

EXHIBIT A



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Obama criticizes new Georgia immigration law

Tue, Apr 26 2011

ATLANTA (Reuters) - President Barack Obama criticized on Tuesday a new immigration bill passed by Georgia's senate that would give police authority to question suspects about their immigration status.

Obama also defended his administration's record on securing U.S. borders and reiterated his call for comprehensive immigration reform.

The Georgia bill is similar to one passed by Arizona last year that sparked a national debate on state attempts to crack down on illegal immigration.

Arizona's law criminalizes illegal immigration by defining it as trespass and allows local law enforcement agencies to question anyone they suspect lacks correct immigration papers.

Asked about the Georgia bill, Obama said: "It is a mistake for states to try to do this piecemeal. We can't have 50 different immigration laws around the country. Arizona tried this and a federal court already struck them down."

"The truth of the matter is that we've done more on enforcement than any previous administration. We have more border patrols. We have been engaging in serious crackdowns on employers who are hiring undocumented workers," Obama said in an interview with WSB-TV, which is based in Atlanta.

Georgia's Senate passed the bill this month but stripped out a requirement for many private employers to check the immigration status of newly hired employees on a federal database called E-Verify.

It is unclear whether Republican Governor Nathan Deal will sign the bill into law.

A U.S. appeals court this month agreed with an earlier court ruling that blocked parts of Arizona's controversial immigration law from going into effect.

That included a provision that would require police to determine the immigration status of a person they have detained and suspect is in the country illegally.

Arizona-inspired immigration measures also are proceeding through legislatures in other states including Alabama, Indiana, Oklahoma and South Carolina.

Utah has passed and the governor signed an Arizona-inspired measure which also included other provisions such as a guest worker program.

(Writing by [Matthew Bigg](#), editing by Peter Bohan)

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EXHIBIT B

Declaration of Christina Hamilton

I, Christina Hamilton hereby declare:

1. I am older than 18 years. I make this declaration based on my personal knowledge. I am a freelance QA analyst.
2. The audio has been listened to repeatedly in the process of transcribing.
3. I transcribed the April 14, 2011 Georgia Senate floor debate of HB 87, which is

published by Georgia Public Broadcast at the following URL:

<http://www.gpb.org/lawmakers/2011/day-40-sine-die>. I transcribed the entire Senate floor debate of HB 87, which commences at the beginning of the recording labeled "Afternoon Senate Session 2" at the above web address, and continues until the two-hour and one-minute mark of that recording. Attached hereto as Exhibit A is the transcript I personally prepared after listening to the audio/video recording of the Senate floor debate on HB 87. Exhibit A is an accurate transcription of that audio/video recording.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on this 27th day of May at Córdoba, Argentina.


Christina Hamilton

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Senate Floor Debate Afternoon Session 2 (Day 40)

Hearing Date: April 14, 2011

1 President: (0:00 -0:05) Chair recognizes the Senator of the 30th.

2 Senator from the 30th: Thank-you Mr. President. I move that the Senate agree to the House
3 amendment to the Senate substitute to HB87

4 President: Is there objection? Without objection. Secretary read.

5 Secretary: House Bill 87 Representatives Ramsey of the 72nd and others. The Bill to
6 be entitled to enact the Illegal Immigration Reform and Enforcement Act
7 of 2011 and for other purposes. Senator Hamrick of the 30th offers the
8 following amendment: Amendment 1 to HB87 to amend the House
9 amendment to (...) version of HB87 by inserting after on borderline 37
10 the following: to establish the study of the impact of immigration reform
11 on Georgia's agricultural industry within the Department of Agriculture,
12 etc. Senators, Senator Rogers of the 21st offers the following.

13 President: Suspend. Was your motion to agree as amended or agree?

14 President: Was your motion to agree or agree as amended?

15 Senator from the 30th: To agree as amended

16 President: Okay. To agree as amended. ... Well, we'll have time. Okay, read the
17 caption.

18 President: Okay, we are ready for debate. Chair recognizes the Senator from the
19 30th.

20 Senator from the 30th: (0:06-0:12) Thank-you Mr. President. There are several changes to House
21 Bill 87 that has come back from the version that we passed out at the



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1 senate, and so I'm going to in my comments to focus on the changes.
2 Obviously we had a long description section by section and I answered a
3 lot of questions about all the other areas, and ah I won't go into those
4 again, but I will mention the changes. On page 12 lines 390 through 397
5 um the House added some language about evidence of illegal immigrant
6 status in court, basically, and we ah in an effort to not have federal law
7 enforcement officials have to show up in court and testify to what a
8 document that is a certified public document says, which is kind of
9 redundant. Ummm... We are trying to just clear that up and make it
10 where the document speaks for itself. On page 3, excuse me, page 16
11 lines 543 through 596 is the House's addition back into the Bill of the e-
12 Verify provision which did not make it out of the Senate in the Senate
13 version. It is the e-Verify for greater than ten employees, companies with
14 greater than ten employees and the companies must, the employees
15 must be full-time employees which is defined as 35 hours, working 35
16 hours in a week and an Affidavit must be presented to local government
17 authority to get a business license testifying to the fact that the business
18 used an e-Verify in order to get a business license. The other change is
19 page 12 line 404, we went back to our language on the criminal
20 investigation and took, just basically took the word felony out, so it could
21 be cause for, if there is probable cause to investigate a criminal offense

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1 including a misdemeanor, then the immigration status of a person could
2 be checked if certain conditions are met as we outlined earlier. The
3 amendment is, has several just changes with the House version on the
4 evidence that I talked about earlier and trying not to duplicate what a
5 public document says we needed to fix the language there, so that's the
6 language on line 5 of the Amendment. We also wanted to have the
7 Attorney General come up with the form affidavit as opposed to, I believe
8 was the Department of Audits that may have been in the previous bill, so
9 that language is being inserted and it is now the Attorney General's office
10 that creates the standardized form affidavit. And, there was a concern by
11 businesses that they could have basically one strike and you are out in
12 terms of the penalties for not following the requirement to e-Verify, so
13 on the amendment, page 3 lines 82 through 87, we insert language that
14 gives a business 30 days to demonstrate to the Attorney General that it
15 has come into compliance with the law. And then also add some
16 language that if it is an employee that has caused the problem for the
17 business, then the Attorney General will look into the conduct of the
18 employee that caused the business to get in trouble over the issue. Then,
19 there is a new section, section 20.1 that authorizes the, or requires the
20 Department of Agriculture to study the issue, the agricultural issue, and
21 make some recommendations about how the seasonal worker programs

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1 are working and we've heard a lot from the agricultural community that
2 those don't work very well, and so we want to look at that issue. And that
3 is the description of the changes in the Amendment Mr. President, and
4 I'll take a few questions, and then I'm sure there will be some discussion.

5 President: Chair recognizes Senator from 33rd for a question

6 Senator from the 33rd: Does the Senator yield?

7 Senator from the 30th: I yield

8 Senator from the 33rd: Senator do, umm... This is "as passed" as amended by the Senate,
9 the House amendment is amended by the Senate, is that right?

10 Senator from the 30th: That's right

11 Senator from the 33rd: Right, do we have that in front of us, what you are explaining to
12 us right now?

13 Senator from the 30th: I believe there was a... the House "as passed" version should be in your
14 notebook I would think and then the amendment that I was describing
15 was passed out and should be on your desk.

16 Senator from the 33rd: Okay... We got it? Thank you.

17 President: Chair recognizes Senator from the 36th

18 Senator from the 36th: Does the senator yield?

19 Senator from the 30th: I yield

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1 Senator from the 36th: So, we appear to be on the... you are asking us to vote to adopt
2 amendment 1a to amend amendment 1, that would be the first thing we
3 are voting on. We will vote on amendment 1 a) to adopt?

4 Senator from the 30th: I believe its amendment 1 that we will vote on.

5 Senator from the 36th: What's before us on the board is adoption of amendment 1a. To
6 amend amendment 1. So we will start with the main amendment first? Is
7 that your understanding?

8 Senator from the 30th: That is my understanding, yes.

9 Senator from the 36th: (0:12-0:17) I am interested to know, since we've heard for the last three
10 months, three and a half months, extensively from the business interests
11 around the state, that they feel like we're going down a road, passing a
12 bill that will threaten jobs in our state and will threaten our agricultural
13 economy and will threaten our tourist and convention business in the
14 state. Were those who crafted this language in consultation with the
15 leaders in the agricultural community and the tourism and convention
16 industry?

17 Senator from the 30th: It is my understanding that they have been, and are continually in
18 conversation with them.

19 Senator from the 36th: Is it your understanding that they are in agreement with this version of
20 the bill?

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1 Senator from the 30th: I don't know the answer to that question. I don't know if they are in
2 agreement or not, but I think there has been some effort to address their
3 concerns as much as possible.

4 Senator from the 36th: But isn't it true that the convention industry, when the word goes out
5 across the country that Georgia has passed an Arizona type piece of
6 legislation that conventions, people holding conventions, organizations,
7 associations that were scheduled to come to Atlanta, are going to start
8 canceling? They are not going to wonder what was in amendment 1a) or
9 1), they are going to know that we passed a bill, isn't that true, that
10 penalizes an entire demographic sector of our state population, and that
11 e-Verify or not e-Verify is not going to be the thing that halts the
12 convention cancellations? I mean, have we really consulted with our
13 Department of Economic Development and with our trade and tourism
14 industry?

15 Senator from the 30th: There is an amendment 1a I've been handed, so I'll correct my earlier
16 statement it just looks like a technical correction, striking persons and
17 replacing it with employers so, there is an amendment 1a. I believe the
18 author of the bill has worked very hard to address the concerns of the
19 tourism industry and has made some changes to the legislation that were
20 suggested, I don't know if any organization or person who has an interest
21 in this bill has gotten 100% of what they want in the legislation, whether

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1 they are for it or against it, but I do believe there has been a monumental
2 effort to work with all, all of the people who had some concern and so
3 there were some adjustments made in response to that concern.

4 Senator from the 36th: And is there any way that we can stand before the public eye and say
5 that this legislation is not going to damage our state's economy, and is
6 not going to lead to convention business being cancelled?

7 Senator from the 30th: I believe that because of the effort, the hard work, that has gone into the
8 legislation, I believe we can say that it is not going to harm our economy,
9 in terms of conventions and tourism. So I am pretty confident that
10 because of the hard work that has been addressed to the extent that it
11 could be addressed.

12 Senator from the 36th: And so people who cast their vote for this legislation as proposed to us
13 today, are willing to take responsibility for placing our state's economy in
14 jeopardy? And putting us all on a list? When in fact, Mississippi, Kentucky,
15 Kansas, Colorado and Arizona have all shelved immigration legislation this
16 year? Isn't it true?

17 Senator from the 30th: I believe the people who vote for this legislation are going to take
18 responsibility for assisting the federal government and verifying that the
19 workers who go to work in our state as in any other country, I mean any
20 other state in the country, are legally authorized to work. And that law
21 enforcement is assisting federal agents and they vote for this bill is, that

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1 the people who vote for this bill, are taking responsibility for enforcing
2 the law.

3 Senator from the 36th: Thank-you

4 President: Chair recognizes the Senator for the 45th

5 Senator from the 45th: Will the senator yield?

6 Senator from the 30th: I yield

7 Senator from the 45th: (0:18-0:19) Senator, I know since you are my suite mate, how hard and
8 diligent you've worked on this along with the House author, and we are
9 very appreciative of that work. I just have one question. On line 20 of the
10 amendment you changed it to 35 hours per week, and I was just
11 wondering how you came up with that 35 hours a week, because I
12 thought a part time employee was 32 hours a week. And is it not your
13 opinion that this weakens it, weakens the bill, and allows people to work
14 more hours, was that in acquiescence to the agriculture industry, so that
15 they could work more hours and not be a part time employee?

16 Senator from the 30th: I believe that several people came up with that suggestion and it was,
17 the thought was that a business should not necessarily have to e-Verify
18 part-time employees who don't work a certain number of hours, and just
19 trying to set a standard for what the full time employee would be, that
20 has to be E-verified.

21 President: (0:19) Chair recognizes the Senator from the 27th

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1 Senator from the 27th: Thank-you Mr. President. Will the Senator yield?

2 Senator from the 30th: I yield

3 Senator from the 27th: Senator, isn't it true that this bill is a combination of work,
4 combination with another Senate bill, and is over four month's worth of
5 work, and it's not taken lightly at all?

6 Senator from the 30th: That is correct.

7 Senator from the 27th: And isn't it also true that we have consulted with the GMA, ACCG, the
8 Contractor's Association, the Hotel Association, the Georgia Chamber,
9 the agricultural community and the restaurant association on the
10 language in this bill?

11 Senator from the 30th: That is, to my understanding, that is correct. The author and
12 others have worked with any group that was concerned and that took a
13 lot of time and effort and energy and he is to be commended for that.

14 Senator from the 27th: Thank-you very much Senator. I appreciate your help on this bill
15 too.

16 Senator from the 30th: Thank-you

17 President: No further questions, Senator.

18 Senator from the 30th: Thank-you Mr. President.

19 President: The Chair recognizes Senator from the 56th, to speak for the Bill.

20 Senator from the 56th: (0:20-0:24) Thank-you Mr. President. Ladies and Gentlemen of the
21 Senate, guests and fellow Representatives. Folks, our nation is young in

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1 its history, but we are amongst the greatest in our prosperity and our
2 very young tenure. Many of the folks in this room, in fact almost half of
3 all Americans came to Ellis Island in order to emigrate to our country,
4 which is considered the great melting pot. As they pulled into New York
5 Harbor they looked up and they saw the Statue of Liberty. Freedom. The
6 American dream of life, liberty and the pursuit of happiness. Then they
7 got off that boat and they were processed legally through Ellis Island in
8 order to meet that American Dream, and they helped build our great
9 nation. Because we are a nation of laws. It is laws that make our nation
10 truly exceptional, which started with the Declaration of Independence
11 founding our nation, to the Constitution and the Bill of Rights. Our state
12 Constitution and all of our local laws is what bids us all together here. To
13 make an argument that it may be good or bad for business is not an
14 argument at all, because if you truly believe that, should we stop
15 prosecuting DUIs? Surely it harms the bars and the liquor stores when we
16 tell people they can't drink and drive? That is not an answer. Will we not
17 prosecute people who commit armed robbery next? That might cause
18 problems with the industry that's trying to put up camera systems for
19 security guards. That is not the right answer, folks. For those that would
20 say e-Verify is too difficult, it is too expensive, those are folks that have
21 never actually used e-Verify, because it literally takes seconds. Continuing

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1 on, there is a concern that we will be Arizona. Folks, we are Georgia, and
2 there are 30 other states, let me repeat that, 30 other states right now
3 that are pursuing stronger immigration laws because it is a problem that
4 faces our entire country, not just Georgia, and everyone in this room took
5 a sworn oath to uphold the laws of this great state, and to say that we
6 will let some go, and others not, would be a violation of that very oath.
7 Our Nation and our state is exceptional. The only way that it stays
8 exceptional is to enforce our laws. We can do that by respecting people,
9 but at the same time respecting the law. So I urge that you pass
10 Comprehensive Immigration Law HB 87. I think the folks have done a
11 great job here, and it's going to be a great economic boom for our state,
12 and it's going to be a good thing that we can pass on to our children.
13 Thank-you Mr. President, I yield for questions.

14 President: Chair recognizes Senator from the 40th.

15 Senator from the 40th: No questions.

16 President: No questions.

17 Senator from the 56th: Thank-you.

18 President: Chair recognizes Senator from the 33rd.

19 Senator from the 33rd: (0:24-0:29) Thank-you Mr. President, Ladies and Gentlemen of the
20 Senate. I want to mention something to you, and first of all I want to
21 apologize to the Senator from the 23rd when he was trying to tell me

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1 something the other night and I couldn't hear him, I don't hear real well,
2 and I thought that he was telling me that the amendment that I offered if
3 you remember to do, to make sure that those people are indicted and go
4 to prison are those people that possess false papers, stolen social security
5 cards and things like that are the ones that are punished by five and 10
6 years in prison, it was defeated, we only got 20 votes. I think one reason
7 we didn't get the votes is because when I transposed and wrote the
8 second amendment, trying to make it more legible because of my
9 penmanship ... here, I left out the word illegal alien, so when he said it
10 could apply to another citizen with false documentation or some college
11 student or something, he was right, and so I apologize to him, I didn't
12 hear and he was trying to help me. But what I am saying to you is that
13 you can talk all you want to about the illegal aliens and what we are going
14 to do, but until you approach the problem of the business of
15 documenting these folks illegally, stealing social security numbers,
16 providing false documents, that business is one of the biggest businesses,
17 one of the biggest illegal businesses in the country right now, and until
18 you punish those folks with a long prison term you are not really doing
19 anything to stop them from continuing to furnish people who jump the
20 stream to feed their kids. Now, that's the reason I can't support this
21 particular motion, because I don't think it is tough enough, I think this is

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1 as tough as you can get if you want to get to the folks that are really
2 really breaking the law, and are providing the documents so that the
3 illegal aliens can come here. But instead we are going to punish the folks
4 that jump the river to feed their children, and I just think it's out of order
5 not to punish these folks first, and then deport the people that came here
6 illegally, because they know they are not legal. But if you are not going to
7 get serious enough to punish the people that are providing the way, then
8 you are not doing anything, really. You're taking a bow? Which is fine
9 with me. And I also got one little problem, I am probably going to
10 disagree with one of the dearest friends I have, that's the Secretary of the
11 Senate. If you, in your Rule Book on page 55 it says that when a Senate
12 passes a bill, when a Senate passes a resolution, and sends it to the
13 House, parliamentary procedures that extend to the amendment process
14 include: the House amends the Bill or resolution and returns it to the
15 Senate. The Senate then may offer an amendment, which is itself
16 amendable one time, like up here, if it were the last time it was here, to
17 amend the amendment adopted by the House, unless the resolution had
18 been engrossed by the Senate. What we are saying is, what this motion
19 ought to be is to insist on our position and it should go back over there
20 and a conference committee should be appointed. We are taking an
21 additional step in admitting it for the second time when it is not really

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1 within the rules. In my opinion, now, it is the House bill, you can only
2 amend it one time, and we have done that, as amended by the senate,
3 and you know this is the second time we are going through this and we
4 should insist on our position and get a conference committee report. But
5 I know why all day long people have been using this particular motion,
6 and I don't have anything to do with the politics of the majority party.
7 Inevitably, if they don't agree you're going to have a conference
8 committee appointed anyway, but I will tell you that, and I will say this,
9 that I am told that we have been doing this for the past three or four
10 years, and if the House has been doing it for that length of time also, so
11 we have accepted this for the last three or four years and I quite frankly
12 did not catch it or know it, so I can't say that anybody's breaking a trend
13 that we have, but if it is specifically according to the letter of the rule,
14 then we are not following it. Having said that, I can't vote for this unless
15 you adopt an amendment to really punish folks that are furnishing these
16 poor people with fake passports, visas, stolen social security numbers
17 and things of that nature. We shouldn't turn that amendment down if it's
18 not in here, we are not even addressing the major portion of the battle
19 that needs to be fought. It's lip service in my opinion, although I do feel
20 for the Senator from the 30th because he has worked very hard and I'm

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1 not sure it's his favorite place to be right now, but he is a good friend of
2 mine, I admire his integrity. No, not again, this whole process is....

3 President: Chair recognizes Senator from the 39th.

4 Senator from the 39th: (00.29-00.34) Mr. President, members of the Senate. I am going to be
5 quick, but hopefully I will communicate those things that are on my mind
6 in an adequate way. One, I too respect the Senator from the 30th,
7 chairman of the judiciary committee, but in response to a question from
8 the Senator from the 36th he said that he didn't believe, and I hope I am
9 not mischaracterizing and he can correct me by question or when he
10 comes in the well to close, he said I believe that a boycott is not
11 imminent, or there will be no boycott, or he believed there will be no
12 boycott. I beg to differ. I think the boycott is going to happen, particularly
13 with the bill in this fashion. Be that as it may, let it come, that's my point
14 of view. But I disagree with him on that basis, and I agree with the
15 Senator from the 56th that we are a nation of laws, but before we are a
16 nation of laws we are a nation of hopes, and dreams, the old
17 philosophers say that before you can have a law in writing you had to
18 have a law in your heart, natural laws which inform the laws that we
19 create, and one of the things about this country is that we are a nation of
20 hopes and dreams. People come here, legally or illegally, to fulfill the
21 dreams that they have for themselves and their families, so I hope that

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1 we would not be so hard-hearted not to understand why hopes and
2 dreams are at the center of what we do here in this body, and what we
3 do as legislators. The only other thing I would like to say is, I am a
4 historian by training, I have been teaching history off and on for the last
5 25 to 30 years, and one of the things that has occurred in print, and
6 sometimes on this floor, the Senator from the 26th has said on occasion
7 he has made analogies between what we are going through now and
8 what went on in the 1950s and 60s in the fight against segregation and
9 disenfranchisement. One of the things that I know is that during the
10 1880s and 1890s and the 1900s there began a stream, a steady stream of
11 segregation laws in Georgia and other states throughout the South, a
12 steady stream of segregation laws that took away the rights of African
13 Americans, took away their voting rights, took away their social rights,
14 and we are in the midst of a similar phase in the history of this country,
15 the history of this state and the history of our people, where we are
16 targeting a certain class of people, and I know the Senator from the 27th,
17 his heart is pure when it comes to how he feels about other people, I
18 know him, and I know he carries no antipathy towards his fellow man,
19 whatever color they may be, and I believe that, but at the same time,
20 whether it is our intent or not, we are in the midst, and we started a few
21 years ago with bills introduced and passed in this body putting

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1 restrictions on immigrants, and we are continuing through that phase,
2 and we have reached a high point. The element in this bill regarding stops
3 by the police is just the most egregious element of this bill, it is the most
4 egregious, and I would say anti-American part of this bill, because the
5 fact of the matter is, I said it before and I will repeat myself before I close
6 and take my seat, is that Georgia citizens our fellow-citizens, people who
7 are here legally, will be stopped on the highways and by-ways of this
8 country, of this nation, of this state. Anyone who thinks otherwise is
9 fooling themselves. It happens every day and will increase because of
10 what we do here today at this very hour. So I strongly urge you to be on
11 the right side of history and vote against this bill, and vote against these
12 bad amendments. Thank-you Mr. President, I will relinquish the well
13 unless there are questions from my colleagues.

14 President: One question. Senator from the 26th.

15 Senator from the 26th: Thank-you Mr. President. Does the Senator yield?

16 Senator from the 39th: I certainly do.

17 Senator from the 26th: Did I understand you to say that that section of the bill that this body
18 voted on that would prohibit the unlawful or the, what you have
19 characterized as discriminatory stopping of people was removed from the
20 bill?

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1 Senator from the 39th: It was removed, it was, on our side it was that language was
2 removed, then some other language replaced it which I believe made it,
3 replaced felonies, instead of, if you stop someone for a felony that is one
4 thing, but you can't do it for a misdemeanor or another minor offense.

