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(A) If a law enforcement officer of this State or a political subdivision of this State lawfully stops, detains, investigates, or arrests a person for a criminal offense, and during the commission of the stop, detention, investigation, or arrest

[REDACTED]

(5) If the person meets the presumption established pursuant to this subsection, the officer may not further stop, detain, investigate, or arrest the person based solely on the person's lawful presence in the United States.

(6) This section does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.

~~(C)(1) If the person does not meet the presumption established pursuant to~~

Public Safety or the United States Immigration and Customs Enforcement, as applicable, shall assume custody of the person. The officer is not required by this section to retain custody of the person based solely on the person's lawful

presence in the United States. The officer may securely transport the person to a federal facility in this State or to any other point of transfer into federal custody that is outside of the officer's jurisdiction. The officer shall obtain judicial authorization before securely transporting a person to a point of transfer that is outside of this State.

(d) Nothing in this section must be construed to require a law enforcement officer

to stop, detain, investigate, arrest, or confine a person based solely on the person's

lawful presence in the United States. A law enforcement officer may not attempt

to make an independent judgment of a person's lawful presence in the United States. A law enforcement officer may not consider race, color, or national origin

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shall consider whether the person charged is an alien unlawfully present in the United States.

(G) No official, agency, or political subdivision of this State may limit or restrict the enforcement of this section or federal immigration laws.

(H) This section does not implement, authorize, or establish, and shall not be construed to implement, authorize, or establish the federal Real ID Act of 2005.

(I) Any time a motor vehicle is stopped by a state or local law enforcement officer

without a citation being issued or an arrest being made, and the officer contacts the Illegal Immigration Enforcement Unit within the Department of Public Safety pursuant to this section, the officer who initiated the stop must complete a data collection form designed by the Department of Public Safety, which must include

information regarding the name, date of birth, and address of the driver of the

United States Department of Homeland Security. If the prisoner is determined to be an alien unlawfully present in the United States, the keeper of the jail or other

In construing Sections 6 and 7, as codified, a number of principles of statutory construction are applicable. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." *Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). Statutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable. *State v. Thomas*, 372 S.C. 466, 468, 643 S.E.2d 724, 725 (2007). Moreover, a statute must, if possible, be construed consistently

with the Constitution. *State v. Peake*, 353 S.C. 499, 579 S.E.2d 297 (2003). As our Supreme

Court has consistently recognized, "[a] possible constitutional construction of a statute must prevail over an unconstitutional interpretation" *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 196, 525 S.E.2d 872, 873 (2000).

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Royer, 460 U.S. at 500. With regard to duration of the stop, although the reasonable duration of a traffic stop “cannot be stated with mathematical precision,” *Branch*, 537 F.3d at 336, a stop may become unlawful if it is prolonged beyond the time reasonably necessary to effectuate the stop. The proper inquiry is whether, during the detention, the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the individual(s). *United States v. Sharpe*, 470 U.S. 675 (1985); *State v. Woodruff*, 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001). If the time, manner or scope of the investigation exceeds the proper parameters, a constitutionally permissible stop may be transformed into one which violates the Fourth Amendment. *Id.*

The Fourth Circuit Court of Appeals has also recently summarized the permissibility of a traffic stop as follows:

[Redacted text]

require highly fact-specific inquiries, the cases make possible some generalizations. When a police officer lawfully detains a vehicle, “police diligence involves requesting a driver’s license and vehicle registration, running a computer check, and issuing a ticket.” *United States v. Digiovanni*, 650 F.3d 498, 507 (4th Cir. 2011). The officer may also, “in the interest of personal safety,” request that the passengers in the vehicle provide identification, at least so long as the request does not require the

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Again, courts emphasize that the intrusiveness and duration of the stop must bear a reasonable relation to either the underlying traffic offense or other circumstances suggesting criminal activity that come lawfully to the officer's attention during the stop. *State v. Pichardo*

367 S.C., *supra* at 98, 623 S.E.2d, *supra* at 848 [once the purpose of the traffic stop has been completed, an officer can lengthen the stop, or expand the scope of the stop, only with a

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concluded that "If the police stop someone based on nothing more than possible removability

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

not detain or arrest an individual solely based on known or suspected civil

Like the district court, we conclude that the deputies seized Santos for purposes of the Fourth Amendment when Deputy Openshaw gestured for her to stay seated after dispatch informed him of the outstanding civil ICE deportation warrant. *See* Part III.C. At that time, the deputies' only basis for detaining

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reasonable effort, when practicable, to determine whether the person [suspected of a criminal offense] is lawfully present in the United States”¹ Based upon the legislature’s use of the language “during the commission of a valid stop” – indicating that the immigration inquiry must occur *while the investigation of the original stop is ongoing*, but not afterwards – in other words, we believe the General Assembly intended that individuals may not be stopped, detained, arrested or have their detention prolonged based upon their immigration status, and any immigration inquiry may not be initiated after the stop has ended.

In our opinion, this means that even if a state or local officer is able to verify that an individual is present in violation of federal immigration laws, § 17-13-170 does not authorize the officer to make an arrest or continue to detain the individual on that basis. Section 17-13-170 (C)(4) emphasizes that even “[i]f the officer determines that the person is unlawfully present in

based solely on the person’s lawful presence in the United States.” Such a limitation is the

MEMORANDUM FOR THE HONORABLE PATRICK J. MURPHY, GOVERNOR
SUBJECT: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

