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\**Pro hac vice* motion pending

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**IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF UTAH, CENTRAL DIVISION**

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Utah Coalition of La Raza; Service Employees International Union; Workers' United Rocky Mountain Joint Board; Centro Civico Mexicano; Coalition of Utah Progressives; Latin American Chamber of Commerce; Salt Lake City Brown Berets; Jane Doe #1; John Doe #1; Milton Ivan Salazar-Gomez; Eliana Larios; Alicia Cervantes; John Doe #2 <p style="text-align: right;">Plaintiffs.</p>	<p style="text-align: center;">Case No. 2:11-cv-00401-BCW</p> <p style="text-align: center;"><b>LODGED: PROPOSED AMICUS CURIAE BRIEF SUBMITTED BY ASIAN AMERICAN JUSTICE CENTER AND OTHER AMICI CURIAE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ATTACHED</b></p>
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v.

Gary R. Herbert, Governor of the State of Utah, in his official capacity; Mark Shurtleff, Attorney General of the State of Utah, in his official capacity,  

Defendants.

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BY ASIAN AMERICAN JUSTICE  
CENTER AND OTHER AMICI CURIAE  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR A PRELIMINARY  
INJUNCTION**

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## **I. STATEMENT OF INTEREST OF ASIAN AMERICAN JUSTICE CENTER**

The Asian American Justice Center (“AAJC”), a member of the Asian American Center for Advancing Justice, is a national non-profit, non-partisan organization working to advance the human and civil rights of Asian Americans and build and promote a fair and equitable society for all. AAJC and its fellow amici (collectively “Amici”) submit this brief in support of Plaintiff’s motion for preliminary injunction because Utah’s House Bill (“HB”) 497, the “Illegal Immigration Enforcement Act,” will create dangerous precedent and undermine the constitutional and civil rights of all people within Utah.

The impact of HB 497’s state-law system for the regulation of immigration will be extensive and pervasive. HB 497 creates a vehicle for immigration enforcement that is not only unconstitutional but that encourages egregious violations of the rights of Utah’s residents and visitors. Amici write with particular concern about the disproportionate and damaging effect on Utah’s communities of color, who will be unfairly targeted and alienated by HB 497.

## **II. INTRODUCTION**

“Immigration is a federal policy issue between the U.S. government and other countries—not Utah and other countries.”<sup>1</sup> This quote from the Utah Compact—a statement of principles meant to address the challenges associated with the national immigration system—succinctly captures the clear demarcation of authority over immigration enforcement, which falls

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<sup>1</sup> The Utah Compact, which has been endorsed by many public leaders since 2010, sets forth five principles meant to guide Utah’s immigration discussion: federal solutions, law enforcement, families, economy and a free society. *See* The Utah Compact, *available at* <http://utahcompact.com/>

solely under the federal government’s jurisdiction pursuant to the U.S. Constitution.<sup>2</sup> However, the recent passage of HB 497 directly contradicts this constitutional mandate by giving local law enforcement agencies the right to question and arrest people for perceived immigration violations.

HB 497’s nickname as the “show me your papers” law accurately describes the substance of the law: it compels all people within Utah—residents, visitors, and tourists alike—to carry identification papers at all times to prove their U.S. citizenship or immigration status. Without papers, a person risks extensive investigation and protracted detention until his or her status is verified. HB 497 mandates police to request identification documents of all persons they stop or arrest. The law further authorizes law enforcement officials to investigate and detain a person if they have “reasonable suspicion” of the lawfulness of the person’s status. HB 497 is unconstitutional and threatens the civil rights of all persons in Utah.

In condemning HB 497, the AAJC is joined by numerous and diverse civil rights organizations, including those referenced in Exhibit 1 attached hereto.

The substance of this Amicus Brief denounces Utah’s Illegal Immigration Enforcement Act and highlights the adverse effects that enforcement of HB 497 will inevitably impart on communities of color, demonstrating how the law will unfairly target and disproportionately affect them. HB 497 creates dangerous precedent and fundamentally undermines the civil rights of those residing or traveling in Utah for the following reasons:

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<sup>2</sup> See The Commerce Clause, Art. I, Sec. 8, cl. 3 of the U.S. Constitution; see also the Naturalization Clause, Art. I, Sec. 8, cl. 4; the Migration and Importation Clause, Art. I, Sec. 9, cl. 1; and the War Power, Art I, Sec. 8, cl. 11.

- HB 497 encourages racial profiling and targets communities of color: Since the criteria for “reasonable suspicion”<sup>3</sup> is not defined, HB 497 invites discrimination and profiling based on impermissible factors, such as race, ethnicity, or English-speaking ability. Local law enforcement officials lack sufficient training to adequately enforce immigration at the local level.
- HB 497 destroys trust in law enforcement and threatens to chill reporting of crimes: The law will diminish public safety and trust in local law enforcement. Fearing that every encounter with authorities will lead to interrogation about their immigration status and possible detention, immigrants, non-residents, and people of color will hesitate to contact authorities with information about crimes committed against them or crimes they witnessed.
- HB 497 falls on the wrong side of history: HB 497 violates United States Supreme Court precedent that facially neutral laws can be unconstitutional if they disparately impact minorities. HB 497 also flouts the progress the United States, and particularly Utah, has made in the last century toward civil rights and increased integration of communities.

For these reasons, this Court should grant Plaintiff’s motion for preliminary injunction to bar enforcement of Utah’s Illegal Immigration Enforcement Act.

### **III. ARGUMENT**

#### **A. HB 497 Will Disproportionately Harm Certain Communities of Color and Encourage Racial Profiling.**

##### **1. Enforcement of HB 497 cannot be executed in a race-neutral fashion.**

The U.S. Supreme Court has held that reasonable suspicion “may not apply merely because a person . . . is of a suspected race or ethnicity.” *Terry v. Ohio*, 392 U.S. 1 (1968). HB

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<sup>3</sup> The law provides no instruction on how an officer would develop “reasonable suspicion” that an individual’s attestation of lawful presence is in fact false.

497, which cannot be applied in a non-discriminatory manner, directly violates this important judicial precedent.

HB 497 invites law enforcement to target certain people based on their race, ethnicity, and other disparate factors, due to assumptions that members of certain minority groups are more likely to be unlawfully present in the United States and/or to engage in illegal behavior. The statute's arguably facially neutral language fails to mitigate the harm from the substantial bias that will likely occur if the law is enforced.

