

Linton Joaquin*
 Karen C. Tumlin*
 Shiu-Ming Cheer*
 Melissa S. Keaney*
 NATIONAL IMMIGRATION LAW
 CENTER
 3435 Wilshire Boulevard, Suite 2850
 Los Angeles, California 90010
 Telephone: (213) 639-3900
 Facsimile: (213) 639-3911
 joaquin@nilc.org
 tumlin@nilc.org
 cheer@nilc.org
 keaney@nilc.org

Omar C. Jadwat*
 Andre I. Segura*
 Elora Mukherjee*
 AMERICAN CIVIL LIBERTIES UNION
 FOUNDATION
 125 Broad Street, 18th Floor
 New York, New York 10004
 Telephone: (212) 549-2660
 Facsimile: (212) 549-2654
 ojadwat@aclu.org
 asegura@aclu.org
 emukherjee@aclu.org

Attorneys for Plaintiff

Cecillia D. Wang*
 Katherine Desormeau*
 AMERICAN CIVIL LIBERTIES
 UNION FOUNDATION IMMIGRANTS'
 RIGHTS PROJECT
 39 Drumm Street
 San Francisco, California 94111
 Telephone: (415) 343-0775
 Facsimile: (415) 395-0950
 cwang@aclu.org
 kdesormeau@aclu.org

Darcy M. Goddard (USB No. 13426)
 Esperanza Granados (USB No. 11894)
 AMERICAN CIVIL LIBERTIES
 UNION OF UTAH FOUNDATION, INC.
 355 North 300 West
 Salt Lake City, Utah 84103
 Telephone: (801) 521-9862
 Facsimile: (801) 532-2850
 dgoddard@acluutah.org
 egranados@acluutah.org

Bradley S. Phillips*+
 Munger, Tolles & Olson LLP
 355 South Grand Avenue
 Thirty-Fifth Floor
 Los Angeles, CA 90071-1560
 Telephone: (213) 683-9100
 Facsimile: (213) 687-3702

- * Applications for admission *pro hac vice* forthcoming
 + Attorneys for all plaintiffs except Service Employees International Union, and the Workers' United Rocky Mountain Joint Board

**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 CHRIS BURBANK

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

1 quarter of the population we are sworn to protect and serve and by signaling that
2 certain individuals are entitled to fewer rights than others.

- 3 5. I believe HB 497 is misguided legislation that serves to make a law enforcement
4 officer's job more difficult because it erodes the vital community trust on which
5 we, as law enforcement officers in the State of Utah, so heavily rely. HB 497
6 significantly expands a Utah law enforcement officer's authority to detain
7 individuals based upon their perceived ethnicity. The complicated system of
8 immigration status checks created by HB 497 distances the community from police
9 officers.
- 10 6. Section 1003 of HB 497 creates an overly complex system governing an officer's
11 duty to verify immigration status of individuals with whom they come into contact,
12 in certain situations mandating verification and in others permitting or even
13 encouraging it. This makes it extremely difficult to monitor or eliminate racial bias
14 in citizen contacts. These provisions will drive a wedge between the community
15 and the police regardless of whether the status verification is mandatory or optional
16 because the overriding message these provisions send to the community is that
17 Utah police officers are less concerned about ensuring a community member's
18 safety and more concerned about their immigration status.
- 19 7. Although HB 497 provides Utah law enforcement with some discretion to verify
20 status in certain situations, I am concerned that officers in neighboring cities and
21 counties will inquire into immigration status in all situations or will make
22 determinations about when to exercise this discretion based on race, appearance or
23 manner of speaking. Moreover, some law enforcement agencies in the state may
24 feel obligated to inquire into immigration status in all situations because of the
25 provisions of HB 497 that subject agencies to potential liability for policies that in
26 any way limit enforcement of federal immigration law. The net effect will be a
27 public perception that all Utah law enforcement officers are engaging in
28 immigration enforcement because the public does not distinguish between Salt
Lake City police officers and police from other counties and cities. As a direct

1 result, community members will fear contact with any law enforcement official in
2 the State of Utah and the good work of police officers will be compromised.

