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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 15 2007

Phil Lombardi, Clerk
U.S. DISTRICT COURT

National Coalition of Latino Clergy, Inc.,
CONLAMIC - OKLAHOMA,
Church Eficaz,
Church Piedra Angular
Mexico Lindo Restaurants,
John Doe One, John Doe Two, John Doe
Three, Jane Doe Four, John Doe Five, John
Doe 6, et al.

Plaintiffs,

CV NO.

v.

Brad Henry, Governor of the State of
Oklahoma and

07 CV - 584 JHP FHM

Drew Edmondson, Attorney General of the
State of Oklahoma

Defendants.

COMPLAINT

For their Complaint against the Honorable Brad Henry, Governor of the State of Oklahoma, and the Honorable Drew Edmondson, Attorney General of the State of Oklahoma, (the "State"), Plaintiffs National Coalition of Latino Clergy, Inc. (CONLAMIC), CONLAMIC- Oklahoma, Church Eficaz, Church Piedra Angular, Mexico Lindo Restaurants, John Doe One, John Doe Two, John Doe Three, Jane Doe Four, et al., allege as follows:

SUMMARY

1. Plaintiffs bring this case to uphold and to prevent violations of the Constitution of the United States, the laws of the United States, and the Constitution of the State of Oklahoma.

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2. On or about May 8, 2007 the Honorable Brad Henry, the Governor of Oklahoma, signed into law HB 1804, a bill passed by the Oklahoma Legislature on or about May 1, 2007 (hereinafter referred to as "HB 1804"). HB 1804 is attached as Exhibit "A".
3. HB 1804 violates the United States and Oklahoma constitutions and federal law. Specifically, HB 1804 violates the Supremacy Clause of the United States Constitution; Plaintiffs' due process rights under the United States and Oklahoma constitutions; equal protection rights under the United States Constitution; rights against self-incrimination under the United States and Oklahoma constitutions; Contracts Clause of the United States and Oklahoma constitutions; separation of powers doctrine of the Oklahoma Constitution; and right to bail under the Oklahoma Constitution; and 42 U.S.C. § 1981.
4. 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 violate Plaintiffs' due process rights under the United States and Oklahoma constitutions; equal protection rights under the United States Constitution; and 42 U.S.C. § 1981.
5. Plaintiffs seek and are entitled to a declaratory judgment and a preliminary and permanent injunction to declare HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 unconstitutional

and illegal and to enjoin the Governor and the Attorney General from enforcing HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff National Coalition of Latino Clergy and Christian Leaders, (CONLAMIC-USA), is a non profit corporation incorporated under the laws of the State of Virginia, with its principal place of business located in Washington, D.C.
7. Plaintiff CONLAMIC Oklahoma, is a branch of CONLAMIC – USA.
8. Plaintiff Church Eficaz is a non-profit, 501(c)(3) tax exempt church, authorized to act as a church under federal law and the laws of Oklahoma.
9. Plaintiff Church Eficaz' primary function is to promote the gospel of Jesus Christ. Before the passage of HB 1804 Church Eficaz had approximately 200 members. Its membership has now dwindled to approximately 100 members, as result of the fear caused by HB 1804's passage they assume that many church members are undocumented.
10. Plaintiff Church Eficaz does not require its members to prove their citizenship, residency or other immigration status as a condition of membership. HB 1804 has created great hostility towards the Latino community in Oklahoma and therefore adversely affects the work Church

Eficaz performs in Oklahoma and for Oklahoma residents.

11. Church Eficaz' membership and constituency (herein, collectively "members") includes individuals – many but not all of whom are Latino – who reside and who are employed in and around Tulsa, some of whom have school-aged children. The membership includes persons who have Spanish as their native tongue with a limited proficiency in English.
12. Church Eficaz intends to continue to provide services to all its church members, including but not limited to transporting them to different locations. Church Eficaz fears they will be subject to numerous felonies if they continue to transport individuals, who happen to be undocumented, after November 1, 2007. Church Eficaz does not plan to alter the services they provide after November 1, 2007.
13. The interests Church Eficaz seeks to protect through this action are germane to its purpose, and neither the claims asserted nor the relief requested herein require the personal participation of Church Eficaz' members.
14. Plaintiff Church Eficaz' pastor, Julian Rodriguez, has ministered to hundreds of church members for over nine years. Since passage of HB 1804, he has visited the jails and found numerous instances of individuals who believed they were stopped by local Oklahoma police because they

appeared “Hispanic” or otherwise “foreign”.

15. Pastor Julian has ministered in the jails for over four months and has never seen as many detained Hispanic immigrants as he has seen after passage of HB 1804. Pastor Julian believes that the local Oklahoma police have been emboldened by the language of HB 1804, especially in light of statements made by the bill’s author, Oklahoma State Rep. Randy Terrill – “It would be just fine with me if we exported all illegal aliens to the surrounding states.” See enclosed Exhibit “B”, September 26, 2007 USA Today newspaper article.
16. Such statement presumes that the State of Oklahoma has the right to “export” (sic) aliens to other states. Not only is it a federal function to deport, or otherwise regulate immigration, but contrary to Rep. Terrill’s wishes, they cannot be deported or “exported” to other surrounding states, only to their country of origin.
17. Plaintiff Church Piedra Angular’ primary function is to promote the gospel of Jesus Christ. Before the passage of HB 1804 Church Piedra Angular had approximately 400 members. It has lost at least 40 members as a result of the fear caused by HB 1804’s passage. Leaders of Plaintiff Church Piedra Angular assume that many church members are undocumented.
18. Plaintiff Church Piedra Angular does not require its members to prove their

citizenship, residency or other immigration status as a condition of membership. HB 1804 has created great hostility towards the Latino community in Oklahoma and therefore adversely affects the work Church Piedra Angular performs in Oklahoma and for Oklahoma residents.

19. Church Piedra Angular's membership and constituency (herein, collectively "members") includes individuals – many but not all of whom are Latino – who reside and who are employed in and around Tulsa, some of whom have school-aged children. The membership includes persons who have Spanish as their native tongue with a limited proficiency in English.
20. Church Piedra Angular intends to continue to provide services to all its church members, including but not limited to transporting them to different locations. Church Piedra Angular fears they will be subject to numerous felonies if they continue to transport individuals, who happen to be undocumented, after November 1, 2007. Church Piedra Angular does not plan to alter the services they provide after November 1, 2007.
21. The interests Church Piedra Angular seeks to protect through this action are germane to its purpose, and neither the claims asserted nor the relief requested herein require the personal participation of Church Piedra Angular' members.

22. Plaintiffs Church Eficaz and Church, Piedra Angular Church are collectively referred to herein as “Plaintiff Churches.”
23. Plaintiff Jose Ramirez is a resident of Oklahoma. Plaintiff is the representative of Plaintiff Mexico Lindo Restaurants there are (5) Mexico Lindo Restaurants in Oklahoma.
24. Plaintiff Mexico Lindo Restaurant opened its business in approximately the year 2000.
25. Plaintiff Mexico Lindo Restaurant has lost significant revenue since the announcement of HB 1804. Plaintiff Ramirez estimates that he has lost approximately 40% of his business as a result of HB 1804. HB 1804 has negatively affected Plaintiff Mexico Lindo Restaurants’ businesses and hundreds of others in Oklahoma. The loss in revenue and profit resulting from the passage of HB 1804 might force Plaintiff Mexico Lindo Restaurants to close their business. Due to the loss of business income, Plaintiffs fear they will be unable to maintain their businesses open.
26. Plaintiff Mexico Lindo Restaurants has hired individuals to work in their business. If Plaintiff does not participate in the “federal status verification system” he will not have access to state contracts according to HB1804. Plaintiff Mexico Lindo Restaurants is aware that federal law does not require a business to participate in the federal status verification system.

Moreover the term “federal status verification system” as adopted by HB 1804, does not clarify which particular voluntary federal program plaintiff is supposed to follow. There are numerous status verification systems much as the basic pilot program, and the social security verification system. There are voluntary and not required by federal law. Imposing this new burden on Plaintiff Mexico Lindo Restaurants’ business is burdensome and due to its vagueness he does not know what it means exactly.

27. If Plaintiff Mexico Lindo Restaurant fires an employee for theft or any other legitimate reason, he will be subject to a claim by the fired employee under § 7 of HB 1804 if one of his employees happens to be undocumented. Plaintiff would be subject to the lawsuit even if they have properly filled out form I-9 of federal forms and later find that one of their employees are undocumented. Plaintiff has fully complied with Federal law in his hiring practices.
28. Plaintiff Mexico Lindo Restaurants, as of November 1, 2007, will continue to follow federal immigration and tax law but will require independent contractors to show proof of lawful status, unless otherwise ordered by this court.
29. Plaintiff Mexico Lindo will hereby be referred to as “Employer Plaintiff”. Unless HB 1804 is permanently enjoined and declared invalid, Plaintiffs

will continue to lose income and/or incur significant monetary fines.

30. Plaintiff John Doe One is a resident of Oklahoma. He has lived in Oklahoma for over 5 years with his wife and two school-age children. He has 2 U.S. Citizen Children. He is originally from Mexico. Plaintiff John Doe One will not sign a document, required by Section 8 of HB 1804, attesting to his lawful status, as this violates his right against self-incrimination.
31. Plaintiff John Doe 2 is a resident of Oklahoma. He has lived in Oklahoma for over 12 years with his wife and one child. He is originally from Mexico.
32. Plaintiff John Doe 2 and his wife are undocumented. They have a 16-year-old child that has been studying in Oklahoma schools since the age of three. She first started in the “Head Start Program” and has been a model student for over 10 years.
33. Plaintiff John Doe 3 and Plaintiff Jane Doe 4 are husband and wife. They are residents of Oklahoma. They have lived in Oklahoma for over five years. They are originally from Mexico.
34. Plaintiff John Doe 3 and his wife Plaintiff Jane Doe 4 are undocumented.
35. Plaintiff John Doe 3 applied for a driver’s license with the State of Oklahoma and the license was denied. Plaintiff was not given any due

process opportunities to contest the denial of his license. Plaintiff John Doe 3 is otherwise qualified to hold an Oklahoma driver's license except for his undocumented status.

36. Plaintiff John Doe 5 is undocumented and has an Oklahoma driver's license. Plaintiff John Doe believes HB 1804 will cause him to lose his driver's license.

37. Plaintiff John Doe 6 is currently incarcerated with criminal and immigration charges and believes he has been denied bail because HB 1804 unlawfully denies bail to foreign nationals who have not been lawfully admitted.

38. Plaintiffs John Does 1,2,3, and 4 reasonably fear that, if HB 1804 is enforced, they will be evicted from their homes as the landlord may not want to rent to them since renting an apartment or house may be considered "harboring" an "undocumented person" and thus subject the landlord to a possible felony.

39. Plaintiffs John Doe 1,2,3,5 and 6, Jane Doe 4, and Portillo are collectively referred to herein as "Individual Plaintiffs."

40. The Individual Plaintiffs, as of November 1, 2007, will not require proof of documentation from those who visit their homes and/or ride in their vehicles. The Individual Plaintiffs are undocumented but otherwise qualify

as Oklahoma residents, to obtain a driver's license.

