

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

**LOWCOUNTRY IMMIGRATION COALITION;  
MUJERES DE TRIUNFO; NUEVOS CAMINOS;  
SOUTH CAROLINA VICTIM ASSISTANCE  
NETWORK; SOUTH CAROLINA HISPANIC**

**Plaintiffs,**

v.

**NIKKI HALEY, in her official capacity as Governor of  
the State of South Carolina; ALAN WILSON, in his  
official capacity as Attorney General of the State of South  
Carolina; JAMES ALTON CANNON, in his official  
capacity as the Sheriff of Charleston County; and  
SCARLETT A. WILSON, in her official capacity as  
Solicitor of the Ninth Judicial Circuit,**

**Defendants.**

Civil Action File No.

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**COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE  
RELIEF  
CLASS ACTION**

1.

ation law, Senate

and declaratory relief to prevent serious harm that Plaintiffs and putative class members across the state will suffer if the law goes into effect.

2. Through SB 20, South Carolina has created a punitive and comprehensive state



Sec. 4, codified at S.C.CODE § 16-9-460. The South Carolina Illegal Immigration Reform Act  
RI 3 § ' D G R S W H G - X n e s t a t e i m m i g r a t i o n c r i m i n a l s  
transporting. See S.C.CODE § 16-9-460 (2008). SB 20 amended this provision to criminalize  
unlawful presence by making unlawful the acts of allowing oneself to be transported or harboring  
oneself effectively authorizing the arrest of individuals simply suspected of being unlawfully  
present while maintaining the existing immigration-related transporting and harboring  
offenses. See Sec. 4, codified at S.C.CODE § 16-9-460. SB 20 further encourages broad  
HQIRUFHPHQW RI 6RXWK & DUROLQD ¶ V KDUERULQJ DQG WUD  
enforcement agencies to potential civil liability for failure to enforce laws to the maximum  
extent possible. See Sec. 1, codified at S.C.CODE § 6-1-170.

6. SB 20 also creates a South Carolina specific alien registration scheme, allowing

expansive provisions differently, leading to a patchwork of migration enforcement even within the State of South Carolina.

8. The patchwork of migration enforcement is apparent not only from the scope and design of SB 20, but also from the express statements of the members of the South Carolina General Assembly who drafted and supported the legislation.

#### JURISDICTION AND VENUE

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15.

providing other needed services like education, voter registration, and letter

22. SB 20 is impeding the ability of Mujeres de Triunfo to carry out its mission to provide critical services, including transportation, to women and children in need. Although its mission is to provide support and information to women who have experienced trauma, Mujeres de Triunfo normally aims to cover educational, informational, motivational, preventative, and community discussions of SB 20 and its effects on transportation, carrying migration documents, and interactions with law enforcement. The passage of SB 20 has significantly impacted the ability of Mujeres de Triunfo to provide these services, as members are now subject to criminal liability for providing routine services such as transportation, arranging meetings and inviting its members to attend, or responding to urgent crises. Consequently, since SB 20 passed, Mujeres de Triunfo has not met as a large group and has resorted to smaller, less formal meetings to provide services to its members. Mujeres de Triunfo relies on its members to volunteer their time, resources and vehicles to ensure other members and their children have access to basic necessities, such as food, clothing and medical care, as well as access to a support group. However, since SB 20 passed, fewer members are available or willing to transport members or arrange meetings, thus

23. In addition, SB 20 criminalizes the actions of members seeking to promote strength. Members of Mujeres de Triunfo will be subject to criminal liability for providing routine services such as transportation, arranging meetings and inviting its members to attend, or responding to urgent crises. Consequently, since SB 20 passed, Mujeres de Triunfo has not met as a large group and has resorted to smaller, less formal meetings to provide services to its members. Mujeres de Triunfo relies on its members to volunteer their time, resources and vehicles to ensure other members and their children have access to basic necessities, such as food, clothing and medical care, as well as access to a support group. However, since SB 20 passed, fewer members are available or willing to transport members or arrange meetings, thus



24. Plaintiff Nuevos Caminos is a 501(c)(3) organization dedicated to providing hope to Hispanic families in the communities of Charleston, Dorchester, and Berkeley Counties in South Carolina. The organization provides services to Hispanic families, including immigrant families, through needs assessment, case management, Spanish/English assistance, community forums, parenting and prevention classes, and support groups. Nuevos Caminos also provides services to victims of violence, including domestic violence. All of their services are provided in Spanish. Families are often referred to Nuevos Caminos after they are in contact with the South Carolina Department of Social Services, the criminal justice system, or the family court. Some of Nuevos Caminos' services are provided to crime victims.

25. In the past, Nuevos Caminos has received donations to assist in servicing the

families with issues relating to legal status. 6% of the population is also suffering because, despite years of funding to strengthen families. The target population is also suffering because, despite years of funding



31. 6% KDV DOUHDG\ FKDQJHG WKH QDWRXIV RI 6 & 9 \$ 1  
time and resources away from the direct victim services that are central to its mission, and  
instead towards responding to questions about the provisions of SB 28CVAN now has to  
spend a great deal of time having conversations with law enforcement officials at all levels to  
discuss SB 20V SUR and L R Q V

have greatly increased the number of calls that SCVAN has received from victims seeking assistance before the law takes effect. SCVAN is inundated and has had to reprioritize cases that it can work on based on their urgency. SCVAN is also considering limiting the days on which it receives phone calls due to the influx of new clients calling the organization. Furthermore,

I U X V W U D W H V 6 & + / & ¶ V P L V V L R Q R I H Q K D Q F L Q J W K H b T X D O L W

the Hispanic community by burdening the Hispanic community through its identification

requirements D Q G K D P S H U L Q J 6 & + / & ¶ V P L V V L R Q R I H Q K D Q F L Q J W K H b T X D O L W \ W R V H U Y H L W V

36. Plaintiff Service Employees International Union <sup>3</sup> 6 ( , 8 ´ L V R Q H R I W K H O

labor organizations in the world, representing 2.2 million men and women who work primarily in

the public sector and in janitorial, health services, long care, and security industries. Many

R I 6 ( , 8 ¶ V P H P E H U V P a r t s t o t h e U n i t e d S t a t e s P a r t M a n y o f

from racial minority groups SEIU has long called for and worked toward comprehensive rens00C0003r

hardship for members of SEIU. In addition, SEIU will be harmed if SB 20 is implemented because its members and potential members, regardless of nationality and immigration status, will refrain from exercising their rights to attend rallies, demonstrations, and union meetings to engage in leafleting or other traditional labor activities because of the possibility of being stopped by police under SB 20. This will significantly affect the ability of SEIU to protect its existing members. In addition, the Latino community is one of the fastest growing in the state and is heavily represented.

to attend rallies, demonstrations, and union meetings or to engage in leafleting or other traditional labor activities because of the possibility of being stopped by police under SB 20.