A discussion of HB 497's key provisions illustrates how the statute will inevitably lead to profiling and harassment of communities of color. In Section 76-9-1003 (Detention or arrest-Determination of immigration status), HB 497 requires law enforcement officials to verify identification at every lawful stop, detention, or arrest. The level of required investigation under HB 497 is contingent on the offense, providing discretion in certain circumstances to the officer as to when or when not to investigate immigration status.<sup>4</sup>

As a result, the vague and ambiguous nature of the law opens the door to selective enforcement against people presumed to look or sound "foreign," based on impermissible external characteristics.<sup>5</sup> Many people, particularly those of color, will face further investigation

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<sup>4</sup> Upon an arrest for an alleged class A misdemeanor or felony, officers "shall request" verification of the person's citizenship or immigration status; upon an arrest and booking for a class B or C misdemeanor (such as littering, traffic violations and jay-walking), officers "shall attempt" to verify the person's status; upon a stop or detention for a class B or C misdemeanor, officers "may attempt" to verify the person's status. HB 497 § 76-9-1003.

<sup>5</sup> See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 117-29 (1997). Groups other than Latinos are designated as being "foreign." Asian Americans, at various times in U.S. history, have been subject to similar treatment. See Keith Aoki, *"Foreign-ness" & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 ASIAN PAC. AM. L.J. 1, 9-13 (1996) (analyzing legal significance of treatment of persons of Asian ancestry as "foreigners"); Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 OR. L. REV. 261, 295-315 (1997) (same); see also *Orhorhaghe v. INS*, 38 F.3d 488, 492 (9th Cir. 1994) (ruling that "Nigerian-sounding name" was insufficient to justify

and detention during routine encounters with law enforcement officials.<sup>6</sup> Even petty offenses (such as routine traffic stops) provide ample pretext to stop, investigate, and detain a person.

HB 497 Section § 76-9-1004 (Grounds for presumption of lawful presence in United States) provides that a person is “presumed to be lawfully present in the United States” if he or she (1) presents one of the four officially prescribed documents to the law enforcement officer, or (2) makes a statement or affirmation to the law enforcement officer that the person is a U.S. citizen or legal resident. However, this presumption of lawful status is entirely rebuttable. Law enforcement officials may unilaterally discredit a person’s attestations of lawful presence and/or reject documentation provided on the grounds of “reasonable suspicion” that such statements are false.

“Reasonable suspicion” is neither easily understood nor capable of a uniform application.<sup>7</sup> HB 497 invites selective reliance upon impermissible factors, such as skin color, accent, religion or race, that make the officer question the person’s attestation of lawful presence.<sup>8</sup> The vague standard of “reasonable suspicion,” combined with the rebuttable

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immigration stop); *supra* text accompanying notes 156-57 (describing Orhorhaghe).

<sup>6</sup> See Kevin R. Johnson, *ESSAY: How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 Geo. L.J. 1005, 1039 (April 2010) (“The authorization to rely on race, combined with much discretion, has resulted in even greater abuses of racial minorities in immigration enforcement than ordinary law enforcement.”)

<sup>7</sup> “Reasonableness . . . is not a definite, arithmetic, objective quality that is independent of aims and values. It is a concept that is considerably more subtle, complex, malleable, and mysterious than the simplistic model of decision-making relied upon by those who accept at face value the “reasonableness” or “rationality” of conduct that expresses not only controversial moral and political judgments, but also deep-seated, perhaps unconscious, affections, fears and aversions. . . .” Carrie Arnold, *Racial Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal Immigration Law*, 49 ARIZ. L. REV. 113, 134-135 (2007) (quoting Randall Kennedy, *RACE, CRIME AND LAW*, 144-145 (1997)).

<sup>8</sup> See *id.* (describing the problem with providing officers unguided authority to enforce immigration will transform “every traffic stop [] [into] an immigration-papers stop, leading to potential civil rights violations against members of ethnic groups”) (citing D.L. Hawley, *The Powers of Local Law Enforcement to Enforce Immigration Laws*, 99-06 Immigr. Briefings 1, 13

presumption of lawful status, provides a loophole around the prohibition against using racially motivated factors in this determination.

Many lawful residents, visitors, and immigrants will be unable to provide one of the requisite forms of identification to avoid investigation and detention.<sup>9</sup> A national survey sponsored by the Brennan Center for Justice at the NYU School of Law (“Brennan Center Survey”) revealed that millions of Americans do not have documentary proof of citizenship that falls under one of these categories readily available.<sup>10</sup> Approximately 13 million U.S. citizens do not have ready access to citizenship documents.<sup>11</sup> As many as 21 million Americans do not have valid government-issued photo identification.<sup>12</sup> HB 497 does not specify how persons can otherwise prove their identity if they lack one of the prescribed forms of identification

## **2. Local law enforcement officials are unequipped to enforce HB 497.**

One cannot readily ascertain a person’s lawful presence in the United States from external characteristics. Instead, this assessment requires a comprehensive evaluation of numerous factors, including federal laws, regulations, and procedures.<sup>13</sup> Congress enacted the

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(June 1999)).

<sup>9</sup> HB 497 Section § 76-9-1004 also provides a list of acceptable documents to create the presumption of lawful presence. These documents are: (a) a valid Utah driver license issued on or after January 1, 2010; (b) a valid Utah identification card issued on or after January 1, 2010; (c) a valid tribal enrollment card or other valid form of tribal membership identification that includes photo identification; or (d) a valid identification document that (i) includes a photo or biometric identifier of the holder of the document; and (ii) is issued by a federal, state or local governmental agency that requires proof or verification of legal presence in the United States as a condition of issuance of the document. H.B. 497 § 76-9-1004(1)(a)-(d).