41. Several plaintiffs are eligible for public benefits under Section 8 of HB 1804.
42. The State of Oklahoma is in possession of information relating to the unlawful status of several plaintiffs, which would otherwise be confidential under state law.
43. The Individual Plaintiffs, plaintiff employers, and plaintiff churches have suffered or will suffer as a result of HB 1804's unconstitutional and otherwise illegal provisions as set out in counts 1 thru 15 infra.
44. Defendant Oklahoma is a State of the United States existing pursuant to law, with its principal place of business and capitol located at 2300 N. Lincoln Boulevard Oklahoma City, OK .
45. At all relevant times Oklahoma acted through it's duly authorized agents. Governor Brad Henry, Attorney General W.A. Drew Edmondson , as well as those charged with applying and enforcing Oklahoma law.
46. At all times alleged herein, Oklahoma officials, employees and agents were acting under color of state law.
47. Defendant Brad Henry is the Governor of the State of Oklahoma (the "Governor"). He is named herein as a Defendant in his capacity as

Governor.

48. Defendant Drew Edmonson is the Attorney General of the State of Oklahoma (the “Attorney General”). He is named herein as a Defendant in his capacity as Attorney General.
49. Each Plaintiff and the members and/or shareholders of each Plaintiff are affected by the actions of the State of Oklahoma in enacting into law HB 1804.
50. Each Plaintiff has standing to sue in this action.
51. The Supremacy Clause, due process, Contracts Clause, right against self-incrimination and equal protection claims of Plaintiffs arise under the Constitution and laws of the United States. As a result, Plaintiffs have a right to sue arising under 42 U.S.C. § 1983.
52. This Court has jurisdiction over the Supremacy Clause, due process, Contracts Clause, right against self-incrimination and equal protection claims of Plaintiffs pursuant to 28 U.S.C. §§ 1331 and 1343 because they arise under the Constitution and laws of the United States.
53. This Court has jurisdiction over the Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.
54. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

55. Pursuant to 28 U.S.C. §§ 2201-2202, the Court may issue a declaratory judgment and further necessary or proper relief.

ALLEGATIONS COMMON TO ALL CLAIMS

56. On or about May 8, 2007, the Honorable Brad Henry, the Governor of Oklahoma, signed into law HB 1804, a bill passed by the Oklahoma Legislature on or about May 1, 2007, 2007.
57. HB 1804 creates a state felony for any person who, "knowingly or in reckless disregard of the fact" of an alien's illegal status, transports, harbors, or conceals any undocumented immigrant.
58. HB 1804 places new responsibilities on certain agencies that issue identification documents. The bill provides that federal, state, and local government agencies, and in some cases public schools or state or private educational institutions, shall only issue identification documents to US citizens, legal permanent residents, or other immigrants with lawful status demonstrated by specified "valid documentary evidence." Furthermore, HB 1804 states that if the Department of Public Safety ("DPS") is notified by a local, state, or a federal government agency indicating reasonable suspicion that an individual is unlawfully present, then DPS may not issue even a renewed, duplicated or reissued driver's license without verifying that individual's legal status by specified "valid documentary evidence."

59. HB 1804 requires that jail authorities determine the immigration status of persons charged with a felony or with driving under the influence. The bill states that “[i]f verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be made within forty-eight (48) hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security”; and in the event that legal status is not verified, the bill states that the officer must report the inmate to the Department of Homeland Security. It further provides that a foreign national who has not been lawfully admitted is presumed to be a flight risk for bond purposes.
60. HB 1804 will require public employers to register with and utilize a Status Verification System to determine the federal employment authorization status of all new employees. It will also extend the requirement to participate in the Status Verification System to entities which contract or subcontract with a public employer for the physical performance of services within the State of Oklahoma. The bill will make it a discriminatory practice for an employer to discharge a United States citizen or permanent resident alien while retaining an unauthorized alien in certain circumstances.

61. HB 1804 will deny federal, state or local public benefits to persons over the age of fourteen who are unable to verify their lawful status.
62. HB 1804 will require that, in certain circumstances, contracting entities withhold a contractor's state income tax at the maximum rate if the contractor fails to verify employment authorization.
63. HB 1804 directs the Attorney General to negotiate, and the Governor and Attorney General to sign, a memorandum of understanding between the State of Oklahoma and the Department of Justice and Department of Homeland Security concerning, among other things, the enforcement of federal immigration laws. The bill prohibits agencies and local authorities from preventing the communication of information regarding an individual's unlawful status to the Department of Homeland Security.
64. HB 1804 will restrict the ability of undocumented aliens to obtain in-state tuition benefits for post-secondary education.
65. HB 1804 in essence creates a new state mechanism to interpret and enforce federal immigration law, which is prohibited by the United States Constitution.
66. Although the law is not to take effect until November 1, 2007, it has already been the subject of countless media reports in both the English and Spanish-speaking press, and has served as a catalyst for increased

enforcement efforts by local and state authorities as well as numerous cases of racial profiling.

67. The law's increasing notoriety in many Hispanic communities has scared families into keeping their children home from school. This particular fear was caused by media coverage of certain legislators' initial attempt unconstitutionally to restrict access to public schools to only those children with US citizenship, lawful permanent residency or other type of legal status. After the ill-informed legislators were made aware that Supreme Court case law clearly protects the rights of all children to attend elementary through high school, regardless of their immigration status, this provision was removed from the final bill. See Plyler v. Doe, 457 U.S. 202 (1982). Nevertheless, the harm had been done, as immigrant parents throughout the state have decided not to send their children to school. (See Statistics)
68. On September 5, 2007, five members of the Oklahoma House of Representatives addressed a letter to the Attorney General requesting his opinion on a number of issues relating to HB 1804 and questioning the constitutionality of HB 1804. The letter is attached as Exhibit "C", and incorporated herein by reference.
69. The city of Hazelton, Pennsylvania's recent attempt to also regulate and

interpret federal immigration law was soundly rebuffed by a federal district court. *See Lozano v. City of Hazleton*, 496 F. Supp. 2d 477 (M.D. Pa. 2007). Although many of the issues in the case at bar are different than those in *Lozano*, and will be subsequently delineated throughout the complaint, the underlying premise applies to both matters, and numerous attempts by municipalities and states throughout the country to create new immigration categories - such attempts are pre-empted by the Supremacy Clause. *See eg. LULAC v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995).

70. *Conflicts with Federal Law's Benefit Eligibility Requirements.* HB 1804 requires state and local agencies to verify the lawful presence of individuals over the age of 14 who apply for federal, state or local public benefits. It requires applicants to verify that they are both a "qualified" alien and "lawfully present" in the U.S. This requirement fails to track federal law, which allows additional groups of immigrants to secure such benefits, and which doesn't utilize age 14 for benefits eligibility verification purposes.
71. *Requires participation in a "Status Verification System," the most likely component of which is the Basic Pilot Program.* Federal law does not require participation in any such program. Federal immigration law expressly regulates the employment and hiring of unauthorized workers and the Basic Pilot program is not required under current federal law. State bills that require the use of the Basic Pilot Program therefore are preempted by federal

law because they attempt to regulate immigration and legislate in a field that has been occupied by the federal government.

72. The bill also creates a new private cause of action against an employer for any U.S. citizen or lawful permanent resident who is discharged and can show that on the same day of the discharge the employer employed an unauthorized worker. This provision would protect an employee who was terminated for cause and would reward him or her for the criminal acts that caused the termination, such as embezzlement, theft, arson or assault on a fellow employee.
73. The new cause of action will cause turmoil. Discharged employees and their lawyers will have the right to confidential employee records to try to prove that an undocumented alien was retained.
74. Former employees terminated for cause will be likely to sue their former employers under the new cause of action for knowingly retaining an unauthorized alien.
75. The new cause of action is likely to lead to discrimination against potential employees who appear to be of foreign national origin.
76. The new cause of action is based upon strict liability and does not require intent, knowledge, recklessness, or even a negligent state of mind.

77. In order to avoid liability under the new cause of action, an employer who does not participate in a Status Verification System must either retain all employees, regardless of their misconduct, or discharge all employees in the event that, despite the employer's best efforts to verify employment authorization, one employee might be an undocumented alien.
78. *Require State Determinations Regarding Compliance with Federal Immigration Law.* The bill makes sheltering or moving an immigrant who may have entered or remained in the U.S. while undocumented a *state* crime. This requires a *state* determination that an individual entered the U.S. in violation of *federal* immigration law. The federal government, not the states, has this power. The state determination could conflict with the way that the federal government interprets immigration law or with other foreign policy considerations. The bill also requires local officials to inquire about the immigration status of persons charged with certain offenses and to verify that they have been lawfully admitted to the United States. To the extent that the state is making the determination regarding lawful status, the provision is problematic. The bill uses the verification or absence of verification of citizenship status in determining whether to issue a bond. A U.S. citizen who lacks documents, and is unlikely to appear in a federal immigration database, for example, would be presumed to be a flight risk.

79. 47 O.S. § 6-103(A)(9) provides that driver licenses may not be issued to undocumented aliens.
80. 47 O.S. § 6-106(B)(10) provides that applicants for a driver license must indicate whether they are prohibited by 47 O.S. § 6-103(A)(9).
81. 47 O.S. § 6-114(A) prohibits the issuance of a replacement license to undocumented aliens.
82. 47 O.S. § 6-115(A) and (D) provide that the an alien's driver license expires at the expiration of his or her documentation, and that a renewed license will only be valid until the expiration of his or her documentation.
83. 47 O.S. § 6-122 provides that undocumented aliens may not renew their driver licenses by mail.
84. Plaintiffs are entitled to injunctive relief. They have a strong likelihood of success on the merits and will suffer irreparable harm if HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are not enjoined and are enforced against plaintiffs, and other individuals, organizations, and employers in Oklahoma, including Plaintiffs.
85. Plaintiffs will suffer irreparable harm as a result of the potential enforcement of HB 1804 and have suffered irreparable harm as a result of the enforcement of 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-

115(A) and (D), and 6-122.

86. Plaintiffs are entitled to recover their costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF SUPREMACY CLAUSE OF U.S. CONSTITUTION AND PRE-EMPTION BY FEDERAL LAW

87. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.
88. Article VI, Section 2 of the U.S. Constitution states, "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."
89. Under the Supremacy Clause of the U.S. Constitution, federal law may expressly or implicitly pre-empt state and local laws.
90. In accordance with its exclusive power over matters of immigration, the U.S. Congress has adopted, pursuant to the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., a comprehensive system of laws, regulations,

and procedures and has created administrative agencies that determine, subject to judicial review, whether and under what conditions an individual may enter, stay in, and work in the U.S. and a system of civil and criminal penalties for those violating the law, including employers who knowingly employ unauthorized aliens.

