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**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH
 CENTRAL DIVISION**

Utah Coalition of La Raza, et al.,
 Plaintiffs,

v.

Gary R. Herbert, et al.,
 Defendants.

**DECLARATION OF GEORGE
 GASCÓN**

Case No. 2:11-cv-00401-BCW
 Judge: Brooke C. Wells

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DECLARATION OF GEORGE GASCÓN

I, GEORGE GASCÓN, hereby declare:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

1. I am currently the District Attorney of San Francisco, California. I was appointed to this position on January 9, 2011.
2. Prior to assuming the role of District Attorney, I was the Chief of the San Francisco Police Department, a post I held from August 1, 2009 to January 9, 2011. I have over 32 years of law enforcement service, including: 3 years' service as the Chief of the Mesa Police Department in Mesa, Arizona; and 28 years as a member of the Los Angeles Police Department, beginning as a patrol officer and working my way up through the ranks to Assistant Police Chief, a position that I held for approximately 4 years.
3. I currently sit on the Board of Directors of the Council of State Governments' Justice Center and was formerly on the Board of Directors for the Police Executive Research Forum and the California Peace Officers' Memorial Foundation.
4. I received a Juris Doctor Degree from Western State University, College of Law and I am currently an active member of the California State Bar.
5. Additionally, I am a graduate of the FBI's National Executive Institute and a member of the Harvard University Kennedy School of Government's Executive Session on Policing and Public Safety.
6. I have published articles on the subject of police accountability, community policing, police training, and hiring practices.
7. I have read and reviewed Utah's new immigration enforcement law, HB 497, and I make this declaration based on over 32 years of law enforcement experience.
8. HB 497 creates a very complicated web of sometimes mandatory, sometimes permissive immigration verification checks by Utah law enforcement officers. It

1 expands the authority and responsibilities of Utah law enforcement and I believe it
2 will decrease community safety and increase mistrust of police.

- 3 9. Even with my legal training and extensive law enforcement background, I find
4 section 76-9-1003 of HB 497 extremely difficult to decipher and interpret. I
5 believe it will be extremely difficult, if not impossible, for law enforcement
6 officers in Utah to understand and differentiate what HB 497 requires them to do
7 and what it permits them to do. I cannot imagine how law enforcement officers in
8 Utah can be sufficiently trained to understand their responsibilities under this
9 section of the law.
- 10 10. As a result of the law's complexity, I believe officers will naturally exercise their
11 maximum authority under HB 497, erring on the side of caution to avoid omitting a
12 mandatory requirement by conducting immigration status checks on all individuals
13 stopped, detained, or arrested and booked, regardless of the severity of the crime
14 being investigated.
- 15 11. If HB 497 is implemented, when police officers attempt to determine whether an
16 individual they encounter on patrol is in the United States illegally, as HB 497
17 permits in some instances and requires in others, they inevitably will rely upon race
18 and ethnicity. I believe that officers who want to ensure that they comply with the
19 law are likely to investigate the status of anyone who looks or sounds foreign, even
20 though this is constitutionally impermissible. In section 76-9-1004 of HB 497, an
21 individual may be afforded a presumption of lawful presence in the United States
22 by making a statement or affirmation to a law enforcement officer that he or she is
23 a United States citizen or national. The law then places the burden on the law
24 enforcement officer to determine whether the statement or affirmation is false.
25 This section is inherently problematic because it encourages police officers to
26 make arbitrary decisions based on nothing more than the physical appearance,
27 race/ethnicity, or manner of speaking of the individual.
- 28 12. HB 497 also contains a significant expansion on the mandate to check immigration
status in section 76-9-1003, subsection 2, which creates another likelihood that

1 constitutional violations will occur. This subsection requires officers to verify
2 immigration status where an officer has reasonable suspicion to believe that the
3 driver or passengers in a car are violating Utah's smuggling and transporting
4 provisions. In enforcing this provision, law enforcement officers will likely rely on
5 physical appearance, manner of speaking, and other legally suspect factors to form
6 the requisite reasonable suspicion. If implemented, I believe this provision will
7 result in racial profiling and will increase instances of pretextual stops based on the
8 perceived race of drivers or passengers.

9 13. Section 76-9-1003 of HB 497 will also result in the unconstitutionally prolonged
10 detention of individuals, including U.S. citizens and individuals with legal
11 immigration status, while officers inquire about their immigration status. Under
12 this provision, after completion of a lawful stop for even a minor violation, such as
13 a C misdemeanor, if a person is unable to provide one of a few enumerated
14 identification documents, an officer may attempt to verify the person's immigration
15 status. A lawful detention, however, must last no longer than necessary to
16 effectuate the purpose of the stop, and an officer must have suspicion of further
17 criminal activity to continue the detention beyond the completion of the original
18 stop. Here, officers are allowed to extend the stop of an individual without any
19 suspicion of wrongdoing, much less criminal activity. Failing to produce one of
20 the specified forms of identification in 1004 is not evidence of any crime. For
21 example, a person may have a driver's license from another state or may be a
22 foreign national who is lawfully present in the country but unable to provide any of
23 the listed forms of identification. Prolonging the stop without suspicion of criminal
24 activity, as allowed for here, is unconstitutional.

25 14. If HB 497 goes into effect, there will be an increase in the incidents of pretextual
26 stops of individuals of color in Utah, as some law enforcement officers will use
27 pretextual reasons to stop or question individuals they believe to be in the United
28 States illegally. An officer motivated by racial/ethnic discrimination or by race-
based stereotypes about what an illegal immigrant looks like can easily find a

1 pretext for stopping an individual, whether by following a car until a minor traffic
2 violation occurs or by approaching a pedestrian for “consensual” questioning.
3 Under the provisions of 76-9-1003, even minor traffic violations qualify to permit
4 an officer to inquire about a person’s immigration status.