5 President: The Chair recognizes Senator from the 36th

6 Senator from the 36th: (0:35-0:47) Thank-you Mr. President. We are here yet again,
7 debating an issue that other states have looked at, and in their wisdom
8 have decided to turn away from in the best interests of their own
9 economies and of their state's reputation, and with respect for their
10 immigrant populations who are part of the backbone of the economy in
11 the State of Georgia. Yes, our immigrant workforce is part of the
12 backbone of our economy. You go up to Hall County, you go up to North
13 Georgia where all those millions of chickens are being raised, plucked,
14 gutted and processed. We ate some today for lunch. Who do you
15 think...whose hands are on those chickens? We all know whose hands are
16 on those chickens. The hands of Hispanic laborers. Spanish-speaking
17 people who've come here from other nations in search of bettering the
18 lot of their families, and to fill the jobs that are available. Nobody ran
19 people out of jobs in Georgia. The jobs were there available, and you
20 know what, there are going to be more jobs available as all of us grow
21 older, as long term care needs which require heavy staffing. We are an

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1 aging nation, and our survival depends, as it always has, on accepting the
2 next wave of immigrants from somewhere around the world. My folks
3 came from Ireland, and they had the signs up “No Irish need apply”; there
4 are even songs about it, I will refrain from humming a line or two, but
5 every immigrant wave has faced alternatively the welcome mat and the
6 opportunity to work, but also had to overcome a wave of discrimination
7 that accompanied that. True leaders stand up in the face of hatred, they
8 stand up in the face of misinformation, they stand up in the face of bad
9 numbers, and they say: We are going to do what is in the best interests of
10 our state, and we have heard, since last September when the first
11 hearings were held, we have been hearing from the business leaders of
12 this state. I could name, I could give you the names of the CEOs of some
13 of the largest corporations, whose footprint extends around the world,
14 they have been in this Capitol, sitting down and meeting with our senior
15 leadership and asking them for moderation and to back off from pursuing
16 this course of action. And we talk about ourselves as a pro-business state,
17 and we talk about ourselves as wanting to grow jobs in this bad economy,
18 and yet we sit here and persist one more time after we worked on this
19 Bill for several hours the other night, with fair exchange of ideas,
20 numbers of amendments and honest discussion and debate and votes
21 that we took as a body, and we amended this Bill and took things out.

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1 Now we stand here today with those essential elements of this Bill back
2 in, that we had taken out, and we are preparing to go over the cliff as a
3 state. And I have no doubt in my mind in telling you, if this legislature
4 passes this Bill, sends it to the Governor and has the Governor's
5 signature, and it becomes the law of Georgia, we will live to regret it. We
6 have just begun the bare beginnings of turning our economy back in the
7 right direction. We are all working with the burden of low revenues, high
8 unemployment, and we hear from business: "please don't do this to us."
9 We hear from agribusiness "we beg of you don't do this to us." We hear
10 from employers who have benefited from a workforce of decades now,
11 that are up there making the carpets in North Georgia; they are legal,
12 they are here, they are raising their families, they are contributing to the
13 economy, they are buying homes, they are sending their children to
14 school, they are living the American dream right up there in north-west
15 Georgia making the carpet industry, the carpet industry for the world.
16 That population is going to be negatively impacted by this Bill. We've
17 crafted a Bill that insists on demonizing people of brown skin and people
18 with Spanish accents, and we have done it in the face of the pleas of
19 business: "Don't do this, this will be bad for the economy." And the
20 Vidalia onions are coming in. May is the month, remember? We all wait,
21 await anxiously; some of them are here already, some people will taking

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1 home 10-pounder boxes of Vidalia onions tomorrow, and that's the
2 posture we are in here. We could chose to insist on our position, and
3 send this Bill back to the House. We could choose to do that, that choice
4 is before us, so our hands are not tied, and you could choose to go back
5 home and you could say to that small dwindling voice of hate that
6 pounds in some of our communities, and gets on the blogs and sends in
7 the e-mails and videos discussions and our debates here and sits in the
8 balcony and leans over and just absolutely oozes hatred from their pores,
9 in many instances I am thinking of some particular individuals, we could
10 go home and tell the solid citizenry in our communities : "We voted for
11 Georgia's best interests. We are going to insist that the Federal
12 Government fix the broken immigration system and create the worker
13 visas to get the workforce here and the migrant labor here that we need
14 for our economy to do the jobs that are there to be done in Georgia, and
15 we did what's best for our state, what's best for our community." We
16 could choose to do that, you could go back and isolate that small band of
17 haters, but you know, April 23rd up in North Georgia, the Arian Nations
18 Knights have sent out a call for a rally that they're going to have against
19 illegal immigrants. That'll be coming next, and that headline will go
20 around the nation and around the world, along with the headline that
21 Georgia has passed an Arizona-type Bill. And we can stand up here and

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1 make speeches about the Statue of Liberty and give me your poor, your
2 tired, your weary masses yearning to be free, and still vote and pass this
3 Bill. Now back when people were coming in to Ellis Island, you said they
4 were coming in legally, people had poured into this nation across all our
5 borders at different points in time in the waves of immigration that have
6 occurred. And we have got a system right now that does not allow people
7 to enter legally. Even people that are here wait, 10, 15, 20 years to get
8 naturalized. So we have a broken system in Washington. That's where
9 this job should be done, that's who we should be addressing, we should
10 take all our collective energies and voices and tell Washington to fix the
11 federal laws on immigration, and get them right, because they are broken
12 and they don't work. We could choose to do that instead of allowing the
13 flames of hate to be fanned, put in a bill that is going to encourage racial
14 profiling and put in a bill that is going to drive out of the state people who
15 are here legally, put into law, into our statutes and law books this
16 measure that is going to cost business money, that is going to kill jobs,
17 that is going to give Georgia a bad name, and go home and say your job is
18 done. I know personally because we all talk, we are all colleagues, we all
19 work together on issues, we maybe on one issue this way and on another
20 issue that way, but we work I believe, Mr. President and the Senate, for
21 collegiality, and to understand each other, and to know each other

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1 personally and to agree to disagree, so I know many of you simply
2 understand that there's a lot of hate being whipped up back home in
3 your, among your constituents, and you do not want to go home and face
4 that without an immigration bill, so that is unfortunate. There are times,
5 you know who we remember in history and in politics, and don't you pick
6 up the paper every week and see an obituary for a state legislator, and if
7 you haven't been around long you scratch your head and wonder "Who
8 was that?" Coming down there from this county or this part of the state
9 or that part of the state they served ten years. Well, they are an obituary,
10 but you know whose names live on, and that's the people who
11 demonstrate political courage. That's the people who when the tough
12 decisions are in front of them to be made, and I think of Charles Weltner,
13 who did not go along with the segregationist approach at a time when it
14 was a very popular approach in our state. Those are the names that are
15 remembered, so it is my hope that people can find the political courage
16 to do the right thing, and to stand on the right side of history. This is a
17 vote, and this is a bill, and it will be a law if passed, that we regret, that
18 has negative consequences, and that we will have to correct. It may be, it
19 is certainly the most important vote you are making this year, it may be
20 the most important vote of your career. We should send this Bill back to
21 the House with an insist, and finally, in addition to standing on the right

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1 side of history, we ought to try and follow our own rules. The rule on
2 amendments and special orders is that we cannot amend the House bill
3 twice. Now that's the rule. Now, have we chosen in addition to
4 everything else, to throw our own rules out the window in this frantic
5 fever to pass an immigration bill? That's, that's deeply troubling to say
6 the least, and the gentleman from the 33rd has pointed out the fact that
7 we cannot amend a House bill twice, and having done so doesn't make it
8 right. It's in the rules that that is not allowed, and the House will be
9 breaking the rules if they accept a bill that we send back amended twice,
10 so I am going to ask the part – the Secretary, you can see how long I was
11 in the House – I am going to ask the Secretary of the Senate to read the
12 rule on amendments and special orders when I return to my seat, so we
13 can all be clear about the vote this choice has placed before us today, and
14 whether or not we are complying with our own rules. Thank-you Mr.
15 President, if there are no questions I will yield the well.

16 President: Chair recognizes Senator from the 36th. What rule was that?

17 Senator from the 36th: Mr. President, I would like to request that the Secretary of the
18 Senate read the rule on amendments and special orders. Thank-you.

19 Secretary: Senate Rule 7.1.10. (a) The questions which arise before the Senate
20 respecting actions taken by the House are, in order of precedence: A
21 motion to agree to the House amendment as amended by the Senate.

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1 This motion shall be considered to be out of order if the bill or resolution
2 has been engrossed by the Senate pursuant to 6.9.1.

3 President: The Chair recognizes the Senator from the 45th.

4 Senator from the 45th: *(0:49-1:04)* Thank-you Mr. President, members of the Senate. I
5 had no idea that I was coming up here this morning, and everything I am
6 saying comes from my heart, it's not prepared, but I can tell you I've been
7 elected as a Senator for a long time, I served in the House of
8 Representatives, I served as the mayor and a county commissioner, and
9 the number one issue and the number one complaint over the years that
10 I have gotten from my constituents has been about illegal immigrants, so
11 I had to take this opportunity to come up here and talk just a little bit,
12 and I want to be brief, but let me just give you a background. I come from
13 a county that when I grew up had 40,000 people in the county, its 25
14 miles north-east of Atlanta, Gwinnett County. Now that county has
15 almost a million people, and I have watched as I grew up and then as an
16 elected official as, this county changed dramatically. When I grew up and
17 graduated from Berkmar High School in 1972 there was one African
18 American person in my school, one. And when I became a mayor
19 Gwinnet started to change, it changed dramatically, and now our county
20 is the most diverse county in the State of Georgia, Gwinnett County, and
21 now I can go into districts, senate districts like senate district 9 in the

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1 bottom, in the southern end of my county, and in one school, one school
2 100 different languages are spoken in that one school. You may say that
3 that is a good thing, and we have enveloped these people, these people
4 that come legally we welcome them with open arms, but unfortunately
5 all the people that have come have not been legal, and as a matter of fact
6 the majority of the people have been illegal. English as a second
7 language, I did not even know what that was when I was the mayor of a
8 small city, and the school system had to put that in. Our school system
9 has 160,000 kids now, it is the largest school system in the State of
10 Georgia and one of the largest school systems in the whole nation, it's
11 incredible how it has grown. But unfortunately we are absorbing all of
12 those illegal kids, and it's us the taxpayer, and when I say that my
13 constituents call me, it's just incredible how they call me, one of the main
14 things they call me about is the hospital emergency room. They cannot
15 get into the emergency room, and the reason they tell me why they
16 cannot get into the emergency room is because of illegal immigrants, and
17 they are very, very, very angry, because they have supported that
18 hospital, they have helped that hospital to grow, and then when it is their
19 time to have their heart attack, that they need that stent, or their child
20 needs emergency treatment in the middle of the night, they can't get
21 into that hospital emergency room. Now the hospital has grown

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1 exponentially, it's a beautiful hospital, but let me tell you about that
2 hospital. That hospital for as long as I've been around has been in the
3 black, they've operated with a positive profit, for the first time ever, one
4 of the most prosperous counties in the nation; Gwinnett County, the
5 Gwinnett County Medical Center is operating in the negative, and one of
6 the reasons they are is because people are not paying their bills, and that
7 includes the illegal immigrants. When they show up at the door, because
8 they have that Hill-Burton Act, they have to take care of those people,
9 and they are going to take care of those people. But it's me and my
10 taxpayers and my constituents that are having to foot the bill, and they
11 are very, very, angry, and the Senator for the 36th, she can throw out all
12 these inflammatory words like the Arian Nation or all of these hate
13 groups and people spewing hate, I can ask you, of all the Senators in this
14 room, there is probably no-one in here that is more compassionate that I
15 am. I am a former registered nurse, I spent most of my nursing career
16 right down the street at Grady Hospital taking care of the poor, taking
17 care of the homeless. I know what disparity is, I know what life and death
18 is. There is no person that could be more compassionate, that could
19 spend the years that I've spent at Grady Hospital, working in an
20 emergency room too. So I can tell you that it is easy to talk about these
21 immigrants that are doing all this free labor or low-cost labor for us in

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1 Gainesville that's right up above my district, the chicken, splitting the guts
2 out of the chicken, but let me tell you, they're illegal, they're going to use
3 our services. It costs us to use those services, we are footing the bill. My
4 constituents have a right to complain about that. We don't mind taking
5 care of people, let's just take care of our own people, our own people
6 that are here legally. So you can throw out those words, the
7 inflammatory words about spewing hate and not caring about people, I
8 truly care about people, but I want to take care of our people, I don't
9 want to take care of Mexico's people that are here illegally, and I can tell
10 you that I have one of the best sheriffs in the State of Georgia, and I think
11 that just about everybody in this room will agree, Sheriff Butch Conway,
12 because he had the foresight, because he knew as an elected official, that
13 he had to do something about the problem too, and he enacted the
14 federal program, I think it's called 287G. He went in and I think he was
15 the second county in the whole of the State of Georgia to enact this. And
16 let me tell you, it was a good thing, it's a great thing, that program has
17 been so successful, I think Cobb County did it first, and then Gwinnett
18 County did it second and they have done a marvelous job with, and I am
19 very proud of my sheriff, and I can tell when I ride down the street I don't
20 see as many people that are foreign because they have scattered, they're
21 scared to death to be there in Gwinnett County now because they have

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1 got a sheriff that does his business. He is putting people into the jail and
2 seeing if they are here legally, and if they are not here legally he is doing
3 something about it, he is turning it over to the Feds. The problem with
4 the system is, DeKalb County and Fulton County don't have that program.
5 So what has happened? People who are afraid to be in Gwinnett County
6 just move, they just pack up and move 20 miles away, or ten miles away,
7 or if they are down in Norcross, they just move over the county line, they
8 don't go into Gwinnett County. I'm grateful they don't go into Gwinnett
9 County. I can tell you when I grew up the crime was very, very, low. Now I
10 have my constituents routinely calling me up: "I am moving out of
11 Gwinnett County. I am tired of taking people, taking care of people and
12 supporting people that are here illegally." I don't blame them! I don't
13 blame them at all. They pay a lot of money on those big houses, they pay
14 a lot of money and I don't blame them. So the Senator that talked about
15 spewing hate, that's wrong! I'm not spewing hate, I'm talking about
16 reality. I don't think there is any person in here that would disagree with
17 me. I know what it's like, hatred, because I am Jewish. I was a Jewish
18 mayor, I know what it's like. I had the KKK demonstrating outside of my
19 house, I know all about hatred. I'm just talking about reality. I am going to
20 vote for this Bill. It's not because I like the Bill, I understand it's a
21 compromise, I understand that the Senator that's in the suite that shares

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1 with me, he understands my concerns, he agrees with my concerns, he
2 has compromised on this Bill, I understand that and I appreciate his
3 dedication, I know he has taken a lot of heat for it, he doesn't deserve
4 that heat, he has done the best that he could do, and I am very, very
5 appreciative. He's a lawyer, I'm not a lawyer, he knew how to look into
6 the federal immigration laws, I know that he contacted immigration
7 officials in Washington, he has done his due diligence and I am very very
8 grateful to him. There's a lot of loopholes in this law, and I understand
9 why they are in there because of the changes that were made with the
10 agricultural industry I want it e-Verified and I want to go on record, and I
11 want my constituents to know I wanted e-Verify for every single person, I
12 did not want any exclusions, I wanted it to be zero, I wanted everyone to
13 be e-Verified, I wanted the 32 hours a week, I wanted the felonies. I want
14 to talk just a little bit, and I do like the Attorney General getting involved,
15 I think that is a great thing, because I think people are afraid of Attorney
16 Generals, I know a lot of people are, and I think that's a good thing to get
17 the Attorney General and we have a great new Attorney General in the
18 State of Georgia. One of the things I want to talk about is these two
19 amendments. Now I've been called out there in the hall "vote against
20 this, vote against this." Let me tell you all something, I'm voting for 1a, by
21 our majority leader, I'm voting for that one, but let me tell you what I am

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1 most surprised about. My friends across the aisle, the Democrats, I have
2 worked with them on numerous issues because I do most of the social
3 issues for the Republican Party here in the Senate, and I am so surprised
4 on this amendment 1b. I ask you to vote against it, and the reason I ask
5 you to vote against it, let me just read you this little laundry list. Now I
6 told you I am not an attorney, but I am so surprised. Listen to this:
7 Spousal abuse, I have worked with you guys so much on domestic
8 violence, it's incredible, my whole career, child endangerment, DUI
9 convictions, drug possession, theft, shoplifting, battery, the first two
10 offences are misdemeanors, family violence, the first act is a
11 misdemeanor, simple assault, stalking, criminal trespass, so what we are
12 saying with this amendment, that yes, if the person is arrested for those
13 crimes that I just read off to you, shoplifting, drug possession, child
14 endangerment, spousal abuse, but let me tell you, that person goes to
15 jail, they serve that term, they are here illegally, they never, ever get
16 checked, they go right back into the community, and that is why I am so
17 surprised that the Democrats come up with this amendment when all of
18 these key issues that we've worked on, domestic violence, spousal abuse,
19 and you are willing to put somebody in jail, but oh no, no, no, we are not
20 going to check their papers. But if you're in Gwinnett County and you are
21 under Sheriff Butch Conway, your papers are going to be checked, and

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1 you are going to be shipped back to where you came from, with the
2 federal program, so I encourage you please, please, if you have worked
3 on these issues with me, please consider what you are doing, because the
4 person who abuses that wife, serves their time, and goes back into the
5 community, we all know what happens when you abuse the wife the
6 second and the third and the fourth time, they usually end up murdered.
7 They usually end up doing it in front of their children. It is a travesty, I ask
8 you not to do that. I just want to close out, and if you will please give me
9 just another minute, I want to close out from a press release that was
10 written by the Arizona State Senate, and it's a State Senator Russell
11 Pearce, President of the Senate in Arizona, and this letter, this press
12 release is an endorsement of us making changes. Unfortunately the
13 federal government won't step up to the plate; the states are having to
14 do it. We regret we have to do it, it pits us against you, we don't want to
15 do it but we are forced to do it. I am forced to do it because my
16 constituents are complaining to me every single day. I'm going to
17 respond to my constituents. This letter says, I'm just going to read one
18 paragraph, it's a long one, it's a press release: "There are great savings to
19 taxpayers here in Arizona from Senate Bill 1070, such as over \$400
20 million in K through 12. For the first time in State history we have a
21 declining prison population from a historical growth from 70 to 140

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1 inmates per month in growth. Arizona's violent crime rate has dropped
2 over three times that of the national average. Media reports indicate
3 100,000 illegal aliens have left the state since Senate Bill 1070 went into
4 effect. Arizona's state motto of "attrition by enforcement" works. Jobs
5 for Americans, lower crime rates, reduced costs to taxpayers and a
6 respect for the rule of law will be noted in Georgia soon after the law
7 goes into effect." So I ask you, did Arizona want to do it? No. Does
8 Georgia want to do it? No. But we are forced to do it because the federal
9 government won't do it. So I ask you to please vote for this Bill. Mr.
10 President, I will answer any questions if there are any.

11 President: Just a couple of questions. Senator from the 26th is recognized for a
12 question.

13 Senator from the 26th: Thank-you Mr. President. Does the Senator yield?

14 Senator from the 45th: Yes I will.

15 Senator from the 26th: Do you have any estimate of how many people would be,
16 presently in Gwinnett County who would be affected by this legislation?

17 Senator from the 45th: How many people would be affected?

18 Senator from the 26th: In Gwinnett County.

19 Senator from the 45th: I don't know, but I am sure the sheriff of Gwinnett County could
20 answer that question, I do not know.

21 Senator from the 26th: Senator, a further yield?

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1 Senator from the 45th: Yes.

2 Senator from the 26th: Do you have any estimate of how many people would not use the
3 hospital service in Gwinnet County if this legislation was passed?

4 Senator from the 45th: No, I don't know, but I can tell you that I do have a lot of experience with
5 emergency rooms, I've worked as an emergency room nurse, I have spent
6 a lot of time in them, I know that what my citizens, my constituents are
7 telling me is accurate, I've been involved in the healthcare delivery
8 system for a number of years, and I know that it is true.

9 Senator from the 26th: A further yield?

10 Senator from the 45th: Yes

11 Senator from the 26th: Would this bill prohibit the hospitals from providing services to any
12 person who showed up for those services?

13 Senator from the 45th: No, it would not. Any person who shows up to the hospital door has to
14 be taken care of, and that's why I think my constituents are so angry, it's
15 because we have to take care of these people. They are footing the bill,
16 they are footing the bill every day. The State of Georgia is footing the bill,
17 and we don't have enough money. We don't have enough money right
18 now. Everybody's going broke, and I think that is why we have come to a
19 boiling point right here, because there is no money to take care of legal
20 people or illegal people, but especially the illegals that don't belong here.
21 Mr. President, I'll yield the well. Thank-you.

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1 President: Chair recognizes Senator from the 44th.

