

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MAKE THE ROAD STATES, INC.,	:	CASES CONSOLIDATED
NAACP BUCKS COUNTY BRANCH	:	
2253, BUXMONT UNITARIAN	:	Trial Ct. No. 2025-04200
UNIVERSALIST FELLOWSHIP, and	:	
JUAN NAVIA,	:	
v.	:	
FREDERICK A. HARRAN, individually	:	
and in his official capacity as Sheriff of	:	
Bucks County, and BUCKS COUNTY,	:	
PENNSYLVANIA SHERIFFS’	:	
ASSOCIATION, Franklin County Sheriff	:	
BENJAMIN H. SITES, and Bradford	:	No. 1480 C.D. 2025
County Sheriff C.J. WALTERS	:	

Appeal of: Bucks County

MAKE THE ROAD STATES, INC.,	:	
NAACP BUCKS COUNTY BRANCH	:	
2253, BUXMONT UNITARIAN	:	
UNIVERSALIST FELLOWSHIP, and	:	
JUAN NAVIA,	:	
	:	
<i>Appellants,</i>	:	No. 1502 C.D. 2025

v.	:
FREDERICK A. HARRAN, individually	:
and in his official capacity as Sheriff of	:
Bucks County, and BUCKS COUNTY,	:
PENNSYLVANIA SHERIFFS’	:
ASSOCIATION, Franklin County Sheriff	:
BENJAMIN H. SITES, and Bradford	:
County Sheriff C.J. WALTERS	:

**BRIEF OF APPELLANTS MAKE THE ROAD STATES, INC., NAACP
BUCKS COUNTY BRANCH 2253, BUXMONT UNITARIAN
UNIVERSALIST FELLOWSHIP, AND JUAN NAVIA**

On Appeal from the Order of the Court of Common Pleas of Bucks County,
entered on October 15, 2025

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INTRODUCTION¹

County sheriffs do not have unfettered authority to allocate county resources however they see fit. Among the limitations Pennsylvania law places on sheriffs is a restriction on their ability to sign cooperation agreements with federal agencies. Under our system of checks and balances, the Pennsylvania Constitution assigns to each county's "governing body"—i.e., its board of commissioners—the exclusive power to decide whether to commit county resources to assist federal agencies with federal functions. PA. CONST. art. IX, § 5. The General Assembly reiterated this requirement when it passed the Intergovernmental Cooperation Act ("ICA"), which specifically requires passage of a resolution or ordinance approving agreements to cooperate with other governmental units. 53 Pa.C.S.A. § 2305(a).

Appellees are sheriffs who flouted these straightforward requirements and unilaterally signed cooperation agreements with U.S. Immigration and Customs Enforcement (ICE) under what is known as the "287(g)" program. These agreements purport to allow county officers to perform quintessentially federal immigration enforcement functions, including provisions authorizing unwarranted interrogations, arrests, and detentions of anyone "suspected" of being undocumented. And they are void *ab initio* for failure to comply with statutory and constitutional prerequisites.

¹ As Appellee Harran is no longer Sheriff of Bucks County, Appellants are not seeking appellate review of the Trial Court's rulings insofar as it dismissed claims against Harran "in his individual capacity." Accordingly, this appeal relates to claims against Intervenor-Appellees and Harran in his official capacity while acting on behalf of the Bucks County Sheriff's Office.

Appellees each admit that they did not seek or obtain approval of their counties' governing bodies. Indeed, when informed of its former sheriff's 287(g) agreement, the Bucks County Board of Commissioners adopted a resolution expressly disavowing it. Still, Appellees charged forward, asserting county authority they do not have. And the trial court endorsed the resulting violations of Pennsylvania law.

The trial court erred as a matter of law by reading non-existent requirements and exceptions into the ICA and the Pennsylvania Constitution. It held that Appellees' agreements did not violate the ICA or Pennsylvania Constitution because they were not "enforceable contracts," even while acknowledging that there is no authority for reading an "enforceable contract" condition into the ICA or Pennsylvania Constitution. It further erred in theorizing, *sua sponte*, that the Municipal Police Jurisdiction Act ("MPJA") exempts sheriffs' agreements from the ICA, even though the MPJA cannot be invoked by sheriffs outside of Allegheny County and was not invoked by any Appellee here. And the trial court erred in considering a variety of matters outside the pleadings to sustain preliminary objections in the nature of demurrer.

The trial court also committed a series of legal and factual errors in connection with Appellees' procedural objections. It focused on testimony given at a preliminary injunction hearing to hold that Appellants had not proved sufficient harm to establish standing to challenge former Bucks County Sheriff Frederick

Harran’s 287(g) agreement. In so doing, the trial court improperly fixated its analysis of preliminary standing objections on whether Appellants testified that they (or their organizational members) had suffered a specific form of harm—namely, whether they had been racially profiled and detained by anyone in Harran’s office. This analysis ignored (a) binding precedent establishing Pennsylvania plaintiffs’ ability to bring pre-enforcement declaratory judgment challenges to illegal government action that causes immediate *or threatened* injury, and (b) two Appellants’ well-pleaded allegations and supporting statements that they had been injured because Harran’s agreement forced them to divert organizational resources away from other work serving their civic and religious missions.

Regardless of what a county official, or trial judge, believes as a policy matter about 287(g), Pennsylvania law is clear that such policy determinations are left to county commissioners. This is ultimately a straightforward application of clear statutory and constitutional requirements. Sheriffs are simply not authorized to decide for their counties that 287(g) is a worthwhile pursuit. The trial court’s decision to the contrary must be reversed before it reverberates to do damage in other Pennsylvania counties.

STATEMENT OF JURISDICTION

The Court of Common Pleas had jurisdiction over Appellants’ action for declaratory and injunctive relief pursuant to 42 Pa.C.S. §§ 931(a) and 7532. This

Court has jurisdiction over this appeal under 42 Pa.C.S. § 762(a)(4)(i)(A). *Dayhoff v. Weaver*, 808 A.2d 1002, 1005-06 (Pa. Commw. Ct. 2002).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in holding that Appellees' unapproved 287(g) agreements were lawful under the ICA, where Appellees failed to obtain statutorily required approval, via ordinance or resolution, by their respective municipalities' governing bodies?

Suggested answer: Yes.

2. Did the trial court err in holding that Appellees' unapproved 287(g) agreements were lawful under Article IX, Section 5 of the Pennsylvania Constitution, where such agreements represented an agreement to "cooperate or agree in the exercise of any function, power or responsibility" with the federal government but were not authorized by their respective municipalities' governing bodies?

Suggested answer: Yes.

3. Did the trial court err in holding that the MPJA "authorizes extrajudicial action by police officers," where this provision of the MJPA was not raised by any party, does not apply to sheriffs outside of Allegheny County, and makes certain exceptions not applicable here, only for municipal police officers acting "beyond the territorial limits of [their] primary jurisdiction." 42 Pa.C.S.A. § 8953(a)?

Suggested answer: Yes.

4. Did the trial court err in sustaining preliminary objections asserting that 8 U.S.C. § 1357(g) supersedes the ICA and Article IX, Section 5 of the Pennsylvania Constitution, where the cited federal statute only authorizes 287(g) agreements “to the extent consistent with State and local law,” 8 U.S.C. § 1357(g)(1)?

Suggested answer: Yes.

5. Did the trial court err in holding that Plaintiff-Appellants lacked standing where: (a) they brought pre-enforcement challenges to unlawful government action posing a threat to their organizations and members under the Declaratory Judgments Act; (b) two organizational plaintiffs pled existing harm based on their expenditure of resources to counter Appellee’s threatened implementation of an unlawful 287(g) agreement; and (c) individual Plaintiff Juan Navia pled existing harm based on Appellee Harran’s effective invalidation of his votes in the elections for Bucks County Commissioners?

Suggested answer: Yes.

6. Did the trial court err in dismissing Appellants’ claims based on their perceived lack of standing where another party with undisputed standing, Cross-claimant Bucks County, asserted the same claims against Appellees?

Suggested answer: Yes.

7. Did the trial court err in relying on irrelevant lay legal opinion testimony from an out-of-town sheriff, who was not party to any of the 287(g) agreements at issue?

Suggested answer: Yes.

8. Did the trial court err in relying on irrelevant evidence outside of the record concerning the purported criminal histories of individuals with whom ICE had “encounters” and the arrest of a Wisconsin state court judge?

Suggested answer: Yes.

9. Did the trial court err in stating that this appeal is moot following the election of a new Sheriff in Bucks County where there are three other Appellees still in the case to defend the trial court’s determination that their unapproved 287(g) agreements are lawful under the Pennsylvania Constitution and ICA?

Suggested answer: Yes.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

This Court’s “standard of review in [an] appeal arising from an order sustaining preliminary objections in the nature of a demurrer is *de novo*, and [its] scope of review is plenary.” *Raynor v. D’Annunzio*, 243 A.3d 41, 52 (Pa. 2020) (citing *Ladd v. Real Est. Comm’n*, 230 A.3d 1096, 1103 (Pa. 2020); *Mazur v. Trinity Area Sch. Dist.*, 961 A.2d 96, 101 (Pa. 2008)). Similarly, as to the trial court’s standing analysis, “this issue presents a question of law, over which our standard of

review is *de novo* and our scope of review is plenary.” *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 476 (Pa. 2021). In conducting its review of preliminary objection rulings—either on demurrer or standing grounds—the Court “accept[s] as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts.” *Mazur*, 961 A.2d at 101 (citing *Hosp. & Healthsystem Ass’n of Pa. v. Dep’t of Pub. Welfare*, 888 A.2d 601, 607 n. 12 (Pa. 2005); *Willet v. Pa. Med. Catastrophe Loss Fund*, 702 A.2d 850, 853 (Pa. 1997)); *see also, e.g., Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 831–32 (Pa. 2024) (citing *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 917 (2013)) (application to standing cases).

STATEMENT OF THE CASE

I. Factual Background

On April 19, 2025, Harran signed what is commonly referred to as a “287(g) agreement” with ICE, referencing subsection 287(g) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1357(g). R.0233a. On June 6, 2025, Appellants filed suit in the Court of Common Pleas for Bucks County seeking declaratory and injunctive relief for violations of Article IX, § 5 of the Pennsylvania Constitution and the ICA, 53 Pa.C.S.A. § 2301 *et seq.* See R.0001a. Appellants claimed that Harran violated these constitutional and statutory provisions, and usurped the Bucks

County Board of Commissioners' contracting powers, by entering into a 287(g) agreement without approval of the County Board.

A. *Appellees Agreed to Allocate County Resources to Federal Immigration Functions.*

Under the 287(g) program, the U.S. "Attorney General may enter into a written agreement with a State, or any political subdivision of a State" authorizing local authorities to perform certain immigration enforcement functions normally reserved for federal ICE agents "at the expense of the State or political subdivision and to the extent consistent with State and local law." 8 U.S.C. § 1357(g)(1).

By executing these agreements, Appellees agreed to commit county personnel to perform federal immigration enforcement functions under ICE's supervision. By their terms, the 287(g) memorandums "constitute[] an agreement" to grant designated county sheriffs' office personnel "authority to perform certain immigration enforcement functions" "under the direction and supervision of ICE within the LEA's [Law Enforcement Agency's] jurisdiction." R.0233a. The agreements also authorize sheriffs' office personnel to perform expressly "federal immigration enforcement functions," R.0240a, "on behalf of ICE," R.0239a. These "immigration enforcement duties," which Appellees' "personnel are authorized to perform...under federal authority," R.0243a, included serving and executing warrants for immigration violations, making arrests for suspected immigration violations, issuing immigration detainers, and interrogating anyone believed to be a

non-citizen, among other functions. R.0234a-35a. Appellees each agreed to carry out these federal immigration enforcement functions at their counties' expense and for their respective counties to accept all costs and liability for any deaths or injuries suffered by their staff in performing these duties. R.0239a-240a.