40. Members have already told the Joint Board that they have faced additional police scrutiny and questioning since SB 20 was passed. They believe this additional police scrutiny was based solely on their ethnic appearance and/or English speaking ability. This discriminatory treatment by law enforcement will significantly impede the ability of the Joint Board to protect its current members and to organize new members. Some members of the Joint Board lack the qualifying identity documents required by SB 20 or do not regularly carry these documents with them when traveling through the state, and are therefore at risk of lengthy detention and investigation under the new law.

41. The Joint Board will also be harmed if SB 20 is implemented because employers in the state will refrain from hiring members and potential members of the Joint Board that they

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organizational priorities. The Joint Board joins this lawsuit to preserve its ability to organize new members and to protect the rights and interests of its members and prospective members.

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Individual Plaintiffs

42. Plaintiff Jane Doe # 1 is a Mexican national who currently lives in North Charleston, South Carolina, with her husband and two young sons. Both her children were born in South Carolina.

43. Plaintiff Jane Doe # 1 does not have lawful immigration status in the United States but she is currently in the process of getting a visa. Her petition for an Alien Relative Visa (I-130) has been approved by the federal authorities and she is waiting for a visa to become available.

44. 3 O D L Q W L I I - D Q H ' R H G R H V Q R W K D Y H D 6 R X W K & eligible to apply for one. The only documents she has that show that she has an application pending with federal immigration authorities are notices related to I-130 Petition. The notices she has received are government correspondence, not official identification or registration documents. These documents do not bear a photograph or have any dates defining the time period for which they are valid. Jane Doe # 1 is concerned that a police officer would not accept such documents as proof of current immigration status. If SB 20 is implemented, and Jane Doe # 1 is stopped by police, she fears they will not understand that federal immigration authorities are aware she is in the country without status but have not sought to deport her.

45. If SB 20 is implemented, Jane Doe # 1 will be subject to police interrogation and detention, as well as prosecution under the state alien registration scheme and the state transporting crime if she is stopped by police for any reason. As a result, she will reduce her

travel in the state in order to avoid possible contact with law enforcement. She cannot completely avoid such encounters, because she must still leave home for groceries and other necessities.

46.

detained by local law enforcement based on her Latina appearance. But she cannot completely avoid such encounters, because she must still leave home for necessities like groceries and English classes. In addition, Jane Doe # 2 sometimes receives rides from others and fears being prosecuted under the new law for allowing herself to be transported as an immigrant lacking lawful status.

51. Plaintiff John Doe #1 is a resident of Johns Island, South Carolina, and has resided in South Carolina for 21 years. Originally from Guatemala, Plaintiff John Doe #1 came to the United States in 1989 to escape the civil war in his native country. Plaintiff John Doe #1 has been able to obtain an Employment Authorization Document (EAD) from the U.S. government as a result of his eligibility for immigration relief under the Nicaraguan Adjustment and Central American Relief Act (

non-

themselves and were stopped by local police for driving without a license, she believes they would be questioned about their immigration status. Plaintiff BenetSmith worries however, that if SB 20 goes into effect and she is pulled over while driving her undocumented friends, the S R O L F H P L J K W T X H V W L R Q K H U I U L H Q G V ¶ L P P L J U D W L R Q V W D helping a sick friend get to the doctor.

58. Plaintiff BenetSmith has also hosted people she knows lack immigration status in her home and may do so again. If SB 20 goes into effect, she fears she could be prosecuted for inviting friends and neighbors into her home and could lose her chance to become a U.S. citizen or even be deported.

59. Finally, Plaintiff BenetSmith also worries about the climate of suspicion SB 20 will create for anyone who looks or talks differently. Plaintiff BenetSmith speaks English fluently but has a strong accent and worries that under SB 20 she could be profiled by police officers and detained simply based on her accent.

60. Plaintiff Keller Barron is a 79-year-old resident of Columbia, South Carolina, where she has lived since 1953. She raised children and has been active in the League of : R P H Q 9 R W H U V I R U G H F D G H V L Q F O X G L Q J F K D L U L Q J W K D W Equal Rights Amendment. For the past 10 years or so, Barron has provided assistance to a family whose parents came from Mexico to provide a better life for their children. This has included providing rides to the undocumented mother so that she can attend medical appointments and parent-teacher conferences at school, among other things. Barron has also provided financial assistance to the parents so that they can more fully relieve the parents so that they can

61. While she plans to continue assisting the family, including the undocumented mother, Barron worries that she will be subject to prosecution under SB 20 for transporting and otherwise assisting an undocumented immigrant to remain in South Carolina.

62. Plaintiff John McKenzie is a resident of Columbia, South Carolina, and an active member of the South Carolina State Bar. He practices law primarily in the areas of subrogation, FULPLQDO GHIHQVH GRPHVWLF UHODWLRQV ZRUNHU\ V FR part of his practice involves providing for the legal needs of the Latino community in South Carolina. In 2004, he was recognized by the Government of Mexico for his work with the Mexican-American community. Plaintiff McKenzie estimates that a significant percentage of his Latino clients are undocumented. Plaintiff McKenzie represents these individuals in personal L Q M X U \ Z R U N H b, p r i v i l e g e d a n d f a m i l y law matters.

