

June 9, 2022

The Honorable Richard K. Delmar
Deputy Inspector General
U.S. Department of the Treasury
Office of the Inspector General
1500 Pennsylvania Avenue, N.W.
Room 4436
Washington, DC 20220

SENT VIA U.S. MAIL

Re: Concerns regarding the legality of the State of Florida’s allocation of \$12 million in interest earnings from the Coronavirus State Fiscal Recovery Fund to implement a discriminatory state program for the removal of immigrants from the state.

Dear Deputy Inspector General Richard K. Delmar:

We write to you with deep concern about the legality of the State of Florida’s plan to spend \$12 million of interest earnings accrued from Florida’s share of the Coronavirus State Fiscal Recovery Fund (“SFRF”) to finance and support an operation led by Florida’s Department of Transportation to transport “unauthorized aliens” out of the State of Florida.

The State of Florida’s planned use of federal COVID relief funds to remove immigrants from the state violates the purpose for which Congress allocated those funds, constituting an impermissible use of those funds. As the federal government component entrusted with enforcement authority over SFRF violations, we urge your office to take the necessary, immediate steps to prohibit the State of Florida from using these funds for this impermissible and illegal purpose.

On or about March 1, 2022, Florida House Bill 5001 (“HB 5001”), “The General Appropriations Act,” was placed in Senate Conference (Appropriations Conference Committee/Appropriations) for review. *See* HB 5001.¹ On or about March 7, 2022, the Florida State Senate’s budget proposal added \$12 million for the Florida Department of Transportation to contract with common carriers to remove people deemed to be “unauthorized aliens.” *See* HB 5001 § 185 (hereinafter, “Section 185”).² Section 185 states

¹ *HB 5001: General Appropriations Act: Bill History*, Florida Senate, <https://www.flsenate.gov/Session/Bill/2022/5001/?Tab=BillHistory> (last visited June 5, 2022).

² The text of the bill broadly defines “unauthorized alien” as “a person who is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.” However, the term is so broad as to include individuals who have various forms of immigration status, including those who have been lawfully admitted into the United States. Accordingly, the term “immigrants” is used in place of “unauthorized alien” throughout this letter. Regardless of how broad or

that this program is to be funded from “the interest earnings associated with the federal Coronavirus State Fiscal Recovery Fund,” with the funds taken from the General Revenue Fund and appropriated to the Florida Department of Transportation for Fiscal Year 2021-2022. *Id.* On June 2, 2022, Governor DeSantis signed the General Appropriations Act into law.³

The Coronavirus State and Local Fiscal Recovery Fund programs (“SLFRF”) were created on March 11, 2021, when the American Rescue Plan Act of 2021 (“ARPA”) was passed. *See* ARPA, Pub. L. No. 117-2, § 9901, 135 Stat. 223 (2021). These funds are intended to provide support to State (and other local) governments in their ongoing recovery from the COVID-19 pandemic. *See id.* at § 9901(a). Pursuant to the provisions of ARPA, the State of Florida was allocated \$8,816,581,838.70.⁴

The proposed misuse of these funds reinforces anti-immigrant policies and sets a dangerous precedent for the politization by state governments of the use of federal relief funds. Moreover, for the reasons set forth *infra*, the State of Florida’s use of the interest accrued from SFRF funds for the purpose of removing immigrants from the state is unauthorized and violates the ARPA and the SLFRF.⁵

I. The State of Florida’s proposed program for the “transport” of immigrants is not an “eligible use” of SLFRF funds.

The purpose of the SLFRF (and by default, the SFRF) program is to ensure that state, local, and Tribal governments have the “resources needed to fight the coronavirus pandemic, sustain and strengthen the economic recovery, maintain vital public services, and make investments that support long-term growth, opportunity, and equity.” 87 Fed. Reg. 4338 (Jan. 27, 2022).⁶ This program “provides vital resources for state, local, and Tribal governments to respond to the pandemic and its economic effects and to replace revenue lost due to the public health emergency, preventing cuts to government services.” *Id.*

The ARPA provides that SLFRF funds may be used:

- (a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to

narrow the class of individuals the State of Florida seeks to “transport” out-of-state is defined, Section 185 nevertheless constitutes an impermissible use of SFRF funds. The State of Florida cannot use federal COVID relief funds to remove individuals from its territory, *regardless* of their immigration status.

