UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INGRID BUQUER, BERLIN URTIZ, and LOUISA ADAIR, on their own behalf and on behalf of those similarly situated,	)	
Plaintiffs,	)	
v.	)	No.
CITY OF INDIANAPOLIS and the MARION COUNTY PROSECUTOR, in his official capacity, CITY OF FRANKLIN;JOHNSON COUNTY SHERIFF, in his official capacity, and the JOHNSON COUNTY PROSECUTOR, in his official capacity,	)	
Defendants.	)	

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF / NOTICE OF CHALLENGE TO CONSTITUTIONALITY OF STATE STATUTE

Introduction

1. On May 10, 2011, the Governor of the State of Indiana signed into law Senate Enrolled Act 590 ("SEA 590"), the relevant portions of which will be codified at Indiana Code § 34-28-8.2-1, *et seq.* and Indiana Code § 35-33-1-1, *et seq.*, effective July 1, 2011. The law allows state and local law enforcement officers to make warrantless arrests of a person who has "a removal order issued for the person by an immigration court," or "a detainer or notice of action issued" for them, even though they have been lawfully released by federal immigration officials, and even though they have committed no crime. Additionally, the law expansively allows law enforcement officials to arrest anyone solely because he or she "has been indicted or convicted of an aggravated felony, as defined in 8 U.S.C. 1101(a)(43)," regardless of whether the person is

a U.S. citizen, was never actually convicted of the offense, has been released on bail, or has already served the sentence for the aggravated felony. Finally, the law makes it unlawful for foreign nationals in Indiana to offer their foreign government-issued consular identification card for identification purposes, and for any governmental or private entity to accept a consular identification card for identification purposes.

2. This action seeks declaratory and injunctive relief on behalf of a class of persons who have either "a removal order issued for the person by an immigration court," or "a detainer or notice of action issued" for them, or who have "been indicted for or convicted of one (1) or more aggravated felonies (as defined in 8 U.S.C. 1101(a)(43)," even though they have been lawfully released by federal or state law enforcement officials. Insofar as SEA 590 authorizes state and local law enforcement officers to arrest persons without reasonable suspicion or probable cause of any unlawful conduct, much less criminal activity, it violates the Fourth Amendment's prohibition on unreasonable seizures. SEA 590 also conflicts with and is preempted by the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, which provides a comprehensive statutory framework for the regulation of immigration that among other things, contains detailed provisions governing the detention and release of non-citizens in removal proceedings.

3. This action also seeks declaratory and injunctive relief on behalf of a class of persons who regularly use their consular identification cards for identification purposes, including, among other things, when banking or interacting with consular officials. When SEA 590 goes into effect July 1, 2011, the class will no longer be able to use this method of identification without violating Indiana law, and their consular identification cards will become useless in the state of Indiana. SEA 590's prohibition on consular identification cards is directly preempted by federal regulations that authorize banks to accept foreign government-issued photo identification

for verifying the identity of account holders. *See* 31 C.F.R. § 1020.220. The law is also preempted by the President's constitutional authority to conduct foreign affairs insofar as state restrictions on the use of consular identification cards interferes with the United States carrying out certain treaty obligations with foreign countries and might result in foreign governments retaliating by imposing similar restrictions on U.S. nationals abroad. Finally, the prohibition on the use of consular identification cards violates the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution because it is not rationally related to any legitimate governmental purpose.

Jurisdiction, Venue, and Cause of Action

4. This Court has jurisdiction of this cause pursuant to 28 U.S.C. § 1331.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

6. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States, and as a preemption claim brought pursuant to the decision of the United States Supreme Court in *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96 n.14 (1983) (holding that a plaintiff presenting a pre-emption claim "presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve" even in the absence of a cause of action under 42 U.S.C. § 1983).

Parties

8. Ingrid Buquer is a citizen of Mexico and is a resident of Franklin, Indiana in Johnson County.

9. Berlin Urtiz is a citizen of Mexico and is a resident of Marion County. He has been a

lawful permanent resident of the United States since 2001.

10. Louisa Adair is a citizen of Nigeria and is a resident of Marion County.

11. The City of Indianapolis is the entity with supervisory authority over the Indianapolis Metropolitan Police Department and the City of Franklin supervises the Franklin Police Department.

12. The Marion County and Johnson County Prosecutors are the persons charged with prosecuting civil offenses in Marion County, and are sued in their official capacities.