63. % H F D X V H P D Q \ R I K L V / D W L Q R F O L H Q W V G R Q R W K D McKenzie routinely provides transportation to his clients to court hearings. If SB 20 is implemented, Plaintiff McKenzie would be subject to criminal prosecution for concealing, K D U E R U L Q J R U W U D Q V S R U W L Q J X Q G R F X P H Q W H G L P P L J U D Q the United States. SB 20 will fundamentally interfere Z L W K 3 O D L Q W L I I 0 F . H Q ] L H \ V D practice his profession effectively on behalf of the members of the Latino community

64. Since SB 20 passed, Plaintiff McKenzie is aware that Latinos and immigrants are increasingly afraid to access the courts to protect their rights. If SB 20 is implemented, Plaintiff McKenzie anticipates losing up to 20 percent of his law practice, if not more, and sustaining certain financial loss. In addition, if SB 20 is implemented, Plaintiff McKenzie would be subject to a loss of his professional license from the State of South Carolina to practice law. If he were to be convicted, plead guilty to, or enter a nolo contendere plea with respect to transporting or

harboring undocumented individuals, Plaintiff McKenney would be subject to disciplinary action by the South Carolina Supreme Court and sanctions, including possible imprisonment.

65. Plaintiff Sandra Jones is the pastor of Spring of Life Lutheran Church in Columbia, South Carolina, where she conducted outreach for a year before establishing the church in 2008. Pastor Jones ministers to a congregation of nearly 200 Latino individuals, many of whom are undocumented. She also serves as Executive Director of the Carolina Lutheran Outreach Centers.

66. Plaintiff Jones undertakes activities that serve the spiritual, physical, intellectual, and emotional needs of individual congregants and others in the community who seek her assistance. These activities include transportation, food distribution, counseling, education, and advocacy.

67. Plaintiff Jones transports children to after school and summer programs. She also facilitates adult education courses at the church. Plaintiff Jones often transports people to medical appointments and to shop for groceries and school supplies. Further, she transports congregants to church services and events. Many of these individuals are undocumented; Plaintiff Jones does not inquire into their status, but frequently learns of it in the course of her ministry and providing services.

68. Plaintiff Jones is concerned that in undertaking her work as a pastor, she will be subject to monetary fines or jail time for transporting members to various appointments or for providing one of the many services she provides her congregants. Further, she is concerned that the undocumented immigrants whom she serves as a part of her ministry will be subject to criminal prosecution.

69. After the passage of SB 20, Plaintiff Jones has heard members of her congregation express fear about leaving their houses to go to church or get groceries. Others are leaving the state.

70. Since SB 20 passed Plaintiff Jones is aware that her congregants choose not to go out during weekday evenings to attend classes or even worship out of fear that they will be stopped by police and asked to produce proof of immigration status. Plaintiff Jones has had to put adult and youth group ministries on hold because people are nervous about leaving their homes and being stopped and arrested by police based on their perceived immigration status.

71. In addition, since SB 20 passed, churches that previously loaned Plaintiff J vans or buses, as well as drivers, to transport her congregants are now reluctant to do so without some assurance that the driver will not be arrested for transporting undocumented persons. Further, churches that previously made donations to Plaintiff Church are now hesitant to do so because they are afraid of being charged with a crime for aiding undocumented persons.



Defendant Haley is responsible for the enforcement of SB 20 in the State of South Carolina and is an appropriate defendant in this case. Defendant Haley is sued in his official capacity.

74. Defendant Alan Wilson is the Attorney General of South Carolina. The South Carolina Constitution, Article IV, Section 1, provides that the Attorney General is the chief legal officer of the State and is responsible for the enforcement of the laws of the State. The Attorney General is also responsible for the representation of the State in all legal matters. The Attorney General is also responsible for the representation of the State in all legal matters.

Berkeley counties. S.C. CODE § 1-7-310 et seq Defendant Scarlett Wilson is sued in her official capacity.

FACTS

History and Intent of SB 20

77. On June 21, 2011, the South Carolina General Assembly enacted SB 20, a comprehensive law that governs numerous aspects of immigration regulation. SB 20 was originally introduced in the State Senate on January 11, 2011. It was then introduced in the State House of Representatives on March 14, 2011.

78. Governor Nikki Haley signed SB 20 on June 27, 2011. Except for Section 17, the law is scheduled to take effect on January 1, 2012.

79. In enacting SB 20, South Carolina legislated in an area committed exclusively to the federal government under the U.S. Constitution.

80. Indeed South Carolina expressly intended not only to intrude into an area of exclusive federal control, but to supplant the federal government in key respects.

81. The legislative record makes clear that a primary motivating factor in passing this law was the South Carolina legislature's desire to take control of immigration regulation away from the federal government.

82. During the debate, legislators expressly stated that they intended for the State of South Carolina to wrest control over immigration regulation away from the federal government. For example, Senator Glenn "F" & Representative "F" PPHQWHG said, "It bothers me that our borders are still not secure. It bothers me that our borders are still not secure. It bothers me that our borders are still not secure." Senator Larry "D" UWLQ VWDWHG WKDW "W" KH ELJ SURE OHP WKDW "K" the federal government to secure our borders.

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(Mar. 2, 2011) (remarks of Sen. Larry Martin).

83. During the debate over SB 20, legislators expressly stated that the intent of the law was to deport undocumented immigrants and to deter them from living in South Carolina. The intent of the legislators could not be clearer than stated by ~~Senary~~ Grooms, sponsor of the bill in the Senate, when talking about SB 20:

[It] will have an impact It will cause South Carolina to be a very unpleasant sta if you are here illegally. And I would want those that are here illegally to find places that the temperature is not quite so hot. Go to Vermont. They will welcome you with open arms. Go back to your country of origin, but leave South Carolina. Leave South Carolina unless you are here legally. If you are here legally, I welcome you. I want you to integrate and become part of our society. But if you are here illegally, please, please go somewhere else. And this bill will make South Carolina difficult place to live. It will cause many of the illegal immigrants to self-deport.

