

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

United States of America,)	Civil Action No. 2:11-cv-02958-RMG
)	
Plaintiff,)	
)	
v.)	
)	
State of South Carolina, and)	
Nikki R. Haley, in her official)	
capacity as the Governor of)	
South Carolina,)	
)	
Defendants.)	
_____)	
Lowcountry Immigration Coalition, et al,)	Civil Action No. 2:11-cv-02779
)	
Plaintiffs,)	
)	
v.)	
Nikki Haley, et al,)	
)	
Defendants.)	
_____)	

JOINT REPORT REGARDING CASE STATUS AND DISPOSITION

Plaintiffs in both cases and defendants State of South Carolina, Governor Nikki R. Haley and Attorney General Alan Wilson (Defendants) have conferred regarding the proper disposition of this matter in light of decisions by the United States Supreme Court and, in the instant case, the Court of Appeals for the Fourth Circuit and the District Court of the District of South Carolina. In the interest of assisting the Court in the proper and efficient resolution of this case in accordance with those decisions, the parties make the following representations and requests regarding the various statutory provisions at issue:

1. Each reference to a provision of Act 69, 2011 S.C. Acts, herein shall be construed as a reference to any amendments to those provisions as of this date.

2. The parties acknowledge that the Fourth Circuit panel's decision in *United States v. South Carolina*, 720 F.3d 518 (4th Cir. 2013), holds that Sections 4, 5, and 6(B)(2) of Act 69 (S.C. Code §§ 16-9-460, 16-17-750, 17-13-170(B)(2)), are preempted by federal law. Further, the parties agree that, consistent with this Court's previous determination of the Plaintiff's likelihood of success in challenging Section 15, *United States v. South Carolina*, 720 F.3d 518 (4th Cir. 2013), and together with the Supreme Court's decision in *Arizona v. United States*, 132 S. Ct. 2492 (2012), this Court would conclude that Section 15 of Act 69 (S.C. Code § 16-13-480) is preempted by federal law. The parties also agree that the Plaintiffs can satisfy, for this Court, the other requirements for obtaining final injunctions against these provisions.

3. The Defendants submit that in light of the Supreme Court's decision in *Arizona v. United States*, 132 S. Ct. 2492 (2012), and the ruling of this Court on November 15, 2012, 906 F. Supp. 2d 463 (D.S.C., 2012), the remainder of Section 6 of Act 69 (S.C. Code § 17-13-170), is subject to an interpretation that does not authorize an officer to prolong an original stop based upon the officer's inquiry into or based on a determination, suspicion, or admission concerning a person's immigration status. The view of Defendants is expressed in the Opinion of the Office of the Attorney General of March 3, 2014 (*see* Attachment 1). In light of this interpretation, Plaintiffs will dismiss their remaining claims as to the remainder of Section 6 without prejudice.

4. Although this Court found that the Lowcountry Plaintiffs lacked standing to challenge Section 7 of Act 69 (§ 23-3-1100) at the preliminary injunction stage, Plaintiffs believe that they would be able to show standing to seek permanent injunctive relief. The Defendants are willing for this Court to address this issue because of the similarity of issues concerning both Sections 6 and 7 and the opportunity to resolve all issues at the same time. Defendants submit that in light of the Supreme Court's *Arizona* decision and the ruling of this Court on November 15, 2012, Section 7 is subject to an interpretation that does not authorize

prolonging the detention of a person in jail or prison simply to determine the person's immigration status, and it does not authorize transferring an individual on the basis that he or she is believed or determined to be unlawfully present to federal custody. The view of Defendants is expressed in the Opinion of the Office of the Attorney General of March 3, 2014 (*see* Attachment 1). In light of this interpretation, the Lowcountry Plaintiffs will dismiss their remaining claims against Section 7 without prejudice.

5. The Defendants respectfully disagree with the rulings of this Court and the Court of Appeals enjoining the above referenced provisions and defer to those rulings rather than consent to the injunctions. They have vigorously defended the challenged parts of Act 69, and join in this Report only in recognition that the Courts have ruled regarding these sections of the Act and that further litigation of this matter would be inconsistent with those rulings and would be contrary to judicial economy. Should governing statutory or decisional law or other circumstances change in the future, they reserve their right, and that of any other appropriate State official, to seek modification of the injunctions in the Final Judgment via a post-judgment motion under the Federal Rules of Civil Procedure or through any other means permitted by law.

6. Plaintiffs will voluntarily dismiss all claims not specifically referenced above without prejudice. Defendants consent to the voluntary dismissal of these claims.