5 15. HB 497 will permit and even encourage disparate treatment of Latinos and other
6 persons of color in Utah. When an individual makes a statement to an officer that
7 he or she is a U.S. citizen or national, the officer will be more likely to believe the
8 individual if he or she is White than if he or she is Latino. Also, law enforcement
9 officers may be more likely to arrest and book individuals based on low-level
10 offenses if they are from certain minority communities in order to ensure that an
11 immigration status verification is done on the individual. Such disparities in law
12 enforcement based on race and ethnicity will inevitably lead to potential legal
13 liabilities for the police department.

14 16. HB 497 also presents very real public safety concerns. By requiring or
15 encouraging Utah law enforcement officers to check immigration status, immigrant
16 and minority communities will be reluctant to contact the police because of fear
17 that such contact will lead to investigations into immigration status. This will
18 mean that fewer witnesses to or victims of crimes, such as domestic violence, will
19 call the police because doing so could result in investigations into the immigration
20 status of the victim, his or her family members, neighbors, or other persons close to
21 the victim, perhaps leading to their deportation. HB 497 will threaten public safety
because it will drive a wedge between immigrant communities and the police.

22 17. The alienation between police and communities that will result from HB 497 will
23 not be limited to cases where the victim or witness of the crime is undocumented,
24 but will occur in a great many other cases. Many families live in “mixed status”
25 households, meaning some members of the household are either U.S. citizens or
26 otherwise have legal immigration status while others do not have legal status.
27 Thus, even community members in legal immigration status will be dissuaded from
28 contacting the police out of fear of deportation of a family or community member.

1 18. As a result of community distrust of the police, Utah law enforcement will have a
2 much more difficult time doing their job. Effective policing, and investigating and
3 solving serious crimes, rely on partnership with the local community. This
4 partnership is seriously endangered by HB 497 because the law sends an overriding
5 message to immigrant communities to avoid law enforcement officers because they
6 will be mandated to inquire about immigration status in numerous circumstances
7 and have the discretion to do so in a wide range of other circumstances.

8 19. The resulting harm to public safety will not only impact immigrant communities,
9 but all communities in the state of Utah because it creates a vacuum in law
10 enforcement. Criminal elements within the state will be emboldened by the belief
11 that they have less reason to fear being reported by victims or witnesses in
12 immigrant communities, and therefore less reason to fear consequences for
13 criminal conduct. This will make immigrant communities a target of criminal
14 activity and potentially other communities closely located or otherwise connected
15 to immigrant communities.

16 20. Finally, HB 497 decreases community safety by diverting police resources away
17 from fighting serious and violent crimes in favor of pursuing enforcement of civil
18 immigration laws. Police officers in the state of Utah simply cannot take on the
19 added responsibility of immigration enforcement without taking substantial time
20 away from priorities that are more central to a local law enforcement agency, such
21 as investigation and preventing violent crimes and property crimes.

22 21. The warrantless arrest provisions of HB 497, found in 77-7-2 of the law, are
23 particularly concerning because they will divert law enforcement resources to
24 immigration determinations that law enforcement officers are unqualified to make.
25 The provisions authorize an officer to make a warrantless arrest where there is
26 reasonable cause to believe that the person is an alien and either subject to a federal
27 immigration removal order or a civil detainer issued by the U.S. Department of
28 Homeland Security. There is no practical way for an officer in the field to know or
confirm that someone is subject to either a removal order or a civil detainer without

1 working with someone remotely at an office or a dispatch center to try and verify
2 this information. The criminal checks that are routinely run in the field, the
3 National Crime Information Center checks, generally do not give access to this
4 kind of confirmatory information and therefore an officer will either be required to
5 greatly increase the duration of a stop to make this determination or may feel
6 compelled to take the individual into the station to do so. Moreover, even if such
7 checks could be done in the field, they would cause routine traffic stops to be
8 unreasonably prolonged while an officer keeps the occupants of a vehicle detained
9 pending the results of the check. Individuals with common names where automatic
10 queries are likely to produce multiple hits may be subjected to prolonged
11 detentions and be required to provide fingerprints or other biometric characteristics
12 to be ruled out. In all events, the officer's time and potentially the jail's booking
13 resources will be diverted from their primary purpose of ensuring public safety and
14 preventing crime.

15 22. This section also permits warrantless arrest where the officer has reasonable cause
16 to believe the individual has been charged or convicted in another state with one or
17 more aggravated felonies, as defined under federal immigration law. Typically
18 local police are not trained to determine whether a crime constitutes an aggravated
19 felony under immigration laws, and the determination of whether a criminal charge
20 is an aggravated felony is extremely complex. Thus this provision of HB 497
21 would require officers in the field to determine whether they have authority to
22 make a warrantless arrest based on a very complicated set of factors. This will
23 inevitably lead to unlawful arrests and police departments in Utah will likely
24 expend significant time, money, and otherwise divert resources to defend against
25 lawsuits if this provision is implemented.


26 23. In my opinion, HB 497 is extremely harmful for local police departments in Utah.
27 It creates a complicated and unworkable system that will undermine public safety
28 by causing communities to distrust the police, will likely lead to racial/ethnic

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profiling and subject local agencies to litigation, and diverts policing resources from the goal of ensuring public safety.

I declare under penalty of perjury of the laws that the foregoing is true and correct.

Executed this 21 day of April 2011 in San Francisco, California.


District Attorney George Gascón