

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MAKE THE ROAD STATES, INC., NAACP	:	CASES CONSOLIDATED
BUCKS COUNTY BRANCH 2253,	:	
BUXMONT UNITARIAN UNIVERSALIST	:	Trial Ct. No. 2025-04200
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 County	:	
Sheriff C.J. WALTERS	:	No. 1480 C.D. 2025

Appeal of: Bucks County

MAKE THE ROAD STATES, INC., NAACP	:	
BUCKS COUNTY BRANCH 2253,	:	
BUXMONT UNITARIAN UNIVERSALIST	:	
FELLOWSHIP, and JUAN NAVIA,	:	
<i>Appellants,</i>	:	

v.	:	
FREDERICK A. HARRAN, individually and	:	No. 1502 C.D. 2025
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	:	

PLAINTIFF-APPELLANTS’ OMNIBUS REPLY BRIEF

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

Stephen A. Loney, Jr. (No. 202535)
Ariel Shapell (No. 330409)
Keith Armstrong (No. 334758)
ACLU OF PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102
215-592-1513
sloney@aclupa.org
ashapell@aclupa.org
karmstrong@aclupa.org

Marielle Macher (No. 318142)
Daniel Vitek (No. 209013)
COMMUNITY JUSTICE PROJECT
118 Locust Street
Harrisburg, PA 17101
717-236-9486
mmacher@cjplaw.org
dvitek@cjplaw.org

*Counsel for Plaintiff-Appellants Make
the Road States, Inc., NAACP Bucks
County Branch 2253, BuxMont
Unitarian Universalist Fellowship, and
Juan Navi*

TABLE OF CONTENTS

INTRODUCTION	1
ARGUMENT	2
I. Appellees Provide No Basis to Affirm Demurrer Rulings.....	2
A. Sheriff’s offices are units of county government, answerable to its governing body.	3
B. ICA and Article 9, § 5 impose mandatory requirements.....	7
C. Legal violations cannot be excused as “routine.”.....	8
D. DHS is not an indispensable party.....	10
E. The decision on appeal is infected by multiple additional errors.....	12
II. Appellees Provide No Basis for Dismissing This Appeal as Moot.	14
A. Plaintiff-Appellants’ claims are not moot as to the Intervenor-Appellees or the Bucks County Sheriff in his official capacity.	14
B. Alternatively, the great public importance exception applies.	16
III. Appellees Fail to Justify the Trial Court’s Standing Analysis.....	17
A. Appellees do not dispute Bucks County’s standing.	18
B. Plaintiff-Appellants have standing.	20
C. NAACP Bucks and BuxMont UU have standing based on diversion of resources.	23
D. Make the Road’s members and Juan Navia faced identifiable, imminent harm from the 287(g) agreement.....	25
E. A zone of interest analysis does not extinguish Standing.	26
CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.</i> , 309 A.3d 808 (Pa. 2024).....	27
<i>Arizona v. United States</i> , 567 U.S. 387 (2012)	6
<i>Atl. Inland, Inc. v. Bensalem Twp.</i> , 394 A.2d 1335 (Pa. Commw. Ct. 1978).....	15
<i>Ball v. Chapman</i> , 289 A.3d 1 (Pa. 2023).....	23, 24
<i>Bollard & Assocs., Inc. v. PA Assocs.</i> , 223 A.3d 698 (Pa. Super. Ct. 2019)	19
<i>Campanaro v. Pa. Elec. Co.</i> , 656 A.2d 491 (Pa. Super. Ct. 1995)	11
<i>City of Phila. v. Commonwealth</i> , 838 A.2d 566 (Pa. 2003).....	10
<i>Cnty. of Allegheny Deputy Sheriff’s Ass’n v. Cnty. of Allegheny</i> , 730 A.2d 1065 (Pa. Commw. Ct. 1999).....	6
<i>Cnty. of Elk v. Highland Twp.</i> , 677 A.2d 398 (Pa. Commw. Ct. 1996).....	11
<i>Cnty. of Erie v. Am. Fed’n of State</i> , 138 A.3d 715 (Pa. Commw. Ct. 2016).....	6
<i>Com. v. Marconi</i> , 64 A.3d 1036 (Pa. 2013).....	9
<i>Commonwealth v. Hlubin</i> , 208 A.3d 1032 (Pa. 2019).....	3, 4, 7, 8, 9
<i>Commonwealth v. Trosky</i> , No. 398 M.D. 2016, 2017 WL 3081084 (Pa. Commw. Ct. July 20, 2017)	12
<i>Commonwealth, Off. of Governor v. Donahue</i> , 98 A.3d 1223 (Pa. 2014).....	21
<i>Commonwealth, Pa. Game Comm’n v. Seneca Res. Corp.</i> , 84 A.3d 1098 (Pa. Commw. Ct. 2014).....	21, 22
<i>Cox v. City of Chester</i> , 464 A.2d 613 (Pa. Commw. Ct. 1983).....	15
<i>Downs Racing, L.P. v. Luzerne Cnty.</i> , 297 A.3d 20 (Pa. Commw. Ct. 2023).....	11
<i>Firearm Owners Against Crime v. Papenfuse</i> , 261 A.3d 467 (Pa. 2021).....	19, 26

<i>Franklin Twp. v. Commonwealth, Dep't of Env't Res.</i> , 452 A.2d 718 (Pa. 1982).....	21
<i>Funk v. Wolf</i> , 144 A.3d 228 (Pa. Commw. Ct. 2016).....	20
<i>Grimme Combustion, Inc. v. Mergentime Corp.</i> , 595 A.2d 77 (Pa. Super. Ct. 1991)	10
<i>In re Davis</i> , 302 A.3d 166 (Pa. Super. Ct. 2023)	6
<i>Kopko v. Miller</i> , 892 A.2d 766 (Pa. 2006).....	9
<i>Lehigh Valley Hosp. v. Cnty. of Montgomery</i> , 768 A.2d 1197 (Pa. Commw. Ct. 2001).....	4
<i>Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania</i> , 591 U.S. 657 (2020)	19
<i>Make the Rd. States, Inc., v. Harran</i> , No. 25-3938, 2025 WL 1791129 (E.D. Pa. June 27, 2025)	11
<i>Monastra v. Delaware Cnty. Sheriff's Off.</i> , 49 A.3d 556 (Pa. Commw. Ct. 2012).....	4
<i>Noem v. Vasquez Perdomo</i> , No. 25A169, 2025 WL 2585637 (U.S. Sept. 8, 2025).....	26
<i>Pennsylvania Lab. Rels. Bd. v. Della Vecchia</i> , 352, 537 A.2d 805 (Pa. 1988).....	4
<i>Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth</i> , 877 A.2d 383 (Pa. 2005).....	18, 19
<i>Rebert v. York Cnty. Detectives Ass'n</i> , 909 A.2d 906 (Pa. Commw. Ct. 2006).....	5
<i>Robinson Twp., Washington Cnty. v. Commonwealth</i> , 83 A.3d 901 (Pa. 2013).....	21, 26
<i>Soc'y Hill Civic Ass'n v. Phila. Bd. of License & Inspection Rev.</i> , 905 A.2d 579 (Pa. Commw. Ct. 2006).....	25
<i>Summit Twp. Indus. & Econ. Dev. Auth. v. Cnty. of Erie</i> , 980 A.2d 191 (Pa. Commw. Ct. 2009).....	4, 8
<i>Taylor v. Pa. Bd. of Prob. & Parole</i> , 746 A.2d 671 (Pa. Commw. Ct. 2000).....	17
<i>Town of Chester v. Laroe Estates, Inc.</i> , 137 S. Ct. 1645 (2017).....	19
<i>Yost v. McKnight</i> , 865 A.2d 979 (Pa. Commw. Ct. 2005).....	4

Statutes

16 Pa.C.S.A. § 12106.....4
16 Pa.C.S.A. § 12107.....4
16 Pa.C.S.A. § 14720.....6
53 Pa.C.S.A. § 2302.....3
53 Pa.C.S.A. § 2304.....7
8 U.S.C. § 1357.....11