³ *See supra* note 1.

⁴ *American Rescue Plan Act*, Florida Division of Emergency Management, <https://www.floridadisaster.org/dem/recovery/american-rescue-plan-act> (last visited June 5, 2022).

⁵ Frankly, the State of Florida is out of its depth, and has no authority to attempt to regulate immigration into or out of the State. “The power to expel [immigrants] has long been recognized as an exclusively federal power.” *See Fok Yung Yo v. United States*, 185 U.S. 296, 302 (1902); *Fong Yue Ting v. United States*, 149 U.S. 698, 706–07 (1893). The federal government “is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties,” which includes the field of immigration. *Hines v. Davidowitz*, 312 U.S. 52, 62–63 (1941). “If every other state enacted similar legislation to overburden the lives of [immigrants], the immigration scheme would be turned on its head. The federal government—not the fifty states working in concert—retains the power to exclude [immigrants] from the country.” *United States v. Alabama*, 691 F.3d 1260, 1301 n.21 (11th Cir. 2012).

⁶ On January 6, 2022, the Department of the Treasury released the final rule for the SLFRF program effective April 1, 2022 (“Final Rule”). *See* 87 Fed. Reg. 4338.

eligible workers;

- (c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- (d) To make necessary investments in water, sewer, or broadband infrastructure.

Pub. L. No. 117-2, § 9901, 135 Stat. 226; *see also* 87 Fed. Reg. 4339 (listing the above four categories as the SLFRF’s “eligible uses”).

Nowhere in the ARPA or the Final Rule is a state government’s use of SLFRF funds to remove immigrants mentioned, or even contemplated, as a permissible use of those funds. As noted above, SLFRF funds may *only* be applied to the four “eligible uses” delineated in the ARPA and the corresponding Final Rule. *See* 87 Fed. Reg. 4339. As explained in the Final Rule, “[e]ach eligible use category has separate and distinct standards for assessing whether a use of funds is eligible . . . [t]herefore, recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category.” *Id.*

A. Public Health and Negative Economic Impacts, 31 C.F.R. § 35.6(b)

The first eligible use of SLFRF funds allows state, local, and Tribal governments to “respond to the public health emergency with respect to COVID-19 or its negative economic impacts.” *Id.* at 4341 (quoting Pub. L. No. 117-2, § 9901). Pursuant to the Final Rule, there are limited sub-categories of permissible uses of SLFRF funds. *Id.* at 4343. When SLFRF funds are being used to respond to the public health emergency, they may only be used for “(1) COVID–19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, and (4) preventing and responding to violence.” *Id.*; *see also* 31 C.F.R. § 35.6(b)(3)(i). If the funds are intended to be used to address the second portion of this eligible use—the negative economic impacts of the COVID-19 pandemic, then the state (or other permitted entity) may *only* use the funds to provide assistance to (1) households, (2) small businesses, (3) nonprofits, and (4) travel, tourism, hospitality, and other impacted industries. 87 Fed. Reg. 4343; *see also* 31 C.F.R. § 35.6(b)(3)(ii).

