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

PLAINTIFFS' MEMORANDUM IN SUPPORT

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Plaintiffs move for a preliminary injunction enjoining Defendants from enforcing Senate Bill 20 ("SB 20"). If SB 20 is allowed to go into effect, it will expose all South Carolinians, and in particular both lawfully present immigrants and immigrants who lack certain immigration status, to a broad array of unwarranted and unlawful police intrusion into their daily lives. These concerns are not imaginary—in only a few weeks since the implementation of a similar state immigration law in Alabama, a crisis has gripped that state. Local officers have begun arresting individuals for new state immigration crimesl( )-i

Carolina legislators enacted this comprehensive law, directly regulating numerous aspects of immigration. During the debate, legislators expressly stated an intent to wrest control over immigration regulation away from the federal government. For example, 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." Ex. 22-A, Transcript of March 2, 2011, Senate Debate on SB 20 at 11:4-13. The intent of the legislators was clearly stated by Senator Larry Grooms, sponsor of the bill in the Senate, when talking about SB 20: "[T]his bill . . . will make South Carolina a difficult place to live. It will cause many of the illegal immigrants to self-deport." Ex. 22-B, Transcript of March 8, 2011, Senate Debate on SB 20 at 3:12-14.

As noted in the press, Senator Martin 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.' " Noelle Phillips, *Ford: Mexicans Needed To Do Work Others Reject*, The State (Feb. 8, 2011).[3] And in signing SB 20 into law, Governor Haley acknowledged that legislators "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).[4]

[3] *Available at* http://www.thestate.com/2011/02/08/1685334/tougher-immigration-proposal-

SB 20 mandates that South Carolina law enforcement officers effectuate prolonged detentions solely for the purpose of investigating immigration status. Section 6 requires every law enforcement officer in South Carolina to determine the immigration status of any person the officer stops if the officer develops "reasonable suspicion to believe that the person is unlawfully present in the United States." Sec. 6, S.C. CODE § 17-13-170(A). Only individuals who can produce or who are verified as having one of four state-approved identity documents receive a presumption of lawful status. § 17-13-170(B)(1). Individuals who cannot produce or do not

Alabama's state alien registration law pending appeal), *appealing United States v. Alabama*, 2011 WL 4469941, *19, *37-*45 (N.D. Ala. Sept. 28, 2011) (enjoining a state immigration-related harboring and transporting provision, but not a mandatory law enforcement immigration verification provision or state alien registration criminal offense).

1. SB 20 Is an Unconstitutional State Law Regulating Immigration

The "[p]ower to regulate immigration is unquestionably

requirements not authorized by federal law for immigrants seeking public assistance violated the Supremacy Clause, and observing that the restrictions "necessarily operate . . . to discourage entry into or continued residency in the State"); *Villas at Parkside Partners v. City of Farmers Branch*, 701 F. Supp. 2d 835, 855 (N.D. Tex. 2010) (invalidating ordinance requiring noncitizens to demonstrate immigration status prior to renting housing), *appeal docketed* No. 10-10751 (5th Cir. July 28, 2010).

In addition to the text of SB 20, the legislative debates described above make clear that SB 20 is centrally concerned with regulating immigration, and not to "further[] a legitimate state goal." *Plyler v. Doe*, 457 U.S. 202, 225 (1982). SB 20 was enacted as South Carolina's attempt to replace federal law and policy with state-crafted solutions to the perceived problem of the federal government's failure to regulate immigration to South Carolina's liking. Its goal—and its effect—is to profoundly restrict the "entry and stay" of foreign nationals in South Carolina, *DeCanas*, 424 U.S. at 355, 359, particularly those whom South Carolina believes to be present without federal approval. By creating conditions that make life so difficult for immigrants that they remove themselves from the state, SB 20 as a whole constitutes a direct regulation of immigration.

