

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Florida Immigrant Coalition, Inc.,
Americans for Immigrant Justice, Inc., and
Hope CommUnity Center, Inc.,

Plaintiffs,

v.

Ronald D. DeSantis, in his official capacity as
Governor of the State of Florida; and Jared
W. Perdue, in his official capacity as the
Secretary of the Florida Department of
Transportation,

Defendants.

Civil Action No. 1:22-cv-23927

**COMPLAINT FOR INJUNCTIVE RELIEF AND
DECLARATORY JUDGMENT**

federal funds intended to combat a deadly pandemic. And he has vowed to use “every penny” of those \$12 million to continue this unconstitutional scheme. This case is about that section of the Florida appropriations act, which violates the Supremacy Clause by usurping the federal government’s sole role in regulating and enforcing immigration law, muddying an already complex area of law, leading to chaos and confusion; and the Fourteenth Amendment’s Equal Protection Clause, through its state-sponsored harassment of immigrants based on race, color, and national origin.

Plaintiffs,-2(gi)tr55e

15. Hope CommUnity Center’s programs and services include immigration, education, service learning, community organizing, and youth and families.

B. Defendants

16. Defendant **Ronald D. DeSantis (“Governor DeSantis”)** is the Governor of the State of Florida. He has publicly confirmed that the \$12 million in funding set aside by Section 185 will continue to be used to unlawfully “relocate” people that Florida deems to be “unauthorized aliens” according to Florida’s unique and incongruent definition of the term “unauthorized alien,” a definition that is ambiguous and in conflict with federal law. Defendant Governor DeSantis is sued in his official capacity.

17. Defendant **Jared W. Perdue (“Secretary Perdue”)** is the Secretary of the Florida Department of Transportation. The funds set aside in Section 185 were appropriated to the Florida Department of Transportation to implement the relocation program. Defendant Secretary Perdue is sued in his official capacity.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under the U.S. Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343, because this action seeks to redress the deprivation, under color of state law, of Plaintiffs’ civil rights and to secure equitable or other relief for the violation of those rights.

19. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57.

20. Venue is proper in the Southern District of Florida under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred, or will occur, in this District and a substantial number of Plaintiffs are located in this District.

21. Defendants, sued in their official capacities, both reside within the state of Florida.

STATEMENT OF FACTS

22. In order to challenge and rewrite federal immigration law and policy, Governor DeSantis has implemented a separate, competing, and conflicting immigration law and policy scheme at the state level through lawsuits, state policies, legislation, and executive orders.

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The original version of HB 5001 did not contain Section 185 or any appropriation for Governor DeSantis' "relocation program."⁶ A few days earlier, on February 4, 2022, the Florida State Senate had introduced its appropriations bill, SB 2500.⁷ SB 2500 also did not include any provision allocating funds to a "relocation program," and it was ultimately substituted for the Florida House of Representatives appropriations bill, HB 5001.⁸

25. HB 5001 was first introduced by State Representative Jay Trumbull on the Florida House Floor on February 10, 2022.⁹ On February 15, 2022, State Representative Kelly Skidmore offered Amendment 990001, which did not add any provisions relating to the "relocation program."¹⁰ The amendment was withdrawn, and HB 5001 was placed for a third reading.¹¹ On February 16, 2022, the original iteration of HB 5001 passed the Florida House of Representatives and was certified to the Florida Senate.¹²

26. On February 17, 2022, State Senator Kelli Stargel proposed Amendment 889818, which proposed a new draft appropriations bill.¹³ This draft of HB 5001 also did not include any

Representatives, <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=76661> (last visited December 1, 2022); *see also Fla. H.R. Journal* 610 (Reg. Sess. 2022).

⁶ *See* H.R. 5001, 2022 Leg., 124th Reg. Sess. (Fla. 2022).

⁷ *See Bill History: SB 2*

29. A mere four days later, on March 14, 2022, the Florida House of Representatives passed HB 5001, as amended by the Conference Committee Report, which included Section 185.¹⁷ That same day, the Conference Committee Report on HB 5001, with Section 185, also passed the Florida Senate.¹⁸

30. Departing from the normal legislative procedural sequence, the aberrant timing of this process effectively eliminated any opportunity for the Florida Legislature to robustly debate Section 185.