<sup>10</sup> The Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification 2* (Nov. 2006), *available at* [http://www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf)

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See* Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties, and Subcomm. on Immigration, Citizenship, Refugees, Border Security, and International Law of the H. Comm. on the Judiciary, 111th Cong. 77-78 (2009) (“Public Safety

Immigration and Nationality Act (“INA” (8 U.S.C. §§ 1101 *et seq.*), which provides a complex set of rules for immigration, deportation and enforcement. Strictly reserving power to regulate immigration for the federal government, Congress reserved execution of these comprehensive guidelines for federal authorities trained in the policies and procedures of enforcement. U.S. Const., Art. 1, § 8, cl. 3, 4. HB 497 blurs the line between the roles of federal and state governments and impermissibly grants local law enforcement with immigration enforcement duties—*duties that they are not trained or equipped to handle.*

The risk of racial profiling dramatically increases when local agencies are tasked with enforcing immigration laws. The International Association of Chiefs of Police asserts that state and local police typically lack the training or knowledge to properly enforce complex federal immigration laws:

Addressing immigration violations such as illegal entry or remaining in the country without legal sanction would require specialized knowledge of the suspect’s status and visa history and the complex civil and criminal aspects of the federal immigration law and their administration. This is different from identifying someone suspected of the type of criminal behavior that local officers are trained to detect. Whether or not a person is in fact remaining in the country in violation of federal civil regulations or criminal provisions is a determination best left to these agencies and the courts designed specifically to apply these laws and make such determinations after appropriate hearings and procedures. Without adequate training, local patrol officers are not in the best position to make these complex legal determinations.<sup>14</sup>

The Major Cities Chiefs’<sup>15</sup> (“M.C.C.”) Immigration Committee further explains that “immigration violations are different from the typical criminal offenses that patrol officers face

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Hearing”) (statement of David A. Harris, Professor of Law, University of Pittsburgh School of Law) (comparing complexity of immigration laws to that of U.S. tax code).

<sup>14</sup> *Enforcing Immigration Law: The Role of State, Tribal, and Local Law Enforcement*, International Assoc. of Chiefs of Police, Nov. 30, 2004, available at <http://www.theiacp.org/Portals/0/pdfs/Publications/ImmigrationEnforcementconf.pdf>.

<sup>15</sup> The M.C.C. is a professional association of Chiefs and Sheriffs representing the largest cities in the United States and Canada. See M.C.C. homepage, available at

everyday on their local beats . . . . [T]he specific immigration status of any particular person can vary greatly and whether they are in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine.”<sup>16</sup>

Salt Lake City Police Chief Chris Burbank remarked on how HB 497 will negatively impact state and local law enforcement efforts:

By increasing our role in civil immigration action, state and local law enforcement is placed in the untenable position of potentially engaging in unconstitutional racial profiling, while attempting to maintain trust within the communities we protect. . . . Officers are forced to detain and question individuals for looking or speaking differently from the majority, not for their criminal behavior. How is a police officer to determine status without detaining and questioning anyone who speaks, looks or acts as if they might be from another nation?<sup>17</sup>

A study by The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity noted that “[w]hen officers use race as an indicator of illegal immigration status, it is virtually inevitable that Hispanic U.S. citizens and lawful residents will be funneled through this vetting process.”<sup>18</sup> Examining arrest data in Irving, Texas, the study compared arrests for petty offenses before and after the city’s collaboration with the Criminal Alien Program (“CAP”), a federal-local immigrant investigation and detention program.<sup>19</sup> The data revealed that discretionary arrests of Hispanics for Class-C petty misdemeanors rose dramatically (and in significantly higher numbers than for Whites and African-Americans) once CAP was implemented. The data

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<http://www.majorcitieschiefs.org/>

<sup>16</sup> M.C.C. Position Statement. The M.C.C. also noted the complexity of federal immigration laws combined with the lack of local authority and state law limitations of authority render federal agencies the most equipped to tackle immigration enforcement.

<sup>17</sup> Associated Press, *Salt Lake Police Chief Chris Burbank to Congress: Some Utah legislatures push racist agenda*, DESERET NEWS, June 18, 2010.

<sup>18</sup> Trevor Gardner II & Aarti Kohli, *The C.A.P. Effect: Racial Profiling In The Ice Criminal Alien Program*, The Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, UC Berkeley School of Law, (Sept. 2009).

<sup>19</sup> State immigration enforcement regimes such as HB 497 should be distinguished from formal federal-local partnerships for immigration enforcement like CAP.



marked compelling evidence that CAP indirectly encouraged local police to arrest Hispanics for petty offenses in order to purge undocumented immigrants from the city—the more arrests made led to a bigger the pool of detainees, which ensured that more undocumented immigrants would be removed from the city via CAP’s screening system.

**3. Enforcement of HB 497 will disproportionately affect communities of color.**

Not only does the law encourage pretextual grounds to stop individuals and investigate their status, but it will also increase negative scrutiny of certain communities of color.<sup>20</sup> A report issued by the Consortium for Police Leadership in Equity (“CPL”), written in part by Chief Burbank, found that support of Utah’s Senate Bill 81 (“SB 81”),<sup>21</sup> which required law enforcement officers to attempt to determine the citizenship status of persons confined in county jails and to verify the immigration status of a confined foreign national, was “closely related to a dislike of Latino immigrants—both documented and undocumented” and that “the bill is conceptualized by civilians in terms of being pro-or anti-Latino—and not simply pro-or anti-immigration.”<sup>22</sup> The obfuscation of Latino background and undocumented status influences the perception of Latinos and criminal activity: when questioned on crime rates, Salt Lake City residents consistently overestimated the rate at which Latinos committed drug-related, violent,

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<sup>20</sup> See Huyen Pham, *The Inherent Flaws in the Inherent Authority Position: Why Inviting Local Enforcement of Immigration Laws Violates the Constitution*, 31 FLA. ST. U. L. REV. 965 at 997-998 (2004) (“this lack of training, coupled with lack of hands-on enforcement experience, may tempt local authorities to rely on racial profiling . . . And to the extent that there exists anti-immigrant sentiments within a community . . . these sentiments may more likely be expressed by local authorities who live within those communities, rather than outside federal authorities”).

<sup>21</sup> The full text of SB 81 can be found at <http://le.utah.gov/~2008/bills/sbillenr/sb0081.htm>.

<sup>22</sup> Phillip A. Goff, Liana Maris Epstein, Chief Chris Burbank, & Division Chief Traci L. Keese, *Deputizing Discrimination? Causes & Effects of Cross-Deputization Policy in Salt Lake City, Utah*, report issued by The Consortium for Police Leadership in Equity, Board of Directors (“CPL Cross-Deputization Report”) at 12. This report, prepared after the passage of Utah’s Senate Bill 81, presented research to assess the cross-deputization dispute.

and identity theft crimes.<sup>23</sup> The report's findings of widespread misperceptions of people of color underscore the likelihood that HB 497 will be enforced upon pretextual grounds.

