By /s/ Michele Molinario

14 Michele Molinario
 15 John T. Masterson
 16 Derek R. Graffious
 17 Justin M. Ackerman
 18 40 North Central Avenue, Suite 2700
 19 Phoenix, Arizona 85004
 20 Attorneys for Defendants Sheriff James Driscoll
 21 and Commander Matt Figueroa
 22
 23
 24

25 ¹ Citing *Kern v. Huidekoper*, 103 U.S. 485, 26 L.Ed. 354 (1881); *Chesimard v. Kuhlthau*,
 26 370 F.Supp. 473 (D.C.N.J.1974); *Sands v. Geller*, 321 F.Supp. 558, 559 (S.D.N.Y.1971); *Fossey*
v. State, 254 Ind. 173, 258 N.E.2d 616 (1970); *State ex rel. Gremillion v. NAACP*, 90 So.2d 884
 (La.App.1956); *Hopson v. North American Insurance Co.*, 71 Idaho 461, 233 P.2d 799 (1951).

1 ORIGINAL of the foregoing electronically filed via
2 TurboCourt this 25th day of January 2019.

3 COPY of the foregoing mailed
4 this 25th day of January 2019, to:

5 Lee Phillips
6 Robert S. Malone
7 Law Office of Lee Phillips, P.C.
8 209 N. Elden St.
9 Flagstaff, AZ 86001
10 *Attorneys for Plaintiff*

11 Kathleen E. Brody
12 William B. Peard
13 ACLU Foundation of Arizona
14 3707 North 7th Street, Suite 235
15 Phoenix, AZ 8501
16 *Attorneys for Plaintiff*

17
18
19
20
21
22
23
24
25
26
/s/ Cindy Castro

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Coconino County Jail Detainee Sues Over Allegedly Unlawful ICE Hold](#)