31. Section 185 was included in the state's appropriations act despite Article III, Section 12 of the Florida Constitution, which mandates that "[l]aws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." An appropriations act is not the proper place for the enactment of general public policies on matters other than appropriations. Yet, in violation of Article III, Section 12 of the Florida Constitution, Section 185 establishes substantive policy, not salaries or other current expenses of the state. As such, the "relocation program" contemplated by Section 185 should have been scrutinized through the legislative process applicable to substantive legislation, not slipped into the annual appropriations act

32. HB 5001, including Section 185, was presented to Governor DeSantis on June 2, 2022, who approved it that same day.¹⁹

¹⁷ *Fla. H.R. Journal* 1216, 1425 (Reg. Sess. 2022).

¹⁸ *Fla. S. Journal* 1174, 1176–77 (Reg. Sess. 2022).

¹⁹ *Bill History: HB 5001: General Appropriations Act*, The Florida Senate, <https://flsenate.gov/Session/Bill/2022/5001/?Tab=BillHistory> (last visited Dec. 1, 2022).

B. Implementation of Section 185

33. Since the passage of Section 185, Defendants Governor DeSantis and Secretary Perdue have taken direct action to implement Section 185 by transporting asylum seekers from Texas to Massachusetts.

34. Even before putting his “relocation program” into effect, Governor DeSantis and his administration threatened immigrant communities with its implementation. On August 18, 2022, Florida Lieutenant Governor Jeanette M. Nuñez stated that Governor DeSantis had worked with the legislature to secure funds to send Cuban migrants, “very frankly, to the state of Delaware, the state of the President.”²⁰

35. During this time, the Florida Department of Transportation was also developing guidelines for the “relocation program” created by Section 185 and seeking proposals from transportation companies to transport noncitizens out of Florida. The Florida Department of Transportation’s request for such proposals includes four deliverables: “Deliverable 1 - Establish procedure to receive requests from partner agencies; Deliverable 2 - Establish procedure for determining eligibility for relocation; Deliverable 3 - Provide transportation and all ancillary services; Deliverable 4 - Provide reports.”²¹

36. On September 14, 2022, Governor DeSantis launched his “relocation program,” contracting

Martha's Vineyard, Massachusetts

As you know, in this past legislative session the Florida Legislature appropriated \$12 million to implement a program to facilitate the transport of illegal immigrants from this state consistent with federal law.

Florida's immigration relocation program both targets human smugglers found in Florida and preempts others from entering.²⁶

40. There is not one scintilla of evidence—not in the legislation itself, not in the requests for bids, not in the Florida Department of Transportation policies—suggesting that Section 185 in any way “targets human smugglers” or that the individuals coerced onto the plane in Texas were or had any connection to “human smugglers.”

41. On the same day, Governor DeSantis told reporters that he intends to use “every penny” of the \$12 million Florida budgeted for the “relocation” of immigrants, clarifying that “these are just the beginning efforts” and that they “got an infrastructure in place now” and “there’s going to be a lot more that’s happening.”²⁷ A month later, Governor DeSantis’ staff confirmed that “the immigration relocation program remains active.”²⁸

C. Governor DeSantis has consistently targeted immigrants of Latin American descent

42. Section 185 is only one in a litany of actions Governor DeSantis and his administration have taken to target immigrants. Governor DeSantis has undertaken multiple

²⁶ See Heather Morrison, *Read Florida Gov. Ron DeSantis’ Statement on Immigrants Sent to Martha’s Vineyard*, Mass Live (Sept. 15, 2022), <https://www.masslive.com/news/2022/09/read-florida-gov-ron-desantis-statement-on-immigrants-sent-to-marthas-vineyard.html?outputType=amp>.

²⁷ See e.g., Steve Contorno, *DeSantis Vows Florida Will Transport More Migrants From Border to Other States*, CNN (Sept. 16, 2022), <https://www.cnn.com/2022/09/16/politics/desantis-marthas-vineyard-migrants/index.html>.

²⁸ Associated Press, *DeSantis Continuing Migrant Flights to Delaware, Other Democratic States*, Delaware Online (Oct. 17, 2022), <https://www.delawareonline.com/story/news/nation/2022/10/17/desantis-continuing-migrant-flights-to-delaware-democratic-states/69567961007>.

“sanctuary policy” previously incorporated into SB 168, requires all law enforcement agencies operating county detention facilities to enter into a cooperation agreement with the federal government pursuant to INA § 287(g), and

50. FLIC's staff time and resources have been diverted to responding to questions related to the interpretation and implementation of Section 185, including how to avoid being targeted by Florida's "relocation program."

