ACLU AMERICAN CIVIL LIBERTIES UNION FOUNDATION IMMIGRANTS' RIGHTS PROJECT

PRELIMINARY ANALYSIS OF
HB 56 "Alabama Taxpayer and Citizen Protection Act"

Summary of major provisions: HB 56 is an extraordinary attempt to regulate every aspect of the lives of immigrants in Alabama. It will deter children from going to school, deny people public benefits to which they are lawfully entitled, and interfere with their ability to rent housing, earn a living, and enter into contracts. It also requires state and local police officers to detain and investigate people based on a "suspicion" that they may be undocumented immigrants, thus inviting racial profiling and raising concerns about prolonged and erroneous detentions. It creates a range of new immigration-related crimes, with draconian penalties attached. It even authorizes the Alabama Department of Homeland Security to hire and maintain its own immigration police force. These and other provisions of HB 56 are unconstitutional. A shocking throwback to the days of de jure segregation, HB 56 attempts to make a class of individuals non-persons in the eyes of the law. If it goes into effect, it will deny immigrants and Alabamans of color their most basic rights.

This is not a comprehensive analysis of all the unconstitutional aspects of HB 56. The provisions discussed below represent some of the most troubling provisions of this law.

Interfering with children's schooling

Section 28 provides that "[e]very public elementary and secondary school in this state, at the time of enrollment in kindergarten or any grade in such school, shall determine whether the student enrolling in public school was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States[.]" At enrollment, each child must produce his or her birth certificate. If a child's birth certificate is unavailable or shows that the child was born outside the United States or to undocumented parents, the child has 30 days to prove his or her citizenship or immigration status; otherwise, the school "shall presume . . . that the student is an alien unlawfully present in the United States." Schools must maintain this information and periodically report to the state legislature how many so-called "unlawfully present" children are in school.

Section 28 also provides that school officials can report students and their parents who are presumed to be "unlawfully present" to the federal government. Another provision of HB 56, § 5, forbids state and local agencies, including schools, from maintaining any "policy or practice that limits . . . communication between its officers and federal immigration officials." Together, § 5 and § 28 ensure that schools will become agents of immigration enforcement. Thus, although Section 28 ostensibly is aimed at data

collection, its inevitable effect will be to intimidate parents and to drive children – including U.S. citizen children with immigrant parents – out of school.

In fact, deterring children from school was one of HB 56's motivating purposes. For example, HB 56's sponsor, Rep. Micky Hammon, described the bill as motivated by the costs of "educat[ing] the children of illegal immigrants," and predicted that enforcing HB 56 will result in "cost savings for this state."

Thirty years ago, the U.S. Supreme Court held that a state cannot bar children from primary education based on their immigration status. Section 28 attempts to do just that. It aims to shut the schoolhouse doors to undocumented students – and even to U.S. citizen students of undocumented parents. It does so by directing educational officials to make their own determinations of immigration status, using a novel category of "presume[d] . . . unlawful[] presen[ce]" that bears no resemblance to any status under federal immigration law. Section 28 thus violates both the Equal Protection Clause and the Supremacy Clause of the U.S. Constitution.

Section 8 further restricts access to education: It prohibits undocumented immigrants from "enroll[ing] in or attend[ing] any public postsecondary education institution in this state" or receiving any educational benefits such as financial aid. Educational officials are authorized to verify students' status at any time. Thus, § 8 invites racial profiling and will deter students of color from enrolling or remaining in higher education. And, although educational officials may not make a "final" determination of status, nothing prevents them from making an initial determination and, while awaiting a final determination from the federal government, deferring or denying a student's enrollment or scholarship. Even lawful immigrant students may lose or be denied enrollment or financial aid if the educational institution seeks verification of their status and the federal government's response is delayed, erroneous, or inconclusive.