SB 20's impact on immigration is direct, not "incidental or speculative." *Cf. id.* at 355. In only a few weeks since a similar law entered into effect in Alabama, there already have been reports of misuse of immigration enforcement by local law enforcement officers. For example, an individual in Alabama was arrested and detained under a state crime equivalent to SB 20's Section 5 for failing to have an alien registration document, even though the arresting officer knew (as documented in the police report) that the individual was currently in immigration

not authorized by federal law and "directly impact[ed] immigration").

c. SB 20's Impact On Foreign Relations as a Regulation of Immigration Requires that It Be Held Invalid

SB 20's demonstrated impact on foreign relations further requires that it be held invalid. *See GLAHR*, 2011 WL 2520752 at *11 (finding that international relations concerns raised by Georgia's HB 87 were direct and immediate); *Arizona*, 641 F.3d at 368 (Noonan, J. concurring) ("Whatever in any substantial degree attempts to express a policy by a single state or by several states toward other nations enters an exclusively federal field."); *Hines*, 312 U.S. at 64.

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 living in or visiting South Carolina," and that its "passage ignores . . . Mexico's importance as the state's fourth largest export market" and "goes against the principles of shared responsibility and mutual trust and respect with which the federal governments of Mexico and the United States 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).[10]

In response to similar state anti-

HB 87, and Alabama's HB 56, numerous foreign governments 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.[11]

Laws dealing directly with matters of immigration, such as SB 20, "belong[] to that class of laws which concern the exterior relation of this whole nation with other nations and governments." *Henderson*, 92 U.S. at 273. Such laws "ought to be[] the subject of a uniform system or plBh,o01c 01 Tc 0 Tw (2]TJ -0.004 Tc 0.04004-0.00([0 Tw 0.6Tc 0 24)]TJ /0.0023TJ -0.003Tj

Davis, LLC, 604 F.3d 824, 829-30 (4th Cir. 2010) (quoting *Hines*, 312 U.S. at 67); *Onslow County Bd. of Ed.*, 728 F.2d at 635 ("Preemption may occur whether the conflict is explicit from the language of the federal statute or implicitly contained in its structure and purpose") (internal citations omitted). Even where the state law does not set out substantively different terms than federal law, the state law is conflict preempted where it " 'interferes with the *methods* by which the federal statute was designed to reach [its] goal.' " *Columbia Venture, LLC*, 604 F.3d at 830 (quoting *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 103 (1992) (emphasis added)). And regardless of whether the state and the federal government share the same concerns, "[t]he fact of a common end hardly neutralizes conflicting means" of addressing those concerns. *Crosby*, 530 U.S. at 379.

In the INA, Congress has set forth a comprehensive system of immigration laws, regulations, procedures, and policies under which the federal government regulinedraat the

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of “an actual or imminent mass influx of aliens,” a power which has never been invoked. 8 U.S.C. § 1103(a)(10). And under 8 U.S.C. § 1357(g)(1), the federal government may enter into

status of any person the officer stops if the officer develops "reasonable suspicion to believe that the person is unlawfully present in the United States." Sec. 6, § 17-13-170(A). Whenever an officer develops such "reasonable suspicion" and the person also does not possess or is unable to produce a state-approved identification, the officer is effectively required to contact the federal government in order to verify the person's immigration status. §§ 17-13-170(B)(1), (C)(1). Thus, Section 6 mandates that officers prolong detentions and undertake custodial immigration

federal government. § 23-3-1100(B). Section 7 further requires the continued custodial detention of individuals in South Carolina jails, even after any lawful basis for custody has

the many non-citizens who lack immigration status, and whose continued presence technically violates federal immigration law, yet are allowed to remain in the United States with the knowledge and consent of the federal government. For example, Plaintiff Jane Doe # 2 currently lacks lawful immigration status in the United States, but has applied to the federal government for a U-visa based on her cooperation in the criminal prosecution of her daughter's abusive husband. Decl. Jane Doe # 2, ¶¶ 3-4, attached as Ex. 5. Although federal authorities are aware that Jane Doe # 2 is undocumented, they have not elected to initiate immigration proceedings against her. Yet Plaintiff Jane Doe # 2 does not have a federal alien registration document or other document that can establish to South Carolina law enforcement officials that her presence in the country is known to the federal government. *Id*. ¶ 5. Although the federal government would have no interest in arresting her, federal agents could not, if asked, tell a South Carolina peace officer that she is in lawful status. SB 20 authorizes peace officers to investigate and detain Jane Doe # 2 on immigration grounds without a warrant and without regard to the fact that the federal government has already declined to seek her removal.