2 Senator from the 44th: (1:06-1:09) Thank-you very much Mr. President, and my
3 colleagues in the Senate. I will be very brief here. We've been around the
4 country, this state for the last few months with hearings on immigration,
5 and we have heard from many persons. Two points I just want to make,
6 and one is that this bill will be bad for business in Georgia, and will hurt
7 Georgia's economy. We had many immigrants who said that they owned
8 businesses in Georgia and they pay taxes. I am convinced after listening
9 to all of these hearings, and in my own convictions that this bill will be
10 bad for Georgia's economy and for the citizens of Georgia, and then the
11 second point I really want to make, which is the one that really gets me,
12 is that this bill will increase racial profiling. We can argue all day whether
13 it is legal, we can argue all day about it being morally right and what is
14 fair, but African Americans endured 400 years of slavery, when we were
15 brought to this country on slave ships, then years of lynching, especially
16 here in the South, and now years of racial profiling: it's just driving while
17 you are black. Now, I do not want to see any group subjected to racial
18 profiling like I have seen black people, especially black males. I have been
19 in their cars, even when I was a Senator, and the only reason that car was
20 stopped was because black people were in there, so this bill is not in the
21 best interests of Georgia. Now in my district I know there is a mobile

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1 home, and a lot of immigrants live there, but I know it is racial profiling
2 when the sheriff stops people and they are walking, it can't be nothing
3 but racial profiling, they are not even driving, so I really do not want to
4 see any group subjected to this racial profiling, so I urge you to please
5 vote "no" on this bill. Mr. President, I will the yield. I wield the yell. I yield
6 the well. (Laughter)

7 President: Chair recognizes the Senator from the 5th.

8 Senator from the 5th: (1:09 - 1:24) Well, I was hoping that we would be at a different point
9 today and that we would be moving towards, on other bills while a
10 conference committee was at work on this. And one of the reasons that I
11 was hoping that "calmer heads and saner heads" would prevail, and
12 there would in fact be a conference committee on this is because even
13 though the Senator, from what I believe was from the 30th, that brought
14 forward this bill on the motion to agree as amended by the Senate, with
15 these amendments 1 and 1a), and most of the discussion has been about
16 basically two changes, the issue that has been bouncing back and forth
17 about the e-Verify system and the issue that has been bouncing back and
18 forth about what to do about code violations, ordinance violations and of
19 course misdemeanors, that's gotten a lot of discussion, including
20 discussion by the Senator from the 45th just recently as she was speaking
21 in the well very passionately about her side of this. But the reality is that

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1 more than 2 dozen changes were made to this bill when it left this
2 Chamber and went over to the House, and in fact, those changes were
3 being drafted before this bill, before our version of the bill, as passed by
4 the Senate, ever even passed the Senate. The Representative carrying
5 this bill in the House was already working with legislative council on what
6 that Representative was going to dictate to the Senate that we pass, and
7 instead of the Senate saying that no, in fact, we have spent hours and
8 hours on this bill. We have looked at these amendments, and we in fact
9 have a voice in this, we have apparently been dictated to by one House
10 member, exactly what this bill should be and what it should contain, and
11 while there is an amendment and an amendment 1a) it is really just
12 window dressing, it doesn't do anything substantive. When I came in the
13 well, I think it was two maybe three days ago, talking about the fact that
14 you could put lipstick on a pig, and you could dress a pig up and it would
15 still be a pig, and that even if you bought a new ball dress at Saks it would
16 still be a pig in a dress, and if you took and got it the most expensive
17 lipstick you could get, from the Nordstrom's make-up counter, it would
18 still be a pig. Well, I guess we have gone on instead of going over to Saks,
19 "well Saks won't do" so "let's go down to Nordstroms, or let's go to
20 Bloomingdales" but it is still a pig in a dress folks, and maybe instead of
21 going to the Origins counter they went to the Lancôme counter to buy

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1 some fancy lipstick but it is still a pig in a dress with lipstick. And no
2 matter how much money I spend on lipstick and dresses, it is still a pig,
3 and we are still being dictated to by the House, about what we will and
4 will not pass in this body, and our voices are not heard and apparently
5 people here don't have the courage to stand up and insist, and say that a
6 conference committee should take a look at this because there were
7 more than two dozen changes drafted, not two, two dozen. I am going to
8 go through a few of them because I, that raise at least some concern to
9 me. One of those is that if you all would look, for those of you who are
10 actually still looking at this bill, because I think most of us have made up
11 our minds, and I don't see a person with the bill out, but if you would
12 actually look at the bill and apologies to the Senator from the 29th if he
13 looked up and was looking at the bill amendments, but we've basically
14 passed a section of our law saying that we are not going to recognize
15 driver's licenses from other states, if you look at section 5 on page 5 lines,
16 looks to be 162 till about 169, if those states don't verify citizenship we
17 won't recognize their driver's license. That violates the US Constitution.
18 We've already been talking about the cost of this going to court, and
19 whether or not this was going to court. If we had put this in a conference
20 committee and had some lawyers looking at that maybe somebody might
21 have been mentioning the fact that you can't do that. If you are trying to

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1 draft a bill, that is not going to get up in the court, you've already created
2 one more amendment, one more change that's going to get into the
3 courts and get struck down. Going through and further along, you've got
4 section 5 that creates this crime of giving false documents for work, and I
5 could be, and I just want to point out it's a felony with a 100, with a 250
6 thousand dollar fine and a 15 year sentence. The senator from the 45th
7 who cares so much about trafficking and minors might want to note that
8 paying for sex with a 16 year-old only carries with it a five year penalty,
9 yet giving false papers to get a job, is going to get you, and mind you that
10 might be a 15 year old trying to get a job at "Del Taco" because he or she
11 wants to go to work, without..., not because there are not a citizen but
12 because they can't get the work permit from their school but they need
13 to work, or they want to work. They are guilty of a felony with a 15 year
14 sentence. 15 year sentence, that is section five on page 8 of the Bill, and
15 paying for sex with teenagers carries only a five year penalty. Now the
16 next thing, because we have been dealing a lot with this is, what happens
17 to the "church bus" and so these, the supposed solution that they have
18 come up with, that keeps coming back and forth is this, transporting
19 someone if you are lawfully hired, a term that is not defined anywhere in
20 the code, go find it, and it's not defined in this bill, and a privately funded
21 social service which basically means that if someone is getting a bus ride

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1 to the church, or from the church, this is not the church that is 501C3
2 that is doing English as a second language class or Moms morning out, or
3 doing some kind of work. This means people going to and from church
4 and that church bus transporting those folks is pulled over, everybody on
5 board, and the bus driver, and the church are liable, because privately
6 funded social service, is not defined in the bill, it is not defined in the
7 code, and it is in fact a 501C3, not every church has one of those, not
8 every church is engaging in privately funded social services. So I just want
9 to point that out. The last thing I want to point out is this section 20 this
10 big long thing of creating this commission for immigration enforcement
11 review board. I brought this up last time on questioning the Senator from
12 the 10th because we have this issue for the first time I ever seen it in the
13 code, you have to be a registered voter to make a complaint. Not only
14 does that probably bring the Voting Rights Act into question here, but
15 that is also an unconstitutional provision, and that's on page 24 about,
16 lines, let's see, lines 827, 28, 29 again you are basically eliminating a
17 person's constitutional right to a redress of grievances, it's another, just
18 because they have chosen not to register to vote, a voluntary act. Again
19 another unconstitutional provision, and I'm not sure if anywhere, where
20 we have gone out and created these type of independent enforcement
21 review boards. What this creature is or whether it is even constitutional,

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1 or whether in fact it is more of an usurpation of the Attorney General's
2 constitution powers and the Executive branch's constitutional powers, it
3 is just, this independent board, that I'm not sure, that does not appear to
4 be constitutional, and someone should have taken a look at that, and
5 someone should have probably taken that out of the bill, but we won't
6 get that done because no one felt that they needed to have a conference
7 committee on a bill that was drafted on the fly on the last days of the
8 session. And then I just want to point out at what slippery slope we are
9 on, and I know that the Senator from the 45th is off the floor and I, but I
10 am going to comment on the Senator from the 45th speech, because I am
11 going to point out something. The Senator from the 45th this is the
12 dangerous precipice we are on with regards to racial profiling, and really
13 getting into the police state. The Senator from the 45th through, who I
14 have known her for years and I understand she stood here in the well
15 talking about having been a Jewish mayor. If she is sitting up there
16 basically racial profiling in her speech on the floor, by commenting that
17 well, there used to be only English spoken in my schools, but now there is
18 one school with 100 languages and that's a reason for having a Bill about
19 immigration, because well, there are 100 languages spoken, there must
20 all be illegal. I mean, that is the general assumption that has been made
21 from that speech or because now she drives down the road there are

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1 fewer foreigners, and that was her words in this well, just before I left,
2 that somehow that means that there are fewer illegals because the folks
3 from Bulgaria and Serbia and other places that are in my district on
4 overstayed visas, and I know they are, they look like me. But because
5 they are fewer people that don't look like her, or don't look like me,
6 that's the very kind of racial profiling, we just saw that happening here on
7 the floor of the House by someone, by an incredibly well meaning
8 compassionate Senator, as she pointed out supposedly the most
9 compassionate person here seems to think that we are not going to have
10 racial profiling when it is being done in the very well of this House just
11 two speakers before I spoke. That is what this Bill is encouraging, it is
12 encouraging constituents to do that, it will be encouraging law
13 enforcement to do that. If you think that "quote unquote" seeing fewer
14 people that don't look like you on the street is a way to prove that a bill is
15 running off undocumented, illegal, unlawfully present whatever word
16 euphemism you want to use for it. If that is your justification for, if that's
17 your litmus test for whether the Bill is working or not, that is racial
18 profiling. Point blank. And that is what we were supposedly trying to
19 avoid and this is a patent example of why this should be in a conference
20 committee, folks. We can do that, no one here has to go home and say
21 they have not voted for something, everybody has gotten their 'yes'

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1 votes or their 'no' votes, but we can disagree, we can vote down
2 amendments 1b) and 1a) and whatever other amendments are on here,
3 vote this down so that we can get to a point where we can assist, we can
4 get this into a conference committee and we can strip out these
5 provisions that are just going to get us in court, just going to lead to the
6 very kind of racial profiling that we are supposedly at least saying in the
7 Bill that we can't do. And we can get this done right, we can get it done
8 before any one of us have a primary opponent. We can get it done before
9 anyone of us will have a single person write a 400 dollar check to qualify
10 against us if we can just stand another couple of hours of nasty e-mails.
11 But, to sit and say and quote "pseudo science" and say, well they are
12 costing us money when there are no legitimate source saying exactly how
13 much money is being cost and netting it out, and that we can't, citing the
14 same urban myths that have basically got us to this point stoking those
15 fears of hate, that have gotten people thinking that we have to do
16 something. Well, this is not the thing to do. Stoking those fires even
17 further is not the thing to do. We need to vote this down, we need to get
18 this into a conference committee. Remember, voting it down is not a
19 vote against final passage, for those of you who feel you've got to vote
20 for something, it is a vote to get this into a conference committee so that
21 these 24, 25, 26 odd changes can be looked at, so that we can actually

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1 have real live input, from the real live business community, whether it is
2 the agricultural community or the “metro” chamber or the Georgia
3 chamber as to how to deal with this, and then if what you want is make
4 sure, you know, the only other issues is if you really want to deal with the
5 issues that were brought up by the Senator of the 45th, we actually
6 should be putting money in the budget for more counties to adopt 287G.
7 If that’s really what you all want to do, because that was effective,
8 whether you like it or not it was effective. This is not that, and saying that
9 4, 287G worked in my county so let’s go do something else that is
10 unconstitutional and is going to cost jobs, going to cause boycotts, is not,
11 that’s saying, well because X is happening, because X worked, I want to
12 do A, that doesn’t make any sense. We should send this to a conference
13 committee and unless there are questions I will yield the well.

14 President: There are questions. Senator from the 22nd? Not on the floor. Senator
15 from the 33rd?

16 Senator from the 5th: I yield

17 Senator from the 33rd: Senator, in addition to the 20 odd changes that you talked about that
18 were made, is it not true that with correct “verbiage” we might be able to
19 visit punishing those who would be in the business of providing such
20 documents as I described earlier to illegal immigrants?

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1 Senator from the 5th : If...Absolutely, it this were on a conference committee the issue of
2 the social security card mills, the places that print fake papers, could be
3 put on the table and dealt with, absolutely.

4 President: Chair recognizes Senator from the 36th for a question.

5 Senator from the 36th: Thank-you Mr. President. Does the Senator yield?

6 Senator from the 5th: I'll yield

7 Senator from the 36th: Does the Senator share my concern that I have understood from
8 the Hall that the hotel industry has not been involved at all in this Bill, has
9 not been consulted, and has not seen the Bill, and has not been allowed
10 input on this version? Would you share my concern on hearing that?

11 Senator from the 5th: Well, I believe you have shared your concern, and I know you are
12 passionate about what you are saying. I certainly agree that the retailers
13 weren't involved, the hoteliers weren't involved, there was nobody at the
14 table.

15 Senator from the 36th: The restaurant owners.

16 Senator from the 5th: The restaurant owners; there was nobody at the table except one House
17 member.

18 Senator from the 36th: Exactly, and as an attorney, you could possibly have an opinion on
19 what it is going to take for an Attorney General to suddenly be expected
20 to staff up at a level to have this public in-pouring of complaint and calls

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1 for investigations. What's your opinion on what sort of scenario we could
2 be facing with these measures in this Bill?

3 Senator from the 5th: Well, I have no doubt that we have an able-bodied Attorney-General who
4 will try to do his best, but we have already passed the Budget, it has not
5 allotted any extra dollars for any of these folks that are going to be
6 needed to do this. That means that like any boss, and the Attorney
7 General is a boss, he will have to make decisions about how to prioritize
8 stuff, and if this is the priority, other stuff like drug trafficking, other stuff
9 like prostitution rings, other stuff like pornography rings, other stuff like
10 Rico violations, will not, other stuff like gang violence will not get done,
11 and the reality of this is that he can certainly ask his able-bodied Assistant
12 Attorney Generals, and to the extent that he can stretch his budget, he
13 can hire special Attorney Generals, outside counsel to deal with some of
14 these cases. The reality is that at some point these folks get so
15 overworked that they will go work for other states and other places that
16 will pay them more. The Attorney-General cannot adjust the pay of the
17 folks, we have already passed the Budget. What will end up happening is
18 overworked people will end up leaving, and then even more work will not
19 get done. Work that needs to be done on behalf of the people of Georgia,
20 stopping violent crimes.

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1 Senator from the 36th: And so it is safe to say that in passage, passing this bill we would
2 be incurring greater fiscal responsibilities for state agencies without
3 question.

4 Senator from the 5th: Absolutely. Without question and without funding. We already passed
5 the budget. This isn't...forget about the fact that there is or isn't a fiscal
6 note for this, it was not anticipated in the budget. Period. There is
7 nothing in the entire budget that indicates any part of it was anticipated
8 in how they funded or staffed positions.

9 Senator from the 36th: Thank-you.

10 Senator from the 5th: If there's no other questions...

11 President: Senator from the 42nd, your light is on, did you have a question?

12 Senator from the 42nd: Thank-you Mr. President, does the Senator yield?

13 Senator from the 5th: I'll yield.

14 Senator from the 42nd: Senator, you made a reference to non-profits, church vans and so
15 forth. Where is that in the Bill that we have before us?

16 Senator from the 5th: It's Article 5, it starts on page 9, starting with line 308, I mean that's the
17 section where you have the privately funded, this concept of privately-
18 funded social service deliverer.

19 Senator from the 42nd: Can you direct me to that...

20 Senator from the 5th: (1:29) Let me get you to it. It's line 339 on page 10. "A person providing
21 privately funded social services." Understand, Senator from the 22nd,

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1 since you are in fact a minister, that means providing rides to and from
2 church services, is not exempted.

3 Senator from the 42nd: Okay...

4 Senator from the 5th: And if it is not a privately-funded social service it's not exempted, and
5 that's not defined, but I can tell you it's not going back and forth to
6 church.

7 Senator from the 42nd: I guess I am confused Senator. In line 330 "this code section shall
8 not apply to", and if I drop down to line 335 "a person providing
9 privately-funded social services."

10 Senator from the 5th: That is correct.

11 Senator from the 42nd: Would that apply to non-profits, 501C3 organizations, religious
12 places of worship?

13 Senator from the 5th: It's not defined. There is no definition of that in the code. So we won't
14 know until after you all are arrested and the court decides. Does that
15 answer your question?

16 Senator from the 42nd: Thank-you.

17 Senator from the 5th: An Appellate Court decides, to be more correct.

18 President: No further questions. Chair recognizes Senator from the 42nd.

19 (1:31) Senator from the 21st? Where's the Senator from the 21st? Senator
20 from the 21st is he going to speak to his amendment? No, amendment 1a.

21 Chair recognizes Senator from the 21st.

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1 Senator from the 21st: (01:32-0:1:35) Thank-you Mr. President. Amendment 1a simply corrects a
2 technical feature found in Amendment 1. If you will join me on line 39,
3 Federal Government can assign and force eligibility verification system
4 user numbers, but they do so to employers, as opposed to persons, which
5 is found in line 39, so this simply clarifies that particular word and
6 corrects it. Now I want to say one other thing before I leave the well. I
7 want to thank the Senator from the 30th who has put an incredible
8 amount of work into this, I want to thank the Senator from the 27th who
9 also put in an enormous amount of work into this, and I want to thank
10 Representative Ramsey from the House. As someone who went through
11 this process five years ago, I understand what he has taken on and it is
12 probably something a little different from just about any other legislator
13 unless you have engaged on this issue. When you delve into this area, and
14 perhaps you have noticed I really don't do it any longer, you are going to
15 be called names you never thought you would be called, you are going to
16 be accused of things you never thought you would be accused of. I will
17 never forget one time at Kennesaw State University talking about this
18 issue, and someone, of course who does not think much past their nose,
19 accused me of hating children because I was dealing with illegal
20 immigration, so I said "Well, that's funny, because I've got four of them,
21 you would have thought that if I hated them I'd stop after number one."

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1 But those are the type of things that are thrown out, and of course you
2 have safety issues that you have to deal with, personal safety issues, and I
3 know he has had to deal with that, so I want to publicly state my thank-
4 you to a Senator, to Senators and a Representative who would take on an
5 issue of this type of importance, and go through what you have to go
6 through to deal with this issue, and the way that he has done it, he has
7 worked with everyone that has come to him, and deserves a lot of credit
8 for working on that. And I want to correct two things that were said from
9 this well earlier. It was suggested in some way that the United States is
10 somehow because of legislation like this “anti-immigrant,” which on its
11 face is silly, but is also factually incorrect, because the United States
12 allows more people to immigrate into our Nation than any other nation
13 on Earth. Any other nation on Earth! We have nothing to apologize for.
14 The fact that we have a process that we ask you to go through is not any
15 different than any other country, and yet we allow more people into this
16 country every year, than any nation on Earth. And the second thing that is
17 often in this debate and is somewhat confusing is that people tend to
18 take the words “illegal alien” and then take ethnicities or nations of origin
19 and use those back and forth as if they were the same thing. Lawful status
20 is lawful status. It doesn’t matter what country you are from, its lawful
21 status. And in fact, if you look at the numbers you will find a large

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1 percentage of the people that are unlawfully in the United States are not
2 from Latin American countries, they are not from other North American
3 countries, they are actually from all over the world. So if you are going to
4 talk about this issue, and we seem to be talking about it a lot, let's at least
5 agree on the things that are factual, and not use these inflammatory
6 terms like hate, and certain ethnicities and certain nations of origin as if
7 they can encompass the entire universe of people that happen to be in
8 our country unlawfully. So with that, Mr. President, if there are no
9 questions, I yield the well.

10 President: There are no questions. Chair recognizes Senator from the 42nd.

11 Senator from the 42nd: (01:36-01:42) Thank-you Mr. President. Members of the Senate. I rise to
12 speak to Amendment 1a for this reason. As I understand the rules, if 1a is
13 defeated, then we will be able to vote on 1b, which I have proposed, and I
14 call your attention, there have been multiple drafts of 1b, the one that is
15 the appropriate draft says 1b and has a check-mark in the corner, and it
16 amends the amendment by ensuring that the language that the Senate
17 voted for on last night, or two nights ago, that would restrict the police
18 state elements of this law "substantially", and it would prevent lawful
19 people from being caught up in the net that we are creating. It would
20 prevent people from being caught up because of tail-lights being out on
21 their car, because of routine traffic violations and it would limit the police

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1 powers of this new law just to those instances in which the person is a
2 subject, a suspect in a felony or commits a felony, and I would urge you to
3 support, to vote against amendment 1a so that we can adopt amendment
4 1b and take the same position, the same strong pro-business position
5 that the Senate took two nights ago. This body voted 31 to 17 two nights
6 ago to limit the police powers of this bill in this way, and it was a good
7 idea then, it is a good idea now. Nothing has changed, and it is very
8 important to the business community in this state, to me, to you, and to
9 your children that our state sends a clear message that we are not trying
10 to capture legal Americans in this process, we are not trying to harass
11 legal Americans in this process and we don't want to risk that, we don't
12 want to send that message in any way, and we don't want to put on the
13 backs of law enforcement the obligation of distinguishing between, as the
14 Senator from the 21st mentioned, we don't want people to have to raise
15 suspicions or determine things on the basis of national origin or anything
16 else, and there are people in my Party with whom I disagree with regard
17 to this, there are people from the other Party with whom I disagree, but
18 we are unified as a group of folks that care about Georgia, who care to
19 say that this state is not the kind of state that wants to catch legal citizens
20 in this net over and over and over again in a discriminatory way. Senator
21 from the 45th, who I have great respect for, talked of this amendment

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1 briefly, and I want to be very clear. Under the current Federal law, and
2 under the law in virtually any jurisdiction in this state that wants it, if
3 somebody is booked into jail, they can have their immigration status
4 checked, now, today, so we are not talking about folks that go to jail, we
5 are talking about whether or not, you are talking about routine traffic
6 violations, and other things that would not land you in jail; not a DUI, not
7 something else. The question is, what type of discretion do we give, and
8 what type of pressure do we put on our local law enforcement to enforce
9 the federal immigration laws in a way that is going to be incredibly
10 burdensome for them and incredibly burdensome on the legal American
11 population of this state. I would also like to mention one thing. I'm glad
12 that we have spent time over the last few days talking about this, and I
13 am glad that the Senator from the 30th has done such a thorough job with
14 his amendment in the phase-in process with regard to e-Verify, and many
15 other people, the Senator from the 27th has spent an enormous amount
16 of time, and I recognize the Representative from the 72nd as well, as did
17 the Senator from the 21st, that people have spent time and thought about
18 this process, but I would say one final thing. To the extent that this Bill
19 has caused controversy, to the extent that there are people in this
20 building and in this state who know that this bill will kill jobs, or who are
21 fearful that it will, to that know that this will have a reputational impact

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1 on our state, the one aspect of this bill that we cannot undo is the
2 reputational damage to our state that would come from passing, from
3 agreeing to put a police state in force to enforce what is undeniably a
4 broken federal system. That is the one aspect of this law, that
5 reputational damage cannot be undone, and that is why the business
6 community is in the hallways, is in the streets and is everywhere they can
7 be, to let folks in this room know that we cannot turn back in this regard.
8 We can turn back in various other ways, but we cannot turn back, and let
9 me say this, Arizona has tried. The Senator from the 45th mentioned and
10 quoted from a press release from Russell Pearce, the President of the
11 Senate in Arizona. He introduced five Bills this year, five Bills in Arizona
12 dealing with immigration. Every one of them was defeated by the Arizona
13 Senate, voting against the President of their Senate. The following states
14 have considered the similar police state law that we are voting on:
15 Colorado, Kansas, Kentucky, Nebraska, and Mississippi have all turned
16 back from this element, this one element, and so I am asking you to do
17 what we did the other night. We made our business community proud,
18 we made the next generation of Georgians proud, by voting to say we do
19 not want a police state that captures legal people, we do not want to put
20 that pressure on our local law enforcement, and we do not want to have
21 the reputational damage to our state, to our big, important parts of our

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1 country, we don't want to deepen the Savannah Harbor and then have
2 people from Panama that come through that canal say that they don't
3 want to come here. So I urge you to vote "no" on Amendment 1a and to
4 vote "yes" then on amendment 1b, and with that Mr. President, I will
5 yield the well.

6 President: Chair recognizes Senator from the 21st.

7 Senator from the 21st: Thank-you Mr. President. Does the Senator yield?

8 Senator from the 42nd: Yes, Mr. Leader

9 Senator from the 21st: You speak of this reputational damage at the same time you reference
10 the so-called police state. Would you...I don't know if you have a copy of
11 the bill, I could possibly give you one but would you point out to me in the
12 bill the sections that you believe create as you termed it a police state?

13 Senator from the 42nd: Yes, in fact they are referenced on my amendment 1b. The sections that
14 are amended by line, after line 312 which indicate that you harbor an
15 illegal immigrant or transport an illegal immigrant while committing
16 another criminal offense. If we don't pass this amendment, then
17 somebody who crosses a double yellow line, or has a tail light out can be
18 arrested, and there could be probable cause that they have knowingly
19 transported an illegal alien, and we have no idea what that will do as we
20 have mentioned to church buses, to our average everyday person, to our

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1 friends and neighbors at home who drive folks around. That's the type of
2 capturing that I'm dealing with. The second, I'm happy to stop.

3 Senator from the 21st: Does the Senator further yield?

4 Senator from the 42nd: Yes Mr. Leader.

5 Senator from the 21st: You reference Church buses. I'm looking on line 339 and I see "a person
6 providing privately-funded social services." Would a Church not be
7 somebody providing a privately-funded social service?

8 Senator from the 42nd: I suspect some churches would, but I don't know whether or not a law
9 enforcement officer on the street would be able to determine, standing
10 there, whether or not a person has full private funding, whether there is
11 any public funding or not, whether it's a social service under the law, and
12 the question is, do we want to put the pressure on the local law
13 enforcement and the pressure on lawful people transporting people for a
14 variety of reasons to have to deal with that type of scrutiny and that risk
15 of criminal liability.

16 Senator from the 21st: Does the Senator further yield?

17 Senator from the 42nd: Yes Mr. Leader.

18 Senator from the 21st: Do you consider Georgia to be a police state today?

19 Senator from the 42nd: (Laughs) I think there are some aspects of Georgia that I would like to
20 see less power in, but I do not consider it to be a police state, in fact I
21 celebrate our freedoms every day.