Other Authorities

*VICTORY — America First Legal Defeats the ACLU in **Landmark** Case Upholding Pennsylvania Sheriff’s Authority to Partner With ICE*, America First Legal (Oct. 15, 2025), available at <https://aflegal.org/press-release/victory-america-first-legal-defeats-the-aclu-in-landmark-case-upholding-pennsylvania-sheriffs-authority-to-partner-with-ice/> (last visited Mar. 31, 2026).....17

Constitutional Provisions

Pa. Const. art. IX, § 14.....4
Pa. Const. Art. IX, § 5.....7

INTRODUCTION

Taken together, Appellees’ Briefs¹ concede as much as they dispute. No party meaningfully contests that: a live dispute remains that is not moot as to Intervenor-Appellees’ ongoing 287(g) agreements; Bucks County has standing to assert the same claims raised in the complaint that initiated this case; and the trial court committed several legal errors—*e.g.*, by invoking an inapplicable statute raised by no party and by considering matters outside the pleadings to sustain demurrers. Thus, all agree that at least one claimant with standing still has live claims, and the trial court committed errors in addressing those claims below.

Appellees concede, as they must, that the question raised below about application of the Pennsylvania Constitution and Intergovernmental Cooperation Act (“ICA”) “is a legal question.” Intervenor-Appellees’ Br.² 12. There is thus no doubt that the trial court erred by sustaining demurrer objections based on a perceived lack of “*evidence at trial* to support the[] claim that the County’s approval was needed under the ICA or...Pennsylvania Constitution.” R.1497a (emphasis added). Moreover, no Appellee disputes that the trial court erroneously relied on a

¹ Plaintiff-Appellants submit this “omnibus” Reply Brief addressing points raised in briefs submitted by Appellant Harran, Intervenor-Appellants and current Bucks County Sheriff Daniel Ceisler, who is the party in interest with respect to Plaintiff-Appellants’ claims against former Sheriff Harran in his official capacity.

² Unless otherwise noted, references herein to “Intervenor-Appellees’ Br.” refer to the March 27, 2026 “Brief of Appellees/Intervenor-Defendants in Opposition to Brief of Appellants Make the Road States, Inc.”

sua sponte misinterpretation of the Municipal Police Jurisdiction Act (“MJPA”). And none of them attempts to dispute the essential facts that render demurrer on ICA and Pennsylvania Constitution claims unsupportable: (a) sheriffs are county officers, (b) these sheriffs signed a “Memorandum of Agreement” to cooperate with a federal agency, and (c) none of them sought or obtained county board approval.

Instead, Appellees misconstrue the law and the pleadings in an effort to escape Plaintiff-Appellees’ claims on faulty procedural grounds. Appellees endorse the trial court’s pinched concept of organizational standing, which cannot be reconciled with controlling cases involving pre-enforcement declaratory judgment challenges to government action. They make misguided arguments over mootness exceptions while conceding that the case is not moot as to Intervenor-Appellees. And on the merits, Intervenor-Appellees present novel counter-textual arguments without citation to authority, while asking this Court to ignore both controlling Supreme Court precedent and the trial court’s numerous errors of law.

ARGUMENT

I. Appellees Provide No Basis to Affirm Demurrer Rulings.

Neither the current nor former Bucks County Sheriff offers any argument on the merits. And Intervenor-Appellees fail in their few attempts to justify the trial court’s decision to grant preliminary objections sounding in demurrer. No Appellee meaningfully disputes that the trial court committed a multitude of errors in

considering matters outside the pleadings and failing to limit its demurrer analysis to issues of law. And on the basic issue of law presented, Appellees ultimately have no way around the Supreme Court of Pennsylvania’s unequivocal holding that:

[A]ny agreement for intergovernmental cooperation necessitates that the governing body of the municipality *must* pass an ordinance with respect to said agreement.

Commonwealth v. Hlubin, 208 A.3d 1032, 1039 (Pa. 2019) (emphasis added) (superseded in part by statute on other grounds).

A. Sheriff’s offices are units of county government, answerable to its governing body.

Intervenor-Appellees’ merits arguments expressly rely on the same flawed premise underpinning the trial court’s analysis: that a sheriff can enter into any agreement it wants without answering to its county’s governing body. They simply declare county sheriffs to be sovereigns, rather than units of county government, citing no authority other than the fact that the Pennsylvania Constitution provides for the election of sheriffs. Intervenor-Appellees’ Br. 12. The entire premise is contrary to blackletter Pennsylvania law.

Intervenor-Appellees’ assertion that “[t]he Sheriff is not a municipality” (*id.*) misses the point, because Sheriffs are officers *of a municipality*. As Intervenor-Appellees acknowledge, a sheriff is a “county officer.” *Id.* And counties are “municipalities” within the meaning of the Pennsylvania Constitution and ICA. *See* 53 Pa.C.S.A. § 2302 (“[l]ocal government” under the ICA includes counties); Pa.

Const. art. IX, § 14 (“[m]unicipality” includes counties).³

As this Court has recognized, a sheriff’s office is “a sub-unit of” the county, not its own “legal entit[y].” *Monastra v. Delaware Cnty. Sheriff’s Off.*, 49 A.3d 556, 558 (Pa. Commw. Ct. 2012); *see also Pennsylvania Lab. Rels. Bd. v. Della Vecchia*, 352, 537 A.2d 805, 807 (Pa. 1988) (“individual row officers...[are not] *independent* ‘public employers’” and have no authority to enter collective bargaining agreements without commissioner approval); *Lehigh Valley Hosp. v. Cnty. of Montgomery*, 768 A.2d 1197, 1200 n.1 (Pa. Commw. Ct. 2001) (“[O]nly the Commissioners have the authority to enter into contracts.”). As a sub-unit of the county, a sheriff’s office has no legal capacity of its own.⁴ *Id.*; *see* 16 Pa.C.S.A. § 12107 (“The corporate power of each county shall be vested in the county commissioners.”). It cannot sue or be sued, enter contracts on its own behalf, or exercise other corporate powers of the county, which lie exclusively with the commissioners. 16 Pa.C.S.A. § 12106 (describing the county’s corporate powers); § 12107.⁵

³ *See also Hlubin*, 208 A.3d at 1039 (“The Pennsylvania Constitution defines a ‘municipality’ as [including] a ‘county.’”) (citing Pa. Const. art. IX, § 14); *Summit Twp. Indus. & Econ. Dev. Auth. v. Cnty. of Erie*, 980 A.2d 191, 209 (Pa. Commw. Ct. 2009) (voiding a county’s intergovernmental agreement for failing to comply with the ICA).

⁴ Appellees embraced the sheriff’s office’s role as a mere sub-unit of county government elsewhere. After the federal court awarded attorneys’ fees to Appellants’ counsel, Appellee argued, “any award of attorneys fees should be directed to the Bucks County Sheriff’s office,” *i.e.*, the County and its taxpayers, “and not Sheriff Harran personally.” Def.’s Opp. to Mot. for Attorneys’ Fees at 7, Ex. A. Appellees cannot have it both ways.

⁵ *Yost v. McKnight*, 865 A.2d 979 (Pa. Commw. Ct. 2005), offers no support for Intervenor-Appellees. *Yost* holds only that, under specific provisions of the County Code governing district

Intervenor-Appellees’ novel “constitutional county officer[s]” theory fails under the weight of these authorities, which they leave unaddressed. Ultimately, as a sub-unit of the county (*i.e.*, municipal) government, any intergovernmental cooperation agreement signed by the county sheriff’s office is an agreement *of the municipality*, subject to approval by the municipality’s governing body under the ICA and Pennsylvania Constitution.

