

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF CULPEPER

MICHAEL V. McCLARY, et al,

Plaintiffs

v.

Case No. CL18-1373-00

SCOTT H. JENKINS, et al,

Defendants

DEFENDANT JENKINS' DEMURRER

Defendant, Scott H. Jenkins, by counsel, demurs to the Complaint as follows:

1. Federal law preempts state law in the field of immigration. A State court has no jurisdiction to rule on immigration matters under the guise of a local taxpayer lawsuit because immigration matters are exclusively federal in nature. A state court's purported exercise of jurisdiction to review the validity of 287(g) agreement infringes upon the federal government's exclusive federal authority over immigration matters and violates the Supremacy clause.

2. Plaintiffs lack standing to bring this suit. The complaint does not demonstrate a sufficient nexus between the 287(g) Agreement and any injury to Plaintiffs and does not allege any specific local taxpayer funded costs associated with the 287(g) Agreement. Additionally, as a matter of law, Sheriff Jenkins receives significant state funding which CANNOT be the basis for taxpayer standing. The Complaint does not (and cannot) delineate whether the unidentified and speculative expenses were paid from state or local funds.

3. Plaintiffs have failed to state a claim upon which relief can be granted as Plaintiffs cannot demonstrate Sheriff Jenkins acted outside of his duty and authority when he participated in a 287(g) Agreement. Under Virginia law, Sheriffs expressly are given plenary power to enforce *the law*, without limitation. Virginia Code § 15.2-1609. Sheriffs, as law enforcement officers, are


expressly authorized to enforce the immigration laws of the United States. Va. Code Ann § 19.2-81.6 (2018). Sheriffs are expressly authorized to enter in to agreements to provide law enforcement services *to any governmental entity* providing law enforcement services in the Commonwealth. Va. Code Ann. § 15.2-1730.1 (2018). As explained above, federal law expressly authorizes 287(g) agreements, such as the Agreement with Sheriff Jenkins. Sheriff Jenkins had authority under both federal and state law to enter into the Agreement to cooperate with federal law enforcement agencies with respect to federal immigration laws.

WHEREFORE, for these and the additional reasons set forth in his memorandum in support, Defendant Jenkins requests that this Court sustain his demurrer, dismiss the Complaint against him with prejudice, and award such other and further relief as the nature of the case may require and to equity may seem meet.

SCOTT H. JENKINS,

By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was mailed, postage prepaid, on January 22, 2019, to:

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