After signing his agreement, Harran and 16 of his deputies also signed "Designated Immigration Officer" forms, also known as ICE Form 70-006, in which they individually committed to perform some of the broadest powers available under 287(g), including "[t]he power and authority to interrogate any person believed to be an alien as to his right to be or remain in the United States" and to arrest individuals based on immigration status. R.1551a-66a.² These forms also provided information for ICE officials to contact the designated deputies directly. *Id.*

B. *Appellees Did Not Seek Approval by their Municipalities' Governing Bodies.*

Appellees executed their 287(g) agreements unilaterally, without seeking authority or permission from their boards of commissioners—a county's governing body under Pennsylvania law. R.0016a, ¶ 26; R.0132a, ¶ 13. Harran never provided a copy of the 287(g) agreement to the Bucks County Board of Commissioners. Nor did he seek the state Local Government Commission's review of the agreement or

² Harran had insisted, before these forms came to light, that he would exercise fewer powers than what his 287(g) agreement contemplated, but he never committed to do so in writing or adopted a policy to that effect. At the preliminary injunction hearing, he repeatedly refused to "lock [himself] into one thing." R.0980a (104:24). And, when given the opportunity to identify limitations on his participation in the ICE Form 70-006, he instead accepted the broadest of powers. R.1551a-66a.

seek a resolution or ordinance by the Bucks County Board authorizing the agreement. R.0017a, ¶¶ 27-30.

Indeed, when the Bucks County Board learned that Harran had executed a 287(g) agreement with ICE, it passed a resolution explicitly disavowing the 287(g) agreement, confirming that Harran's attempt to enter into the agreement was unilateral and *ultra vires*. R.0018a, ¶ 31, R.0030a-31a. Nonetheless, Harran proceeded with his agreement, in utter defiance of the Board's authority over intergovernmental agreements. R.0018a, ¶ 32.

While Harran claimed not to "answer to the County Board of Commissioners," R.0929a (53:13-16), he admitted to bringing over twenty resolution requests to his commissioners since assuming office. R.0930a (54:2-4). Indeed, the same day that Harran signed his 287(g) agreement, he issued a statement concerning a different intergovernmental cooperation agreement for school resource officers ("SRO Agreement") in which he admitted that such an agreement "requires the approval of the county." R.1526a-27a; R.0931a (55:1-6), R.0933a (57:2-3), R.0934a-35a (58:24-59:6). The SRO Agreement relied on the Public School Code, which incorporates the ICA provisions at issue here. *See* 24 P.S. § 13-1309-C (a).

C. *Appellants Were Aggrieved by Sheriff Harran's Unlawful 287(g) Agreement.*

Across the country, 287(g) agreements have been shown to syphon important county resources, already stretched thin, to serve the goals of the federal immigration

enforcement agency while eroding trust between immigrant communities and law enforcement, ultimately undermining public safety at the local level. R.0006a-07a, ¶ 3. These agreements have led to harmful and insidious racial profiling, poor jail conditions, and other civil rights violations, all of which expose municipalities and their taxpayers to liability. *Id.*

To combat the ill effects of their home county sheriff entering into one of these agreements, Appellants and their Bucks County members were forced to redirect resources and change behaviors. In particular, Appellants NAACP Bucks and BuxMont UU were forced to devote time and resources to public education, counseling, outreach, and advocacy related to Appellee Harran's 287(g) agreement. For NAACP Bucks, Harran's decision to sign a 287(g) agreement caused the organization to spend "time and resources to create and publish dozens of social media posts educating its members and constituents about the Sheriff's conduct and advocating to prevent the agreement's implementation." R.0066a-68a, ¶ 12; *id.*, ¶¶ 6-9, R.0069a-105a. To focus its energies on educating its community about the 287(g) agreement, NAACP Bucks had to "cut in half" mission-critical programs it had planned for 2025 focused on "educating our community around diversity, equity and inclusion." R.1078a-79a (202:15-203:2). Similarly, Harran's 287(g) agreement forced Appellant BuxMont UU's lone clergy member to "devote extra time to pastoral care for congregants and at least one community member with major fears

and anxiety about how heightened immigration enforcement may impact themselves and/or their family members.” R.0106a, ¶ 7. This “inevitably take[s] away from [his] time and resources to work on other congregational priorities....” R.0107a, ¶¶ 9-10.

Appellant Make the Road’s members³ and Appellant Juan Navia were also aggrieved by Harran’s agreement because, as Spanish-speaking persons of color and of Latino/a descent with Hispanic surnames, an agreement to multiply ICE’s forces in Bucks County placed them at increased risk of being subject to warrantless search, arrest, and/or detention for “suspicion” of being undocumented. *See* R.0008, ¶ 10; R.0011, ¶ 13. Navia and members of Make the Road testified that, as Latino persons in Bucks County, they had altered their behavior because of this increased risk. *See* R.1033a-34a (157:25-158:7 (Navia restricted his use of Spanish language in public)); R.1037a (162:9-18 (Navia observed a decline in attendance at his Spanish-language church in Bucks County)); R.1151a (275:3-8 (Make the Road member in Bucks County stopped attending Spanish language church and Spanish festivals and limited her activities being in large groups)). The fears experienced and risk of injury to Appellants were well-founded, given Pennsylvania’s history of disproportionately targeting people of Latino/a descent and people with darker complexions for

³ Make the Road pled that it has multiple members of Latino descent living in Bucks County, and two of those members testified at the preliminary injunction hearing below.

immigration-related stops and arrests,⁴ and the pattern of profiling Latino residents exhibited by ICE and local law enforcement officers working under ICE's supervision in other jurisdictions, R.0008a-09a, ¶ 10.

II. Procedural Background

To prevent Harran from fully carrying out his unlawful 287(g) agreement with ICE, Appellants filed a three-count Complaint under the Declaratory Judgments Act, naming Harran and Bucks County as defendants. *See* R.0001a Appellants also immediately filed a petition for preliminary injunction to stop implementation of the *ultra vires* 287(g) agreement. R.0051a.

On June 9, 2025, before the trial court had an opportunity to address Appellants' preliminary injunction application, Harran removed the case to federal court. *Make the Rd. States, Inc. v. Harran*, No. CV 25-2938, 2025 WL 1791129, at *1 (E.D. Pa. June 27, 2025). On June 27, 2025, the U.S. District Court for the Eastern District of Pennsylvania remanded the case to the Bucks County Court of Common Pleas, where it was assigned to the Honorable Jeffrey G. Trauger..

Following remand, Harran filed preliminary objections raising standing and merits objections in the nature of demurrer. R.0161a. And on July 17, 2025, Appellees Benjamin H. Sites, C.J. Walters, and the Pennsylvania Sheriffs'

⁴ *Cold Reality: Uncovering the Cruelty and Chaos of ICE Operations in Pennsylvania*, ACLU OF PENNSYLVANIA (Oct. 23, 2024), available at <https://www.aclupa.org/publications/cold-reality-uncovering-cruelty-and-chaos-ice-operations-pennsylvania/>.

Association (“PSA”) moved to intervene as defendants. R.0129a. In support of intervention, Sites and Walters—Sheriffs of Franklin and Bradford Counties respectively—alleged that they had also signed 287(g) agreements with ICE and that “[n]either Sheriff sought or obtained approval from their respective county governing bodies[.]” R.0365a. The PSA alleged that it “represents all sixty-seven (67) elected Sheriffs in Pennsylvania” (*id.*), which includes the Appellees’ home counties and several others where sheriffs signed 287(g) agreements without seeking approval from the county board of commissioners.

On August 18, 2025, Bucks County filed a cross-claim, incorporating all the substantive claims originally raised by Plaintiff-Appellants. R.0390a-0393a. Harran filed preliminary objections to the cross-claim on September 8, 2025. R.085a. Meanwhile, the trial court granted intervention, and the Intervenor-Appellees filed preliminary objections to Appellants’ complaint on September 11, 2025, raising only arguments that were already included in Harran’s preliminary objections. R.0855a.

With all preliminary objections still pending, the trial court held hearings on Appellants’ preliminary injunction petition on September 16 and 26, 2025. R.1486a. On October 15, 2025, the trial court issued a “Decision” in Appellees’ favor. R.1449a-1461a. On October 27, 2025, the trial court entered an Order at once denying Appellants’ preliminary injunction petition, sustaining Harran’s preliminary objections against both Appellants’ complaint and Bucks County’s

cross-claim, and dismissing all claims against Appellees with prejudice. R.1486a-87a. Plaintiff-Appellants appealed on November 13, 2025, and Judge Trauger issued a Section 1925 Opinion to support his Decision on January 6, 2026.

SUMMARY OF ARGUMENT

The trial court erred in dismissing this case both on merits and standing grounds. On the merits, the trial court failed to apply clear statutory and constitutional requirements. The ICA and Pennsylvania Constitution—as interpreted by binding Supreme Court precedent—clearly require that “any agreement” by a county officer to cooperate with federal agencies in the exercise of federal functions be approved via an ordinance or resolution passed by the board of commissioners. *Commonwealth v. Hlubin*, 208 A.3d 1032, 1039 (Pa. 2019) (superseded by statute on other grounds); PA. CONST. art. IX, § 5; 53 Pa.C.S.A. § 2305 (a). Not only did Appellees fail to seek or obtain such approval, but the Bucks County Board of Commissioners also passed a resolution *disavowing* any 287(g) agreement.

Rather than applying plain legal requirements to straightforward allegations, the trial court twisted itself into knots to justify a policy view that Appellees’ agreements were “necessary” to public safety. R.1461a. The trial court first did this by misconstruing the primary legal issue as a factual question, faulting Appellants for not submitting “*any* evidence at trial to support their claim that the County’s approval was needed under the ICA or Article 9, Section 5 of the Pennsylvania

Constitution.” R.1497a (emphasis in original). Of course, what the Constitution and ICA require are questions of law, not evidentiary matters. Moreover, there was no “trial” on the merits below, as the pleadings never closed before preliminary objections were granted. There was an evidentiary hearing held on Appellants’ preliminary injunction motion, but even if it were proper to rely on that hearing record in ruling on demurrers, the trial court ignored evidence that Appellees’ 287(g) agreements fit the description of intergovernmental cooperation agreements that require board approval under Pennsylvania law. Harran’s agreement and the form of agreement signed by other Appellees were in evidence, as were the admissions of Harran and PSA President Michael Slupe, who admitted that by signing form 287(g) agreements, they were “agreeing to cooperate in the exercise of any function, power, or responsibility with the Federal Government.” R.1070a (194:9-16). No more evidence was required to overcome Appellees’ demurrer objections on issues of law.

The trial court also committed legal error by reaching for non-existent exceptions to the ICA and Pennsylvania Constitution to excuse Appellees’ refusal to follow the law. It held that Appellees’ agreements did not trigger the ICA or Pennsylvania Constitution because they were not “enforceable contracts.” However, as the trial court acknowledged, there is no precedent for imposing an “enforceable contract” condition on application of the ICA or Article IX, Section 5. The trial court’s novel approach would thus create new statutory and constitutional law that

cannot be reconciled with the Pennsylvania Supreme Court’s holding that these provisions apply to “any agreement.” *Hlubin*, 208 A.3d at 1039.

In another unprecedented ruling, the trial court *sua sponte* invoked inapplicable terms of the MPJA to hold that it exempts Appellees from the ICA. No Appellee had made this argument, presumably because the plain language of the MPJA makes clear that it cannot apply here. The trial court further erred by granting (without analysis) Harran’s preliminary objection arguing that Section 287(g) of the INA supersedes the Pennsylvania Constitution and ICA. This objection is absurd on its face because the federal statute includes an express carveout for requirements of state and local law. 8 U.S.C. § 1357 (g)(1) (stating that local law enforcement agencies may enter into agreements only “to the extent consistent with State and local law”).