Since Utah's communities of color comprise a substantial portion of the state's population, many people will face inevitable scrutiny. According to the U.S. Census Bureau, nearly 19 percent of Utah's 2.8 million people define their race as something other than Caucasian.<sup>24</sup> Of this, 12.3 percent define themselves as Hispanic or of Latino origin; 2.1 percent as Asian; 1.4 percent as African American; 1.4 percent as American Indian or Alaska Native; and 0.8 percent as Native Hawaiian or Pacific Islander.<sup>25</sup> Between 2000 and 2008, the percentage of minorities dramatically increased in every county, and grew 55 percent overall.<sup>26</sup>

Utah's foreign-born population is also increasing. Approximately one in 12 Utah residents are foreign-born.<sup>27</sup> This number has grown considerably from 3.4 percent in 1990, to 7.1 percent in 2000, to 8.3 percent in 2008.<sup>28</sup> Nearly one-third of foreign-born Utahans are naturalized citizens.<sup>29</sup>

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<sup>23</sup> *Id.* at 14.

<sup>24</sup> U.S. Census Bureau, State and County QuickFacts, *available at* <http://quickfacts.census.gov/qfd/states/49000.html>.

<sup>25</sup> *Id.*

<sup>26</sup> L. Davidson, *The face of Utah is changing fast*, DESERET NEWS, May 14, 2009, *available at* <http://www.deseretnews.com/article/705303336/the-face-of-utah-is-changing-fast.html>. The two counties with the largest minority populations include San Juan County (61 percent, primarily Navajo) and Salt Lake County (24 percent). (*Id.*)

<sup>27</sup> U.S. Census Bureau, American Factfinder, Subject Table S0501, Utah, *available at* [http://factfinder.census.gov/servlet/STTable?\\_bm=y&-context=st&-qr\\_name=ACS\\_2009\\_1YR\\_G00\\_S0501&-ds\\_name=ACS\\_2009\\_1YR\\_G00\\_&-CONTEXT=st&-tree\\_id=307&-redoLog=false&-geo\\_id=04000US49&-format=&-lang=en](http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2009_1YR_G00_S0501&-ds_name=ACS_2009_1YR_G00_&-CONTEXT=st&-tree_id=307&-redoLog=false&-geo_id=04000US49&-format=&-lang=en). The census data shows that 60 percent of Utah's immigrants were born in Latin America; 17 percent in Asia; 11 percent in Europe; 3.9 percent in Oceania; 3.9 percent in Northern America; and 2 percent in Africa. (*Id.* at Subject Table S0502.)

<sup>28</sup> *New Americans in the Beehive State*, IMMIGRATION POLICY CENTER, July 1, 2010, *available at* <http://www.immigrationpolicy.org/just-facts/new-americans-beehive-state>

<sup>29</sup> U.S. Census Bureau, American Factfinder, Subject Table S0501, Utah, *available at* [http://factfinder.census.gov/servlet/STTable?\\_bm=y&-context=st&-qr\\_name=ACS\\_2009\\_1YR\\_G00\\_S0501&-ds\\_name=ACS\\_2009\\_1YR\\_G00\\_&-CONTEXT=st&-](http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2009_1YR_G00_S0501&-ds_name=ACS_2009_1YR_G00_&-CONTEXT=st&-)

The likelihood of error in attempting to enforce the law with HB 497's documentation requirements will be higher for minority communities. The Brennan Center Survey revealed that millions of American citizens do not have government-issued identification, and minority citizens are less likely to have photo identification.<sup>30</sup> More than 25 percent of African Americans and 16 percent of Hispanics lack current government-issued photo identification, compared to only eight percent of Caucasians. *Id.* More than 32 million women do not have citizenship documents that reflect their current name. *Id.*

Moreover, many people affected by HB 497 will be U.S. citizens.<sup>31</sup> Approximately 70 percent of immigrants in the United States are legal permanent residents or U.S. citizens.<sup>32</sup> Of the remaining 30 percent, many have some form of lawful status.<sup>33</sup> However, since there is no national database of citizens available to quickly verify status, these groups will face prolonged detention and investigation if stopped without proper identification.<sup>34</sup>

## **B. HB 497 Threatens Public Safety in Utah.**

The threat and likely occurrence of discriminatory police treatment will erode the already fragile trust of law enforcement by the community it is working to protect. HB 497 will instill fear and mistrust in Utah's communities of color and drastically chill the reporting of crime and

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<sup>30</sup> The Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification 2* (Nov. 2006), *available at* [http://www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf)

<sup>31</sup> For example, in 2008, 32 percent of immigrants in Utah were naturalized citizens and eligible to vote. *Id.*

<sup>32</sup> Nancy Morawetz & Alina Das, *Legal Issues in Local Police Enforcement of Federal Immigration Law*, paper presented at the Police Foundation conference, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Washington, DC, August 21, 2008.

<sup>33</sup> *Id.*

<sup>34</sup> See Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, 2009 at 28 (Mary Malina ed., 2009) ("Police Foundation Report"), *available at* <http://www.policefoundation.org/pdf/strikingabalance/Narrative.pdf>.

cooperation in criminal investigations by minorities. A number of detrimental effects will likely occur because immigrants and persons of color will avoid the police out of fear that any interaction could lead to immigration status inquiries: (1) Utah law enforcement officers will not get the critical assistance they need to prosecute crimes because of the erosion of trust between them and the community; (2) crimes will go unpunished because immigrant victims or witnesses will refuse to report the crime to police; (3) immigrant victims or witnesses will refuse to testify in criminal trials or participate in criminal investigations; and (4) crime rates against immigrants will rise, especially for hate crimes and domestic violence.

**1. Enforcement of HB 497 will erode trust between communities of color and law enforcement.**

HB 497 fundamentally changes the primary role and operations of local law enforcement and amounts to a mandatory immigration status check for all officers in the field. It consequently undermines the ability of police to protect and serve not only immigrant populations, but also the community as a whole.<sup>35</sup> According to the CPLE, the “depressed sense of police legitimacy [created by cross-deputization] has the potential to harm the [Salt Lake City Police Department’s] reputation and to impair the SLCPD’s ability to police effectively amongst both White and Latino residents.”<sup>36</sup>

As Hubert Williams, President of Police Foundation—a non-partisan organization established to improve policing in the United States—testified before Congress:

The reluctance of local police to enforce federal immigration law grows out of the difficulty of balancing federal and local interests in ways that do not diminish the ability of the police to maintain their core mission of maintaining public safety, which depends on the public trust. In communities where people fear the police, very little information is shared with officers, undermining the police capacity for

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<sup>35</sup> CPLE Cross-Deputization Report at 17.

