

Attachment 1

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

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

v.

Governor Gary R. Herbert, *et al.*,
Defendants.

[PROPOSED] FINAL JUDGMENT
Case No. 2:11-cv-00401-CW;
Case No. 2:11-cv-1072-CW
Judge: Honorable Clark Waddoups

Pursuant to the ruling of this Court on June 18, 2014 and the parties' Stipulation, the Court hereby enters final judgment in this action as follows:

1. For the reasons given in my Memorandum Decision and Order of June 18, 2014, the Defendants State of Utah, Governor Gary R. Herbert, Attorney General Sean Reyes, and their successors, are PERMANENTLY ENJOINED from implementing Section 6(2) of H.B. 497 (Utah Code Ann. § 76-9-1006(2)); Section 11 of H.B. 497 (Utah Code Ann. § 77-7-2(5)); and Utah Code Ann. § 76-10-2901, as amended. The State may implement the remaining sections of H.B. 497 subject to the limiting constructions outlined herein.

2. The Court adopts the construction of Section 3 of H.B. 497 (Utah Code Ann. § 76-9-1003) as set forth in Utah Attorney General Opinion No. 2012-001 (Dkt. No. 146-3) as follows: Section 3 only requires (or authorizes, where indicated) officials to conduct a status check during the course of an authorized, lawful detention or after a detainee has been released. Officials must have a lawful stop, detention, or arrest as a predicate to any verification. Section 3 does not provide an independent basis for stops, detentions or arrests. Nor may a stop, detention or arrest be prolonged merely to confirm a person's immigration status. Officers may not delay or postpone addressing the original purpose of the stop, detention, or arrest. In the enforcement of Section 3, law enforcement officers are also prohibited from considering race, color, or national origin, except to the extent permitted by the Constitution.

3. Section 4 of H.B. 497 (Utah Code Ann. § 76-9-1004) simply outlines what forms of identification (or what affirmations) constitute acceptable verification of immigration status, in accordance with the otherwise constitutionally permissible requirement of Section 3

to verify immigration status in certain situations. Section 4 does not impose on aliens any new requirement to register, nor does it make failure to register a state offense. Section 4 does not require any person to carry any immigration documents, nor does it require or authorize law enforcement officers to seek to ascertain whether persons are carrying certain immigration documents as required under federal law. As with Section 3, Section 4 of H.B. 497 does not provide an independent basis for a stop, detention, or arrest and in the absence of an underlying, independent basis, law enforcement officials are not authorized to seek identification from a person for the purpose of seeking to ascertain their immigration status or nationality. Under Section 4, an officer can use any means by which the officer might normally and reasonably verify a person's identity and status.

4. Section 5 of H.B. 497 (Utah Code Ann. § 76-9-1005) must be considered in context and read in relation to other relevant sections, especially Section 3. Read in conjunction with the rest of H.B. 497 and the limiting construction of the Utah Attorney General's Opinion, pursuant to Section 5, officials must have a lawful stop, detention, or arrest as a predicate to any verification; verification may not prolong any such detention; suspicion that an individual may be unlawfully present in the United States does not constitute such a lawful basis for detention; officials must have continuous lawful custody over the individual during the course of the transportation; and the state official must be acting under federal direction to transport the individual to a federal detention facility. If any of the predicates is missing, transportation of the individual to a federal facility is not permissible under Section 5.¹

¹ This paragraph describes the requirements of H.B. 497 and should not be understood as describing federal law or federal policy.

5. Subsection 1 of Section 6 of H.B. 497 (Utah Code Ann. § 76-9-1006(1)) must be construed to include assistance only with those activities that have been invited or expressly authorized by the federal government. Consistent with Section 9 of H.B. 497, which requires that the Act must be implemented ‘in a manner that is consistent with federal laws that regulate immigration,’ nothing in subsection 1 of Section 6 would prohibit a locality from adopting a policy requiring compliance with the Constitution and/or federal law as a predicate for assisting the federal government in immigration enforcement. Subsection 2 of Section 6 of H.B. 497 (Utah Code Ann. § 76-9-1006(2)) is impermissible because it seeks to regulate in the field of alien registration, which is fully occupied by the federal government. *Arizona v. United States*, 567 U.S. ____, 132 S. Ct. 2492 (2012), makes clear that any regulation in the field of alien registration, regardless of what type, is preempted.

6. Neither La Raza nor the United States directly challenge Sections 7, 8, or 9 of H.B. 497 (respectively, Utah Code Ann. § 76-9-1007, 1008, and 1009). Because there are no direct challenges to these provisions, the Court does not address them.

7. Utah Code Ann. § 76-10-2901 is impermissible because it seeks to regulate the entry and residence of aliens and makes new state offenses for conduct already criminalized by Congress’ existing immigration regulation scheme. In *Arizona* the Supreme Court held that states cannot regulate behavior in a field that is occupied by a complete and comprehensive scheme of regulation, and that the States cannot criminalize behavior already made criminal by federal law. Criminalizing this behavior interferes with Congress’ chosen balance.

8. Section 11 of H.B. 497 (Utah Code Ann. § 77-7-2(5)) is impermissible because it seeks to bestow on state officers greater discretion and authority than that possessed by

federal immigration officials, establishes a *de facto* state immigration policy which may be in conflict with Congress' carefully crafted policy, and violates the removal process that has been entrusted to the federal government.

9. Any of Plaintiffs La Raza's or the United States' remaining claims which have not been adjudicated are dismissed without prejudice.

AND IT IS SO ORDERED.

Dated: November _____, 2014

Honorable Clark Waddoups
UNITED STATES DISTRICT COURT JUDGE

Approved as to form and content:

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