These errors underpinning the trial court’s merits ruling were exacerbated by its reliance on several other irrelevant and inadmissible matters outside the pleadings. First, the trial court relied on an inadmissible legal opinion from a lay out-of-town sheriff witness, who had no legal training and whose only function at the preliminary injunction hearing was to parrot Appellees’ irrelevant legal theories about whether 287(g) agreements are “enforceable contracts.” Second, the trial court improperly relied on its own factual research and allegations it had pulled from outside the record (*see* R.1451a-1454a, ¶¶ 21-22, 29) to reach its conclusion that

287(g) agreements are “necessary,” R.1461. Because preliminary objections in the nature of demurrer must be decided solely based on the pleadings, the trial court erred in considering such evidence.

The trial court also erred as a matter of law in holding that Appellants lacked standing to challenge former Sheriff Harran’s 287(g) agreement.⁵ As a practical matter, should this Court reverse the erroneous dismissal of Appellant Bucks County’s cross-claim, any perceived issues with each Plaintiff-Appellant’s own standing will be mooted. The County asserts the same claims as Plaintiff-Appellants, and Pennsylvania courts have long held that only one party needs to demonstrate standing to bring claims asserted by multiple plaintiffs. Nevertheless, the trial court’s standing analysis was flawed as to each Appellant.

First, the trial court erred by discounting the substantial, direct, and immediate interests pled by organizational plaintiffs NAACP Bucks and BuxMont UU, each of which were forced to divert resources to address the immediate effects of Harran’s harmful and illegal 287(g) agreement. The trial court’s approach to discounting

⁵ While Harran’s 287(g) agreement has since been withdrawn by his successor in the Bucks County Sheriff’s Office, the agreement was in effect when the trial court issued its erroneous opinion, and standing is evaluated as of the time of the operative pleading. *See Residential Credit Opportunities Tr. v. Two Easy Enter., LLC*, 251 A.3d 1211 (Pa. Super. Ct. 2021). Appellants separately address Appellees’ position that subsequent events have mooted the underlying claims (*see infra*, Section IV), and focus their standing arguments in the trial court’s flawed analysis of Appellants’ injuries below.

Appellants' well-pled allegations and supporting statements in this regard imposed an overly restrictive standing analysis.

Second, the trial court failed even to address the standing arguments of Appellants Navia and Make the Road, to the extent that their standing is based on the immediate risk of harm that Harran's 287(g) created for Spanish-speaking persons of color, and of Latino descent, with Hispanic surnames in Bucks County. Appellants' allegations established that Harran's agreement to multiply ICE's forces in Bucks County placed Mr. Navia and Make the Road's Bucks County members at increased risk of being subject to warrantless search, arrest, and/or detention for "suspicion" of being undocumented. This increased risk is a sufficient injury to confer on Mr. Navia individual standing to bring a pre-enforcement declaratory judgment action. And the fact that individual members of Make the Road faced the same harm is sufficient to establish associational standing for the organization.

Third, the trial court applied the wrong standard to Navia's separate claim of standing as a Bucks County voter. As a Bucks County elector who voted in every election when each County Commissioner was seated, Mr. Navia has standing to challenge an action by another government official (Harran) that would effectively nullify his vote by usurping the authority of those duly elected Commissioners.

Finally, the change in leadership at the Bucks County Sheriff's Office did not moot this appeal for at least two reasons. First, there are three other defendants in

this case as Appellees defending the trial court’s decision. The PSA and two other sheriffs fought for and won a decision authorizing their own 287(g) agreements even though none of them has sought or obtained approval from their respective county governing bodies. They prevailed below and continue to operate under unlawful 287(g) agreements with the trial court’s blessing. Second, even if this Court were to determine that events subsequent to the trial court’s decision technically mooted Appellants’ claims, it should apply a mootness exception to hear this appeal because this is a matter of great public importance that is recurring throughout the Commonwealth.

ARGUMENT

I. County Sheriffs’ Unapproved 287(g) Agreements Violate the ICA and the Pennsylvania Constitution.

Under both the ICA, 53 Pa.C.S.A. § 2304, and Article IX, § 5 of the Pennsylvania Constitution, “[a] municipality by act of its governing body may...cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other governmental units including...the Federal government.” PA. CONST. Art. IX, § 5; 53 Pa.C.S.A. § 2304. The ICA further provides that before “[a] local government may enter into intergovernmental cooperation with or delegate any functions, powers or responsibilities to another governmental unit,” the local government’s “governing body” must pass an ordinance or resolution authorizing the

intergovernmental cooperation agreement. *Id.*, § 2305 (a).⁶ Thus, as the Supreme Court of Pennsylvania unequivocally held, “any agreement for intergovernmental cooperation necessitates that the governing body of the municipality must pass an ordinance with respect to said agreement.” *Hlubin*, 208 A.3d at 1039.⁷

As “municipalities,” each county, and its officers, are bound by the ICA and Article IX, § 5 of the Pennsylvania Constitution. *See* 53 Pa.C.S.A. § 2301 (applying the ICA to “all local governments,” defined in Section 2302 to include counties); *Hlubin*, 208 A.3d at 1039 (“The Pennsylvania Constitution defines a ‘municipality’ as [including] a ‘county.’”) (citing Pa. Const. art. IX, § 14)). And the “governing body” of each county is its Board of Commissioners, not the Sheriff. 16 Pa.C.S. § 1122; 16 Pa.C.S. § 12107. Thus, by unilaterally entering into 287(g) agreements without County Commission approval—and, in Harran’s case, over the express

⁶ The ICA also mandates that “prior to and as a condition precedent to enactment of an ordinance or resolution” the agreement must “be submitted to the [state] Local Government Commission for review and recommendation.” 53 Pa.C.S. § 2314 (a). Harran did not submit the 287(g) agreement to the Local Government Commission. R. 0896a (20:11-16).

⁷ As to the agreement at issue in *Hlubin*, the Supreme Court of Pennsylvania held that Section 8953(a)(3) of the MPJA “does not authorize police officers to cross jurisdictional lines to participate in pre-arranged sobriety checkpoints.” 208 A.3d at 1046. The General Assembly subsequently amended the MPJA to authorize such extraterritorial action by police officers. *See Commonwealth v. Forsythe*, 217 A.3d 273, 278 (Pa. Super. Ct. 2019). But the neither the General Assembly nor the Supreme Court of Pennsylvania has overruled *Hlubin* and the portions of *Hlubin* addressing municipalities’ obligations under the ICA and the Pennsylvania Constitution remain binding law. *See Commonwealth v. Eakin*, 324 A.3d 591, 596-97 (Pa. Super. Ct. 2024) (ICA portion of ruling based on *Hlubin* survived amendments to the MPJA).

objections of his Board—Appellees and other sheriffs represented by the PSA plainly violated both the ICA and the Pennsylvania Constitution.

It is well-established that failing to adhere to the ICA “renders an intergovernmental agreement void.” *Summit Twp. Indus. & Econ. Dev. Auth. v. Cnty. of Erie*, 980 A.2d 191, 209 (Pa. Commw. Ct. 2009) (quoting *Stein v. Dep’t of Transp.*, 857 A.2d 719, 724 (Pa. Commw. Ct. 2004)) (internal quotation marks omitted); see also *Commonwealth v. Mescolotto*, No. 3209 EDA 2013, 2014 WL 10795091, at *3 (Pa. Super. Ct. Oct. 10, 2014) (same). Both the ICA and Article IX, § 5 of the Pennsylvania Constitution thus protect against *ultra vires* agreements, and *ultra vires* agreements are ordinarily void *ab initio*. See *Clairton Slag, Inc. v. Dep’t of Gen. Servs.*, 2 A.3d 765, 782 (Pa. Commw. Ct. 2010); *Bolduc v. Bd. of Supervisors of Lower Paxton Twp.*, 618 A.2d 1188, 1191 (Pa. Commw. Ct. 1992). Accordingly, Appellees’ failure to comply with the ICA voided their 287(g) agreements with ICE. In holding otherwise, the trial court relied on a series of unsupported premises and conclusions, each of which constitute reversible error.

A. *Appellees’ 287(g) Agreements Are Intergovernmental Cooperation Agreements Subject to the ICA and Constitutional Restrictions.*

To support its dismissal of Appellees’ claims on the merits, the trial court stated: “Appellants failed to provide *any* evidence at trial to support their claim that the County’s approval was needed under the ICA or Article 9, Section 5 of the Pennsylvania Constitution.” R.1497a (emphasis in original). This perplexing

contention reflects a basic misunderstanding of the legal issues presented. What the ICA and Pennsylvania Constitution require is a question of law—indeed, the core legal question presented—not one of fact requiring evidence to resolve.

All facts required to resolve this legal question were alleged in Appellants’ complaint and not seriously disputed: (a) sheriffs are county officers, (b) this sheriff signed a “Memorandum of Agreement” with ICE, agreeing “to perform certain immigration enforcement functions” under ICE’s supervision, and (c) the sheriff did not seek or obtain board approval for that agreement. Appellants’ claims, and Appellees’ preliminary objections in the nature of demurrer, simply required an application of law to determine whether the agreement fit the description of an intergovernmental cooperation agreement provided in the ICA and Pennsylvania Constitution, and whether the Board of Commissioners (as opposed to the sheriff) is the “governing body” authorized to enter into such agreements. By declaring these to be matters of “evidence,” the trial court abdicated its responsibility to conduct a straightforward legal analysis applying the terms of statutory and constitutional provisions.

In addition, because these legal questions about application of the ICA arose only in connection with Appellees’ preliminary objections in the nature of demurrer, the trial court failed in its duty to evaluate such objections based on the pleadings when it dismissed Appellants’ claims for purported want of “evidence.” At this early

stage,⁸ the trial court was required to overrule the objections sounding in demurrer only if, accepting all well-pleaded facts as true, Appellants' claims could not be sustained as a matter of law. *Foxe v. Pa. Dep't of Corr.*, 214 A.3d 308, 312 (Pa. Commw. Ct. 2019) (quoting *Torres v. Beard*, 997 A.2d 1242, 1245 (Pa. Commw. Ct. 2010)); *see also, e.g., Raynor v. D'Annunzio*, 243 A.3d 41, 52 (Pa. 2020) (internal citation and quotation marks omitted); *Dotterer v. Sch. Dist. of Allentown*, 92 A.3d 875, 880 (Pa. Commw. Ct. 2014) (preliminary objections must be overruled unless "it is clear and free from doubt that the facts pled are legally insufficient to establish a right to relief"). Here, Appellants sufficiently alleged facts establishing that the task force model 287(g) agreements fit the legal description of an intergovernmental cooperation agreement. *See, e.g.,* R.0020a, ¶ 37; R.0007a, ¶ 4; R.0012a-16a; R.0023a; *see also* R.0033a (model 287(g) Task Force Agreement); R.0233a (Harran's executed 287(g) agreement).

Moreover, the terms of the 287(g) agreements quoted in the pleadings—including the generic 287(g) Task Force Agreement attached to Appellants' complaint, and the executed version attached to Harran's preliminary objections—sufficiently established that Appellees' 287(g) agreements committed them to

⁸ As the trial court noted, it issued its ruling on the merits after "the Court heard evidence from all parties on the substantive issues at a two-day prolonged hearing," *id.* at 16. However, that hearing was set to address Plaintiffs' application for preliminary injunction and was not a full trial on the merits. Indeed, the court could not have held a trial on the merits because neither Harran nor the Intervenor Defendants had answered the complaint.