13. The Johnson County Sheriff provides law enforcement services in Johnson County.

Class Action Allegations

14. Plaintiffs bring this action on their own behalf and on behalf of two (2) classes of similarly situated persons against the defendants, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

15. The first class ("Class A") is represented by Berlin Urtiz, Louisa Adair, and Ingrid Buquer, and is defined as:

> all persons in Marion and Johnson Counties, Indiana, or who will be in Marion and Johnson Counties, Indiana, who are or will be subject to warrantless arrest pursuant to Section 19 of SEA 590 based on a determination that: a removal order issued against them by an immigration court; have, or will have, a detainer or notice of action issued for or against them by the United States Department of Homeland Security; or they have been, or will be, indicted for or convicted of one (1) or more aggravated felonies, as defined in 8 U.S.C. 1101(a)(43).

16. As defined, Class A meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

> a. The class is so numerous that joinder of all members is impracticable. The precise number is unknown but it is thought to be in the hundreds if not thousands.
>
> b. There are questions of law and fact common to the proposed class including: (1) whether SEA 590 violates the Fourth Amendment of the U.S.

Constitution; and (2) whether SEA 590 is preempted by the U.S. Constitution and federal law.

c. The claims of the representative parties are typical of those of the class.

d. The representative parties will fairly and adequately protect the interests of the class.

17. The second class ("Class B") is represented by Ingrid Buquer and is defined as:

all persons in Marion and Johnson Counties, Indiana, or who will be in Marion and Johnson Counties, Indiana, who possess, or will posses, a valid consular identification card and are using it, or will use it, for non-fraudulent identification purposes.

18. As defined, Class B meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

a. The class is so numerous that joinder of all members is impracticable. It is believed that in the last five years the Mexican Consulate in Indianapolis has issued more than 50,000 consular identification cards. And in 2002 and 2003 alone, Mexico issued more than 2.2 million consular identification cards in the United States. *See* U.S. Government Accountability Office, *Consular Identification Cards Accepted within United States, but Consistent Federal Guidance Needed*, p.1, Aug. 2004 (available at: http://www.gao.gov/new.items/d04881.pdf (last visited May 13, 2011)).

b. There are questions of law and fact common to the proposed class including: (1) whether SEA 590 is preempted by the U.S. Constitution and federal law and (2) whether SEA 590 violates the Due Process Clause of the U.S. Constitution.

c. The claims of the representative party are typical of those of the class.

d. The representative party will fairly and adequately protect the interests of the class.

19. The further requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met for both Class A and Class B in this cause in that have at all times acted and have refused to act in a manner generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

20. Counsel for the plaintiffs are appropriate and adequate attorneys to represent the class and should be so appointed pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

The Challenged Statute

Senate Enrolled Act 590

21. On April 29, 2011 the Indiana State Senate and Indiana House of Representatives adopted SEA 590, which was signed into law by the Governor of the State of Indiana on May 10, 2011, effective July 1, 2011.

Section 19: additional causes for arrest

22. Section 19 of SEA 590 (adding Indiana Code §§ 35-33-1-1(a)(11) to (13)) provides in part:

> (a) A law enforcement officer may arrest a person when the officer has:
>
> * * * *
>
> (11) a removal order issued for the person by an immigration court;
> (12) a detainer or notice of action for the person issued by the United States Department of Homeland Security; or
> (13) probable cause to believe that the person has been indicted for or convicted of one (1) or more aggravated felonies (as defined in 8 U.S.C. 1101(a)(43)).
>
> IND. CODE § 34-33-1-1 (effective July 1, 2011).

Section 18: prohibition on the use of consular identification cards

23. Section 18 of SEA 590 (adding Indiana Code § 34-28-8.2) provides in part:

> Chapter 8.2. Offenses Related to Consular Identification
> Sec. 1. As used in this chapter, "consular identification" means an identification, other than a passport, issued by the government of a foreign state for the purpose of providing consular services in the United States to a national of the foreign state.
> Sec. 2. (a) This section does not apply to a law enforcement officer who is presented with a consular identification during the investigation of a crime.
> (b) Except as otherwise provided under federal law, a person who knowingly or intentionally offers, accepts, or records a consular identification as a valid form of identification for any purpose commits a Class C infraction. However, the person commits:

(1) a Class B infraction for a second offense; and
(2) a Class A infraction for a third or subsequent offense.