Similarly, John Doe # 1 has an Employment Authorization Document ("EAD") from the federal government, as well as a South Carolina driver's license, but both expire in early January, 2012. Decl. of John Doe # 1, ¶¶ 2-4, attached as Ex. 6. In the past it has taken him several weeks or even a month to receive his renew12 snua8 scn /TT0 1 5(r)]TJ 0.002 Tc -02r

Because of the complex structure and operation of federal immigration law, there are countless individuals in South Carolina who are presently not in lawful status, but are eligible for a form of immigration relief, such as asylum, adjustment of status, or withholding of removal—relief for which Congress has expressly provided and which is fundamental to the proper administration of federal immigration laws as Congress intended them to work. Some of these individuals are known to the federal government; others will not be identified until they are actually placed in proceedings by the federal government and their cases are adjudicated.

b. SB 20 Creates New State-Based Immigration Crimes that Conflict with Federal Law

SB 20 creates several new state offenses criminalizing immigration-related conduct. As discussed above, South Carolina previously established independent state immigration offenses criminalizing the harboring or transporting of unauthorized immigrants. *See* S.C. CODE § 16-9-460 (2008). Section 4 of SB 20 amended this provision to also criminalize the acts of allowing *oneself* to be transported or harboring *oneself*. *See* Sec. 4, S.C. CODE § 16-9-460(A), (C). Although Section 4 is constitutionally preempted as an impermissible regulation of immigration because it applies criminal sanctions to those who assist in the entry and continued presence of certain non-citizens—a core element of immigration regulation, Section 4 also impermissibly conflicts with the operation of federal law. While appearing to mirror federal law on the surface, these new state criminal offenses are specific to, and wholly administered by state and local officials in South Carolina, beyond of the federal government's control over how best to regulate such conduct to meet Congress's objectives. *See GLAHR*, 2011 WL 2520752 at *13.

Congress has established several federal offenses that appear superficially similar to the new state offenses created by Section 4. *See* 8 U.S.C. § 1324. Yet, Section 4 materially differs from the federal harboring statute. First, Section 4 criminalizes those who are themselves

transported or who conceal or harbor themselves—conduct which is not subject to prosecution under the federal law and is not part of the Congressional design for defining and addressing the harboring and transporting components of unlawful immigration

enforced at the discretion of state law enforcement officers and prosecutors and will be interpreted by state judges—not by their federal counterparts. Local authorities do not have access to the full range of options provided under the INA for handling immigration crimes, including, for example, the option of imposing civil or administrative sanctions rather than criminal ones. Thus, as the district court held in enjoining a similar provision in Georgia, "[d]ecisions about when to charge a person or what penalty to seek for illegal immigration will no longer be under the control of the federal government." *GLAHR*, 2011 WL 2520752 at *13.

For example, under Section 4, local officers and prosecutors could arrest and convict individuals for driving

authority to arrest individuals for violation of that federal law. If South Carolina truly sought to enforce federal law in this area, it could arrest violators and turn them over to the federal government for prosecution. But the power to arrest does not imply the power to enact independent state crimes to be administered in its own state system, out of apparent dissatisfaction and disagreement with federal law. Even if a local officer made an arrest under Section 1324, decisions regarding whether to prosecute, whether to seek criminal, civil, or administrative penalties, and the ultimate disposition would remain with the federal government.

c. SB 20 Creates a State Alien Registration Scheme

Section 5 establishes a South Carolina-specific alien registration regime by creating a new state criminal offense for failure to carry certain immigration documents. Section 5 regulates the conditions under which even lawful immigrants remain in the State by imposing South Carolina-specific penalties for failure to carry alien registration documents. *See Hines*, 312 U.S. at 59-60, 68 (state alien registration law, including criminal penalties, invades a "field which affects international relations").

Under Section 5, South Carolina is attempting to legislate in an area that the Supreme Court has explicitly declared off-limits to the states and broadly preempted by federal alien registration provisions.[21] *Id.*, at 68-69, 74. Under federal law, registered aliens are required to carry their "certificate[s] of alien registration" or "alien registration receipt card[s]." 8 U.S.C. § 1304(e). Over the objection that "compliance with the state [alien registration scheme at issue in *Hines*] does not preclude or even interfere with compliance with the act of Congress," *id*. at 79

[21] Congress has provided very specific measures ranging from which aliens must register, *see* 8 U.S.C. §§ 1201, 1301; when they must register, *see* § 1302; the content of the registration forms and what special circumstances may require deviation, § 1303; the confidential nature of registration information, § 1304; the circumstances under which an already-registered alien must report her change of address to the government, § 1305; and the penalties for failing to register, § 1306.

