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

LOWCOUNTRY IMMIGRATION COALITION; MUJERES DE TRIUNFO; NUEVOS CAMINOS; SOUTH CAROLINA VICTIM ASSISTANCE NETWORK; SOUTH CAROLINA HISPANIC LEADERSHIP COUNCIL; SERVICE EMPLOYEES INTERNATIONAL UNION; SOUTHERN REGIONAL JOINT BOARD OF WORKERS UNITED; JANE DOE #1; JANE DOE #2; JOHN DOE #1; YAJAIRA BENET-SMITH; KELLER BARRON; JOHN MCKENZIE; and SANDRA JONES,

Plaintiffs,

v.

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

Defendants.

Civil Action File No.

2:11-cv-02779-RMG

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

CLASS ACTION

1. This action challenges South Carolina's comprehensive immigration law, Senate Bill 20 ("SB 20," attached as Exhibit A), on multiple constitutional grounds and seeks injunctive and declaratory relief to prevent serious harm that Plaintiffs and putative class members across the state will suffer if the law goes into effect.

2. Through SB 20, South Carolina has created a punitive and comprehensive state immigration system that, among other things: (1) mandates that state and local law enforcement officers engage in immigration enforcement; (2) creates new criminal immigration laws specific

to and wholly administered by the State of South Carolina; and (3) creates a South Carolina-specific alien registration system.

3. SB 20 is unconstitutional in several respects. SB 20 in its entirety violates the Supremacy Clause of the U.S. Constitution by attempting to regulate immigration—a function that is constitutionally committed exclusively to the federal government. SB 20 is also preempted because it conflicts with federal law in several ways. SB 20 further violates the Fourth Amendment's prohibition against unreasonable searches and seizures and the Fourteenth Amendment's guarantees to equal protection and due process under the law.

4. SB 20 will subject South Carolinians—including U.S. citizens and non-citizens with permission from the federal government to remain in the United States—to unlawful interrogations, prolonged detentions, and arrests. *See* Secs. 6 & 7, codified at S.C. CODE §§ 17-13-170, 23-3-1100. SB 20 mandates that state and local law enforcement officers investigate the immigration status of any individual they stop, detain, or arrest whenever they have a "reasonable suspicion" that the individual lacks immigration status. Individuals perceived as "foreign" by state or local law enforcement agents will be in constant jeopardy of harassment and unlawfully prolonged detention and arrest. Under SB 20, all South Carolinians will be required to carry state-approved identity documentation in order to prevent lengthy investigations into their immigration status.

5. SB 20, in combination with existing South Carolina law, will subject South Carolinians—including U.S. citizens and non-citizens with permission from the federal government to remain in the United States—to criminal penalties and incarceration for humanitarian daily activities, such as giving a ride to a neighbor, family member, client, or fellow congregant, or for opening their homes to individuals, including individuals in need. *See*

Sec. 4, codified at S.C. CODE § 16-9-460. The South Carolina Illegal Immigration Reform Act of 2008 ("A280"), adopted June 4, 2008, created the state immigration crimes of harboring or transporting. *See* S.C. CODE § 16-9-460 (2008). SB 20 amended this provision to criminalize unlawful presence by making unlawful the acts of allowing *oneself* to be transported or harboring *oneself*—effectively authorizing the arrest of individuals simply suspected of being unlawfully present—while maintaining the existing immigration-related transporting and harboring offenses. *See* Sec. 4, codified at S.C. CODE § 16-9-460. SB 20 further encourages broad enforcement of South Carolina's harboring and transporting crimes by subjecting law enforcement agencies to potential civil liability for failure to enforce these laws to the maximum extent possible. *See* Sec. 1, codified at S.C. CODE § 6-1-170.

6. SB 20 also creates a South Carolina-specific alien registration scheme, allowing state and local law enforcement officers to arrest individuals simply for failing to carry with them certain registration documents. *See* Sec. 5, codified at S.C. CODE § 16-17-750. And it creates new state criminal penalties for using false identity documents, which apply solely when the documents are used by individuals who are deemed by the State to be unlawfully present in the United States or if offered as proof of an individual's lawful presence in the United States. *See* Sec. 6, codified at S.C. CODE § 17–13–170(B)(2).

7. SB 20 interferes with the core federal interests of maintaining a uniform national immigration scheme and speaking for the entire nation in conducting foreign relations. SB 20 would fundamentally rework the federal immigration scheme by regulating the terms on which immigrants may remain in the state and the penalties that attach to state-created immigration crimes, thus undermining the federal government's ability to ensure uniformity and speak with a single voice. Indeed, South Carolina's 46 counties inevitably will interpret SB 20's vague and

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

8. The State of South Carolina's intent to displace federal immigration authority is apparent not only from the scope and design of SB 20, but also from the express statements of the members of the South Carolina General Assembly who drafted and supported the legislation.

JURISDICTION AND VENUE

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

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

11. Venue is proper in this District and Division under 28 U.S.C. § 1391(b). Defendants are sued in their official capacity. Each Defendant resides within the State of South Carolina and two Defendants reside within this Division. Additionally, Organizational Plaintiffs Lowcountry Immigration Coalition, Mujeres de Triunfo, and Nuevos Caminos are located within this Division, Organizational Plaintiffs SEIU and the Southern Regional Joint Board of Workers United have numerous members who reside and work in this Division, and Individual Plaintiffs Jane Doe #1, John Doe #1, and Yajaira Benet-Smith reside within this Division.

PARTIES

Organizational Plaintiffs

12. Plaintiff **Lowcountry Immigration Coalition** ("LIC") is a non-profit volunteer corporation in accordance with the laws of the State of South Carolina that seeks to provide a

forum for individuals in the Lowcountry of South Carolina to support efforts toward comprehensive immigration reform policies. LIC seeks to educate, inform, communicate, and advocate through meetings, public functions, media, and other mechanisms in support of immigration policies to advance a human rights agenda, including the protection of civil liberties, prevention of discrimination, and education on cultural awareness.

13. LIC was founded in 2010 and has grown significantly since that time. LIC has 12 active board members and approximately 240 supporters who help provide services to a number of constituents annually. Its membership is open to business owners, local and state office holders, enforcement officials, faith communities, and members of the legal profession, among others. Today, LIC provides a wide range of services, including voter registration drives, workshops on starting small businesses and investing in local banks, "Know Your Rights" presentations, seminars on safety and hurricane preparedness, and advocacy for access to medical services among immigrant communities. LIC provides services without regard to immigration status and is aware that some of its constituents are undocumented.

14. Since SB 20 passed, LIC has had to completely shift its priorities. Instead of hosting voter registration drives, LIC has dedicated itself to educating people about the provisions of SB 20. Rather than sponsoring workshops to teach Latino immigrants how to start small businesses or how to invest in their local banks, LIC now must hold multiple "Know Your Rights" presentations to inform individuals about their rights if SB 20 goes into effect. Instead of working with medical providers to increase access to health care among the immigrant community, LIC has had to recruit attorneys from civil rights organizations to answer specific pressing questions about SB 20.

15. Since many of the individuals whom LIC serves cannot obtain driver's licenses due to their immigration status, LIC members pick up individuals from their homes and bring them to LIC functions. LIC members have also organized car pools for people to attend their events. If SB 20 goes into effect, members of LIC will continue to drive individuals, including undocumented individuals, to appointments of various types around the Lowcountry area if requested by those who attend their functions. This would subject LIC members to criminal prosecution under the law for transporting undocumented immigrants.

16. Since SB 20 passed, LIC has seen a decrease in volunteers, making it difficult to sponsor educational seminars. LIC volunteers have been deterred from continuing to work with LIC for fear of retaliation against them or their businesses. If SB 20 goes into effect, it is likely that some of these supporters will stop their support completely. In the past, LIC has used churches to host their community meetings and other activities. Since the passage of SB 20, churches have been increasingly unwilling to host LIC for community meetings due to the fact that it is known that LIC provides services to undocumented immigrants.

17. The passage of SB 20 has also decreased attendance at LIC events because their constituents fear being stopped by the police when traveling to functions. If SB 20 goes into effect, LIC will lose even more attendees because people fear the police will detain or arrest them.

18. Due to the extremely difficult climate that SB 20 has created, LIC has more work than ever and faces the prospect of substantial adversity in continuing its work as a result of fewer volunteers, difficulty getting space to hold meetings, and an atmosphere of fear that prevents the advertisement of its meetings and events. Since the passage of SB 20, LIC has shifted its resources to educating the community about the provisions of SB 20 instead of

providing other needed services like education, voter registration, and letter-writing campaigns. LIC's mission is frustrated by SB 20 and its deleterious effects.

19. Plaintiff **Mujeres de Triunfo** is a grassroots membership organization of Latinas in the Charleston, South Carolina region. Mujeres de Triunfo is dedicated to serving women and children through support groups, skill-building workshops, facilitating access to community resources and medical care, including professional therapy, because some of its members are trauma and abuse survivors. The group provides its members with transportation to meetings and to medical and other appointments for the health and welfare of members and their children. Mujeres de Triunfo informs members about community resources, such as domestic violence shelters. It ensures access to resources vital to members' well-being by informing, transporting, and accompanying women to important social services. Mujeres de Triunfo also manages clothes donations among its members.