IND. CODE § 34-28-8.2 (effective July 1, 2011).

24. Under current Indiana law the penalties for a civil infraction are as follows:

(a) A judgment of up to ten thousand dollars ($10,000) may be entered for a violation constituting a Class A infraction.
(b) A judgment of up to one thousand dollars ($1,000) may be entered for a violation constituting a Class B infraction.
(c) Except as provided in subsection (f), a judgment of up to five hundred dollars ($500) may be entered for a violation constituting a Class C infraction.

IND. CODE § 34-28-5-4.

Factual Allegations

Facts relating to additional causes for arrest

25. Indiana Code § 34-33-1-1 authorizes state and local law enforcement officers to arrest and detain the plaintiffs on the sole basis of a removal order, detainer, notice of action, or an indictment or conviction for an aggravated felony, as defined by 8 U.S.C. § 1101(a)(43).

26. State and local law enforcement officers have no general authority to enforce federal immigration law by making arrests for civil violations of federal immigration law.

27. Only in narrowly defined circumstances does federal law authorize state officers to assist in immigration enforcement, and otherwise reserves immigration enforcement authority to the federal government.

28. State and local law enforcement officers in Indiana do not fall within these exceptions.

29. For example, under 8 U.S.C. § 1357(g), the federal government can enter into what are commonly referred to as "287(g) agreements" that allow state and local law enforcement officers to enforce immigration laws under limited circumstances and under the supervision of ICE.

30. However, currently neither the State of Indiana nor any political subdivision therein has

entered into a 287(g) agreement with the federal government. *See* U.S. Immigration and Customs Enforcement, Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act (available at: http://www.ice.gov/news/library/factsheets/287g.htm) (last visited May 20, 2011).

31. Furthermore, SEA 590 authorizes warrantless arrests in circumstances where even federal immigration officers would not be authorized to make an arrest without a warrant. *See* 8 U.S.C. §§ 1357(a), (d); 8 C.F.R. §§ 287.1-287.3, 287.5, 287.8, 287.10 (describing limited circumstances and procedures necessary for warrantless arrests by federal immigration officials).

32. The federal government has exclusive power over immigration matters. The U.S. Constitution grants the federal government the power to "establish a uniform Rule of Naturalization," U.S. Const. art. I, § 8, cl. 4, and to "regulate Commerce with foreign Nations," U.S. Const. art. I, § 8, cl. 3. In addition, the Supreme Court has held that the federal government's power to control immigration is inherent in the nation's sovereignty.

33. The Immigration and Naturalization Act ("INA") provides a comprehensive framework for apprehending, detaining and deporting aliens who are removable under federal law. 8 U.S.C. § 1226, *et seq.*

34. The INA is not only concerned with the detention and removal of aliens but represents a careful and considered balance of national law enforcement, foreign relations, and humanitarian interests.

35. Unlawful presence in the United States does not subject an alien to criminal penalties and incarceration, although unlawful presence may subject the alien to the civil remedy of removal. *See* 8 U.S.C. §§ 1182(a)(6)(A)(i), 1227(a)(1)(B)&(C).

36. The U.S. Department of Homeland Security is the agency charged with administering and

enforcing the INA and other laws related to immigration, primarily through its components, U.S. Immigration and Customs Enforcement ("ICE"), U.S. Customs and Border Protection ("CBP"), and U.S. Citizenship and Immigration Services ("USCIS"). *See* 8 U.S.C. § 1103.

37. In recognizing the limited resources of administration and law enforcement officials, the INA also vests the executive branch with considerable discretion in enforcing the provisions of federal immigration laws, generally allowing federal agencies to ultimately decide whether particular immigration remedies are appropriate in individual cases.

38. As a result, the Congress has given ample discretion to the federal government to prioritize for arrest, detention, prosecution, and removal those aliens who pose a danger to national security or a risk to public safety.

39. Therefore, many removable aliens do not remain in detention during the pendency of removal proceedings or even after a final removal order is issued by an immigration judge.

40. For example, 8 U.S.C. § 1226(a) provides that the U.S. Attorney General may release a removable alien on bond or parole pending final removal and may grant the alien work authorization.

41. Even after an immigration judge issues a removal order pursuant to 8 U.S.C. § 1229a, an alien has both a right to a motion to reconsider and an appeal, and may remain released on bond until the removal order is finalized. *See* 8 U.S.C. § 1229a(c)(5) & (6); 8 C.F.R. § 1241.1.