91. When enacting the Immigration Reform and Control Act, Congress expressly pre-empted state and local laws. The Immigration Reform and Control Act provides, in part, as follows: "[Federal law] pre-empts any state or local law imposing similar criminal sanctions (other than through licensing and similar laws) upon those who employ unauthorized aliens." [8 U.S.C. § 1324a (h) (2)].
92. Title 8, Section 1188(h)(2) explicitly provides that portions of the same title "preempt any State or local law regulating admissibility of nonimmigrant workers."
93. The immigration laws, procedures, and policies created by the federal government regulate immigration and confer rights in a careful balance reflecting the national interest.
94. Congress carefully balanced the requirements and penalties in federal immigration law with consideration of the tension that immigration compliance and sanctions might cause relating to race, national origin, and

citizenship discrimination.

95. The Constitution bars the State from altering or obstructing the federal government's carefully crafted comprehensive immigration regime.
96. HB 1804 threatens the uniformity and primacy of the federal immigration system and conflicts with federal immigration law.
97. HB 1804 stands as an obstacle to the uniform enforcement and application of federal immigration laws and the comprehensive regime created by Congress.
98. Section 3 of HB 1804, which will be codified as 21 O.S. § 446, violates the Supremacy Clause because it is preempted by federal legislation and because it requires persons other than those empowered by federal law and who have no particular knowledge or training in the area to assess the immigration status of other persons.
99. Section 4 of HB 1804, which will amend 21 O.S. § 1550.42, violates the Supremacy Clause because it is preempted by federal legislation and because it requires persons other than those empowered by federal law and who have no particular knowledge or training in the area to assess the immigration status of other persons. Section 4 also purports to regulate federal government agencies in a manner which will interfere with the government's ability to carry out its federal function.

100. Section 5 of HB 1804, which will be codified as 22 O.S. § 171.2, violates the Supremacy Clause because it is preempted by federal legislation and because the detention it may authorize exceeds that authorized by 8 U.S.C. § 1252c.
101. Section 7 of HB 1804, which will be codified as 22 O.S. §1313, violates the Supremacy Clause because it is preempted by federal legislation.
102. The licensing exception to the preemption clause contained in 8 U.S.C. § 1324a(h)(2) was designed and intended to allow state governments to take action against the business license for employers "found to have violated the sanctions provision" of 8 U.S.C. § 1324a—essentially only after the employer had been found by the federal government to have violated the federal law.
103. The licensing exception to the preemption clause in 8 U.S.C. § 1324a(h)(2) does not allow states to pass laws prohibiting the employment of unauthorized aliens, or the ability to define who actually are unauthorized aliens.
104. The federal government has enacted broad, comprehensive immigration laws that govern who is eligible to work in the United States and that govern the process by which employers must verify the eligibility of job applicants.

105. The federal government has occupied the field of immigration regulation through the Immigration and Nationality Act and the Immigration Reform and Control Act of 1986 ("IRCA"), including occupying the field relating to prohibiting the employment of unauthorized workers and verifying the eligibility of job applicants.
106. Federal law governs the documents that employers must accept to make employment decisions regarding whether persons are authorized to work in this country.
107. Federal law prohibits employers from conducting any further investigation or taking any steps other than reviewing the documents that employees have the right, under federal law, to present to an employer
108. Once an employee has satisfied the verification requirements of 8 U.S.C. § 1324a, employers are barred by federal law from seeking additional information.
109. Federal law prohibits employers from making additional inquiries, conducting additional investigations, or taking additional steps to determine an applicant's or employee's eligibility to work in this country other than having examined the original documents that the employee elected to present and, if the employer voluntarily enters into an agreement, to utilize the Basic Pilot Program.

110. The federal government has failed to issue tamper-proof and forgery-proof forms of identification to persons that employers may rely upon to confirm with accuracy and reliability the identity of a person or the person's eligibility to work in the United States.
111. The State of Oklahoma has failed to issue tamper-proof and forgery-proof documents establishing the identity of residents of the State of Oklahoma.
112. Federal immigration law and federal employment discrimination laws prohibit employers from taking action to refuse to hire or discharge employees based upon their citizenship, national origin, race, color or other classifications protected by law.
113. HB 1804 imposes penalties on employers for state regulated immigration enforcement measures beyond and different than what the federal government requires.
114. Subsection C of section 7, which provides that it is a discriminatory practice to discharge a United States citizen or permanent resident alien employee while retaining an unauthorized alien employee under certain circumstances, is preempted by IRCA. It is inconsistent with the uniform enforcement of federal immigration law and Congress has already acted, through IRCA, to occupy the field regarding controlling the employment of aliens.

115. The federal government does not require employers to use the Employment Eligibility Verification System (Basic Pilot Program). It is a strictly voluntary program, except in the few cases where the government requires employers that violated the employment verification laws to use the Basic Pilot Program as part of a settlement with the federal government.
116. The fact that the federal government does not require employers to use the Basic Pilot Program evidences the federal intent that the Basic Pilot Program remain voluntary and that employers are not to be required to use the Basic Pilot Program.
117. The State of Oklahoma does not have the authority to require employers that do business with the State of Oklahoma to use the Basic Pilot Program, which is the component of the “Status Verification System” most likely to be used, and its attempt to do so is preempted by federal law.
118. HB 1804 will place burdens on the Executive Branch of the federal government including the Department of Justice, Department of Homeland Security, and Social Security Administration, that will impede the functions of those agencies.
119. By requiring that every employer use a “Status Verification System” which is most likely to involve the Basic Pilot Program, HB 1804 places an impermissible burden on the Executive Branch of the federal government,

including the Social Security Administration and the Department of Homeland Security, who currently do not have the resources to successfully absorb hundreds of Oklahoma users into the Basic Pilot Program, which currently has approximately 17,000 companies enrolled and only half that many that actively use the program.

120. Section 7 also violates the Supremacy Clause because it is preempted by the Civil Rights Act of 1964. The strict liability Section 7 seeks to impose upon employers is inconsistent with the purposes and provisions of the Civil Rights Act of 1964, which does not impose strict liability for employment discrimination.

121. Section 8 of HB 1804, which will be codified as 56 O.S. § 71, violates the Supremacy Clause because it is preempted by federal legislation and because it purports to regulate the provision of federal public benefits in a manner which will interfere with the government's ability to carry out its federal function. By creating an exception for certain programs "in the sole and unreviewable discretion of the United States Attorney General after consultation with [certain] appropriate federal agencies and departments[,]" Section 8 also purports to regulate discretionary acts of the Attorney General in such a way as to interfere with the government's ability to carry out its federal function.

122. Section 9 of HB 1804, which will be codified as 68 O.S. § 2385.32, violates the Supremacy Clause because it is preempted by federal legislation; specifically, it penalizes contracting entities who have hired independent contractors which have failed to provide “documentation” of “employment authorization,” while 8 U.S.C. § 1324a(a)(1) and (4) make it illegal only to knowingly hire an unauthorized worker through contract, but do not require contracting entities to seek any documentation.
123. The bill requires employers to withhold income tax at the top marginal income tax rate from the compensation of an independent contractor if the contractor fails to provide “documentation to verify the independent contractor’s employment authorization” Employers who fail to do so are subject to a penalty equal to the amount they should have withheld under this bill, unless the employer is exempt from withholding by the Internal Revenue Service (IRS) pursuant to IRS Form 8233.
124. For purposes of federal tax compliance, the IRS distinguishes between “resident aliens” and “nonresident aliens,” which is based on whether the individual meets either the “green card test” or “substantial presence test”. Form 8233 only applies to nonresident aliens and is, therefore, most likely inapplicable here.

125. The SSA has estimated that 17.8 million of its records contain discrepancies related to name, date of birth, or citizenship status. The bill's provision is likely to cause confusion among employers where the state is requiring it to do something that conflicts with the IRS guidance.
126. Section 10 of HB 1804, which will be codified as 74 O.S. § 20j, violates the Supremacy Clause because it is preempted by federal legislation, and because, by directing the United States Department of Justice and Department of Homeland Security to negotiate and sign a "Memorandum of Understanding" with the State of Oklahoma, it also purports to regulate the discretionary acts officers of the United States Department of Justice and Department of Homeland Security in such a way as to interfere with the government's ability to carry out its federal function.
127. Section 11 of HB 1804, which will be codified as 70 O.S. § 3242.2, and section 13, which will amend 70 O.S. § 3242, violate the Supremacy Clause because they are preempted by federal legislation, and because they require persons other than those empowered by federal law and who have no particular knowledge or training in the area to assess the immigration status of other persons.
128. Plaintiffs are entitled to a declaratory judgment that HB 1804 is unconstitutional because it is preempted by federal law.

129. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804.

SECOND CLAIM FOR RELIEF

VIOLATION OF DUE PROCESS UNDER THE U.S. CONSTITUTION DUE TO VAGUENESS AND OVERBREADTH

130. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

131. HB 1804 is void for vagueness because persons of common intelligence must necessarily guess at its meaning and differ as to its application.

132. HB 1804 is void for overbreadth because it reaches a substantial amount of constitutionally protected conduct.

133. Association, religious exercise, travel, education of one's children as one chooses, contract, pursuit of livelihood, working for a living and enjoyment of property are constitutionally protected conduct.

134. Section 3 of HB 1804, which will be codified as 21 O.S. § 446, is unconstitutionally vague because it fails to specify the precise conduct that constitutes transporting, moving or attempting to transport an undocumented alien "in furtherance of the illegal presence of the alien in

the United States.

135. Section 3 is also unconstitutionally vague because it fails to specify the precise conduct that constitutes concealing, harboring or sheltering an undocumented alien from detection.
136. The state-of-mind elements of knowledge or reckless disregard contained in Section 3 apply only to a defendant's state of mind with regard to the unlawful presence of an alien; these elements do not apply with regard to the acts of transporting, moving or attempting to transport, or to the acts of concealing, harboring, or sheltering from detection.
137. Section 3 is unconstitutionally vague because it fails to specify what documentation or proof on the part of the alien would suffice to prevent a person transporting, moving, attempting to transport, concealing, harboring, or sheltering the alien from doing these activities with knowledge or reckless disregard for the alien's unlawful presence.
138. Section 3 could be construed to forbid activities including but not limited to permitting a person to ride in one's vehicle or enter onto one's property as a house guest, religious worshiper or tenant, unless one knows that the person is lawfully present in the United States. This section of HB 1804 is thus unconstitutionally overbroad because it reaches a substantial amount of constitutionally protected conduct including but not limited to association,

religious exercise, travel, education of one's children as one chooses, contract, pursuit of livelihood, working for a living and enjoyment of property.

139. Section 5 of HB 1804, which will be codified as 22 O.S. § 171.2, is unconstitutionally vague because it fails to specify what documents or proof are needed in order to “determine the citizenship status” or “lawful immigration status” of a prisoner or “verify that the prisoner has been lawfully admitted to the United States”

140. Section 5 is also unconstitutionally vague because it fails to specify whether, in the event that “verification of lawful status cannot be made from documents in the possession of the prisoner,” the prisoner must remain incarcerated for the specified 48 hours within which verification must be made.

141. The vague and overbroad language of HB 1804 violates the due process rights of Plaintiffs.

142. Plaintiffs are entitled to a declaratory judgment that HB 1804 is unconstitutional because it violates the due process clause of the U.S. Constitution on account of vagueness and overbreadth.

143. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or

implement HB 1804.