Sheriffs’ inclusion in Article IX, § 4 of the Pennsylvania Constitution provides no special exemption from the requirement of *the very next provision* of Article IX, nor does it grant the power to exercise the county’s corporate authority without commissioner consent in violation of § 12107. *See, e.g., Rebert v. York Cnty. Detectives Ass’n*, 909 A.2d 906, 913 (Pa. Commw. Ct. 2006) (“[O]ur constitution itself [does not] accord row officers any particular management rights.”). Likewise, Intervenor-Appellees’ vague reference to sheriffs’ “traditional, common law function of upholding the peace and enforcing the laws of the Commonwealth” (Intervenor-Appellees’ Br. in Opp. to County Br. 9 (quoting *Commonwealth v.*

attorneys, a DA may enter employment contracts with the employees of their choosing with funds that the commissioners already pre-approved, without salary board approval, subject to other limits of the County Code. *Id.* at 984. This proposition is unremarkable: no party disputes that sheriffs maintain control of sheriff’s office hiring decisions under 16 Pa.C.S.A. § 14720. The problem for Intervenor-Appellees is that *in this case, the sheriff’s contract violates other laws*, namely, Article IX, § 5 of the Pennsylvania Constitution and the ICA. In addition, contrary to Intervenor-Appellees’ claim that Appellee “ha[d] budgeted funds for the 287(g) Agreement,” Intervenor-Appellees’ Br. in Opp. to County Br. 12, Appellee Harran in fact conceded that implementing his 287(g) agreement would divert taxpayer-funded deputy sheriff time away from existing budgeted priorities. R. 892a-894a, 909a-911a.

Bennett, 827 A.2d 469, 476-477 (Pa. Super. Ct. 2003))) offers no support for Pennsylvania sheriffs seeking to enforce *federal civil immigration law*—a power *not* part of Pennsylvania sheriffs’ traditional authority at any point in history. See *Arizona v. United States*, 567 U.S. 387, 408 (2012).

Intervenor-Appellees’ reliance on 16 Pa.C.S.A. § 14720 is also misplaced. See Intervenor-Appellees’ Br. 2. Section 14720 provides row officers the power over managerial functions like “hiring, discharging, and supervising” their subordinate staff. It does not confer the broader substantive powers Appellees are trying to create here. See, e.g., *In re Davis*, 302 A.3d 166, 175 n.3 (Pa. Super. Ct. 2023) (row officers’ power to supervise employees under the predecessor to § 14720 does not entitle them to “act at [their] pleasure.”); *Cnty. of Erie v. Am. Fed’n of State*, 138 A.3d 715, 718 (Pa. Commw. Ct. 2016) (this section “cannot be interpreted as granting the Sheriff absolute discretion to reassign his employees to any job at any time despite contractual language to the contrary”).

The only authority Intervenor-Appellees cite for their radical claim of limitless sheriff authority under § 14720 is *County of Allegheny Deputy Sheriff’s Association v. County of Allegheny*, 730 A.2d 1065, 1068 (Pa. Commw. Ct. 1999). But the court there held only that deputy sheriffs could not compel the sheriff to participate in a retirement incentives program. It provides no support for any notion that § 14720 reaches beyond basic managerial functions, let alone the sweeping

“operational policy decision” authority Intervenor-Appellees ask this Court to recognize for the first time. Intervenor-Appellees’ Br. in Opp. to County Br. 11. At most, this case confirms the obvious—that row officers may make basic employment decisions.

B. ICA and Article 9, § 5 impose mandatory requirements.

Intervenor-Appellees also ask this Court to make new law by arguing that the requirements of Article IX, § 5 of the Pennsylvania Constitution and § 2304 of the ICA are optional based on use of the word “may.” *See* Intervenor-Appellees’ Br. 11-13. Again citing no authority, they claim that governing body approval is permissive, ignoring both binding precedent and other relevant constitutional and statutory text. The Pennsylvania Constitution provides: “A municipality *by act of its governing body may*, or upon being required by initiative and referendum in the area affected *shall*” engage in intergovernmental cooperation. Pa. Const. Art. IX, § 5; *see also* 53 Pa.C.S.A. § 2304 (“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 local governments, [or] the Federal Government.”). The word “may” in context plainly means that a *municipality may* choose to engage in intergovernmental cooperation; when it does so choose, it *must* do so through its governing body. That is what the Supreme Court held in *Hlubin*, 208 A.3d at 1039.

Moreover, Intervenor-Appellees ignore ICA § 2305, which states that intergovernmental cooperation requires the municipality’s “passage of an ordinance or resolution.” This requirement removes any room for doubt that complying with Article IX, § 5 and the ICA is mandatory.

While Intervenor-Appellees pretend that there is some open question of statutory interpretation on this point, both the Supreme Court of Pennsylvania and this Court have held that Article IX, § 5 and the ICA establish *mandatory* rules for engaging in intergovernmental cooperation. *See Hlubin*, 208 A.3d at 1039⁶ (“The General Assembly, through its passage of the ICA, 53 Pa.C.S. §§ 2301–2317, established formal rules of compliance for intergovernmental cooperation.”); *Summit Twp.*, 980 A.2d at 209 (“[F]ailure to adopt an ordinance ‘renders an intergovernmental agreement void.’”) (quoting *Stein v. Dep’t of Transp.*, 857 A.2d 719, 724 (Pa. Commw. Ct. 2004)). Intervenor-Appellees cannot wish away this caselaw. The binding authority they ignore requires this Court to reject Intervenor-Appellees’ unprecedented statutory and constitutional interpretations.

C. Legal violations cannot be excused as “routine.”

Faced with the above authority, Intervenor-Appellees resort to complaining that compliance with the ICA and Pennsylvania Constitution could disrupt sheriffs’

⁶ Intervenor-Appellees’ only effort to deal with *Hlubin* is to point out that the unapproved agreement in that case involved a local police department rather than a county sheriff’s office. Intervenor-Appellees’ Br. 14-15. This distinction does not render inapplicable *Hlubin*’s basic holding that the ICA and Article IX, § 5 are mandatory.

“routine” practices. Intervenor-Appellees provide no basis for assuming county officers routinely fail to present intergovernmental cooperation agreements to county boards for approval. If anything, the record reveals the opposite—that the “routine law-enforcement practice” is to seek county approval for such agreements. Appellee Harran conceded below that he brought over twenty resolutions to the County Commissioners during his term as sheriff, including at least one directly analogous intergovernmental cooperation agreement, with no evident disruption to the sheriff office’s duties. R. 930-31a.

In any event, the assertion that some sheriffs may presently be flouting the law does not entitle Appellees to violate it further. *See, e.g., Hlubin*, 208 A.3d at 1044 (holding that law enforcement agencies must comply with the ICA). While Intervenor-Appellees depict intergovernmental cooperation as an ordinary part of sheriffs’ work, so is obtaining commissioner approval over agreements to use county resources in unsanctioned ways. Further, the Supreme Court of Pennsylvania has long recognized that sheriffs “are not police officers—nor are they invested with general police powers.” *Com. v. Marconi*, 64 A.3d 1036, 1043 (Pa. 2013). Instead, in most instances, “[t]he General Assembly has limited the powers and duties of sheriffs to those ‘authorized or imposed upon them by statute,’” *Kopko v. Miller*, 892 A.2d 766, 772 (Pa. 2006) (quoting 13 P.S. § 40), which center today mostly on the role of the sheriff as a “court officer.” *Id.* at 778 (quoting *Com. v. Leet*, 641 A.2d

299, 301 (Pa. 1994)) (internal quotation marks omitted). To whatever extent some sheriffs may unilaterally attempt to enlarge their roles through unapproved intergovernmental cooperation with law enforcement agencies with broader jurisdiction, Appellees present no basis for treating such voluntary undertakings as so routine as to justify violations of the Pennsylvania Constitution.

D. DHS is not an indispensable party.

In response to Appellant Bucks County’s Brief, Intervenor-Appellees’ attempt to revive their failed argument that DHS is an indispensable party. But the trial court could not even justify this part of its initial ruling when tasked with doing so under Pa.R.A.P. 1925. *See* R.1500a (1925 Opinion ultimately agreeing that “DHS and ICE are not necessary parties to this case”). Appellees did not cross-appeal that conclusion and should not be heard to revive their failed arguments now.