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JRYHUQPHQW WR ULQJ RII WKH KRFRD: MexCarls Welle To DoG ' 1RH

Work Others Reject, The State (Feb. 8, 2011), available at

<http://www.thestate.com/2011/02/08/1685334/tough-immigration-proposal-goes.html>.

87. House Speaker Bobby Harrell, another proponent of SB 2011, said in a recent interview that it has become abundantly clear that if we want something to pass, we need to make it a top priority. ROH DERXW LOOHJDO LPPLJUDV

Carolina became the state that was known across the country as the state that was going to enforce

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See *The Times Examiner*, Gov. Nikki Haley Signs Illegal Immigration Reform Bill (June 27,

2011), available at [http://www.timesexaminer.com/videos/807-gov-nikki-haleysignsillegal-](http://www.timesexaminer.com/videos/807-gov-nikki-haleysignsillegal-immigration-reform-bill)

[immigration-reform-bill](http://www.timesexaminer.com/videos/807-gov-nikki-haleysignsillegal-immigration-reform-bill) (statement made at signing ceremony).

90. Similarly, bill sponsor Senator Larry Grooms remarked at the bill signing

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SHUVRQ¶V XQODZIXO LPPLJUDWLRQ VWDWXV E S C W D W H R U

CODE § 16-9-460(A).

94. South Carolina also criminalizes transporting within the state, or soliciting or  
conspiring to transport W ZLWKLQ WKH VWDWH D SHUVRQ ZKR KDV <sup>3</sup>FRF  
8QLWHG 6WDWHV LQ YLRODWLRQ RI ODZ´ ZLWK WKH <sup>3</sup>LQWHG  
United States or avoiding apprehension L R Q R U G H W H F W U N L A V O U R M M A K H S A U S U V R Q ¶  
E\ VWDWH R U I H G H U D O D X W S C O D E S 16-9-460(B). 6 H F FRGLILHG D

of Section 4 is also not permitted to seek or obtain any professional license offered by the State or any agency or political subdivision of the State. Sec. 4, codified at S.C. CODE § 16-9-460(E).

98. South Carolina enacted its own version of these provisions precisely to bypass the comprehensive federal statute, 8 U.S.C. § 1324.

99. Under SB 20, both the actor and recipient of the conduct targeted by Section 4 are subject to criminal prosecution an unprecedented expansion of who can be found guilty of harboring. Never before has a state or locality, much less the federal government explicitly criminalized the recipient (i.e. the immigrant) for the act of transporting or harboring them. The purpose and effect of subjecting the recipient of such conduct to criminal prosecution is to allow the state to identify and impede individuals it regards as unlawfully present. Section 4 also requires officers to make an independent

100. South Carolina intended (and achieved) an extraordinarily broad criminal prohibition in Section 4. And, as discussed below, law enforcement agencies will prioritize and maximize

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State-Specific Alien Registration Scheme (Section 5)

102. Section 5 of SB 20 enacts a state alien registration regime by creating a new state

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Mandatory Investigation of Immigration Status and Prolonged Detention by State and Local Law Enforcement (Sections 6 & 7)

Section 6

105. SB 20 converts many routine encounters with South Carolina law enforcement officers into prolonged detentions solely for the purpose of investigating immigration status and

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106. Section 6 of SB 20 requires every law enforcement officer in South Carolina to determine the immigration status of any person the officer stops, detains, investigates or arrests

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W K H 8 Q L W H G 6 W D W H V Code § 17-13-170(B) Under Section 6, an officer

may demand that any person subjected to a lawful stop, detention, investigation, or arrest

produce one of four state approved identity documents. Sec. 6, codified at Code § 17-13-

170(B)(1). Only individuals who can produce or who are verified as having a state approved

document receive a presumption of lawful status. See id

107. Only the following four categories of identification documents are approved by the State of South Carolina to provide such a presumption of immigration status: 1) a

D G U L Y H U ¶ V

license or picture identification issued by the South Carolina Department of Motor Vehicles; 2) a

G U L Y H U ¶ V O L F H Q V H R U S L F W X U H L G H Q W L I L F D W L R Q L V V X H G

such as a United States passport or any identification; and 4) a tribal picture identification. See Sec. 6, codified at S. Code § 17-13-170(B)(1). Individuals who cannot produce or do not

possess such a document, which includes many persons who are U.S. citizens or citizens

with federal permission to remain in the United States are subject to a lengthy and intrusive immigration verification process.

108. SB 20 fundamentally changes the primary role and day-to-day operations of state, county, and municipal law enforcement officers in South Carolina. SB 20 radically changes the role of law enforcement into every stop, detention, and arrest they make.

109. Section 6 requires that South Carolina law enforcement officers contact the federal government in the process of investigating immigration status. Sec. 6, codified at S.C.

CODE

seatbelts) Under Section 6 South Carolina law enforcement officers are required to prolong

such stops in order to investigate immigration status. 3 U H D V R Q

3 W K D H W S M U V R Q L V D Q D O L H Q Z K R L V X Q O D Z I X O O \ S U H V H Q W

S.C.CODE § 17-13-170(A).

112. SB 20 fails to enumerate any criteria for developing a 3 U H D V R Q D E O H V X V S L F L

what D Q L Q G L i m i g r a t i o n s t a t u s m i g h t b e S B 2 0

116. Implementation of SB 20 will have a significant negative impact on the ability of local law enforcement officers to protect immigrant communities and mixed-immigration-status communities and families (i.e., communities and families that include both people with immigration status and people without such status). Because immigrants will avoid the police out of fear that any interaction with law enforcement could lead to immigration status inquiries, South Carolina law enforcement officers will not receive the assistance they need to prosecute crimes. For example, Plaintiff Jane Doe has avoided interactions with police since becoming aware of SB 20 and was afraid to report a shooting in her neighborhood. To avoid the risk of interrogation and detention due to her immigration status, she will refrain from contacting the police as a victim or witness if SB 20 goes into effect.

#### Section 7

117. Under Section 7, if a person is charged with a criminal offense and held in custody for any period in a state or local jail, South Carolina law enforcement officers are required to attempt to determine whether the confined person is an alien unlawfully present in the United States. Sec. 7, codified at S.C. CODE § 23-3-110(A).