(Stone, J. dissenting), the Court found that,

> Having the constitutional authority so to do, [Congress] has provided *a standard for alien registration in a single integrated and all-embracing system* in order to obtain the information deemed to be desirable in connection with aliens. When it made this addition to its uniform naturalization and immigration laws, it plainly manifested *a purpose to do so in such a way as to protect the personal liberties of law-abiding aliens through one uniform national registration system, and to leave them free from the possibility of inquisitorial practices and police surveillance. . ..*

Id. at 74 (emphasis added). For the same reasons, SB 20 is preempted.

As with Section 4 discussed above, any assertion that South Carolina's registration provision is not preempted because it is consistent with, or mirrors, federal law must fail. *Id*. at 66-67 (laws that "complement the federal [alien registration] law, or enforce additional or auxiliary regulations" are preempted); *see also Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 379-80 (2000) ("conflict is imminent when two separate remedies are brought to bear on the same activity") (punctuation and citations omitted).

SB 20 goes well beyond simply "complementing" federal registration provisions. First, Section 5 applies *additional penalties* to non-citizens in South Carolina when they are found (by South Carolina state courts) to have violated the federal registration provision. This is particularly glaring because the federal government rarely prosecutes registration violations. *See* Bureau of Justicw -6.03Tc 0.004 T3(e)nw [(ito.004 t is)1(cTj [(s)-15()-6(r)-1(ar)-1(el)-260TJ /TT0 (S4(s)-5(

U.S.C. § 1304, which local officers are not authorized to enforce under the INA. Section 1304 is intended only to regulate the conduct of select lawfully present immigrants—*i.e.*, individuals who have registered and been issued registration documents that they must carry at all times. Under SB 20, local officers—who lack the expertise in federal immigration law—will be tasked with determining whether certain immigrants are required to carry registration documents and which documents satisfy Section 1304's requirements. This situation is exactly what the Supreme Court proscribed in *Hines*—the "[l]egal imposition of distinct, unusual and extraordinary burdens and obligations upon aliens-such as subjecting them alone, though perfectly law-abiding, to indiscriminate and repeated interception and interrogation by public officials." 312 U.S. at 65-66. This provision ultimately places control over who is arrested and who is prosecuted for registration offenses with state and local authorities, wresting control over these complex determinations from the federal government.[22]

SB 20's alien registration scheme is particularly problematic because many foreign nationals who reside in the United States with the permission or knowledge of the United States do not possess or have readily available documentation to demonstrate their status, and thus will be subject to arrest under Section 5 of SB 20.[23] Subjecting these immigrants, whom the federal

[22] Section 5 will also result in state and local officers making arrests solely on the basis of unlawful presence, a civil offense for which local officers do not have the authority to arrest. Any individual who is unlawfully present would necessarily be a foreign national without a valid registration document. Individuals who cannot produce such a document will be treated as suspected undocumented immigrants and subject to arrest based on an untrained local officer's belief that the individual is required to carry registration documentation.

[23] These categories of foreign nationals include those travelers visiting from countries participating in the Visa Waiver Program, and individuals with temporary protected status or who have applied for visas as victims of crimes, such as Plaintiff Jane Doe # 2. *See* Decl. of Lori Scialabba ¶¶ 21, 26, 37, Ex. 22-G (Deputy Director of DHS USCIS). The number of individuals in these situations is significant. In fiscal year 2010, more than 16 million aliens were admitted under the Visa Waiver Program, Decl. of David V. Aguilar ¶ 10, Ex. 22-H (Deputy Commissioner of U.S. CBP), and DHS estimates that up to 200,000 individuals were eligible for

government is not attempting to remove, to criminal prosecution conflicts with federal law and policy. *See DeCanas*, 424 U.S. at 358, n.6 ("Of course, state regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress. . . .").