The “guiding inquiry in any discussion of indispensability is whether justice can be done in the absence of the parties asserted to be necessary. This requires an assessment of the particular facts and circumstances presented in each case.” *City of Phila. v. Commonwealth*, 838 A.2d 566, 584 (Pa. 2003). Thus, it is not the case that every party to an agreement must be joined any time a complaint mentions the terms of an agreement. “If no redress is sought against a party, and its rights would not be prejudiced by any decision in the case, it is not indispensable....” *Grimme Combustion, Inc. v. Mergentime Corp.*, 595 A.2d 77, 636 (Pa. Super. Ct. 1991)

(Cavanaugh, J., dissenting); *see also Campanaro v. Pa. Elec. Co.*, 656 A.2d 491, 493-94 (Pa. Super. Ct. 1995) (third-party not indispensable even though it was a party to the underlying contract and had some “interest in the contract it negotiated”).

For a third-party to be “indispensable,” its interest must be “essential” to deciding the “merits of the issue” in the lawsuit. *Cnty. of Elk v. Highland Twp.*, 677 A.2d 398, 400 (Pa. Commw. Ct. 1996)).⁷ Here, it is beyond dispute that participating in the 287(g) program is voluntary, *see* 8 U.S.C. § 1357(g)(9), such that termination of a sheriff’s participation would not impair any rights DHS has under the agreement. This lawsuit deals only with sheriffs’ unilateral decision to sign agreements with ICE in violation of the ICA and the Pennsylvania Constitution. The agreements themselves enable the sheriffs to terminate their participation at any time and for any reason. R. 1515a; *see also* R. 1516a (MOA “does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person.”); *cf. Make the Rd. States, Inc., v. Harran*, No. 25-3938, 2025 WL 1791129, at *3 (E.D. Pa. June 27, 2025) (“The lack of federal direction here is especially evident because entry into 287(g) agreements

⁷ *See also Downs Racing, L.P. v. Luzerne Cnty.*, 297 A.3d 20, 27 (Pa. Commw. Ct. 2023) (third-party not indispensable as it “simply lacks the requisite legal interest, i.e., one that is essential to the merits of the tax claim litigation.”)

is voluntary.”). DHS thus already disclaimed any right to enforce its 287(g) agreements if they are found to be contrary to Pennsylvania law.⁸

Because DHS has no right to force sheriffs to keep these 287(g) agreements in place, this case can be litigated without impact on its rights.

E. The decision on appeal is infected by multiple additional errors.

Finally, Appellees concede many of the errors Plaintiff-Appellants identified in the trial court’s analysis. Specifically, Appellees offer no dispute that:

- The trial court read an “enforceable contract” requirement into the ICA, even though “neither Article IX, Section 5 nor Section 2304 uses that phrase.” Intervenor-Appellees’ Br. 15⁹;
- The trial court invoked a patently inapplicable provision of the MPJA as excusing Appellees from compliance with the ICA and Article IX, § 5 of the Pennsylvania Constitution¹⁰;
- The trial court granted preliminary objections based on a baseless federal preemption argument, even though Appellees now admit that “Section 287(g) does not preempt state law,” Intervenor-Appellees’ Br. 16¹¹; and
- The trial court considered matters outside the pleadings—including hearing testimony and independently-sourced facts about criminal histories of people stopped by ICE—thus failing to decide objections under Pa.R.Civ.P. 1028(a)(4) based on the pleadings alone, accepting Plaintiffs’ allegations as true. *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))

⁸ DHS’s lack of interest here is underscored by the fact that it declined to seek intervention. The United States instead submitted a “statement of interest,” in which it declined to “take a position on the state-law claims” at issue in this litigation. R. 291a, n.10.

⁹ See also Appellants’ Br. 27-29.

¹⁰ Compare Appellants’ Br. 29-33 with Intervenor-Appellees’ Br. 16.

¹¹ See also Appellants’ Br. 33-34.

("[e]vidence presented at the preliminary injunction hearing cannot be considered" in ruling on a preliminary objection in the form demurrer).¹²

However, Intervenor-Appellees simply brush these errors aside, suggesting they are immaterial to the outcome. But a cursory reading of the trial court's rulings reveals these errors to be critical in its analysis. *See, e.g.*, R.1459a (holding that "the documents signed by the Sheriff are not an enforceable contract *and therefore* were not subject to the approval of the Bucks County Commissioners" (emphasis added)); R.1497a (concluding that "the MPJA's federal task force exception...appears to validate the 287(g) MOA at issue in this case"); R.1502a (confirming the trial court relied on legal opinion offered by Sheriff Slupe as "helpful" in deciding "(1) whether the 287(g) Memorandum of Agreement is a contract; and (2) whether Sheriff Harran is authorized to enter into the 287(g) MOA without the County's approval").

Intervenor-Appellees ask this Court to ignore these reversible errors because "[w]hether Article IX, Section 5 and the IGCA apply is a legal question" that this Court can review and resolve on its own. Intervenor-Appellees' Br. 12. Plaintiff-Appellants agree that this is the core legal question, which *should have been* resolved without delving into immaterial side issues. The trouble with Intervenor-Appellees taking this stand now¹³ is that the trial court did not limit itself to deciding this

¹² Compare Appellants' Br. 57-61 with Intervenor-Appellees' Br. 17-18.

¹³ Intervenor-Appellees take this position despite how their presentations below focused on novel arguments about enforceable contracts and references to other types of agreements to which the

question as a matter of law. Indeed, when the trial court did consider the core legal question, it faulted Plaintiffs for not presenting more “evidence” that the statute and constitution apply, R.1497a, rather than approaching it as a pure legal question. Had the trial court considered this straightforward legal question—without its flawed MPJA analysis, novel “enforceable contract” theories, or Sheriff Slupe’s opinion testimony—it would have to have found that Plaintiff-Appellants “stated a viable claim that commissioner approval was legally required before the Sheriff could enter the Memorandum [of Agreement]” under 287(g). Intervenor-Appellees’ Br. 15.

II. Appellees Provide No Basis for Dismissing This Appeal as Moot.

A. Plaintiff-Appellants’ claims are not moot as to the Intervenor-Appellees or the Bucks County Sheriff in his official capacity.¹⁴

The net result of the parties’ various mootness arguments is that this appeal should be heard.¹⁵ Intervenor-Appellees now expressly concede that Plaintiff-Appellants’ claims are not moot as to them because the intervenors continue to

MPJA might apply. *See* R.1427a (arguing 287(g) agreements are “simply a ‘delegation’,” as opposed to a binding contract); R.1430a (arguing sheriffs’ 287(g) agreements are valid by reference to municipal police department agreements). The entire debate about whether a 287(g) agreement is a “contract” emanates from Intervenor’s own novel theories. *See* R.0590a-0592a (Intervenor’s counsel arguing that County approval is not required because the 287(g) agreement is not a “contract” and “not enforceable by the DHS”).

¹⁴ No party claims there is any live dispute as to personal-capacity claims against Mr. Harran. Plaintiff-Appellants made clear from the earliest stages of this appeal that they are not pursuing, through appeal, any claims against the former sheriff, and they filed a Notice pursuant to Pa.R.A.P. 908 to confirm Mr. Harran’s status as a party without interest before Appellees’ briefs came due.

¹⁵ No Appellee contests Plaintiff-Appellees’ request, in the alternative, that if this Court sees fit to deny this appeal as moot, it should vacate the lower Court’s opinion and remand with instructions to dismiss the underlying case.

operate under their respective 287(g) agreements, with the trial court's blessing.¹⁶ Intervenor-Appellees' Br. 18. That alone confirms this appeal presents live issues.

