



to provide federal Immigrations and Customs Enforcement (“ICE”) the personally identifying information of at least dozens, and possibly far more, individuals in response to an administrative (not court-issued) subpoena that ICE served to enforce federal civil immigration law.

3. The Polis directive to collaborate with ICE is illegal. It also harms an unknown but potentially large number of state employees, by directing them to commit illegal acts, risking a wide range of professional and personal harms, including personal penalties of up to \$50,000 per violation under the legislation Governor Polis himself signed into law.

4. As one of those state employees, and the supervisor of many others with less financial or personal ability to resist an illegal directive from the Governor, Moss protested – repeatedly, discreetly, and internally, and both verbally and in writing – that the ICE collaboration sought by Governor Polis was illegal, dangerous to state employees who would place themselves at personal risk by following illegal orders, harmful to Colorado residents, and a breach of the promises Governor Polis made and authorized that Colorado would not misuse its residents’ PII by turning it over for immigration seizures. Though not given the opportunity to communicate these points directly to the Governor, he was told that despite his protests, he was expected to follow Polis’s directive.

5. As a last resort, Moss files this action seeking a judicial declaration and an immediate injunction to protect not only himself, but other public employees and most importantly the immigrant workers and children Governor Polis wants to help ICE find, seize, and deport – after they trusted his promises and enactments that he would not place them at the mercy of federal anti-immigration forces.

### **PARTIES, JURISDICTION, AND VENUE**

6. Scott Moss is a citizen of the State of Colorado. Since June 3, 2019, Moss has been Director of the CDLE Division of Labor Standards and Statistics (“DLSS”) and an employee of the Colorado Department of Labor and Employment (“CDLE”), a state agency of the state of Colorado. Until 2019, Moss was a full-time professor at the University of Colorado Law School, and (with CDLE permission) continues to teach one course per year at the law school in most years, including each year since 2023.

7. At all pertinent times, Jared Polis has been Governor of Colorado and a citizen of the State of Colorado. As Governor, Polis conducts official business out of the State Capitol located in the City & County of Denver. Further, the Governor’s residence (“the Governor’s Mansion”) is located in the City & County of Denver.

8. Moss was directed to commit the illegal acts described herein while working in the City and County of Denver.

9. Venue is proper in the District Court of the City and County of Denver, Colorado, pursuant to C.R.C.P. 98(c)(1), (5).

## FACTUAL ALLEGATIONS

### **Colorado Repeatedly Enacts Bans on Disclosing PII for Federal Immigration Enforcement**

10. **The ban on disclosing PII for federal immigration enforcement:** Twice since 2021, Governor Polis signed new laws directing that government agencies and employees “shall not disclose . . . personal identifying information that is not publicly available information for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, including enforcement of civil immigration laws,” yielding this ban in C.R.S. § 24-74-103 (emphases added):

- (1) **A state agency employee or political subdivision employee shall not disclose or make accessible, including through a database or automated network, personal identifying information that is not publicly available information for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, including enforcement of civil immigration laws and 8 U.S.C. sec. 1325 or 1326, except as required by federal or state law, including student visa sponsorship requirements for public institutions of higher education or requirements that are necessary to perform state agency or political subdivision duties, or as required to comply with a court-issued subpoena, warrant, or order.**

11. The statute defines PII broadly as “information that may be used in conjunction with any other information, to identify a specific individual.” C.R.S. § 24-74-102(1).

12. The statute provides the following non-exhaustive list of information that constitutes PII:

a name; a date of birth; a place of birth; a social security number or tax identification number; a password or pass code; an official government-issued driver's license or identification card number; information contained in an employment authorization document; information contained in a permanent resident card; vehicle registration information; a license plate number; a photograph, electronically stored photograph, or digitized image; a fingerprint; a record of a physical feature, a physical characteristic, a behavioral characteristic, or handwriting; a government passport number; a health insurance identification number; an employer, student, or military identification number; a financial transaction device; a school or educational institution attended; a source of income; medical information; biometric data; financial and tax records; home or work addresses or other contact information; family or emergency contact information; status as a recipient of public assistance or as a crime victim; race; ethnicity; national origin; immigration or citizenship status; sexual orientation; gender identity; physical disability; intellectual and developmental disability; or religion.

C.R.S. § 24-74-102(1).