THIRD CLAIM FOR RELIEF

VIOLATION OF DUE PROCESS UNDER THE OKLAHOMA CONSTITUTION DUE TO VAGUENESS AND OVERBREADTH

144. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

145. For the reasons discussed in Plaintiffs' cause of action for violation of due process under the U.S. Constitution due to vagueness, HB 1804 is unconstitutionally vague and overbroad.

146. Plaintiffs are entitled to a declaratory judgment that HB 1804 is unconstitutional because it violates Article 2, Section 7 of the Oklahoma Constitution on account of vagueness and overbreadth.

147. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804.

FOURTH CLAIM FOR RELIEF

VIOLATION OF SUBSTANTIVE DUE PROCESS UNDER THE U.S. CONSTITUTION

148. Plaintiffs hereby incorporate by this reference all allegations of the

preceding paragraphs of this Complaint, as if fully set forth herein.

149. Under the Fourteenth Amendment to the U.S. Constitution, state and local governments are prohibited from arbitrarily and capriciously depriving a person of a fundamental right guaranteed by the U.S. Constitution.

150. Corporations, including Plaintiffs _ and their members and/or shareholders, are persons entitled to fundamental rights under the Fourteenth Amendment.

151. Undocumented aliens, including Plaintiffs, are persons entitled to fundamental rights under the Fourteenth Amendment.

152. Plaintiffs have fundamental rights to associate with whomever Plaintiffs choose, to travel, to contract, to pursue a livelihood, to work for a living, to liberty, to life, to property and to privacy.

153. Section 3 of HB 1804, which will be codified as 21 O.S. § 446, infringes on Plaintiffs' fundamental right to associate with whomever Plaintiffs choose to associate because it in effect prohibits people from permitting the presence of undocumented aliens in their vehicles or on their property.

154. Section 3 infringes on Plaintiffs' fundamental right to travel because it prohibits people from transporting, moving or attempting to transport undocumented aliens, or from concealing, harboring or sheltering them on

“any . . . means of transportation” This provision will have a chilling effect on the willingness of individuals and common carriers to transport undocumented aliens, and will thus in effect drastically restrict the freedom of undocumented aliens to travel.

155. Section 3 infringes on Plaintiffs’ fundamental right to contract because it will have a chilling effect on the ability of undocumented aliens to rent or lease property and to purchase tickets on common carriers.

156. Section 4 of HB 1804, which will amend 21 O.S. § 1550.42, infringes on Plaintiffs’ fundamental right to travel because it will prevent undocumented aliens from obtaining driver licenses and therefore from driving motor vehicles without fear of prosecution.

157. Section 4 is not reasonably related to any legitimate state objective because it is likely to encourage undocumented aliens to drive without licenses. The provision will therefore contribute to reckless driving, driving under the influence and disregard of the rules of traffic, because penalties like suspension and revocation of driver licenses will no longer have any conceivable effect on undocumented aliens who will no longer be able to obtain driver licenses in the first place. The bill will thus increase the “lawlessness” decried its section 2.

158. Section 5 of HB 1804, which will be codified as 22 O.S. § 171.2, infringes

on Plaintiffs' fundamental right to liberty because it could be interpreted to mandate incarceration of a person for up to 48 hours simply because he or she is unable to verify "lawful status."

159. Section 7 of HB 1804, which will be codified as 25 O.S. § 1313, infringes on Plaintiffs' fundamental rights to property, to contract, to pursue a livelihood and to work for a living.

160. Section 8 of HB 1804, which will be codified as 56 O.S. § 71 infringes on Plaintiffs' fundamental right to life because it drastically impedes the access of undocumented aliens to health care. While it permits the receipt of public benefits for "emergency medical condition[s]," it creates an exception for organ transplants. Often people in need of health care do not know whether their medical condition is an "emergency" or not; the requirement that an alien sign an affidavit under penalty of perjury in order to obtain public benefits for health care will present many undocumented aliens with the catch-22 of forgoing the public benefits necessary to obtain medical care for possible emergency conditions, or facing prosecution for making out a false affidavit. The provision denies public benefits which would enable aliens to receive life-saving organ transplants. The requirement that applicants for public benefits verify their presence may prevent undocumented aliens from even seeking medical care for possible emergency conditions.

161. Section 9 of HB 1804, which will be codified as 68 O.S. § 2385.32, infringes on Plaintiffs' fundamental right to contract, to pursue a livelihood, to work for a living, and to property.
162. Section 10 of HB 1804, which will be codified as 74 O.S. § 20j, infringes on Plaintiffs' fundamental right to privacy because it prevents any restriction on, and effectively mandates, the disclosure of information regarding citizenship and immigration status, and contains no exception for personal information including medical and financial information.
163. 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 infringe on Plaintiffs' fundamental right to travel.
164. Because HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 limit fundamental rights guaranteed by the United States Constitution, they can only be justified by a compelling state interest.
165. There is no compelling state interest for restricting Plaintiffs' fundamental rights by enacting HB 1804 or 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.
166. Neither HB 1804 nor 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are narrowly tailored to achieve any compelling state interest.

167. Neither HB 1804 nor 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are the least restrictive method available to achieve any compelling state interest.

168. Plaintiffs are entitled to a declaratory judgment that HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are unconstitutional because they violate the substantive due process guarantees of the Fourteenth Amendment to the U.S. Constitution.

169. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.

FIFTH CLAIM FOR RELIEF

VIOLATION OF SUBSTANTIVE DUE PROCESS GUARANTEES OF THE OKLAHOMA CONSTITUTION

170. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

171. For the reasons discussed in Plaintiffs' cause of action for violation of substantive due process guarantees of the U.S. Constitution, HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 violate the substantive due process guarantees of Article 2, Section 7 of

the Oklahoma Constitution.

172. Plaintiffs are entitled to a declaratory judgment that HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are unconstitutional because they violate the substantive due process guarantees of Article 2, Section 7 of the Oklahoma Constitution.

173. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.

SIXTH CLAIM FOR RELIEF
VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES UNDER
THE U.S. CONSTITUTION

174. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

175. Under the 14th Amendment to the U.S. Constitution, state and local governments are prohibited from depriving any person of property without due process of law.

176. Corporations, including certain Plaintiffs, and their members and/or shareholders, are persons entitled to due process.

177. Due process of law requires, at a minimum, that before any person, whether an individual, corporation or other business entity may be deprived of a license or permit, the State must provide:

- (a) Notice and a reasonable definite statement of the charges or matters at issue.
- (b) Notice of the time and place of a hearing.
- (c) The right to produce witnesses at a hearing.
- (d) The right to examine witnesses at a hearing.
- (e) The right to a full consideration and determination of the issues based on the evidence.

178. Identification documents are property interests that are subject to the due process protections of the 14th Amendment to the U.S. Constitution.

179. The Governor, the Attorney General, the State of Oklahoma and its political subdivisions and other public officials are prohibited by the 14th Amendment from suspending or revoking driver's licenses or permits to conduct business with the State unless the State or its political subdivisions provide the holder of the license or permit due process of law.

180. Section 4 of HB 1804, which will amend 21 O.S. § 1550.42, violates

Plaintiffs' procedural due process because it may prevent them from obtaining, renewing, duplicating or having reissued identification documents to which they may be entitled, without the requirements of due process including but not limited to notice and opportunity to be heard.

181. Section 8 of HB 1804, which will be codified as 56 O.S. § 71, violates Plaintiffs' procedural due process rights because it may prevent a them from obtaining or continuing to obtain public benefits to which they may be entitled, without the requirements of due process including but not limited to notice and opportunity to be heard.

182. Section 9 of HB 1804, which will be codified as 68 O.S. § 2385.32, violates Plaintiffs' procedural due process rights because it permits the state to retain Plaintiffs' income without the requirements of due process including but not limited to notice and opportunity to be heard.

183. Section 11 of HB 1804, which will be codified as 70 O.S. § 3242.2, and Section 13, which will amend 70 O.S. § 3242, violate Plaintiffs' procedural due process rights because they permit the state to deny Plaintiffs' property rights, including but not limited to scholarships and resident tuition, without the requirements of due process including but not limited to notice and opportunity to be heard.

184. 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-

122 violate Plaintiffs' procedural due process rights because they permit the state to deny the issuance, replacement or renewal of driver licenses to which Plaintiffs [name] would otherwise be entitled.

185. HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 do not provide Plaintiffs with due process before the State may deprive them of property interests.

186. The procedures established under HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 do not satisfy the due process requirements of the United States Constitution

187. Plaintiffs are entitled to a declaratory judgment that HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are unconstitutional because they violate procedural due process guarantees of the U.S. Constitution.

188. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.

SEVENTH CLAIM FOR RELIEF
VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES OF
OKLAHOMA CONSTITUTION

189. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

190. For the reasons discussed in Plaintiffs' cause of action for violation of procedural due process guarantees of the U.S. Constitution, the procedures established under HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 do not satisfy the due process requirements of the Oklahoma Constitution

191. Plaintiffs are entitled to a declaratory judgment that HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are unconstitutional because they violate the procedural due process guarantees of the Oklahoma Constitution.

192. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.

EIGHTH CLAIM FOR RELIEF
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE U.S.
CONSTITUTION

193. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

194. Plaintiffs are persons within the jurisdiction of the State of Oklahoma.

195. HB 1804 creates a classification based on alienage.

196. HB 1804 has already spawned discrimination by state actors and private individuals against individuals of foreign national origin.

197. This discrimination reflects, and raises a presumption of, intent to discriminate against persons of foreign national origin.

198. Section 3 of HB 1804, which will be codified as 21 O.S. § 446, creates a classification based on undocumented alienage.

199. Section 3 infringes on the constitutionally protected rights of undocumented aliens to associate with whomever they wish, to travel and to contract.

200. Section 4 of HB 1804, which will amend 21 O.S. § 1550.42, creates a classification based on undocumented alienage.

201. Section 4 infringes on the constitutionally protected rights of undocumented

aliens to travel.

202. Section 5 of HB 1804, which will be codified as 22 O.S. § 171.2, creates a classification based on alienage, whether or not an alien is documented.

203. Section 5 infringes on the constitutionally protected rights of aliens to liberty.

204. Section 7 of HB 1804, which will be codified as 25 O.S. § 1313, creates a classification based on undocumented alienage.

205. Section 7 also creates a classification based on immigration status. 25 O.S. § 1313(C)(1) will make it a discriminatory practice for an employer in certain circumstances to discharge a U.S. citizen or permanent resident alien employee while retaining an undocumented alien employee, but does not make it a discriminatory practice to discharge an immigrant or non-immigrant who is authorized to work in the United States while retaining an undocumented alien employee. Federal immigration law authorizes many immigrants and non-immigrants to work in the United States.

206. Section 7 of HB 1804 infringes on the constitutionally protected rights of undocumented aliens to contract, to pursue a livelihood and to work for a living.

207. Section 8 of HB 1804, which will be codified as 56 O.S. § 71, creates a

classification based on undocumented alienage.