Moreover, Plaintiff-Appellants' official-capacity claims as to the Bucks County Sheriff are not mooted by Sheriff Ceisler's voluntary cessation of the 287(g) agreement. Appellees cannot demonstrate that a future Bucks County Sheriff would not again execute such an agreement. Under Pennsylvania law, "voluntary cessation of allegedly illegal conduct does not moot a case where the offensive conduct could be resumed upon dismissal of the proceedings." *Atl. Inland, Inc. v. Bensalem Twp.*, 394 A.2d 1335, 1337 (Pa. Commw. Ct. 1978) (citing *Temple Univ. v. Pa. Dep't of Pub. Welfare*, 374 A.2d 991 (Pa. Commw. Ct. 1977)). This doctrine is especially apt where the party changing its practices maintains its original position did not violate the law. *Cox v. City of Chester*, 464 A.2d 613, 616 (Pa. Commw. Ct. 1983) ("we question the significance of the authorities' temporary discontinuance of the challenged activity, as applied to the future, given their steadfast position that, under the Tax Sale Law, they have no obligation" to cease the disputed conduct).

Here, Appellees continue to argue that their conduct did not violate the ICA or Pennsylvania Constitution. R.1406a (Sheriff Harran's Memorandum of Law in

¹⁶ Curiously, Intervenor-Appellees joined Mr. Harran's motion to quash this appeal as moot despite their apparent agreement that there is still a live dispute as to the trial court's declaration that Intervenor-Appellees' respective 287(g) agreements are valid. Their position cannot be reconciled with a request to dismiss the entire appeal.

Support of Response in Opposition to Petition for a Preliminary Injunction); Intervenor-Appellees Br. 2. Sheriff Ceisler takes no position on this question. Ceisler Brief at 10. And while Sheriff Ceisler commits that there will be no further 287(g) agreement during *his* tenure in office, he cannot speak to what will happen when another person occupies that office. Thus, Appellees have not borne their heavy burden of proving that there is no reasonable expectation that a future Bucks County Sheriff would not re-execute the 287(g) agreement without approval from the Bucks County Board of Commissioners.

B. Alternatively, the great public importance exception applies.

Appellees make no serious attempt to argue why the exception for matters of great public importance should not apply if the Court determines that the appeal is moot. Sheriff Ceisler “does not dispute or take a position against the public importance as to the issues in this action as they might apply to other sheriffs around Pennsylvania who enter into 287(g) agreements without county approval, such as Appellants Sheriffs Sites and Walters.” Ceisler Br. 15. And Appellee Harran simply notes that the exception is applied infrequently, without arguing why *this* appeal does not qualify. Harran Br. 33.¹⁷ As counsel’s public statements acknowledge, this

¹⁷ Appellee Harran argues that even if the public importance mootness exception does apply here, the Court should not hear the instant appeal because the legal questions can be addressed in a separate proceeding challenging a different, active 287(g) agreement. Harran Br. 33. But the potential that similar legal questions could be addressed in other litigation is an argument against the application of the “capable of repetition but evading review” mootness exception not asserted

case plainly involves matters of great public importance. America First Legal—which stated that it litigated this case “in partnership with” counsel of record—issued a press release acknowledging the importance of the legal issues involved here. *VICTORY — America First Legal Defeats the ACLU in Landmark Case Upholding Pennsylvania Sheriff’s Authority to Partner With ICE*, America First Legal (Oct. 15, 2025), available at <https://aflegal.org/press-release/victory-america-first-legal-defeats-the-aclu-in-landmark-case-upholding-pennsylvania-sheriffs-authority-to-partner-with-ice/> (last visited Mar. 31, 2026) (emphasis added). That press release noted that the trial court’s decision had “sweeping implications.” *Id.*

Plaintiff-Appellants discuss in more detail the palpable public importance of this matter in response to Appellees’ Application to Quash Appeal. The narrow legal issues here address conflicts between public officials over the distribution of governmental power, which are brewing in dozens of other Pennsylvania municipalities where officers have executed 287(g) agreements.

III. Appellees Fail to Justify the Trial Court’s Standing Analysis.

Like the trial court, Appellees continue to advance an unduly restrictive approach to standing that is incompatible with Pennsylvania law. To overcome the allegations of direct, substantial, and immediate interests pled by Plaintiff-

here, not the matters of great public importance exception. *See, e.g., Taylor v. Pa. Bd. of Prob. & Parole*, 746 A.2d 671, 675 (Pa. Commw. Ct. 2000) (“the issues raised ... are capable of repetition ... [but] are not likely to evade review,” because similarly situated incarcerated persons would be able to raise the issues before their release).

Appellants below, Appellees resort to reframing these allegations, ignoring controlling case law, and shifting focus to Mr. Harran's hearing testimony about his purported intentions to limit participation in 287(g). But Plaintiff-Appellants adequately pled an interest in the violation of law that was complete upon Mr. Harran's signing of an unapproved 287(g) agreement. And in any event, this Court need not be overly concerned with the debate over each Plaintiff's standing because there is a cross-claim plaintiff asserting the same claims in the same case, and there is no debate over its standing.

A. Appellees do not dispute Bucks County's standing.

No Appellee contests the County's standing to bring cross-claims. Pennsylvania courts have long recognized that only one party need establish standing for a claim asserted by multiple parties. The trial court therefore erred in even considering dismissal of identical claims brought by the Plaintiff-Appellants.

The Supreme Court of Pennsylvania has recognized where "one party has standing, the Court need not consider whether another party also has standing." *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 393 (Pa. 2005) (citing *City of Phila. v. Commonwealth*, 838 A.2d 566, 579 n.8 (Pa. 2003)). Appellee Harran seeks to cabin this rule to parties who enter a case as co-plaintiffs from the outset, ignoring that the County is a cross-claim *plaintiff*. See Harran Br. 22. He cites no support for this position.

The Court explicitly used “party,” not “plaintiff,” in setting out this rule. *Pennsylvanians Against Gambling Expansion Fund, Inc.*, 877 A.2d at 393. Additionally, the rule is consistent with Pennsylvania standing jurisprudence, more broadly, which is concerned with “ensur[ing] that courts do not issue inappropriate advisory opinions.” *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021) (citing *Stuckley v. Zoning Hearing Bd. of Newtown Twp.*, 79 A.3d 510, 516 (Pa. 2013)). Standing’s gatekeeping function as to a given claim is realized once a court finds that one party has standing to bring that claim.¹⁸ Because the County indisputably has standing to bring its cross-claim, this Court has jurisdiction over this case, even if it were to dismiss Plaintiff-Appellants’ identical claims for lack of standing. *Bollard & Assocs., Inc. v. PA Assocs.*, 223 A.3d 698, 702 (Pa. Super. Ct. 2019). It would serve no purpose for the trial court to consider Plaintiff-Appellants’ standing in this matter.

Appellee Harran’s fear that this approach would “erase[.]” standing rules because “[a] plaintiff, who otherwise lacks standing, would simply name any party, who would have standing, as a defendant” is baseless. Harran Br. 22. Under the prevailing rule, a court must in all events find that one party has standing to bring

¹⁸ The United States Supreme Court has adopted this same rule. See *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020) (concluding the Third Circuit had “erred by inquiring into [one of the parties’] independent Article III standing[.]” where another party “clearly had standing to invoke the Third Circuit’s appellate jurisdiction, and both [parties] asked the court” for the same relief). The original source of the identical claims does not matter. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017).

each claim for relief, *Funk v. Wolf*, 144 A.3d 228, 248 n.12 (Pa. Commw. Ct. 2016), *aff'd*, 158 A.3d 642 (Pa. 2017), and frivolous claims against fraudulently joined parties are subject to dismissal. That is not the case here; no party suggests that Bucks County was improperly joined.