20. Plaintiff Mujeres de Triunfo welcomes women regardless of immigration status to become members. Some members are U.S. citizens while others are undocumented.

21. SB 20 is affecting the ability of Mujeres de Triunfo to have members attend meetings, and fewer members now attend meetings. Members fear encountering the police while driving, being driven, or even walking to meetings due to SB 20, and Sections 4, 5, 6, and 7, in particular. They fear being stopped, questioned by police about their immigration status, and then detained and separated from their children. Since SB 20 passed, immigrant members fear leaving their homes even for basics needs, such as groceries. Members fear driving women and children even for medical emergencies because they could be held criminally liable for transporting or harboring, as well as being transported or harbored.

22. SB 20 is impeding the ability of Mujeres de Triunfo to carry out its mission to provide critical services, including transportation, to women and children in need. Although its mission is to provide support and information to women who have experienced trauma, Mujeres de Triunfo's limited resources are now being re-directed to responding to members' fears and concerns surrounding SB 20's impact on their lives. During its meetings, Mujeres de Triunfo normally aims to cover educational, informational, motivational, preventative, and community service topics. However, since SB 20's passage, meetings have repeatedly devolved into discussions of SB 20 and its effects on transportation, carrying immigration documents, and interactions with law enforcement. This has impacted Mujeres de Triunfo's mission by changing the meetings' focus from sustaining and developing Latino families' quality of life to crisis planning and responses to SB 20's effects on members' daily lives.

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

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

25. In the past, Nuevos Caminos has received donations to assist in servicing the immigrant population, as many of the people it serves live in poverty. Nuevos Caminos provides its services regardless of the immigration status of its clients. The organization's work with immigrant families occasionally requires that staff or volunteers provide transportation to clients between their homes and other service providers, medical providers, or court hearings. Some of these clients are known to be undocumented. Without such transportation, some of Nuevos Caminos's clients would not be able to meet obligations required of them by the criminal or family courts.

26. If SB 20 goes into effect, Nuevos Caminos will not be able to fully serve the Hispanic population or fulfill their organizational mission. Since SB 20's passage, Nuevos Caminos's funding sources have decreased because funders fear that the organization's work may be illegal under SB 20. In addition, SB 20 has caused Nuevos Caminos's resources to be diverted from its core mission, and it has increased demands on staff time because, in anticipation of SB 20's enforcement, Nuevos Caminos' staff and volunteers have needed to assist

families with issues relating to legal status and SB 20's provisions, instead of providing services to strengthen families. Nuevos Caminos' ability to provide services to its target population is also suffering because, despite years of attending community meetings and meals with Nuevos Caminos, many immigrants are now too fearful to leave their homes to engage with them. Additionally, Nuevos Caminos is concerned that its staff and volunteers may be exposed to criminal sanctions if they continue to serve immigrant families by transporting them to services or hearings or by opening their homes to them in hospitality.

27. Finally, many of the service providers for Nuevos Caminos are licensed by the State of South Carolina as public school teachers, social workers, or psychologists. Under SB 20, those professionals might have their professional licenses revoked as a result of the criminalization of their continued work with the immigrant population Nuevos Caminos serves. Nuevos Caminos believes that the services it routinely provides to its target population will expose its staff and volunteers to criminal charges for providing transportation and shelter to people known to be undocumented, making it impossible for its staff and volunteers to carry out the mission of the organization.

28. Plaintiff **South Carolina Victim Assistance Network ("SCVAN")** was founded to coordinate the efforts and resources of victims' services groups around South Carolina. As an umbrella agency, SCVAN's primary role is to provide support, training, funding, and resources that help sustain groups on the front line of servicing victims in South Carolina. SCVAN's secondary function is to fill existing gaps in victim services by implementing programs that address pressing needs amongst the victim population in the state. Directly, and in cooperation with local victim organizations, SCVAN provides an array of services across the state to any person who has suffered from a criminal act and to their families, regardless of their immigration

status. That work includes, but is not limited to: providing funds to crime victims to meet their basic needs during the recovery process; enforcing the rights of victims through legal representation, language translation, and cultural sensitivity education services; providing sexual assault response teams; and advocating for victims in the criminal justice system. Annually, SCVAN serves about 1,500 victims across the 46 counties in South Carolina.

29. While immigrants have access to all of SCVAN's programming, the Immigrant Victim Network ("IVN"), a subsidiary of SCVAN, mainly targets the immigrant population. IVN is particularly vulnerable to criminal repercussions under SB 20 because a large majority of its clients do not have legal status or are at risk of losing their legal status when they first contact SCVAN. IVN was formally established in 2009 and functions as a collaborative network of partners—including immigrant communities, victim service providers, health care and legal professionals, and law enforcement agencies—dedicated to working together to better serve immigrant victims of crimes, to ensure that these victims receive justice, and to obtain meaningful access to culturally and linguistically competent resources on their behalf.

30. SCVAN's ability to carry out its mission is directly threatened by the implementation of SB 20 because it will force the organization to either change and limit its services, or face criminal liability. A significant portion of the assistance that SCVAN provides is funding to victims for expenses to meet their basic needs and ensure their well-being, such as arranging housing and food assistance. SCVAN personnel also frequently provide rides to clients between appointments and their homes. These routine services may violate SB 20's prohibition against transporting and harboring undocumented immigrants, exposing SCVAN staff to criminal liability for simply doing their jobs. SB 20 frustrates SCVAN's mission and endangers its ability to provide victim-related services to those most in need.

31. SB 20 has already changed the nature of SCVAN's work by diverting precious time and resources away from the direct victim services that are central to its mission, and instead towards responding to questions about the provisions of SB 20. SCVAN now has to spend a great deal of time having conversations with law enforcement officials at all levels to discuss SB 20's provisions and the implications on their work; providing "Know Your Rights" presentations around the state about SB 20 and how the legislation will affect immigrants and service providers; and counseling and encouraging some apprehensive victims to approach law enforcement to report crimes, as immigrants have become increasingly apprehensive of harassment by law enforcement.

32. The burden of assuming the tasks of public education and advocacy for SB 20 has already and will undoubtedly continue to divert precious resources away from where they are needed most—the victims. Specifically, the IVN program has had to limit the number of new victims it can serve because it now takes longer to serve each victim and communicate with law enforcement given the constraints of SB 20. Typically, SCVAN now has to allot an additional half hour for each intake meeting. During each intake with a victim, SCVAN is not only asking about their victimization and social services needs, but now also has to answer questions about SB 20's provisions and how it impacts the victim's right to report these crimes and get supportive services. Significant portions of the appointments are spent easing the victim's heightened fears towards law enforcement, especially in light of the new law.

33. SB 20 has placed new demands on SCVAN, which challenge its ability to ensure that immigrant victims in South Carolina are able to access the justice system and get help from law enforcement when they are crime victims. Additionally, the increased awareness of SB 20 and SCVAN's active encouragement of reporting crimes arising from recent advocacy initiatives

have greatly increased the number of calls that SCVAN has received from victims seeking assistance before the law takes effect. SCVAN is inundated and has had to reprioritize cases that it can work on based on their urgency. SCVAN is also considering limiting the days on which it receives phone calls due to the influx of new clients calling the organization. Furthermore, victims who previously utilized SCVAN's services are shying away from getting the help they need because they lack proper identification documentation and fear the real possibility of police investigation, scrutiny, and detention under SB 20 if they come forward.

34. Plaintiff **South Carolina Hispanic Leadership Council ("SCHLC")** is an organization dedicated to enhancing the quality of life and quantity of services delivered to the Hispanic Community in South Carolina through the sharing of useful information and timely exchange of ideas. The SCHLC has approximately 5 board members and approximately 180 members. The majority of its members are Latino. The SCHLC serves the Hispanic community in South Carolina by educating members about business leadership, offering Reach scholarships to low-income students, being a partner in the state's Latin Festival, convening an annual luncheon, and offering public speakers during Hispanic Heritage Month. The volunteer board members carry out these services and organize these events.

35. This year, the SCHLC has received approximately 10 to 12 requests to speak during Hispanic Heritage Month, almost all of which relate to SB 20 and its impact on the Hispanic community in South Carolina. Normally, the SCHLC would speak about topics related to business leadership, which furthers its organizational mission, but this year it has had to divert scarce volunteer resources to address the fear in the Hispanic community and among its allies regarding the impact of SB 20. SCHLC's mission focuses on building partnerships with other businesses, but since SB 20 passed, it has not been able to work on this goal at all. SB 20

frustrates SCHLC's mission of enhancing the quality of life and quantity of services delivered to the Hispanic community by burdening the Hispanic community through its identification requirements and hampering SCHLC's ability to serve its constituency.