118. Section 7 also provides that if W K S is an alien,

individual would normally be released in order to transport or her to the federal government regardless of whether the federal government has requested formally or informally, that the individual be further detained or delivered to federal custody

120. The immigration status queries mandated by SB 20 impose a substantial burden on federal authorities, who will be required to respond to an enormous increase in the number of immigration status inquiries and will be hindered in their attempts to prioritize among their enforcement obligations as directed by federal statutes, regulations and policies.

Criminalization of False Identification Documents Relating to Immigration (Section 6)

121. In addition to the provisions described above, Section 6 also creates a state criminal enforcement scheme for false identity documents relating to immigration.

122. 6 HFWLRQ PDNHV LW XQODZIXO WR XVH RU SRVVHV FRXQWHUIHLW SLFWXUH LGHQWLILFDWLRQ IRU WKH SXUSRVV LQ WKH 8 Q L S E C O D E § 7 4 3 4 7 0 ( B ) ( 2 ) . I t f u r t h e r p r o v i d e s t h a t u p o n t h e f i r s t o f f e n s e , t h e v i o l a t o r i s g u i l t y o f a m i s d e m e a n o r a n d s u b j e c t t o a \$ 1 0 0 0 f i n e a n d 3 0 d a y i m p r i s o n m e n t . W i t h a s e c o n d o f f e n s e , t h i s p e n a l t y b e c o m e s a f e l o n y , s u b j e c t t o a \$ 5 0 0 0 f i n e a n d 1 2 m o n t h s i m p r i s o n m e n t . I L Q H D Q G I m p r i s o n m e n t . I . V ¶

123. The criminal offenses created by Section 6 apply only when documents are used in violation of federal immigration law. This limiting language demonstrates the purpose of the statute to regulate in the federal domain of immigration.

Immigration Enforcement Mandate (Section 1)

124. Section 1 tasks all state and local agencies and officials with the enforcement of federal immigration law and SB 20 under threat of civil liability and steep monetary penalties.



130. In addition, the federal government has issued numerous regulations, policies, and procedures interpreting the provisions of the INA and has established a large and complex administrative apparatus to carry out these mandates.

131. The INA carefully calibrates the nature of criminal or civil<sup>2</sup> and the degree of penalties applicable to each possible violation of its terms.

132. The INA contains complex and exclusive procedures for determining an L Q G L Y L G X D O ¶ V L P P L J U D W L R Q D Q G F L W L ] H Q V K L S V W D W X V immigration laws have been violated, and determining whether an individual may lawfully be removed from the United States.

133. Under the INA, a non F L W L ] H Q ¶ V L P P L J U D W L R Q V W D W X V P D \ citizen change over time. A non-citizen who enters the United States with authorization with a student visa, for example, may remain in the country past his period of authorized stay and thus no longer be in status. (Alternatively, he may overstay his original visa yet remain in status, for example, if he is eligible to change into a different visa classification.) Conversely, a non-citizen who enters the United States without authorization, for example by crossing into the country by foot while evading border authorities, may subsequently gain lawful status, such as through a successful asylum application or Uvisa application as a victim of serious crime.

134. The fluidity of immigration status is a fundamental feature of federal immigration law. It is a direct and unavoidable consequence of the system of immigration regulation that Congress has prescribed, and it accommodates many important national interests including, for H [ D P S O H W K H Q D W L R Q ¶ V K X P D Q L W D U L D Q D Q G L Q W H U Q D W L and people fleeing torture.

135. SB 20 presumes that immigration status is definite, not ~~to~~ ~~nuance~~, and readily and quickly ascertained. But those presumptions ~~is~~ ~~are~~

136. Under federal law, there is no single, readily ascertainable category or characteristic that establishes whether a particular person may or may not remain in ~~the~~ the United States. The answer to that question is a legal conclusion that can only be reached through the processes set forth in the INA, ~~that~~ ~~may~~ depend on the discretionary determinations of federal officials.

137. There are many ~~not~~ citizens who are present ~~in~~ the United States without formal immigration status who would not be removed if placed in federal removal proceedings, or who actually have temporary permission from the federal government to be in the United States. For example, an individual without ~~formal~~ immigration status may be eligible for a form of immigration relief, such as asylum, adjustment of status, or withholding of removal. Some of these individuals are known to the federal government, often because they have applied for immigration relief; others will not be identified until they are actually placed in proceedings by the federal government and their cases are adjudicated.

138. In addition, some individuals, like those granted Temporary Protected Status due to turmoil or natural disasters ~~in~~ their native countries, have permission to be in the United States, but are unlikely to have one of the enumerated qualifying identity documents under SB 20.

139. The fact that some persons have permission to remain in the United States without having a formal immigration status, or despite being technically removable, is also a fundamental feature of federal immigration law and the system of immigration regulation that Congress has prescribed. This system accommodates many important national interests



including IRU H [DP SOH & RQJUHVV V V GHVLUH WR DOORZ FHUW removal.

140. Federal agencies do not and cannot determine definitively, in response to a demand from a state or local official, whether an individual is subject to removal. It is impossible to make a determination of whether an individual is lawfully in the United States based upon a search of the federal database. Federal officials check in the course of responding to an immigration status query. Such determinations involve complex questions of fact and law and are made through a federal administrative and judicial process that may take years.

141.