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1 Senator from the 21st: Senator, are you further aware that the laws against harboring and
2 transporting illegal aliens have been federal law, which would of course
3 apply to our state, since 1996.

4 Senator from the 42nd: I believe that the Senator knows of what he speaks.

5 Senator from the 21st: If we are not a police state today, and this is the federal law and we are
6 simply putting it into state law, how would that then, explain the logic to
7 me of how that would take us to be a police state. I am not sure how that
8 makes us a police state.

9 Senator from the 42nd: Thank-you for the question. If we are taking it from the federal
10 enforcement authorities and distributing it out to every single law
11 enforcement agency in this state, we have taken the current net and
12 refined it and brought it down to bear in a much more aggressive way,
13 and I certainly don't believe, and I know that the Senator from the 21st
14 would agree, we don't want all federal laws to be state laws, and we
15 don't want our state and local law enforcement officials to enforce every
16 federal law. I mean, it's just we would not want to put that burden on
17 them as local law enforcement, and I don't think we would want to put
18 that burden on any other community.

19 Senator from the 21st: Does the Senator further yield?

20 Senator from the 42nd: Absolutely.

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1 Senator from the 21st: I want to make sure I heard what you said: you don't want the federal
2 government or state governments enforcing federal laws that we just
3 suggested?

4 Senator from the 42nd: No. My point is this, Mr. Leader, and again I appreciate your question,
5 the work you have done in this area and your deep knowledge of the
6 subject. My point is only this: if we make this state law, and we create a
7 new state crime, then we are asking our state and local law enforcement
8 to enforce a new state crime. If the position is that this does nothing,
9 then I guess, because it is already the law, then I would just ask why we
10 are putting it on there anyway.

11 Senator from the 21st: No further questions.

12 Senator from the 42nd: Thank-you Mr. Leader.

13 President: You only have one question. Would you like to take it, or do you want to
14 yield the well?

15 Senator from the 42nd: I'll take it.

16 President: Senator from the 36th is recognized.

17 Senator from the 36th: Thank-you for your comments from the well, and your efforts to try to
18 ameliorate some of the most offensive areas of this bill. You talked about
19 reputational damage, and I believe that the Senator, the Leader just
20 asked you that question again. Would you respond to both him and me in

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1 terms of underscoring the reputational damage that you feel we are at
2 the risk of creating?

3 Senator from the 42nd: I think the reputational damage is the type that has befallen the state of
4 Arizona, and it is the type that will befall the State of Georgia or not, but
5 that could befall the State of Georgia if we pass a bill that does not
6 respect the rights of our legal American citizens and could have grave
7 impact on our business community, in my city and across the state. With
8 that, I yield the well. Thank-you Mr. President.

9 President: Thank-you Senator. Senator from the 29th is recognized to speak to the
10 Bill. Then the Senator from the 35th, that's all the lights I have, and if we
11 can keep it to that it would be helpful.

12 Senator from the 29th: (01:48 -01:51) Thank-you Mr. President. I am not going to take long, I
13 know that everyone is ready to vote and knows how they are going to
14 vote, but I have had quite a few constituents call me over the course of
15 this session as we have had several debates on this issue, and asked "Why
16 don't you stand up and say something. Everyone that's opposed what you
17 are all trying to do is in the well talking about this issue, why haven't you
18 spoken on behalf of those of us that want to see this reform take place,
19 so that's why I'm here today. And I just want to start out by saying that
20 we are a nation of laws, not men, a nation of laws, not men and if you
21 look at the US Constitution there are precious few things that our federal

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1 government is supposed to do, but one of the things it is expressly
2 commanded to do, is to secure our borders and provide for a common
3 defense, and I submit to you, Ladies and Gentlemen of the Senate, that
4 the federal government has failed miserably in that constitutional
5 obligation it has abdicated its responsibility, they have walked off the job,
6 and so what are we supposed to do? We're supposed to just throw up
7 our hands and say "Well, the federal government is not exercising its
8 responsibilities, so we are just going to suffer the consequences." At a
9 certain point, you have to take action, and that's what happened in
10 Arizona. Phoenix was becoming the kidnapping capital of the United
11 States. Criminal activity was rampant. The expenses that have already
12 been talked about eloquently by the Senator from the 45th, and all the
13 legislation before us does is enforce existing federal law. I would submit
14 to those of you who would like to see the federal law changed to contact
15 Washington, to see about having that changed, but we are not doing
16 anything but enforcing the federal law on the books that the federal
17 government refuses to enforce, and the overwhelming majority of
18 Americans and Georgians, particularly people who are first-generation
19 legal immigrants to this country, want to see our laws obeyed, and our
20 laws honored, and that is what this debate is about. As far as law
21 enforcement enforcing these laws, I know a lot of the law enforcement

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1 folks in my district, I know the sheriffs, I know the chiefs of police, and I
2 know the rank and file folks in law enforcement, and they're not bigots,
3 they're not racists, they're well trained to enforce the law, and they will
4 be well trained to enforce this law. There is no question in my mind that
5 adoption of this legislation is going to address in a meaningful way, the
6 very serious problem of illegal immigration in the State of Georgia. And
7 how are we going to do it? Very simply, by honoring and enforcing our
8 laws, because we are a nation of laws, not men, and that's what this
9 debate should be about. On that Mr. President, I yield the well.

10 President: Senator from the 35th, you are the last speaker.

11 Senator from the 35th: (01:52-01:57) It's been a long debate about a very serious, serious issue.
12 Yes, we have problems with immigration in the United States of America,
13 but it is unnecessary, and many of the speakers who are for this bill have
14 stood at this well and said how it is already the law, so why won't those
15 people who are calling them call their Congresspersons and make them
16 enforce the law that this bill is supposed to be putting on Georgia's law.
17 It's already a law. It's unwarranted besides being unnecessary because so
18 many of the people who are stopped are legal immigrants, and I know,
19 because I am a former commentator of Radio Asian Voice radio program
20 which was a weekly broadcast for four hours every Sunday. For four and a
21 half years I have been on that station, and I get calls long before Arizona

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1 put their law in, I was getting calls sometimes for one or two hours from
2 people who said they were stopped and detained, had lost their jobs
3 because they were from another country, and they had to prove that they
4 were legal, or that they were working on their green cards, or they were
5 here properly. This is a real serious problem, and many of these people
6 have to pay big money for lawyers, they have to prove who they are. Yes,
7 in this country I heard somebody say earlier that you are innocent until
8 been proved guilty. Hah! This law would only allow the horror stories that
9 I hear over and over again to continue to happen. I have regular town hall
10 meetings throughout my district, and especially in Haysville and some
11 other cities I have to have an interpreter to interpret what I am saying
12 because we have a lot of people from other countries. You cannot assume
13 that because they are from another country that they are not legal. But
14 that is what most people are probably doing, saying "Well, they don't
15 speak the language yet, they are here, they are working, many of them
16 paying taxes and they will do jobs that some of you would never do in a
17 million years. We need to be compassionate, to all of the workers and the
18 people who live in this country. This country is built by immigrants, and it
19 welcomed immigrants, "give me your tired, your poor, your huddled
20 masses yearning to be free", isn't that on the Statue of Liberty? That's
21 what this country is built on, but we are turning our backs and our hearts

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1 on people. For what reason: for some legislation that is already on the
2 books on the federal level? I say that Senate Bill, House Bill 87 is too
3 costly for local governments, it's an unfunded mandate, it's too costly for
4 the State of Georgia because the court costs will be phenomenal, and it's
5 clear that it is not in the best interests of this great State of Georgia, so
6 why are we opening up a can of worms, because there are too many
7 elements for abuse in this law, there are loopholes after loopholes, so we
8 will be going to court for a long time when we pass this nonsense. Yes,
9 granted something needs to be done, but it's on the federal level, so let's
10 not waste the people's time here in the State of Georgia talking about
11 "much ado about nothing" that we on the state level should be even
12 talking about. We have so many important bills and laws that directly
13 impact us. These are the things that I think we should be dealing with,
14 and we should not open, create a hodge-podge of new legislation here in
15 laws that we will have to deal with and that our local governments will
16 have to deal with. And in closing, I say the same thing that I guess the
17 Congressman from the 5th District always says: "This is a land of
18 immigrants. You can search through your background and you can find
19 out where your folk came from." And then he says, "We all may have
20 come here on different boats, but we in the same boat now." So let's
21 vote against Senate Bill, House Bill 87. Thank-you.

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1 President: OK. This is posture in which we are in. The question is on the adoption of
2 the floor amendment authored by the Senator from the 21st, which is 1a.
3 Is there objection? There is objection. Shall the ayes and nays be
4 sustained? Clearly having five voted, the ayes and nays shall be sustained.
5 All of those in favor of Amendment 1a authored by the Senator from the
6 21st will vote “aye”, those opposed “no” and the Secretary will unlock the
7 machine. Senator from the 45th, for what purpose do you rise?

8 Senator from the 45th: (1:58) May I make an inquiry?

9 President: State your inquiry.

10 Senator from the 45th: Isn't it true, Mr. President that for the safety of all Georgians we should
11 vote in favor of 1a.

12 President: The Senator has great passion for this issue, I am confident of it.

13 (1:59) On Amendment 1a the “Ayes” are 32, and the “Nays” are 23, and
14 Amendment 1a has been adopted. And now we go to the motion which is
15 to agree to the House Amendment as amended. All those in favor will
16 vote “Aye” all those opposed “No,” Secretary will unlock the machine.
17 This is the amendment to the House that came over. Senator from the
18 41st.

19 Senator from the 41st: Parliamentary inquiry, Mr. President.

20 President: State your inquiry.

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1 Senator from the 41st: In it not true that if this fails the bill is not necessarily dead, someone else
2 could come back with another amendment and another motion, agree to
3 amend in a different form?

4 President: I think. Well, the answer to your question is yes, that would be correct,
5 with the assumption that it fails. It is my opinion that it will not fail.
6 Senator from the 11th.

7 Senator from the 11th: Parliamentary inquiry

8 President: State you inquiry

9 Senator from the 11th: Mr. President, isn't it true that the author of this House Bill worked real
10 well with us during in the day-to-day to try to address all of the needs, I
11 may not have gotten everything I wanted, but then again at the end of
12 the day, we have really had a lot of cooperation and work to come
13 together on this piece of legislation.

14 President: (2:00) The Senate has worked hard on this issue, no question. I'll pass to
15 the bill, the "Ayes" are 37, the "Nays" are 19, and this bill therefore
16 received requisite constitutional majority, the House, forgive me, the
17 Senate has agreed. The Senate has agreed in the hope that the House will
18 agree as well.

19

20

EXHIBIT C

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Office of the Lieutenant Governor
Lt. Governor Casey Cagle

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Speaker Ralston and Lt. Gov. Cagle Announce the Creation of the Special Joint Committee on Immigration Reform

Wednesday, September 29, 2010

Contact: Ben Fry (404) 656-5030

ATLANTA— House Speaker David Ralston and Lieutenant Governor Casey Cagle today announced the creation of the Special Joint Committee on Immigration Reform.

"The creation of this joint committee was inspired by the federal government's continued failure to deal with the problem of illegal immigration and its drain on taxpayer resources in Georgia," said House Speaker David Ralston. "I expect this committee to look at every legislative solution available to the General Assembly that picks up where Washington D.C. has let us down."

This 14-member joint committee will work to draft legislation that stems the flow of illegal immigration activity in Georgia. Rep. Matt Ramsey (R-Peachtree City) and Sen. Jack Murphy (R-Cumming) will serve as Co-Chairmen of the Special Joint Committee on Immigration Reform.

"A respect for the rule of law is one of the basic founding tenets of our state and nation. If the federal government continues to neglect its responsibility to enforce the law, we're going to use every option at our disposal to lessen its impact in Georgia," said Lt. Governor Cagle. "The members of this committee will take a broad, in-depth look at ways to confront this problem and offer concrete solutions to improve the regulations we have on the books already."

Speaker Ralston also named to the joint committee State Representatives Katie Dempsey (R-Rome), David Casas (R-Lilburn), Rick Austin (R-Demorest), Michael Harden (R-Toccoa), Greg Morris (R-Vidalia), and Stephen Allison (R-Blairsville).

Lt. Gov. Cagle appointed State Senators Johnny Grant (R-Milledgeville), Jeff Mullis (R-Chickamauga), Chip Rogers (R-Woodstock), Bill Heath (R-Bremen), Butch Miller (R-Flowery Branch) and John Bulloch (R-Ochlocknee) to the joint committee.

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EXHIBIT D

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Governor Nathan Deal
Office of the Governor



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Deal signs immigration reform: Legislation protects taxpayers, employers while upholding rule of law

Friday, May 13, 2011

Georgia Gov. Nathan Deal today signed the Illegal Immigration Reform and Enforcement Act of 2011, which passed both houses of the Georgia Legislature by overwhelming margins.

"Georgia is a welcoming state with vibrant immigrant communities and a highly diverse population," Deal said. "These are strengths that enrich the culture of Georgia and expand our economy. There's no better way to promote the quality of life of all who live here and no better way to protect taxpayers than upholding the rule of law.

"This immigration reform measure fulfills my promise to Georgians to crack down on the influx of illegal immigrants into our state. Georgia has the sixth-highest number of illegal residents, and this comes at enormous expense to Georgia taxpayers. Those who claim that this law will have a negative financial impact on Georgia completely ignore the billions of dollars Georgians have spent on our schools, our hospitals, our courtrooms and our jails because of people who are in our state illegally.

"In Georgia, we learned from the state laws elsewhere that raised objections from the federal government. We do not wish to go to war with the federal government. We wish to partner with the federal government to enforce the current law of the nation. Let's remember: It's already illegal on every inch of U.S. soil to hire someone who is in this country illegally. What we've done in Georgia is create a level playing field for all employers. The use of E-Verify means everyone plays by the same rules – and it protects employers by giving them a federal stamp of approval on their workforce. This also protects workers because those who live in the shadows of our society lack legal protections and they're vulnerable to fraud and abuse. This legislation was expertly crafted by state Rep. Matt Ramsey to assure that our state protects the constitutional rights of all who live here. Rep. Ramsey knows, as I do, that there's no better way to promote the rights of individuals than by protecting the rule of law.

"Illegal immigration is a complex and troublesome issue, and no state alone can fix it. We will continue to have a broken system until we have a federal solution. In the meantime, states must act to defend their taxpayers."

EXHIBIT E

DECLARATION OF SHEILA MILLER

I, SHEILA MILLER, declare as follows:

1. I am employed as a Senior Paralegal with the National Immigration Law Center, co-counsel of record for plaintiffs in the instant action. I make this declaration based on my personal knowledge (except where expressly noted herein) and, if called upon as a witness, I could and would testify competently as to the matters set forth below.

2. Attached hereto as Exhibit A is a transcription of excerpts of a March 3, 2011 AM hearing before the Georgia State Legislature – Georgia House of Representatives Floor debate of HB 87, which is available at the following URL http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_030311_AM.wmv. This transcript was personally prepared by me after listening to the audio recordings of the debate found at the Georgia State Legislature website.

3. Attached hereto as Exhibit B is a transcription of excerpts of a March 3, 2011 PM hearing before the Georgia State Legislature – Georgia House of Representatives Floor debate of HB 87, which is available at the following URL http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_030311_AM.wmv. This

transcript was personally prepared by me after listening to the audio recordings of the debate found at the Georgia State Legislature website.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed the 7th day of June, 2011 at Los Angeles, California.



SHEILA MILLER

EXHIBIT A

State of Georgia – 2011 General Legislative Session

House Floor Debate HB 87 (Day 23) - ga_leg-house-030311_AM

Hearing Date: March 3, 2010

1 **Mr. Speaker:** Pursuant to Rule 33.3 the Rules Committee has passed an order limiting
2 debate on HB 87 to a total of three hours. Time to be allocated at the
3 discretion of the Chair. The Chair is going to allocate time equally
4 amongst those that have signed up to speak for the bill and those who
5 have signed up to speak in opposition to the Bill. The Chair recognizes, to
6 present the bill, Representative Ramsey from the 72nd District of our prior
7 agreement, will have 20 minutes to present the bill. Representative
8 Ramsey.

9 **Rep. Ramsey (R):** Thank you Mr. Speaker. I rise today to present to you HB 87 Illegal
10 Reform and Enforcement Act of 2011. This is the result of months of
11 work, of study, of committee hearings of revisions to the bill all aimed at
12 addressing the social and economic consequences of our Federal
13 Government's failure to live up to their fundamental obligation to secure
14 our nation's borders. Make no mistake that's why we are here today
15 folks – our federal government; our federal government has failed us. I
16 want to give you a few statistics. Georgia ranks number 6th in the country
17 with about 425,000 illegal aliens by the most recent estimate. The
18 Department of Homeland Security estimates that over the last ten years
19 Georgia leads the country in terms of the percentage increase of a
20 percentage of our population of illegal aliens -- about 115 %. Arizona
21 with less illegal aliens their population only increased about 42 %. Official

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Hearing Date: March 3, 2010

1 and very, very optimistic estimates tell us that we are only able to catch
2 about 1 out of every 4 or 5 individuals that illegally cross our borders. A
3 GAO study that just came out estimates that we only have about 44 %,
4 our border patrol only has about 44 percent operational control of our
5 southern border. No doubt about it, our federal government has failed
6 us and our citizens in Georgia are suffering the consequences. Now, we
7 are at a crossroads. We have two roads we can go down. The first road
8 is we can just continue to stand idly by. We can continue to throw our
9 hands up in the air and say and just wait and wait and wait for our federal
10 government to take serious a problem that has grown more pressing and
11 more pressing every single year. Or, we can go down the other road and
12 that's what supporters of this legislation intend to do today. We can act
13 within our scope as state legislatures, within the bounds of the U.S. and
14 state's Constitution to take aggressive action to address this problem that
15 is affecting *every* segment of our state. If we want to effectively address
16 illegal immigration we can't wait for our federal government to act –
17 we've got to do it ourselves. Now, what this bill doesn't do and what we
18 can't do as a state is secure our nation's borders – that's within the
19 federal government's exclusive province. We don't have the authority to
20 deport illegal aliens that we identify – that's exclusively in the federal
21 government's province. But, what we can do within the bounds of the

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1 U.S. and the Georgia Constitution and within our existing laws is we can
2 remove every single incentive that we possibly can that lures illegal aliens
3 to come to Georgia. Of individuals that come into our country illegally
4 and make the decision to come here the incentives that our tax payers
5 are footing the bill for we can remove those as state policy makers and
6 that is exactly what HB 87 proposes to do. Now, before I go into the bill
7 and walk through the bill and provide why I think you should vote for it, I
8 want to take a minute and talk about the process that lead us to this
9 point. This is hands down the most inclusive, thorough process I've ever
10 been involved as a state representative down here on any piece of
11 legislation. It started last summer when Speaker Ralston and the Senate
12 leadership recognizing this is a pressing problem that we had to address,
13 impaneled a special Joint Committee on Immigration Reform. I was
14 honored to be chosen as the House Chairman of that endeavor. Over
15 the next four months we had numerous public hearings. Every hearing
16 started with a request and a solicitation to the public – if you have an
17 interest in this issue whether you are on the left, whether you are on the
18 right and anywhere in between. If you are a government official, state or
19 local. If you are a member of the law enforcement community. If you
20 are a member of the business community. If you just have an interest as
21 a citizen – we want to hear from you. We spent hours and hours and

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1 hours hearing testimony from constituents and from citizens of Georgia.
2 It was an incredible opportunity to hear from folks their view of this
3 issue. We heard from law enforcement officials that told us about the
4 burden that they are straining under to address adjudicating cases
5 involving those that are in the country illegally. We heard from school
6 officials that said about how the quality of the education in their school
7 systems has been materially diminished as the population of illegal aliens
8 coming into our State has increased. We heard from hospital officials
9 who said that “we’re struggling to keep up our emergency rooms are on
10 the verge of breaking” and this is certainly exacerbating the problem. We
11 heard from all manner of individuals. Some opinions we agreed with.
12 Some we didn’t. But through that process it led to the introduction of
13 the piece of legislation at the beginning of this session. But that wasn’t
14 the end of it. Then Chairman Golick went about holding what I believe is
15 the most thorough committee process, committee vetting of a bill that
16 I’ve ever seen, multiple public hearings. He said on every hearing
17 anybody that shows up at this capital and signs up to speak on this bill
18 they are going to be given the opportunity to do so. And that’s exactly
19 what happened. Finally, on the last of hours and hours of public hearing
20 he looked down at his sign-up sheet and there was nobody else there.
21 Anybody who wanted to speak was given an opportunity to be heard. In

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1 the interim, over the last month when not in committee, I have
2 repeatedly said over and over “if you want to come in and talk about this
3 bill whatever the group, whatever you represent, I want to hear from
4 you.” And, I can tell you a lot of folks have taken me up on that. I’ve had
5 a virtual revolving door for that last month. We’ve made *numerous*
6 revisions in working to improve the bill, in working to hear concerns from
7 groups that are potentially affected. And I think that has resulted in what
8 I believe is to be one of the very best products that has ever come out of
9 the Judiciary Non-Civil Committee because we’ve had so many people
10 contribute to this effort. From the Attorney General’s office, to the
11 members of the committee, to every manner of group that’s standing out
12 in the hall right now and from private citizens. We feel confident in the
13 product that we put forward today. So, I want to talk to you a little bit
14 about the bill now. Now it’s 22 sections, 22 pages. I am not going to be
15 able to go line by line we just don’t have the time to do that. But, I think
16 the bill does break into kinda’ three distinct categories and I want to hit
17 on some high points of the bill and tell you a little bit about what it does.
18 The first section of the bill is a follow up on an effort that was started
19 four years ago dealing with the area of public benefits. Now, four years
20 ago the general assembly passed SB 529. It was an effort to eliminate
21 access to public benefits by those ineligible to receive them. We’ve

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1 passed several provisions in that bill aimed at getting at that problem.
2 Two of them. Two of the most important was a requirement that state
3 and local governments that dispensed public benefits enroll in the
4 Federal Save program. And the other is that public works contractors
5 agencies that let public works contractors, state or local, at the point of
6 application for a public works contract they collect a E-verify affidavit
7 swearing that that company is enrolled in the E-verify program. The
8 problem with that effort was when that law was passed there was no
9 enforcement mechanism. There was no penalty in place for failing to
10 enroll in these programs and comply with what's been the law of the
11 state for four years now. And, what we have found through the hearing
12 process is we're not getting uniformed compliance. We have a large
13 percentage of governments that have not even enrolled in the Save
14 program. That is intended. That provision of the law was intended to
15 protect your citizens, your tax payers from bearing the burden of
16 providing publicly funded benefits to those that are by law ineligible to
17 receive them. So, we had to come out of this effort with an effective
18 enforcement mechanism. We can't continue to have a law without a way
19 to hold those that violate the law accountable. And what we've come up
20 with is the ability to bring citizens, our citizens to put eyes on their
21 government and bring action to seek injunctive relief against a