B. Plaintiff-Appellants have standing.

Plaintiff-Appellants have also established standing to sue in their own right. Appellee Harran argues that, under *Firearm Owners*, a party has standing to seek pre-enforcement review of threatened unlawful conduct only where the defendant was “engaging in active and on-going enforcement of . . . the very conduct plaintiffs were engaged in.” Harran Br. 10-11. For one thing, the conduct complained of here is the unauthorized entry into a 287(g) agreement. That legal violation was complete without further action by the sheriff when Plaintiffs filed their complaint. Moreover, while the Court in *Firearm Owners* considered the defendant’s active enforcement of the challenged ordinance as evidence of the immediacy of plaintiffs’ interests, Pennsylvania Courts do not require a plaintiff to plead such active enforcement to establish standing for a pre-enforcement declaratory judgment action.¹⁹

¹⁹ Appellee Harran’s statement that Plaintiff-Appellants did not raise these arguments below (Harran Br. 8, n.3) is demonstrably false. *See* R.0637a-0638a (preliminary objection opposition brief arguing “[a] more liberal standing analysis is especially appropriate in the declaratory judgment context”) R.1357a-1358a (Post-Hearing Brief discussing Pennsylvania’s relaxed standing requirement for pre-enforcement declaratory judgment claims); *see also* R.0587a-0588a (discussing standing for pre-enforcement declaratory judgment claims at Aug. 4, 2025 status conference, when trial court first raised standing questions).

Instead, plaintiffs need only plead the threat of harm due to the legal violation. *See, e.g., Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 920 (Pa. 2013) (municipalities had standing to challenge a statute that would allow for more expansive natural gas drilling, despite relevant portions of the statute not yet being effective, because of the threat of future harm to the municipalities); *Franklin Twp. v. Commonwealth, Dep't of Env't Res.*, 452 A.2d 718, 722 (Pa. 1982) (township and county had standing to appeal issuance of a permit for waste processing/disposal facility, because “[w]e need not wait until an ecological emergency arises in order to find that the interest of the municipality and county faced with such a disaster is immediate”); *see also Commonwealth, Off. of Governor v. Donahue*, 98 A.3d 1223, 1230 (Pa. 2014) (Office of the Governor had standing to bring a pre-enforcement declaratory judgment action challenging the Office of Open Records’ interpretation of the Right-to-Know Law, which the Office of Open Records has “otherwise indicated that it intends to enforce” in the future).²⁰

In *Commonwealth, Pa. Game Comm'n v. Seneca Res. Corp.*, 84 A.3d 1098, 1102 (Pa. Commw. Ct. 2014), the Pennsylvania Game Commission sought a declaration that it, and not Seneca, maintained oil and gas development rights over

²⁰ Appellees ignore *Robinson Twp.* and *Franklin Twp.* Appellee Harran only mentions *Donahue* for the unremarkable proposition that standing rules apply in declaratory judgment actions, Harran Br. 9, but ignores its application of standing rules in the context of a pre-enforcement declaratory judgment challenge to government conduct.

a disputed plot of land. Seneca argued that the Commission lacked standing “because the Commission merely alleges that Seneca ‘plans on’ drilling wells to extract oil and gas from the Property.” *Id.* at 1102. This Court disagreed, “[l]iberally construing and administering the Declaratory Judgments Act, as we must,” and held the threat of Seneca drilling on the property in the future was enough to provide the Commission with standing to seek a pre-enforcement declaration.²¹ *Id.* at 1104. This Court specifically noted, “while it is true that Seneca has not yet begun drilling operations, and could decide never to drill, Seneca has admitted that it holds a well permit” for an adjacent property, had previously drilled a test well, and it “need afford the Commission only 60 days advance notice before drilling.” *Id.* at 1104.

Similarly, Appellee Harran claimed not to have begun performing immigration enforcement functions under the 287(g) agreement when Plaintiff-Appellants sued. But like defendant in *Seneca*, who had “tools in place threatening imminent invasion of the Commission’s purported rights,” 84 A.3d at 1104, Appellee Harran had taken steps that put Plaintiff-Appellants at imminent risk of

²¹ In so holding, this Court recognized the DJA’s expansive standing considerations:

If differences between the parties concerned, as to their legal rights, have reached the state of antagonistic claims, which are being actively pressed on one side and opposed on the other, an actual controversy appears; where, however, the claims of the several parties in interest, while not having reached the active stage, are nevertheless present, and indicative of threatened litigation in the immediate future, which seems unavoidable, the ripening seeds of a controversy appear.

Id. at 1103-1104 (citing *Mid-Centre Cnty. Auth. v. Boggs Twp.*, 384 A.2d 1008, 1011 (Pa. Commw. Ct. 1978)).

harm. His personnel had been nominated, trained, and certified under the 287(g) agreement. R.0898a, R.0935a, R.0968a. All that was left was for DHS to provide those officers with direction, equipment, and software. R.0953a. On September 16, 2025, Appellee Harran admitted those remaining steps could be completed “tomorrow,” R.0953a-0954a, such that enforcement activities under the agreement “could happen any day now.” R.0938a. Plaintiff-Appellants had thus demonstrated an immediate interest in this matter, despite Appellee Harran having not fully implemented the 287(g) agreement when the complaint was filed.

C. NAACP Bucks and BuxMont UU have standing based on diversion of resources.

Appellee Harran does not dispute that NAACP Bucks and BuxMont UU diverted resources to deal with the fallout of his unapproved 287(g) agreement. Instead, he relies on a sweeping contention that “Pennsylvania does not confer standing on a litigant based on a diversion of resources alone....” Harran Brief at 11. He quotes *dicta* from *Ball v. Chapman*, 289 A.3d 1 (Pa. 2023), a case in which the Pennsylvania Supreme Court explicitly held that litigants had standing because the challenged government action forced their organizations to divert resources.²² While the *Ball* Court warned that an organization’s diversion of resources would not be a

²² Appellees essentially ignore the other cases identified by Plaintiff-Appellant in which Pennsylvania courts cited diversion of resources to find standing, *see* Plaintiff-Appellants Br. 41 n.16 (discussing *Donahue*, 98 A.3d at 1229-30, *Applewhite*, 2014 WL 184988, at *8, *Allegheny Reprod. Health Ctr.*, 309 A.3d at 823, 838).

basis for standing if the organization “challenged an existing interpretation of settled law, or simply sought to compel the Commonwealth to act in a way that aligns with its mission or its investment of resources,” *id.* at 19, it held that campaign arms of the Republican Party had standing to challenge an unsettled legal question regarding mail-in ballots because they were diverting organizational resources to educate the public and their election monitors on that question, *id.* at 13, 19-20.

Here, Appellees argued that the applicability of the ICA and Pennsylvania Constitution to Appellee Harran’s 287(g) agreement implicate unsettled legal questions about local law enforcement participation in federal immigration enforcement activities. R.0167a-R.0170a. Intervenor-Appellees continue to argue that the ICA and Pennsylvania Constitution do not limit a sheriff’s authority to enter into a 287(g) agreement. *See* Intervenor-Appellees Brief at 2. In support of that contention, Intervenor-Appellees argue that the applicability of the ICA and Article 9 § 5 of the Pennsylvania Constitution to intergovernmental cooperation agreements executed by Sheriffs is not a matter of settled law.

Additionally, like the petitioners in *Ball*, NAACP Bucks and BuxMont UU sufficiently alleged that, given their respective missions and communities they serve, the challenged government conduct forced them to devote time and resources to public education, counseling, outreach, and advocacy directly related to the legal

question of whether Harran had the authority to enter into the 287(g) agreement.²³ R.0067a-68a, ¶ 12 (NAACP Bucks); R.0106a-107a, ¶¶ 6-10 (BuxMont UU). Many of NAACP Bucks’s social media posts explicitly discussed the disputed legal questions at issue in this case. *See, e.g.*, R.0101a (“[t]he Sheriff’s Office cannot lawfully enter into a 287(g) agreement with ICE without the Bucks County Commissioners passing a resolution or ordinance authorizing such an agreement”). Others implored the Bucks County Commissioners to prevent the implementation of the agreement, which Appellees have argued the Commissioners did not have the power to do under Pennsylvania law they imply is unsettled. R.0104a.