36. Plaintiff **Service Employees International Union** ("SEIU") is one of the largest labor organizations in the world, representing 2.2 million men and women who work primarily in the public sector and in janitorial, health services, long-term care, and security industries. Many of SEIU's members are recent immigrants to the United States and many of its members come from racial minority groups. SEIU has long called for and worked toward comprehensive reform of U.S. immigration laws. Another priority for SEIU is fighting discrimination against minorities, women, and other groups in the workplace and society in general. In South Carolina, SEIU has a local affiliate, the Southern Regional Joint Board of Workers United. This affiliate represents about 1,125 employees who live in South Carolina. These employees work in seven different work sites across the state and at one worksite in Pineville, North Carolina, which is on the North-South Carolina border. At least 50 of these employees reside in the Charleston area. Approximately 15 percent of the employees that the Joint Board represents in South Carolina are Latino and the majority of the remainder are African American. In South Carolina, SEIU works in partnership with the Southern Regional Joint Board and other groups to combat discrimination and mobilize for immigration reform at the national level.

37. The implementation of SB 20 will have a severe impact on SEIU's organizational mission. Some of SEIU's Latino members or their families have already been subjected to stops by local law enforcement where they have been asked to produce proof of immigration status. SEIU will be harmed if SB 20 is implemented because its minority members will be even more likely to be stopped, detained, arrested, and questioned by state and local police. This will cause

hardship for members of SEIU. In addition, SEIU will be harmed if SB 20 is implemented because its members and potential members, regardless of nationality and immigration status, will refrain from exercising their rights to attend rallies, demonstrations, and union meetings or to engage in leafleting or other traditional labor activities because of the possibility of being stopped by police under SB 20. This will significantly affect the ability of SEIU to protect its existing members. In addition, the Latino community is one of the fastest growing in the state and is heavily represented in the industries in which Workers United is concentrated—manufacturing, industrial laundries, and distribution. SEIU joins this lawsuit to preserve its ability to organize new members and to protect the rights and interests of its members and prospective members.

38. Plaintiff **Southern Regional Joint Board of Workers United** ("Joint Board") is a labor union and an affiliate of Plaintiff SEIU. The Joint Board represents approximately 1,125 workers in South Carolina. Approximately 15 percent of the Joint Board's South Carolina membership is Latino. The primary mission of the Joint Board is to organize, represent, and empower employees in South Carolina. In addition, the Joint Board works in partnership with SEIU and other groups to combat discrimination and mobilize for immigration reform at the national level.

39. The Joint Board will be harmed because its minority members, including U.S. citizens and lawful immigrants, are likely to be unlawfully stopped, detained, arrested, and questioned by state and local police after SB 20 goes into effect. This will cause hardship for members of the Joint Board. In addition, the Joint Board will be harmed if SB 20 is implemented because its members and potential members will refrain from exercising their rights

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

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

41. The Joint Board will also be harmed if SB 20 is implemented because employers in the state will refrain from hiring members and potential members of the Joint Board that they believe look or sound "foreign" out of a fear that they will be subject to increased liability under SB 20. This will have a serious impact on the ability of the Joint Board to recruit new members. The Joint Board will be further harmed if SB 20 takes effect because of the provision criminalizing the transporting of undocumented immigrants. This provision will have a chilling effect on the Joint Board's efforts to give rides to people attending union meetings and other events. The Joint Board will have a more difficult time organizing transportation to these key union activities because people will be afraid to associate with someone whose racial/ethnic appearance might result in getting the driver stopped for a minor traffic offense leading to further police scrutiny and possible criminal prosecution under the law. In addition, if SB 20 is implemented, the Joint Board will need to spend significant new time educating members and potential members about the law. This will divert The Joint Board's resources from other core

organizational priorities. The Joint Board joins this lawsuit to preserve its ability to organize new members and to protect the rights and interests of its members and prospective members. SB 20 will frustrate the Joint Board's mission and force it to further divert resources to combat it.

Individual Plaintiffs

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

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

44. Plaintiff Jane Doe # 1 does not have a South Carolina driver's license and is not eligible to apply for one. The only documents she has that show that she has an application pending with federal immigration authorities are notices related to her I-130 Petition. The notices she has received are government correspondence, not official identification or registration documents. These documents do not bear her photograph or have any dates defining the time period for which they are valid. Jane Doe # 1 is concerned that a police officer would not accept such documents as proof of current immigration status. If SB 20 is implemented, and Jane Doe # 1 is stopped by police, she fears they will not understand that federal immigration authorities are aware she is in the country without status but have not sought to deport her.

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

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

46. Jane Doe # 1 is the primary caregiver to her two young children. She is concerned that if SB 20 is implemented, it will separate her from her husband and children because she will be subject to prolonged detention, or arrest under the law's provisions.

47. Plaintiff **Jane Doe # 2** lives in West Columbia, South Carolina with her five children. She has lived in South Carolina for six years.

48. Plaintiff Jane Doe # 2 currently lacks lawful immigration status in the United States, but has applied to the federal government for a U-visa—a form of federal immigration relief for crime victims and certain family members that provides a pathway to lawful permanent residence. Jane Doe # 2's application is based on her cooperation, and that of her grown daughter, in the criminal prosecution of the daughter's abusive husband. Although federal authorities are aware that Jane Doe # 2 is undocumented, they have not elected to initiate immigration proceedings against her, and her application for a U-visa is pending.

49. Although her petition for immigration relief is pending, Plaintiff Jane Doe # 2 does not have a federal alien registration document; nor does she have any document that can easily establish to South Carolina law enforcement officials that her presence in the country is known to the federal government. As a result, if SB 20 is implemented, Jane Doe # 2 will be subject to unlawful interrogation and detention by law enforcement officials based on her Latina appearance and lack of state-approved identity documents.

50. If SB 20 takes effect, Plaintiff Jane Doe # 2 will curtail her travel and engagement in other daily activities in order to reduce the chance that she will be stopped, interrogated, and

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

51. Plaintiff **John Doe #1** is a resident of Johns Island, South Carolina, and has resided in South Carolina for 21 years. Originally from Guatemala, Plaintiff John Doe #1 came to the United States in 1989 to escape the civil war in his native country. Plaintiff John Doe #1 has been able to obtain an Employment Authorization Document ("EAD") from the U.S. government as a result of his eligibility for immigration relief under the Nicaraguan Adjustment and Central American Relief Act ("NACARA"). However, he must apply for renewal of his EAD on an annual basis, and he often goes weeks or even months before he receives a current EAD. John Doe # 1's driver's license and EAD expire in early January 2012. Without a current EAD, Plaintiff John Doe #1 is unable to renew his South Carolina driver's license, which is only valid for the same period as his EAD. As a result, he regularly goes for periods of a few weeks or months without a current EAD or driver's license.

52. During the periods when he does not have a current EAD or driver's license, Plaintiff John Doe #1 will not be able to provide a South Carolina law enforcement officer with an identity document meeting the requirements of SB 20. Although the federal government is aware of Plaintiff John Doe #1's immigration status and is not seeking to deport him, he fears that South Carolina law enforcement will subject him to prolonged detention and prosecution under new state immigration crimes created by SB 20. Plaintiff John Doe #1 has experienced racial profiling in the past during a traffic stop in which he was scrutinized more thoroughly than

non-Hispanic drivers, and he fears that such disparate treatment by law enforcement will increase if SB 20 goes into effect.

53. Due to his significant workload and duties as a single parent, Plaintiff John Doe #1 sometimes forgets to carry his EAD when he leaves the house. As a result of SB 20, Plaintiff John Doe #1 fears being stopped and arrested for not carrying his alien registration documents at all times.

54. Plaintiff John Doe #1 would suffer great harm if he were detained for state immigration crimes, because he is the sole caregiver for his two young U.S. citizen daughters.

55. Plaintiff **Yajaira Benet-Smith** was born in Caracas, Venezuela, and has been living in Beaufort, South Carolina, since 2009. Her husband is a U.S. citizen. Plaintiff Benet-Smith has a green card and is a Lawful Permanent Resident of the United States. She will be eligible to apply for U.S. citizenship in two years.

56. Plaintiff Benet-Smith uses a South Carolina driver's license as her main form of identification. She does not always carry her green card when she leaves the house, because she worries about the time-consuming and costly process to replace her green card if she were to lose it. If SB 20 is implemented, she fears being stopped, detained, and arrested by South Carolina law enforcement officials for not having her green card on her when they demand it.

57. Plaintiff Benet-Smith works for a social service and advocacy agency in Beaufort and Jasper counties that empowers Latinos to have healthy families through maternal and child health care. In her personal time, Plaintiff Benet-Smith has given rides to people she knows to be undocumented. In particular, she has driven a sick friend and his wife to doctor's appointments in Charleston and plans to continue doing so even after SB 20 is implemented. She plans to do this because her friends need to visit the doctor, and if they were to drive

themselves and were stopped by local police for driving without a license, she believes they would be questioned about their immigration status. Plaintiff Benet-Smith worries, however, that if SB 20 goes into effect and she is pulled over while driving her undocumented friends, the police might question her friends' immigration status and she would be criminalized simply for helping a sick friend get to the doctor.