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1 government that's not complying with that section of the law. Now,
2 we've continue to hear of these wild claims about frivolous lawsuits,
3 frivolous lawsuits and we're sensitive to that. So, over the last month
4 we've worked with local government groups to address the process by
5 which this litigation can be brought to force compliance with these
6 sections of the law. We have drafted into the bill and subsequent
7 revisions a 30-day notice requirement borrowed from the [unintelligible]
8 provisions in our State code that will give our government. So, anybody
9 that wants to bring a claim under this will first have to give their local
10 government or state government whoever they believe is not complying
11 with these requirements in the code the opportunity to state with
12 specificity what they believe is the nature of their non-compliance. Then
13 the recipient whether it be the state government or local government
14 will have the opportunity to get into compliance. Now, this isn't a difficult
15 process. Either you are enrolled in the Save program or you are not
16 enrolled in the Save program. Either you are collecting E-verify affidavits
17 at the point of public works contract applications or you're not. So, you
18 get that 30-days to demonstrate that you are in compliance with the law.
19 Only then if they're still not in compliance and there is a good faith bases
20 to go forward can litigation be brought. We have also provided an
21 additional mechanism if the recipient, the defendant in that lawsuit still

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1 believes this is a meritless claim. We have put a 45-day stop on all
2 discovery activities in the event a motion to dismiss is filed. Now, for the
3 non-lawyers, a motion to dismiss is a motion that is filed very early on in
4 litigation if you as a defendant believe that what is stated in the claim is
5 meritless. It gives you the opportunity to test the sufficiency of the
6 pleadings. And, we have provided that a judge must rule on that in 45-
7 days. That is security that any meritless claim will get rooted out without
8 any excessive cost of litigation being run up. Not to mention will still
9 have, the defendants, if there is a meritless lawsuit brought, they still
10 have every sanction that's available in the Civil Practice Act for the
11 bringing of frivolous lawsuits available to them. This is a, the best
12 solution we could come up with to provide an effective enforcement
13 mechanism to give citizens the ability to put eyes on their government to
14 make sure they are complying with the law that's been the law of this
15 state for four years. This isn't a new requirement. This is something that
16 has been required of our government for four years. Also, in the area of
17 public benefit we have heard over and over again about the desperate
18 number of identifications that are provided to our state and local
19 government for official purposes. Whenever an identification is required
20 to be presented. We have, borrowing language from other states, are
21 going to beef up what type of identification you can provide to present to

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1 your government for official purposes. We are going to ask the Attorney
2 General's office similar to the way they develop a list every year of public
3 benefits to help enforce the Save provisions to develop a list of what are
4 defined as secure and verifiable identifications. We want to get out
5 those types of documents that we know are most commonly forged.
6 We've heard over and over from the law enforcement community the FBI
7 even about how easily forged these matriculate counselor cards and their
8 rampant use. We want to make sure that there is confidence in the
9 identification that's being presented to our government and we believe
10 this gets at that. Second, kind of broad section of the bill is providing
11 new tools to law enforcement. Now, we have heard over and over and
12 over again about the burden being placed on our law enforcement
13 community. And we have provided several new tools aimed at first
14 aimed at getting at those that are knowingly transporting, harboring and
15 inducing illegal aliens to come into coming into our state which ultimately
16 results in our taxpayers footing the bill. Now, we have heard these
17 absurd stories of well my church is going to end up getting, up my
18 mission group is going to end up getting prosecuted or the church bus
19 driver is going to get prosecuted. That's patently absurd. We have
20 borrowed this language from federal code. Nobody -- I challenge people
21 to do this. Nobody is ever going to show me where a domestic violence

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1 clinic or a bus driver has been prosecuted. But, what we have done is we
2 have built it. And, I encourage you to read the bill. Because a lot of these
3 complaints clearly are grounded in a person who has not read the bill to
4 being with. But, in order to be prosecuted for transporting an illegal
5 alien, first you have to be proven you know they are an illegal alien.
6 Anybody that's ever dealt in criminal law know that's a tough standard
7 right there proving knowledge that you know they are an illegal alien.
8 Second, you have to prove that they are committing a crime, another
9 crime while doing it. So, another predicate act has to be committed it.
10 Third, you have to prove they are doing it for the purpose, for the
11 purpose of furthering their illegal presence in the United States. Now,
12 these provisions exist in federal law to give prosecutors another tool to
13 go at what we are called in the media the mules and the coyotes, the
14 people that are profiting. We talked a little about trafficking yesterday.
15 This is the type of people that this is intended to go after. There's not
16 examples out there where a church bus driver or a minister who's
17 ministering to his parishioners or providing a social service has been
18 prosecuted under this theories. It's just overheated political rhetoric and
19 it's just not true. And this is going to give our prosecutors the ability to
20 go after folks that are preying on these individuals, bringing them into
21 our state for their own profit and ultimately to the detriment of our tax

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1 payers. We have also heard a lot about the immigration status check
2 piece of this bill. Everybody keeps jumping up and down saying, “Arizona
3 copycat. Arizona copycat.” Which I, clearly they haven’t read the bill and
4 read what they did out there. But, what we have provided in terms of a
5 new tool to law enforcement officers is what we believe to be very
6 common sense tool. Right now in Georgia every time a person is arrested
7 for a felony they are booked into the jail and their immigration status is
8 checked. That’s been the law of our state for several years. We are now
9 going to expand that to misdemeanors. If you are booked in on a
10 misdemeanor your immigration status is gonna’ check. We have also
11 expanding that to the criminal investigation process. What it says simply
12 is this – if you are a criminal suspect. If you, if an officer have probable
13 cause, probable cause to believe you’ve committed another crime –
14 whether it’s murder, reckless driving or anything in between and you
15 cannot provide the law enforcement officer evidence as to your identity.
16 Now, I want you to think about this -- when has there *ever* been a
17 criminal investigation in the history of criminal jurisprudence where a law
18 enforcement officer didn’t attempt to determine the identity of the
19 suspect? It’s just commonsense. It’s what happens every day. And what
20 it says -- if you can’t provide evidence of your identity – we list a whole
21 host of documents – a driver’s license, the secured and verifiable IDs that

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1 the Attorney General list is going to be developed or just information as
2 to your identity where the officer can go and independently identify who
3 you are – pull your name down from the DMV database. If you can't do
4 any of that all we are saying is that the law enforcement officer shall be
5 authorized at that point as part of the investigation into the suspect's
6 identity to do an immigration status check. Why wouldn't, in an effort to
7 keep our citizens safe, our communities safe, give our law enforcement
8 community every tool possible to identify criminal suspects? It's just
9 commonsense. It is a perfectly objective criteria. There is no subjectivity.
10 We don't have the provision notice that says you have to have a
11 reasonable suspicion to believe they are in the country illegally. It's truly
12 about your ability as a criminal suspect to demonstrate your identity in
13 the context of a criminal investigation. Finally, the third portion of the
14 bill and what I believe is the most critical provision of the bill deals with
15 private employment. Now, we have heard a lot of debate about this.
16 And, we know beyond a shadow of a doubt what the root cause of illegal
17 immigration is and that's illegal employment. We know why they are
18 coming here. They are coming here for jobs. And, if we do an
19 immigration bill, and immigration reform bill and we don't get at private
20 employment it's like trying to cure cancer with an aspirin. I mean it's a
21 sham. We have got to get at the root cause. Now, I continue to hear a

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1 lot of rhetoric from the other side on this and they keep talking about
2 how this bill is going to damage our economy, it's going to be bad for
3 jobs, it's gonna' damage tourism. And I want to deconstruct that a little
4 bit. They talk a lot in code and they talk a lot in circles. But, when you
5 get right down to it – what they're really saying is, is that we as a state
6 cannot prosper economically. We depend, economically. We can't go
7 forward as a state economically without relying on those that crossed our
8 borders illegally and came into the country. You will never convince me
9 that that's true. I believe in our state. I believe in our state's citizens.
10 We can prosper economically. We don't have to look the other way. We
11 don't have to settle for the status quo and, and, and just acquiesce to this
12 notion that our state can't prosper economically without those that came
13 here illegally. That broke the law to come into our country. Now, how
14 are we going to get at it? What we propose to do in this bill is require
15 private employers to enroll in the E-verify program. It is a simple efficient
16 program. I've enrolled my own business in it. It takes a matter of
17 minutes to enroll and adds just a few seconds to the hiring process. It is
18 hands down the very best tool available to us to verify the eligibility of
19 our state's work force. It is the only tool we have candidly. It, it, it. I
20 keep hearing misnomers about how it is inaccurate. Ninety-seven
21 percent of every query sent to the federal government to be verified

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1 comes back in a matter of seconds as verified. For the small percentage
2 that comes back as tentative nonconformance they are given an
3 opportunity to appeal that finding. There's a due process function that is
4 built into it. And, of course there is an opportunity for those with good
5 enough false identification to beat the system. There is no doubt about
6 it. But that's exactly why we drafted another provision into the bill.
7 What we kept hearing over and over again from employers is well; we're
8 having a hard time deciding what is a fake ID and what isn't a fake ID.
9 What fraudulent and what's not fraudulent. Well, what we have done is
10 provided employers, in this bill, and prosecutors an additional tool to get
11 at those that are trying to pass off fraudulent identification for the
12 purpose of obtaining employment. Under our aggravated identity fraud
13 statute we are going to add a new specific theory in the law. A specific
14 provision that allows tough new penalties to be brought to bear on those
15 that jeopardize our employer, you are putting an employer in a tough
16 legal spot if they are found to be employing an illegal alien. If you, in an
17 attempt to obtain that employment try to pass false identification it's
18 gonna' be a good deterrent and it's going to provide prosecutors with an
19 important new tool. Now, I think when we talk about private
20 employment -- I saw a story on the front page of the Atlanta Journal and
21 Constitution today and I think the timing of it is just perfect for this

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1 debate. It announced today that our state right now has the highest
2 unemployment in its history, 10.4 %. And, I keep hearing from folks that
3 illegal aliens are doing jobs that citizens won't do. Well, they haven't
4 talked to my constituents. They haven't talked to the people that are
5 unemployed in my district that are struggling to put food on the table.
6 That is absurd. I just met with a hotel owner last week. He told me that,
7 he owns a large hotel chain, that last year when they enrolled in E-verify,
8 several, a number of employees left, he believed, because they feared
9 being detected as being in the country illegally. Within a matter of days
10 those jobs were filled by legal workers. People that are eligible to work.
11 Don't tell me that they are only doing jobs that will only be done by
12 illegals and won't be done by citizens. I don't know about y'all but to me
13 if there is one Georgia citizen, one Georgian out there that's going
14 without a job because a person that came across our border illegally is
15 holding it -- that's one too many for me particularly in this tough
16 economic time. Now, that's a lot of the What about the bill. Now I want
17 to talk about the Why. I think there are many, many reasons compelling
18 the enactment of this legislation but I want to talk about the two most
19 important to me. And, first that's our responsibility to our taxpayer. For
20 the last three years we have been making awful choice after awful choice
21 in the budget. Every single service that we have funded has been

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1 impacted. Our schools are drowning. Our law enforcement community
2 is doing more with less. Our health care infrastructure is to the breaking
3 point. We know statistically that it is costing our taxpayers \$2.4 billion
4 dollars per year to fund the presence of 425,000 illegal aliens. Don't . . .

5 **Mr. Speaker:** Gentleman's time has expired. So, I will ask you to head to the finish line
6 quickly.

7 **Rep. Ramsey (R):** Thank you Mr. Speaker. I am gonna' close with this – you're gonna' make
8 a choice in about three hours. And, you are gonna' get a choice to
9 decide. Are you gonna' side with the status quo. Are you gonna' side
10 with looking the other way while our citizens go without jobs. While our
11 taxpayers fund benefit after benefit? Or are you gonna' side with the
12 rule of law? We swore an oath to uphold the laws of this state and the
13 U.S. Constitution and the Georgia Constitution. This bill is a
14 representation of that oath that we are not going to accept the status
15 quo. We are not going to look the other way anymore. We are going to
16 address a pressing problem and we are going to start today. Thank you,
17 Mr. Speaker. I yield the well.

18 **Mr. Speaker:** Gentleman had questions but his timing is expired and he did go over the
19 limit a little bit and I will make an adjustment in other speakers who are
20 speaking in favor of the bill so that we keep it fair. Chair recognizes to
21 speak to the bill Representative Casis. Representative Casas.

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1 **Rep. Casas (R):** Thank you, Mr. Speaker. Ladies and gentleman of the house, uh, I rarely
2 come to the Well as you know to speak on someone else's bill. But, felt
3 compelled in this instance. I will let others speak specifically on the
4 provisions of this bill. But, I want to address just some things about it
5 that I think will be a benefit as you make a decision. See, I understand
6 this issue from many different perspectives. Uniquely, as that. Unique in
7 the fact that I am a first generation immigration. My parents and I are
8 indebted to the Nixon administration and to our Congress who opened
9 the doors to Cuban refugees who escaped the island of Cuba and were
10 able to come to the United States. And, we did so in 1974 when I was
11 two years old and we came straight to Atlanta. So, I am not just the son
12 of an immigrant. I am an immigrant. But, I am also unique in the fact
13 that most of you probably have to answer the AJC or have to answer
14 other media outlets but for the last eight weeks I have been chased by
15 Mundo Hispánico, Univision and CNN en Español because they want a
16 quote and I haven't spoken to them. So, if they are watching this is the
17 quote and you are about to get it. I am also unique in my experience in
18 the fact that I was a target of mistrust in my past primary. Not because
19 of my solid conservative record. But, because of my last name. To where
20 my volunteers had doors slammed by my constituents in my party who
21 said I am not voting for someone that doesn't belong here. So, I

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1 understand the issues. Neither side can tell me I don't. I was here for the
2 debates of 529 and I casted my support and my vote. And, I am here to
3 tell you that HB 87 is a good bill. It is something that has been needed
4 and it is something that we have to do. And, I commend Representative
5 Ramsey for his work and the work in the open process that we have had
6 throughout this time. We are finally addressing identity theft which I felt
7 that 529 lacked. We are finally addressing private employment
8 provisions which I felt that 529 lacked. The fact is we have this problem
9 because our businesses are hiring illegal immigrants. You see it with the
10 quotes that are sitting on your desk. Last night two legislatures I admire
11 spoke about zero based budgeting. One said to the other, "whatever you
12 do with this bill keep it real." And I tell you that that is what we face with
13 this topic. Not just this bill but this topic because this is our second
14 attempt. Until we address America's need for hard working, responsible
15 labor and demand that businesses hire legal labor we will not completely
16 solve this problem. Now, DA King who has been an advocate of this issue
17 was quoted that "[the] purpose of HB 87 is that illegal immigrants leave
18 Georgia." Well, I tell you with this bill just like 529 they will leave. But,
19 they are not going to go back to their countries. They are going to go to
20 Alabama. They are going to go to Tennessee. They are going to go to
21 Florida and whatever states right now will hire them. Why? Because the

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1 conditions in their countries compel them to stay and to come. I was at a
2 pastor's conference in Mexico City quite a few years ago and there I
3 found out how their police force treats their own citizens. Where you are
4 pulled over at night and abused and maybe even beat up by your own
5 police force who wants to steal your wallet. That's not conditions that
6 any civilization can grow and prosper. And, so therefore they are
7 compelled to feed their children and feed their families to cross the
8 border even if it means illegally. There is where our problem lies. I had a
9 message sitting on my desk yesterday from a "Vivian" from District 21 she
10 tells, she told me vote for HB 87 because Americans want their borders
11 closed. Vivian, I am sorry to tell you that HB 87 is not going to do that.
12 But, that is the problem. What we are doing with HB 87 is sending a
13 message to President Obama to secure our borders. To our
14 congressional members to make real comprehensive immigration reform.
15 It is time for our federal government to do so. I see the light here on
16 telling me my time is up but I want to finish real quickly with just two
17 stories. There's a couple that were married in 1999 and during the New
18 Years Eve they were driving and they were hit in the back from a drunk
19 driver who was illegally in this country. Their mother was in the back
20 seat. The couple was in the front seat. The accident was terrible. Thank
21 God nothing happened to them. There was another couple that was on

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1 their way to the 7th District convention in 2003. They were expecting
2 their first child. They were also hit in the back from an illegal immigrant
3 who was here driving. You know who that couple was? That was me in
4 both instances. God protected my family in those instances and so I tell
5 you that we have to support HB 87. I understand both sides. But, it's
6 time to protect our citizens if our federal government will not do so. But,
7 do not think our work is done. We need comprehensive immigration
8 reform. Mr. Speaker, thank you. I yield the Well.

9 **Mr. Speaker:** Gentleman has yielded the Well and did his allocated time and that
10 adjustment will be made by others speaking on the same side of the
11 issue. The Chair recognizes to speak to the bill Representative Atwood.
12 Representative Atwood.

13 **Rep. Atwood (R):** Thank you, Mr. Speaker. Ladies and gentlemen of the house I stand
14 today to support our national sovereignty. To support our state
15 sovereignty. To support the rule of law. And, I enthusiastically ask your
16 support of HB 87. I submit to you that we cannot be a sovereign nation if
17 we don't protect our borders. And, that includes the borders of the state
18 of Georgia. Some have said that we should leave illegal immigration
19 enforcement to the federal government and respectfully, I submit they
20 are wrong. As some of you know, for a large period of my life I have
21 served as a federal agent with the United States government. I have also

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1 served as an attorney. I have served as a magistrate judge. I appreciate
2 the need for effective enforcement of our laws. I appreciate that that
3 must be balanced by constitutional standards. And, I welcome and
4 support legal immigration into our country and state. As a federal agent,
5 I worked alongside some of the most dedicated and patriotic people I
6 have ever known. We worked to combat illegal smuggling enterprises,
7 primarily illicit drugs, organizations that operated with a degree of
8 sophistication you can only imagine. But, we could not do it alone. Often
9 working alongside of us were police officers and state agents from
10 municipal and county law enforcement agencies. This same assistance
11 should be given at least to the degree that is allowed in this bill to the
12 enforcement of immigration laws. This bill hits to the heart of those who
13 profit on illegal immigration. It attacks the use of falsified documents. It
14 gives local police the authority and additional tools to assist in the effort
15 to combat illegal immigration. It does a myriad of other things to assist in
16 this effort without overburdening business, agriculture, tourism and it's
17 the right thing to do. As you consider this legislation, I want to leave you
18 with one thought. I know that we are limited on time and I am cutting
19 my comments short. I want to tell you about a fella', two men indeed,
20 one was Louis Dixon. He was 35 years old. He was married to Celeste.
21 He had a stepdaughter. He had been with the North Carolina State

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1 Highway Patrol for 14 years. His partner was Charlie Chuck McKinskie.
2 He was only in his 20s. He was a young kid. He was a bachelor. He was
3 a good man. He had spent several years as a sky marshal. And, both had
4 joined my old agency and were posted around Nogales, Arizona which
5 was a hotbed of smuggling, of drugs and illicit alias from Mexico into the
6 United States at that time. After they surprised a smuggler as he drove a
7 pickup truck north away from the Mexican border, Bud and Chuck gave
8 chase and were soon involved in a running gun battle. As they ran off the
9 road and the man slammed on his breaks, the agents burst out of the
10 dust and Chuck McKinskie was killed immediately. Bud Dixon pulled his
11 mortally wounded partner out of the line of fire and then he was killed.
12 The man who did it later died from his wounds. They were joined in the
13 fight. It's time now ladies and gentleman, I'll submit to you that we join
14 in the fight to do what we can to helping this effort, to stand by the rule
15 of law, to protect the sovereignty of our nation and our state and I ask
16 that you pass this bill. Thank you, Mr. Speaker. I yield the Well.

17 **Mr. Speaker:** Gentleman yielded the Well. The Chair recognizes the Chairman of the
18 Banks and Banking Committee, Chairman Morris to speak to the Bill.

19 **Chairman Morris(R):** Thank you Mr. Speaker. Ladies and gentlemen of the House, I rise in
20 support of HB 87. I must say I rise with some regret. Not because I think
21 there is deficiency in the bill. I think it accomplishes what we want to

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1 accomplish. The regret is the bill is necessary at all. Uh, as most of you
2 know, I represent the Vidalia area. Home of the famous sweet Vidalia
3 onions. World famous sweet Vidalia onions. It's a \$60 million dollar
4 industry so I don't take this lightly. I want to quickly clear up two
5 misconceptions. That the growers in my area want to break the law.
6 They do not. None have encouraged me to make it available or make it
7 so that they can break the law. What they want is the federal
8 government to have a workable H28 program so they can bring migrant
9 workers in, get the crops and then go home. That's what they want.
10 They want to follow the law. The second misconception is that every
11 migrant worker that's in my area wants to live in this country. Most of
12 'em have families. They love their families. They need work. They come
13 here to make money. They want to go home to be with their families
14 when the work is done. I live on 260 acres, our family farm. I put my
15 house right in the middle of it. I farm part of it. Sixty acres is leased to
16 Hernan Farms who grow some of the greatest onions, uh, that you'll see.
17 I have the pleasure every spring of watching that harvest in my front
18 yard. And, let me tell you something it is a pleasure to watch the migrant
19 workers work and they work. You know I have more in common with
20 those folks than I do of many of my contemporaries. You see because
21 even though I've got a continental, urban accent – don't let that fool you.

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1 I come from sharecroppers. My daddy was a sharecropper. My
2 grandmother was a sharecropper. They worked in the same fields in that
3 same hot sun. That same toil. They were picking cotton. Cropping
4 tobacco and dipping tar. So, for me to even look down in any kind of way
5 on these people would be denying my own heritage. I love to see those
6 people work. I am a living manifestation of the American dream. My
7 grandmother worked. My father worked and worked out of the fields
8 and worked hard and lived the American dream to have a better life for
9 their son and grandson and I am that manifestation. What is sad though
10 is the American dream has been traded. What we traded the American
11 dream and we traded it for a society of entitlement. It's not that the
12 workers are being exploited. Do you know those workers can make \$400
13 a day picking onions? But, now you gotta' work. I don't believe any of us
14 can stay with 'em. You gotta' work and you gotta' do it. But they can
15 make it. What we got. They trouble we got. And, Mr. Speaker, let me
16 say this – is we've always got some half-baked social worker standing at
17 the end of the field who wants to sign them up for everything they can
18 give 'em and instead of living the American dream we want to trap them
19 in the cycle of exploitation that so many Americans are in. It's regretful
20 that we have to have this bill. The American dream should allow that.
21 We are anti-immigrant. Don't blame the migrant workers. It's our fault

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1 for allowing our society to become a entitlement society. Not one that
2 the American dream that my daddy, uh, had for me. Thank you, Mr.
3 Speaker. I yield the Well.

4 **Mr. Speaker:** Gentleman has yielded the Well. Chairman recognizes Representative
5 Pak.