D. Make the Road’s members and Juan Navia faced identifiable, imminent harm from the 287(g) agreement.

Appellees argue that Make the Road and Juan Navia lacked standing because Latino community members’ fears of harm were too speculative. *See* Intervenor-Appellees’ Br. 9; Harran Br. 19. Appellees ignore Pennsylvania’s pre-enforcement

²³ Intervenor-Appellees argue, without support, that NAACP Bucks and BuxMont UU’s diversion of resources “are reactive responses to a government policy the organizations oppose.” Intervenor-Appellees Br. 8. But diversion of resources to address unlawful government conduct is by its nature a “reactive response[.]” Further, NAACP Bucks has demonstrated that “eliminat[ing] racial prejudice” and discrimination against people of color, the harm feared here, is among NAACP Bucks’ “core institutional functions.” R.0066a; *see also* R.0106a-0107a (Rev. Kevin Jagoe of BuxMont UU confirming that pastoral care is one of the church’s core functions and that Appellee Harran’s 287(g) agreement forced him to devote time to counseling congregants and community members in fear of the threat of heightened immigration enforcement that he would otherwise be devoting to other congregational priorities); *cf. 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.”).

declaratory judgment action jurisprudence, under which Plaintiff-Appellants were not required to wait for Appellee Harran’s deputies to start interrogating and arresting people they suspected of being “aliens” under their County Sheriff’s Office’s 287(g) agreement before bringing suit to stop the palpable threat. The threat of harm from the 287(g) agreement was enough to establish standing. *Firearm Owners Against Crime*, 261 A.3d at 475, 484; *Robinson Twp.*, 83 A.3d at 922. Plaintiff-Appellants’ claims were directed at an existing legal violation—their sheriff’s commitment to an unlawful ICE cooperation agreement—not something they anticipated might happen in the future. And as Latino community members living under the sheriff’s jurisdiction, they were uniquely imperiled by what the sheriff expressly agreed to do in collaboration with an agency that had “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.” *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637 at *10 (U.S. Sept. 8, 2025) (Sotomayor, J., dissenting).

E. A zone of interest analysis does not extinguish Standing.

Finally, Appellee Harran argues, “even if Plaintiff-Appellants had articulated a non-speculative, direct, immediate, and substantial harm, they would still lack standing because they do not fall within the zone of interests the [ICA] and article 9, section 5 of the Pennsylvania Constitution were designed to protect.” Harran Br. 23. But the Pennsylvania Supreme Court has explained that “a zone-of-interests analysis

is not a necessary component of immediacy.” *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 841 (Pa. 2024). It may be used as an aid to establish immediacy, but is not necessary to the analysis here. For the reasons described above and in their opening Brief, Plaintiff-Appellants have standing whether or not their interests were in the zone of interests protected by the ICA and Pennsylvania Constitution.

CONCLUSION

For all of the foregoing reasons, and those set forth above in Plaintiff-Appellants’ opening Brief, this Court should reverse the trial court’s decision sustaining Appellees’ preliminary objections. Plaintiff-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: April 20, 2026

Marielle Macher (No. 318142)
Daniel Vitek (No. 209013)
COMMUNITY JUSTICE PROJECT
118 Locust Street
Harrisburg, PA 17101
717-236-9486
mmacher@cjplaw.org
dvitek@cjplaw.org

/s/ Ariel Shapell

Ariel Shapell
Stephen A. Loney, Jr. (No. 202535)
Ariel Shapell (No. 330409)
Keith Armstrong (No. 334758)
ACLU OF PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102
215-592-1513
sloney@aclupa.org
ashapell@aclupa.org
karmstrong@aclupa.org

*Counsel for Plaintiff-Appellants
Make the Road States, Inc., NAACP
Bucks County Branch 2253, BuxMont
Unitarian Universalist Fellowship,
and Juan Navia*

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: April 20, 2026

/s/ Ariel Shapell

Ariel Shapell

CERTIFICATION OF WORD COUNT

I certify that the foregoing brief complies with the 7,000-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 6,964 words, not including the supplementary matter as described in Pa.R.A.P. 2135(b).

Dated: April 20, 2026

/s/ Ariel Shapell _____
Ariel Shapell

EXHIBIT

A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAKE THE ROAD STATES, INC.,	:	No. 2:25-cv-02938
NAACP BUCKS COUNTY BRANCH	:	
2253, BUXMONT UNITARIAN UNI-	:	
VERSALIST FELLOWSHIP, and	:	
JUAN NAVIA,	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
FREDERICK A HARRAN, individu-	:	
ally and in his official capacity as Sher-	:	
iff of Bucks County, and BUCKS	:	
COUNTY,	:	
	:	
	:	
Defendants	:	

**RESPONSE IN OPPOSITION TO
PETITION FOR ATTORNEYS FEES AND COSTS**

Defendant, Frederick A. Harran, individually and in his official capacity as Sheriff of Bucks County (“Sheriff Harran”) files this response in opposition the petition for attorneys fees of plaintiffs, Make the Road States, Inc., NAACP Bucks County Branch 2253, Buxmont Unitarian Universalist Fellowship, and Juan Navia (collectively “Plaintiffs”). ECF No. 24.

I. PLAINTIFFS ARE NOT ENTITLED TO ATTORNEYS FEES BECAUSE SHERIFF HARRAN HAD AN OBJECTIVELY REASONABLE BASIS TO REMOVE THE MATTER FROM THE BUCKS COUNTY COURT OF COMMON PLEAS.

To begin, Sheriff Harran respectfully requests that the Court reconsider its award of attorneys fees entirely because Sheriff Harran had an objectively reasonable basis for removal.

When a defendant improperly removes a matter to the district court remand is appropriate, “but incorrectly invoking a federal right is not comparable to violating substantive federal law.” *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 137 (2005). Accordingly, when “awarding fees under § 1447(c) [the district court] should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied. *Id.* at 140. Therefore, a district court should only award attorneys fees “where the removing party lacked an objectively reasonable basis for seeking removal.” *Id.* at 141. Critically, a ‘colorable removal claim in an area of unsettled law’ does not merit a § 1447(c) award.” *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, 921 F.3d 378, 384 (3d Cir. 2019) (quoting *Roxbury Condo. Ass’n v. Anthony S. Cupo Agency*, 316 F.3d 224, 228 (3d Cir. 2003).

Here, the Court ordered that Sheriff Harran pay attorneys fees for his removal because he failed “to establish he was entitled to removal under 1442(a)(1) [, the “federal officer removal statute].” Opinion, ECF No. 21, at 9. Respectfully, this Court misapplied the standard for awarding attorneys fees under 28 U.S.C. § 1447. “Removal is not objectively unreasonable solely because the removing party's arguments lack merit.” *Accor N. Am. v. Gonzalez*, 2008 WL 5377621, at *2 (E.D. Pa. Dec. 23, 2008) (quoting *Dollar Tree Stores, Inc.* 518 F.3d 1062, 1065 (9th Cir. 2008)). While the Court found that Sheriff Harran failed to establish he was entitled to removal under the federal office removal statute, there is no finding that he did so in the face of

settled substantive law or for the purpose of prolonging litigation or to impose additional costs on Plaintiffs. Furthermore, Plaintiffs have never made any such argument.

First, the law in the area is unsettled. “The [287(g)] program and the agreement reached between ICE and Sheriff [] is not an exercise of state executive power—it is, instead, a unique agreement whereby the federal government directly delegates its own plenary power over immigration by deputizing local political subdivisions to ‘perform certain functions of an immigration officer.’” *Santos v. Frederick Cnty. Bd. of Commissioners*, 346 F. Supp. 3d 785, 794 (D. Md. 2018). The issues in this matter are complicated and novel and neither the Third Circuit nor the Pennsylvania Supreme Court has definitively ruled that Sheriff Harran was prohibited from executing the 287(g) Agreement. Indeed, Plaintiffs rely upon the Pennsylvania Intergovernmental Cooperation Act and the Pennsylvania Constitution neither of which have ever been applied to invalidate a 287(g) Agreement or any other agreement between local law enforcement and the federal government.