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

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

60. Plaintiff **Keller Barron** is a 79-year-old resident of Columbia, South Carolina, where she has lived since 1953. She raised four children and has been active in the League of Women Voters for decades, including chairing that group's national effort for ratification of the Equal Rights Amendment. For the past 10 years or so, Barron has provided assistance to a family whose parents came from Mexico to provide a better life for their children. This has included providing rides to the undocumented mother so that she can attend medical appointments and parent-teacher conferences at school, among other things. Barron has also provided financial assistance to the parents so that they can more fully participate in their children's lives.

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

62. Plaintiff **John McKenzie** is a resident of Columbia, South Carolina, and an active member of the South Carolina State Bar. He practices law primarily in the areas of subrogation, criminal defense, domestic relations, worker's compensation, and personal injury. An important part of his practice involves providing for the legal needs of the Latino community in South Carolina. In 2004, he was recognized by the Government of Mexico for his work with the Mexican-American community. Plaintiff McKenzie estimates that a significant percentage of his Latino clients are undocumented. Plaintiff McKenzie represents these individuals in personal injury, worker's compensation, criminal defense, and family law matters.

63. Because many of his Latino clients do not have driver's licenses, Plaintiff McKenzie routinely provides transportation to his clients to court hearings. If SB 20 is implemented, Plaintiff McKenzie would be subject to criminal prosecution for concealing, harboring, or transporting undocumented immigrants in order to further such persons' entry into the United States. SB 20 will fundamentally interfere with Plaintiff McKenzie's ability to practice his profession effectively on behalf of the members of the Latino community.

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

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

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

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

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

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

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

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

71. In addition, since SB 20 passed, churches that previously loaned Plaintiff Jones vans or buses, as well as drivers, to transport her congregants are now reluctant to do so without some assurance that the driver will not be arrested for transporting undocumented persons. Further, churches that previously made donations to Plaintiff Jones's church are now hesitant to do so because they are afraid of being charged with a crime for aiding undocumented persons. This is making it more difficult for Plaintiff Jones to raise funds for the church and its programs, and to conduct her ministry.

72. Despite concerns of her own as well as those of her congregants, Plaintiff Jones will continue to operate church and outreach center programs and engage in activities central to her role as a pastor. Plaintiff Jones's ministry manifests her religious beliefs and defines for her what is humane and Christian work.

Defendants

73. Defendant **Nikki Haley** is the Governor of South Carolina. Defendant Haley exercises "[t]he supreme executive authority of" South Carolina, S.C. CONST. ART. 4 § 1, and she is constitutionally required to "take care that the laws be faithfully executed." *Id.* § 15. As such,

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

74. Defendant **Alan Wilson** is the Attorney General of South Carolina. The South Carolina Constitution requires that the Attorney General "shall assist and represent the Governor" in taking care that the laws be faithfully executed. S.C. CONST. ART. 4 §15. The Attorney General is also mandated to "consult with and advise the solicitors in matters relating to the duties of their offices." S.C. CODE § 1-7-100. The South Carolina code requires that the Attorney General "appear for the State" in cases "in which the State is a party or is interested . . . in any . . . court or tribunal when required by the Governor or either branch of the General Assembly." S.C. CODE § 1-7-40. Defendant Alan Wilson is responsible for the enforcement of SB 20 in the State of South Carolina and is an appropriate defendant in this case. Defendant Alan Wilson is sued in his official capacity.

75. Defendant **James Alton Cannon** is the Sheriff of Charleston County. As Sheriff, Defendant Cannon is empowered to arrest "any person for . . . felony or breach of the peace committed in his presence" and "any person for . . . felony upon probable and reasonable grounds." S.C. CODE § 23-17-90. Defendant Cannon is charged with the duty of enforcing the criminal provisions of SB 20 within Charleston County. Defendant Cannon is further required to "serve, execute, and return every process, rule, order or notice issued by any court of record in this State or by other competent authority." S.C. CODE § 23-15-40. Defendant Cannon is sued in his official capacity.

76. Defendant **Scarlett A. Wilson** is Solicitor of the Ninth Judicial Circuit, which includes Charleston and Berkeley counties. In that capacity, Defendant Scarlett Wilson is charged with the duty of enforcing the criminal provisions of SB 20 within Charleston and

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

FACTS

History and Intent of SB 20

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

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

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

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

81. The legislative record makes clear that a primary motivating factor in passing this law was the South Carolina General Assembly's disagreement with federal immigration policy.

82. During the debate, legislators expressly stated that they intended for the State of South Carolina to wrest control over immigration regulation away from the federal government. For example, Senator Glenn McConnell commented: "[B]oth Republican and Democrat, House of Representatives, Senate and Presidents of the United States have failed the country on this issue." Debate on SB 20 Before the Senate (Mar. 8, 2011) (remarks of Sen. Glenn McConnell). Senator Larry Martin stated that "the big problem that has brought us here today is the failure of the federal government to secure our borders. . . . [I]t bothers me that our borders are still not

secure, and that's why we have to deal with this today." Debate on SB 20 Before the Senate (Mar. 2, 2011) (remarks of Sen. Larry Martin).

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

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

Debate on SB 20 Before the Senate (Mar. 8, 2011) (remarks of Sen. Larry Grooms).

84. Several legislators who supported SB 20 publicly expressed their frustration with the federal government's immigration policies and announced that it was time for the State of South Carolina to take immigration into its own hands.

85. For example, Senator Grooms's official website opines that "[p]rotecting our borders is a national obligation the federal government has failed to enforce," and promises that SB 20—which Senator Grooms calls the "Arizona Law"—"will help keep illegal aliens off our streets." *See* Senator Larry Grooms, "Issues," available at http://larrygrooms.com/issues/ (last visited October 11, 2011).

86. A newspaper article on another supporter of SB 20, Senator Larry Martin noted that the he supported SB 20 "because the federal government is failing to address the issue. He hopes an increase in calls from the state's local law enforcement agencies will get the attention

of federal agencies responsible for immigration enforcement. 'I want the phones of the federal government to ring off the hook,' Martin said." Noelle Phillips, *Ford: Mexicans Needed To Do Work Others Reject*, The State (Feb. 8, 2011), available at http://www.thestate.com/2011/02/08/1685334/tougher-immigration-proposal-goes.html.

87. House Speaker Bobby Harrell, another proponent of SB 20, told the press: "It has become abundantly clear that if we want something done about illegal immigration, we're going to have to do it ourselves." Harriet McLeod, *South Carolina House Passes Illegal Immigration Bill*, Reuters (May 25, 2011), available at http://www.reuters.com/article/2011/05/25/us-immigration-southcarolina-idUSTRE74O0OM20110525. When the House approved SB 20, Speaker Harrell "said the state was stepping into a void because the federal government 'refuses to effectively support our law enforcement officers by enforcing immigration laws.'" Associated Press, *SC Gov Signs Illegal Immigration Police Checks Law* (June 27, 2011), available at http://www.bostonherald.com/news/national/south/view/20110627sc_gov_signs_illegal_immigration_police_checks_law/srvc=home&position=recent.

88. And Representative Bill Hixon, who also voted for SB 20, told reporters that "[i]t seems like the federal government won't help us" with immigration, and that "our state is going to try to fix it." Fraendy Clervaud, *SC Immigration Bill Set To Become Law*, MidlandsConnect.com (June 22, 2011), available at http://www.midlandsconnect.com/news/story.aspx?id=632818#.Totg1nL-3To.

89. In signing SB 20 into law, Governor Haley also reiterated the intent of the bill by stating that "illegal immigration is not welcome in South Carolina" and that "South Carolina will not tolerate any illegal immigration in this state." In thanking the sponsors of the bill, Governor Haley acknowledged that they "understood how important it was to make sure that South

Carolina became the state that was known across the country as one that was going to enforce our immigration laws and make sure that anyone that was illegal found another state to go to." *See* The Times-Examiner, *Gov. Nikki Haley Signs Illegal Immigration Reform Bill* (June 27, 2011), available at http://www.timesexaminer.com/videos/807-gov-nikki-haley-signs-illegal-immigration-reform-bill (statement made at signing ceremony).

90. Similarly, bill sponsor Senator Larry Grooms remarked at the bill-signing ceremony: "Illegal immigration is a direct and serious threat to American liberty and our very freedoms, it must necessarily be eradicated," and "freedom-loving states must do what is necessary to preserve our American way of life. . . ." *See id*. (statement made at signing ceremony).

91. In short, the legislative history leaves no question that the General Assembly enacted SB 20 as a comprehensive solution to the perceived problem of the federal government's failure to regulate immigration to South Carolina's liking with the express goal of driving undocumented immigrants out of the state.