13. **The 2021 Act:** ban on disclosing PII for federal immigration enforcement was enacted in [Colorado Senate Bill 21-131 \(“SB21-131”\)](#), signed by Governor Polis with an immediate effective date on June 25, 2021 (hereinafter, “the 2021 Act”). The 2021 Act added to C.R.S. Title 24 (“Government – State”) a new Article 74 titled, “Protection of Personal Identifying Information” (hereinafter, “Article 74”).

14. **The 2025 Act:** [Colorado Senate Bill 25-276 \(“SB25-276”\)](#), signed by Governor Polis with an immediate effective date on May 23, 2025 (hereinafter, “the 2025 Act”), amended the Article 74 ban on disclosing PII for federal immigration enforcement, expanding it from just state governments to cover political subdivisions as well, without narrowing the ban or expanding any exceptions.

15. Article 74 also clarifies that it “shall not interfere with **criminal investigations** or proceedings that are authorized by judicial process or to restrict a state agency employee or political subdivision employee from fully investigating, participating in, cooperating with, or assisting federal law enforcement agencies in **criminal investigations.**” C.R.S. § 24-74-103(2) (emphasis added).

16. In August 2019, Moss wrote, and DLSS promulgated, rules with force of law that promise similar protections to those the legislature and Governor Polis adopted into Colorado statutes in Article 74, banning disclosure of not just “the immigration status,” but any “information concerning the immigration status,” of those who suffered possible wage and hour violations. DLSS has long applied this rule against disclosing “information concerning the immigration status” to include PII requested for “immigration enforcement” efforts to “locate unaccompanied alien[s].” The current version of those rules is as follows:

- 4.8: Immigration status is irrelevant to labor rights and responsibilities, and the Division shall assure that labor rights and responsibilities apply regardless of immigration status, including but not limited to as follows:
  - 4.8.1: The Division will not voluntarily provide any person or entity information concerning the immigration status of (a) a party to a wage claim, (b) a person offering information concerning a wage claim, or (c) a person with a relationship with anyone in categories (a) or (b).
  - 4.8.2: Any effort to use a person’s immigration status to negatively impact the labor law rights, responsibilities, or proceedings of any person or entity is an unlawful act . . . .

### **Colorado and Governor Polis Repeatedly Offer Public Reassurances that Colorado Will Not Disclose PII for Federal Immigration Enforcement**

17. Governor Polis publicly reassured those protected by Colorado law – not only those who may be targeted by federal investigation, but also the state and local government employees who comprise nearly 5% of Colorado residents – that Colorado would not disclose PII for purposes of federal civil immigration enforcement:

a. “We’re happy to cooperate on any criminal matter, but **if the federal government wants to enforce immigration laws, that should be on their dime, not on our dime.**”<sup>1</sup>

b. “[W]e **won’t share immigration status on non-criminal cases with the federal government,** nor should we.”<sup>2</sup>

c. “We . . . remain committed to **enforcing . . . criminal laws, rather than** just being an extension of the government and focused on **federal immigration laws.**”<sup>3</sup>

18. Based on the rules and statutory enactments detailed above, Moss and other state employees have assured a wide range of persons and entities – including immigrant workers, unions representing immigrant workers, community organizations, labor rights attorneys, and officials from multiple foreign consulates in Colorado – that state officials, including at CDLE, would not turn over information on immigrants obtained in labor investigations and labor filings for federal immigration enforcement.

### **ICE Serves a Civil, Administrative Subpoena for Immigration Enforcement**

19. On April 24, 2025, CDLE received from a federal executive agency an **“IMMIGRATION ENFORCEMENT SUBPOENA”** (caps and boldface in original) (hereinafter the “April 24th Immigration Enforcement Subpoena”).

20. **From ICE.** The April 24th Immigration Enforcement Subpoena is a request for production to U.S. Immigration and Customs Enforcement (“ICE”) within the U.S. Department of Homeland Security.

a. The subpoena bears on each page the federal agency logo and name “U.S. Immigration and Customs.”

b. The subpoena says it is from the “Homeland Security Investigations” unit within ICE.

c. The subpoena asks that the requested production be made to a named executive official listed as a “Special Agent . . . at U.S. Immigrations and Customer Enforcement.”

d. The first notice Moss received about the subpoena was an email from a

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<sup>1</sup> Ryan Warner, [\*Interview: Setting his agenda for 2025, Polis lays out strategies to stand up to bail and to Trump in 2025 State of the State\*](#), Colorado Public Radio (January 10, 2025) (emphasis added).