- 3 8. A recent study conducted by the Consortium for Police Leadership in Equity
4 (CPLÉ) in Salt Lake City showed that people across the board, regardless of
5 immigration status, race, ethnicity or national background, are significantly less
6 likely to report crimes if they feel officers are engaged in immigration
7 enforcement, interjecting bias into our policing actions. I have received numerous
8 anecdotal reports of individuals who have fallen victim to a crime and have failed
9 to report these incidents because of the rhetoric surrounding proposed immigration
10 laws.
- 11 9. There is a direct correlation between public perception that local law enforcement
12 officers are engaging in federal immigration enforcement and fear of police
13 officers. If officers are viewed as immigration agents, victims and witnesses of
14 crime are less likely to report violations and participate in prosecution. This lack
15 of cooperation creates an environment in which the criminal element thrives and
16 creates a class of silent victims. Entire segments of our community become wary
17 of contacting law enforcement and effective community policing fails. This
18 negatively impacts all community members in our state, not only immigrant
19 communities.
- 20 10. HB 497 inappropriately imposes civil enforcement priorities ahead of criminal
21 activity. By requiring officers to verify immigration status in certain instances and
22 permitting verification in others, Utah law enforcement officers will be forced to
23 extend the duration of stops in order to carry out status verification, including stops
24 involving U.S. citizens and individuals with valid immigration status. Under
25 section 1003 of HB 497, if an individual is unable to present one of a few listed
26 documents, the officer may attempt to verify the individual's immigration status.
27 This will dramatically prolong detention duration because immigration status is not
28 something that can be easily and expeditiously verified in the field. Law
enforcement officers in the field do not have access to a database containing

1 information about an individual's immigration status. Therefore, an officer's only
2 option to verify immigration status will be to contact Immigration and Customs
3 Enforcement (ICE) directly and wait for verification or unnecessarily book
4 individuals into jail. This may subject my agency to liability because it allows
5 officers to extend the duration of a stop without suspicion of criminal activity, the
6 traditional standard by which we operate.

7 11. These provisions of HB 497 additionally divert the resources of my agency in
8 concerning ways. I currently have 24 motorcycle officers. They issue
9 approximately 30,000 citations per year, which under Utah law is technically an
10 arrest. The process of issuing a citation takes less than 10 minutes per stop. If
11 officers are engaged in civil immigration status checks in the field or booking
12 individuals into jail to determine immigration status, there will be a tremendous
13 impact on officers' ability to answer calls for service and engage in proactive
14 policing.

15 12. HB 497 also impacts our jail resources. In Utah, law enforcement officers have
16 discretion to determine whether to book individuals for Class B or C
17 misdemeanors, which include traffic violations. In Salt Lake City, our policy is not
18 to book individuals for Class B and C misdemeanors. However, with the
19 heightened emphasis upon immigration, officers in other parts of the state have
20 resorted to booking individuals for minor offenses in order to facilitate immigration
21 status checks. Currently, the Salt Lake County Detention Facility releases between
22 700 and 900 criminal violators per month solely for the reason of overcrowding.
23 Booking and holding individuals for the purpose of civil immigration infractions
24 will cause the release of more criminals onto the streets of our cities. Again, my
25 concern is the result will be an increase in crime and an emboldened criminal
26 element committing crimes with impunity.

27 13. Utah established a Driving Privilege Card for individuals who do not have social
28 security numbers. This is a significant benefit for Utah law enforcement because it
provides a consistent form of picture identification. In the list of documents

1 establishing identification and a presumption of lawful presence, found in section
2 1004, the Driving Privilege Card is not listed. Under the provisions of HB 497,
3 presenting a Driving Privilege Card to a Utah law enforcement officer may be
4 viewed as an automatic red flag, triggering additional questioning and verification
5 of immigration status. As a result, people will be less likely to apply for or use the
6 Driving Privilege Card, meaning more individuals will be driving in the State of
7 Utah without the authority and education to do so. This makes our job as law
8 enforcement officers extremely difficult, especially as it relates to traffic violations
9 and accidents.