7. Accordingly, all parties consent to the form of Final Judgment submitted as Attachment 2 hereto.

[Signature blocks on next pages]

Respectfully submitted,

ALAN WILSON
Attorney General
Federal ID No.10457

ROBERT D. COOK
Solicitor General
Federal ID No. 285
Email: BCOOK@SCAG.GOV

/s/ J. Emory Smith, Jr.
J. EMORY SMITH, JR.
Deputy Solicitor General
Federal ID No. 3908
Email: ESMITH@SCAG.GOV
Post Office Box 11549
Columbia, South Carolina 29211
Phone: (803) 734-3680
Fax: (803) 734-3677

Counsel for Defendants
Governor and Attorney General

s/ Susan K. Dunn
Susan K. Dunn (Federal Bar No. 647)
American Civil Liberties Union of
South Carolina
P. O. Box 20998
Charleston, South Carolina 29413-0998
T: (843) 720-1425
sdunn@aclusouthcarolina.org

On behalf of Attorneys for Plaintiffs

Susan K. Dunn (Federal Bar No. 647)
American Civil Liberties Union of
South Carolina
P. O. Box 20998
Charleston, South Carolina 29413-0998
T: (843) 720-1425
sdunn@aclusouthcarolina.org

Steven Suggs (Federal Bar No. 7525)⁺
SOUTH CAROLINA APPLESEED
LEGAL JUSTICE CENTER
P.O. Box 7187
Columbia, South Carolina 29202
T: (803) 779-1113
ssuggs@scjustice.org

Andre Segura (Appearing *pro hac vice*)
Omar Jadwat (Appearing *pro hac vice*)
Courtney Bowie (Appearing *pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
T: (212) 549-2660
asegura@aclu.org
ojadwat@aclu.org
cbowie@aclu.org

Michelle R. Lapointe
(Appearing *pro hac vice*)
Naomi Tsu (Appearing *pro hac vice*)
Daniel Werner (Appearing *pro hac vice*)
SOUTHERN POVERTY LAW CENTER
233 Peachtree St., NE, Suite 2150
Atlanta, Georgia 30303
T: (404) 521-6700
michelle.lapointe@splcenter.org
naomi.tsu@splcenter.org
daniel.werner@splcenter.org

Reginald Lloyd (Federal Bar No. 6052)
LLOYD LAW FIRM
One Law Place, 223 East Main Street Suite
500
Rock Hill, South Carolina 29730
T: (803) 909-8707
reggie@lloydlawfirm.net

Alice Paylor (Federal Bar No. 3017)
ROSEN, ROSEN & HAGOOD
134 Meeting Street, Suite 200
Charleston, South Carolina 29401
T: (843) 628-7556
apaylor@rrhlawfirm.com

Linton Joaquin (Appearing *pro hac vice*)
Karen C. Tumlin (Appearing *pro hac vice*)
Nora A. Preciado (Appearing *pro hac vice*)
Melissa S. Keaney (Appearing *pro hac vice*)
Alvaro Huerta (Appearing *pro hac vice*)
Nicolas Espiritu (Appearing *pro hac vice*)
NATIONAL IMMIGRATION LAW
CENTER
3435 Wilshire Boulevard, Suite 2850
Los Angeles, California 90010
T: (213) 639-3900
joaquin@nilc.org
tumlin@nilc.org
preciado@nilc.org
keaney@nilc.org
huerta@nilc.org
espiritu@nilc.org

Victor Viramontes (Appearing *pro hac vice*)
MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND
634 S. Spring Street, 11th Floor
Los Angeles, California 90014
T: (213) 629-2512 x 133
vviramontes@maldef.org

Katherine Desormeau
(Appearing *pro hac vice*)
Cecillia D. Wang
(Appearing *pro hac vice*)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION IMMIGRANTS'
RIGHTS PROJECT
39 Drumm Street
San Francisco, California 94111
T: (415) 343-0775
kdesormeau@aclu.org
cwang@aclu.org

Samuel Brooke (Appearing *pro hac vice*)
SOUTHERN POVERTY LAW CENTER
400 Washington Ave.
Montgomery, Alabama 36104
T: (334) 956-8200
samuel.brooke@splcenter.org

Foster S. Maer (Appearing *pro hac vice*)
Ghita Schwarz (Appearing *pro hac vice*)
LATINOJUSTICE PRLDEF
99 Hudson St., 14th Floor
New York, New York 10013
T: (212) 219-3360
fmaer@latinojustice.org
gschwarz@latinojustice.org

Amy Pedersen (Appearing *pro hac vice*)
MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND
1016 16th Street NW, Suite 100
Washington, DC 20036
T: (202) 293-2828 x 12
apedersen@maldef.org

Justin B. Cox
(Appearing *pro hac vice*)
ACLU Immigrants' Rights Project
230 Peachtree Street, NW, Suite 1440
Atlanta, GA 30303-2721
T: (404) 523-2721, ext. 215
jcox@aclu.org

⁺ Attorney only for Plaintiffs Lowcountry Immigration Coalition, SCVAN, Mujeres de Triunfo, and Nuevos Caminos

STUART F. DELERY
Assistant Attorney General

WILLIAM N. NETTLES (I.D. #6586)
United States Attorney

s/ Barbara M. Bowens

BARBARA M. BOWENS (I.D. #4004)
Civil Chief
Wells Fargo Building
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Telephone: (803) 929-3052
Facsimile: (803) 254-2912
E-mail: barbara.bowens@usdoj.gov

ARTHUR R. GOLDBERG
Assistant Director

W. SCOTT SIMPSON
Senior Trial Counsel

Attorneys, Department of Justice
Civil Division, Room 7210
Post Office Box 883
Washington, D.C. 20044
Telephone: (202) 514-3495
Facsimile: (202) 616-8470
E-mail: scott.simpson@usdoj.gov

COUNSEL FOR PLAINTIFF
UNITED STATES OF AMERICA
CIVIL ACTION NO. 2:11-cv-02958-RMG

March 3, 2014