<sup>36</sup> *Id.*

crime control and quality services delivery. As a result, these areas become breeding grounds for drug trafficking, human smuggling, terrorist activity, and other serious crimes. As a police chief in one of our focus groups asked, “How do you police a community that will not talk to you?”<sup>37</sup>

Law enforcement agencies have recognized how critical it is to have the community’s trust.<sup>38</sup> Many police departments have adopted “community-based policing,” requiring police to interact with members of the community to forge mutual trust<sup>39</sup> and engaging communities in a working partnership to reduce crime and promote public safety. *Id.* To encourage cooperation between police and the public, some localities have adopted policies similar to the Los Angeles Police Department’s Special Order No. 40, which prohibits police officers from “initiat[ing] police action with the objective of discovering the alien status of a person.”<sup>40</sup>

While community-based policing fosters—and relies upon—trust between the community and local police, HB 497 will ensure precisely the opposite. The concern that community trust will decline if local officials enforce immigration laws is not merely theoretical. A 2009 report concluded that a Virginia police department’s enforcement of immigration laws caused a 15-percent decrease in the level of trust in government among Hispanics in the community, and a two-point drop (on a ten-point scale) in their quality of life.<sup>41</sup> A statewide

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<sup>37</sup> Public Safety Hearing, at 81-82 (statement of Hubert Williams, President, Police Foundation) (recommending that local law enforcement not engage in immigration enforcement activities that directly involve the public, such as requesting documentation in connection with traffic stops).

<sup>38</sup> See Jack McDevitt et al., Ne. Univ. Institute on Race & Justice, *COPS Evaluation Brief No. 1: Promoting Cooperative Strategies to Reduce Racial Profiling* 21 (2008) (“Being viewed as fair and just is critical to successful policing in a democracy.”).

<sup>39</sup> Police Foundation Report, at 24.

<sup>40</sup> L.A. Police Dep’t, LAPD Manual Vol. 4 § 264.50, available at [http://www.lapdonline.org/lapd\\_manual/volume\\_4.htm#264.50](http://www.lapdonline.org/lapd_manual/volume_4.htm#264.50) (last visited May 9, 2011); see also L.A. Police Dep’t, Chief of Police Special Order No. 40 (Nov. 27, 1979) (adopting policy located in LAPD Manual at Vol. 4 § 264.50 because “effective law enforcement depends on a high degree of cooperation between the Department and the public it serves”), available at [http://www.lapdonline.org/get\\_informed/pdf\\_view/44798](http://www.lapdonline.org/get_informed/pdf_view/44798).

<sup>41</sup> Thomas M. Guterbock et al., *Evaluation Study of Prince William County Illegal Immigration*

survey of California community groups found that ninety-five percent of respondents reported a negative impact on their community after U.S. Immigration and Customs Enforcement (“ICE”) collaborated with local police to enforce immigration laws.<sup>42</sup> Those respondents reported that their relationship with local police had been “very good” before ICE collaboration and that the relationship deteriorated to “very poor” since ICE collaboration. *Id.*

Other studies yield similar results. With data derived from nationwide focus groups, the Police Foundation found that a majority of respondents thought that aggressive enforcement of immigration laws would negatively impact community relationships.<sup>43</sup> Another report found that law enforcement officers expected that with the passage of bills such as Arizona’s SB 1070, there would be decreased respect and trust from the communities they serve.<sup>44</sup>

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*Enforcement Policy*, at xi, 76-78 (2009), available at <http://www.pwcgov.org/docLibrary/PDF/10636.pdf>.

<sup>42</sup> “*We’re Not Feeling Any Safer*”: *Survey Results Show Negative Impacts from ICE Involvement with Local Police*, California Immigrant Policy Center, University of California, Berkeley Law (Summer 2010), available at <http://caimmigrant.org/document.html?id=322/>. One type of ICE collaboration with local police is known as Secure Communities. *See, e.g.*, Secure Communities, U.S. Immigration and Customs Enforcement, [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/) (last visited May 19, 2011). Under this program, ICE conducts an immigration check along with the U.S. Department of Homeland Security and the Department of Justice to identify aliens who are arrested for a crime and booked into local law enforcement custody. *Id.*

<sup>43</sup> *See* Police Foundation Report at 24. Specifically, community relationships would be eroded by decreasing community trust of the police (74 percent), trust between community residents (70 percent), and reporting of both crime victimization (85 percent) and criminal activity (83 percent). Compounding these concerns was a belief that aggressive enforcement of immigration laws would weaken public trust initiatives (77 percent), community-policing efforts (77 percent), youth outreach (74 percent), intelligence/information gathering (63 percent), criminal investigations (67 percent), and even recruitment (31 percent), thereby impacting operations significantly.

<sup>44</sup> Phillip Atiba Goff, *et al.*, “*Safe Because We Are Fair*” *How Cross-Deputization Undermines Police Officer and Community Safety*”, The Consortium for Police Leadership in Equity. The report showed that officers anticipated they would feel less respect from both whites and Latinos under a cross-deputization police model, and that the drop in perceived respect would be higher on the part of Latinos. *Id.* at 6. Officers also indicated greater anxiety in approaching Latino suspects under a cross-deputization policy. *Id.* Significantly, the report noted that “anxiety towards a group has been demonstrated in prior research to lead to conflict escalation, impaired task performance, and an increase in hostility.” *Id.* at 7. The report found that officers were significantly more concerned with appearing racist. *Id.* at 8. “This is a concern as *higher levels*

Utah has already suffered the detrimental effects of prior laws requiring the verification individuals' immigration status. Following the passage of SB 81, the CPLE prepared a report finding that both Latinos and Caucasians were less likely to report crimes.<sup>45</sup> Even outside the context of immigration verification laws, communities may become distrustful if they feel they are targeted because of their status. For example, in Salt Lake City, police officers and federal agents rushed into a business in the Latino community on the later invalidated assumption that undocumented Mexicans conducted 80 percent of the city's illegal drug trade. As a result, customers became afraid to shop there and to trust the police.<sup>46</sup> When the community loses faith in its protectors, the communication and trust necessary for optimally effective local law enforcement is obstructed. And as immigration enforcement becomes more aggressive, the community is less likely to cooperate with police.