Key Provisions of SB 20

State-Based Harboring-Related Immigration Crimes (Section 4 & S.C. CODE § 16-9-460 (as currently in effect))

92. Section 4 of SB 20, amending the section of the South Carolina Code enacted under A280, *see supra* ¶ 5, creates state law immigration crimes punishable by fines and/or imprisonment. *See* Sec. 4, codified at S.C. CODE § 16-9-460. These provisions are at odds with federal immigration policy.

93. Section 4 makes it a state crime for those who have "come to, entered, or remained in the United States in violation of law to allow themselves to be transported" or to "solicit or conspire to be transported or moved within the State with the intent to further the

person's unlawful entry into the United States or avoiding apprehension or detection of the person's unlawful immigration status by state or federal authorities." Sec. 4, codified at S.C. CODE § 16-9-460(A).

94. South Carolina also criminalizes transporting within the state, or soliciting or conspiring to transport within the state, a person who has "come to, entered, or remained in the United States in violation of law" with the "intent to further the person's unlawful entry into the United States or avoiding apprehension or detection of the person's unlawful immigration status by state or federal authorities." Sec. 4, codified at S.C. CODE § 16-9-460(B).

95. Section 4 makes it state crime for those who have "come to, entered, or remained in the United States in violation of law to conceal, harbor, or shelter themselves from detection or to solicit or conspire to" do so "in any place, including a building or means of transportation, with intent to further that person's unlawful entry into the United States or avoiding apprehension or detection of the person's unlawful immigration status by state or federal authorities." Sec. 4, codified at S.C. CODE § 16-9-460(C).

96. South Carolina also criminalizes "conceal[ing], harbor[ing], or shelter[ing]" a person who has "come to, entered, or remained in the United States in violation of law," or soliciting or conspiring to do so, "with intent to further that person's unlawful entry into the United States or avoiding apprehension or detection of that person's unlawful immigration status by state or federal authorities." Sec. 4, codified at S.C. CODE § 16-9-460(D).

97. Under SB 20, a violation of these new state crimes is considered a felony, punishable by a fine of up to $5,000 or up to 5 years in prison, or both. Furthermore, under SB 20, a person who is convicted of, pleads guilty to, or enters into a plea of no contest to a violation

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

98. South Carolina enacted its own version of these provisions precisely to bypass the federal government's definitions and prosecutorial and adjudicatory processes under the comprehensive federal statute, 8 U.S.C. § 1324.

99. Under SB 20, both the actor and recipient of the conduct targeted by Section 4 are subject to criminal prosecution, an unprecedented expansion of who can be found guilty of harboring. Never before has a state or locality, much less the federal government, explicitly criminalized the recipient (*i.e.* the immigrant) for "allowing" someone else to transport or harbor them or for "harboring" themselves. The purpose and effect of subjecting the recipient of such conduct to criminal prosecution is to allow the state to identify and imprison individuals it regards as unlawfully present. Section 4 also requires officers to make an independent determination of an individual's immigration status.

100. South Carolina intended (and achieved) an extraordinarily broad criminal prohibition in Section 4. And, as discussed below, law enforcement agencies will prioritize and maximize enforcement of these provisions in order to avoid the possibility of civil liability under Section 1 of SB 20.

101. The new state immigration crimes created by Section 4 criminalize routine behavior undertaken on a daily basis by U.S. citizens and noncitizens with legal status in South Carolina. Under these state-based immigration offenses, South Carolinians who give a lift to a neighbor, a client, or fellow congregant, who invite a family member to visit from out of state or rent out a room to a friend, or who married a person without considering his or her immigration status, are subject to prosecution, fines, and incarceration if state authorities decide that they

knew or recklessly disregarded that the other person has "come to, entered, or remained in the United States in violation of law" within the meaning of the South Carolina criminal code.

State-Specific Alien Registration Scheme (Section 5)

102. Section 5 of SB 20 enacts a state alien registration regime by creating a new state criminal offense of "fail[ure] to carry in the person's personal possession any certificate of alien registration or alien registration receipt card . . . while the person is in this State." Sec. 5, codified at S.C. CODE § 16-17-750. One element of the offense is that the certificate or card was "issued pursuant to 8 U.S.C. § 1304," a federal statute imposing certain requirements that particular non-citizens carry registration documents. Under SB 20, a violation of this new state crime is considered a misdemeanor, punishable by a fine of up to $100 or up to 30 days of jail time, or both.

103. This provision supplants federal registration laws (and the federal officers who administer and enforce those laws) and congressional judgments regarding the appropriate penalties for failure to carry registration documents in the United States. This provision further requires state officers to make independent judgments regarding an individual's immigration status and whether an individual is required under federal law to carry registration documents. Section 5 is a backdoor attempt to enforce unlawful presence—a civil violation and an offense for which state and local officers are not authorized to make arrests—by allowing arrests upon probable cause that an individual is a foreign national and lacks certain immigration registration documents.

104. The provision governs activities and presence of certain non-citizens within this country, and will undoubtedly burden lawfully present non-citizens.

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

Section 6

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

106. Section 6 of SB 20 requires every law enforcement officer in South Carolina to determine the immigration status of any person the officer stops, detains, investigates, or arrests if the officer develops "reasonable suspicion to believe that the person is unlawfully present in the United States." Sec. 6, codified at S.C. CODE § 17-13-170(A). Under Section 6, an officer may demand that any person subject to any lawful stop, detention, investigation, or arrest produce one of four state-approved identity documents. Sec. 6, codified at S.C. CODE § 17-13-170(B)(1). Only individuals who can produce or who are verified as having a state-approved document receive a presumption of lawful status. *See id*.

107. Only the following four categories of identification documents are approved by the State of South Carolina to provide such a presumption of immigration status: 1) a driver's license or picture identification issued by the South Carolina Department of Motor Vehicles; 2) a driver's license or picture identification issued by another state; 3) a federal picture identification such as a United States passport or military identification; and 4) a tribal picture identification. *See* Sec. 6, codified at S.C. CODE § 17-13-170(B)(1). Individuals who cannot produce or do not possess such a document—which includes many persons who are U.S. citizens or non-citizens with federal permission to remain in the United States—are subject to a lengthy and intrusive immigration verification process.

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

109. Section 6 requires that South Carolina law enforcement officers contact the federal government in the process of investigating immigration status. Sec. 6, codified at S.C. CODE § 17-13-170(C)(1).

110. The federal government does not respond to immigration status queries instantaneously. Federal authorities take over 80 minutes on average to respond to immigration status queries from state and local police under best-case scenarios—when they are given sufficient biographical information and they are readily able to locate the target in the immigration databases that they search. However, the databases that federal officials search for immigration status queries often return no information whatsoever. For example, there is no centralized database of U.S. citizens. In these circumstances, federal immigration officials will report that there is "no match" for the suspect, and in certain circumstances, may have to engage in a lengthy and manual file review. If a manual file review is required in response to an inquiry on an individual, this process can take over two days.

111. Section 6 will unreasonably prolong police encounters, including traffic stops that would ordinary result in a citation and that would take only minutes absent SB 20's mandates. Many citable traffic violations and other minor offenses, such as jaywalking or failure to wear a seatbelt, are deemed criminal violations under South Carolina law. *See*, *e.g.*, S.C. CODE. §§ 56-5-730 (failure to obey traffic provisions is a misdemeanor), 56-5-990 (failure by a pedestrian to obey "walk" and "wait" traffic signals), 56-5-3150 (jaywalking), 56-5-6520 (mandatory use of

seatbelts). Under Section 6, South Carolina law enforcement officers are required to prolong such stops in order to investigate immigration status whenever they have "reasonable suspicion" "that the person is an alien who is unlawfully present in the United States." Sec. 6, codified at S.C. CODE § 17-13-170(A).

112. SB 20 fails to enumerate any criteria for developing a "reasonable suspicion" of what an individual's immigration status might be. SB 20 leaves that determination entirely to an officer's discretion, making it inevitable that officers will detain individuals without proper suspicion of criminal activity, basing their suspicions instead on appearance, language choice, or English-language ability.

113. Section 6 is designed to require, and will have the effect of requiring, everyone in South Carolina, and particularly those who might be perceived as foreign, to carry identification papers reflecting their immigration status at all times to avoid unreasonably prolonged law enforcement encounters.

114. Section 6 further authorizes peace officers to arrest without a warrant anyone they determine to be "unlawfully present" in order to transfer that person to the custody of the federal government. Sec. 6, codified at S.C. CODE § 17-13-170(C)(4). During this time, peace officers are effectively required to arrest such individuals under no lawful basis in order to transport them to federal custody.

115. Law enforcement officials across the country and in South Carolina have stated that SB 20 cannot be implemented lawfully and will inevitably lead law enforcement officers to rely inappropriately on race, ethnicity, and English-language ability in making decisions about whom to subject to additional scrutiny with questions regarding their immigration status.