10 14. According to the provisions of section 1004 of HB 497, individuals presenting
11 identification from states that do not verify immigration status, such as New
12 Mexico and Washington, will also trigger additional immigration screening.
13 Without the presumption granted in section 1004, my officers will require
14 additional proof of lawful presence or citizenship for individuals presenting these
15 forms of identification. Section 1004 also provides that showing one of the
16 enumerated documents creates a presumption of lawful presence unless the officer
17 has a reasonable suspicion that the document presented is false. This creates an
18 unacceptable risk that officers will base a finding of reasonable suspicion that the
19 document presented is false on factors such as race, appearance or manner of
speaking.

20 15. In addition to listing documents that create a presumption of lawful presence, HB
21 497 also provides that an individual is presumed to be a citizen or national of the
22 United States if the person makes a statement or affirmation to a law enforcement
23 officer, unless the officer has a reasonable suspicion that the statement or
24 affirmation is false. This provision creates tremendous liability for my officers
25 because there is absolutely no way that I can adequately train my officers in how to
26 determine whether the statement or affirmation is false – a hunch is not enough.
27 This provision creates a significant risk that officers will resort to racial profiling in
28

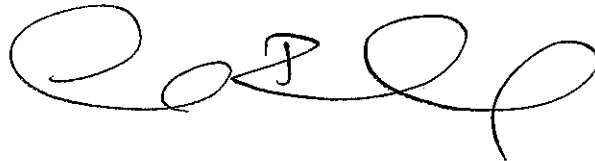
1 determining whether to credit a statement or affirmation as to citizenship. It further
2 exposes officers to accusations of acting in an arbitrary or capricious manner.

3 16. HB 497 also creates liability for my officers by greatly expanding their powers to
4 detain and arrest under Utah law. Section 77-7-2, which describes a law
5 enforcement officer's power to arrest, was significantly expanded to allow for
6 warrantless arrest of individuals whom a law enforcement officer has "reasonable
7 cause to believe" is an alien and either subject to a removal order issued by an
8 immigration judge, a civil immigration detainer, or who is charged or convicted in
9 another state with an aggravated felony as defined under federal immigration law.
10 These provisions would require officers to make very complicated determinations
11 that they do not have the expertise to make. Before HB 497, warrantless arrest
12 provisions have generally been based on observable facts that can be seen and
13 articulated and which, together, provide the basis for probable cause that a
14 violation of criminal law has occurred. HB 497, on the other hand, permits
15 warrantless arrest based on factors that cannot be readily observed, such as
16 "reasonable cause to believe that the person is an alien" and would allow for arrest
17 based solely on violations of civil immigration law rather than criminal law. These
18 provisions invite racial profiling and expand the power to arrest in dangerous ways.

19 17. HB 497 also undermines my ability to set law enforcement priorities for my agency
20 because I cannot prohibit the allocation of already scarce resources toward civil
21 immigration enforcement instead of violent crimes and criminal enforcement. HB
22 497 provides that "a state or local governmental agency ... may not ... limit or
23 restrict by ordinance, regulation, or policy the authority of any law enforcement
24 agency or other governmental agency to assist the federal government in the
25 enforcement of any federal law or regulation governing immigration..." I am
26 concerned that policies or guidelines I establish regarding enforcement priorities
27 could be called into question under this provision, thus undermining my ability to
28 appropriately manage the department.

1 18. HB 497 compromises the integrity of the law enforcement profession by calling
2 upon Utah law enforcement officers to make determinations that they are neither
3 equipped nor appropriately able to make. The law's complexity makes it
4 impossible to adequately train officers and leaves it open to such wide
5 interpretation that it becomes susceptible to abuse that would lead to systemic
6 constitutional violations by officers in the field. HB 497 will negatively impact
7 public safety by driving a wedge between Utah police and the communities we are
8 sworn to serve. Scarce law enforcement resources in the State of Utah will be
9 diverted from their primary and most important mission of ensuring public safety,
10 and crime will increase as a result.

11 19. I declare under penalty of perjury of the laws that the foregoing is true and correct.
12 Executed this 4th day of May, 2011, in Salt Lake City, Utah.

13 A handwritten signature in black ink, consisting of several loops and a central vertical stroke, likely representing the name of the declarant.