“cooperate or agree in the exercise of [a] function, power or responsibility with ... the Federal Government,” namely ICE’s immigration enforcement responsibilities. 53 Pa.C.S.A. § 2304; PA. CONST. art. IX, § 5. Indeed, the first paragraph on page 1 of these agreements states that each one “constitutes an agreement” to grant designated Sheriffs’ Office personnel “authority to perform certain immigration enforcement functions” usually reserved for the federal government. R.0033a, R.0233a. They go on to authorize Sheriffs’ Office personnel to perform expressly “*federal immigration enforcement functions*,” R.0040a, R.0240a (emphasis added), “on behalf of ICE,” R.0039a, R.0239a. These “immigration enforcement duties,” which Appellees’ “personnel are authorized to perform ... *under federal authority*,” R.0043a, R.0243a (emphasis added), included serving and executing warrants for immigration violations, making arrests for suspected immigration violations, issuing immigration detainers, and interrogating anyone believed to be a non-citizen, among other functions. R. 0034a-37a, R.0234a-37a.⁹

In any event, Plaintiffs presented considerable additional evidence at the preliminary injunction hearing to confirm Appellees’ 287(g) agreements were of the type covered by the ICA and Article IX, § 5 Pennsylvania Constitution. Harran’s

⁹ Appellees Sites and Walters’ 287(g) agreements used this same language, R.0132a, ¶ 14, as have several other members of the Pennsylvania Sheriffs’ Association who entered into identical “task force model” agreements. *See 287(g) Participating Agencies*, U.S. IMMIGR. AND CUSTOMS ENF’T, <https://www.ice.gov/doclib/about/offices/ero/287g/participatingAgencies02172026pm.xlsx> (listing all local agencies with 287(g) agreements, including several Pennsylvania county sheriffs, with links to completed task force model agreements).

287(g) agreement itself was entered into evidence (by agreement) as the first hearing exhibit, and the trial court heard testimony from two sheriffs conceding the point. One of them, Sheriff Slupe, testified in his capacity as President of Appellee PSA. He readily conceded that a sheriff entering into a task force model agreement with ICE is “agreeing to cooperate in the exercise of any function, power, or responsibility with the Federal Government.” R.1070a (194:9-16). Harran concurred, testifying that the functions his office agreed to accept were “powers of the Federal Government,” which he was performing “[p]ursuant to Federal law.” R. 1225a (349:9-17). Finally, the trial court admitted into evidence a collection of “Designated Immigration Officer” forms, in which Bucks County Sheriff’s Office personnel individually committed to performing certain federal immigration functions under their 287(g) agreement. *See* R.1326a-41a

Thus, even if it were appropriate for the trial court to consider evidence outside the pleadings in sustaining Appellees’ demurrer objections, it committed clear error by ignoring undisputed evidence when it found that Appellants had failed to offer “*any* evidence at trial” in support of the claim that Appellees’ 287(g) agreement are intergovernmental cooperation agreements under the ICA or Article IX, Section 5 of the Pennsylvania Constitution. R.1497a (emphasis in original).

B. *The Trial Court’s Focus on “Enforceable Contracts” Is Irrelevant to the ICA and Pennsylvania Constitutional Analysis.*

The trial court also erred in adopting a flawed, and unsupported, premise that a 287(g) agreement could not be subject to the ICA or Article IX, § 5 of the Pennsylvania Constitution if it was not “an enforceable contract.” See R.1459a; R.1502a (“In this case, the legal issues are (1) whether the 287(g) Memorandum of Agreement is a contract...”). Neither Article IX, § 5 of the Pennsylvania Constitution nor Section 2304 of the ICA refer to efforts to formal “contract” principles, and binding Supreme Court precedent applying these provisions held that they apply to “any agreement” for intergovernmental cooperation. *Hlubin*, 208 A.3d at 1039 (emphasis added). The “enforceable contract” standard applied by the trial court here was simply made-up.

Indeed, the trial court recognized that no Pennsylvania case law supported the position that an agreement must be an enforceable contract for the ICA or the Pennsylvania Constitution to apply. R.1459a. Nevertheless, it relied on a wholly inapposite New York state court opinion analyzing a completely unrelated issue—namely, the enforceability of the terms of a “memorandum of understanding” between private parties granting the right of first refusal to purchase equity in another’s company. *Id.* (citing *Doller v. Prescott*, 91 N.Y.S. 3d 533 (N.Y. App. Div. 2018)). The trial court ignored the terms of the Pennsylvania Constitution and the ICA, as well as binding precedent from the Supreme Court of Pennsylvania. The

Supreme Court in *Hlubin* did not analyze whether the agreements at issue were supported by mutual consideration, or whether they could be enforced by either party in an action for specific performance. It implemented the statutory and constitutional language as written to apply broadly to “any agreement” to cooperate in performance of another government entity’s functions. 208 A.3d at 1039.

Here, Appellees’ 287(g) agreements are indisputably *agreements*. The first line of these agreements reads: “[t]his Memorandum *of Agreement* (MOA) *constitutes an agreement* between United States Immigration and Customs Enforcement (ICE) ... and” the sheriff signatory. R.0033a, R.0233a (emphasis added). And, as Appellees concede (*see* Argument Section I(A)), their 287(g) agreements commit them to “cooperate or agree in the exercise of” ICE’s immigration enforcement function.

In addition to ignoring the relevant statutory and constitutional text, Judge Trauger’s insistence on applying the law only to formal, binding contracts would eviscerate the ICA and Article IX, § 5 by enabling any local officials to bypass their limitations simply by memorializing their cooperation through informal agreements that include clauses disclaiming the parties’ ability to enforce specific performance. That is exactly what Appellees seek to do here—they forthrightly admit that they intend to *carry out* the terms of their 287(g) agreements at their county governments’ expense, but then they seek to shield themselves from Pennsylvania law by

disclaiming that their agreements are enforceable in contract. Appellees cannot have their cake and eat it too. The ICA and Article IX, § 5 cover all agreements to cooperate, with no special carveouts for purported informal agreements.

Thus, Appellees were bound by the terms of the ICA and Article IX, § 5 of the Pennsylvania Constitution when they executed their 287(g) agreements, whether or not those agreements were, in the trial court’s view, “enforceable contracts.”

C. The MPJA Does Not Exempt 287(g) Agreements from the ICA or Pennsylvania Constitution.

The trial court also erred in reaching an unprecedented holding that the MPJA exempts Appellees’ 287(g) agreements from the ICA and the Pennsylvania Constitution. Despite no Appellee taking this position below, the trial court repeatedly asserted, *sua sponte*, that the federal task force exception, 42 Pa.C.S.A. § 8953(a)(3)(iii), “*appears to validate the 287(g) MOA at issue in this case despite the County’s lack of approval.*” R.1497a (emphasis added). The trial court goes so far as to contend, without support, that “Section 8953(a)(3) of the MPJA now authorizes *extrajudicial action* by police officers.” R.1496a (emphasis added).

However, the MPJA is entirely irrelevant, because it does not apply to county sheriffs outside of Allegheny County. The MPJA expressly applies only to “duly employed municipal police officer[s]” within the meaning of Sections 8953(a) and 8951 of the MPJA. Those and other Pennsylvania legal provisions, in turn, define municipal officers to include only local police departments and sheriffs of counties

of the second class (of which there is one—Allegheny County).¹⁰ Accordingly, the Supreme Court of Pennsylvania has repeatedly concluded that employees of the sheriff (except in Allegheny County) are *not* “police officers” as that term is used in Pennsylvania law. *See Com. v. Marconi*, 64 A.3d 1036, 1041 (Pa. 2013) (“[W]e conclude that sheriffs and their deputies are not ‘police officers’ under the Vehicle Code.”); *Com. v. Dobbins*, 934 A.2d 1170, 1179 n.19 (Pa. 2007) (“The suggestion that sheriffs, by default, have authority identical to that of municipal police officers is belied by the recent legislative action modifying 18 Pa.C.S. § 103 to add only sheriffs of second-class counties [*i.e.*, Allegheny County] to the definition of police officer.”). Thus, as Sheriff Slupe recognized during his testimony, sheriffs in the other 66 Pennsylvania counties are not municipal police officers. R.1046a-47a

¹⁰ Specifically, § 8951 of the MPJA defines “[m]unicipal police officer” as “[a]ny natural person who is properly employed by a municipality...as a regular full-time or part-time police officer.” A “[p]olice officer” under Pennsylvania law is specifically defined as:

- (1) A full-time or part-time employee assigned to criminal or traffic law enforcement duties of any of the following:
 - (i) A police department of a county, city, borough, town or township.
 - (ii) Any railroad or street railway police.
 - (iii) Any campus or university police department, including the State System of Higher Education and its member institutions.
 - (iv) The Capitol Police.
 - (v) The Harrisburg International Airport Police.
 - (vi) An airport authority police department.
- (2) A deputy sheriff of a county of the second class [*i.e.*, Allegheny County].
- (3) A security officer of a first class city housing authority or a police officer of a second class city housing authority.
- (4) A county park police officer.

(170:13-172:1), R.1061a-62a (185:21-186:23). The MPJA therefore could not possibly exempt Appellees, or any other PSA member outside of Allegheny County, from the ICA or the Pennsylvania Constitution in executing 287(g) agreements.

Additionally, 42 Pa.C.S.A. § 8953(a)(3)(iii) applies only to municipal police officers acting “beyond the territorial limits of [their] primary jurisdiction.” Appellees’ 287(g) agreements authorize them “to perform certain functions of an immigration officer under the direction and supervision of ICE *within the LEA’s [Law Enforcement Agency’s] jurisdiction.*” R.0033a, R.0233a (emphasis added). Thus, even if the MPJA did apply to sheriffs outside of Allegheny County (which it does not), it could not apply to the in-county immigration enforcement activities contemplated under Appellees’ 287(g) agreements.

Ignoring these limitations, the trial court looked to other examples of unapproved federal cooperation agreements as support for the misguided view that the MPJA exempts 287(g) agreements by county sheriffs. It relied on Harran’s past execution of FBI Task Force and Fugitive Task Force agreements without approval from the County Commissioners. R.1497a. However, those other unapproved agreements were not at issue below, nor did the court or any party conduct an

analysis of whether such agreements also violated the ICA or Pennsylvania Constitution, or whether they could have met an exemption under the MPJA.¹¹

In any event, a sheriff's past failures to obtain statutorily and constitutionally required approval from county commissioners cannot excuse his failure to do so in this case. *City of Harrisburg v. Pickles*, 492 A.2d 90, 95 (Pa. Commw. Ct. 1985) (the "assertion that [t]his is the way that we have handled these cases in the past is not a poor excuse; rather, it is *no excuse at all* for a constitutional infirmity" (emphasis in original) (internal quotations omitted)). The trial court's implication that it would unduly burden sheriffs to obtain commissioner approval every time they want to carry out their duties is both (a) irrelevant to the Pennsylvania Constitutional and ICA analysis here, and (b) belied by undisputed evidence that Harran routinely sought and obtained commissioner approval, without incident, when entering the Sheriff's Office into other agreements. *See* R.0931a (55:1-6), R.0934a-35a (58:24-59:6) (conceding that, on the same day he executed his 287(g) agreement, Harran "brought a request to the Commissioners to approve a contract to provide a deputy sheriff to serve as a school resource officer at the Central Bucks High School").¹²

¹¹ Indeed, when asked about other unapproved agreements entered into by Harran, the Bucks County Solicitor noted that they may very well have been ICA violations. R.0958a (82:23-24).

¹² Harran was required to obtain approval over this school resource officer ("SRO") agreement for the same reason he was required to obtain approval for the 287(g) agreement. The SRO agreement was governed by the Public School Code, which incorporates the ICA. 24 P.S. § 13-1309-C (a).