208. Section 8 infringes on the constitutionally protected rights of undocumented aliens to life.
209. Section 8 covers persons fourteen years old and up, some of whom are therefore minor children, who are not accountable for their status as undocumented aliens.
210. Section 9 of HB 1804, which will be codified as 68 O.S. § 2385.32, creates a classification based on undocumented alienage.
211. Section 9 infringes on the constitutionally protected rights of undocumented aliens to contract, to pursue a livelihood, to work for a living, and to property.
212. Section 10 of HB 1804, which will be codified as 74 O.S. § 20j, creates a classification based on undocumented alienage.
213. Section 10 infringes on the constitutionally protected right of undocumented aliens to privacy.
214. Section 11 of HB 1804, which will be codified as 70 O.S. § 3242.2, and section 11, which will amend 70 O.S. § 3242, create a classification based on undocumented alienage.

215. 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 infringes on the constitutionally protected rights of Plaintiffs to travel.
216. 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 creates a classification based on undocumented alienage.
217. Some students pursuing postsecondary education are minor children, who are not accountable for their status as undocumented aliens.
218. The inability to obtain postsecondary education will compromise the social, economic, intellectual and psychological well-being of the undocumented aliens subject to HB 1804, and will present an unreasonable obstacle to their advancement on the basis of individual merit.
219. The classifications created by HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are not necessary to serve a compelling state interest.
220. Neither HB 1804 nor 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are narrowly tailored to achieve any compelling state interest.
221. Neither HB 1804 nor 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are the least restrictive method available to achieve any compelling state interest.

222. The classifications created by HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are not substantially related to any important government interest.
223. The classifications created by HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 do not rationally further any legitimate state interest.
224. Particularly irrational are provisions which deny public benefits including but not limited to scholarships and resident tuition to undocumented aliens who pay the same taxes as other residents of the State of Oklahoma.
225. There is no evidence that undocumented aliens impose any significant burdens on the economy of Oklahoma
226. Plaintiffs are entitled to a declaratory judgment that HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are unconstitutional because they violate the Equal Protection Clause of the U.S. Constitution.
227. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.

NINTH CLAIM FOR RELIEF

VIOLATION OF THE RIGHT AGAINST SELF-INCRIMINATION CONTAINED IN THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION

228. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

229. The Fifth Amendment of the United States Constitution provides that “No person . . . shall be compelled in any criminal case to be a witness against himself”

230. Section 8 of HB 1804, which will be codified as 56 O.S. § 71, requires that applicants for public benefits execute an affidavit under penalty of perjury attesting to their lawful status.

231. Although section 8 provides an exception to the requirement for verification of lawful presence in the event of a medical emergency, it is often difficult to determine whether or not a medical condition is an emergency.

232. Section 8 excludes organ transplant procedures from the category of medical emergency.

233. Section 8 impliedly leaves the determination of whether a medical condition is an emergency to the agency or person administering the public benefit.

234. Section 8 may will thus in certain circumstances place undocumented aliens

in the catch-22 of either abstaining from public benefits to obtain life-saving medical treatment, or committing a crime.

235. Section 8 thus coerces undocumented aliens to commit a crime.

236. Section 8 violates the Fifth Amendment prohibition against self-incrimination, as applied to the states through the Fourteenth Amendment.

237. Section 10 of HB 1804, which will be codified as 74 O.S. § 20j, prohibits state and local government actors from preventing the disclosure of information relating to immigration status.

238. Oklahoma tax law requires that individuals disclose a social security number and/or other information which could reveal the individual's status as an undocumented alien.

239. Oklahoma tax law makes the records and files of the Oklahoma Tax Commission confidential, and prohibits their disclosure.

240. Section 10 contains no exception for the confidentiality of tax records.

241. Section 10 thus requires that undocumented aliens provide information which could subject them to criminal prosecution.

242. Plaintiffs are entitled to a declaratory judgment that HB 1804 is unconstitutional because it violates the right against self-incrimination

contained in the U.S. Constitution.

243. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804.

TENTH CLAIM FOR RELIEF

VIOLATION OF THE RIGHT AGAINST SELF-INCRIMINATION CONTAINED IN THE OKLAHOMA CONSTITUTION

244. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

245. Article 2, section 21 of the Oklahoma Constitution provides, “[n]o person shall be compelled to give evidence which will tend to incriminate him, except as in this Constitution specifically provided”

246. For the reasons discussed in the preceding cause of action, HB 1804 is likely to force people to incriminate themselves.

247. Plaintiffs are entitled to a declaratory judgment that HB 1804 is unconstitutional because it violates the right against self-incrimination contained in the Oklahoma Constitution.

248. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or

implement HB 1804.

ELEVENTH CLAIM FOR RELIEF
VIOLATION OF THE SEPARATION OF POWERS DOCTRINE OF THE
OKLAHOMA CONSTITUTION

249. 202. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

250. The Constitution of Oklahoma divides the State Government of Oklahoma into three branches, the executive, legislative and judicial. Article III of the Constitution states as follows:

251. The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others. Okla. Const. Art. 4, § 1.

252. The Oklahoma Constitution prohibits each branch of government from exercising the powers that are given by the Constitution to a separate branch of government.

253. The Constitution of Oklahoma prohibits the Legislative Branch of

government from exercising executive powers that properly belong to the Executive Branch of government.

254. The Legislative Branch has the power to write and pass laws. The Executive Branch has the sole power to carry out the provisions of the law.

255. Section 10 of HB 1804, which will be codified as 74 O.S. § 20j, violates the separation of powers because it requires the Executive Branch to negotiate and sign a “Memorandum of Understanding” with the United States Department of Justice and Department of Homeland Security. Such action is properly and solely within the discretion of the Executive Branch.

256. Section 10 mandates that the Executive Branch take the above action regardless of the resources, other duties, professional judgment and other priorities or factors that the Executive Branch would otherwise consider in discharging its duties under HB 1804 and under all other laws for which it has the responsibility to take action.

257. Plaintiffs are entitled to a declaratory judgment that HB 1804 is unconstitutional because it violates the separation of powers of the Oklahoma Constitution.

258. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804.

TWELFTH CLAIM FOR RELIEF
VIOLATION OF THE RIGHT TO BAIL UNDER THE OKLAHOMA
CONSTITUTION

259. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

260. Article 2, section 8 of the Oklahoma Constitution provides in relevant part that “All persons shall be bailable by sufficient sureties, except that bail may be denied for:

1. capital offenses when the proof of guilt is evident, or the presumption thereof is great;
2. violent offenses;
3. offenses where the maximum sentence may be life imprisonment or life imprisonment without parole;
4. felony offenses where the person charged with the offense has been convicted of two or more felony offenses arising out of different transactions; and
5. controlled dangerous substances offenses where the maximum sentence may be at least ten (10) years imprisonment.”

261. Section 5 of HB 1804, which will be codified as 22 O.S. § 171.2, states at subsection (C) that “[f]or purpose of determining the grant of or issuance of

bond, it shall be a rebuttable presumption that a person whose citizenship status has been verified pursuant to subsection B of this section to be a foreign national who has not been lawfully admitted to the United States is at risk of flight.” Because the language of the bill references “the grant or issuance of bond” not the amount of bond, the legislature clearly intended to deny bail to undocumented aliens.

262. Status as an undocumented alien is not among the enumerated grounds for which the Oklahoma Constitution permits denial of bail.
263. Section 5 of HB 1804 violates the right to bail under the Oklahoma Constitution.
264. Plaintiffs are entitled to a declaratory judgment that HB 1804 is unconstitutional because it violates the right to bail under the Oklahoma Constitution.
265. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804.

THIRTEENTH CLAIM FOR RELIEF

VIOLATION OF 42 U.S.C. § 1981

266. Plaintiffs hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint, as if fully set forth herein.

267. Pursuant to 42 U.S.C. § 1981, “All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

268. Section 1981 prohibits discrimination under color of law on account of alienage and race.

269. The provisions of section 1981 apply to aliens, including undocumented aliens, as well as to United States citizens.

270. HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 involve intent to discriminate on the basis of alienage.

271. Section 3 of HB 1804, which will be codified as 21 O.S. § 446, will interfere with Plaintiffs’ ability to make and enforce contracts with landlords and

common carriers.

272. Section 4 of HB 1804, which will amend 21 O.S. § 1550.42, will discriminate against Plaintiffs with regard to licenses, and deny them the full and equal benefit of laws..

273. Section 5 of HB 1804, which will be codified as 22 O.S. § 171.2, will subject undocumented aliens to disproportionate punishments and penalties, insofar as it may mandate additional incarceration up to 48 hours of a prisoner unable to verify his or her lawful status.

274. Section 7 of HB 1804, which will be codified as 25 O.S. § 1313, violates section 1981 because it will make it a discriminatory practice for an employer in certain circumstances to discharge a U.S. citizen or permanent resident alien employee while retaining an undocumented alien employee, but does not make it a discriminatory practice to discharge an immigrant or non-immigrant who is authorized to work in the United States while retaining an undocumented alien employee. Federal immigration law authorizes many immigrants and non-immigrants to work in the United States.

275. Section 10 of HB 1804, which will be codified as 74 O.S. § 20j, will discriminate against Plaintiff with respect to the maintenance of confidential information.

276. 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 discriminate against Plaintiffs with regard to licenses, and deprive them of the full and equal benefit of laws.
277. The discrimination will interfere with Plaintiffs' right to make and enforce contracts, to the full and equal benefit of all laws and proceedings for the security of persons and property; and will subject them to discriminatory punishment, pains, penalties, taxes, licenses, and exactions.
278. Plaintiffs are entitled to a declaratory judgment that HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are unlawful because they violates 42 U.S.C. § 1981.
279. Plaintiffs are entitled to a preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand judgment awarding the following:

- A. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that HB 1804 is unconstitutional because it violates the Supremacy Clause

of the United States Constitution; Plaintiffs' due process rights under the United States and Oklahoma constitutions; equal protection rights under the United States Constitution; rights against self-incrimination under the United States; Contracts Clause of the United States and Oklahoma constitutions; separation of powers doctrine of the Oklahoma Constitution; and right to bail under the Oklahoma Constitution.

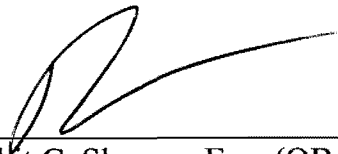
- B. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are unconstitutional because they violate Plaintiffs' due process rights under the United States and Oklahoma constitutions, and equal protection rights under the United States Constitution.
- C. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that HB 1804 is unlawful pursuant to 42 U.S.C. § 1981.
- D. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122 are unlawful pursuant to 42 U.S.C. § 1981.
- E. A preliminary and permanent injunction to enjoin the Governor and Attorney General from taking actions to enforce or implement HB 1804 and 47 O.S. §§ 6-103(A)(9), 6-106(B)(10), 6-114(A), 6-115(A) and (D), and 6-122.