Preventing people from renting, entering into contracts, and earning a living

Section 27 provides that "[n]o court of this state shall enforce the terms of . . . any contract between a party and an alien unlawfully present in the United States, if the party had direct or constructive knowledge that the alien was unlawfully present . . . ." The only exceptions to this rule are "a contract for lodging for one night, a contract for the purchase of food to be consumed by the alien, a contract for medical services, or a contract for transportation of the alien that is intended to facilitate the alien's return to his or her country of origin." Section 27 will invite rampant exploitation of immigrants. Its effort to make a class of individuals non-persons in the eyes of the law is repugnant to fundamental civil and human rights and a startling throwback to the days of pervasive de jure segregation..

Section 30 makes it a Class C felony for an "unlawfully present alien" to enter into any "business transaction" with a government agency, such as applying for a license plate, a nondriver identification card, or a business license. Violations are punishable by at least

1 year and up to 10 years in prison, and fines of up to $15,000.[i] Even U.S. citizens and lawful immigrants will face serious administrative hurdles delays under this section, and potentially wrongful denials. Nothing in § 30 prevents the state or locality from denying a person's application if the results of status verification are delayed or inconclusive.

Section 13 makes it a crime to "enter[] into a rental agreement . . . with an alien to provide accommodations, if the person knows or recklessly disregards the fact that the alien is unlawfully present in the United States." Violations of this section are Class A misdemeanors punishable by imprisonment for up to 1 year, and fines up to $6,000.[ii] However, if a violation "involves 10 or more aliens," it becomes a Class C felony, which is punishable by at least 1 year and up to 10 years in prison, and fines of up to $15,000.[iii] Similar municipal restrictions have uniformly been struck down in legal challenges around the country.

Section 11 makes it unlawful for an "unauthorized alien" to "knowingly apply for work, solicit work," or "perform work." A violation of § 11 carries a penalty of up to $500. This section is preempted by federal law, which sets out penalties for both non-citizen workers and employers who engage in employment relationships without federal authorization.

Obstructing lawful access to public benefits

Section 7 imposes burdensome new requirements that will make it unreasonably difficult for people to access public benefits and services to which they are entitled Under Section 7, U.S. citizens must sign a declaration of citizenship under penalty of perjury, and non-citizens must submit to status verification. These bureaucratic hurdles will result in some individuals not getting state and local public benefits that they are entitled to receive. Moreover, although § 7 provides that status verification "shall not be *required*" for primary and secondary school education or for certain emergency benefits that are guaranteed to all by federal statute, it does not *prohibit* officials from verifying status. Thus, § 7 will deter parents from enrolling their children in primary and secondary school, and will deter people from seeking other life-saving benefits that federal law specifically protects for all individuals, regardless of immigration status.

Requiring law enforcement officers to verify immigration status

Section 12 requires that, "[u]pon any lawful stop, detention, or arrest" by a law enforcement officer, where "reasonable suspicion exists that the person is an alien who is unlawfully present," the officer "shall" verify the person's immigration status by contacting the federal government. This requirement applies even for the most minor offenses, and indeed, even if there is no probable cause to believe a law has been violated at all (e.g., *Terry* stops). HB 56 does not explain what constitutes "reasonable suspicion" that a person is undocumented; this vague formulation is an open invitation to racial profiling. Under § 12, Alabamans stopped by police for any reason will be subjected to

interrogation and extended detention unless they carry one of the privileged identity documents listed in HB 56, which give rise to a "presumption" of citizenship.

Section 12 also requires that whenever "[a]ny alien . . . is arrested and booked into custody," his or her status must be verified.

Similarly, **Section 19** requires status verification for anyone who is "charged with a crime for which bail is required" or "confined for any period in a state, county, or municipal jail." Section 19 permits a status inquiry to be delayed up to 48 hours; delays in the federal government's response time will prolong detention still further. Section 19 also requires that "[i]f the person is determined to be an alien unlawfully present in the United States, the person shall be [denied bail] . . . and shall be detained until prosecution or until handed over to federal immigration authorities." Thus, even individuals whose charges are dropped or who are found innocent of any wrongdoing must be delivered to federal immigration authorities. Section 19 does not say what should happen if the federal authorities do not want to take custody of the person; in such a case, § 19 appears to authorize indefinite detention. In addition to violating the Fourth Amendment and Due Process Clause, this provision is preempted by federal law, which sets out the exclusive terms under which individuals may be detained for immigration enforcement purposes.