<sup>2</sup> *Id.* (emphasis added).

<sup>3</sup> John Frank, [\*Colorado weighs cooperation with ICE authorities on immigration\*](#), Axios Denver (Jan. 28, 2025) (emphasis added).

state official that began: “An ICE subpoena has been received that is asking for information about the sponsors of unaccompanied minors . . . .”

21. **Administrative, Not Judicial.** The April 24th Immigration Enforcement Subpoena is an administrative, not judicial subpoena.

- a. The subpoena is neither issued, approved, nor signed by a judge or magistrate judge.
- b. The subpoena does not request that production be made for, or in, a judicial proceeding, only to the above-listed ICE special agent.
- c. The subpoena states that the requested information is for “enforcement” efforts by an executive agency, specifically that it is “in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws.”

22. **Civil, Not Criminal.** The April 24th Immigration Enforcement Subpoena is for civil, not criminal, proceedings.

- a. Federal immigration law authorizing deportation of persons not lawfully in the United States is based upon civil, not criminal, law.
- b. The title of the subpoena is “IMMIGRATION ENFORCEMENT SUBPOENA.”
- c. The first full sentence of the subpoena says the requests are “in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws.”
- d. The portion of the subpoena detailing the requests says the subpoena is for “investigative activities to locate unaccompanied alien children” and to “ensure that the children are being properly cared for.”
- e. Unaccompanied alien children are, the federal government publicly explains, minors “apprehended by immigration authorities,” then released to “sponsors (usually family members), while they await immigration proceedings” of a civil nature that determine whether ICE can deport them.<sup>4</sup>
- f. The subpoena cites as authority 8 U.S.C. § 1225, a federal statutory provision that authorizes civil administrative proceedings to enforce federal immigration law, and which is part of a broader set of immigration statutes titled: “Part IV – Inspection, Apprehension, Examination, Exclusion, and Removal” (U.S.C. Chapter 12, Subchapter II, Part IV.)
- g. The sole reference in the subpoena to possible “crimes” is, at the end of the sentence saying the purpose is “to locate” children previously apprehended for civil

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<sup>4</sup> U.S. Department of Health & Human Services, Office of Refugee Resettlement, “[Unaccompanied Alien Children Released to Sponsors by State](#)” (last visited June 4, 2025).

immigration proceedings, a disclosure that the scope of the investigation may extend beyond merely locating the children, spanning an essentially unlimited range of theoretical civil and criminal child welfare issues, including to ensure that the children are “properly cared for,” are not subjected to “crimes of human trafficking,” and are not subject to any “other forms of exploitation” without limitation (which could include, for example, civil laws on child labor, child health, etc.).

h. The subpoena does not allege that there is an ongoing criminal investigation, nor does it cite any criminal law that has allegedly been violated or any probable cause supporting any unidentified criminal investigation.

### **23. Disclosure of PII.**

a. The subpoena expressly requests the following information, all of which would result in the disclosure of PII:

- Copies of quarterly wage reports, supporting schedules, and employer information to include employer’s name, physical address, phone number, and email addresses;
- Copies of Job Separation Documentation (i.e. unemployment benefits filings) and related documents;
- Copies of Healthy Families and Workplaces Act (HFWA) records;
- Copies of Family and Medical Leave Insurance (FAMLI) Program records; and
- Any other records that show the following information for the listed sponsors: address of residence, telephone number, and email address.

b. The subpoena then lists 35 individuals whose records are sought (referred to as “the Subpoena Population”). These individuals are defined as sponsors of unaccompanied alien children (“UACs”).

c. Notably, the records sought could include PII of third parties – including the Subpoena’s Population’s household members, family members, coworkers, employers, and the UACs. For example, DLSS records may include a range of personnel and employment records that could list spouses, children, or other family as beneficiaries of employment benefits, emergency contacts, etc.; FAMLI records may include PII for household and family members, such as a non-spousal partner in the case of a FAMLI record created in response to a sponsor taking leave following the birth of a child. Thus, the population of individuals whose PII is at risk of being disclosed is far greater than the Subpoena Population and is referred to herein as “the Impacted Population.”