6 **Rep. Pak (R):** Thank you Mr. Speaker. Members of the House of Representatives, I rise
7 today in support of HB 87. To continue what Representative Casas has
8 said I could even go further. I am an immigrant. I am a first generation
9 immigrant in this country legally. I rise today to speak on the rhetoric
10 around, surrounding this debate. There has been much misinformation
11 regarding what this bill does. Specifically, I want to talk about the
12 opponents of the bill claiming that this bill legalizes racial profiling. With
13 all due respect to those who disagree with sponsors of this bill. The
14 statement that we are legalizing racial profiling is preposterous. Let me
15 initially note that the opponents and the rhetoric surrounding this debate
16 has characterized and confused the issues by calling this legislation
17 somehow anti-immigrant. It is not anti-immigrant. They failed to
18 distinguish between what is an illegal immigrant and a legal immigrant.
19 Of course, the purpose is not a good one. The purpose is to couch this,
20 this legislation as something that the Georgia legislature and the state of
21 Georgia is somehow targeting people who are here illegally. Let me be

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1 clear, the bill does not create a state law crime for someone who's here
2 illegally or someone who is out of status. But, that's what been
3 perpetuated out in the world and also in the papers that we are
4 receiving. I ask you as a member of the immigrant community please
5 stop. Because it is intentionally or unintentionally inciting unnecessary
6 fears in our community and the public at large. I think I could pretty
7 much say this that no one in this chamber no matter which side of the
8 political isle that you are on wants racial profiling. It's a bad thing. When
9 you ask the people that claim that this bill increases the chance of racial
10 profiling, you ask them what provision does that, they can't cite you on.
11 Specifically, the statute, the proposed statute outlaws racial profiling.
12 How much more clear could we get in sending a message that we are not
13 going to accept racial profiling. Unlike the Arizona law and there is
14 rhetoric out there calling this bill an Arizona copycat. There is no
15 language like Arizona bill in HB 87 allowing a police officer to stop
16 somebody based on a reasonable suspicion. Unlike the Arizona law
17 there is no state law [unintelligible] crime making it a trespass for
18 someone to be here illegally. I implore you to just read the bill. It
19 provides clear guidance on the police officers and law enforcement
20 exactly when they can investigate the status of a person and exactly
21 when they cannot. They also claim that it will discourage immigrants

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1 from reporting crimes when they are victims or witnesses. The bill once
2 again specially addresses this. It says when they are calling as victims or
3 witnesses the police cannot investigate the immigration status of the
4 person calling. How much clearer can we get? But, of course, if you read
5 the minority report it overlooks that fact and undermines that specific
6 language in the legislation. Above all I think the argument that somehow
7 traffic stops are often a pretext to racial profiling is an insult to law
8 enforcement. There are good men and women out there protecting us
9 from the danger. And, I truly believe that when they stop somebody in a
10 dangerous situation that the first thing in their mind is, whether or not,
11 the reason they stopped that person isn't because that person driving
12 while they are Hispanic or black. There might be some bad apples out
13 there but I refuse to believe that that is the case. There is no facts or
14 logical reasoning backing up the argument that we are somehow
15 legalizing racial profiling in this bill. With no facts or support or even the
16 law all you have is rhetoric and political theatre. Let me close with one
17 story that I have. I served for a pretty long time as a federal prosecutor in
18 the United States Attorney's office here in Atlanta, Georgia. By virtue of
19 that position I had the honor and the opportunity to preside over a
20 naturalization ceremony. And, I made the motion to make all of the
21 individuals who waited long years to become citizens of the United States

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1 and I made the motion for them to take the oath. We also took the oath
2 when we were sworn in as state representative. We must defend the
3 Georgia and the United States Constitution. All this bill is doing is
4 protecting those values that we have. I ask for favorable consideration of
5 Chairman Ramsey's bill. And, with that Mr. Speaker, I yield the Well.

6 **Mr. Speaker:** Gentleman has yielded the Well. We will not have any audible outbursts
7 for or against on the speakers. Chair recognizes Representative Setszler
8 to speak to the bill. Representative Setszler.

9 **Rep. Setszler (R):** Thank you Mr. Speaker . . . I rise to do three things. I rise to demonstrate
10 that there is rampant identity fraud in Georgia perpetrated both by
11 individuals and businesses and that that fraud is the specific responsibility
12 of this general assembly to address. Secondly, I plan to demonstrate that
13 illegal workers are taking jobs from Georgians in our districts [and] in our
14 communities. Thirdly, I plan to demonstrate that public funds used in our
15 schools and our public institutions are being channeled to illegal
16 immigrants and to illegally businesses and it's our job to address that.
17 And, lastly I'll demonstrate that E-verify works and it was created by our
18 federal government to address the issues we are addressing today. If the
19 clerk would play the video. I would like to share with you a 2 minute 55
20 second video and then Mr. Speaker, I will be glad to close and leave to
21 this to the Augusta body.

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1 Unidentified Fox 5 News video shown to house members

2 **Rep. Setzler (R):** Ladies and gentlemen, it is the responsibility of this general assembly to

3 ensure that felony identity fraud both by businesses and individuals

4 cannot thrive in this state. What you saw here on Fox 5 News is my high

5 school. That is Northcobb High School in Kenasaw, Georgia. Where

6 public tax dollars and our [unintelligible] is funding these fraudulent

7 businesses and illegal individuals. It is the responsibility of this general

8 assembly to deal with facts not with fiction and not with hyperbole.

9 There is misuse of our tax dollars right before us. And, I would argue with

10 you friends its our responsibility -- not the federal government's

11 responsibility to deal with these kinds of things. That's exactly what HB

12 87 does. Lastly, Mr. Speaker and I will close. The E-verify system is a

13 powerful system that is opposed not because it doesn't work but

14 precisely because it does work. Friends, the federal government

15 empowered us to have that system precisely to do these things. This is

16 our job to fix, friends. And, I would ask you to support HB 87 because

17 there are specific state issues not federal issues that is the pure

18 providence of the general assembly. And, I would ask this body to act

19 unanimously and overwhelming in support of HB 87 for these reasons I

20 provided today. Thank you, Mr. Speaker. I yield the Well.

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1 **Mr. Speaker:** The gentleman has yielded the Well. Just for members' planning
2 purposes we are going to take a little lunch break here today. We've got
3 a lot of speakers yet to go but we are going to get just a few more in and
4 then we are going to break for lunch and come back this afternoon.
5 Chair recognizes the chairman of the Agriculture and Consumer Affairs
6 Committee, Chairman McCall to speak to the bill.

7 **Rep. McCall (R):** Thank you, Mr. Speaker. I'm be real quick. What I wanted to do was
8 express my thanks to Representative Ramsey and the Speaker for all the
9 time that has been put in this and adjusting it to fit more palatable to the
10 growers of agriculture products in the state of Georgia. There is an
11 amendment with probably 30 signatures on it that it will help that. Uh, I
12 would hope that you would vote on that amendment when it comes up.
13 But the real thing I want to talk to you about for a second is on January
14 10th each and every one of us put our hand on a bible and took an oath to
15 uphold the Constitution of this state and United States. The fourth word
16 in the preamble of this bill is "illegal." And, I think when we took that
17 oath it commanded us as a body to not do anything to support any kind
18 of illegal activity. I would appreciate y'all considering voting for this.
19 And, again to Representative Ramsey, thank you for all your hard work.

20 **Mr. Speaker:** Gentleman has yielded the Well. Chair recognizes Representative
21 Dempsey to speak to the bill. Representative Dempsey.

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1 **Rep. Dempsey (R):** Thank you, Mr. Speaker and thank you for appointing me to the Joint
2 Study Commission this summer. We sat there and we listened and we
3 listened and I want to tell you that I listened quietly. I didn't say one
4 word or ask one question. I wanted to know what the roomful of
5 passionate and personal stories really were each day that we met. But, I
6 rise today because I can no longer stay quiet to deal with the reality that
7 our state faces in this very challenging time. As a mother and a
8 grandmother that reality in my mind comes most focused in a practical
9 way on education. I thank those teachers that get up every day right
10 now and go in that classroom and are compelled to teach every student
11 that is there. No matter what has brought them to their classroom. No
12 matter what walk they or their parents may have taken. But today in our
13 classrooms all across our state 175,000 students, nearly 10 percent of our
14 K thru 12 students are illegal aliens or are children of an illegal alien.
15 What that means is that \$1 billion dollars of our state QVE money is going
16 toward those children. And, that the local match. The absolute burden
17 on our local government is \$3,000 dollars per student. That's a reality I
18 cannot step away from. We cannot continue to put this burden on those
19 teachers while they also ask, "please don't furlough me" "please don't
20 make my classroom larger." This is how we do it. We take those real
21 dollars and we put them back into those classrooms where they really

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1 belong. I care very much about everyone who is in our state and that
2 they have the best opportunity allowed but we must deal with this
3 reality. I ask you to join me today to vote in favor of this legislation.
4 Thank you, Mr. Speaker – I yield the Well.

5 **Mr. Speaker:** The lady has yielded the Well. Chair recognizes Representative Dougan.
6 Representative Dougan.

7 **Rep. Dougan (R):** Thank you Mr. Speaker. I shall be very brief. We do need to step back
8 and think about what this is really about. This is about the rule of law
9 and our country founded almost 250 years ago was based on a rule of
10 law. And, are founding fathers were divinely inspired. And, we are sitting
11 here inheriting the prosperity, economic and worldwide success because
12 of that. And, I knew we had fallen as a country when I saw a headline on
13 my TV screen last year that said, “Arizona makes illegal aliens illegal.”
14 That is where we have gone. And, unfortunately we have to address
15 something today and it will be consequences to what we do today. And,
16 there will be difficulties for some Georgians, let’s be honest about that.
17 But I feel that the side effects of not doing anything or even worse to the
18 core values of our country. For our duties as legislatures, duties of
19 patriots [and] duties as Americans to support this difficult decision and
20 vote for HB 87. With that I yield the Well.

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1 **Mr. Speaker:** Gentleman has yielded the Well. Chair recognizes Representative
2 Harden. Representative Michael Harden to speak to the bill.

3 **Rep. Harden (R):** Thank you, Mr. Speaker. My friends, I think all of you know that I am a
4 huge supporter and proponent of agriculture in this state. And, I am also
5 a business owner. But it has disappointed me greatly to hear the biggest
6 argument in all the dozens of documents that have been put on my desk
7 this morning – the argument that’s being made is that we cannot afford
8 it. We cannot afford to do the right thing. Friends, this is a matter of
9 right and wrong. You know it was just a few days ago that we debated
10 the issue of sex trafficking. And, for those of you who don’t support this
11 bill I am thankful that you were asleep that day because if we had had
12 the pimps in this chamber maybe they had made the same argument. I
13 am financially benefiting from this. I know it’s wrong but this is about a
14 buck. My friends, there’s no difference. About 150 years ago folks in our
15 very chairs and those like it across the country debated a very similar
16 issue. Is it about the dignity of a human being or is it about the dollar.
17 You know, we have a shortage of engineers in this state. We have a
18 shortage of math and science teachers. The question is should we go into
19 our prisons and find those and let them out and give them a free pass
20 because they’re beneficial to society? That’s a stupid question, isn’t it?
21 And, yet every time I ask that question the answer is overwhelmingly,

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1 “No.” And the answer is this – it’s because it’s wrong. If you break the
2 law there is consequences there is no difference. Do we teach our
3 children make yourself irreplaceable that way you can get away with
4 anything? No we don’t. We tell them to live by the rule of law and to do
5 the right thing. A few short weeks ago we took an oath as we placed our
6 hand on the bible and we pledged to do the right thing -- to protect and
7 defend the citizens of this state without exception. Well, Georgia today
8 we are going to find out who meant it. I urge you to vote for this bill.
9 Thank Chairman Ramsey for his dedicated and unwavering just
10 amazement on this bill. I urge you to vote for this bill. Do the right thing.
11 And, Georgia watch and see how we act. Thank you.

12 **Mr. Speaker:** Gentleman yields the Well. Chairman recognizes Representative Kumer
13 to speak to the bill. Representative Coomer.

14 **Rep. Coomer (R):** Thank you, Mr. Speaker. I rise to speak to this bill and to address
15 concerns of those who have claimed that God himself is somehow
16 opposed to this bill. We’ve heard the bill is unchristian, immoral and
17 opposed to the principals of scripture. And, there are in fact scripture
18 references to aliens and immigrants throughout the holy scripture. First,
19 there are those scriptures that address the protection and good
20 treatment of aliens. Among those we find Psalm 146:9 that says “God
21 watches over the alien or sojourner.” Exodus 23:9 which is often quoted

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1 in this debate says “do not oppress an alien. You yourselves know it feels
2 to be aliens because you were aliens in Egypt.” Now, we are nation of
3 aliens and immigrants. And, my personal ancestry includes immigrants
4 from Germany and Ireland and we’ve got some Cherokee Indian and
5 probably some other things that didn’t get written down for prosperity,
6 uh, that make up our ancestral heritage. And some of you probably have
7 better blood lines than that but the bottom line is we all have ancestry of
8 immigration and immigrants in this country. And, you may not
9 remember the discrimination you faced by your ancestors but you know
10 the history and you know the discrimination they faced by virtue of not
11 being from around here. You know they suffered it. Scripture
12 admonishes us to remember and to refrain from allowing other aliens
13 and immigrants to be treated that way. This is one reason I support HB
14 87. This bill would discourage the predatory and abusive practices taken
15 against immigrants. It would operate to protect those most vulnerable
16 by discouraging those who want to take advantage of people who can’t
17 demand a fair wage. Protecting people who won’t report they have been
18 raped or beaten or abused or imprisoned for fear of reprisal from people
19 who [unintelligible] them into the country -- people who find themselves
20 in the hands and at the mercy of brutal criminals. And, when the
21 government is complacent in that heinous conduct, HB 87 gives private

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1 citizens who care for the welfare of immigrants a private right to seek
2 redress in the Superior court and to aid in halting discourage against
3 those who really cannot defend themselves. We are a nation of laws and
4 not of men and that means we do not rely on our bloodlines to
5 determine whether or not we are Americans and Georgians. Instead, we
6 rely on the law that governs us all to make us all Americans and
7 Georgians. If you believe in the rule of law then I ask you to join me as a
8 descendent of immigrants. As a lawyer who has studied and loves the
9 law. And, as a Christian that holds scripture as the highest director for
10 life. And, I implore you to vote in support of this bill. It's the right bill at
11 the right time. Mr. Speaker, I yield the Well.

12 **Mr. Speaker:** Gentleman yields the Well. Chair recognizes Representative Ferguson to
13 speak to the bill.

14 **Rep. Ferguson (R):** Thank you Mr. Speaker. This is a very interesting debate but I am a little
15 confused. I have several reports here that have been placed on our desk
16 this morning. The first is from the Asian American Legal Advisory Center
17 that talks about SB 1070 from Arizona. The second one is from a Dr.
18 Russell and I quote from him, "please do not disregard the efforts of
19 these immigrant workers." The third is a information sheet that discusses
20 undocumented immigrants. The reason that I am confused is because I
21 think that we are getting bogged down in rhetoric. Let's get to the facts

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1 of this bill. Let's look at line one of the bill. Line one. Specifically, the 4th
2 and 5th word – "illegal immigration." That's what this bill deals with it
3 deals with illegal immigration. I would like to reiterate the words of my
4 good friend, Representative Pak. He had some very wise words for us
5 this morning. This is not about profiling. This is not about scare tactics.
6 This is about *illegal* activity. Let's get past the rhetoric. The best way
7 that we currently have for employers to verify that they are hiring legal
8 workers, whether immigrants or U.S. citizens, is E-verify. It's a very
9 simple and quick solution. There's been a lot put on your desk about the
10 burden that it will cause businesses. I know firsthand that it is not a
11 burden. It a very minor way and a very minor task to ensure as best as
12 we can today that we are obeying the law in this state. I'd like to give
13 you a quick parallel of a similar electronic verification that I am very
14 familiar with and it works wonderfully. And, that is the FBI background
15 check for firearm transfers in this country as a part of the Brady Act. That
16 has been in place multiple years now and it has worked extremely
17 effectively online to ensure that criminals are not purchasing firearms
18 illegally. It takes about 4 minutes to proceed with this check. And, most
19 of the time well over 90 % those background checks come back in less
20 than 4 minutes. This is a very similar platform as one that we have
21 already have that has been proven in an industry time and time again

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1 that makes our state and our country safe. I see no difference with this.

2 In conclusion

3 **Mr. Speaker:** Gentleman's time has expired.

4 **Rep. Jerguson (R):** Thank you Mr. Speaker. I ask that you vote favorable for this bill and I
5 thank Representative Ramsey for his hard work.

6 **Mr. Speaker:** Gentleman has yielded the Well. Chair recognizes Representative
7 Spencer to speak to the bill. Representative Spencer.

8 **Rep. Spencer (R):** Thank you, Mr. Speaker. I rise today before this body and to voice strong
9 sentiments from the District 180 in support of HB 87. The sovereign
10 people of the 180th have grown impatient with the federal government's
11 ineptitude in enforcing the Constitution of the United States and the
12 federal immigration laws. The failure has cost this state more than \$2.4
13 billion dollars a year. Not only that, the federal government's
14 incompetence has cost us our state's sovereignty. This surrender of
15 sovereignty is the most costly consequence of all. The author of this bill
16 is doing his duty. He is duly responding to the will of the people of his
17 district and of this state. No government has the right to resist the
18 regularly expressed will of the sovereignty which created it. Either for
19 the purpose of retaining its power or continuing its existence against the
20 will of the people. The government of this state exists to protect the
21 people's lives, liberties and properties against violence and fraud. An

EXHIBIT B

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1 **Madam Speaker:** We are back on the Rules calendar. The Chair recognizes Representative
2 Peak to speak on the bill. Rather, the Chair recognizes Representative
3 Dollar.

4 **Rep. Dollar (R):** Thank you Madame Speaker. I don't think I have too much to add that
5 hasn't already been said here today but I still felt compelled to come up
6 and just say a few words. I had intended to ask the author a couple of
7 questions but obviously we ran out of time. A number of years ago when
8 we had some landmark legal immigration legislation come through here
9 we addressed an issue of proper ID. Something that is the author
10 referred to as secure and verifiable. At that time I had obtained a
11 matricular consular card. In fact, I had obtained two. So, I am glad to see
12 that that easily obtained identification is addressed in this bill. Here is
13 what it looks like In case you never seen one. It's my name, and my
14 photo and my birth date. It says I was born in Guadalajara. Another item
15 I would like to address is , uh, we've gotten a lot of things on the desk
16 relating to the business community. I have one regarding Kia. A couple
17 of other businesses here in Georgia have been referenced. To those
18 industries, I would, I just would like to reiterate what already has been
19 said and that this is not an anti-immigration bill this is an anti illegal
20 immigration bill. My next door neighbor is from Uruguay, South
21 American. The bank teller at the bank I go to is from Croatia. And, just

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1 yesterday I met the head of the PTA at Eastside Elementary School in my
2 district who is from Turkey. Her children are from Turkey and when she
3 brought them over here she taught them not their native tongue but
4 English, primarily. And, I just think that it is incredibly hypocritical and
5 insulting for you to tell these people who are immigrants and who
6 worked very difficult, you know very difficulty, very diligently to become
7 citizens in this country to look at them and say it is for not. It is for
8 nothing. Um, some of the immigrants I have talked to. Several of which
9 have stood up here today are actually, probably feel stronger about this
10 bill than many of us who will be voting for it. And, I just want that to be
11 acknowledged and remembered because I think it's important. And, with
12 that Madame Speaker, I yield the Well. Thank you.

13 **Madame Speaker:** The Chair recognizes Representative Crawford to speak on the bill.

14 **Rep. Crawford (D):** Thank you Madame Speaker. Ladies and gentleman I will be but a
15 moment. My purpose today is to keep the word that I have given to my
16 constituents. The legislation before us is imperfect. There are parts of it
17 which certainly do concern me. And, there are parts of it that will create
18 issues as we go forward. Nonetheless, at the end of the day my county is
19 a very economically depressed area. We have very high systemic
20 unemployment. We rank on the top tier of economic development
21 incentives. And, I have been repeatedly contacted by constituents of

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1 mine who are out of work and have been for some time. And they have
2 reported to me incidents where they have applied for work and been
3 denied jobs based on what they consider to be questionable
4 circumstances. In response to their concerns I gave them my word that if
5 presented with the opportunity to vote for E-Verify that I would do so. I
6 come today to keep my word that I have given to them. I will vote for
7 this bill so that we may implement E-Verify to protect all of our citizens.
8 Particularly, in this time of high unemployment. I will not belabor the
9 point. I think everyone knows what they are going to do. I am here
10 today simply to keep my word. And, I yield the Well.

11 **Madame Speaker:** Chair recognizes Representative Peake to speak to the bill.

12 **Rep. Peake (R):** Thank you, Madame Speaker. I rise today in support of HB 87 with a
13 couple of points. One, I want to commend my friend and colleague Matt
14 Ramsey. You have done a great job with this bill -- open, transparent the
15 way legislation ought to be done. And, uh, thank you for that hard work.
16 Many of you may know the Georgia Restaurant Association has opposed
17 this bill. Georgia Restaurant Association's \$14 billion dollars of revenue,
18 17,000 restaurants, 375,000 jobs in this state. The largest non-
19 government employment sector in the State. And, they have opposed
20 this bill. Well, a couple of things -- I am a restaurant owner. I own 18
21 restaurants across the state. I am a member of the Georgia Restaurant

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1 Association, for now. They have had no discussions with me. Not one
2 word. Not one phone call. Not one email to discuss this bill. I am a
3 restaurant owner. I am a member of the Georgia Restaurant Association
4 and I support this bill. The argument that it is a federal – their argument
5 that this is a federal issue and should be left to the federals is not valid
6 when you realize the cost to our state is over \$2 billion dollars. The
7 second point I want to make is regarding E-Verify. We have heard a lot
8 about how difficult it is. It is not accurate. We can't – as a restaurant
9 owner and a small business owner and a small little staff of 3 or 4 people
10 that take care of my business, I can sit here today, stand here today and
11 tell you that E-Verify, the E-Verify set up was simple and easy to use. It
12 took about 15 minutes to set up. We have about 15 to 20 new
13 employees each week that come through our little business. It takes
14 about 30 seconds to input their name, social security number, date of
15 birth to find out if whether they are a valid citizen in this state. We get
16 immediate results to find out if it kicks out a problem with their date of
17 birth, name and social security number. And, then we give the
18 opportunity to our employees to correct that. And, so I am here tell you
19 that the argument that the E-Verify system would be a hindrance to
20 business is not a valid one and not a valid argument. I urge you and

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1 encourage you to support HB 87. Thank you Madame Chair. I yield the
2 Well.

3 **Madame Speaker:** The gentleman has yielded the Well. The Chair recognizes the Majority
4 Chairman. Caucus Chairman Representative Sheldon to speak to the bill.

5 **Rep. Sheldon (R):** Thank you, Madame Speaker and members of the house. Today I rise in
6 full support of HB 87. on January 21 – on January 12, 2001, the Gwinnett
7 County Sheriff Department Immigration Custom Enforcement or ICE
8 began a 26-day search at the jail to check all inmates for their
9 immigration status. At the end of 26 days ICE had placed detainers on
10 914 foreign inmates in order to begin deportation proceedings. These
11 numbers reveal that 68 % of our foreign born population at the jail is
12 here illegally. Charges included dozens of violent offenses such as
13 murder, rape, armed robbery and child molestation. Fifty-four percent of
14 the 914 had a previous criminal history. The vast majority of those with
15 prior criminal histories had previous criminal histories in Gwinnett. No
16 one has ever been deported from the US of A -- USA for a traffic offense
17 or any other minor offense. The singular reason for deportation is a
18 violation of American immigration laws. Border patrol agents risk their
19 lives to secure our borders. Not using any and all available federal tools
20 given to us by the feds to help locate the illegal aliens who escaped
21 capture and make it to Georgia, it's a dishonor the work of the brave

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1 border patrol agents. The rich tradition of legal immigration in our nation
2 inviolate the oath of office we took and hold in the state of Georgia and
3 the US Constitution. The Gwinnett Sheriff's Department testified at a
4 joint committee hearing that in addition to removing thousands of illegals
5 from the county our 287 G use has resulted in fewer illegal aliens being
6 arrested and a lower population of foreign born inmates and an overall
7 savings to Gwinnett taxpayers. Similar reports are flooding in from
8 jurisdictions using 287 G is a proven deterrent to illegal and I repeat
9 illegal immigration. We are proving daily the commonsense axiom that
10 enforcement works. This bill will expend on the tried and true notion and
11 give our law enforcement additional tools to better enforce the law all
12 across the state. Nobody in Georgia can reasonably say that we need
13 more illegal aliens or that we shouldn't do all possible to protect real
14 legal immigrants and the Georgia citizens from the crime of illegal
15 immigration. Use of E-Verify to stop illegals from being hired and the use
16 of 287 G to help locate the illegals in our jails can only serve to protect
17 jobs and increase public safety. I yield the Well.