**2. HB 497 will produce a chilling effect on the reporting of crime and cooperation in police investigations, jeopardizing the public safety of all Utahans.**

The American Bar Association has reported that: “[l]ocal police and prosecutors should be prepared for the predictable reduction in reporting of serious crimes if law enforcement officers choose to expand their duties to include the policing of immigration matters.”<sup>47</sup> Because its provisions target communities of color, HB 497 will thwart the willingness of Utahans to report and cooperate in the investigation of crimes.

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*of stereotype threat have been consistently linked to detrimental performance and unintentional confirmation of the very stereotype one is concerned with fulfilling in a variety of domains.” Id. (emphasis added).*

<sup>45</sup> CPLE Cross-Deputization Report at 16.

<sup>46</sup> Gail Pendleton, *Local Police Enforcement of Immigration Laws and its Effects on Victims of Domestic Violence*, Domestic Violence and Immigration in the Criminal Justice System, ABA Commission on Domestic Violence (“ABA Domestic Violence Report”), at 3, *available at* <http://www.mcadsv.org/webinars/IR-2007-April/VI/BI%20Law%20Enforcement%20CJS.pdf>.

<sup>47</sup> *Id.* at 1.

Craig Ferrell, the Deputy Director and Administration General Counsel at the Houston Police Department, details the chilling effects laws like HB 497 would have on immigrant cooperation:

Local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families.<sup>48</sup>

Racial and ethnic minority victims may well feel compelled to let a particular incident go unreported rather than potentially expose themselves to interrogation and possible detention while their own immigration status is investigated—a process that takes more than an hour on average.<sup>49</sup> This reluctance is even greater for individuals who are undocumented. Fear of reporting crimes and cooperating with police investigations has been prevalent among the undocumented, which often makes them vulnerable to crimes.<sup>50</sup>

Reluctance to cooperate with law enforcement is also inevitable for the significant number of people who may themselves have legal status but who may live with relatives or friends who do not.<sup>51</sup> For those who fear that they or a loved one will be deported, reporting a

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<sup>48</sup> Craig E. Ferrell Jr., *Immigration Enforcement: Is It a Local Issue?*, The Police Chief: The Professional Voice of Law Enforcement (Feb. 2004), available at [http://www.lwvil.org/downloadimm/lwvil\\_immigration\\_study\\_second\\_packet\\_police\\_chief\\_magazine.pdf](http://www.lwvil.org/downloadimm/lwvil_immigration_study_second_packet_police_chief_magazine.pdf).

<sup>49</sup> See Police Foundation Report at 23.

<sup>50</sup> See, e.g., Nat'l Network for Immigrant & Refugee Rights, *Over-Raided, Under Siege: U.S. Immigration Laws and Enforcement Destroy the Rights of Immigrants* 36 (2008), [http://www.nnirr.org/resources/docs/UnderSiege\\_web2.pdf](http://www.nnirr.org/resources/docs/UnderSiege_web2.pdf) (noting that many crimes committed against immigrants go unreported because immigrants fear deportation if they report any incident to the police); S. Poverty Law Ctr., *Under Siege Life for Low-Income Latinos in the South* 6 (Apr. 2009), available at <http://www.splcenter.org/sites/default/files/downloads/UnderSiege.pdf> (noting that 41 percent of migrant workers in survey reported wage theft).

<sup>51</sup> The Police Foundation Report notes that 85 percent of families are mixed-status families—families with a combination of citizens, undocumented immigrants, and documented immigrants. Police Foundation Report at 24.



crime or providing witness information to law enforcement officials may be too great a risk to take.<sup>52</sup> Because many families with undocumented family members also include legal immigrant members, this would drive a potential wedge between police and huge portions of the legal immigrant population as well.<sup>53</sup> This ripple effect will facilitate HB 497's widespread consequences of chilling reporting of crime and eroding the trust between law enforcement and the community.

English language learners are particularly reluctant to cooperate in such instances, given the language barriers that already hinder their ability to communicate with government officials.<sup>54</sup> Not only may English language learners hesitate to contact officials because of their limited English proficiency, but they are also likely to avoid government contact due to unfamiliarity with U.S. laws.<sup>55</sup>

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<sup>52</sup> The Police Foundation Report describes a recent Pew Hispanic survey, which found that the majority of Latinos in the United States worry about deportation of themselves, a family member, or a close relative. Police Foundation Report at 24.

<sup>53</sup> Craig E. Ferrell Jr., *Immigration Enforcement: Is It a Local Issue?*, The Police Chief: The Professional Voice of Law Enforcement (Feb. 2004), available at [http://www.lwvil.org/downloadimm/lwvil\\_immigration\\_study\\_second\\_packet\\_police\\_chief\\_magazine.pdf](http://www.lwvil.org/downloadimm/lwvil_immigration_study_second_packet_police_chief_magazine.pdf).

<sup>54</sup> See Susan Shah, Insha Rahman, and Anita Khashu, *Overcoming Language Barriers: Solutions for Law Enforcement* (Vera Institute of Justice, 2007) at 4, available at: [http://www.justice.gov/crt/lep/resources/vera\\_translating\\_justice\\_final.pdf](http://www.justice.gov/crt/lep/resources/vera_translating_justice_final.pdf) (“The obstacles associated with language barriers are often complicated by the fact that many [limited English proficient] persons fear the police and go to great lengths to avoid contact with them. Especially in a political environment where immigrants’ legal status is a prominent issue of national debate, more and more immigrants—particularly those who do not speak fluent English—are staying away from public services and government institutions. As community members often explain, ‘Even with immigrants who are here legally, they are suspicious of and fear the police.’”)