SB 20 thus selects a single "provision that has long been obsolete and widely regarded by the federal authorities, at the very highest levels, to be practically impossible to enforce and of extremely limited value as an immigration enforcement tool," Cooper Decl. ¶ 25, and prioritizes it for systematic enforcement, which is neither intended by Congress nor approved by the Executive. Section 5 allows local officials to detain and prosecute non-citizens under state law authority for violation of federal immigration law rather than turning them over to federal authorities, by whom they would be highly unlikely to be charged for a registration crime.

d. SB 20 Impermissibly Burdens the Federal Government

SB 20 is also preempted because it imposes an impermissible burden on federal resources, creating "obstacle[s] to the accomplishment and execution of the full purposes and objectives of Congress." *Hines*, 312 U.S. at 67; *see Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 150 (2001) (holding that "differing state regulations affecting an ERISA plan's 'system for processing claims and paying benefits' impose 'precisely the burden that ERISA pre-emption was intended to avoid.'") (quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10 (1987)). "By imposing mandatory obligations on state and local officers, [such provisions] interfere with the federal government's authority to implement its priorities and strategies in law enforcement, turning [state] officers into state-directed DHS agents." *Arizona*, 641 F.3d at 351-52.

SB 20 will directly undermine federal immigration enforcement priorities by vastly

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temporary protected status based solely on the designation of Haiti due to last year's earthquake, Decl. of James B. Steinberg ¶ 19, Ex. 22-I (former Deputy Secretary of State).

increasing the number of undesired immigration status queries to the federal government. State and local officers will contact the federal government in the enforcement of South Carolina's alien registration scheme (Sec. 5) and the state's fraudulent identification document provision (Sec. 6). In addition to the immigration queries required during routine police encounters by Section 6, Section 7 mandates that a verification request be submitted to the federal government for every non-citizen—regardless of whether they are suspected to be unlawfully present or not—who is arrested and booked into jail. And while many foreign nationals will be unable to readily demonstrate their lawful status, Section 7 requires querying the federal government in each case. Furthermore, under the threat of civil liability set forth in Section 1, law enforcement agencies must enforce SB 20 to the fullest extent, thereby increasing the number of requests that will be submitted to the federal government. *See* Sec. 1, S.C. CODE § 6-1-170(E)(1); Decl. of George Gascón ¶ 17, Ex. 8 (District Attorney and former Chief of Police of San Francisco, CA).

By flooding the federal government with unwarranted requests for immigration status verification, SB 20 requires the federal government to divert resources to handling low-priority cases rather than focusing on the apprehension of the most dangerous aliens and exercising prosecutorial discretion in certain instances. Decl. of William M. Griffen ¶ 26, Ex. 22-J (Acting Unit Chief of LESC); Decl. of Daniel H. Ragsdale ¶ 41, Ex. 22-K (Executive Associate Director for Management and Administration at ICE); *see also* ICE Director John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (Mar. 2, 2011)[24]; ICE Director John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension,*

[24] *Available at* http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf.

Detention, and Removal of Aliens at 2 (June 17, 2011)[25]

Recent guidance issued by DHS setting forth the proper role of state and local officers in immigration enforcement further confirms SB 20's conflict with achieving federal goals and priorities. *See*

combined with the already time-intensive verification process, will necessarily strain the federal government's resources.[26]

Moreover, local law enforcement agencies, solicitors, and courts across South Carolina's 46 counties inevitably will interpret

Arizona Immigration Bill Signed Into Law, CBS/AP, Apr. 23, 2010.[28]

The Court should also consider the burden on the federal government due to the cumulative impact of other states passing similar legislation. *See GLAHR*, 2011 WL 2520752, at *10 (the "risk [of inconsistent civil immigration policies] is compounded by the threat of other states creating their own immigration laws") (citing *United States v. Arizona*, 641 F.3d at 354-55; *Wis. Dep't of Indus., Labor and Human Relations v. Gould Inc.*, 475 U.S. 282, 288–89 (1986) ("Each additional statute incrementally diminishes the [federal government's] control over enforcement of the [federal statute] and thus further detracts from the 'integrated scheme of regulation' created by Congress.")). To date, South Carolina is one of six states that passed far

and instrumentalities for entering and remaining in the United States.

The central concerns of the INA's comprehensive scheme include regulating the entry, status, and presence of non-citizens within the United States, determining whether non-citizens must depart from the United States, and effecting such removal. *See, e.g.*, 8 U.S.C. §§ 1181-89 (admission); §§ 1222-31 (detention, entry, inspection, apprehension, detention, removal); *see also Whiting*, 131 S. Ct. at 1973 (INA is "a 'comprehensive federal statutory scheme for regulation of immigration and naturalization'" (quoting *DeCanas*, 424 U.S. at 353)); *Elkins v. Moreno*, 435 U.S. 647, 664 (1978) (INA is "a comprehensive and complete code governing all aspects of admission of aliens to the United States"). Congress has created a vast federal apparatus to administer this scheme and has entrusted federal officials with discretion in carrying out the statute's mandates. *See generally* Federal Guidance at 3-4 & n. 4.