F. An award of attorney fees plus costs and interest pursuant to 42 U.S.C. § 1988.

G. Such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 15th day of October, 2007.

Counsel for Plaintiffs,



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EXHIBIT A

STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

HOUSE BILL 1804

By: Terrill

AS INTRODUCED

An Act relating to illegal immigration; creating the Oklahoma Taxpayer and Citizen Protection Act of 2007; stating legislative purpose; making certain acts unlawful; providing penalties; amending 21 O.S. 2001, Section 1550.42, which relates to identification documentation; requiring issuance of identification documents to certain persons; providing exceptions; stating period of validity; providing for renewal under certain circumstances; providing presumption of validity for renewal, duplication or reissuance of driver license; requiring determination of citizenship status for persons charged with certain crime; requiring verification of persons determined to be a foreign national; providing time limitation for verification; requiring notification to certain entities; deeming certain persons to be a flight risk; requiring certain entity to prepare and issue certain guidelines and procedures; defining terms; requiring participation in certain pilot program; prohibiting certain persons from entering into contracts; providing an exception; providing for cause of action under certain circumstances; requiring certain agency to promulgate certain rules and regulations; requiring agencies and political subdivisions to verify lawful presence of persons applying for certain benefits; providing for nondiscriminatory treatment; excluding verification under certain circumstances; requiring execution of affidavit; requiring certain applicant to receive benefits through the Systematic Alien Verification of Entitlement Program; making certain actions subject to certain criminal penalties; authorizing adoption of variations to stated requirements; requiring certain entities to submit an annual compliance report; requiring Secretary of State to monitor

1 certain program; requiring publication of annual
2 report and certain recommendations; requiring the
3 withholding of percentage of state income tax under
4 certain circumstances; providing for tax liability
5 for noncompliance; providing an exception; directing
6 Attorney General to negotiate terms of certain
7 memorandum; requiring certain signatures; prohibiting
8 certain actions by government entities; authorizing
9 private right of action under certain circumstances;
10 providing for noncodification; providing for
11 codification; and providing an effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma
Taxpayer and Citizen Protection Act of 2007".

SECTION 2. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

The State of Oklahoma finds that illegal immigration is causing
economic hardship and lawlessness in this state and that illegal
immigration is encouraged by public agencies within this state that
provide public benefits without verifying immigration status. The
State of Oklahoma further finds that illegal immigrants have been
harbored and sheltered in this state and encouraged to reside in
this state through the issuance of identification cards that are
issued without verifying immigration status, and that these
practices impede and obstruct the enforcement of federal immigration

1 law, undermine the security of our borders, and impermissibly
2 restrict the privileges and immunities of the citizens of Oklahoma.
3 Therefore, the people of the State of Oklahoma declare that it is a
4 compelling public interest of this state to discourage illegal
5 immigration by requiring all agencies within this state to fully
6 cooperate with federal immigration authorities in the enforcement of
7 federal immigration laws. The State of Oklahoma also finds that
8 other measures are necessary to ensure the integrity of various
9 governmental programs and services.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 446 of Title 21, unless there is
12 created a duplication in numbering, reads as follows:

13 A. It shall be unlawful for any person to transport, move, or
14 attempt to transport within the United States any alien knowing or
15 in reckless disregard of the fact that the alien has come to,
16 entered, or remained in the United States in violation of law, in
17 furtherance of the illegal presence of the alien in the United
18 States.

19 B. It shall be unlawful for any person to conceal, harbor, or
20 shelter from detection any alien in any place, including any
21 building or means of transportation, knowing or in reckless
22 disregard of the fact that the alien has come to, entered, or
23 remained in the United States in violation of law.
24

1 C. Any person violating the provisions of subsections A or B of
2 this section shall, upon conviction, be guilty of a felony
3 punishable by imprisonment in the custody of the Department of
4 Corrections for not less than one (1) year, or by a fine of not less
5 than One Thousand Dollars (\$1,000.00), or by both such fine and
6 imprisonment.

7 SECTION 4. AMENDATORY 21 O.S. 2001, Section 1550.42, is
8 amended to read as follows:

9 Section 1550.42 A. The following entities may create, publish
10 or otherwise manufacture an identification document, identification
11 card, or identification certificate and may possess an engraved
12 plate or other such devise for the printing of such identification;
13 provided, the name of the issuing entity shall be clearly printed
14 upon the face of the identification:

15 1. Businesses, companies, corporations, service organizations
16 and federal, state and local governmental agencies for employee
17 identification which is designed to identify the bearer as an
18 employee;

19 2. Businesses, companies, corporations and service
20 organizations for customer identification which is designed to
21 identify the bearer as a customer or member;

22 3. Federal, state and local government agencies for purposes
23 authorized or required by law or any legitimate purpose consistent
24 with the duties of such an agency, including but not limited to,

1 voter identification cards, ~~driver's~~ driver licenses, ~~nondriver's~~
2 nondriver identification cards, passports, birth certificates and
3 social security cards;

4 4. Any public school or state or private educational
5 institution, as defined by Sections 1-106, 21-101 or 3102 of Title
6 70 of the Oklahoma Statutes, to identify the bearer as an
7 administrator, faculty member, student or employee;

8 5. Any professional organization or labor union to identify the
9 bearer as a member of the professional organization or labor union;
10 and

11 6. Businesses, companies or corporations which manufacture
12 medical-alert identification for the wearer thereof.

13 B. All identification documents as provided for in paragraph 3
14 or 4 of subsection A of this section shall be issued only to United
15 States citizens, legal permanent resident aliens, or holders of
16 valid unexpired nonimmigrant visas.

17 C. The provisions of subsection B of this section shall not
18 apply when an applicant presents, in person, valid documentary
19 evidence of:

20 1. A valid, unexpired immigrant or nonimmigrant visa status for
21 admission into the United States;

22 2. A pending or approved application for asylum in the United
23 States;

24 3. Admission into the United States in refugee status;

1 4. A pending or approved application for temporary protected
2 status in the United States;

3 5. Approved deferred action status; or

4 6. A pending application for adjustment of status to legal
5 permanent residence status or conditional resident status.

6 Upon approval, the applicant may be issued an identification
7 document provided for in paragraph 3 or 4 of subsection A of this
8 section. Such identification document shall be valid only during
9 the period of time of the authorized stay of the applicant in the
10 United States or if there is no definite end to the period of
11 authorized stay, a period of one (1) year. Any identification
12 document issued pursuant to the provisions of this subsection shall
13 clearly indicate that it is temporary and shall state the date that
14 the identification document expires. Such identification document
15 may be renewed only upon presentation of valid documentary evidence
16 that the status by which the applicant qualified for the
17 identification document has been extended by the United States
18 Immigration and Naturalization Service or the Bureau of Citizenship
19 and Immigration Services of the United States Department of Homeland
20 Security.

21 D. Any driver license for which an application has been made
22 for renewal, duplication or reissuance shall be presumed to have
23 been issued in accordance with the provisions of subsection C of
24 this section, provided that, at the time the application is made,

1 the driver license has not expired, or been cancelled, suspended or
2 revoked. The requirements of subsection C of this section shall
3 apply, however, to a renewal, duplication or reissuance if the
4 Department of Public Safety is notified by a local, state or federal
5 government agency that the individual seeking such renewal,
6 duplication or reissuance is neither a citizen of the United States
7 nor legally in the United States.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 171.2 of Title 22, unless there
10 is created a duplication in numbering, reads as follows:

11 A. When a person charged with a felony or with driving under
12 the influence pursuant to Section 11-902 of Title 47 of the Oklahoma
13 Statutes is confined, for any period, in the jail of the county, any
14 municipality or a jail operated by a regional jail authority, a
15 reasonable effort shall be made to determine the citizenship status
16 of the person so confined.

17 B. If the prisoner is a foreign national, the keeper of the
18 jail or other officer shall make a reasonable effort to verify that
19 the prisoner has been lawfully admitted to the United States and if
20 lawfully admitted, that such lawful status has not expired. If
21 verification of lawful status can not be made from documents in the
22 possession of the prisoner, verification shall be made within forty-
23 eight hours through a query to the Law Enforcement Support Center of
24 the United States Department of Homeland Security or other office or

1 agency designated for that purpose by the United States Department
2 of Homeland Security. If the prisoner is determined not to be
3 lawfully admitted to the United States, the keeper of the jail or
4 other officer shall notify the United States Department of Homeland
5 Security.

6 C. For the purpose of determining the grant of or issuance of
7 bond, a person whose citizenship status has been verified pursuant
8 to subsection B of this section to be a foreign national who has not
9 been lawfully admitted to the United States, shall be deemed to be a
10 risk of flight.

11 D. The Oklahoma Sheriffs' Association shall prepare and issue
12 guidelines and procedures used to comply with the provisions of this
13 section.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1312 of Title 25, unless there
16 is created a duplication in numbering, reads as follows:

17 As used in Sections 6 and 7 of this act, the term:

18 1. "Basic Pilot Program" shall mean the electronic verification
19 of work authorization program of the Illegal Immigration Reform and
20 Immigration Responsibility Act of 1996, P.L 104-208, Division C,
21 Section 403(a); 8 U.S.C. 1324a, and operated by the United States
22 Department of Homeland Security or any equivalent federal work
23 authorization program operated by the United States Department of
24 Homeland Security or any other designated federal agency authorized

to verify the work authorization status of newly hired employees,
pursuant to the Immigration Reform and Control Act of 1986 (IRCA),
D.L. 99-603;

2. "Public employer" means every department, agency, or
instrumentality of the state or a political subdivision of the
state; and

3. "Subcontractor" includes a subcontractor, contract employee,
staffing agency, or any contractor regardless of its tier.

SECTION 7. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1313 of Title 25, unless there
is created a duplication in numbering, reads as follows:

A. Every public employer shall register and participate in the
Basic Pilot Program to verify the work authorization status of all
new employees.

B. 1. No public employer shall enter into a contract for the
physical performance of services within this state unless the
contractor registers and participates in the Basic Pilot Program to
verify the work authorization status of all new employees.

2. No contractor or subcontractor who enters a contract with a
public employer shall enter into such a contract or subcontract in
connection with the physical performance of services within this
state unless the contractor or subcontractor registers and
participates in the Basic Pilot Program to verify information of all
new employees.

1 3. The discharge of any United States citizen or permanent
2 resident alien employee by an employer of this state, who, on the
3 date of the discharge employed an unauthorized alien, shall be an
4 unfair trade practice as defined in Section 752 of Title 15 of the
5 Oklahoma Statutes. The discharged employee shall have a private
6 cause of action for such unfair trade practice.

7 C. The provisions of this section shall be enforced without
8 regard to race or national origin.

9 D. The Department of Labor shall prescribe forms and promulgate
10 rules and regulations deemed necessary in order to administer and
11 effectuate the provisions of this section and publish such rules and
12 regulations on the Department of Labor website.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 71 of Title 56, unless there is
15 created a duplication in numbering, reads as follows:

16 A. Except as provided in subsection C of this section or where
17 exempted by federal law, every agency or a political subdivision of
18 this state shall verify the lawful presence in the United States of
19 any natural person fourteen (14) years of age or older who has
20 applied for state or local public benefits, as defined in 8 U.S.C.
21 Section 1621, or for federal public benefits, as defined in 8 U.S.C.
22 Section 1611, that is administered by an agency or a political
23 subdivision of this state.