The Final Rule specifically explains that to use SLFRF funds to address public health purposes, there must first be a “negative public health impact or harm experienced by an individual or a class.” *Id.* “Second, the program, service, or other intervention must address or respond to the identified impact or harm”; in other words, eligible uses “must be in response to the disease itself or other public health harms that it caused.” *Id.* To constitute an eligible use under the negative economic impacts sub-category, there must first “be a negative economic impact, or an economic harm, experienced by an individual or a class,” and the state must “assess whether, and the extent to which, there has been an economic harm . . . *that resulted from the COVID-19 public health emergency.*” *Id.* at 4344 (emphasis added). Second, the proposed use “must be designed to address the identified economic impact resulting from or exacerbated by the public health emergency.” *Id.*

Florida’s intended use of SLFRF funds does not fall within any of the enumerated eligible uses under the “Public Health and Negative Economic Impacts” category of eligible uses. Using SLFRF funds to pay “private parties, including common carriers,” to transport immigrants from Florida is by no means a “response to the [COVID-19] disease or other public health harms that it caused.” HB 5001 § 185; 87 Fed. Reg. 4343. Nor does it address an economic harm “experienced by an individual or a class” that

was a result of the COVID-19 pandemic. *See* 87 Fed. Reg. 4344. In fact, this intended use of SLFRF funds, targets, and harms communities disproportionately impacted by the COVID-19 pandemic.⁷

B. Premium Pay to Eligible Workers, 31 C.F.R. § 35.6(c)

Under the Final Rule, 31 C.F.R. § 35.6(c) provides that SLFRF funds may be used:

to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers that have eligible workers who perform essential work, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency.

On its face, HB 5001 § 185 does not fall within this category of eligible use. As the Final Rule recognized, premium pay is meant to be thought of as hazard pay, and was “designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic.” 87 Fed. Reg. 4397. Premium pay is intended to “address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.” *Id.* Instead of using SLFRF funds for a permissible use—such as providing compensation to the countless Floridians and others who have been essential workers during the COVID-19 pandemic—Florida instead is attempting to impermissibly use those funds to separate families and punish many essential workers by “transport[ing]” them out of Florida.⁸ Thus, Florida’s planned use of SLFRF funds does not comply with the permissible use as defined in 31 C.F.R. § 35.6(c).

C. Providing Government Services, 31 C.F.R. § 35.6(d)

The third category of permissible uses of SLFRF funds is for “the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the

⁷ *See* 87 Fed. Reg. 4351 (“While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines. The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.”); *id.* at 4357 (discussing the disparate economic impact of the pandemic on workers of color, and Hispanic and Latino communities); *see also, e.g.*, Patricia Mazzei, *Florida’s Coronavirus Spike is Ravaging Migrant Farmworkers*, N.Y. Times (June 18, 2020), <https://www.nytimes.com/2020/06/18/us/florida-coronavirus-immokalee-farmworkers.html>; Janine Zeitlin, *How Florida Left Farmworkers Out of its COVID-19 Pandemic Response*, Naples Daily News (Mar. 28, 2021), <https://www.naplesnews.com/story/news/coronavirus/2021/03/28/covid-florida-left-farmworkers-out-pandemic-response-ron-desantis-nikki-fried/6922068002>; Lan N. Doàn, et al., *Immigrant Communities and COVID-19: Strengthening the Public Health Response*, 111 Am. J. Pub. Health S224 (Oct. 28, 2021), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.306433>.

⁸ *See, e.g.*, Testimony of Tom Jawetz before the U.S. House Judiciary Subcommittee on Immigration and Citizenship (Sept. 23, 2020), <https://www.americanprogress.org/article/immigrants-essential-workers-covid-19>; *Immigrant Essential Workers are Crucial to America’s COVID-19 Recovery*, FWD.us (Dec. 16, 2020), <https://www.fwd.us/wp-content/uploads/2020/12/FWD-essential-worker-report-FINAL-WEB.pdf>; *The Plight of Essential Workers During the COVID-19 Pandemic*, The Lancet (May 21, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC724197>; Roxana Chicas, Nizahualcoyotl Xiuhtecutli, et al., *COVID-19 and Agricultural Workers: A Descriptive Study*, 24 J. Immigrant & Minority Health 58 (Oct. 12, 2021), <https://doi.org/10.1007/s10903-021-01290-9>.

COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency.” Pub. L. No. 117-2, § 9901, 135 Stat. 226; *see* 31 C.F.R. § 35.6(d). “[T]he amount of the reduction in the [state’s] general revenue due to the public health emergency” is calculated based upon a standard allowance or the specific formula laid out in the Final Rule. 8 C.F.R. § 35.6(d)(1), (2).SLFRF funds used for this purpose are intended to “allow[] recipients experiencing budget shortfalls to use payments from the SLFRF funds to avoid cuts to government services,” which in turn allows state governments to “continue to provide valuable services and ensures that fiscal austerity measures do not hamper the broader economic recovery.” 87 Fed. Reg. 4400.

HB 5001 § 185 bears absolutely no relation to this acceptable use of SLFRF funds. The Final Rule makes clear that that the statutory language “refer[s]to revenue reductions caused by the *public health emergency*.” 87 Fed. Reg. 4402 (emphasis added). The State of Florida has made no attempt to explain how transporting immigrants out of the state would fund a government service that would otherwise be cut due to COVID-19 related budget shortfalls. Nor could it, for none exists. Regardless, as noted above, immigration is *not* a state government service.⁹ As such, Section 185 is not a permissible use of SLFRF funds under 31 C.F.R. § 35.6(d).

D. Investments in Water, Sewer, and Broadband Infrastructure, 31 C.F.R. § 36.5(e)

The final category of permissible uses of SLFRF funds relates to necessary investments in water, sewer, and broadband infrastructure. 31 C.F.R. § 36.5(e). The Final Rule specifies the particular uses that fall under this category. Permissible water infrastructure investments include: (1) Clean Water State Revolving Fund projects, (2) additional stormwater projects, (3) Drinking Water State Revolving Fund projects, (4) additional lead remediation and household water quality testing, (5) drinking water projects to support increased population, (6) dams and reservoirs, and (7) private wells. *Id.* § 36.5(e)(1)(i)–(vii). Broadband investments are permitted uses so long as they are “designed to provide service to households and businesses with an identified need,” and meet certain specifications relating to, *inter alia*, internet speed. *Id.* § 35.6(d)(2)(i). Cybersecurity infrastructure investments are also permitted. *Id.* § 35.6(d)(2)(ii). Finally, funds may also be used “to meet the non-federal matching requirements of any authorized Bureau of Reclamation project.” 31 C.F.R. § 35.6(f).

Section 185 has no impact on or relation to any investments in water, sewer, or broadband infrastructure. The nonsensical “transport” of immigrants out of Florida is completely unrelated to this category of eligible uses of SLRFR funds.

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In sum, because the program outlined in Section 185 does not fall within any of the eligible uses of SLRFR funds, the State of Florida must not be permitted to use the \$12 million in interest accrued from SLFRF funds to attempt to remove immigrants from its territory.

II. Conclusion

The State of Florida’s allocation of \$12 million in SFRF interest earnings to fund a discriminatory operation targeting immigrants is not an intended or proper use of SLFRF funds. Accordingly, we request that the U.S. Department of the Treasury’s Office of the Inspector General, exercise its authority to review this matter and prevent the State of Florida from using of SLFRF interest funds to cover the Florida Department of Transportation’s operations to remove immigrants from Florida, as this is an impermissible use of such federal funds. In addition, we ask that the U.S. Department of the Treasury recoup these monies in accordance with the process described in 31 C.F.R. § 35.10. Should this Office fail to stop or challenge Florida’s illegal actions, a significant number of Floridians will suffer harm, and this failure to act

⁹ *See supra*, note 5.

will set a dangerous precedent for unchallenged misuse of SLFRF funds. Should you require additional information, please contact Paul R. Chavez at paul.chavez@splcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul R. Chavez", with a stylized flourish extending to the right.

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CC
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