With respect to Section 4, in accordance with the federal regulation of entry and presence, Congress has long included criminal sanctions directed at harboring or transporting unauthorized immigrants, and has repeatedly adjusted the standards and penalties relating to this activity. *See United States v. Ozcelik*, 527 F.3d 88, 97-99 (3d Cir. 2008). Thus, "Congress has expressed much more than 'peripheral concern' with the transportation, harboring, and inducement of illegal aliens." *GLAHR*, 2011 WL 2520752, at *15. The longstanding federal dominance over this area and the centrality of these provisions are evidence that federal law is "so pervasive that [the Court] can reasonably infer that Congress has left no room for the states to supplement it." *Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1068 (11th Cir. 2010).

With respect to Sections 6 and 7, Plaintiffs have already demonstrated how Congress has carefully defined the narrow ways in which states may participate in immigration enforcement. Those limited authorizations are simply incompatible with any argument that Congress meant to

allow states to create their own, separate enforcement authorizations. Furthermore, the INA limits even *federal* officers' authority to enforce its investigation and arrest provisions. *See, e.g.*, 8 U.S.C. § 1357(a)(2) (limiting federal officials' warrantless arrest authority for immigration

crime is necessary to extend a traffic stop for investigatory purposes" once the original purpose of the stop has been completed. *United States. v. Branch*, 537 F.3d 328, 337 (4th Cir. 2008). While an officer may question a person who has been lawfully stopped on unrelated subjects, such questioning may not unreasonably prolong the stop. *See Arizona v. Johnson*, 129 S. Ct. 781, 788 (2009); *Muehler v. Mena*, 544 U.S. 93, 100-01 (2005).

By requiring officers to prolong a traffic stop well beyond the time needed to address the original basis for the stop to contact the federal government—by an average of 80 minutes, under the best-case scenario—SB 20 will result in Fourth Amendment violations. Section 6 mandates the prolonged detention of persons who have been stopped solely for the purpose of undertaking an immigration investigation and based only on "reasonable suspicion" that a person is present unlawfully. § 17-13-170(A). However, "reasonable suspicion"—93, 1or1 142(l)-2(e)4(0 5t)- lrs04 Tc 0.004 Tv

determine what length of time is reasonable given Section 6's mandate to investigate and determine an individual's status. § 17-13-170(C)(2). Officers will necessarily look to this statute for guidance. And, in fact, Section 6 goes on to specify the actions an officer must take prior to releasing an individual suspected of unlawful presence—an officer must attempt to verify the status of such individual with the federal government and only after being unable to verify the person's status is the officer required to discontinue the detention. *Id*. Thus, before releasing the person, the officer must attempt and be unable to verify the individual's lawful status—a process that will, by definition, unlawfully prolong the stop.

If, however, a person is found to be unlawfully present, Section 6 requires that the officer determine whether ICE shall assume custody and grants officers the authority to transport the person to a federal facility. § 17-13-170(C)(4). Thus, officers will be detaining individuals, who would normally be released from custody (because, for example, charges against them were dismissed), without any lawful basis other than a federal civil immigration violation. And SB 20 provides no time limit for custody in the case of a transfer.

reason to arrest you." Ex. 22-L, Transcript of May 24, 2011, House Debate on SB 20, 36:7-10. And he noted that the restraint of such an individual will be based only upon "a suspicion that . . . [an individual] might be here illegally or that maybe you can't prove that you're here illegally." *Id*. at 36:17-19. Although ultimately voting in favor, Representative Stavrinakis admitted that SB 20 would "double [the] intrusion into your Constitutional rights." *Id.* at 37:15-19.