42. An alien may also file a motion to reopen removal proceedings under certain circumstances even after a removal order is finalized, which may have the effect of staying a removal pending final disposition of the motion. *See* 8 U.S.C. § 1229a(c)(7).

43. For example, aliens who have cause to reopen removal proceedings could then seek lawful status in the United States, such as asylum, certain nonimmigrant visas (such as a U-visa),

or lawful permanent residency, either in removal proceedings or upon termination of removal proceedings.

44. Additionally, if the U.S. Attorney General fails to remove the alien 90 days after the removal order is finalized, the alien is released from detention subject to supervision by the Attorney General. 8 U.S.C. § 1231(a)(3).

45. In lieu of deportation proceedings, the Attorney General may also "permit an alien voluntarily to depart the United States" during a predetermined period of time. 8 U.S.C. § 1229c.

46. Therefore, there are a variety of scenarios by which a potentially removable alien would not be detained or is not detainable pending his or her removal.

47. Indiana Code § 34-33-1-1(a)(11) (effective July 1, 2011) allows state and local law enforcement officers to make a warrantless arrest of a person based solely on the issuance of a removal order by an immigration judge without consideration of the wide range of circumstances under federal law where these individuals would be at liberty pending the conclusion of their removal proceedings. It does not contain an exception for non-citizens who have been released pending removal proceedings or judicial review, nor could state and local officers in Indiana determine such facts in the field.

48. Indiana Code § 34-33-1-1(a)(11) does not require local or state law enforcement officers to coordinate in any way with DHS to confirm removability or if there is a lawful reason the person is not in the custody of DHS.

49. Louisa Adair is a citizen of Nigeria who has a removal order that was issued against her by an immigration court in 1996.

50. However, she is currently released on an Order of Supervision, whereby she reports to

ICE every six (6) months.

51. Louisa Adair has valid work authorization from DHS and has a pending request for prosecutorial discretion before the ICE Chief Counsel's office to join her Motion to Reopen and Terminate Removal Proceedings. If granted, she will be eligible to apply for lawful permanent residency because her mother is a U.S. citizen and she has an approved and current I-130 visa petition.

52. Louisa Adair will be subject to arrest under Indiana Code § 34-33-1-1(a)(11) when the law goes into effect on July 1, 2011 even though she has committed no crime and has been released by federal immigration authorities, solely because she has a removal order issued against her.

53. Indiana Code § 34-33-1-1(a)(12) also allows a state or local law enforcement officer to arrest a person on the sole basis of "a detainer or notice of action" issued by DHS.

54. An immigration detainer is a "request" issued by ICE to a federal, state, or local law enforcement agency to advise ICE of the imminent release of an alien already in the custody of that law enforcement agency on independent charges. 8 C.F.R. § 287.7(a).

55. A detainer purports to request a law enforcement agent to detain an alien for up to 48 hours (not including weekend days and holidays) past the time a detainee would otherwise be released to permit ICE to assume custody. 8 C.F.R. § 287.7(d). However, the detainer immediately expires at the end of the 48-hour period. *Id.*

56. Generally, immigration detainers are not issued for individuals who are not in criminal custody. And even when an individual is in criminal custody, the mere issuance of a detainer does not represent probable cause that the detainee has violated immigration laws, and it is not independent grounds for arrest. The issuance of an immigration detainer does not even indicate

that an individual will ultimately be placed in removal proceedings.

57. Nonetheless, Indiana Code § 34-33-1-1(a)(12) authorizes a law enforcement officer to arrest a person on the sole basis of the issuance of a detainer, regardless of the time period it was issued, whether it was issued in error or not, or whether ICE ultimately decides to follow-up on the detainer by actually taking the person into custody.

58. Indiana Code § 34-33-1-1(a)(12) also authorizes a warrantless arrest based upon a "notice of action."

59. A notice of action is a general administrative response issued by DHS. Often it is in response to an application by an alien, for example, an application for an immigrant or nonimmigrant visa, refugee status, or even an application for naturalization to become a U.S. citizen. *See, e.g.*, 8 C.F.R. § 207.7(f)(1) (establishing Form I-797, a notice of action form used to inform refugees that their application to admit spouse or child has been approved); 8 C.F.R. § 245.2(C) (establishing receipt of visa application); 8 C.F.R. § 214.15 (approval for visa application).