18 **Mr. Speaker:** The lady has yielded the Well. The Chair recognizes to speak to the bill
19 the Speaker pro Tem of this House. Speaker pro Tem Jones.

20 **Speaker PT Jones(R):** Thank you Mr. Speaker. We are a generous country and nation. The US
21 has welcomed more legal immigrants for each of the last 30 years than

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1 the rest of the entire world put together. In fact, in recent years half of
2 our new legal immigrants have come from Mexico. We welcome them as
3 fellow citizens. This is not merely an illegal immigration issue it's an
4 education problem that goes to the heart of our ability to provide quality
5 education to *our* state's children. How can we afford to not address the
6 economic burden placed on core services by those that come to our
7 nation in circumvention of federal law? There are more than 64,000
8 school aged illegal aliens and 90,000 US born school aged children of
9 illegal aliens in Georgia's public schools. We are funding them at an
10 average cost of \$7433 per student in state and local funding. Without
11 raising taxes by one red cent Georgia could devote 10 % more in per pupil
12 funding if not for illegal immigration. Additionally, 50 % of illegal
13 immigrant adults have not completed high school. Eight-five percent of
14 adult Americans over the age of 25 have completed high school. Illegal
15 immigration is costing state taxpayers, our public schools and local
16 property taxpayers. It's compromising our state's prosperity and we
17 cannot afford it. As state legislatures we don't have the authority to
18 enforce our country's borders. We can though make Georgia less
19 attractive as a haven for illegal immigrants by voting for HB 87. Thank
20 you and I urge you to vote for the bill. I yield the Well.

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1 **Mr. Speaker:** The lady has yielded the Well. The Chair recognizes the whip of the
2 majority party caucus Representative Lindsey to speak to the bill.
3 Representative Lindsey.

4 **Rep. Lindsey (R):** Thank you Mr. Speaker. Last night as I was slowly falling asleep or trying
5 to fall asleep, I decided to reach for some fiction to help me along my
6 way. So, I reached and grabbed for the minority report to HB 87. Now,
7 I'll tell you this it doesn't have a whole lot of action to it but it does have
8 a great amount of fantasy. Let me sort of walk you through real quickly
9 the problems with this minority report. On economic impact what it
10 totally, totally ignores is the \$2.4 billion dollar impact that illegal
11 immigration has on the state of Georgia. That includes a \$1 billion impact
12 on our K - 12 education. Their only argument in favor of the negative
13 economic impact in Georgia is based on fear and distortion as to what
14 exactly is in this bill. And, for those of us who received the emails
15 regarding HB 87 that oppose it. We understand what that means. How
16 many of you have received emails in which what is in this bill is totally
17 and completely distorted? I have gotten a new way of dealing with it – I
18 simply shoot back a link to the bill and say read it and then email me
19 back. And, yet to have someone come back yet. Therefore, if we get
20 folks to stop demonizing this bill and read it, I do not worry about the
21 economic impact. Secondly, the minority report talks about the impact

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1 on local government. Keep in mind that this bill only allows lawsuits
2 against local governments if they do one of three things: If they fail to
3 use E-Verify when it comes to contracts, government contracts. In other
4 words, if they fail to police to make sure that only businesses that
5 operate legally can do business with the local governments. Number
6 two, if the local governments fail to do the proper investigation to make
7 sure that only folks that are entitled to receive benefits actually receive
8 those benefits. In other words, if local governments fail to protect the
9 taxpayer's hard earned money then a suit can be filed. And, number
10 three of course, if a local government decides to create a sanctuary city.
11 Those are the only three instances in which a lawsuit can be filed. And,
12 Representative Ramsey has already talked about the various hurdles.
13 The very difficult hurdles that have to go through before the lawsuit can
14 move forward. And, number three regarding E-Verify. They say that it is
15 a 50 % inaccuracy rate. A total and complete fiction. The fact of the
16 matter is 97 % of the time when someone's name is plugged into E-Verify
17 it comes up green that they can, that they are entitled to work. Only 3 %
18 are rejected. And of those 3 % there is a process in place a due process
19 process in place for those folks who are legitimately here in the United
20 States to clear up the record so that they can get a job. The only thing
21 that this minority report cites to in regards to the questioning the

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1 accuracy of E-Verify is the amount of documentation which is fraudulent.
2 The fact of the matter is this bill tries and in fact does attack just that
3 issue. The fourth thing it talks about is community impact. In which the
4 opening line is this bill as structured will legalize racial profiling. Probably
5 the greatest single state of fiction that is contained in this minority
6 report. It has absolutely no basis whatsoever and all it's doing is creating
7 fear mongering. The fact of the matter is as Representative Ramsey very
8 clearly pointed out – all that is allowed in this bill is that as part of a
9 criminal investigation if the local law enforcement agent cannot
10 otherwise verify who they are dealing with they can then check on that
11 individual's immigration status. That is commonsense. Now, all of us
12 who have been here even the freshman have come to recognize that
13 there is a difference between citing a reason for opposing a bill and citing
14 an excuse. And, the fact of the matter is this minority report is merely an
15 excuse. Those who oppose this bill do so for one simple ideological
16 reason – they do not agree with the immigration laws of the United
17 States and they do not believe that they should be enforced. That's the
18 bottom line. For those of us who favor this bill our reason is simply this –
19 we believe in the rule of law. We believe that businesses that are
20 following the law in terms of who they are hiring and making sure that
21 they are only hiring legal residents should not have to compete unfairly

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1 with those who are not. Who are instead siphoning in illegal residents
2 and cheap labor. Businesses who are doing it right should not have to
3 compete with those who are not. Furthermore, taxpayers, voters the
4 folks who sent us here should not be required to bear the burden of a
5 failed federal government's enforcement policy when it comes to making
6 sure that only their hard earned taxpayers, their own hard earned tax
7 money is actually going to those people who are legally entitled to
8 receive it. Those are the reasons why I support this bill. Those are the
9 reasons why I believe that the overwhelming majority of his house
10 supports this bill. We should not allow these excuses cited in the
11 minority report to dominate here today. Mr. Speaker, I yield the Well.
12 This is a good piece of legislation. This is a legislation that has been
13 vetted and worked on exhaustingly before session and during the
14 session. It is an important step forward for this state and it is an
15 important call to the federal government – do your job. Mr. Speaker, I
16 yield the Well.

17 **Mr. Speaker:** Gentleman has yielded the Well. Chair recognizes the majority leader of
18 this house. Majority Leader O'Neal to speak to the bill.

19 **Rep. O'Neal (R):** Thank you Mr. Speaker. Ladies and gentlemen. We are a country that
20 that makes law of its people by its people. Law is not made by a dictator
21 or regime in America. We are a country that has a long history of respect

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1 for its rule of law. We do not have a history of condoning for any reason
2 violations or violators of our law. We all know legal pathways to
3 citizenship exist in this great nation. And, everyone here is a direct or
4 indirect evidence of that fact. We all know legal means for obtaining
5 seasonal labor assistance exist. I respectfully submit to you that if we as
6 a nation continue to ignore our own law for convenience sake we
7 undermine the fundamental integrity of our law. It's often said that the
8 Devil is in the details. In the case of illegal immigration the details have
9 been the Devil to our citizens. Ladies and gentlemen freedom as we
10 know it cannot sustain lawlessness. We must act now and decisively.
11 The decision before us fundamentally is truly whether or not we respect
12 our own rule of law. If you do respect our law join me and vote Yes on
13 HB 87. Mr. Speaker, I yield the Well.

14 **Mr. Speaker:** The gentleman has yielded the Well. That concludes the list of speakers
15 of those who have signed up for 90 minutes in favor of passage of the bill.
16 We will now go on to those that have signed up to speak, I think by
17 previous agreement, except for the minority report, for 11 minutes each.
18 The Chair recognizes Representative Marin to speak. Representative
19 Marin.

20 **Rep. Marin (D):** Thank you, Mr. Speaker. Good afternoon. Buenos Aires. For the record
21 allow me to say that, yes the United States has not adequately and

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1 sufficiently addressed the issue of immigration. Our federal government
2 has yet to adopt legislation to correct many of the policies and
3 problematic challenges that could bring relief to our families, universities,
4 public agencies and businesses. I recognize we have a situation that
5 requires thoughtful and substantive action. It requires our federal
6 leaders to think strategically about the long term implications of any
7 course they intend to take. We also recognize the frustration many of us
8 have at the state and local levels due to the federal government
9 remaining disengaged. This level of frustration has lead to many states,
10 counties and municipalities establishing policies that they believe are in
11 the best interest of their government and constituents. As legislators we
12 all feel compelled to act when conditions exist that impact our economy,
13 institutions and overall quality of life. I can safely say that immigration
14 does indeed fit with the aforementioned category. The question is how?
15 How are we going to respond to challenges that confront us? How are
16 we going to ensure our decisions are based on fairness, justice and acting
17 with the best intentions? How are we going to guarantee what we will
18 do today will not come back and haunt us tomorrow? In examining the
19 provision within HB 87, I would question whether this is the appropriate
20 response our state should have on the issue of immigration. I strongly
21 oppose this bill due to its lack of moral decency by forcing human beings

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1 to be regulated to a second class status. Its willingness to enforce a new
2 version of the Fugitive Slave Act of 1850 where neighbors become duty
3 bound to notify authorities if they suspect someone of being illegal. And,
4 it being extremely burdensome to local governments who must expand
5 their responsibilities without a penny of state funding being appropriated
6 for staffing, training, processing or holding of captured human beings.
7 During a time when our economy is desperately trying to improve. Our
8 unemployment rate is in double digits. Many of our children will not
9 enjoy the full benefits of full scholarships and grants. Foreclosures
10 continue to plague many of our communities and people are finding it
11 more difficult to pay for medical service. Do we really believe now is the
12 time to create a Gestapo state where every person who looks, sound or
13 have the surname of an immigrant must provide papers as in South Africa
14 to prove their citizen or legal residence? It is creating a culture of fear
15 and distrust. The best way we can effectively respond to the present
16 issue of the day is No. No. No. If the authors of HB 87 think this is some
17 peninsula that will cure all of our ills as a state you are sadly mistaken. I
18 know how easy it is to identify a group of people and dump all of our
19 frustrations on them. We see it happen every election cycle. "Let's
20 blame the immigrants for all our problems." "If every brown and black
21 skinned people whose undocumented left Georgia then our economy

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1 would improve.” “Our test scores would increase.” “Everybody would
2 have a job.” My apologies but I support policy that deals with reality. HB
3 87 does not represent the ideals and values of Georgia and will not
4 relieve our state from the challenges of immigration. All it does is
5 confirm that some of my colleagues have no real plan to help our citizens.
6 Only a policy of distraction, disillusion and despair. Thank you, Mr.
7 Speaker. I yield the Well.

8 **Mr. Speaker:** Gentleman has yielded the Well. The Chair recognizes Representative
9 Kendrick. Representative Kendrick to speak to the bill.

10 **Rep. Kendrick (D):** Thank you, Mr. Speaker. Most of you know I don't speak much unless I
11 have something really, really important to speak today. Today I rise in
12 opposition to HB 87. And, let me clarify a few things before I begin. I am
13 not in support of illegal immigration. I know a lot people may come up
14 here and make it seem that if you are opposition to this bill you are in
15 support of illegal immigration. That is not the case. Mentioned also. It
16 has also been mentioned about the rule of law as is those that are in
17 opposition to this bill do not understand the rule of law. Many of you
18 know that I am a practicing attorney. And, although I have only been
19 practicing for a few years, I do understand the rule of law. But, I also
20 understand that there are civil rights and many supporters of this bill will
21 point to the fact that this bill is based on immigration law but they fail to

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1 mention the civil rights law side of it. We don't get to choose in this
2 country what type of law is going to be held above others. And now that
3 I have clarified that, I want to tell you that I am up here in opposition to
4 this bill representing small to medium sized businesses owners because I
5 am a business attorney. And, this is my passion and I have concerns
6 about the effects it is going to have on this group of people. Now, many
7 in this room are small business owners so I am speaking specifically to
8 you. And one question that I have to ask is what about jobs? If this bill
9 passes it will stifle tourism. If tourism is stifled small to medium size
10 business owner revenues will suffer. If small to medium size business
11 owner revenues suffers employees are going to suffer through
12 termination and cut in hours. Now many of you ran on this platform of
13 economic development. I ran on the same platform. Unemployment in
14 this state is at 10.4 %. So, I just want to give you some interesting facts
15 about our small to medium size business owners in Georgia. According to
16 the SBA small businesses those that employ less than 500 employees
17 account for almost 90 % of the workforce. In order to employ this many
18 people small to medium size business owners need money. And one of
19 Georgia's biggest money makers is tourism. Creating 541,500 jobs and
20 \$6.9 billion in residential income. As of today the Secretary of State has
21 registered over 87,000 new businesses in Georgia not including general

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1 partnerships and sole proprietorships. As of today this year the Secretary
2 of State has registered almost 16,000 new businesses. The Congressional
3 Budget Office predicated that because of the E-Verify system that took
4 place in Arizona that what happened is many businesses would hire
5 workers off the books and would not pay the crucial payroll and other
6 taxes to their state and local governments and this is exactly what is
7 happening in Arizona. Who wants to drive to a state for fear that they
8 will be pulled over and asked to show papers for fear of being jailed for
9 any length of time? No one. Who wants to ride through a state that
10 penalizes riding in the car with a friend that may be illegal? No one. Who
11 wants to start a business, continue and grow a business, or bring clients
12 to a state that profiles individuals no matter what the author may claim?
13 No one. What this bill does is harm businesses. It harms my business. It
14 harms your businesses. It harms Georgia's businesses who are already
15 suffering under these economic conditions. I ask you to oppose HB 87
16 and before you push that button ask yourself, What about the jobs?
17 Thank you, Mr. Speaker.

18 **Mr. Speaker:** The lady has yielded the Well. Chair recognizes Representative Drenner
19 to speak to the bill. Representative Drenner.

20 **Rep. Drenner (D):** Thank you Mr. Speaker. Ladies and gentleman of the house, I rise today
21 in opposition to HB 87. And let me say before I go into my prepared

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1 remarks. Let me say that I am a law abiding christen American citizen
2 and I do not support illegal immigration. Let me say this again, I am a law
3 abiding christen American citizen and I do not support illegal
4 immigration. However, I do believe that this is a federal issue – not a
5 state issue. For those who would say that our federal government has
6 failed to act, I agree. But the reason is a federal issue is simple.
7 Immigration is complex and not easily addressed through state legislation
8 that cannot address the root causes. I want to draw your attention to
9 section 11 of the bill. And, before I do that let me just tell you that for
10 the last 6 terms I have had the privilege. And, let me just say the
11 privilege of representing one of the most diverse areas in the state of
12 Georgia – the city Clarkston. The city of Clarkston has approximately 20
13 different nationalities and 51 different dialects -- 20 different
14 nationalities and 51 different dialects. And, so I would like for you to pull
15 section 11. Section 11 deals specifically with the provision of the Arizona
16 law that the federal judge found the most problematic – empowering law
17 enforcement to investigate the immigration status of a person who they
18 believe is undocumented. The law tries to change the language of the
19 Arizona statute by saying “the law enforcement officer must have
20 stopped the criminal suspect and have probable cause to believe the
21 person committed the crime before giving them cart blanche to then

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1 seek to verify the suspects immigration status. If the suspect cannot
2 produce one of the documents listed in the code section 50:36:2 or a
3 driver's license or state ID card or proof of legal status or a federally
4 issued ID document or other information to independently identify the
5 suspect." The sponsor of the bill maintains that by taking out reasonable
6 cause to believe a person is undocumented that he has cured the
7 constitutional defect in the legislation. But contrary. He has made the
8 law even more unconstitutional because he has removed what could
9 have been the basis for determining legitimate immigration inquires and
10 turned it into a completely arbitrary process. And while he has also
11 exempted individual police officers from liability he has not exempted
12 county or local governments who will be the subject of that fictitious
13 profiling lawsuits that we were told about earlier from liability. I would
14 not want to be a police officer who has to enforce this law because he
15 has either has to ask *every* driver he stops about their immigration status,
16 regardless of what status the person appears to have or he has to ask
17 *none* of them. Any action in between will be subject of a lawsuit. More
18 importantly, this particular part of the Arizona law was struck down
19 because it was preempted by federal law in that it impermissible
20 burdened the federal immigration authorities and thus could not be
21 enforced. Nothing about this version of the law changes that analysis.

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1 And by passing this legislation the legislature would be setting the state
2 up for a lawsuit to defend. A lawsuit it will lose. Further, this section
3 expands the definition of a criminal related stop to now include *traffic*
4 *offenses*. So, if you thought speeding was a simple traffic violation think
5 again. It is not a criminal offense in Georgia. And, what about
6 passengers in vehicles or other occupants of a house or other people at
7 the business? This provision has long reaching and very severe
8 implications for anyone who is a friend of the Constitution. I ask you to
9 do the right thing and vote against HB 87.

10 **Mr. Speaker:** The lady has yielded the Well. Chair recognizes Representative Neal.
11 Representative Yasmin Neal to speak to the bill.

12 **Rep. Neal (D):** Thank you, Mr. Speaker. I do respect both sides of this debate. But, this
13 is my reason for opposing this bill. I am speaking in reference to the law
14 enforcement piece of this bill. As a police officer and as a state
15 legislature, I can offer some insights my colleagues cannot. First, HB 87
16 creates a one-size-fits-all approach to law enforcement which ignores the
17 cuts and cutbacks to public safety. Because undocumented populations
18 vary widely across the state, local law enforcement requires some ability
19 to deal with situations on a case by case basis. Not everyone can drive
20 the 4 hours to an ICE location or immigration location and wait for
21 processing. Along with that, it puts officers in dangerous positions

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1 because over the past few weeks I have been advised that this bill does
2 not criminalize being an illegal immigrant. But, as of today on line 510 -
3 512 35-6(d) it does indeed give authority to police who arrest for being
4 an illegal immigrant. With that officers will be allowed to arrest an illegal
5 immigrants. But, each time an encounter is made with an illegal
6 immigrant, officers are going to be put in positions where they may have
7 to fight for their lives each time because the illegal immigrants may be
8 fighting for their freedom each and every time if this bill leaves this
9 capital. As a matter of a personal reference it may not matter to some
10 but I myself have been in some serious fights with people who did not
11 want to go to jail. With persons that did not want their freedom taken
12 away. And, ladies and gentleman that can seem like the longest 5, 10 or
13 15 minutes of your life. Freedom is all that a person has left but this
14 battle is not ours at this moment. Law enforcement does not have the
15 numbers nor the amount of resources on the county or city level nor the
16 funding. And, the fact that my fellow police officers are about to be put
17 into some very dangerous situations and a war is about to be raised in
18 our streets deeply, deeply concerns me. With the shortage of officers
19 already and the lack of funds available to fund officers in departments
20 that are short staffed as well this will be offices in a very, very dangerous
21 position. A position that they are not equipped to handle. A position

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1 where they may be in a dangerous altercation and help will be too far
2 away or worse due to being short staffed not have the backup available
3 at all. Until we are able to adequately equip our police officers with the
4 money and a force big enough to handle the immigration issue, I feel that
5 this attempt of this bill should be exhausted until such time when the
6 state can afford to fund the effort. I am not saying that I don't under that
7 immigration is a problem. While it is there is another way to fix it and fix
8 it in a manner where the state can handle it and the time is not right
9 now. Also, a vague reference to – immunity is referenced in the bill but it
10 doesn't explicitly state, explicitly state that officers are released from all
11 liability from lawsuits for a failure to act. A failure to act because county
12 agencies should be able to use their own discretion based upon their staff
13 and resources and not be subjected to lawsuits if they cannot afford or if
14 they aren't staffed well enough to handle the effort. Mr. Ramsey advises
15 that there are 425,000 illegal aliens in Georgia. There are only as of 2009
16 per the Georgia Peace Officers Standards and Training Counsel 58,818
17 police officers in this state. We are outnumbered 8 to 1. Also, ICE
18 immigration does not come at the drop of a hat, ladies and gentlemen.
19 They come when they can. The jails will stay crowded and severely cost
20 taxpayers more money per inmate. Also, it's easy to say let law
21 enforcement handle it when people are saying you don't' have to put on

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1 that bullet proof vest everyday and go into the streets. To conclude, by
2 the grace of God -- God has seen me through some bad situations
3 because I know what it feels like to be in a fight with someone who will
4 not give up and will not to jail easily. I have been in a position where we
5 have been short staffed and I have had to keep fighting and wait for
6 backup and continue to yell on the radio for help to keep coming and still
7 continue to fight until they got there. So, with that being said we are
8 treading into dangerous waters. Like I mentioned before I am not saying
9 I don't under that immigration is a problem while it is there is another
10 way to fix it and fix it in a manner where the state can handle it. And, the
11 time is not right now. So, if you will join me I will be voting no on behalf
12 of the men and women in blue who protect our streets everyday that
13 cannot be in this position right now. Thank you.

14 **Mr. Speaker:** The lady has yielded the Well. Chair recognizes Representative Williams
15 of the 165th task district to speak to the bill.