2. Unlawfully Prolonged Detention in State and County Jails

Section 7 violates the Fourth Amendment by mandating the continued custodial detention of individuals in jail, even after they have completed their sentence, solely on the basis of federal civil immigration violations, until they are transported and handed over to federal immigration authorities. Sec. 7, S.C. CODE § 23-3-1100(E). Courts have regularly found that the Fourth Amendment is violated where plaintiffs who are initially placed in custody on a lawful basis are held in custody after they were entitled to release, or after any lawful basis for detention has ended. *See, e.g. Ringuette v. City of Fall River*

Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 375 (2008). Courts have ruled that irreparable harm may result from the enforcement of a law that violates the Supremacy Clause. S*ee e.g. Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992); *Arizona*, 641 F.3d at 366; *GLAHR*, 2011 WL 2520752 at *18. Similarly, courts have ruled that constitutional violations inflict irreparable harm. *Faulkner v. Jones*, 10 F.3d 226, 233 (4th Cir. 1993) (affirming district court did not abuse its discretion in entering preliminary injunction to prevent irreparable harm to plaintiff during pending litigation of equal protection claim).

If SB 20 goes into effect, it will subject plaintiffs, as well as members and clients of plaintiff organizations, to the risk of unconstitutional and extended detention while police officers investigate immigration status. Decl. of Kanuck ¶ 14, attached as Ex. 11; Decl. of McCandless ¶ 13, attached as Ex. 12; Decl. of Robinson ¶¶ 11, 13, attached as Ex. 13; Decl. of Swain Kunz ¶ 14, attached as Ex. 14; Decl. of Torrales ¶ 8, attached as Ex. 15; Decl. of Baird ¶ 9, attached as Ex. 16; Decl. of Raynor ¶¶ 5, 7, 8, attached as Ex. 17; Decl. of Jane Doe # 1 ¶¶ 4, 8, attached as Ex. 18; Decl. of Jane Doe # 2 ¶¶ 5, 7-11; Decl. of John Doe #1 ¶¶ 5, 9; Decl. of Benet-Smith ¶¶ 3, 6, 7, 9; Decl. of McKenzie ¶ 9, attached as Ex. 19; Decl. of Jones ¶¶ 11, 13, attached as Ex. 20. *See also* Gascón Decl. ¶ 18; Decl. of Eduardo Gonzalez ¶ 16. Plaintiffs are a diverse group of individuals and organizations who represent and provide services to racial minorities, national origin minorities, and individuals who speak foreign languages, have accents when speaking English, and lack the qualifying identity documents enumerated in SB 20. McCandless Decl. ¶¶ 4, 6; Robinson Decl. ¶¶ 4, 7, 12, 13; Swain Kunz Decl. ¶¶ 5, 7; Torrales Decl. ¶ 3; Baird Decl. ¶¶ 4, 6, 11; Raynor nc 0 Tw 2.21 0-4(edBn9360.00[(S)-4(ee a)-4(l)-6(4(num)-2(e)-6(et-

enforcement. *See* Kanuck Decl. ¶¶ 13-14; McCandless Decl. ¶¶ 11-14; Robinson Decl. ¶¶ 7, 11, 13; Baird Decl. ¶ 10; Raynor Decl. ¶¶ 6, 10. None of these harms can be compensated after the fact. Thus, each harm is an irreparable injury that justifies an injunction. *Multi-Channel TV Cable Co.*, 22 F.3d at 551.

III. THE BALANCE OF HARMS STRONGLY FAVORS THE ISSUANCE OF AN INJUNCTION

A preliminary injunction will impose only minimal harm on the State of South Carolina because Plaintiffs ask that the status quo be maintained while serious questions about the law's constitutionality are adjudicated. This is, in fact, the purpose of a preliminary injunction. A preliminary injunction "protect[s] the status quo . . . to prevent irreparable harm during the pendency of a lawsuit ultimately to preserve the court's ability to render a meaningful judgment on the merits." *Z-Man Fishing Products, Inc. v. Renosky*, 2011 WL 1930636 at *4 (D.S.C. May 17, 2011) (citing *In re Microsoft Corp. Antit J.8. v. Rbig(c)6(2e)6(c)6(t1 W)-16(L)]TJ Tj ( )Tj EMC030 Td

constitutional rights serves the public interest"); *see also Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) ("upholding constitutional rights surely serves the public interest"). And courts have held specifically that enjoining a state statute that is preempted by federal law will serve the public interest. *See*

established a likelihood of success on the merits, they respectfully request this Court maintain the status quo and preliminarily enjoin SB 20 in its entirety, and particularly Sections 1, 4, 5, 6, and 7, until a request for permanent injunction can be fully considered.

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