

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

CHRISTINE POPP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-cv-03664-JPH-DML
	)	
MONROE COUNTY SHERIFF,	)	
	)	
Defendant.	)	

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendant, Monroe County Sheriff (“the Sheriff”), by counsel, in accordance with the Federal Rules of Civil Procedure, responds to the *Complaint for Declaratory and Injunctive Relief* (Doc 1) (“Complaint”) filed by plaintiff, Christine Popp (“Ms. Popp”), as follows:

Introductory Statement

1. With regard to the allegations asserted by Ms. Popp in paragraph one (1) of her Complaint, the Sheriff denies that he “has ‘hidden’ Ms. Popp’s critical comments—meaning that they can be viewed only by her but not by any other member of the public—while simultaneously allowing comments favorable to or supporting of him to remain publicly available.” The Sheriff denies that he has engaged in censorship of the views expressed by Ms. Popp on the Facebook page of the Monroe County Sheriff Department. Finally, the Sheriff denies that declaratory and injunctive relief are warranted. The Sheriff admits all other allegations asserted by Ms. Popp in paragraph one (1) of her Complaint.

Jurisdiction, Venue and Cause of Action

2. The Sheriff admits that this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
3. The Sheriff admits that venue is proper pursuant to 28 U.S.C. § 1391.

4. The Sheriff admits that Federal Rule of Civil Procedure 57 permits parties to obtain a declaratory judgment to determine their rights and obligations in cases involving actual controversies, but denies that declaratory relief is available to Ms. Popp in this case.

5. The Sheriff admits that Ms. Popp is maintaining this action pursuant to 42 U.S.C. § 1983.

#### Parties

6. The Sheriff admits the allegation asserted by Ms. Popp in paragraph six (6) of her Complaint.

7. The Sheriff admits the allegations asserted by Ms. Popp in paragraph seven (7) of her Complaint.

#### Factual Allegations

8. The Sheriff admits the allegations asserted by Ms. Popp in paragraph eight (8) of her Complaint.

9. The Sheriff admits the allegations asserted by Ms. Popp in paragraph nine (9) of her Complaint.

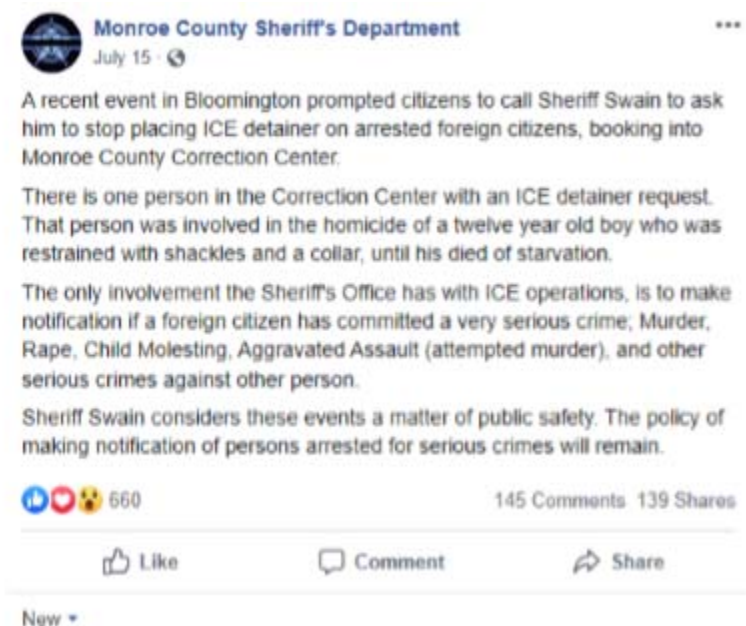
10. The Sheriff admits the allegations asserted by Ms. Popp in paragraph ten (10) of her Complaint.

11. The Sheriff lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted by Ms. Popp in paragraph eleven (11) of her Complaint.

12. The Sheriff admits the allegations asserted by Ms. Popp in paragraph twelve (12) of her Complaint.

13. The Sheriff lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted by Ms. Popp in paragraph thirteen (13) of her Complaint.

14. The Sheriff admits that the following post was made to the Facebook page of the Monroe County Sheriff Department on July 15, 2019:



15. The Sheriff admits that Ms. Popp posted the following “comments” to the Facebook page of the Monroe County Sheriff Department on July 15, 2019:



Popp & Bullman, Attorneys-at-Law I want to be very clear what I have shared about the jail's practices, which is exactly what the Sheriff has said to me personally, in writing to others, and publicly. If Someone presents a foreign ID to him, he will contact ICE (at his discretion, he decides when), regardless of that person's status. That person could be a citizen of the United States, a lawful permanent resident, or undocumented. It is not the right nor the responsibility of the Sheriff to inquire about immigration status. Immigration violations are not crimes and they are not within the jurisdiction of the Sheriff. However, by reporting these cases to ICE, the Sheriff is profiling people based on their race and nationality. Second, if someone is booked in the jail, ICE may place a "Hold" or "Detainer" on that person. This is based on the suspicion that the person may have committed an immigration violation. What causes this suspicion? Sometimes the person reports a foreign birth place (though that does not mean the person is not a citizen). Sometimes it is a matter of mistaken identity. Sometimes the person really is undocumented. In any case, ICE places the hold, and no matter what the Sheriff honors that hold. ICE does not need probable cause for a crime nor a warrant, and this is why so many innocent people and US citizens have been caught by ICE holds around the country. Furthermore, as I said below, many of the "crimes" are minor. The Sheriff may only call ICE on what he deems are serious crimes, but he will honor the detainer on anyone. This is how my client with a BAC of .06 was arrested and put into deportation, despite the fact that he came here as a teenager and lived here for decades, raising his family. This is how another client whose wife called during a domestic dispute had a hold and was quickly deported because he had entered from Europe on a visa waiver and did not have the right to go before a judge to fight deportation. I've had clients arrested with charges dismissed because it was a case of mistaken identity. I don't think that people who commit crimes should go free. I think they should serve their time. But I don't think a DUI should result in permanent exile from your family. That is what is happening. Obviously, we can all disagree on whether holds are a good idea. But I want the facts to be clear here and the community to be informed. I also want the community to be informed about the hundreds of thousands of dollars many counties have had to pay for honoring ICE holds. For those who are interested, here is a list of cases around the country finding Holds unconstitutional or otherwise illegal: [https://www.ilrc.org/.../immig\\_detainer\\_legal\\_update...](https://www.ilrc.org/.../immig_detainer_legal_update...)

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Popp & Bullman, Attorneys-at-Law "The ACLU recommends that law enforcement agencies decline to effectuate any ICE detainer request absent a judicial warrant in order to minimize the risk and liability of holding a person in violation of the Fourth Amendment." [https://www.aclu.org/.../aclu\\_backgrounder\\_on\\_detainers\\_1...](https://www.aclu.org/.../aclu_backgrounder_on_detainers_1...)

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Popp & Bullman, Attorneys-at-Law <https://www.nytimes.com/.../immigrants-houston-domestic...>



NYTIMES.COM

Fewer Immigrants Are Reporting Domestic Abuse. Police Blame...

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Popp & Bullman, Attorneys-at-Law Let's be clear -- this is not about enforcing immigration laws. The Sheriff does not have the right or obligation to do so. What the Sheriff is doing is violating the Fourth Amendment of the US constitution, which prohibits the unlawful search and seizure of individuals without probable cause. The reason it is unlawful is because immigration violations are civil, not criminal. ICE does not need to have probable cause that a person is undocumented, nor does it need a warrant reviewed by a judge to issue a detainer. The Sheriff's choice of one horrific story as a justification is specious -- that person accused of the horrible murder of her step-son is not getting out of jail, period. The fact is that most people who are picked up in Monroe County (including two who were held on ICE holds as recently as the first two weeks of July -- one who was picked up right before the Sheriff issued this statement) are held for misdemeanors or DUIs. They are also only accused of committing crimes -- not convicted. Finally, they are held on ICE detainers after a judge has already ruled that they are free to leave the jail because they are innocent or because they are not a danger to society. Everyone is focused on immigration enforcement, but ICE issues detainers without probable cause. In Florida between 2017-2019, ICE issued 420 detainers for US Citizens -- people born in the United States -- and Sheriffs honored those detainers. Those Sheriffs are now being sued, along with many other Sheriff departments, including LA County, which paid hundreds of thousands of dollars for holding US Citizens. None of us are safe as long as the Sheriff works with ICE. The Sheriff should focus on law enforcement. Keep our community safe and our jails from being overcrowded. Leave immigration enforcement to the immigration authorities.

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Popp & Bullman, Attorneys-at-Law Brad Swain I'm not distorting anything. I hold myself to the highest integrity. I also have utmost respect for law enforcement, as most of my clients are victims of crimes, trafficking, and persecution. I work very closely with law enforcement agencies to help them. On Friday, I reported to the public what you have told me publicly and in private meetings multiple times. I also am very familiar with how ICE holds work because I have been dealing with them for well over a decade. There is a reason that Sheriffs around the country have decided to focus on law enforcement and not immigration enforcement. Most courts that have looked at this matter have found ICE holds to be unconstitutional. At the very least, they send a signal to immigrants that law enforcement is not to be trusted. That is not the signal we want in our community. We want immigrants to feel comfortable reporting crimes against them, not fearing the police.

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The Sheriff lacks knowledge or information sufficient to form a belief about the truth of the allegation asserted by Ms. Popp in paragraph fifteen (15) of her Complaint that her “comments were . . . intended to inform the public about immigration law and the role that officials may play in the enforcement of immigration law.”