116. Implementation of SB 20 will have a significant negative impact on the ability of local law enforcement officers to protect immigrant communities and mixed-immigration-status communities and families (*i.e.*, communities and families that include both people with immigration status and people without such status). Because immigrants will avoid the police out of fear that any interaction with law enforcement could lead to immigration status inquiries, South Carolina law enforcement officers will not receive the assistance they need to prosecute crimes. For example, Plaintiff Jane Doe # 2 has avoided interactions with police since becoming aware of SB 20 and was afraid to report a shooting in her neighborhood. To avoid the risk of interrogation and detention due to her immigration status, she will refrain from contacting the police as a victim or witness if SB 20 goes into effect.

Section 7

117. Under Section 7, if a person is charged with a criminal offense and confined for *any* period in a state or local jail, South Carolina law enforcement officers are required to attempt to determine whether the confined person is "an alien unlawfully present in the United States." Sec. 7, codified at S.C. CODE § 23-3-1100(A).

118. Section 7 also provides that if "the prisoner is an alien," correctional officials "must make a reasonable effort to verify whether the prisoner . . . is unlawfully present in the United States." Such verification must be made within 72 hours through a query to the federal government. Sec. 7, codified at S.C. CODE § 23-3-1100(B).

119. If the prisoner has been determined to be "unlawfully present" in the United States and has completed his or her sentence of incarceration, an officer must notify DHS and securely transport the prisoner to federal custody. Sec. 7, codified at S.C. CODE § 23-3-1100(E). Officers are therefore required to maintain custody of an individual beyond the time the

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

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

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

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

122. Section 6 makes it unlawful to use or possess "a false, fictitious, fraudulent, or counterfeit picture identification for the purpose of offering proof of the person's lawful presence in the United States." Sec. 6, codified at S.C. CODE § 7–13–170(B)(2). It further provides that upon the first offense, the violator is guilty of a misdemeanor and subject to a $100 fine and 30 days' imprisonment. With a second offense, this penalty becomes a felony, subject to a $500 fine and five years' imprisonment. *Id.*

123. The criminal offenses created by Section 6 apply only when documents are used "for the purpose of offering proof of the person's lawful presence in the United States." *Id.* This limiting language demonstrates the purpose of the state legislature to regulate in the federal domain of immigration.

Immigration Enforcement Mandate (Section 1)

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

125. Section 1 creates a private right of action for a South Carolina resident to sue any political subdivision that enacts any ordinance or policy that intentionally limits or prohibits a law enforcement officer or local government employee "from seeking to enforce a state law with regard to immigration" or "communicating to appropriate federal or state officials regarding the immigration status of a person" within the state. Sec. 1, codified at S.C. CODE § 6-1-170(E)(1).

126. Political subdivisions found guilty of such violations face steep monetary fines of no less than $1,000 and up to $5,000 for each day that the enactment, action, policy, or practice remains or remained in effect. Sec. 1, codified at S.C. CODE § 6-1-170(E)(1)(c)(3). Under threat of civil liability, law enforcement agencies will be compelled to enforce the provisions in SB 20 to the full extent possible, even where discretion in enforcement is permitted.

Comprehensive Federal Immigration System

127. The federal government has exclusive power over immigration matters. The U.S. Constitution grants the federal government the power to "establish a uniform Rule of Naturalization," U.S. CONST. ART. I, § 8, cl. 4, and to "regulate Commerce with foreign Nations," U.S. CONST. ART. I, § 8, cl. 3. In addition, the Supreme Court has held that the federal government's power to control immigration is inherent in the nation's sovereignty.

128. Congress has created a comprehensive system of federal laws, agencies, and procedures regulating immigration. *See generally* Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

129. The extensive statutory scheme created by the INA leaves no room for supplemental state immigration laws.

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

131. The INA carefully calibrates the nature—criminal or civil—and the degree of penalties applicable to each possible violation of its terms.

132. The INA contains complex and exclusive procedures for determining an individual's immigration and citizenship status, deciding whether the civil provisions of the immigration laws have been violated, and determining whether an individual may lawfully be removed from the United States.

133. Under the INA, a non-citizen's immigration status may be fluid and subject to change over time. A non-citizen who enters the United States with authorization—with a student visa, for example—may remain in the country past his period of authorized stay and thus no longer be in status. (Alternatively, he may overstay his original visa yet remain in status, for example, if he is eligible to change into a different visa classification.) Conversely, a non-citizen who enters the United States without authorization, for example by crossing into the country by foot while evading border authorities, may subsequently gain lawful status, such as through a successful asylum application or U-visa application as a victim of serious crime.

134. The fluidity of immigration status is a fundamental feature of federal immigration law. It is a direct and unavoidable consequence of the system of immigration regulation that Congress has prescribed, and it accommodates many important national interests including, for example, the nation's humanitarian and international law obligations regarding asylum seekers and people fleeing torture.

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

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

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

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

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

including, for example, Congress's desire to allow certain individuals to obtain relief from removal.

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

141. Moreover, the federal government has established certain priorities that determine where resources for immigration enforcement are focused and when discretion should be used. For example, the federal government prioritizes the apprehension and removal of non-citizens it deems to represent the most serious risk to public safety.

142. The federal Law Enforcement Support Center ("LESC"), which is responsible for responding to immigration status queries from law enforcement agencies, has experienced continuous and dramatic increases in immigration status determination queries over the past four years. The verification process at the LESC is time-intensive and can take between 80 minutes and two days per request. Following congressional directives, the LESC has prioritized its efforts in order to focus resources on those non-citizens deemed most likely to pose a threat to public safety or national security.

143. On September 21, 2011, the federal Department of Homeland Security issued a memorandum setting forth the proper role of state and local officers in immigration enforcement pursuant to achieving federal goals and priorities. *See* U.S. DHS, *Guidance on State and Local*

Governments' Assistance in Immigration Enforcement and Related Matters, available at http://www.dhs.gov/xlibrary/assets/guidance-state-local-assistance-immigration-enforcement.pdf ("Federal Guidance"). In the view of the agency charged with administering the INA, "[s]tate or local laws or actions that are not responsive to federal control or direction, or categorically demand enforcement in such a way as to deprive the Federal Government—and state and local officers—of the flexibility and discretion that animates the Federal Government's ability to globally supervise immigration enforcement [are prohibited], . . . even if the state or local government's own purpose is to enforce federal immigration law." Federal Guidance at 8. "[T]he INA thus requires that a state or local law enforcement officer who assists DHS officers in their enforcement of the immigration laws must at all times have the freedom to adapt to federal priorities and direction and conform to federal discretion, rather than being subject to systematic mandatory state or local directives that may work at odds with DHS." *Id*. at 9. "[S]tate or local governments must not systematically act in a way that conflicts with the policies or priorities set by the Federal Government or limits the ability of the Federal Government to exercise discretion under federal law whenever it deems appropriate." *Id*. at 10.

144. In addition, the federal government often exercises its prosecutorial discretion to prioritize certain cases for action over others. The federal government's decision to exercise such discretion may be based upon a wide range of equitable factors, and its exercise in any given case cannot be predicted in advance.

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

LESC or by state agencies to the federal Systematic Alien Verification for Entitlements ("SAVE") program yield, at best, a snapshot of what a federal agency believes to be an individual's current immigration status or eligibility for benefits, respectively, which may not correspond to the ultimate finding of whether she is subject to removal. *See* Department of Justice Office of the Inspector General, *Follow-up Review of the Status of IDENT/IAFIS Integration* at 41 (2004), available at http://www.justice.gov/oig/reports/plus/e0501/final.pdf (noting that, according to DHS officials, DHS's immigration "databases cannot be relied upon to accurately determine immigration status [at any given time] because immigration status is dynamic[,]" and database entries may "not be current"). Thus, not all inquiries to the federal government regarding immigration status yield a clear response.

146. Whether a person is a citizen of the United States is not easily ascertained in the contexts demanded by SB 20. U.S. citizens are not required to carry documentary proof of their citizenship. There is no national database that contains information about every U.S. citizen. Some people are actually unaware of their U.S. citizenship because they may have acquired U.S. citizenship at birth by operation of law due to their parents' citizenship, despite not being born in the United States. *See*, *e.g.*, 8 U.S.C. § 1433. Others automatically obtain citizenship when their parents become naturalized U.S. citizens. *See*, *e.g.*, 8 U.S.C. § 1431.

147. SB 20's creation of a state immigration system fundamentally conflicts with the congressionally created statutory scheme, impermissibly encroaches on the federal government's exclusive power to regulate immigration, and will to lead to erroneous determinations and unlawful detention by state and local officials.

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

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

Federal registration system

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

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

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

152. The federal regulation implementing 8 U.S.C. §§ 1302, 1304, and 1306 prescribes as "evidence of registration" specific forms for compliance. *See* 8 C.F.R. § 264.1. The list, however, has not been updated to include some of the current federal forms that are commonly used. For example, there is no corresponding registration form available for recipients of U-visas (given to victims of crime who assist in the prosecution of the case) or T-visas (given to victims of human trafficking). As a result, there are categories of non-citizens who have applied for immigration benefits or whose presence in the United States is otherwise known to federal immigration agencies who do not have registration documents that are recognized as valid under the regulations.