\* R Y H U Q P H Q W V ¶ \$ V V L V W D Q F H L Q , P P L J U D A V I L A B L E Q ( Q I R U F H P H Q  
http://www.dhs.gov/xlibrary/assets/guidance/state-local-assistance-immigration-enforcement.pdf

3) H G H U D O \* X L G D L O H Z H R I W , I Q H W D J H H Q F \ F K D U J H G Z I T A W K O R D G P L Q L  
local laws or actions that are not responsive to federal control or direction, or categorically  
demand enforcement in such a way as to deprive Federal Government<sup>2</sup> and state and local  
officers<sup>2</sup> R I W K H I O H [ L E L O L W \ D Q G G L V F U H W L R Q W K D W D Q L P D W  
globally supervise immigration enforcement [are prohibited], . . . even if the state or local

J R Y H U Q P H Q W ¶ V R Z Q S X U S R V H L V W R H Q C R I D A F I L E A T 8 I G H U D O L P F  
3 > 7 @ K H , 1 \$ W K X V U H T X L U H V W K D W D V W D W H R U O R F D O O D Z  
in their enforcement of the immigration laws must at all times have the freedom to adapt to  
federal priorities and direction and conform to federal discretion, rather than being subject to

V \ V W H P D W L F P D Q G D W R U \ V W D W H R U O R F D O I D G L U H F W L Y H V W  
3 > 6 @ W D W H R U O R F D O J R Y H U Q P H Q W V P X V W Q R W V \ V W H P D W L  
or priorities seby the Federal Government or limits the ability of the Federal Government to  
H [ H U F L V H G L V F U H W L R Q X Q G H U I H G H U I D O A T 10 . D Z Z K H Q H Y H U L W

144. In addition, the federal government often exercises its prosecutorial discretion to  
prioriti ] H F H U W D L Q F D V H V I R U D F W L R Q R Y H U R W K H U V 7 K H I H  
such discretion may be based upon a wide range of equitable factors, and its exercise in any  
given case cannot be predicted in advance.

145. As a result, the question whether any given noncitizen may remain in the United  
States depends upon a host of complicated and consuming legal and discretionary  
determinations by a variety of federal officials. It cannot be conclusively determined by a status  
verification query to the federal government. Inquiries made by law enforcement officials to

LESC or by state agencies to the federal Systematic Alien Verification for Entitlements

3 6 \$ 9 ( ' S U y Rel UADP Best, a snapshot of what a federal agency believes to be an

indivi G X D O ¶ V F X U U H Q W L P P L J U D W L R Q V W D W X V R U H O L J L E L O L

correspond to the ultimate finding of whether she is subject to removal See Department of

Justice Office of the Inspector General Follow-up Review of the Status IDENT/IAFIS

Integration at 41 (2004) available at <http://www.justice.gov/oig/reports/plus/e0501/final.pdf>

Q R W L Q J W K D W D F F R U G L Q J W R ' + 6 R I I L F L D O V ' + 6 ¶ V L P P L J

accurately determine immigration status [at any given time] because immigration status is

G \ Q D P L F > @ ' D Q G G D Q D W D E V H F F Q S U U I Q W Q P I S to the federal

government regarding immigration status yield a clear response.

146. Whether a person is a citizen of the United States is easily ascertained in the contexts demanded by SB 20. U.S. citizens are not required to carry documentary proof of their citizenship. There is no national database that contains information about every U.S. citizen.

Some people are actually unaware of their U.S. citizenship because they may have acquired U.S.

F L W L J H Q V K L S D W E L U W K E \ R S H U D W L R Q R I O D Z G X H W R W K

the United States See e.g., 8 U.S.C. § 1433. Others automatically obtain citizenship when

parents become naturalized U.S. citizens See e.g., 8 U.S.C. § 1431.

147. 6 % ¶ V F U H D W L R Q R I D V W D W H L P P L J U D W L R Q V \ V W F R Q J U H V V L R Q D O O \ F U H D W H G V W D W X W R U \ V F K H P H L P S H U P I

exclusive power to regulate immigration, and will lead to erroneous determinations and unlawful detention by state and local officials.

148. Moreover, SB 20 conflicts with and is preempted by provisions of the INA that set forth comprehensive federal schemes including: (1) alien registration documentation

requirements; (2) transportation and harboring; (3) immigration enforcement authority; and (4) fraudulent immigration documents.

#### Federal registration system

149. The INA includes a national alien registration system that displaces and preempts state alien registration laws.

150. The federal registration scheme has been in place since 1940 and was designed to create a single, uniform, national scheme.

151. The preemptive effect of the federal alien registration scheme expressly recognized by the President of the United States when the scheme was created and has been upheld by the Supreme Court.

152. The federal regulation implementing 8 U.S.C. §§ 1302, 1304, and 1306 prescribes

crimes, rather than those who ma



Charleston, Lexington, and York Counties are designated with authority under only the detention model. See U.S. ICE, Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, available at <http://www.ice.gov/newslibrary/factsheets/287g.htm>.

163. SB 20 violates the U.S. Constitution by granting state and local officers in South Carolina immigration enforcement authority outside of the authority provided by 287(g)

D J U H H P H Q W V 6 % ¶ V S U R Y L V L U S O V E R S I G H T I N G B Y S T A T E A N D L O C A L L J U D W  
law enforcement officials in the field conflicts with the limited manner in which the federal government has allowed particular South Carolina law enforcement agencies assist in the enforcement of federal immigration law X Q G H U W K H I H G H U D O J R Y H U Q P H Q W ¶ V

164. The other provisions in federal law authorizing state or local participation in immigration enforcement are also carefully constrained. Federal immigration statutes expressly authorize state and local police to make arrests for exactly two immigration crimes: federal immigration crimes of smuggling, transporting, or harboring certain aliens, and illegal entry by a previously deported felon. See 8 U.S.C. §§ 1324(c), 1252c. Another provision, 8 U.S.C. § 1103(a)(10), allows the U.S. Attorney General to authorize state and local officers to enforce L P P L J U D W L R Q O D Z V X S R Q F H U W L I L F D W L R Q R 1 b u t D o s u c h certification has ever occurred.

165. & R Q J U H v t o g e n e r a l l y p r o h i b i t s s t a t e a n d l o c a l o f f i c e r s f r o m e n f o r c i n g c i v i l immigration laws is clear both from the statutory scheme and from legislative history.