60. Lawfully present aliens are issued notices of action regularly and a notice of action is not necessarily grounds for arrest, detention, or removal under the INA. To the contrary, a notice of action is often notice that an applicant is progressing through the administrative process towards permanent residency.

61. Louisa Adair is the beneficiary of an I-797 notice of action issued by USCIS, establishing her relationship to her U.S. citizen mother, and serves as a basis for pursuing lawful permanent residency.

62. Ingrid Buquer lives in Franklin, Indiana but is frequently in Marion County.

63. Ingrid Buquer has applied for a U-visa and has received an I-797 notice of action issued

by USCIS indicating receipt of her application. She is eligible for a U-visa because she is a victim of and witness to a violent crime, and has been helpful to the government in prosecuting the case. *See* 8 U.S.C. § 1101(a)(15)(U) (describing the requirements for a U-visa).

64. Ms. Adair and Ms. Buquer will both be subject to arrest under Indiana Code § 34-33-1-1(a)(12) on the sole basis of a notice of action issued by USCIS, despite the fact that each notice of action is a step toward pursuing lawful status, and despite the fact that Ms. Adair and Ms. Buquer have not committed a criminal offense.

65. Indiana Code § 34-33-1-1(a)(13) allows a person to be arrested if he has been "indicted or convicted for one (1) or more aggravated felonies (as defined in 8 U.S.C. 1101(a)(43))."

66. Being *charged* with an offense that might be aggravated felony is not grounds for deportation—only a *conviction* for an aggravated felony is grounds for removal. *See* 8 U.S.C. § 1227(a)(2)(A)(iii).

67. Furthermore, determining what crimes constitute "aggravated felonies" under federal immigration law is an enormously complex legal conclusion that an officer is not trained to make in the field.

68. Under many subsections of the federal statute defining "aggravated felony," whether the offense meets the definition ultimately depends upon facts that cannot be determined until a person is convicted and sentenced. *See, e.g.*, 8 U.S.C. §§ 1101(a)(43)(F), (G), (J), (R), (S), (Q), (T).

69. Finally, 8 U.S.C. § 1101(a)(43) is a definitional provision that lists criminal offenses that are not necessarily limited to offenses committed by aliens.

70. A plain reading of the statute allows for any person who has been indicted or convicted at *any time* in his or her life to be arrested—even if this person is an American citizen and has

already served his sentence.

71. Berlin Urtiz is a Mexican citizen and has been a permanent resident of the United States since 2001.

72. In 2005, Mr. Urtiz was convicted of theft by the Johnson County Court and sentenced to two (2) years in the Indiana Department of Correction, suspended to probation—an aggravated felony as defined by 8 U.S.C. § 1101(a)(43).

73. In 2010, approximately three years after serving his sentence, Mr. Urtiz was arrested by ICE on the grounds that he had a record for an aggravated felony. He was detained for roughly four months pending removal.

74. Shortly after his detention by Immigration and Customs Enforcement agents, Mr. Urtiz filed a motion for post conviction relief to have his conviction vacated and reduced to a misdemeanor, pursuant to his plea agreement.

75. On or about September 20, 2010, Mr. Urtiz was granted post-conviction relief and was released from detention by federal immigration officials.

76. On November 4, 2010, his conviction for theft was vacated and he was convicted and sentenced to the misdemeanor crime of conversion. *See* Ind. Code § 35-43-4-3 (defining the crime of conversion).

77. Mr. Urtiz was not required to serve more time and he maintained his permanent resident status.

78. Nonetheless, Mr. Urtiz will be subject to arrest under Indiana Code § 34-33-1-1(a)(13) on the sole basis of his prior conviction for an aggravated felony, despite the fact that he has served his sentence, his conviction was vacated and the crime was reduced to a misdemeanor offense, and he is therefore not deportable under federal immigration law.

Facts relating to consular identification cards

79. Consular identification cards ("CIDs") are issued by governments to help identify their citizens living in foreign countries.

80. In the United States, CIDs are issued by foreign consulates located in cities across the country, including Indianapolis, and are used by foreign consulates in providing consular services.

81. CIDs also facilitate the exercise of certain legal rights of foreign nationals present in the United States. Under the Vienna Convention on Consular Relations, a foreign national arrested or detained in the United States must be advised of his or her right to request that appropriate consular officials be notified of their detention without delay. *See* Vienna Convention on Consular Relations art. 36, Apr. 24, 1963, [1970] 21 U.S.T. 77, T.I.A.S. No. 6820.