Finally, even if the MPJA applied to Appellees, and even if it exempted the ICA (which it does not), it could not excuse the Appellees' violations of Article IX, § 5 of the Pennsylvania Constitution. *See S. Newton Twp. Electors v. S. Newton Twp. Sup'r, Bouch*, 838 A.2d 643, 647 (Pa. 2003) (a constitutional provision controls over a contradictory statutory provision); *Washington v. Dep't of Pub. Welfare of Commonwealth*, 188 A.3d 1135, 1147 (Pa. 2018) (where "provisions are mandatory constitutional directives from the people, not mere advisory guidelines, the General Assembly must comply with them in the course of the legislative process"). If applicable, the MPJA could, at most, only relieve Appellees from some technical requirements of the ICA; it could not enable Appellees to enter into a 287(g) agreement unilaterally in violation of Article IX, § 5.

D. Section 287(g) Does Not Preempt the ICA.

The trial court further erred in granting, without analysis,¹³ Appellees' preliminary objection contending that the ICA is preempted by federal law. As a federal court already held in this very litigation, this position is so unserious that it is *not even "colorable,"* let alone meritorious. *Make the Rd. States*, 2025 WL 1791129, at *4 (emphasis added). This is because the statute creating the 287(g) program expressly states that a local law enforcement agency may only enter 287(g)

¹³ The trial court dismissal order sustains all of Harran's preliminary objections, but its Section 1925 Opinion does not explain its decision to grant this particular objection.

agreements “*to the extent consistent with State and local law.*” 8 U.S.C. § 1357(g)(1) (emphasis added); *cf. Ocean Cnty. Bd. of Comm’rs v. Att’y Gen. of N.J.*, 8 F.4th 176, 178-79 (3d Cir. 2021) (holding federal law does not preempt state statute prohibiting state subdivisions from entering into 287(g) agreements). Accordingly, regardless of whether Harran qualified as a “political subdivision” with which ICE “*may*” enter into an agreement under § 1357(g)(1), he must comply with state and local law in doing so. *See, e.g., McHenry Cnty. v. Kwame Raoul*, 44 F.4th 581, 589 (7th Cir. 2022) (holding that the INA’s “political subdivision” language does not convert units of local government into “sovereign entities” in violation of state law) (quoting *Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. 353, 362 (2009)).

In Pennsylvania, that means Appellees had to comply with the Constitution and the ICA, which require them to obtain approval from their county Boards before entering a 287(g) agreement. As the federal court already recognized, Appellees’ attempt to ignore the plain language of § 1357(g)(1) is fatal to their argument that the same subsection allows state officials to ignore state law when entering into these agreements. *See Make the Rd. States, Inc.*, 2025 WL 1791129, at *4. For the same reason, the trial court erred in sustaining Harran’s fourth preliminary objection.

II. The Trial Court Erred in Dismissing Appellants’ Claims for Lack of Standing.

As an initial matter, should this Court reverse the erroneous dismissal of Appellant Bucks County’s cross-claim, any perceived issues with each Plaintiff-

Appellant's standing to sue on its own will be mooted. The County asserts the same claims as Plaintiff-Appellants, and Pennsylvania courts have long held that only one party needs to demonstrate standing to bring claims asserted by multiple plaintiffs.

Moreover, the trial court's standing analysis as to each Plaintiff-Appellant was fundamentally flawed. It contradicted binding precedent from cases challenging unlawful government conduct under the Declaratory Judgments Act, holding that "[o]ur existing jurisprudence permits pre-enforcement review." *Firearm Owners Against Crime*, 261 A.3d at 475. Appellants were not required to wait for sheriff's deputies to start interrogating and arresting suspected "aliens" pursuant to a 287(g) agreement before seeking judicial review; the "threatened injury" of the 287(g) agreement is enough to confer standing. *Id.* at 484. And in any event, the trial court did not properly consider allegations from the two organizational Appellants that they had already experienced concrete harm to their legally protectable interests when Harran entered into his unlawful 287(g) agreement.

The trial court thus committed reversible error by fixating its standing analysis on whether each Appellant had already experienced harm in the specific form of warrantless interrogations and arrests before filing suit.

A. *Appellant Bucks County has standing to pursue the same claims in the same case.*

Neither Appellees nor the trial court questioned the County's standing to assert its cross-claim against Appellees. Nor could they. The County, as the

municipal entity aggrieved by the Sheriff's unapproved intergovernmental cooperation agreement, undoubtedly has a direct, substantial, and immediate interest in challenging a rogue officer's unlawful assertion of authority that the Constitution grants to County Commissioners. And because the substance of the County's claims is exactly same as Plaintiff-Appellants' claims, any decision on appeal to reinstate its cross-claim would effectively moot any debate regarding any party's standing to assert those claims. The Supreme Court of Pennsylvania has emphasized that only one party must have standing for a multi-party case to proceed. *See Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 393 (Pa. 2005) (where "one party has standing, the Court need not consider whether another party also has standing" (citation omitted)); *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 918 (Pa. 2013); *City of Phila. v. Commonwealth*, 838 A.2d 566, 579 n.8 (Pa. 2003).

B. *Each Appellant Has Standing Because They Were Aggrieved by Harran's Unlawful 287(g) Agreement.*

Under Pennsylvania law, a plaintiff has standing when its well-pleaded facts point to "a substantial, direct and immediate interest in the outcome of the litigation." *Allegheny Reprod. Health Ctr.*, 309 A.3d at 832. "A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party's interest is immediate when the causal connection with the alleged

harm is neither remote nor speculative.” *Commonwealth, Off. of the Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014).

When addressing each Appellant’s standing here, the trial court adopted an unduly restrictive analysis, approaching standing as a rigorous gatekeeping tool that limits access to Pennsylvania courts. In so doing, the trial court ignored the liberal standing approach applicable under Pennsylvania law. *See, e.g., Allegheny Reprod. Health Ctr.*, 309 A.3d at 832 (“in our Commonwealth, standing is granted more liberally than in federal courts”); *Robinson Twp*, 83 A.3d at 917 (citing *Fumo v. City of Phila.*, 972 A.2d 487, 500 n.5 (Pa. 2009); *Rendell v. Pa. State Ethics Comm’n*, 983 A.2d 708, 717 & n.9 (Pa. 2009)) (“In contrast to the federal approach, notions of case or controversy and justiciability in Pennsylvania have no constitutional predicate, do not involve a court’s jurisdiction, and are regarded instead as prudential concerns implicating courts’ self-imposed limitations.”).

The more relaxed standing analysis applied by Pennsylvania courts is especially appropriate in the declaratory judgment context, as the Pennsylvania Declaratory Judgments Act is intended to be remedial in nature and liberally construed in favor of resolving pre-enforcement challenges to government action:

In the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541, the General Assembly vested in courts the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa.C.S. § 7532. Significantly, the legislature provided that the Declaratory Judgments Act is “remedial,” and “its purpose is to settle and to afford relief from uncertainty and insecurity with

respect to rights, status, and other legal relations, and is to be liberally construed and administered.” 42 Pa.C.S. § 7541(a).

Firearm Owners, 261 A.3d at 482; *see also id.* at 492 (Wecht, J., concurring) (“The question of standing in this case arises in the context of a pre-enforcement action under the Declaratory Judgments Act...the purpose of which ‘is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.’ 42 Pa.C.S. § 7541(a). To this end, the Act ‘is to be liberally construed and administered.’ *Id.*”).¹⁴

Appellants pled “pre-enforcement immediate harm” from the challenged government action, *PPL Generation, LLC v. Com., Dep’t of Env’t Prot.*, 986 A.2d 48, 60 (Pa. 2009), to which the trial court failed to give effect. As set forth in detail below, each Plaintiff-Appellant identified concrete ways in which they were forced to redirect resources or change their behaviors in immediate reaction to an unlawful 287(g) agreement that committed their local Sheriff’s Office to perform harmful ICE functions at ICE’s direction.

¹⁴ The trial court invoked *Duquesne Light Co. v. Com., Dep’t of Env’t Prot.*, 724 A.2d 413 (Pa. Commw. Ct. 1999), to distinguish this case from *Firearm Owners*. The court in *Duquesne Light* held that a petitioner did not have standing to challenge certain environmental regulations because those regulations were not self-executing, and the petitioner could not establish that challenged regulations would be implemented in a way that actually impacted their facilities. *Id.* at 417-18. Thus, the petitioner could make “no factual allegation” that its “business operations were affected immediately by the regulations.” *Id.* at 418 (citing *Rouse & Assocs. v. Pa. Env’t Quality Bd.*, 642 A.2d 642 (Pa. Commw. Ct. 1994)). In other words, “there was no allegation of pre-enforcement immediate harm.” *PPL Generation*, 986 A.2d at 60 (distinguishing *Duquesne Light*). Here, by contrast, Appellants pled pre-enforcement immediate harm stemming from a legal violation that was complete when Harran signed an *ultra vires* agreement.

1. NAACP Bucks and BuxMont UU

The trial court minimized the interests pled by Appellants NAACP Bucks and BuxMont UU, labeling them “abstract,” “vague and speculative.” R.1490a-91a. In so doing, the court overlooked specific and uncontroverted allegations establishing that each of these organizations was forced to divert resources to counteract the effects of Harran’s harmful and illegal 287(g) agreement. Harran’s public decision to enter into the 287(g) agreement, and the steps he took toward implementation, immediately forced both NAACP Bucks and BuxMont UU to expend resources that would otherwise be dedicated to their mission-based work and initiatives. The trial court erred in refusing to recognize the organizational standing of these Appellants.

Even under cases cited by the trial court and Appellees below, an organization has standing to sue in its own right when the organization itself has a substantial, direct, and immediate interest in the outcome of the litigation. *Ball v. Chapman*, 289 A.3d 1, 19 (Pa. 2023). This first-order standing is established where the organization is forced to expend resources to challenge state action or where such state action frustrates the organization’s mission. *See Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at *7 (Pa. Commw. Ct. Jan. 17, 2014) (unpublished)¹⁵

¹⁵ Though unpublished, this decision of the Commonwealth Court followed a precedential decision by the Pennsylvania Supreme Court reversing the Commonwealth Court’s previous order denying preliminary injunction and remanding to the Commonwealth Court for further proceedings on the plaintiffs’ claims. *Applewhite v. Commonwealth*, 54 A.3d 1 (Pa. 2012). The Supreme Court did not, when the case was before it, raise any issue with the plaintiff organizations’ standing.

(“Organizational Petitioners diverted valuable resources as a consequence of Respondents’ inconsistent evolving unchecked decisions...”; “[t]his loss of resources is a direct harm sufficient for standing”); *Soc’y Hill Civic Ass’n v. Phila. Bd. of License & Inspection Rev.*, 905 A.2d 579, 586 (Pa. Commw. Ct. 2006) (“Because of its purpose to promote preservation and restoration of historic buildings in the Society Hill area, the Association has a substantial, direct and immediate interest in the outcome of this litigation.”).

- a. *NAACP Bucks and BuxMont UU established substantial interests.*

An organization has a substantial interest “when it surpasses the interest of all citizens in procuring obedience to the law.” *Ball*, 289 A.3d at 19 (quoting *Donahue*, 98 A.3d at 1229). And organizations whose missions focus on a particular issue have a substantial interest when a government official’s conduct relating to that issue forces the organization to devote resources to countering that conduct, including through public education, outreach, counseling, and complaint resolution on that issue. *Soc’y Hill Civic Ass’n*, 905 A.2d at 586.

Among the trial court’s errors in applying these principles was its conclusion that the “claimed harms” asserted by NAACP Bucks and BuxMont UU were “too abstract to be substantial.” R.1491a. The injuries alleged by these organizations were anything but abstract, as each of them established that Harran’s unapproved 287(g) agreement forced them to expend resources in specific ways.