Plaintiffs’ motion for attorneys’ fees further underscores the unsettled nature of the law concerning Sheriff Harran’s removal. Plaintiffs allegedly devoted 4 attorneys and expended 87.4 in contesting Sheriff Harran’s removal. In essence, Plaintiffs’ counsel spent more than two full 40-hour work weeks researching and briefing the removal issue. Plaintiffs’ counsel spent over 10 hours researching the removal issue under the federal officer removal statute and approximately 26.7 hours drafting briefs on the issue. *See* Decl. of Marielle Marcher, ECF No. 24-4, decl. of Stephen A.

Loney, ECF No. 24-4, decl. of Ariel Shappel, ECF No. 24-5, and decl. of Keith Armstrong, ECF No. 24-6. The amount of time hardly evinces an area of settled law. To the contrary, the amount of time Plaintiffs' counsel allegedly spent demonstrates that the area of the law is complex and unsettled. *Inselberg v. New York Football Giants, Inc.*, 661 F. App'x 776 (3d Cir. 2016) (affirming district court's denial of attorneys fees after remand because law in area was complex and unsettled); *Roxbury Condo. Ass'n, Inc.*, 316 F.3d 224 (holding that district court abuses its discretion in awarding attorneys fees on remand in area of unsettled law.)

Moreover, the United States' statement of interest further exhibits that the law is unsettled. If Sheriff Harran's removal was patently inappropriate and not objectively reasonable, it is doubtful the United States Department of Justice would have devoted time and resources to actively consider whether to intervene or to file a Statement of Interest. Not., ECF No. 18.

Second, there is no evidence that Sheriff Harran sought removal for the purposes of prolonging litigation [or] imposing costs on the Plaintiffs. While Plaintiffs state they incurred costs for costing removal, they make no argument that Sheriff Harran's intent was to cause Plaintiffs to incur costs. Plaintiffs also make no argument that Sheriff Harran's intent in removing the matter was to cause delay. In all events, the removal appears to have caused no delay. Upon remand, the state court scheduled the matter for a hearing on Plaintiffs motion for a preliminary on September 15, 2025.

Based on the foregoing, Sheriff Harran respectfully requests that the district court award Plaintiffs no attorneys fees and costs.

II. THE TIME SPENT AND THE RATES SOUGHT ARE EXCESSIVE AND PATENTLY UNREASONABLE.

The Court should further deny Plaintiffs' request for attorneys fees and costs because they are excessive and grossly inconsistent with similar fee awards from this Court.

When reviewing a motion for attorneys' fees, this Court must conduct "a thorough and searching analysis" *Evans v. Port Auth. of N.Y. & N.J.*, 273 F.3d 346, 362 (3d Cir. 2001) Accordingly, "it is necessary that the Court 'go line, by line, by line' through the billing records supporting the fee request." *Id.*

"In calculating the hours reasonably expended, a court should review the time charged, decide whether the hours set out were reasonably expended for each of the particular purposes described and then exclude those that are excessive, redundant, or otherwise unnecessary." *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). If the Court concludes that the area of law under which Sheriff Harran removed the case was well settled, then Plaintiffs' request for reimbursement for over 80 hours of legal work in an area of settled law is grossly excessive. Plaintiffs cannot have it both ways. Either the remand issues were complex causing them to spend 80 plus hours researching and briefing the matter, in which case no attorneys fees are warranted. Or Plaintiffs have grossly overstated the hours spent on an alleged area of settled law.

Plaintiffs requested reimbursement of \$35,170 in attorneys fees incurred is also grossly disproportional with other fees awards this Court has granted under 28 U.S.C. 1447(c). *See Czarnecki v. Hawthorn Mfg. Corp.*, 2009 WL 159806, at *4 (E.D. Pa. Jan. 16, 2009) (awarding plaintiffs \$4,025 in attorneys fees following remand); *Beautyman v. Spirit Airlines, Inc.*, 2012 WL 12897907, at *3 (E.D. Pa. May 30, 2012) (awardin fees in the amount of \$1526.85 following remand); *Pompetti v. Royal Farms Co.*, 2016 WL 3476301, at *3 (E.D. Pa. June 27, 2016) (awarding plaintiff \$1,000 in attorneys fees following remand).

Plaintiffs further have failed to establish their \$35,170 is reasonable with sufficient evidence. “In a statutory fees case, the party seeking attorney’s fees has the burden to prove that its request for attorney’s fees is reasonable by submitting evidence supporting the hours worked and rates claimed.” *United Sates ex rel. Palmer v. C&D Tech., Inc.*, 897 F.3d 128, 139 (3d Cir. 2018) Here, Plaintiffs rely solely on self-serving declarations from their counsel and have also not submitted any independent third-party analysis attesting to the reasonableness of the \$35,170 fee. They have also offered no evidence that their clients actually paid \$35,710 to contest removal, that they will pay \$35,710 for the contested removal, or that any client has ever paid \$35,710 to contest removal. *Holt v. Pennsylvania*, 2020 WL 2098103, at *14 (E.D. Pa. 2020) (“Plaintiff has not averred that Puricelli has actually billed any paying client at an hourly rate of \$750 or that anyone, including any court authorizing an award in a fee-shifting case, has ever paid him that rate.”); *Middlebrooks v. Teva*

Pharms. USA, Inc., 2019 WL 936645 at *12 (E.D. Pa. 2019) (“Returning to Microeconomics 101 in setting a reasonable market price, we may look to what a willing client would pay a willing lawyer.”)

Thus, if the Court is inclined to award attorneys fees to Plaintiffs, then Sheriff Harran respectfully requests that the award of attorneys fees be consistent with similar awards from this Court under 28 U.S.C. § 1447(c).

III. SHERIFF HARRAN CANNOT BE HELD PERSONALLY LIABLE FOR AN ATTORNEYS FEE AWARD.

Plaintiffs sued Sheriff Harran individually and in his official capacity as Sheriff of Bucks County. The Court’s June 26, 2025 Order is not clear regarding whether the award of attorneys fees is assessed against Sheriff Harran personally or in his official capacity as Bucks County Sheriff. However, “[i]n Pennsylvania, high public official immunity is a long-standing category of common law immunity that acts as an absolute bar to protect high public officials [like Sheriff Harran] from lawsuits arising out of actions taken in the course of their official duties and within the scope of their authority.” *Doe v. Franklin Cnty.*, 174 A.3d 593, 603 (Pa. 2017). The Pennsylvania Supreme Court has held that Sheriffs are high public officials entitled to absolute immunity. *Id.* at 603 (“[T]here is no dispute that, as county sheriff, Sheriff Anthony is a high public official.”) Accordingly, any award of attorneys fees should be directed to the Bucks County Sheriff’s Office and not Sheriff Harran personally.

Respectfully submitted,

Dated: July 25, 2025

/s/Walter S. Zimolong
WALTER S. ZIMOLONG, III, ESQUIRE
JAMES J. FITZPATRICK, III, ESQUIRE
ZIMOLONG LLC
wally@zimolonglaw.com
james@zimolonglaw.com
P. O. Box 552
Villanova, PA 19085
(215) 665-0842

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAKE THE ROAD STATES, INC.,	:	No. 2:25-cv-02938
NAACP BUCKS COUNTY BRANCH	:	
2253, BUXMONT UNITARIAN UNI-	:	
VERSALIST FELLOWSHIP, and	:	
JUAN NAVIA,	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
FREDERICK A HARRAN, individu-	:	
ally and in his official capacity as Sher-	:	
iff of Bucks County, and BUCKS	:	
COUNTY,	:	
	:	
	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify the foregoing has been filed electronically and is available for viewing and downloading from the Electronic Case Filing System of the United States District Court for the Eastern District of Pennsylvania.

Date: June 27, 2025

/s/ Walter S. Zimolong