It is unconstitutional to hold people in jail solely in order to investigate them. The Supreme Court has held that "arresting a person for investigation . . . is foreign to our system." *Papachristou v. City of Jacksonville*, 405 U.S. 156, 169 (1972). The Fourth Amendment requires that, in order to detain individuals for any time beyond when they would otherwise be released, officers must have probable cause to believe that a separate crime has been committed. Failure to carry one of the sorts of documents that gives rise to a presumption of citizenship, even by individuals who look or sound "foreign," does not constitute such probable cause.

Finally, **Section 20** provides that "[i]f an alien who is unlawfully present . . . is convicted of a violation of state or local law," the jail must notify both federal immigration authorities before releasing him or her at the end of his or her sentence. The "Alabama Department of Corrections shall maintain custody during any transfer of the individual" to federal custody. Again, the law says nothing about what should happen if the federal immigration authorities do not wish to assume custody of the person. Because it attempts to force Alabama's own enforcement priorities onto the federal government, this section is preempted. It also creates a serious risk of extended detention without probable cause, in violation of the Fourth Amendment and Due Process Clause.

Creating new immigration-related state crimes

HB 56 creates several new state-law crimes for conduct related to immigration.

Section 13 criminalizes "harboring" and "transporting" any undocumented immigrant while "know[ing] or recklessly disregard[ing]" the fact that "the alien has come to, has

entered, or remains in the United States in violation of federal law." Given the law's use of the word "or," it applies even to *lawful* immigrants who initially entered the country without authorization (including, for example, people who have been granted asylum). The crime of "transporting" includes such activities as driving someone to a doctor, to church, or to a grocery store. Violations of § 13 are Class A misdemeanors, punishable by imprisonment for up to 1 year, and fines of up to $6,000.[iv] However, if a violation "involves 10 or more aliens," it becomes a Class C felony, which is punishable by at least 1 year and up to 10 years in prison, and fines of up to $15,000.[v] Section 13 is preempted, because states may not establish their own immigration crimes. Moreover, Section 13 lacks the safeguards found in federal law, and sets out penalties that conflict with those prescribed by federal statute.[vi]

Section 10 criminalizes "willful failure to complete or carry an alien registration document." Supreme Court precedent clearly establishes that states may not enact alien registration laws. Moreover, enforcement of § 10 would interfere with the federal government's administration of federal immigration law, and will result in wrongful arrests and detention.

Finally, **Section 14** sets out steep criminal penalties for "dealing in false identification documents" and "vital records fraud" (§ 14). Given the existing crime of possessing forged documents under Alabama law,[vii] it is clear that the inclusion of this provision in HB 56 is meant to target immigrants and to override the federal aggravated identity theft statute, which requires that the identity information used belongs to an actual person.

Creating a state immigration police force

Section 22 authorizes the Alabama Department of Homeland Security to "hire . . . and maintain . . . state law enforcement officers" whose job is not to "engage in routine law enforcement activity," but instead to perform "investigative and analytical duties necessary to carry out the enforcement of this act[.]" Thus, § 22 creates a new state immigration police force, supplanting the federal Immigration and Customs Enforcement. This is constitutionally impermissible: State law enforcement officers have no general authority to enforce federal civil immigration law. Federal law specifically authorizes state officers to assist the federal government in immigration enforcement only in narrowly defined circumstances and with the federal government's permission and oversight. This provision attempts to circumvent the federal government's primacy in the field of immigration.

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[i] Alabama Code §§ 13A-5-6, 13A-5-11.
[ii] Alabama Code §§ 13A-5-7, 13A-5-12.
[iii] Alabama Code §§ 13A-5-6, 13A-5-11.
[iv] Alabama Code §§ 13A-5-7, 13A-5-12.
[v] Alabama Code §§ 13A-5-6, 13A-5-11.
[vi] 8 U.S.C. § 1324(a)(1)(A)(iii) (harboring); 1324(a)(1)(A)(ii) (transporting).
[vii] Section 13A-9-2 *et seq*.