51. The diversion of resources has resulted in a reduction of time spent on FLIC's core work and programs and has taken time from existing priorities for FLIC's other programs and initiatives, such as TPS advocacy and assistance, naturalization clinics, deferred action for child arrivals, family separation, hurricane preparedness and recovery, mutual aid, basic organizing, and core education programs.

52. FLIC will be forced to continue diverting its resources from its communications, organizing, services, fundraising, and development departments, as well as its other programs, to address issues relating to Section 185. These limitations will hinder FLIC's future ability to respond and provide support to its members and the immigrant communities they serve.

53. Similarly, AI Justice has experienced an increase in telephone calls for legal information and services from clients and potential clients who are concerned about their and/or family members' possible transportation out of Florida by state officials. To address the need for legal information, counsel and advice in response to Section 185, AI Justice has created Know Your Rights content, provided technical assistance to community-based partner organizations and civic leaders, created preparedness plans for clients and prospective clients who are at-risk of harm based upon Section 185's implementation, and invested time and resources distributing legal information to the community concerning Section 185.

54. This work

to secure legal assistance for other reasons—including survivors of crime, human trafficking, and domestic violence—have been unable to make contact with AI Justice staff to request legal services through AI Justice telephone lines. AI Justice’s communications team has been tasked with creating and distributing information to increase community awareness regarding the implementation of Section 185. AI Justice supervisory staff have provided internal guidance to staff regarding the implications of Section 185 to ensure that they are empowered to provide accurate information to AI Justice clients and the community-at-large. Staff at every level of the organization have devoted considerable time and resources responding to questions from social

will continue, to divert more staff time to creating circles of protection for the immigrant community in Apopka by providing information and education regarding their rights and the implications of Section 185. Hope CommUnity Center has spent significant resources researching the manner in which the State of Florida would proceed with transporting persons out of the State of Florida as Defendants continue to implement Section 185.

58. Hope CommUnity Center is also responding to an increase in

country, respectively. DHS's Bureau of Citizenship and Immigration Services ("USCIS") is responsible for the granting of citizenship and immigration benefits.

62. Due to the nature of immigration law and the

65.

CAUSES OF ACTION

COUNT I

**All Plaintiffs Against All Defendants
Section 185 Violates the Supremacy Clause of the U.S. Constitution
42 U.S.C. § 1983
Declaratory and Injunctive Relief**

67. Plaintiffs repeat and reallege all paragraphs and, by reference, incorporate them by reference as though fully set forth herein.

68. The Supremacy Clause of the Constitution of the United States establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the “supreme law of the land.” U.S. Const., Art. VI, cl 2. The Supremacy Clause mandates that federal law preempts state law and policy in any area that is constitutionally reserved to the federal government, over which Congress has impliedly reserved exclusive authority where state law or policy conflicts or interferes with federal law.

69. The federal power to determine immigration policy is well settled and federal governance of immigration and noncitizen status is extensive and complex. 8 U.S.C. § 1101 *et seq.*; *see Arizona v. United States*, 567 U.S. 387, 395–96 (2012).

70. The power to determine who should and should not be admitted into the country has long been recognized as an exclusively federal power. *See Fok Yung Yo v. United States*, 185 U.S. 296, 302 (1902); *Fong Yue Ting v. United States*, 149 U.S. 698, 706–07 (1893). The power to exclude and the related federal power to grant permission to remain “exist as inherently inseparable from the conception of nationality.” *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936). This is so because the federal government “is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties,” which includes the field of immigration. *Hines v. Davidowitz*, 312 U.S. 52, 62–63 (1941).

71. The Constitution grants the federal government the power to “establish a uniform Rule of Naturalization,” U.S. Const. Art. I, § 8, cl. 4, and to “regulate Commerce with foreign Nations, and among the several states,” *id.*, cl. 3. Courts have consistently seen the clear intention of Congress to provide a regulatory scheme of immigration law so pervasive that it occupies the field in this area of law and that Congress did not intend the states to supplement it. Accordingly, efforts such as Defendants’ to supplant federal immigration law with state policy are held unconstitutional.

72. Section 185 impermissibly attempts to implement its own classification and/or characterization of immigration status, by providing an incoherent definition of the term “unauthorized alien.”

73. Section 185 then impermissibly attempts to authorize the Florida Department of Transportation to determine a person’s immigration status based on Section 185’s incoherent definition of “unauthorized alien”— a definition that does not comport with the federal legislative or regulatory scheme, including the INA.