) X U W K H U P R U H W K H I H G H U D O J R Y H U Q P H Q W K D V H P S K D V L ] H  
governments [to] mandat[e] that state or local law enforcement officers inquire into the L P P L J U D W L R Q V W D W X V R I D V S H F L I L H G J U R X S R U F D W H J R U

government officials [to] consistently refer



priorities and the specific federal

IRUHLJQ SROLF\ DQG QDWLRQDO VHFUXULW\ LQWHUHVWV E\  
Mexico DQG RWKHU FRXQWULHV, *United States v. Arzoo*, Case No. 1:04-13 (D. Ariz.

filed July 6, 2010). Most recently, the U.S. Department of Justice argued in its challenge to a

VLPLODU ODZ LQ \$ODEDPD WKDW WKH VIGNIFDQDWHG ZV<sup>3</sup> ZRXV

8 6 IRUHLJQ UHODWLRQV´ DQG ZLOO MHRSDUGLJH WKH W

XQODZIXOO\ SUHVHQW LQ RWKHU FRXQWULHV, *Walton*, No. 11-276 (N.D. Ala., filed Aug. 1, 2011).

173. Local law enforcement agencies and other government agencies across South  
& DUROLQD¶V FRXQWLHV LQHYLWDEO\ ZLOO LQWHUSUHW  
differently, leading to a patchwork of enforcement even within South Carolina. This cacophony  
of HQIRUFHPHQW SRVHV D VHULRXV WKUHDW WR WKH IHGHU

174. %HFDXVH WKH 8QLWHG 6WDWHV¶ LPPLJUDWLRQ SRC  
IRUHLJQ UHODWLRQV 6RXWK & DUROLQD¶V DWLVRG WR U  
LPDFW WKH 8QLWHG 6WDWHV¶ DELOLW\ WR FRQGXFW IRUH  
undermine the ag c20(, le)-7(a)4(do2.024 322.73 T>e200030036>-3<0025>7<f024 rn) U.S. oov3(e)4(

FRQFHUQ WKDW WKH ODZ ZLOO WKUHDWHOvevhoHvisitK X P D Q D Q  
6 R X W K & D U R O L Q D ' D Q G W K D W L W V ³ S D V V D J [ b f S o u t h C a r o l i n a ]  
Carolina] ¶ V I R X U W K O D U J H V W o r t h a s S o r t h e W P r i n c i p l e s N o t W r e d D e s p o n s i b i l i t y  
trust, and mutual respect with which the Federal Governments of Mexico and the United States  
operate in order to D G G U H V V W K H L U V K D U H G F K D O O H Q J H V L Q 1 R U W K  
Ministry, The Government of Mexico Regrets that S20 Has Been Signed into Law in South  
Carolina (July 27, 2011), available at

[http://www.sre.gob.mx/csocal/contenido/comunicados/2011/jun/cp\\_228.html](http://www.sre.gob.mx/csocal/contenido/comunicados/2011/jun/cp_228.html).

176. In response to similar state anti-migrant laws<sup>2</sup> V X F K D V \$ U L ] R Q D ¶ V 6 %  
\* H R U J L D ¶ V + % 8 W D K ¶ V + % ² n u m b e r s f o r O g D e p e n d e n t %  
e [ S U H V V H G F R Q F H U Q W K D W V X F K O D Z V Z L O O F D X V H Z L G H V S  
obligations, which would harm their nationals living in or visiting the United States, see, e.g.  
Amici Curiae Brief by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican  
Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, United  
Mexican States, and Uruguay in Support of Plaintiffs, *Hispanic Interest Coalition of Alabama v.*  
*Bentley* No. 11-2484, Doc. No. 95 (N.D. Ala. filed Aug. 4, 2011) Motion of the Governments  
of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras,  
Nicaragua and Peru for Leave to Join Brief of the United Mexican States as Amicus Curiae in  
Support of Plaintiffs, *Georgia Latino Alliance for Human Rights, et al. v. Dept. of* No. 11-  
1804, Doc. No. 54 (N.D. Ga. filed June 15, 2011) Brief of the United Mexican States as Amicus  
Curiae in Support of Plaintiffs, *United Coalition of La Raza et al. v. Herbert et al.* No. 11-  
00401, Doc. No. 68 (D. Utah filed June 7, 2011) Brief of the United Mexican States as Amicus  
Curiae in Support of Plaintiffs, *Friendly House et al. v. Whiting et al.* No. 1001061, Doc. No.

299 (D. Ariz. filed July 8, 2010)

180. The claims of the Individual Plaintiffs are typical of the claims of the proposed class.

181. All of the Individual Plaintiffs will fairly and adequately represent the interests of all members of the proposed class because they seek relief on behalf of the class as a whole and have no interests antagonistic to other members of the class. The Individual Plaintiffs are also represented by pro bono counsel, including the ACLU Foundation, the Mexican American Legal Defense and Education Fund, the National Immigration Law Center, the Southern Poverty Law Center, the ACLU of South Carolina, South Carolina Appleseed Legal Justice Center, the law firm of Rosen, Rosen & Hagood, LLC, and the law firm of Reginald Lloyd, who collectively have extensive experience in class action litigation, including litigation regarding the rights of immigrants and constitutional law. Finally, Defendants have acted and will act on grounds generally applicable to the class in executing their duties to enforce SB 20, thereby making appropriate final injunctive relief with respect to the class as a whole.

DECLARATORY AND INJUNCTIVE RELIEF

182. An actual and substantial controversy exists between Plaintiffs and Defendants as to their respective legal rights and duties. Plaintiffs contend that they face an imminent threat of harm if SB 20 is enforced, and that this law violates the U.S. Constitution and federal law. Defendants are obligated to enforce this law unless it is found to be illegal.

183. Defendants have acted and will be acting under color of law.

184. If allowed to go into effect, SB 20 will cause irreparable injury to Plaintiffs.

185. Plaintiffs have no plain, speedy, and adequate remedy at law against SB 20 other than the relief requested in this Complaint.

186. If SB 20 takes effect, the Plaintiffs, and in particular other individuals of color in South Carolina, will be subject to unlawful detention, arrest, prosecution and harassment including all Individual Plaintiffs and the staff and members of all the Organizational Plaintiffs, as well as members of the proposed plaintiffs.