Ball is instructive. There, campaign arms of the Republican Party (the “Party Petitioners”) filed suit to challenge guidance from the Secretary of the Commonwealth about certain mail-in voting requirements. 289 A.3d at 8. The Secretary argued that Party Petitioners lacked standing to bring “general grievance[s] about the correctness of governmental conduct.” *Id.* at 19. The Court disagreed, reasoning that government entities’ competing pronouncements had forced petitioners to expend resources educating their constituencies about mail-in voting requirements. *Id.* “Under these circumstances,” the Court held “that Party Petitioners’ expenditure of resources to educate candidates, electors, and voting officials concerning adherence to the Election Code constitutes a substantial interest[,]” and “[t]he alleged violation... shares a causal connection with the alleged harm (Party Petitioners’ inability to educate candidates, electors, and voting officials effectively).” *Id.* at 19-20.¹⁶

Like the Party Petitioners in *Ball*, NAACP Bucks and BuxMont UU sufficiently alleged that they were forced to devote time and resources to public

¹⁶ See also, e.g., *Donahue*, 98 A.3d at 1229-30 (agency forced to waste resources complying with erroneous interpretation of law had standing to challenge the interpretation); *Applewhite*, 2014 WL 184988, at *8 (“Although diversion of resources is not always sufficient for organizational standing, that is premised on the assumption that the organization would be forced to divert resources regardless of the law’s constitutionality or statutory validity.”); cf. *Allegheny Reprod. Health Ctr.*, 309 A.3d at 838 (medical provider organizations had standing to challenge abortion coverage exclusion, in part because the exclusion would cause them to spend additional time and resources counseling patients and navigating insurance); *id.* at 823 (describing plaintiffs’ assertion of standing based on having to “expend valuable resources—including employing dedicated staff”).

education, counseling, outreach, and advocacy that would not be necessary if the court resolved the parties' legal dispute as to whether Harran had the authority to enter into the 287(g) agreement. In the case of NAACP Bucks, Harran's public decision to sign a 287(g) agreement caused the organization to spend "time and resources to create and publish multiple social media posts educating its members and constituents about the Sheriff's conduct and advocating to prevent the agreement's implementation." R.0067a-68a, ¶ 12. Appellants' pleadings provided dozens of examples of public education efforts and social media postings that the organization's personnel had to spend time and person power to create and distribute to educate its non-citizen and Latino/a membership in Bucks County. R.0066a-0105a, ¶¶ 6-9, 11-12 & Ex. A.

Similarly, BuxMont UU's staff had to spend time addressing the concerns of directly impacted congregants, immediately drawing on the church's limited resources and its religious mission. As affirmed by the church's lone clergy member, Harran's 287(g) agreement forced him to "devote extra time to pastoral care for congregants and at least one community member with major fears and anxiety about how heightened immigration enforcement may impact themselves and/or their family members." R.0106a, ¶ 7. And he confirmed in testimony that time spent in pastoral care with Latino/a congregants about the prospect of being targeted for immigration enforcement increased after news broke of Harran's agreement with

ICE. As the church's resources are finite, this extra strain on resources "inevitably take[s] away from [Rev. Jagoe's] time and resources to work on other congregational priorities...." R.0107a, ¶¶ 9-10.

Accepting Appellants' allegations as true, both NAACP Bucks and BuxMont UU filed suit with a substantial interest in the outcome of the litigation. But the trial court plumbed the preliminary injunction hearing testimony for some basis to brush past Appellants' allegations. Even considering that testimony, though, it is clear that Harran's 287(g) agreement forced at least two Appellants to divert valuable resources away from their civic and religious missions.

As to NAACP Bucks, the trial court quickly dismissed assertions that the organization "had to redirect resources", stating that it "did not specify how much money or other resources they spent...or whether they modified, cancelled or added programs to address the 287(g)" agreement. R.1491a-92a. The trial court did not question *whether* NAACP Bucks had to redirect resources to educate community members and advocate against harmful cooperation with ICE. The trial court focused on a purported failure to *quantify* the diverted resources down to a specific dollar value. But it ignored allegations and testimony wherein Appellant identified programs the organization had to modify *and* quantified the impact. NAACP Bucks specifically testified that the organization had to "cut in half" its planned mission-critical programs that were to focus on "educating our community around diversity,

equity and inclusion” so that they could focus on 287(g). R.1078a-79a (202:15-203:2). This uncontroverted testimony, together with the well-pleaded allegations establishing “expenditure of resources to educate” their constituencies “constitutes a substantial interest” in the outcome of the litigation. *Ball*, 289 A.3d at 19-20.

As to BuxMont UU, the trial court quickly dismissed assertions that the church “diverted resources,” because Rev. Jagoe testified on cross that he had also “provided similar care” following other high-profile “societal events.” R.1492a. Again, the court did not question *whether* BuxMont UU diverted its limited resources to dealing with the impact of Harran’s 287(g) agreement. Instead, the trial court focused on its perception of the quantum of pastoral care the reverend had to provide parishioners, and whether it exceeded the level of care provided in response to other “societal events.” And again, the trial court overlooked uncontroverted testimony that addressed these purported concerns. Rev. Jagoe identified a “big shift” following Harran’s 287(g) agreement “that ratch[et]ed up the perceived fear intention that I had in [pastoral] conversations with people.” R.1003a (127:12-22).

Ultimately, the trial court erred by applying the wrong substantial interest standard because the precise scope of impact on organizational missions is not the relevant inquiry. Once Appellants’ well-pleaded allegations and supporting affidavits established that their respective missions required them to redirect limited resources to counsel, advocate for, and educate their constituencies about 287(g), the

substantial interest prong is satisfied. *See, e.g., Ball*, 289 A.3d at 8, *Donahue*, 98 A.3d at 1229-30, *Applewhite*, 2014 WL 184988, at *8; *compare, e.g., Disability Rts. Pa. v. Pa. Dep’t of Hum. Servs.*, No. 1:19-CV-737, 2020 WL 1491186, at *5 (M.D. Pa. Mar. 27, 2020) (in federal courts, “[a]n organization may have standing if it can show a defendant’s actions ‘perceptibly impaired’ the organization’s ability to provide its primary services or carry out its mission and have resulted in a diversion of resources” (citing *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 308 (3d Cir. 2014), *Fair Hous. Rights Ctr. in Se. Pa. v. Post Goldtex GP, LLC*, 823 F.3d 209, 214 n.5 (3d Cir. 2016))), *with Allegheny Reprod. Health Ctr.*, 309 A.3d at 832 (“in our Commonwealth, standing is granted more liberally than in federal courts”).

b. *NAACP Bucks and BuxMont UU established direct and immediate interests.*

An organization has a direct interest in litigation “when the asserted violation shares a causal connection with the alleged harm,” *Ball*, 289 A.3d at 19 (quoting *Donahue*, 98 A.3d at 1229), such that the requested relief would obviate their asserted injury, *Allegheny Reprod. Health Ctr.*, 309 A.3d at 838. And its interest in litigation is “immediate when the causal connection with the alleged harm is neither remote nor speculative.” *Ball*, 289 A.3d at 19 (quoting *Donahue*, 98 A.3d at 1229).

NAACP Bucks and BuxMont UU sought relief declaring the 287(g) agreement “unlawful and void *ab initio*.” R.0023a. If such relief was granted and the 287(g) agreement were ordered terminated, NAACP Bucks and BuxMont UU would

have been immediately relieved of the need to expend their limited resources on 287(g). Their interests in the litigation were thus direct, because NAACP Bucks and BuxMont UU's requested relief would obviate their injuries.

And because Harran's 287(g) agreement forced them to expend limited resources on addressing the impact of the agreement, rather than their existing mission-based priorities, their interest was immediate. As discussed, *supra*, both NAACP Bucks and BuxMont UU already expended resources to counteract the frustrating effect of the 287(g) agreement on their missions. As such, the trial court's characterization of their interests as "speculative" was without basis and contrary to Appellants' well-pleaded allegations. Those allegations identifying concrete ways in which these organizations were forced to redirect resources in immediate reaction to an unlawful 287(g) agreement, are sufficient to plead "pre-enforcement immediate harm." *PPL Generation*, 986 A.2d at 60 (distinguishing the speculative harm alleged in *Duquesne Light*, 724 A.2d 413).

The interests pled by both NAACP Bucks and BuxMont UU were therefore substantial, direct, and immediate.

2. Latino Residents: Make the Road Members and Juan Navia

The trial court failed even to address the standing of Appellant Make the Road, which is based on injury to its individual members of Latino/a descent, or the similar standing claim of individual Appellant Juan Navia. As Spanish-speaking persons of

color, and of Latino descent, with Hispanic surnames, an agreement to multiply ICE's forces in Bucks County placed Navia and Make the Road's Bucks County members at increased risk of being subject to warrantless search, arrest, and/or detention for "suspicion" of being undocumented. This increased risk is a sufficient injury to confer on Navia individual standing to bring a pre-enforcement declaratory judgment action. And the fact that individual members of Make the Road faced the same harm is sufficient to establish associational standing for the organization. *See, e.g., Ivy Hill Congregation of Jehovah's Witnesses v. Dep't of Hum. Servs.*, 310 A.3d 742, 748 (Pa. 2024) ("an association has standing as representative of its members to bring a cause of action even in the absence of injury to itself, if the association alleges that *at least one* of its members is suffering immediate *or threatened* injury as a result of the action challenged" (emphasis added)); *Robinson Twp.*, 83 A.3d at 922 (same).

- a. *Navia and Make the Road members established a substantial interest.*

The trial court's opinion completely ignored Appellants' assertion that Navia and Make the Road members residing in Bucks County had substantial interest in preventing the heightened risk they faced of warrantless search, arrest, and detention once Harran authorized staff to conduct such activities under ICE's direction. "A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law." *Donahue*, 98 A.3d at 1229 (citing *Johnson v. Am. Standard*,

8 A.3d 318, 329 (Pa. 2010)). These Appellants’ interests surpass the interest of all Bucks County residents generally in ensuring their sheriff complies with the law as it relates to racial profiling, because they possess the specific identities of those who were imperiled by Harran’s unlawful agreement to partner with ICE. *See* R.008a-09a, R.0011a, ¶¶ 10, 13.

People of color and people of Latino descent are minorities in Bucks County.¹⁷ And this discrete population has interests in this litigation that surpass those of the broader Bucks County population, because they are at greater risk than anyone else of profiling for warrantless search, arrest, and detention than other Bucks County residents when their hometown sheriff signed over authority for deputies to conduct immigration enforcement at ICE’s direction.

Moreover, if it wasn’t clear when this case was filed in June 2025, it has since come into even greater focus that profiling people based on whether they “appear” Latino and speak Spanish is baked into ICE’s immigration enforcement tactics. *See Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637 (Sept. 8, 2025) (lifting lower court injunction, 790 F.Supp.3d 850, 898 (C.D. Cal. 2025), of ICE’s practice of stopping individuals based on (1) their apparent race or ethnicity; (2) whether they

¹⁷ *See Bucks County, Pennsylvania Profile Page*, UNITED STATES CENSUS BUREAU, available at https://data.census.gov/profile/Bucks_County,_Pennsylvania?g=050XX00US42017#race-and-ethnicity (last visited Aug. 7, 2025) (showing that 81%, or 521,575 of the 646,538 Bucks County population in the 2020 Census were “White alone, not Hispanic or Latino”).

spoke Spanish or English with an accent; (3) the type of location at which they were found (such as a car wash or bus stop); and (4) the type of job they appeared to work); *see also id.* at *10 (Sotomayor, J., dissenting) (“The Government...has all but declared that all Latinos, U.S. citizens or not, who work low wage jobs are fair game to be seized at any time”); *see also* R.1179a (303:18-23 (Make the Road member testifying she is at greater risk under ICE practices because she “is Latino,...speaks Spanish, and...works at a low wage job...those three things are me”)). Once Harran and his staff accepted authorization to perform the *same*¹⁸ functions under ICE’s direction, Mr. Navia and Make the Road’s members in Bucks County were immediately at greater risk of detention.