153. The federal government rarely prosecutes registration violations. Many of the changes that have been made to the INA since the enactment of the registration provisions reflect Congress's decision to focus on and prioritize immigration enforcement against those immigrants who commit serious criminal offenses. Targeting immigrants convicted of serious

crimes, rather than those who may be in violation of the registration provisions, is the principal priority of federal immigration officers.

154. According to the federal government, it is impermissible for "State or local governments [to] creat[e] state prohibitions or impos[e] civil or criminal sanctions for conduct that is within the scope of the INA, even if not prohibited by the INA—for example, penalizing aliens present in the United States without lawful status [or] penalizing aliens who are in violation of federal registration requirements . . . ." Federal Guidance at 14.

Federal transportation and harboring provision

155. The INA also establishes criminal penalties for the transporting and harboring of certain non-citizens. *See* 8 U.S.C. § 1324(a)(1)-(2). Violations of these provisions carry fines and prison terms ranging from five years to life. *Id.*

156. The federal courts are engaged in an ongoing process of interpreting the statutory language in 8 U.S.C. § 1324(a) and determining the reach of the federal prohibitions therein.

157. Section 4 of SB 20 conflicts with 8 U.S.C. § 1324(a) because there are numerous and material differences between the state and federal statutes. Section 4 removes federal control over the enforcement and prosecution of immigration-related transportation and harboring offenses, providing no mechanism for federal discretion or the complexity of federal immigration law. These state laws will be enforced by state police and prosecutors and interpreted by state judges.

158. Section 4 also criminalizes those who are themselves transported or harbored—conduct which is not subject to prosecution under 8 U.S.C. § 1324.

Federal restrictions on immigration enforcement authority

159. Mere presence inside the United States without federal immigration status is not a criminal offense. Rather, it is a civil violation under federal immigration law.

160. State and local law enforcement officers have no general authority to enforce federal civil immigration law. Federal law specifically authorizes state officers to assist in immigration enforcement only in narrowly defined circumstances; otherwise, it reserves immigration enforcement authority to the federal government.

161. Section 1357(g) of Title 8 of the U.S. Code allows the federal government to "enter into a written agreement with a State, or any political subdivision" to carry out "function[s] of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States." 8 U.S.C. § 1357(g). These agreements are commonly referred to as "287(g) agreements" after the section of the INA in which they are codified. Such agreements, however, may be entered into only if the federal government determines that the particular state officers to be deputized are "qualified to perform a function of an immigration officer," *id.*, and the federal government must train and supervise each officer who is deputized under such an agreement.

162. There are two types of 287(g) enforcement models: the task force officer model and the detention model. Under the detention model, only those individuals brought to jail by local arresting agencies are scrutinized under 287(g) authority. The task force officer model involves engaging in certain immigration-related enforcement on patrol. Currently, the sheriffs' offices of only 4 of South Carolina's 46 counties—Beaufort, Charleston, Lexington, and York—have 287(g) agreements with the federal government pursuant to this statutory provision. The only jurisdiction designated under the task force officer model is Beaufort County, while

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

163. SB 20 violates the U.S. Constitution by granting state and local officers in South Carolina immigration enforcement authority outside of the authority provided by 287(g) agreements. SB 20's provisions mandating immigration status investigation by all state and local law enforcement officials in the field conflicts with the limited manner in which the federal government has allowed particular South Carolina law enforcement agencies to assist in the enforcement of federal immigration law under the federal government's control and supervision.

164. The other provisions in federal law authorizing state or local participation in immigration enforcement are also carefully constrained. Federal immigration statutes expressly authorize state and local police to make arrests for exactly two immigration crimes—*federal* immigration crimes of smuggling, transporting, or harboring certain aliens, and illegal entry by a previously deported felon. *See* 8 U.S.C. §§ 1324(c), 1252c. Another provision, 8 U.S.C. § 1103(a)(10), allows the U.S. Attorney General to authorize state and local officers to enforce immigration laws upon certification of "an actual or imminent mass influx of aliens," but no such certification has ever occurred.

165. Congress's intent to generally prohibit state and local officers from enforcing civil immigration laws is clear both from the statutory scheme and from legislative history. Furthermore, the federal government has emphasized that it is impermissible for "[s]tate governments [to] mandat[e] that state or local law enforcement officers inquire into the immigration status of a specified group or category of individuals" and for "[s]tate or local

government officials [to] consistently refer[] certain classes of individuals or matters to DHS for some action to such an extent as to risk burdening limited DHS resources and personnel either after being asked by DHS not to refer those matters or where such referrals fall outside of DHS priorities." Federal Guidance at 14.

Federal regulation of immigration documents

166. Federal criminal law comprehensively governs document fraud in the immigration context. *See, e.g.*, 8 U.S.C. § 1306(d) (false alien registration cards); 8 U.S.C. § 1324(c) (penalties for document fraud); 18 U.S.C. § 1424-25 (false papers in naturalization proceedings); *id.* § 1028 (production, possession, or use of false identification documents); *id*. § 1426 (false naturalization, citizenship, or alien registration papers); *id*. § 1542-43 (forgery or false use of passport); *id*. § 1544 (misuse of passport); *id*. § 1546 (fraud and misuse of visas); *id*. § 911 (false claim to citizenship). Federal law also comprehensively regulates in the area of picture identifications issued by the United States, such as passports and military identification, including the criminal production, issuance, distribution, possession, or use of false, fictitious, fraudulent, or counterfeit federal picture identifications.

167. All of the abovementioned statutes are undergoing continual and ongoing statutory interpretation by both federal courts and federal agencies lawfully delegated authority to do so.

168. Section 6 of SB 20 purports to create a parallel state system governing the same area—immigration-related document fraud. By mimicking federal criminal immigration statutes, and creating different, sometimes conflicting penalties to be charged and prosecuted through a state criminal system—Section 6 intrudes upon an area of exclusive federal control and, as such, is preempted. This creates unavoidable conflict with both the federal immigration

priorities and the specific federal statutes regulating the issue. And, this state provision inappropriately layers additional penalties on top of the scheme created by Congress, thereby undermining the congressional calibration of force.

Federal government's interests in a uniform immigration system and conducting foreign relations

169. The federal government has a core, constitutionally protected interest in setting a uniform federal immigration scheme, and in conducting foreign relations with other nations. State immigration laws interfere with these core interests.

170. The President of the United States criticized a similar law enacted by the State of Georgia on this basis on April 26, 2011, stating: "It is a mistake for states to try to do this piecemeal. We can't have 50 different immigration laws around the country. Arizona tried this and a federal court already struck them down." *See* Matthew Bigg, *Obama Criticizes New Georgia Immigration Law*, Reuters, Apr. 26, 2011, available at http://www.reuters.com/article/2011/04/26/us-obama-immigration-georgia-idUSTRE73P7QD20110426?feedType=RSS&feedName=domesticNews&rpc=22&sp=true.

171. Janet Napolitano, the former governor of Arizona and current U.S. Secretary of Homeland Security, publicly opposed a similar law enacted by the State of Arizona, saying: "The Arizona immigration law will likely hinder federal law enforcement from carrying out its priorities of detaining and removing dangerous criminal aliens." *Divisive Arizona Immigration Bill Signed Into Law*, CBS/AP, Apr. 23, 2010, available at http://www.cbsnews.com/stories/2010/04/23/politics/main6426125.shtml.

172. As the U.S. Department of Justice argued in its lawsuit against Arizona's SB 1070—a law on which SB 20 was explicitly modeled—state laws that attempt to supplement the federal immigration scheme with a patchwork of state immigration laws "interfere with vital

foreign policy and national security interests by disrupting the United States' relationship with Mexico and other countries." Compl. ¶ 4, *United States v. Arizona*, Case No. 10-1413 (D. Ariz. filed July 6, 2010). Most recently, the U.S. Department of Justice argued in its challenge to a similar law in Alabama that these state laws "would result in further and significant damage to . . . U.S. foreign relations" and will jeopardize the treatment of "American nationals who are unlawfully present in other countries." Compl. ¶¶ 36-37, *United States v. Alabama*, No. 11-2746 (N.D. Ala., filed Aug. 1, 2011).

173. Local law enforcement agencies and other government agencies across South Carolina's 46 counties inevitably will interpret SB 20's vague and expansive provisions differently, leading to a patchwork of enforcement even within South Carolina. This cacophony of enforcement poses a serious threat to the federal government's ability to regulate immigration.

174. Because the United States' immigration policy is inextricably intertwined with foreign relations, South Carolina's attempt to regulate immigration through SB 20 will adversely impact the United States' ability to conduct foreign relations with other countries. SB 20 will undermine the ability of the U.S. government to speak with a single voice about immigration, including communicating to foreign nations what their nationals can expect when they come to visit or reside in the United States. State attempts to interfere with these inherently federal issues can have severe impacts on foreign relations. *See* Decl. of William J. Burns ¶¶ 8-10, 38, 46-49, 53, *United States v. Alabama*, No. 11-CV-02746 (N.D. Ala. filed Aug. 1, 2011) (noting cumulative impact of recent state immigration laws, including SB 20, on foreign affairs and that such laws are "already complicating [U.S.] efforts to pursue [foreign policy] interests").