187. In addition, SB 20 will thwart the missions of Organizational Plaintiffs Lowcountry Immigration Coalition, Mujeres de Triunfo, Nuevos Caminos, SCVAN, SCHLC, SEIU, and the Joint Board by forcing them to divert their resources in order to respond to the FRQVWLWXHQWV¶ TXHVWLRQV UHJDUGLILQDWHKHLU ULJKWV X ability to advance preexisting organizational priorities and services.

188. In addition, SB 20 will thwart the missions of Organizational Plaintiffs Lowcountry Immigration Coalition, Mujeres de Triunfo, Nuevos Caminos, and SCVAN by deterring their members and/or clients from DYDLOLQJ WKHPVHOYHV RI WKH RUJ and/or participating in membership activities.

189. In doing the things alleged in this Complaint' HIHQGDQWV ZLOO GHQ\ 3C rights secured by the U.S. Constitution and federal law.

190. 'HIHQGDQWV¶ HQRUFHPHQW RI 6% ZLOO FRQVWL South Carolina.

191. Plaintiffs are entitled to a declaration that SB 20 is unconstitutional on its face and to an order preliminarily and permanently enjoining its enforcement.

CAUSES OF ACTION

COUNT ONE  
SUPREMACY CLAUSE; 42 U.S.C. § 1983

192. Count One is brought against Defendants Haley and Alan Wilson by all Plaintiffs. It is brought with respect to the entirety of SB 20.

193. Count One is brought against Defendants Cannon and Scarlett Wilson by Organizational Plaintiff Mujeres de Triunfo Nuevos Caminos SEIU, and the Joint Board and by Individual Plaintiffs Jane Doe #, John Doe #, and Yajaira Bene Smith.

194. Paragraphs 191 are repeated and incorporated as though fully set forth herein.

195. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

196. SB 20 is void in its entirety because it is a regulation of immigration, and therefore usurps powers constitutionally vested in the federal government exclusively.

197. In addition, SB 20, and particularly Sections 1, 4, 5, and 7, conflicts with federal laws, regulations and policies, attempts to legislate in fields occupied by the federal government, imposes burdens and penalties on legal residents not authorized by federal law, and unilaterally imposes burdens on W K H I H G H U D O J R Y H U Q P H Q W T V U processes, each in violation of the Supremacy Clause.

198. Plaintiffs move for relief on this claim both directly under the Constitution, as an action seeking redress of the deprivation of statutory rights under the state law, and also under 42 U.S.C. § 1983.

COUNT TWO  
FOURTH AMENDMENT; 42 U.S.C. § 1983

199. Count Twos brought against Defendants Haley and Alan Wilson by  
Organizational Plaintiffs



Caminos,SCVAN, SCHLC, SEIU, and the Joint Board and by Individual Plaintiffs Jane Doe #1, Jane Doe # 2, John Doe # 1, and Yajaira BeneSmith.

206. Count Three is brought against Defendants Cannon and Scarlett Wilson by Organizational Plaintiffs Mujeres de Triunfo Nuevos Caminos, SEIU, and the Joint Board and by Individual Plaintiffs Jane Doe #, John Doe #,1 and Yajaira BeneSmith.

207. Paragraphs-59, 7376, 102104, 124126, and 177191 are repeated and incorporated as though fully set forth herein.

208. The Fourteenth Amendment to the U.S. Constitution, which guarantees the rights of all persons to equal protection of the laws, is violated by the actions of the Defendants. The Fourteenth Amendment to the U.S. Constitution, which guarantees the rights of all persons to equal protection of the laws, is violated by the actions of the Defendants.

209. Section 5 of SB 20 impermissibly discriminates against non-citizens on the basis of alienage and against various classes of non-citizens on the basis of immigration status and deprives them of the equal protection of the laws within the meaning of the Fourteenth Amendment to the U.S. Constitution.

210. Plaintiffs move for relief on this claim as an action seeking redress of the deprivation of Constitutional rights under the color of state law, through 42 U.S.C. § 1983.

COUNT FOUR  
FOURTEENTH AMENDMENT DUE PROCESS (VAGUENESS); 42 U.S.C. § 1983

211. Count Four is brought against Defendants Haley and Alan Wilson by Organizational Plaintiff Lowcountry Immigration Coalition, Mujeres de Triunfo, Nuevos Caminos,SCVAN, SCHLC, SEIU, and the Joint Board and by all Individual Plaintiffs.

212. Count Four is brought against Defendants Cannon and Scarlett Wilson by Organizational Plaintiffs Mujeres de Triunfo, Nuevos Caminos, SEIU, and the Joint Board and by Individual Plaintiffs Jane Doe # 1, John Doe #,1 and Yajaira BeneSmith.

213.

COUNT FIVE  
FOURTEENTH AMENDMENT DUE PROCESS (PROCEDURAL); 42 U.S.C. § 1983

219. Count Five is brought against Defendants Haley and Alan Wilson  
Organizational Plaintiffs Lowcountry Immigration Coalition, Mujeres de Triunfo, Nuevos  
Caminos, SCVAN, SCHLC, SEIU, and the Joint Board and by Individual Plaintiffs Jane Doe #  
1, Jane Doe #2, and John Doe #1.

220. Count Five is brought against Defendants Cannon and Scarlett Wilson by  
Organizational Plaintiffs Mujeres de Triunfo, Nuevos Caminos, SEIU, and the Joint Board and

- b. Declare that SB 20 is unconstitutional in its entirety as a regulation of immigration and that Sections 1, 4, 5, 6 and 7 unconstitutionally conflict with federal law;
- c. Declare that Sections 6 and 7 violate the Fourth Amendment;
- d. Declare that Section 5 violates the Equal Protection Clause;
- e. Declare that Sections 4, 6, and 7 violate the Due Process Clause;
- f. Enjoin Defendants from enforcing SB 20 and S.C. CODE § 16-9-460 (as currently in effect);
- g. \* U D Q W 3 O D L Q W L I I V F R V W V R I V X L W D Q G U H D V R Q D E pursuant to 42 U.S.C. § 1988; and
- h. Grant such other relief as the Court may deem appropriate.

Dated: October 12, 2011

Respectfully submitted,

s/Susan K. Dunn

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