These Appellants further pled their elevated interest in 287(g) by reference to other law enforcement officials who entered into similar agreements and predictably engaged in profiling of Latino residents when working under ICE’s supervision.¹⁹

¹⁸ *Noem* focused on ICE’s authority to “interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States” under 8 U.S.C. § 1357(a)(1). 2025 WL 2585637 at *1 (Kavanaugh, J., concurring). This is, verbatim, the same authority Harran and his designated deputies expressly agreed to accept both in the 287(g) agreement, R.0421a, (Section XI) and ICE Form 70-006, R. 1551a-66a.

¹⁹ *See, e.g.,* Michael Coon, *Local Immigration Enforcement and Arrests of the Hispanic Population*, J. ON MIGRATION AND HUM. SEC. 5, no. 3 at 662 (2017), available at <https://bloximages.newyork1.vip.townnews.com/fredericknews.com/content/tncms/assets/v3/editorial/b/81/b81a7a66-cf75-50ee-a08a-f647f0dcf27f/59921d63e5c34.pdf.pdf> (concluding “the 287(g) program [entered into by the Frederick County, Maryland, Sheriff’s Office] led to a biased increase in the arrests of Hispanics, regardless of immigrant status”); *Maricopa County Sheriff’s Office Findings Letter*, U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION at 6 (Dec. 15, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf (finding that the Maricopa County, Arizona Sheriff’s Office “implemented [287(g)] practices that

For example, the Department of Justice found that law enforcement personnel engaged in immigration enforcement in other jurisdictions have “engage[d] in racial profiling of Latinos” and “unlawfully stop[ped], detain[ed], and arrest[ed] Latinos.” *Maricopa County Sheriff’s Office Findings Letter*, (cited in the Complaint at ¶ 10 n.4, R. 0009a). In Pennsylvania, people from Latin American countries and people with darker complexions have long been disproportionately targeted for immigration-related stops and arrests. *Cold Reality: Uncovering the Cruelty and Chaos of ICE Operations in Pennsylvania*, ACLU OF PENNSYLVANIA (Oct. 23, 2024), available at <https://www.aclupa.org/publications/cold-reality-uncovering-cruelty-and-chaos-ice-operations-pennsylvania/>.

The trial court did not address any of these allegations. And to the extent that the trial court went beyond allegations in the pleadings to evaluate preliminary objections, testimony at the preliminary injunction hearing confirmed that Appellants had already altered their behavior because of this increased risk of being subject to profiling, interrogation, and detention as Latino residents of Bucks County. *See* R.1033a-34a (157:25-158:7); R.1038a (162:9-18); R.1151a (275:3-8).

treat Latinos as if they are all undocumented, regardless of whether a legitimate factual basis exists to suspect that a person is undocumented” and describing incidents of excessive force against Latino U.S. Citizens by sheriff’s deputies); *United States’ Investigation of the Alamance County Sheriff’s Office*, U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION at 4-5 (Sep. 18, 2012), <https://www.justice.gov/iso/opa/resources/171201291812462488198.pdf> (finding the Alamance County Sheriff’s Office “has targeted Latinos in Alamance County for heightened enforcement activity,” regardless of immigration status).

Because Navia and the Bucks County members of Make the Road are among the people who faced a heightened risk of being profiled and identified for warrantless search, arrest, and detention relative to the general population of Bucks County, they had a substantial interest in the outcome of the challenge to Harran’s unauthorized 287(g) agreement.

b. *Navia and Make the Road members established direct and immediate interest in eliminating the 287(g) agreement.*

These Appellants had a direct interest in the litigation, because the requested relief, if granted, would obviate their threatened injuries. Appellees did not seriously dispute that Appellants satisfied the direct interest prong, with good reason. The directness requirement is met when a declaration that a party’s conduct is unlawful would obviate a plaintiff’s injury. *Allegheny Reprod. Health Ctr.*, 309 A.3d at 838. Appellants requested a declaration that the 287(g) agreement “is unlawful and void *ab initio*,” *see* R.0023a, which would have obviated their injuries because Mr. Navia and Make the Road’s members would no longer be at risk of racial profiling and warrantless search, arrest, and detention from the implementation of that agreement.

Their interests were also immediate under Pennsylvania law because “the causal connection with the alleged harm is neither remote nor speculative.” *Donahue*, 98 A.3d at 1229 (citing *Johnson v. Am. Standard*, 8 A.3d 318, 329 (Pa. 2010)). Harran’s execution and threatened implementation of the 287(g) agreement immediately increased their risk of facing warrantless search, arrest, and detention

on suspicion of being undocumented based on their race, heritage, and national origin. *See Robinson Twp.*, 83 A.3d at 922 (finding standing based on “serious risk” of harm and “immediate *or threatened* injury as a result of the action challenged” (emphasis added)).

The injury alleged was not theoretical or conditional. The agreement attached to the pleadings unequivocally committed Bucks County Sheriff’s deputies to perform warrantless searches, interrogations, and detentions at ICE’s direction. R.0034a-35a, R.0234a-35a. The trial court thus erred (to the extent that it considered these Appellants’ standing at all) by focusing exclusively on whether the sheriff or his deputies had *already* engaged in racial profiling, warrantless searches, arrest, and interrogations. To bring a pre-enforcement action under Pennsylvania law, a party need not wait to be physically harmed by the exercise of unlawful governmental authority. *Firearm Owners Against Crime*, 261 A.3d at 490 *see also Franklin Twp. v. Com., Dep’t of Env’t Res.*, 452 A.2d 718, 722 (1982) (plaintiffs placed in harm’s way “need not wait until an ecological emergency arises” to have an immediate interest). Extensive Supreme Court of Pennsylvania precedent provides litigants with standing under Pennsylvania law to seek pre-enforcement review of governmental authority that would risk harm to the plaintiffs if unlawfully executed. *See, e.g., Firearm Owners Against Crime*, 261 A.3d at 490; *Yocum v. Commonwealth Pa. Gaming Control Bd.*, 161 A.3d 228, 234 (Pa. 2017); *Cozen*

O'Connor v. City of Phila. Bd. of Ethics, 13 A.3d 464 (Pa. 2011); *Shaulis v. Pa. State Ethics Comm'n*, 833 A.2d 123 (Pa. 2003); *Arsenal Coal Co. v. Commonwealth*, 477 A.2d 1333 (Pa. 1984).

Appellants' claims are similar to those of plaintiffs in *Firearm Owners Against Crime*—who sought to vindicate their constitutional rights to bear arms in the face of the City's threatened enforcement of allegedly unlawful ordinances. Navia and Make the Road members sought to protect their right to live, work, and publicly exist in Bucks County free of racial profiling after the sheriff unlawfully executed a 287(g) agreement allowing ICE to direct deputies to conduct warrantless searches and arrests in the County upon mere suspicion that people may be undocumented. R.0008a-09a, R.0011a, ¶ 13. Neither Navia and Make the Road members nor the plaintiffs in *Firearm Owners Against Crime* had the challenged state action enforced against them when they commenced their actions. Yet the plaintiffs in *Firearm Owners Against Crime* had an immediate interest because, absent litigation, the only way they could avoid the risk of enforcement would have been to abandon their rights or leave their home city. Navia and Bucks County members of Make the Road similarly had an immediate interest because, absent litigation, they would be left in the untenable position of waiting to have their rights violated by the enforcement of the 287(g) agreement, or else self-restricting the right to traverse their home county to avoid interactions with designated sheriff's deputies.

Finally, like the claims in *Firearm Owners Against Crime* contesting the facial validity ordinances, Appellants' claims addressed Harran's manifest lack of authority to execute the 287(g) agreement, and thus awaiting an actual instance of racial profiling or warrantless search, arrest, or detention was "not likely to shed more light upon the...question of law presented." 261 A.3d at 489.

3. Navia's standing as a Bucks County voter

In addition to ignoring Mr. Navia's standing as a Latino, Spanish-speaking Bucks County resident, the trial court applied the wrong standard to his separate claim of standing as a voter. As a Bucks County elector who voted in every election when each County Commissioner was seated, Mr. Navia has standing to challenge an action by another government official (Harran) that would effectively nullify his vote by usurping the authority of those duly elected Commissioners.

Under Pennsylvania law, a voter has standing to challenge state action that implicates their fundamental right to vote. *See, e.g., Bergdoll v. Kane*, 731 A.2d 1261, 1268 (Pa. 1999); *Applewhite*, 2014 WL 184988, at *6.²⁰ Navia has a substantial, direct and immediate interest in government action that would diminish his right to vote, even if he was not otherwise impacted by that action. He filed this

²⁰ The trial court's only analysis of this standing argument was to state that Harran's actions did not "prevent Navia from exercising his right to vote" R.1494a, as if voters only have standing to protect their fundamental right if they are literally stopped from entering the polls. Not so. The voters in *Bergdoll* were not being prevented from voting on the proposed resolution, yet they had standing because they claimed the form of the resolution *diminished* their right to vote. The same is true of Harran's action diminishing Navia's rights.

suit to ensure Harran could not effectively nullify the electors' choice of Bucks County Commissioners to, *inter alia*, make decisions about what cooperation agreements County officers will sign. The harm caused by Harran's 287(g) agreement is neither remote nor speculative. By unilaterally entering into an intergovernmental cooperation agreement with ICE, over the objections of the duly elected County Commissioners, Harran usurped the statutory and constitutional powers allocated exclusively to the duly elected Board of Commissioners. R.0007a, ¶ 4. Navia's vote in Bucks County Commissioner races was thus partially nullified by Harran's usurpation of their powers. Navia's interest in this regard is direct, because Plaintiffs' requested declaratory relief nullifying the 287(g) agreement would obviate the harm done to Navia's right to vote by restoring the Commissioners' exclusive authority to decide whether to enter into a 287(g) agreement.

C. Attempts to Downplay Harran's 287(g) Agreement Did Not Deprive Appellants of Standing.

The trial court justified its standing decision by pointing to preliminary injunction testimony wherein Harran claimed he would limit his participation in the 287(g) program. The trial court found relevant to standing that Harran "credibly testified" that "he only planned to issue detainers following a check of the ICE database for individuals [the Sheriff's Office] encountered in the normal course of duty *already in custody* and who *have warrants out for their arrest...*" R.1492a.

But Harran’s preliminary injunction testimony about his purported intentions do not overcome Appellants’ allegations in the Complaint and are ultimately irrelevant to the standing analysis.²¹ As set forth in the Complaint, and the 287(g) agreement attached to the pleadings, there was nothing limited about the scope of Harran’s 287(g) agreement. That agreement unequivocally agrees that Bucks County Sheriff’s deputies would submit to ICE supervision and direction in carrying out specified immigration enforcement duties. And even if it were appropriate for the trial court to consider preliminary injunction testimony in analyzing standing, that testimony actually revealed that Harran declined to narrow his powers under the 287(g) agreement when he and his staff signed ICE Form 70-006. Those form submissions confirmed to ICE that Harran and his staff agreed to perform more federal immigration functions than he led the Court to believe during the first day of testimony. R.1551a-66a; R.1208a-11a (332:3-335:1).²²

²¹ Harran’s purported intent to limit his agreement was also irrelevant to the merits of Appellants’ claims, because a sheriff is not legally authorized to enter into any 287(g) cooperation agreement with the federal government—regardless of scope—without the County Board first passing an ordinance or resolution authorizing the agreement. *See* 53 Pa.C.S. § 2304; *id.* at § 2305 (a). Thus, even if Harran were sincere in trying to limit participation in the 287(g) program, the agreement he signed was unlawful because it was not approved by the county’s governing body.