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76. Section 185 constitutes a rewriting of national immigration policy. Here is how

Governor DeSantis explained this section of the budget:

In yesterday's budget, I put in eight million dollars for us to be able to transport people here illegally out of the State of Florida, now we had mentioned, I said, you know, it's somewhat tongue-in-cheek,

COUNT II

**All Plaintiffs Against All Defendants
Section 185 Violates the Equal Protection Clause of the
14th Amendment to the U.S. Constitution
42 U.S.C. § 1983
Declaratory and Injunctive Relief**

81. Plaintiffs repeat and reallege all paragraphs and, by reference, incorporate them by reference as though fully set forth herein.

82. The Fourteenth Amendment to the U.S. Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

83. The implementation of PMA within its jurisdiction 13 Tw (Eq(qua)4(l)- -8(a)-4(l)-6(P)-3(ro)-BDC Tw [(

Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977).

There, the Court articulated a series of non-exhaustive factors that would guide lower courts in “a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Id.* at 266.

86. Those factors include, but are not limited to: (1) “the impact of the official action” and “whether it ‘bears more heavily on one race than another’”; (2) “[t]he historical background of the decision . . . , particularly if it reveals a series of official actions taken for invidious purposes”; (3) the “specific sequence of events leading up to the challenged decision”; (4) “[d]epartures from the normal procedural sequence”; (5) “[s]ubstantive departures . . . , particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached”; and (6) “[t]he legislative or administrative history . . . , especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports.” *Id.*

vacuum. Section 185 must be considered in light of similar and recent discriminatory efforts by the Florida legislature, particularly the passage of SB 168, correctly described by the U.S. District Court for the Southern District of Florida as the product of racial animus, finding two of its provisions unconstitutional because they violate the Equal Protection Clause. *See City of South Miami v. DeSantis*, 561 F. Supp. 3d 1211, 1287 (S.D. Fla. 2021). Learning from their mistakes in passing SB 168, the Florida legislature amended HB 5001 by adding this section to the annual appropriation act at the last second, avo Tc 0. E Florim10(S)--1(e)4(c)4(-2.1(m)n i)-2.1d ihe llt

U.S./Mexico border.³⁵ That patently obvious reality helps explain why a scheme paid for by Florida to “relocate” “unauthorized aliens” ended up targeting and transporting Venezuelans and Peruvians out of Texas who were paroled into the country, many of whom are seeking asylum.

93. Governor DeSantis’ actions and statements leave little doubt that Defendants intend to spend the \$12 million to target and relocate immigrants from Latin America and the Caribbean out of Florida.³⁶ Since the law discriminates on the basis of race and national origin, it must be reviewed under the exacting standard of strict scrutiny, which requires that any state discrimination be necessary to advance a compelling government purpose. *See, e.g., Wygant v. Jackson Bd. Of Educ.*, 476 U.S. 267, 274 (1986).

94. Yet, even if a court were to apply the lesser rational basis standard Section 185 would still fail: immigrants in the United States provide tangible benefits to the communities where they choose to relocate, economic and otherwise. Spending \$615,000 to transport asylum-seekers from Texas to Massachusetts does not further a legitimate interest, it merely perpetuates xenophobia and hate by targeting Latin American and Caribbean migrants. Where the only justifications for a discriminatory law are based in prejudice, the law is unconstitutional even under rational basis review. *See City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985). And where a law is passed merely to “harm a politically unpopular group,” the law does not further a legitimate government interest, and the result is the same. *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *see also Romer v. Evans*, 517 U.S. 620, 632 (1996).

³⁵ *See, e.g., supra* note 30 (discussing

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing facts and arguments, Plaintiffs request that this Honorable Court:

- a. Assume jurisdiction over this matter;
- b. Preliminarily and permanently enjoin Section 185 of HB 5001;
- c. Declare Section 185 of HB 5001, in its entirety, unconstitutional;
- d. Grant Plaintiffs' costs of suit, and reasonable attorneys' fees and other expenses pursuant to 42 U.S.C. § 1988; and
- e. Grant any other relief as the Court may deem just and proper.

Dated: December 1, 2022

Respectfully submitted,

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*Application for admission *Pro Hac Vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2022, the foregoing was electronically filed with the Clerk of the Court with the ECF system, and that the same will be timely served on all Defendants in accordance with the Federal Rules of Civil Procedure.

By: /s/ Paul R. Chavez
Paul R. Chavez
Counsel for Plaintiffs