<sup>55</sup> Jones Moy and Brent Archibald, *Reaching English as a Second Language Communities: Talking with the Police*, The Police Chief Magazine (Vol. 72, No. 6, June 2005), available at [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=614&issue\\_id=62005](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=614&issue_id=62005) (“The [Monterey Park Police] Department observed numerous misunderstandings in the basics: recognizing law enforcement officers (some residents do not know the difference between police officers, security guards, and firemen), using the emergency 911 system, responding to a traffic stop (some people stop right in the middle of the road rather than pull to the curb, whereas others refuse to sign the traffic citation). Response to domestic calls are often complicated by the families' limited English and even more so by their lack of

Finally, HB 497 presents a particularly profound risk for domestic violence victims. “If police are seen as [federal immigration agents] in the eyes of the community, many battered immigrants will be reluctant to call the police and take the initial steps necessary to become independent of the abuser out of fear of being asked about her immigration status.”<sup>56</sup> According to an advocate at the St. Paul Domestic Abuse Intervention Project, local police involvement in immigration matters increases fear in “already vulnerable communities: ‘Most immigrants in battered women shelters are too afraid to call police, even if they have been badly assaulted by their partner.’”<sup>57</sup>

**3. HB 497 will also chill cooperation in court cases and criminal investigations.**

Similarly, HB 497 may chill cooperation in a court cases or criminal investigations. “In the courtroom . . . minority victims and witnesses may be less willing to testify, and jurors may engage in nullification when they perceive that charges were unjustly brought against a minority defendant, regardless of the weight of the evidence.”<sup>58</sup> If targeted groups view law enforcement as discriminating against them, they will doubt the justice system’s ability to function fairly—destroying “the ideal that holds us together as a nation: equal justice under the law.”<sup>59</sup> In one example, a Midwestern police chief recalled an incident where an unauthorized immigrant was a witness to a crime and agreed to testify in a criminal case.<sup>60</sup> The witness’s name was put on the witness list in preparation for trial. Defense attorneys then discovered that the witness was

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understanding of American laws and legal ramifications of domestic violence.”)

<sup>56</sup> ABA Domestic Violence Report at 1.

<sup>57</sup> *Portrait of Injustice: the Impact of Raids on Families, Workers and Communities*, Report from the National INS Raids Task Force of the National Network for Immigrants and Refugee Rights, at 33 (1997).

<sup>58</sup> Anthony E. Mucchetti, *Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities*, 8 Harv. Latino L. Rev. 1, 22 (2005).

<sup>59</sup> David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 Minn. L. Rev. 265, 326 (1999).

<sup>60</sup> See Police Foundation Report at 23.

undocumented. A few days after the witness testified in the case, ICE arrested him and initiated deportation proceedings. Word of the incident spread in the community, and, as a result, police have had difficulty securing cooperation of other immigrant witnesses. *Id.*

**4. HB 497 will particularly undermine community safety by increasing minorities' vulnerability to hate crimes.**

Members of minority communities (including communities defined by color, faith, sexual orientation, gender, and national origin) are the disproportionate victims of hate crimes.<sup>61</sup> They are also the most likely to bear the brunt of HB 497 enforcement. If HB 497 takes effect, victims of hate crimes will likely feel less comfortable reporting crimes to law enforcement.<sup>62</sup>

Those who are most intimidated by the new law enforcement regime will be among those most in need of government protection against crimes of hate. The Federal Bureau of Justice estimates that only 44 percent of hate crimes are reported to the police.<sup>63</sup> One explanation for the significant underreporting of hate crimes may be similar to the reason that undocumented immigrants may underreport crimes: victims fear that calling attention to the crime will lead to further targeting, whether by the perpetrator or by the police.<sup>64</sup> Moreover, the level of vitriol around immigration issues has recently increased: in only two years the number of what the Southern Poverty Law Center terms “nativist extremist” groups<sup>65</sup>—organizations that go

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<sup>61</sup> For example, one northeastern city police chief stated: “They [undocumented immigrants] refer to themselves as walking ATMs because everybody knows that they don’t have documentation enough to get bank accounts, checking accounts, and those kinds of things, and that their savings and whatever they have is on their person, not anywhere else. First of all, they live in an apartment with eight other people, so you can’t leave it behind. They carry it with them and the people who seek to victimize them take advantage of that.” Police Foundation Report at 25.

<sup>62</sup> See generally ABA Domestic Violence Report.

<sup>63</sup> Caroline Wolf Harlow, Bureau of Justice Statistics, *Hate Crime Reported by Victims and Police* 4 (Nov. 2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/hcrvp.pdf>.

<sup>64</sup> Police Foundation Report at 23.

<sup>65</sup> A listing of nativist extremist groups in Utah can be found at S. Poverty Law Ctr., *Nativist*

beyond mere advocacy of restrictive immigration policy to actually confronting or harassing suspected immigrants,”<sup>66</sup>—more than doubled, from 144 groups in 2007 to 309 groups in 2009.<sup>67</sup> In such a climate, all minority groups need to be able to trust in law enforcement to ensure their safety and maintain the well-being of their communities.<sup>68</sup> HB 497 guarantees precisely the opposite and, as a result, may lead to increased hate crimes.

### C. **HB 497 Falls on the Wrong Side of History.**

HB 497 not only violates U.S. Supreme Court precedent in striking down laws that disparately impact minorities, but also flies in the face of progress Utah has made toward racial and social equality.

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*Extremist Groups 2010*, <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2011/spring/the-year-in-nativism/nativist-extremists>.

<sup>66</sup> S. Poverty Law Ctr., *New SPLC Report: “Patriot” Groups, Militias Surge in Number in the Past Year*, Mar. 2, 2010, <http://www.splcenter.org/get-informed/news/splc-report-number-of-patriot-groups-militias-surges-by-244-in-past-year> (defining “nativist extremist”).

<sup>67</sup> Heidi Beirich, S. Poverty Law Ctr., *The Year in Nativism*, Intelligence Report, Spring 2010, available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/spring/the-year-in-nativism>.

<sup>68</sup> The danger of the underreporting of hate crimes exists for all minorities, not just ethnic minorities, who may feel that law enforcement is not interested in advancing or maintaining the well-being of their communities. For instance, law enforcement organizations have recognized that lesbian, gay, bisexual and transgender (“LGBT”) communities are often reluctant to report hate crimes to officials perceived as unsympathetic. King County Dep’t of Pub. Health, *Safety and Hate Crimes*, Oct. 7, 2008, <http://www.kingcounty.gov/healthservices/health/personal/glb/HateCrime.aspx> (“Minority groups, including [LGBT] communities, have historically had strained relations with law enforcement and fear that crimes against them will not be taken seriously or that the police reaction will be unsympathetic or hostile.”). Additionally, one study has found that LGBT undocumented immigrants are often doubly deterred from seeking justice after being victims of anti-LGBT discrimination or crime for fear of arrest or deportation, causing injustices to go unheeded and encouraging further wrongdoing. See Jon Davidson & Francisco Dueñas, *Arizona Law Hurts Us All*, Advocate, May 5, 2010, available at [http://advocate.com/Politics/Commentary/Lambda\\_Legal\\_Arizona\\_Law\\_Hurts\\_Us\\_All/](http://advocate.com/Politics/Commentary/Lambda_Legal_Arizona_Law_Hurts_Us_All/) (while Arizona’s SB 1070 is different from Utah’s HB 497, the two laws are similar and this article is instructive).