1 B. The provisions of this section shall be enforced without
2 regard to race, religion, gender, ethnicity, or national origin.

3 C. Verification of lawful presence under the provisions of this
4 section shall not be required:

5 1. For any purpose for which lawful presence in the United
6 States is not restricted by law, ordinance, or regulation;

7 2. For assistance for health care items and services that are
8 necessary for the treatment of an emergency medical condition, as
9 defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and
10 are not related to an organ transplant procedure;

11 3. For short-term, noncash, in-kind emergency disaster relief;

12 4. For public health assistance for immunizations with respect
13 to diseases and for testing and treatment of symptoms of
14 communicable diseases whether or not such symptoms are caused by a
15 communicable disease; or

16 5. For programs, services, or assistance such as soup kitchens,
17 crisis counseling and intervention, and short-term shelter specified
18 by the United States Attorney General, in the sole and unreviewable
19 discretion of the United States Attorney General after consultation
20 with appropriate federal agencies and departments, which:

21 a. deliver in-kind services at the community level,
22 including through public or private nonprofit
23 agencies,
24

- b. do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient, and
- c. are necessary for the protection of life or safety; or

6. For prenatal care.

D. Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall require that the applicant execute an affidavit under penalty of perjury that:

1. He or she is a United States citizen; or

2. He or she is a qualified alien under the federal Immigration and Nationality Act, and is lawfully present in the United States.

E. For any applicant who has executed the affidavit described in paragraph 2 of subsection D of this section, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this section.

1 F. Any person who knowingly and willfully makes a false,
2 fictitious, or fraudulent statement of representation in an
3 affidavit executed pursuant to subsection D of this section shall be
4 subject to criminal penalties applicable in this state for
5 fraudulently obtaining public assistance program benefits. If the
6 affidavit constitutes a false claim of U.S. citizenship under 18
7 U.S.C. Section 911 a complaint shall be filed by the agency
8 requiring the affidavit with the United States Attorney for the
9 Western District of Oklahoma.

10 G. Agencies or political subdivisions of this state may adopt
11 variations to the requirements of the provisions of this section
12 which demonstrably improve the efficiency or reduce delay in the
13 verification process, or to provide for adjudication of unique
14 individual circumstances where the verification procedures in this
15 section would impose unusual hardship on a legal resident of
16 Oklahoma.

17 H. It shall be unlawful for any agency or a political
18 subdivision of this state to provide any state, local, or federal
19 benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section
20 1611, in violation of the provisions of this section.

21 I. Each state agency or department which administers any
22 program of state or local public benefits shall provide an annual
23 report to the Office of the Secretary of State with respect to its
24 compliance with the provisions of this section. Any and all errors

1 shall be reported to the United States Department of Homeland
2 Security by the Secretary of State. The Secretary of State shall
3 monitor the Systematic Alien Verification of Entitlement program and
4 its verification application errors and significant delays and shall
5 provide an annual public report on such errors and significant
6 delays, and recommendations to ensure that the application of the
7 Systematic Alien Verification of Entitlement program is not
8 erroneously denying benefits to legal residents of Oklahoma.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2385.32 of Title 68, unless
11 there is created a duplication in numbering, reads as follows:

12 A. The employer shall be required to withhold state income tax
13 at the rate of six percent (6%) of the amount of compensation paid
14 to an individual which compensation is required to be reported on
15 Form 1099 and with respect to which the individual has failed to
16 provide a valid Social Security Number, issued by the U.S. Social
17 Security Administration.

18 B. Any employer who fails to comply with the withholding
19 requirements of this subsection shall be liable for the taxes
20 required to have been withheld unless such employer is exempt from
21 federal withholding with respect to such individual pursuant to a
22 properly filed Internal Revenue Service Form 8233 or its equivalent,
23 and has provided a copy of such form to the Oklahoma Tax Commission.

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1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 20J of Title 74, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The Attorney General is authorized and directed to negotiate
5 the terms of a Memorandum of Understanding between the State of
6 Oklahoma and the United States Department of Justice or the United
7 States Department of Homeland Security concerning the enforcement of
8 federal immigration and custom laws, detention and removals, and
9 investigations in the State of Oklahoma.

10 B. The Memorandum of Understanding negotiated pursuant to
11 subsection A of this section shall be signed on behalf of this state
12 by the Attorney General and the Governor or as otherwise required by
13 the appropriate federal agency.

14 C. No local government, whether acting through its governing
15 body or by an initiative, referendum, or any other process, shall
16 enact any ordinance or policy that limits or prohibits a law
17 enforcement officer, local official, or local government employee
18 from communicating or cooperating with federal officials with regard
19 to the immigration status of any person within this state.

20 D. Notwithstanding any other provision of law, no government
21 entity or official within the State of Oklahoma, may prohibit, or in
22 any way restrict, any government entity or official from sending to,
23 or receiving from, the United States Department of Homeland
24

1 Security, information regarding the citizenship or immigration
2 status, lawful or unlawful, of any individual.

3 E. Notwithstanding any other provision of law, no person or
4 agency may prohibit, or in any way restrict, a public employee from
5 doing any of the following with respect to information regarding the
6 immigration status, lawful or unlawful, of any individual:

7 1. Sending such information to, or requesting or receiving such
8 information from, the U.S. Department of Homeland Security;

9 2. Maintaining such information; or

10 3. Exchanging such information with any other federal, state,
11 or local government entity.

12 F. The provisions of this section shall allow for a private
13 right of action by any natural or legal person lawfully domiciled in
14 this state to file for a writ of mandamus to compel any non-
15 cooperating local state governmental agency to comply with such
16 reporting laws.

17 SECTION 11. This act shall become effective November 1, 2007.

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EXHIBIT B

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Page 3A

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Illegal immigrants moving out

By Emily Bazar
USA TODAY

People leave states and cities that have taken up strict policies in going after

lawbreakers

Illegal immigrants living in states and cities that have adopted strict immigration policies are packing up and moving back to their countries or to neighboring states.

The exodus has been fueled by a wave of laws targeting illegal immigrants in Oklahoma, Arizona, Colorado, Georgia and elsewhere. Many were passed after congressional efforts to overhaul the immigration system collapsed in June.

Immigrants say the laws have raised fears of workplace raids and deportation.

"People now are really frightened and scared because they don't know what's going to happen," says Juliana Stout, an editor at newspaper *El Nacional de Oklahoma*. "They're selling houses. They're leaving the country."

Supporters of the laws cheer the departure of illegal immigrants and say the laws are working as intended.

Oklahoma state Rep. Randy Terrill, Republican author of his state's law, says the flight proves it is working. "That was the intended purpose," he says. "It would be just fine with me if we exported all illegal aliens to the surrounding states."

Most provisions of an Oklahoma law take effect in November. Among other things, it cuts off benefits such as welfare and college financial aid.

There are no hard demographic data on the trend, partly because it's hard to track people who are in the USA illegally — but school officials, real estate agents and church leaders say the movement is unmistakable.

In Tulsa, several schools have seen a drop in Hispanic enrollment. About 60% of Kendall-Whittier Elementary School's 950 students are Hispanic, Principal Judy Feary says. Since an enrollment report Sept. 10, she says, 14 have left. Four more said last week that they would move.

Three weeks ago, one couple dropped their three children at school, then returned after lunch with their belongings packed in an

and trailer. Feary says they took the kids and said they were moving back to Mexico. "They were afraid and cited the immigration she says.

Marshall Elementary, where enrollment is 60% Hispanic, has lost about 10 students this year to the immigration law, Principal K Robinson says. Most moved to Texas. "These are families that have been here for a long time," she says.

Illegal immigrants also are leaving Georgia, where a law requires companies on government contracts with at least 500 employees check new hires against a federal database to make sure they are legally authorized to work.

Mario Reyes, senior minister at the Tabernacle of Atlanta, says his church lost about 10 families this summer. His daughter, a real estate agent, is helping them sell their homes.

Churches across the city report similar losses, says Antonio Mansogo, a board member of the National Coalition of Latino Clergy and Christian Leaders.

"There's tension because you don't know when immigration (agents) might show up, and a lot of people don't want to take those chances," he says.

Real estate agent Guadalupe Sosa in Avondale, Ariz., outside Phoenix, says migration from the state began about three months ago shortly after Gov. Janet Napolitano, a Democrat, signed a law that will take effect in January. Employers who hire illegal immigrants lose their business licenses. Of the 10 homes Sosa has on the market, half belong to families that plan to leave because of immigration tensions. "They know they might be losing everything today or tomorrow," she says.

Maria Sanchez, 35, joined the migration with her sister and nephew, who are citizens. Sanchez was in the USA illegally, but she gotten a temporary work permit.

The three lived in Aurora, Colo., when Sanchez was fired from her job as district manager of a fast-food chain after she couldn't get a valid Social Security number.

Colorado has approved several immigration measures. One gives employers 20 days to check and photocopy documents such as driver's licenses and Social Security cards, which new workers present to prove their legal status.

Because of the laws, Sanchez, her sister and nephew left five months ago. "I moved to Utah because they don't have the same laws here," she says.

State Sen. Dave Schultheis says he hasn't observed a major migration out of Colorado but has heard anecdotal reports that illegal immigrants are leaving. "It's absolutely a good thing," he says. "We want to make Colorado the least friendly state to people who are illegally here."

In Hazleton, Pa., families started moving away after the city passed an illegal-immigrant law last summer, says Rudy Espinal, head of the Hazleton Hispanic Business Association. The law would fine landlords who rented to illegal immigrants and suspend the business licenses of companies that hired them. A companion measure would require tenants to register with the city and pay \$10 for a rental permit.

A federal judge ruled the measures unconstitutional in July, but that hasn't stopped people moving away, he says.

"People are still leaving," Espinal says. "Some people have told me that they're leaving because they don't want their kids to grow up in an environment like this."

Hazleton Mayor Lou Barletta counters that some illegal immigrants who moved came back after the judge's decision, which they are appealing. "I see a reversal," he says. "In a small city, it becomes obvious. ... Schools are overcrowded, and there are five-hour waits for the emergency room."

He says, "We don't want to chase immigrants away, just the illegal aliens who are causing many of the problem we are having."

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EXHIBIT C

September 5, 2007

The Honorable W.A. Drew Edmondson
Attorney General of Oklahoma
313 NE 21st St.
Oklahoma City, OK 73105

Dear Attorney General Edmondson:

Conforming with the provisions of 74 O.S. 18b (A) (5), as duly elected members of the Oklahoma State Legislature we place our signatures on this letter and do hereby formally request an official opinion regarding the Oklahoma Taxpayer and Citizens Protection Act of 2007 enacted this past Legislative Session.

Introduction

The Oklahoma Taxpayer and Citizen Protection Act of 2007 was signed by the Governor on May 8, 2007. However, as widely reported in the press, there is a great deal of confusion regarding what the bill does and does not do. There are also questions regarding to how the law will affect public agencies, schools, and other members of our constituency. Below, are a number of specific questions on which we seek the State's legal opinion.

Section 2:

Claims "[I]llegal immigration is causing economic hardship and lawlessness in this state..."