82. In congressional testimony, a U.S. State Department official testified that the Department views CIDs as a useful tool for law enforcement officers to help facilitate observance of the United State's treaty obligations. *See Hearing on the Federal Government's Response to Consular Identification Cards Before the House Subcommittee on Immigration, Border Security, and Claims, House Committee on the Judiciary*, 108th Cong. 44-45, at 144-147 (Jun. 26, 2003) (statement of Roberta Jacobson) (available at: http://commdocs.house.gov/committees/judiciary/hju87813.000/hju87813_0f.htm (last visited May 13, 2011)) (Hereinafter "Statement of Roberta Jacobson").

83. Cardholders can use CIDs to alert federal, state, and local law enforcement authorities of the need to notify consular officials when assistance is needed. *Id.*

84. Cardholders also commonly use CIDs for identification purposes with financial institutions, law enforcement agencies, and state and local governments in the United States.

85. The U.S. Treasury Department has adopted regulations that allow financial institutions to accept CIDs and other foreign government-issue documents. *See* 31 C.F.R. § 1020.220 (implementing 31 U.S.C. § 5318(l), which requires the U.S. Treasury Department to institute regulations that provide minimum standards for the identification and verification of account holders); 68 Fed. Reg. 55335, 55336 (Sep. 25, 2003) ("As issued, the final rules neither endorse nor preclude reliance on particular forms of foreign government issued identification.").

86. State Department officials have also warned that any national policy that prohibits foreign-issued CIDs could result in retaliatory policies by foreign countries and harm the United States' ability to issue similar non-passport identification documents to U.S. citizens abroad. Statement of Roberta Jacobson, *supra*.

87. Ingrid Buquer is a Mexican citizen who regularly uses a consular identification card, issued by the Mexican Consulate in Indianapolis, for non-fraudulent uses in both Johnson and Marion Counties.

88. Ms. Buquer regularly offers her CID when banking, shopping, and in most other situations where identification is required in Johnson and Marion Counties.

89. Ms. Buquer also have offered her CID to consular officials at the Mexican Consulate in Indianapolis as proof of her Mexican citizenship.

90. She wishes to continue to offer her CID for these purposes as this is her preferred method of identification. She is unable to obtain a drivers license or identification card from the State of Indiana.

91. Ms. Buquer will be subject to the penalties under Indiana Code § 34-28-8.2-2 when the law goes into effect on July 1, 2011 if she offers her CID to anyone.

92. Because she will be unable to use her CID without incurring civil infractions, the card

will become useless as a form of identification

General facts

93. The plaintiffs are being caused irreparable harm for which there is no adequate remedy at law.

94. At all relevant times defendants have acted under color of state law.

Legal Claims

95. To the extent Indiana Code § 34-33-1-1(a)(11) to (13) allows state and local law enforcement officers to arrest and detain the plaintiffs on the sole basis of a removal order, detainer, notice of action, or an indictment or conviction for an aggravated felony, SEA 590 violates the Fourth Amendment of the U.S. Constitution because it allows the plaintiffs to be arrested without any reasonable suspicion or probable cause of any unlawful conduct or criminal activity.

96. To the extent Indiana Code § 34-33-1-1 allows state and local law enforcement officers to arrest and detain the plaintiffs on the sole basis of a removal order, detainer, notice of action, or an indictment or conviction for an aggravated felony, it is preempted by federal law.

97. To the extent Indiana Code § 34-28-8.2-2 prohibits the plaintiffs from offering valid CIDs to establish identification it conflicts and is preempted by federal law.

98. To the extent Indiana Code § 34-28-8.2-2 prohibits the use of CIDs, and to the extent Indiana Code § 34-33-1-1 allows state or local law enforcement officers to arrest the plaintiffs on the sole basis of a removal order, detainer, notice of action, or an indictment or conviction for an aggravated felony, the law violates the Due Process Clause of the Fourteenth Amendment.

WHEREFORE, the plaintiffs respectfully request that this Court:

1. Accept jurisdiction of this cause and set it for hearing.

2. Certify this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, with the classes as defined above.

3. Declare that the defendants have violated the rights of the plaintiffs for the reasons specified above.

4. Issue a preliminary injunction, later to be made permanent, enjoining the defendants from enforcing the challenged provisions of SEA 590.

5. Award the plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

6. Award all other proper relief.

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