175. SB 20 has already impaired the United States' foreign relations by upsetting a key ally. On the day Governor Haley signed SB 20 into law, the Mexican government expressed

concern that the law will threaten the "human and civil rights of Mexicans who live in or visit South Carolina," and that its "passage ignores . . . Mexico's importance as the state [of South Carolina]'s fourth largest export market" and "contradicts the principles of shared responsibility, trust, and mutual respect with which the Federal Governments of Mexico and the United States operate in order to address their shared challenges in North America." Mexican Foreign Affairs Ministry, *The Government of Mexico Regrets that S20 Has Been Signed into Law in South Carolina* (July 27, 2011), available at http://www.sre.gob.mx/csocial/contenido/comunicados/2011/jun/cp_228.html.

176. In response to similar state anti-immigrant laws—such as Arizona's SB 1070, Georgia's HB 87, Utah's HB 497, and Alabama's HB 56—numerous foreign governments have expressed concern that such laws will cause widespread violations of the United States' treaty obligations, which would harm their nationals living in or visiting the United States. *See, e.g.*, Amici Curiae Brief by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, United Mexican States, and Uruguay in Support of Plaintiffs, *Hispanic Interest Coalition of Alabama v. Bentley*, No. 11-2484, Doc. No. 95 (N.D. Ala. filed Aug. 4, 2011); Motion of the Governments of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Peru for Leave to Join Brief of the United Mexican States as Amicus Curiae in Support of Plaintiffs, *Georgia Latino Alliance for Human Rights, et al. v. Deal*, et al., No. 11-1804, Doc. No. 54 (N.D. Ga. filed June 15, 2011); Brief of the United Mexican States as Amicus Curiae in Support of Plaintiffs, *United Coalition of La Raza et al. v. Herbert et al*., No. 11-00401, Doc. No. 68 (D. Utah filed June 7, 2011); Brief of the United Mexican States as Amicus Curiae in Support of Plaintiffs, *Friendly House et al. v. Whiting et al*., No. 10-01061, Doc. No.

299 (D. Ariz. filed July 8, 2010). These governments have also explained that state immigration laws, if implemented, would negatively impact foreign relations by undermining public opinion in their home countries and by making it impossible for their countries to engage on a sovereign-to-sovereign basis with the United States on important issues such as immigration and trade.

CLASS ACTION

177. The Individual Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). The class, as proposed by Plaintiffs, consists of all persons:

a. who are or will be subject to detention, arrest, or interrogation with respect to their citizenship or immigration status pursuant to the provisions of SB 20; or

b. who are or will be subject to unlawful detention or prosecution pursuant to the provisions of SB 20; or

c. who are or will be deterred from living, associating, or traveling with immigrants in South Carolina because of the provisions of SB 20.

178. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are met here, in that the class is so numerous that joinder of all members is impracticable.

179. There are questions of law and fact common to the proposed class, including: (1) whether SB 20 is preempted by the U.S. Constitution and federal law; (2) whether SB 20 violates the Fourth Amendment of the U.S. Constitution; (3) whether SB 20 violates the Equal Protection Clause of the U.S. Constitution; and (4) whether SB 20 violates the Due Process Clause of the U.S. Constitution. These questions predominate over any questions affecting only the Individual Plaintiffs.

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

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

DECLARATORY AND INJUNCTIVE RELIEF

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

183. In violating Plaintiffs' rights under the U.S. Constitution and federal law, Defendants have acted and will be acting under color of law.

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

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

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

187. In addition, SB 20 will thwart the missions of Organizational Plaintiffs Lowcountry Immigration Coalition, Mujeres de Triunfo, Nuevos Caminos, SCVAN, SCHLC, SEIU, and the Joint Board by forcing them to divert their resources in order to respond to their constituents' questions regarding their rights under the new law, which will undermine their ability to advance pre-existing organizational priorities and services.

188. In addition, SB 20 will thwart the missions of Organizational Plaintiffs Lowcountry Immigration Coalition, Mujeres de Triunfo, Nuevos Caminos, and SCVAN by deterring their members and/or clients from availing themselves of the organizations' services and/or participating in membership activities.

189. In doing the things alleged in this Complaint, Defendants will deny Plaintiffs' rights secured by the U.S. Constitution and federal law.

190. Defendants' enforcement of SB 20 will constitute an official policy of the state of South Carolina.

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

CAUSES OF ACTION

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

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

193. Count One is brought against Defendants Cannon and Scarlett Wilson by Organizational Plaintiffs Mujeres de Triunfo, Nuevos Caminos, SEIU, and the Joint Board, and by Individual Plaintiffs Jane Doe # 1, John Doe #1, and Yajaira Benet-Smith.

194. Paragraphs 1-191 are repeated and incorporated as though fully set forth herein.

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

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

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

197. In addition, SB 20, and particularly Sections 1, 4, 5, 6, and 7, conflicts with federal laws, regulations and policies; attempts to legislate in fields occupied by the federal government; imposes burdens and penalties on legal residents not authorized by and contrary to federal law; and unilaterally imposes burdens on the federal government's resources and processes, each in violation of the Supremacy Clause.

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

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

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

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

201. Paragraphs 1-54, 73-76, 105-120, 124-126, 159-165, and 177-191 are repeated and incorporated as though fully set forth herein.

202. The Fourth Amendment to the U.S. Constitution prohibits "unreasonable searches and seizures." The Fourth Amendment's guarantees are applied to the States through the Fourteenth Amendment.

203. Sections 6 and 7 of SB 20 require officers to seize, detain, arrest, and hold individuals without reasonable suspicion or probable cause to believe a person has engaged in criminal activity in violation of the Fourth Amendment.

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

COUNT THREE
FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

205. Count Three is brought against Defendants Haley and Alan Wilson by Organizational Plaintiffs Lowcountry Immigration Coalition, Mujeres de Triunfo, Nuevos

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

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

207. Paragraphs 1-59, 73-76, 102-104, 124-126, and 177-191 are repeated and incorporated as though fully set forth herein.

208. The Fourteenth Amendment to the U.S. Constitution provides that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

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

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

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

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

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

213. Paragraphs 1-76, 92-101, 105-126, and 177-191 are repeated and incorporated as though fully set forth herein.

214. The Fourteenth Amendment to the U.S. Constitution provides that no State shall "deprive any person of life, liberty, or property without due process of law."

215. Sections 4 and 6 base criminal liability on the undefined and vague term of "unlawfully present" or "lawful presence," concepts that have no single definition under federal law, but rather are defined only for quite specific purposes that bear no relation to these provisions of SB 20.

216. Sections 4 criminalizes behavior by private parties who are not legally authorized to make verification requests to the federal government, and who for this reason, and because immigration status is otherwise a complex legal determination not readily made by laypersons, cannot have notice at the time they are required to conform their conduct to the law as to whether a person is "unlawfully present" within the meaning of SB 20. Section 4 states that it "does not apply" to certain programs which, among other things, "are necessary for the protection of life or safety," but the statute does not define that standard, leaving groups and individuals uncertain whether they would be deemed to fall within the savings clause or not. Section 4 of SB 20 violates the Due Process Clause as impermissibly vague and overbroad.

217. Additionally, Section 6 directs state and local law enforcement officials to detain an individual if they have a "reasonable suspicion" that the individual is "unlawfully present." The statute leaves the term "reasonable suspicion" undefined, which further confuses the meaning of this provision.

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

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

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

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

221. Paragraphs 1-59, 73-76, 105-120, 124-126, 159-165, and 177-191 are repeated and incorporated as though fully set forth herein.

222. The Fourteenth Amendment to the U.S. Constitution provides that no State shall "deprive any person of life, liberty, or property without due process of law."

223. Sections 6 and 7 of SB 20 direct South Carolina state and local law enforcement officers to deprive persons of their liberty interests without due process of law by subjecting Plaintiffs and putative class members to prolonged detention without any process, in violation of the Fourteenth Amendment Due Process Clause.

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

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Declare that SB 20 is unconstitutional in its entirety as a regulation of immigration and that Sections 1, 4, 5, 6, and 7 unconstitutionally conflict with federal law;

c. Declare that Sections 6 and 7 violate the Fourth Amendment;

d. Declare that Section 5 violates the Equal Protection Clause;

e. Declare that Sections 4, 6, and 7 violate the Due Process Clause;

f. Enjoin Defendants from enforcing SB 20 and S.C. CODE § 16-9-460 (as currently in effect);

g. Grant Plaintiffs costs of suit and reasonable attorneys' fees and other expenses pursuant to 42 U.S.C. § 1988; and

h. Grant such other relief as the Court may deem appropriate.

Dated: October 12, 2011

Respectfully submitted,

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