Does the Oklahoma Legislature have the power to establish a fact that is true or not true, absent empirically true and

**credible evidence to substantiate the recitation of purpose?
Are the recitations mere surplus, or unproven statements
which would cause this Act to fail based upon the lack of true
statement of purpose?**

Section 3:

Section 3 of the Oklahoma Taxpayer and Citizen Protection Act of 2007 appears to create penal provisions relating to the transporting, harboring, or sheltering of individuals who may be illegally present in the state. It is imperative that the public understand what specific acts would constitute violations under the new law.

- 1. With regard to Section 3 of the Oklahoma Taxpayer and Citizen Protection Act of 2007, what acts constitute “transporting”, “moving”, or “attempting to transport” in the State of Oklahoma any alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law, in furtherance of the illegal presence of the alien in the United States?**
- 2. With regard to Section 3 of the Oklahoma Taxpayer and Citizen Protection Act of 2007, what acts constitute “concealing”, “harboring”, or “sheltering” from detection any alien in any place within the State of Oklahoma including any building or means of transportation, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law?**
- 3. With regard to Section 3 of the Oklahoma Taxpayer and Citizen Protection Act of 2007, how does the State of Oklahoma define “in furtherance of the illegal presence of the alien in the United States?”**

4. To the extent that the definitions of the terms outlined above in questions 1 and 2 are coterminous with federal court interpretation of the same terms in

8 USC Section 1324, is Section 3 a state-imposed regulation of immigration?

Section 4:

Section 4 of the Oklahoma Taxpayer and Citizen Protection Act of 2007 requires that all identification documents issued by a public school or state or private educational institution, as defined by Sections 1-106, 21-101 or 3102 of Title 70 of the Oklahoma Statutes, be issued only to United States citizens, nationals and legal permanent resident aliens. See Sec. 4 A (4). A few other categories of immigrants can obtain identification documents marked “temporary” if they submit particular documents. Students, including lawfully present immigrants, who do not have these documents cannot get an identification card for use outside of the campus. Although Section 4(D) allows schools to issue identification cards to all students, provided that these cards are marked as “only for campus” use, this is not mandated.

1. Does Section 4 authorize public and private elementary and secondary schools to deny issuance of identification cards to students who are not U.S. citizens, nationals, lawful permanent residents, or members of the specified categories of immigrants in Section 4?

2. Does the categorization of immigrants for the purpose of eligibility for school identification constitute a state-imposed regulation of immigration?

3. Does Section 4 violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and federal

law unless in implementing it the State requires all public elementary and secondary schools that issue identification cards to issue only school-use cards to all students without any inquiry into their immigration status?

Section 5 (C):

“for the purpose of determining the grant of or issuance of bond, it shall be a rebuttable presumption that a person whose citizenship status has been verified pursuant to subsection B of this section to be a foreign national who has not been lawfully admitted to the United States is at risk of flight.”

Does the mandate and recreation of a rebuttable presumption in the granting of, or issuance of a bond in a criminal matter infringe upon the Separation of Powers and the existing judicial discretion of individual consideration in establishing a bond?

Section 5(C) of the Oklahoma Taxpayer and Citizen Protection Act of 2007 provides that for the purposes of determining bond, “it shall be a rebuttable presumption that a person [who]...has been verified pursuant to [section 5 (B)] to be a foreign national who has not been lawfully admitted to the United States is at risk of flight.”

- 1. Under HB 1804, can state officials, including judges, rely on a defendant’s current lack of immigration status to infer that he or she was not lawfully admitted to the United States?**
- 2. Must defendants have the opportunity to rebut both the presumption of flight risk and any determination that the defendant was not lawfully admitted to the United States?**

3. Do full due process protections, including the right to counsel, apply to proceedings regarding the application of Section 5(C)?

4. May state officials attempt to answer questions of immigration law that arise in determining the applicability of Section 5(C)?

Section 7:

Section 7 of the Oklahoma Taxpayer and Citizen Protection Act of 2007 mandates that all public employers and all contractors who contract with public employers participate in the otherwise voluntary Basic Pilot program for verification of employee work authorization status. In addition, Section 7 creates a private cause of action for discharged U.S. citizen or lawful permanent resident employees, including those who are terminated for causes such as embezzlement, theft, arson, or assault, to challenge their termination if they can prove that the employer was employing an unauthorized worker preempted by federal law.

1. Does HB 1804 mandate that certain Oklahoma employers participate in an employment verification program that Congress has chosen to make voluntary and temporary?

2. Does HB 1804 create a private cause of action holding employers strictly liable for the employment of noncitizens lacking work authorization?

Section 8:

Section 8 of the Oklahoma Taxpayer and Citizen Protection

Act of 2007 requires state agencies and subdivisions of the state to verify the lawful presence of applicants over 14 years old for non-exempt federal public benefits (as defined in 8 USC section 1611) and non-exempt state or local public benefits (as defined in 8 USC Section 1621) except where “lawful presence in the United States is not restricted by law, ordinance or regulation.”

Given that Section 8 requires verification of lawful presence only for benefits that are restricted on the basis of lawful presence. Instead, it requires a non-citizen to declare that he or she is “a qualified alien under the Federal Immigration and Nationality Act and is lawfully present in the United States.”

- 1. Please confirm that Section 8’s verification requirement:**
(1) applies only where lawful presence is a condition of eligibility under existing law, regulation or ordinance; and (2) does not affect the eligibility rules governing federal, state, or local public benefits.
- 2. In implementing HB 1804, please confirm if Oklahoma will adhere to federal guidance and rules on the following.**
 - (a) Verification procedures[1]**
 - (b) Exemptions from verification requirements, including the exemption for non-profit charitable organizations under 8 U.S.C. section 1642(d);**
 - (c) The definition of public benefits services that fall outside of the definition; and those exempt from immigration restrictions.[2]**
 - (d) Privacy, anti-discrimination protections, and other safeguards for benefit applicants under the SAVE program.[3]**
- 3. In light of the fact that there is no federal law requirement that applicants for federal, state, or local public benefits**

declare both qualified immigrant status and lawful presence, please confirm that the affidavits under Section 8(D) will be required only where lawful presence is a condition of eligibility under existing law, ordinance or regulation and that the affidavit requirement will focus only on whether the applicant is lawfully present.[4]

4. Will Oklahoma ensure that trafficking victims have access to federal benefits to the same extent as refugees, regardless of their immigration status?[5]

5. Does HB 1804 create its own definition of lawful presence different from federal definitions of that term, such as the one designated for Title II benefits purposes, at 8 CFR 103.12[6]

Section 10(A):

The Attorney General is authorized and directed to negotiate the terms of a Memorandum of Understanding between the State of Oklahoma and the United States Department of Justice or the United States Department of Homeland Security,”

The American National Government is what it is and is not required to operate as a Republic and the term is never used in the United States Constitution, whereas Oklahoma is required to maintain itself as a Republic, as is the legislative power of the State vested in the Legislature.

1. Given the requirement of the Enabling Act that Oklahoma be founded and maintained as a Republic, by what right or authority can the Attorney General of Oklahoma negotiate the particulars of the application and enforcement of this Act with the United States Government?

2. Is this Act a violation of the Separation of Powers requirement implicit in the requirement that Oklahoma operate as a Republic?

Section 10(F):

“The provisions of this section shall allow for a private right of action by any natural or legal person lawfully domiciled in this state to file for a writ of mandamus to compel any noncooperating local or state government agency to comply with such reporting laws.”

Expressio Unis Est Exclusio Alterius.

Is the use of Writ of Mandamus by a private citizen indirectly delegating the police power of the State to a private person? Further, if a private citizen is authorized a Writ of Mandamus, is he denied the use of a Writ of Prohibition to enforce this Act?

Section 12:

“Subject to the availability of funding a Fraudulent Documents Identification (FDI) Unit for the primary purpose of investigating and apprehending persons or entities that participate in the sale or distribution of fraudulent documents used for identification purposes. The Unit shall additionally specialize in fraudulent identification documents created and prepared for persons who are unlawfully residing within the state of Oklahoma. The Department shall employ sufficient employees to investigate and implement FDI Unit.”

This provision appears to establish an agency of state government which is created to control the effect and means of immigration in Oklahoma. This conclusion is re-enforced by Section 2 of Enrolled House Bill 1804 in the legislative

expresses its legislative intent and findings that, “[W]hen illegal immigrants have been harbored and sheltered in this state and encouraged to reside in this state through issuance of identification cards that are issued without the verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermines the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Oklahoma...”

Therefore, the people of the State of Oklahoma declare that it is a compelling public interest of this state to discourage illegal immigration.”

Article 5, Section 48 of the Oklahoma Constitution provides, in full, that, “The Legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a Bureau of Immigration in the State.”

Therefore, it is apparent that the Fraudulent Documents Identification Unit established by Section 12 of Enrolled House Bill 1804 is a separate and distinct unit of state government created for the purpose of enforcing immigration laws. Does this provision violate Article 5, Section 48 of the Oklahoma Constitution?

Conclusion:

Given that certain portions of the law will take effect on November 1, 2007, I request that you expedite your legal opinion. I thank you for your consideration and analysis in advance.

Sincerely,

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[1] The federal welfare law (PRWORA) charged the U.S. Attorney General with promulgating rules on verification for federal, state and local benefits. 8 U.S.C. section 1642. The U.S. Department of Justice's Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of PRWORA, 62 FR 61344 (Nov 17, 1997) ("Interim Guidance") governs verification of eligibility for federal public benefits and serves as guidance on state and local public benefits.

[2] Consistent with DOJ's Interim Guidance, federal agencies are to decide which, if any, of the programs under their jurisdiction fall within the definition of "federal public benefit" and which among these programs are exempt from restriction. The U.S. Department of Health and Human Services (HHS) issued such guidance, listing specific programs that meet

this definition and clarifying that not all services within these programs are restricted 63 FR 41657 (Aug 4, 1998). The U.S. Attorney General issued further guidance on the types of programs that meet the exemption for services "necessary to protect life or safety." 66 FR. 3613-16 (Jan 16, 2001). A few other federal agencies and HHS sub-agencies have issued similar guidance.

[3] See DOJ's Interim Guidance, and 42 USC Section 1320b-7. See also Tri-Agency Guidance Regarding inquiries into citizenship, Immigration Status and Social Security Numbers in State Applications <http://www.hhs.gov/ocr/immigrationtriagency.html>.

[4] Under the federal laws governing eligibility for benefits "qualified" immigrants are a subset of the groups considered to be lawfully present in the U.S. See, e.g. 8 C.F.R. 103.12.

[5] Under 22 U.S.C. Section 7105(b)(1), individuals who have been certified by the Office of Refugee Resettlement as willing to assist in the prosecution of a severe form of human trafficking, minors who are victims of trafficking, and derivative beneficiaries of trafficking victims, are eligible for federal benefits to the same extent as refugees, regardless of the victims immigration status. There is no lawful presence requirement for these benefits.

[6] See also Yang v. Barnhart, Civ. No 01-2307 (RHK/SRN)(D.Minn. 2002)(for SSI purposes, lawfully present also includes parents of U.S. Citizens whose visa petitions have been approved and who have filed an application for adjustment of status).

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