16. The Sheriff admits the following “electronic dialogue concerning his enforcement of federal immigration laws” was had on the Facebook page of the Monroe County Sheriff Department on July 15, 2019:



Brad Swain Popp & Bullman, Attorneys-at-Law and just why are other aspects of the criminal justice issue being blended in with the specifics of the level of my notifications to ICE?

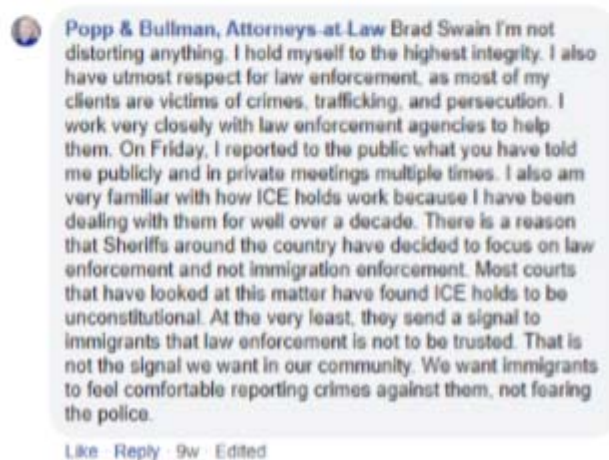
Everyone concerned person I spoke with understood and agreed with the policy. Some were dismayed at the tale that was told at a recent rally, and promised to reach out to friends to inform them accurately.

It is simple. Facts of how I operate my Office were distorted to the public at a rally. Today a young man from an Asian country was booked into jail for stabbing a young girl. Yes. ICE will be notified.

Ms Popp has been practicing law for some time, yet she opts to distort facts on law enforcement and those who serve.

If there are legal issues, go to court and address them. I caution you that a Federal Judge won't be tolerant of such conduct in their court.

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Popp & Bullman, Attorneys-at-Law Brad Swain I'm not distorting anything. I hold myself to the highest integrity. I also have utmost respect for law enforcement, as most of my clients are victims of crimes, trafficking, and persecution. I work very closely with law enforcement agencies to help them. On Friday, I reported to the public what you have told me publicly and in private meetings multiple times. I also am very familiar with how ICE holds work because I have been dealing with them for well over a decade. There is a reason that Sheriffs around the country have decided to focus on law enforcement and not immigration enforcement. Most courts that have looked at this matter have found ICE holds to be unconstitutional. At the very least, they send a signal to immigrants that law enforcement is not to be trusted. That is not the signal we want in our community. We want immigrants to feel comfortable reporting crimes against them, not fearing the police.

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17. The Sheriff admits the allegations asserted by Ms. Popp in paragraph seventeen (17) of her Complaint.

18. The Sheriff lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted by Ms. Popp in paragraph eighteen (18) of her Complaint.

19. The Sheriff denies the allegation that he “utilized the Facebook option to ‘hide’ Ms. Popp’s comments, thereby allowing them to be viewed by the user who posted the

comments (the account associated with Ms. Popp’s law practice) but not by any other user or member of the public.” The Sheriff lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations asserted by Ms. Popp in paragraph nineteen (19) of her Complaint.

20. The Sheriff denies the allegations asserted by Ms. Popp in paragraph twenty (20) of her Complaint.

21. The comments posted by Ms. Popp to the Facebook page of the Monroe County Sheriff Department on July 15, 2019, are “viewable by the public at large,” and have been since the moment that she posted each of them. The Sheriff lacks knowledge or information sufficient to form a belief about the remaining allegations asserted by Ms. Popp in paragraph twenty-one (21) of her Complaint.

22. The Sheriff admits the allegations asserted by Ms. Popp in paragraph twenty-two (22) of her Complaint.

23. The Sheriff denies the allegations asserted by Ms. Popp in paragraph twenty-three (23) of her Complaint.

#### Legal Claim

24. The Sheriff denies the allegations asserted by Ms. Popp in paragraph twenty-four (24) of her Complaint.

WHEREFORE, defendant, Monroe County Sheriff, requests judgment in his favor and all other relief that is just and proper.

#### Affirmative Defenses

Defendant, Monroe County Sheriff, by counsel, asserts the following affirmative defenses to the legal claim asserted by plaintiff, Christine Popp:

1. Ms. Popp lacks standing to pursue injunctive relief.
2. Ms. Popp lacks standing to pursue declaratory relief.
3. Ms. Popp's Complaint fails to state a claim upon which relief may be granted.

WHEREFORE, defendant, Monroe County Sheriff, requests judgment in its favor and all other relief that is just and proper.

Respectfully submitted,

/s/ Lee F. Baker

Lee F. Baker 19257-53

Counsel for Defendant,  
Monroe County Sheriff

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