**Reversing the Initial Decision Not to Produce Information for the ICE Subpoena, Governor Polis Directs State Employees to Violate the Ban He Signed into Law by Disclosing PII to Federal Immigration Agents to Aid their Administrative Efforts to Find, Detain, and Deport Individuals for Civil Immigration Violations**

24. Late on April 24, 2025, Moss was notified of and provided a copy of the April 24th Immigration Enforcement Subpoena.

25. Less than 24 hours later, Moss was notified that the Polis administration was analyzing its rights and options before any decision would be made as to how to respond to the subpoena.

26. In internal discussions within state government, Moss reported that it would be illegal to produce the PII requested by the ICE subpoena.

27. Moss was told by early May that the Polis administration had decided not to produce the PII requested by the subpoena.

28. Only weeks later, in the last week of May – and just before the May 26th production date ICE requested – Governor Polis personally decided, and state officials including Moss were notified, that Polis wanted CDLE to produce the PII requested by the ICE subpoena.

29. From the last week of May through the beginning of June, Moss repeatedly reiterated that it would be illegal to produce the PII requested by the ICE subpoena, verbally as well as in the memo attached as [Exhibit A](#) (which this complaint incorporates) that compiles, cites, and summarizes publicly available information about ICE abuses, applicable laws, and possible consequences of producing the PII requested by the ICE subpoena.

30. Governor Polis still did not indicate whether his decision was final until after the production date requested by ICE: On Friday, May 30, 2025, Moss was told that it was “80%” likely that Governor Polis would require the CDLE production that ICE requested. A meeting was thereafter scheduled for Monday, June 2, 2025, between Moss and other administration officials, to discuss Moss’s objections.

31. Late in the afternoon on June 2, 2025, Moss was told that Governor Polis’s decision was final that CDLE must produce the PII requested by the ICE subpoena.

32. A follow-up meeting was scheduled for the next day, on Moss’s request.

33. After business hours on June 3, 2025, Moss was told that he had to produce the PII requested by the ICE subpoena by the end of the week, no later than June 6, 2025.

34. Governor Polis’s ICE collaboration directive violates, and directs Moss and other state employees to violate, the ban on PII disclosure for federal immigration enforcement. The ICE collaboration directive thereby imposes a choice between harmful options upon Moss and other state employees: illegally disclose PII of the Impacted Population for ICE for immigration enforcement,



risking financial, licensing, professional, and reputational harm to themselves, and deeper harm to the immigrants who entrusted their PII to them; or decline to commit the illegal act Governor Polis ordered, risking termination or other negative professional and personal consequences.

### **State Employees Face Significant Consequences if They Comply with Directives to Violate the Ban on Disclosure of PII**

35. State employees complying with directives to violate the ban on disclosure of PII for federal immigration enforcement, including Moss, risk a wide range of significant, injurious consequences in their personal capacities, including: (a) statutory penalties and orders; (b) professional consequences; (c) personal liability to third parties; and (d) other personal consequences.

a. **Statutory penalties and orders.** The statutory ban on disclosing PII for federal immigration enforcement imposes significant, monetary consequences on state employees who commit violations: “**A state agency employee** or political subdivision employee who intentionally violates a provision of this article 74 is subject to an injunction and is liable for a civil penalty of not more than **fifty thousand dollars for each violation.**” C.R.S. § 24-74-107(1) (emphasis added).

b. **Professional consequences:**

- i. Professional Licensure: A state agency employee who has a professional license may be held to have violated their rules of professional conduct or responsibility if they disclose PII in violation of C.R.S. § 24-74-103 and thereby risk harming the vulnerable immigrant workers and children whom the law aims to protect. Moss holds a law license and, at DLSS, oversees more than 100 staff, including numerous other attorneys. The Rules of Professional Conduct for Colorado attorneys that Moss and his staff risk violating if they illegally disclose PII for federal immigration enforcement include:
  - Rule 8.4, “Misconduct” by attorneys, covers “conduct that is prejudicial to the administration of justice,” “any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer’s fitness to practice law,” and conduct in “public office” per Comment 5 (“Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers.”).
  - Rule 5.1, “Responsibilities of a Partner or Supervisory Lawyer,” covers any directives Moss, as Director, would need to give to his staff, including attorneys, to execute violations of the C.R.S. § 24-74-103 ban on disclosing PII for federal

immigration enforcement. *See* Colo. RPC 5.1 (“A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.”)

ii. **Professional Opportunities:** If PII that immigrant workers provide CDLE is illegally disclosed to ICE, then those who help immigrant workers benefit from state resources – including labor rights enforcement through DLSS, or unemployment insurance or other benefits through other parts of CDLE – risk losing professional opportunities due to immigrants:

- Losing trust in those, including Moss, who reassured them that their PII would not be disclosed to ICE – a reassurance that was true until reneged upon by Governor Polis; and
- Losing trust in CDLE and other state agencies as a place to file claims for benefits or enforcement – harming those like Moss who (1) helps workers understand and enforce their rights at DLSS, and (2) already has begun executing plans to train students to provide legal services to low-wage immigrant workers through his teaching position at the University of Colorado, to begin as early as 2026.

c. **Liability to Third Parties:** Disclosing PII in violation of C.R.S. § 24-74-103 could, if it causes any persons to face adverse action against them by federal immigration authorities, risk subjecting Moss and other state employees to liability for using their authority as government officials to injuriously violate the rights of third parties – injuries that are recognized as a matter of law in the Article 74 provision, signed into law by Governor Polis, finding that a violation of the disclosure ban “poses a real, immediate, and irreparable injury.” C.R.S. § 24-74-107(3).

d. **Personal Consequences:** Moss is deeply troubled by being directed and pressured to execute Governor Polis’s illegal and unethical directive to turn over PII of immigrant workers and children to ICE, especially after Moss wrote Colorado’s first set of rules against such disclosures, then personally promised a wide range of stakeholders that Colorado would not turn workers over to ICE in violation of those rules and statutes Governor Polis signed into law.

36. Orders to violate Article 74 place state employees, including Moss, in the nearly impossible position of disobeying the Governor or risk significant monetary, professional, and/or personal consequences from committing illegal acts that harm immigrant workers and children.

37. All claims in this Complaint are brought in good faith and are not frivolous and are filed for the purpose of extending, limiting, modifying, or reversing existing precedent, law, or regulation, including the laws and regulations that serve as the basis for the claims alleged herein, or for the purpose of establishing the meaning of the laws that serve as the basis for the claims alleged herein.

### **COUNT I**

#### **Violation of Protection of Personal Identifying Information, Article 74 of C.R.S. Title 24**

38. Plaintiff repeats and realleges all allegations above and below.

39. The April 24th Immigration Enforcement Subpoena, which is issued not by a court, but by federal Immigration and Customs Enforcement, directs the Colorado Department of Labor and Employment to produce PII that is not publicly available information for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement.

40. Polis has directed Moss to produce PII in response to the subpoena, in violation of the Article 74 prohibition that protects not only the Impacted Population but also state employees against exactly such unlawful directives.

41. Accordingly, Moss seeks an immediate temporary restraining order, preliminary injunction, and permanent injunction enjoining Polis from directing Moss to respond to or otherwise produce PII in response to the April 24th Immigration Enforcement Subpoena.

42. Finally, Moss seeks any other legal or equitable relief to which he is entitled or that the court deems appropriate, including attorneys' fees and costs associated with this action.

### **COUNT II**

#### **Declaratory Judgments, Article 51 of C.R.S. Title 13**

43. Plaintiff repeats and realleges all allegations above and below.

44. The Colorado Uniform Declaratory Judgments Law, Article 51 of C.R.S. Title 13, provides as follows: "Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." C.R.S. § 13-51-106.

45. Plaintiff requests a declaratory judgment that Colorado law prohibits him from responding to or otherwise producing PII in response to the April 24th Immigration Enforcement Subpoena.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that this Court enter judgment on his behalf and to award him all relief as allowed by law and equity, including, but not limited to, the following:

- A. An immediate temporary restraining order, preliminary injunction, and permanent injunction enjoining Polis from directing Moss to respond to or otherwise produce PII in response to the April 24th Immigration Enforcement Subpoena.
- B. A declaration as a matter of law that Colorado law prohibits Plaintiff and any other person from responding to or otherwise producing PII in response to the April 24th Immigration Enforcement Subpoena;
- C. Attorneys' fees and the costs associated with this action, including expert witness fees, on all claims allowed by law;
- D. Any other appropriate relief at law and equity that this court deems just and proper.

DATED: June 4, 2025

Respectfully submitted,

SPARK JUSTICE LAW LLC

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## VERIFICATION


I declare, under penalty of perjury under the law of Colorado, that the foregoing is true and correct.

Executed on the 4th day of June, 2025, at Denver, CO.  
(city or other location, and state or county)

Scott Moss

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Printed Name



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Signature

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