

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America,)	Civil Action No. 2:11-cv-02958-RMG
)	
Plaintiff,)	
)	
v.)	
)	
State of South Carolina, and)	
Nikki R. Haley, in her official)	
capacity as the Governor of)	
South Carolina,)	
)	
Defendants.)	
_____)	
Lowcountry Immigration Coalition, et al,)	Civil Action No. 2:11-cv-02779
)	
Plaintiffs,)	
)	
v.)	
Nikki Haley, et al,)	
)	
Defendants.)	
_____)	

JOINT REPORT REGARDING CASE STATUS AND DISPOSITION

Plaintiffs in both cases and defendants State of South Carolina, Governor Nikki R. Haley and Attorney General Alan Wilson (Defendants) have conferred regarding the proper disposition of this matter in light of decisions by the United States Supreme Court and, in the instant case, the Court of Appeals for the Fourth Circuit and the District Court of the District of South Carolina. In the interest of assisting the Court in the proper and efficient resolution of this case in accordance with those decisions, the parties make the following representations and requests regarding the various statutory provisions at issue:

1. Each reference to a provision of Act 69, 2011 S.C. Acts, herein shall be construed as a reference to any amendments to those provisions as of this date.

2. The parties acknowledge that the Fourth Circuit panel's decision in *United States v. South Carolina*, 720 F.3d 518 (4th Cir. 2013), holds that Sections 4, 5, and 6(B)(2) of Act 69 (S.C. Code §§ 16-9-460, 16-17-750, 17-13-170(B)(2)), are preempted by federal law. Further, the parties agree that, consistent with this Court's previous determination of the Plaintiff's likelihood of success in challenging Section 15, *United States v. South Carolina*, 720 F.3d 518 (4th Cir. 2013), and together with the Supreme Court's decision in *Arizona v. United States*, 132 S. Ct. 2492 (2012), this Court would conclude that Section 15 of Act 69 (S.C. Code § 16-13-480) is preempted by federal law. The parties also agree that the Plaintiffs can satisfy, for this Court, the other requirements for obtaining final injunctions against these provisions.

3. The Defendants submit that in light of the Supreme Court's decision in *Arizona v. United States*, 132 S. Ct. 2492 (2012), and the ruling of this Court on November 15, 2012, 906 F. Supp. 2d 463 (D.S.C., 2012), the remainder of Section 6 of Act 69 (S.C. Code § 17-13-170), is subject to an interpretation that does not authorize an officer to prolong an original stop based upon the officer's inquiry into or based on a determination, suspicion, or admission concerning a person's immigration status. The view of Defendants is expressed in the Opinion of the Office of the Attorney General of March 3, 2014 (*see* Attachment 1). In light of this interpretation, Plaintiffs will dismiss their remaining claims as to the remainder of Section 6 without prejudice.

4. Although this Court found that the Lowcountry Plaintiffs lacked standing to challenge Section 7 of Act 69 (§ 23-3-1100) at the preliminary injunction stage, Plaintiffs believe that they would be able to show standing to seek permanent injunctive relief. The Defendants are willing for this Court to address this issue because of the similarity of issues concerning both Sections 6 and 7 and the opportunity to resolve all issues at the same time. Defendants submit that in light of the Supreme Court's *Arizona* decision and the ruling of this Court on November 15, 2012, Section 7 is subject to an interpretation that does not authorize

prolonging the detention of a person in jail or prison simply to determine the person's immigration status, and it does not authorize transferring an individual on the basis that he or she is believed or determined to be unlawfully present to federal custody. The view of Defendants is expressed in the Opinion of the Office of the Attorney General of March 3, 2014 (*see* Attachment 1). In light of this interpretation, the Lowcountry Plaintiffs will dismiss their remaining claims against Section 7 without prejudice.

5. The Defendants respectfully disagree with the rulings of this Court and the Court of Appeals enjoining the above referenced provisions and defer to those rulings rather than consent to the injunctions. They have vigorously defended the challenged parts of Act 69, and join in this Report only in recognition that the Courts have ruled regarding these sections of the Act and that further litigation of this matter would be inconsistent with those rulings and would be contrary to judicial economy. Should governing statutory or decisional law or other circumstances change in the future, they reserve their right, and that of any other appropriate State official, to seek modification of the injunctions in the Final Judgment via a post-judgment motion under the Federal Rules of Civil Procedure or through any other means permitted by law.

6. Plaintiffs will voluntarily dismiss all claims not specifically referenced above without prejudice. Defendants consent to the voluntary dismissal of these claims.

7. Accordingly, all parties consent to the form of Final Judgment submitted as Attachment 2 hereto.

[Signature blocks on next pages]

Respectfully submitted,

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