**1. Throughout U.S. history, landmark court decisions have invalidated statutes aimed at excluding certain minority groups from the rights granted to those in the majority.**

Courts have invalidated many statutes intended to exclude certain minority groups from the rights granted to those in the majority throughout the past 150 years. Some of these statutes applied only to certain groups. For example, in *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 427 (1948), the Supreme Court held that a California statute that deprived those ineligible for citizenship, including a legal resident born in Japan, of a commercial fishing license was unconstitutional. Likewise, in *Oyama v. United States*, 332 U.S. 633, 644 (1948), the Supreme Court struck down California's Alien Land Law, which prohibited those ineligible for citizenship, namely Asian immigrants, from owning land. Lastly, in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 525, 534 (1993), the Supreme Court held that the city's "animal sacrifice" ordinance was designed to suppress the vital element of the Santeria religion and therefore was unconstitutional.

The Supreme Court has long held that even facially neutral statutes are unconstitutional when discriminatorily applied. The leading case in this area is *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), where the Supreme Court held unconstitutional the enforcement of a local ordinance banning the operation of hand laundries in wooden buildings unless exempted from the requirement because the statute disproportionately affected Chinese residents.

HB 497 should be similarly struck down because, though facially neutral, it will be discriminatorily applied and will have a disparate impact on minorities and persons of color. While HB 497 is not worded to apply to a specific group, the array of harms inherent in the detention, interrogation, and arrest authorized under HB 497 will be disproportionately imposed

on racial and ethnic minorities, English language learners and others who simply look different or speak differently, including many who are U.S. citizens and legal residents.

**2. HB 497 hinders Utah’s progress toward becoming an inclusive state.**

While Utah has made progress toward equality—as evidenced in the Utah Compact, which calls for humane and welcoming treatment of immigrants—there is a history of discrimination and still much work to be done to eradicate discrimination in the state. Before the civil rights movement in Utah, the state promulgated various laws subjecting minorities to formal discrimination: laws prohibited marriage between a man and woman of different races, barred African Americans from swimming in municipal pools, excluded Native Americans from voting, and sanctioned other forms of discrimination through restrictive real estate covenants, policies of private business, and patterns of residential living.<sup>69</sup>

The experience of Japanese Americans in Utah during World War II illustrates the history of discrimination in Utah. After the bombing of Pearl Harbor, President Franklin Roosevelt issued Executive Order 9066, which forced Japanese Americans to move into internment camps. Utah was the home of the Topaz camp, built near Delta.<sup>70</sup> While the internment camps were created and maintained by federal action, Utah state actors engaged in racial discrimination as well. For example, children of Japanese immigrants were refused admission into Utah’s state university, the state denied fishing and business licenses to people of

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<sup>69</sup> Thomas G. Alexander, *Utah, the Right Place*, Civil Rights Movement in Utah, Utah History To Go, available at [http://historytogo.utah.gov/utah\\_chapters/utah\\_today/thecivilrightsmovementinutah.html](http://historytogo.utah.gov/utah_chapters/utah_today/thecivilrightsmovementinutah.html) (last visited May 10, 2011); see also Kathryn L. MacKay, *Utah History Encyclopedia*, Equal Rights Amendment, Utah History To Go, available at [http://historytogo.utah.gov/utah\\_chapters/utah\\_today/equalrightsamendment.html](http://historytogo.utah.gov/utah_chapters/utah_today/equalrightsamendment.html) (last visited May 10, 2011) (describing Mormon church’s opposition to Equal Rights Amendment).

<sup>70</sup> See Topaz Internment Camp, J. Willard Marriott Library, The University of Utah, <http://www.lib.utah.edu/collections/photo-exhibits/topaz.php> (last visited May 10, 2011) for a photographic exhibit and collection of images from the Topaz Internment Camp.

Japanese descent, and state legislation was proposed to deny immigrants ineligible for citizenship the ability to lease land for more than a year at a time.<sup>71</sup>

Present-day discrimination in Utah still exists. According to a report on the public hearings of the Utah Task Force on Racial and Ethnic Fairness in the Legal System, “[t]here is an overwhelming perception that racial and ethnic minorities in Utah are subject to discrimination by law enforcement due to targeted police action based on the race or ethnicity of the individuals involved” and that “[n]on-English speaking minorities are given unfair punishment and are often defenseless due to language barriers.”<sup>72</sup> The present-day discrimination is so prevalent that the American Civil Liberties Union filed a lawsuit alleging that “[t]he [Utah Department of Public Safety] has a policy and practice of targeting certain individuals based principally on their perceived race or ethnicity, pulling them over for frivolous or nonexistent moving or equipment violations, and then subjecting them to unlawful detentions and searches.”<sup>73</sup>

HB 497, which cannot be executed in a race-neutral fashion, will only exacerbate racial profiling and discrimination problems that already exist in Utah. Thus, combating discrimination in Utah is an extremely timely and important issue for Utah. HB 497 is nothing but a step back in time when racial inequality was even more prevalent in Utah.

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<sup>71</sup> Remembering the Japanese Internment—WWII, Utah State History, [http://history.utah.gov/front\\_page/japanese.html](http://history.utah.gov/front_page/japanese.html) (last visited May 10, 2011).

<sup>72</sup> Criminal Perception of Racial and Ethnic Fairness in the Criminal Justice System, Listening to Utahans: A Client Committee Report on the Public Hearings of the Utah Task Force on Racial and Ethnic Fairness in the Legal System, <http://www.utcourts.gov/specproj/retaskforce/clrpt24.pdf> (last visited May 10, 2011).

<sup>73</sup> ACLU Files Suit to Stop Racial Profiling by Utah Highway Patrol, American Civil Liberties Union, Racial Justice, June 28, 2000, *available at* <http://www.aclu.org/racial-justice/aclu-files-suit-stop-racial-profiling-utah-highway-patrol>.

#### IV. CONCLUSION

For the foregoing reasons, the Asian American Justice Center and fellow Amici request that this Court grant the Plaintiffs' motion for preliminary injunction to bar the enforcement of the Utah Illegal Immigration Enforcement Act. Public interest requires that HB 497 be enjoined because it is incapable of being executed in an impartial and constitutional manner.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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