²² Indeed, when given the opportunity to select and limit which immigration enforcement functions he would accept, Harran selected powers on the ICE Form 70-006 that were among the broadest available under the 287(g) agreement, including “[t]he power and authority to interrogate any person *believed to be* an alien as to his right to be or remain in the United States” and to arrest individuals based on immigration status. R.1551a (emphasis added). Further, the ICE Form 70-006 included a blank “Other duties” line in which Harran could have easily included any limitations he wished, but he filled in no limiting language. *Id.*; R.1216a-17a (340:23- 341:23).

In addition, Harran still expressly refused, in his own words, to “lock [himself] into one thing.” R.0980a (104:24); *see also* R.1272a (396:16 (“I can’t lock into something today”). In stark contrast to the trial court’s interpretation of his testimony, Harran refused to rule out interrogating and arresting other people who have no criminal warrants but happen to simply be “in the presence of someone that [Harran and his staff are] attempting to serve a bench warrant on,” such as other occupants “in...[the same] home.” R.1272a-73a (396:18-397:2). As illustrated by other testimony during the hearing, this would expose a far broader range of people to interrogation and arrest, including people without any criminal history. *See, e.g., id.* R.1192a-93a (316:14-317:13 (Make the Road member testimony about ICE agents questioning her while she was at another person’s home)).

Thus, far from alleviating Plaintiff-Appellees’ well-pled fears of being subject to warrantless interrogations and arrests by their own county’s Sheriff’s Office under the 287(g) agreement, the party admissions and evidence adduced below actually confirmed that their fears were warranted.

III. The Trial Court Erred in Considering Other Irrelevant Matters Outside the Pleadings to Determine Preliminary Objections.

Appellants’ claims were dismissed based on rulings sustaining preliminary objections. In evaluating such objections, the trial court was limited to matters alleged in the pleadings. The trial court thus erred by considering any matters outside the pleadings—most significantly the court’s reliance on testimony offered in a

preliminary injunction hearing—to make rulings on preliminary objections. *See Commonwealth v. Trosky*, No. 398 M.D. 2016, 2017 WL 3081084, at *3 (Pa. Commw. Ct. July 20, 2017) (quoting *Cooper v. Frankford Health Care Sys., Inc.*, 960 A.2d 134, 143 (Pa. Super. Ct. 2008)). (“[e]vidence presented at the preliminary injunction hearing cannot be considered” in ruling on a preliminary objection in the form demurrer).

A. *The trial court relied on inadmissible legal opinion from a lay out-of-town sheriff witness.*

The trial court relied on Butler County Sheriff Michael Slupe’s irrelevant preliminary injunction hearing testimony to decide Appellees’ fourth preliminary objection—a demurrer objection. R.0170a-75a. In its 1925(b) Opinion, the trial court reasoned that this testimony was “helpful...to determining a fact in issue.” R.1502a (quoting Pa.R.E. 702). But the trial court’s task in ruling on demurrers is not to resolve any fact issues. The trial court thus erred in failing to accept as true all factual allegations in the Complaint and limiting its demurrer analysis to issues of law.

The trial court also stated that Slupe’s testimony was admissible and relevant to resolving “whether the 287(g) Memorandum of Agreement is a contract” and hence, by the trial court’s logic, “whether Sheriff Harran is authorized to enter into the 287(g) MOA without the County’s approval.” R.1502a. Thus, the trial court considered Slupe’s testimony in deciding the ultimate issue in the case when (erroneously) holding that Harran’s 287(g) agreement could not be subject to the

ICA or Article IX, Section 5 Pennsylvania Constitution because it was not an “enforceable contract.” *See* R.1459a.

In addition to the legal error of relying on preliminary injunction testimony to rule on a demurrer, *see Trosky*, 2017 WL 3081084, at *3, this particular testimony did not even meet the standard for admissibility at any hearing or trial. Slupe offered only lay opinions on issues of law that would be objectively unhelpful to the finder of fact. The Pennsylvania Rules of Evidence allow a lay witness to provide testimony that is “(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Pa.R.E. 701. But whether a 287(g) agreement meets the definition of an “enforceable contract” is not a “fact in issue” in this case. If anything, it is a legal question,²³ and it was not “in issue” because the ICA and Article IX, Section 5 of the Pennsylvania Constitution apply to intergovernmental cooperation *agreements*, not contracts. *See* Argument Section I(B). And even if it were, the proponent of this testimony did nothing to establish that Slupe’s “15-year tenure as sheriff of Butler County and member (current vice president) of the [PSA]” gave him “specialized

²³ Appellees did not even try to dress up Sheriff Slupe’s testimony on enforceability of contracts to look like factual testimony. They simply asked him for legal conclusions as to whether a 287(g) agreement is a contract. He did not, for example, offer facts as to the circumstances surrounding any offer, acceptance, or consideration exchanged. Nor could they, as Sheriff Slupe admitted that he was not involved in the negotiation or execution of Harran’s agreement with ICE.

experiential knowledge” to offer lay opinion on the enforceability of Harran’s 287(g) agreement. R.1503a. Indeed, Slupe admitted that he was not an attorney, had never been employed in any law enforcement role in Bucks County or by the Federal Government, and was not a party to any Appellee’s 287(g) agreement. R.1058a-59a (182:24-183:24).

Accordingly, the legal conclusions Slupe offered as to the enforceability of Harran’s 287(g) agreement were entirely irrelevant, without foundation, and inadmissible. The trial court erred in admitting such testimony over counsels’ repeated objections and then relying on that testimony in reaching the ultimate conclusion to sustain Appellees’ demurrer objections. *See* R.1043a, R.1044a, R.1048a, R.1051a, R.1054a, R.1056a, R.1058a.

B. *The trial court relied on other irrelevant matters outside the record.*

The trial court also erred by relying on its own factual research in deciding the preliminary objections.²⁴ In its “Decision” on Appellees’ preliminary objections, the trial court relied on several factual allegations it had pulled from outside the

²⁴ The trial court brushed this issue aside, stating that Appellants waived it “[b]ecause Appellants do not specifically identify what specific impermissible evidence on which the Court relied outside of the record.” R.1506a. But Appellants’ concise statement of errors identifies the three paragraphs containing impermissible evidence from outside of the record. *See* 11/17/25 Plaintiffs’ Concise Statement of the Matters Complained of and Intended to be Argued on Appeal at ¶ 9 (“See Decision at ¶¶ 21-22, 29”). Appellants could not have raised this issue any earlier because the trial court did not indicate it was conducting and relying on its own research before referencing that research in its October 15, 2025 “Decision.” As such, the issue was not waived, because the concise statement of errors was “specific enough for the trial court to identify and address the issue an appellant wishes to raise on appeal.” R.1506a (quoting *Chaudhry v. Hunt*, No. 2612 EDA 2022, 2023 WL 5543613 *2 (Pa. Super. Ct. Aug. 29, 2023), *appeal denied*, 313 A.3d 943 (Pa. 2024)).

record. These included an allegation as to the numbers and criminal histories of individuals with whom ICE had recent “encounters,” R.1451a-52a, and the fact that “[a] Wisconsin state judge was arrested for assisting an undocumented person in the avoidance of an Immigration and Customs Enforcement detainer,” R.1454a, ¶ 29. Because preliminary objections in the form of a demurrer must be decided solely on the basis of the pleadings, *Trosky*, 2017 WL 3081084, at *3, the trial court erred in considering such evidence in deciding the preliminary objections.

The trial court apparently relied on this information in reaching its decision that Harran’s cooperation with ICE was “necessary in fulfilling his lawful duty to keep the workers and daily visitors to [Bucks County] safe.” R.1461a.²⁵ Aside from improperly looking outside the pleadings, the trial court appears to have been using this information in analyzing questions that are not relevant to any of Appellants’ claims. Immigration statistics, or the court’s perceptions around issues of public safety, have nothing to do with whether a county sheriff violates the ICA or Article IX, Section 5 of the Pennsylvania Constitution by entering into an intergovernmental cooperation agreement without approval of the county’s governing body.

²⁵ Judge Trauger also expressed similar sentiments supporting the sheriff during the preliminary injunction hearing. R.1250a-1251a (374:7-375:12); R.1271a-1272a (397:5-398:16).

IV. This Appeal Is Not Moot.

Finally, Appellants briefly²⁶ address the trial court's stray comment in its Section 1925 Opinion that "this appeal [is] moot" because "a new Sheriff has been sworn into office in Bucks County." R.1487a. The change in Bucks County Sheriff did not moot this appeal for at least two reasons. First, there are three other defendants in this case as Appellees defending the trial court's decision. They are the PSA and two other sheriffs who fought for and won a decision authorizing their own 287(g) agreements even though "[n]either Sheriff sought or obtained approval from their respective county governing bodies[.]" R.0365a. In support of its motion to intervene as a defendant below, the PSA emphasized that it "represents all sixty-seven (67) elected Sheriffs in Pennsylvania" (*id.*), including those in other counties where Appellants operate and advocate for individuals imperiled by unapproved 287(g) agreements. Thus, even if the decision of former Sheriff Harran's successor to terminate his unlawful 287(g) agreement moots this case as to Harran individually, the case is not moot as to the other Appellees who prevailed below and continue to operate under unlawful 287(g) agreements. *See Sweeney v. Tucker*, 375 A.2d 698, 702-03 (Pa. 1977) (citing *Powell v. McCormack*, 395 U.S. 486, 496-500

²⁶ Appellants will separately and fully address the mootness arguments raised in Appellees' recent Application to Quash Appeal as Moot.

(1969)) (“Even though some issues in a case have become moot, a court will consider the remaining ‘live’ issues.”).

Second, even if this Court were to determine that events subsequent to the trial court’s decision mooted Appellants’ claims, it should apply a mootness exception to hear this appeal because this is a matter of great public importance that is recurring throughout the Commonwealth. *See, e.g., In re Petition to Compel Coop. with Child Abuse Investigation*, 875 A.2d 365, 368, 370-71 (Pa. Super. Ct. 2005) (applying mootness exception to decide matter of “great public importance” involving the constitutional right against unreasonable searches and seizures); *In re Est. of Dorone*, 502 A.2d 1271, 1274-75, 1274 n.2 (Pa. Super. Ct. 1985), *aff’d*, 534 A.2d 452 (Pa. 1987) (applying public importance exception to issue involving First Amendment right to freedom of religion); *see also Colonial Gardens Nursing Home, Inc. v. Bachman*, 373 A.2d 748, 750 (Pa. 1977) (“This Court will decide substantial questions, otherwise moot, which are capable of repetition unless settled.”); *Burke ex rel. Burke v. Indep. Blue Cross*, 128 A.3d 223, 227–28 (Pa. Super. Ct. 2015), *aff’d sub nom. Burke by Burke v. Indep. Blue Cross*, 171 A.3d 252 (Pa. 2017) (applying mootness exception to resolve statutory interpretation question “of substantial public importance as it affects potentially tens of thousands of Pennsylvania[ns]”).

CONCLUSION

For the reasons set forth above, Appellants respectfully request that this Court

reverse the trial court’s decision sustaining Appellees’ preliminary objections and dismissing Appellants’ claims. Appellants further request that this Court direct entry of an order declaring, as a matter of law, that county sheriffs’ 287(g) agreements with ICE are unconstitutional and violate the ICA, and are therefore void *ab initio*, where they are not approved by resolution or ordinance passed by the relevant county’s duly elected board of commissioners.

Dated: February 25, 2026

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CERTIFICATION OF WORD COUNT

I certify that the foregoing brief complies with the 14,000-word limit established by Pa.R.A.P. 2135. According to the word count of the word-processing system used to prepare this brief, the brief contains 13,496 words, not including the supplementary matter as described in Pa.R.A.P. 2135(b).

Dated: February 25, 2026

/s/ Stephen A. Loney
Stephen A. Loney

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Dated: October 14, 2024

/s/ Stephen A. Loney
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