16 **Rep. Williams (D):** Thank you, Mr. Speaker. I was getting worried earlier in this session that
17 this was going to be a boring session. I am so glad that we stepped it up
18 today. My goodness. I was getting so much love around here, I was
19 afraid to come back. And, while I've been listening to this debate I wrote
20 so many notes until I don't know where to start. Well, I can say this; I
21 came up with some mathematical answers. We solved the problem with

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1 hope because if this bill does what it says it'll do just 25 % of the way --
2 I've found \$600 million new dollars since its costing \$2.4 billion now 25 %
3 of that we've got \$600 million dollars. *We don't have a problem with*
4 *hope. We have ended it with this bill. It's been a miraculous day. It's a*
5 *moving moment. I. also . . . I have been so impressed and moved with all*
6 *of these good things said by E-Verify. In the last two years it's the first*
7 *good thing I heard said about the federal government. If the government*
8 *is as bad as I have been hearing for two years, E-Verify ain't gonna work.*
9 *How did they get so good overnight? Interesting. You know, I left a*
10 *couple of things on my desk by mistake. I just wanted to share them.*
11 *We've heard some great immigrant experiences. So, you can empathize*
12 *with me because I have some experiences too. See, my experiences are*
13 *not as an immigrant, but, just four generations ago my folk didn't come*
14 *as immigrants. We didn't have to clear customs because most of the*
15 *times we came in illegal and were given documents where we could walk*
16 *from one plantation to the other. Probable cause -- you could be*
17 *stopped and asked for your papers and you had to produce them.*
18 [Representative is handed documents from unidentified person]
19 This one [referring to an unidentified document] is letting everybody
20 know that Shelly here is owned by a gentleman and he has approved her
21 moving around with this paperwork. I am a little worried about probable

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1 cause when my friends, and I love everybody in here. I had a great time.
2 I loved the minister this morning because he reminded me about the
3 meaning of love regardless to disagreement. But I am a little concerned
4 about our ability to write fair legislation when two years later we can't,
5 we still can't decide or we still have not decided the President is a citizen
6 himself. How in the world are we going to decide who is citizens in cars!?
7 My goodness. It's an interesting scenario here. Now, how in the world
8 are we going to find the cost, the counties and cities to enforce this?
9 When we've got state patrol cars breaking down. Because they got so
10 many miles on them. How they gonna' chase somebody? When cars are
11 falling apart. I mean, we've got. We've got unfilled post in the state
12 patrol. We have got. The GBI can't even turn around autopsy reports in
13 a timely manner because we have cut their budgets so severely. Who in
14 the world gonna' enforce this? Oh! let's just pass it down the same way
15 we do to city and county government and let them take the blame.
16 That's exactly what we talking about. We are telling counties and cities.
17 And then we talk about federal government abdicating it's responsibility.
18 Yes, it's a federal job. Yes, it should be done. But, might I remind my
19 friends across the aisle only 10 of the last 31 years have been in
20 Republican hands. You had a lot to time to solve this on a federal level. I
21 don't know why we think all this problems just came over the last two

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1 years! My goodness it didn't just start. And, last time I checked we
2 weren't bordered by Mexico. I am so glad, so glad that the people who
3 are fleeing the tyranny of a desperate dictator in Libya today don't have
4 us at the borders because we want to check the papers. You can't come
5 until we find out that you are legal. Die at the border. Nobody ever
6 thinks about these terrible illegal aliens when I watch a pickford (?) up at
7 the corner to paint your house. Rake your yard and cook the meals. You
8 always – no questions about their papers then. *Don't change the*
9 *inscription* on the Statue of Liberty. We are a great country because we
10 are a country that has always invited those that yearn for freedom to
11 come to our shores. And, we're still that county. That emblem still
12 means something. Give me your poor. You're yearning to be free. Still
13 the same inscription. Just because the entry changed from Ellis Island to
14 the Rio Grande it hasn't changed. Folks want the same things. They use
15 to run ads about the lousy Irish. The no good Italians. Coming here, I saw
16 the sign "Go back to Africa." We've always gotten hot in hard economic
17 times. But this is still America. Read one little piece and I am finished –
18 and this little piece said, "America deserves a just immigration policy.
19 One that begins with securing not closing our borders. One that provides
20 a temporary guest worker program and one that offers a pathway for
21 earned legal citizenship a temporary residency." This comes from the

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1 ultraliberal Dr. Richard Lane, President of Ethics and Legal Committee,
2 Southern Baptist Convention. Mr. Speaker, I yield the Well.

3 **Mr. Speaker:** The gentleman has yielded the Well. Chair recognizes Representative
4 Paren to speak to the bill. Representative Paren.

5 **Rep. Paren:** Thank you Mr. Speaker. I rise today to discuss the implications of HB 87
6 on the economy of Georgia. I really appreciate the hard work of the
7 committee and know that this bill is very well intentioned. And, there are
8 parts of it that I absolutely agree with. But, at its heart passing it is just a
9 bad idea. We have heard from our agriculture industry. The number one
10 industry in Georgia – that its impact will be devastating to our ability to
11 maintain our dominance in agriculture. But that is not why I rise. I rise to
12 discuss the phenomenon of unintended consequences. We ignore
13 these consequences at our peril and these unintended consequences do
14 need to be discussed today. Let me be clear – I do not and the house
15 democrats do not support illegal immigration. As an officer of the court
16 and as a member of this body that has sworn an oath to uphold the laws
17 of this state and this nation. I do not believe that illegal immigration
18 should be tolerated. I do however believe that it is a federal issue and
19 not a state issue. Despite the good intent to improve our state – HB 87
20 will have the likely result of harming our citizens by costing them jobs in a
21 down economy and damaging our state's reputation that could last for

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1 years to come. We know that agriculture is Georgia's largest industry.
2 What many may not know is that tourism and lodging is our second
3 largest industry. Here are the numbers – Georgia's hotels are an
4 important segment of the state's economy. Two hundred and forty one
5 thousand five hundred jobs in the state are directly or indirectly related
6 to the lodging industry. With hotels, motels, resorts or lodges generating
7 \$4.2 billion in tax revenue for state and local governments. That industry
8 reaches far beyond just providing hotel rooms and convention spaces.
9 Tourism is interlinked with many other industries such as transportation,
10 restaurants, agriculture, manufacturing and recreation. Supporting \$20.9
11 billion in total sales throughout the state. Let's talk about these numbers
12 – 241,500 lodging jobs in 2009, \$6.9 billion in employee wages, \$4.2
13 billion in state taxes. In 2009, the hospitality industry had \$20.9 billion in
14 sales in Georgia. HB 87 as proposed can devastate this industry. How?
15 By sending a signal to foreign visitors that they are not welcomed.
16 Because if we pass this bill to encourage racial profiling, as this legislation
17 does, its intent alone sadly cannot prevent the reality of racial profiling.
18 Georgia will join a short and dubious list with the state of Arizona. A list
19 that says the welcome mat has been rolled up and the welcome sign is
20 off. Now, the author and supporters will protest that this bill does not
21 support racial profiling. It will be said that all it allows is an inquiry into

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1 immigration status when another crime is committed. But, the problem
2 is that the crime in which a person may be accused can be simple as an
3 improper lane change or driving a couple miles over the speed limit.
4 Imagine this – at that moment a traveler from Korea or India or Brazil
5 here for a convention to learn about our growing and burgeoning biotech
6 sector may be pulled over and asked to show his papers. Papers that
7 may be with him or they may be at the hotel down the street. But,
8 because he can't sufficiently prove himself to an officer untrained in
9 immigration law he might be courted off to a detention facility while
10 awaiting processing. But the trouble for us as Georgians and for our
11 economic development begins when he is released. When he makes it
12 back to the convention center and tells his colleagues, business men and
13 women scouting Georgia for, we hope, a new facility and new
14 investment, that if they bring their families here they'll have to worry
15 about being stopped by officers and detained. And, unfortunately, in the
16 era of the internet all it takes is one cell phone video to ruin this
17 economy. A You Tube video that is auto-tuned to tell international
18 travelers to stay away. If you think this scenario is farfetched we can look
19 at what's already happened. In Arizona, the state's convention business
20 has lost \$45 million in 2011 in two months. No one in that state disputes
21 that business was hurt by its version of HB 87 known as HB 1070. I am

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1 sorry SB 1070. A study commissioned by the convention businesses in
2 Arizona says that potential future effects of fewer convention bookings
3 could mean Arizona will receive an overall hit of more than \$750 million
4 to their industry. They have reported that they have lost 40 conventions:
5 4,236 jobs, \$217 million in lost direct spending and \$388 million in lost
6 economic input. Please consider the words of Debbie Johnson, the CEO
7 of the Arizona and Lodging Association and the Arizona Tourism Alliance.
8 Forty meetings were canceled – that was in the first few months after
9 they passed SB 1070 – forty meeting were canceled and that’s just the
10 start that translates into \$90 million. Our phones are not ringing. They
11 negative impacts will likely be felt for years to come. As an industry in
12 our state we are now partnering to create a national public relations
13 campaign and are inviting meeting planners, travel media and business
14 leaders to experience our destination first hand in order to change the
15 tone of the dialogue related to Arizona. Is that what we want to subject
16 our state to? The sad fact is that we do act here at our peril. In Georgia
17 we have worked hard to be an international state. We have the world’s
18 busiest airport that is about to open its new international terminal. We
19 should not let HB 87 empty that terminal. Or worse, become a pit stop
20 on the way to Nashville, Charlotte or Miami. Georgia does deserve
21 better. Thank you Mr. Speaker. I yield the Well.

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1 **Mr. Speaker:** The lady yields the Well. The chair recognizes Representative Hokem.
2 Representative Hokem to speak to the bill.

3 **Rep. Hokem:** Thank you Mr. Speaker. I oppose illegal immigration. Let me be clear – I
4 oppose illegal immigration. It undermines the rule of law. It increases
5 risk to our security and it rewards those who break the law. But, I
6 understand why people move to try to seek better opportunities for
7 themselves. I have been all over the world and I have spent time in war
8 torn places where hope for a better life doesn't even exist. As a result, it
9 has always troubled me that the simple arbitrary fact of where we are
10 born largely determines whether or not we live a good life. But it is not
11 compassion that compels me to speak against HB 87. I oppose this bill
12 because it does not and cannot solve the problem of illegal immigration.
13 The only way the issue of illegal immigration can be solved is for the
14 federal government to act. Immigration is a federal responsibility and we
15 need federal action. The language of the bill proves that immigration is a
16 federal issue. HB 87 repeatedly defines "illegal alien" as a person who is
17 verified by the federal government to be present in the United States in
18 violation of federal immigration law. As a nation we cannot have a
19 patchwork of 50 different state laws on immigration. We need a national
20 policy on immigration because immigration concerns the crossing of
21 people over national borders. Immigration is a national federal

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1 responsibility and it is time for the federal government to overhaul our
2 dysfunctional immigration laws and to make America safer and more
3 competitive. My vote against this bill is not a vote to avoid state and
4 local responsibility. Rather, it is a vote to assign responsibility for
5 immigration to our federal government – where that responsibility lies.
6 Do you hear that Washington? DO YOUR JOB! I also find it fascinating
7 listening to this debate that the same people who want the federal
8 government to stay out of state business want to extend the reach of
9 state government into federal business through this legislation. That
10 doesn't make much sense to me. Besides believing that this is a federal
11 issue that needs to be handled at the federal level, I also have two
12 practical concerns about this legislation. First, our state and local
13 governments has faced dramatic cuts over the last few years and face
14 even more cuts this year. In DeKalb County -- my home county -- the
15 police have been cut back and we are asking them to do more with less.
16 Through this legislation we are asking to them do even more with even
17 less. Again, I believe that we should demand that the federal
18 government do its job instead of assigning federal responsibilities to our
19 state and local authorities. Finally, I oppose HB 87 because it is going to
20 open the flood gates to the court houses. This bill gives private rights of
21 action. In other words, the right to sue our state and local governments.

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1 When our state and local governments are bleeding red ink why would
2 we enact a law requiring our state and local governments to defend
3 allegations that they didn't perform tasks that should have been
4 performed by the federal government? That doesn't make any sense to
5 me. And, even worse, if they lose they not only have to pay their own
6 cost of defense they have to pay attorneys fees for the winning party.
7 Does this make sense? Not to me. In fact, it seems this bill would be
8 better titled the Lawyers Employment Act of 2011. In conclusion, I
9 applaud the effort to reform our immigration policies. I reject HB 87
10 because it is not the way to do it. Thank you Mr. Speaker and I yield the
11 Well.

12 **Mr. Speaker:** The gentleman has yielded the Well. Is there any objection to the
13 previous question being ordered? The chair hears none. The previous
14 question is ordered. There is a minority report. There is a minority
15 report to HB 87. The chair recognizes the Minority Leader of this house,
16 Representative Abrams to speak to this report.

17 **Rep. Abrams:** Mr. Speaker with your permission, I am going to yield the first ten
18 minutes to Chairman Emeritus Calvin Smyre.

19 **Mr. Speaker:** So ordered. The chair recognizes Chairman Smyre.

20 **Chairman Smyre:** Thank you Mr. Speaker and members of the house. First to outset let me
21 say to the members of this body that I for one and like a lot of the other

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1 members before me do not support illegal immigration. And, as a
2 gentleman from the 165th had stated several days ago we debated hope
3 and I really wanted to speak on that issue and took ill. But, in listening to
4 the debate that's one of the issues on the economic standpoint I think it
5 brings back some of the testimony we talked about on Tuesday. And,
6 working with both sides of the isle we were able to come up with a way
7 to pass a bill. And, uh, I just want to say that regardless of how you feel
8 on this issue. As I told a group of freshman the other day that tolerance,
9 tolerance the difference of opinion is what makes this democracy what it
10 is. And, I just want to say at the outset that immigration reform does not
11 belong to any one political party. This is a national issue. And, I think
12 some people feel compelled to act because of the failure of Congress to
13 act. But, as others have said, this is not the state's responsibility. Again,
14 this issue does not belong to any political party. If you recall five years
15 ago in 2006 there was a national effort to pass a comprehensive
16 immigration reform bill that would secure the nation's borders, promote
17 a strong economy and provide a blueprint for humanitarian treatment on
18 undocumented workers now living within our borders. At that time
19 Barack Obama was not President -- George Bush was. And, I didn't hear
20 all this secure our borders from this state's legislature. I just didn't hear
21 it. This issue belongs in the United States Congress and they should act.

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1 And, we ought to push them to act. But, if you think for one minute that
2 passing a HB 87 is going to secure the borders of America then you've got
3 another thing coming. National security in my opinion is a crucial
4 element in any national informed effort. National security plays a critical
5 part in all of our everyday living. And, any element of national reform
6 must have that in it. And, then there are many, many other concerns
7 that have been eluded to here today. We must have a national
8 immigration policy that acknowledge that we are both a nation of
9 immigrants but yet a nation of laws. And, I feel very strongly. A lot of us
10 have echoed this. We have talked about it. And, we have sent messages
11 as strong as we can and we must continue to do so. That immigration is a
12 national issue. The federal government has abdicated its responsibility
13 but we as a state are overstepping our boundaries. And, lastly as a
14 business person, I have not talked to many business people that will tell
15 you this is a good idea. I have not talked to many. In fact, I have not
16 talked to any that says this is a good idea. From an economic standpoint,
17 I think we ought to exercise caution. We haven't heard from any of our
18 business leaders – well, we have but all of 'em say this is bad, this is bad
19 business. This is bad news. But it seems like to me politics is trumpeting
20 economic development and securing increasing of jobs in our state. It is
21 no doubt in my mind that if we pass HB 87 [and] it becomes law Georgia

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1 businesses will be at a disadvantage with those in our neighboring states
2 while addressing this important issue. We see what happens when you
3 do these types of things. It's just not an incentive for a business to want
4 to come and do business in this state. Look at Kia. Look at all of the
5 international business that we have gotten in the last few years. And, all
6 of the business leaders that I've talked to are speaking out against this
7 immigration. This bill. And, lastly, I want to say this. This came from the
8 Georgia chamber. It says we need comprehensive immigration reform in
9 this country. And, we need it badly. But it has to be a federal program
10 and not one at the state legislative level. You can't have 50 different laws
11 in 50 different states and call it immigration reform. What you have is a
12 hodgepodge of state laws that say different things. So, in closing I would
13 implore you that this is a step in the wrong direction. And, we are
14 allowing politics to trump policy. And, I would say that we are not doing
15 what I think is the best interest of our state. Mr. Speaker, I would yield
16 the Well. Thank you.

17 **Mr. Speaker:** The gentleman has yielded the Well. The chair recognizes the Minority
18 Leader Representative Abrams for the balance of the minority report
19 time.

20 **Rep. Abrams:** Thank you Mr. Speaker. As my colleagues have stated there is not a
21 single person who stands in this chamber who supports illegal

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1 immigration. Unequivocally, we oppose illegal immigration as we oppose
2 any illegal act in this body. However, we are called upon as legislators
3 not to merely examine the laudable intent of a bill but to understand the
4 real implications thereof. I will take the author at his word that the bill is
5 designed to improve our state. I do not question his motive. I question
6 method. And, I question outcome. Because as a wise man once told us
7 they road to Hell is paved with good intentions. In earlier speeches from
8 the Well members of this body have asked for facts and figures. And, I
9 am pleased to know that my minority report has provided some rest for
10 the majority. I appreciate the close reading of the report and the intense
11 desire to understand where this comes from. As probably one of the few
12 members of this body who writes both fact and fiction, I can tell you that
13 this report is contained with fact. In fact, I would [ineligible] to say that it
14 is one of the few minority reports that contain citations that cite to other
15 citations because I understand the difference between fact and fiction.
16 And, I will tell you that racial profiling is a fact. Racial profiling exists
17 when the police use their powers to target persons of certain
18 backgrounds. It doesn't have to be the intent of this bill to create racial
19 profiling in order to have the effect of legalizing it. But, as one of the
20 members of this body asked earlier, "where is it found"? It is found on
21 section 11, page 13 and page 14, lines 404. The specific section is section

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1 11 and this is why we have a concern. Certainly the author has been
2 careful to state on lines 451 through 453 that no peace officer can
3 consider race or color or national origin in implementing the
4 requirements of this bill. However, as every attorney knows it's not
5 simply the presence of a clause in a bill, it's the context. Line 451 tells
6 officers not to look at race or color or national origin. And, lines 462 and
7 466, as another representative has pointed out, does state that if
8 someone has to report a crime they will not be held responsible. Yet,
9 these mild disclaimers buried in the center of the bill ignore the 450 lines
10 that precede it and the 250 lines that follow. The ones that give private
11 citizens and peace officers unprecedented power to use this bill as a
12 cause for demagoguery. That imbalance could reasonably undermine
13 any thinking person's belief that this does cause racial profiling. It is a
14 legal equivalent of hearing that whispered voice at the end of a
15 pharmaceutical commercial telling you that there are some causes and
16 effects that you may want to know about. These are the lines of the
17 whispered references to side effects such as these laws might cause
18 moral blindness or social ostracization of legal immigrants and economic
19 paralysis across this state. How is this true? As evidenced by authorities
20 as [discussed] as the federal bureau of investigation. A traffic stop has
21 often been the legal pretext for racial profiling because it is the most

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1 subjective of criminal activities and the hardest to disprove. There is no
2 documentary proof required for failure to maintain a lane or for failure to
3 yield. There need not be a victim or even a witness. There need only be
4 the reasonable suspicion that this traffic crime has been committed as
5 determined by the officer in charge. And, yes, this bill no longer uses the
6 dreaded language "reasonable suspicion." But again, good lawyers know
7 how to use different words to accomplish the same purpose. I would
8 simply point out that Georgia has better drafters than Arizona. More
9 importantly, we are concerned not simply with the act of racial profiling
10 but the mere capacity to do so. Because it is that capacity that will lead
11 international visitors to avoid Georgia as they now do Arizona.
12 Perception more than reality determines human behavior. Indeed, we
13 are in the chamber today because voter perceptions more than the
14 exhaustive review of our actual behavior got us here. And we vote on
15 bills based on our perception of what these bills do rather than the
16 reality. Indeed, today and yesterday we have seen a stream of names
17 disappear from a bill perceived to accomplish one end only to discover
18 that the reality was quite different. If legislators have not read bills
19 closely enough to know their impact it is unreasonable to image that
20 others will do better. This bill despite hours of testimony and tweaks
21 suffers from a fatal internal flaw. It attempts to use the limits of state

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1 government to solve a wholly federal problem. With this body being
2 called upon to demand action from a Republican House of
3 Representative, and a Democratic US Senate and a Democratic President
4 in our nation's Capital. I dare to say that we will have unanimity in our
5 request in 191, well maybe not, 180, 179 signatures. But, instead we are
6 attempting to fix a broken system with tools that will simply destroy that
7 which we seek to improve. HB 87 will cost us on every level. From local
8 governments facing homemade class action lawsuits, to families cowering
9 in the shadows afraid that their papers won't stand up to muster, to
10 tourists and international businesses who realize that Charlotte and
11 Nashville want their businesses and their families. To law enforcement
12 officers afraid to stop because they know that they may face danger,
13 more danger than we are willing to protect them from. Because while
14 the author has faith in Georgia, as do I think all of us in this house the
15 perception that we are anti-immigrant, nativists and unwilling to
16 understand the mistakes that we are making will prove itself to be a
17 reality when business and jobs turn away from Georgia. A vote for HB 87
18 is a vote for the most significant anti-jobs bill that we will consider this
19 year. Anti-jobs. If you want to see Georgia move forward, I urge you to
20 join me in voting no on HB 87. Mr. Speaker, I yield the Well.

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1 **Mr. Speaker:** The lady has yielded the Well. We are down now to the final 20 minutes
2 for the Chair of the Committee. The Chair understands that Chairman
3 Golick of the judiciary non-civil committee yields the first 2 minutes of his
4 time to the Chairman of Transportation Committee. The second 10
5 minutes of his time to Representative Ramsey and will reserve the final 8
6 minutes. Chair recognizes Chairman Roberts to speak to an amendment.

7 **Rep. Roberts:** Thank you Mr. Speaker. I rise today to bring an amendment before this
8 body. First, before I do, I want to thank the chairman of the committee,
9 Chairman Golick and Representative Ramsey for working with us on this
10 piece of legislation. As my good friend, Representative Morris said
11 earlier, you know we shouldn't be dealing with this. This is a federal issue
12 but because the federal government has decided not to act we're having
13 to take measures today to do so. So, what my amendment simply does is
14 on page 19 on line 618, 619, 636, 637 and 639 is just take it out to, if
15 you'll read it says on 618: being effective on September 1, 2011 as to
16 employers with 500 or more employees on July 1, 2012 and as to
17 employers with over 100 or more employees on December 31, 2012.
18 When we passed the last immigration bill we did the same thing. We
19 gave the people an opportunity to understand the law and to put
20 measures in place and that's simply what this amendment does today. I

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1 ask for your favorable consideration and appreciate your help in passing
2 this amendment. Thank you Mr. Speaker. I yield the Well.

3 **Mr. Speaker:** Gentleman has yielded the Well. The Chair recognizes, as part of the
4 Committee Chair's time has been yielded, Representative Ramsey.
5 Representative Ramsey.

6 **Rep. Ramsey:** Thank you Mr. Speaker and thank you Mr. Chairman for yielding some of
7 your time to me to close here today. First, I want to speak to Chairman
8 Robert's amendment. I support that amendment. I cosigned that
9 amendment. Some friends of ours with had some concerns about the bill
10 and we worked very closely with it. They just asked for a little bit more
11 time to make sure they can educate their constituents about what we are
12 doing here before the provisions regarding private employment come
13 into place. We have done that in previous bills in the past and I think it's
14 a good amendment. Now, before I make my remarks. And, I have a great
15 deal of respect for the minority leader and all of my friends on the other
16 side of the isle. And, one after another came up here and said we oppose
17 illegal immigration. We oppose illegal immigration. And, I think it bears
18 pointing out through all of the months of hearings both before we came
19 into session and during session in the judiciary non-civil committee.
20 There was never one proposal put forward. Never one suggestion put
21 forward. Never one amendment offered in committee put forward by a

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1 member of the minority party. They tell you they are serious about illegal
2 immigration. They oppose it. But, they're not willing to offer even one
3 word to address the burden that it is placing on our state citizens. Now,
4 you have heard all the rhetoric now. You've heard it from both sides.
5 We've been here a long time and it's almost time to vote. And, I spoke
6 earlier about the financial burden placed on our state by illegal
7 immigration. I still don't know how anybody can stand up here with a
8 straight face and say this is exclusively a federal issue when you talk
9 about the fact that 425,000 illegal aliens are placing a \$2.4 billion dollar a
10 year on state and local tax payers. I am not sure how you can say this is
11 exclusively a federal issue. But, I don't want to close by speaking about
12 dollars and sense. I want to talk about an issue and about a notion that I
13 believe you just can't put a price on. And, that's our oath of office. The
14 oath that we swore to protect the laws of this state, and uphold the US
15 and National Constitution. Now, you have heard a lot of rhetoric from
16 the other side about how this is an anti-immigrant bill. And, they
17 continue to blur the line. I think a very important distinction they keep
18 losing in all this.– the line that between immigrants and those that came
19 to our country illegally. To do so is a slap in the face to our nation's rich
20 history. There is no country in the world more welcoming to immigrants
21 in the United States. While America is not the only country in the world

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1 to offer immigrants improved employment opportunities and a better
2 standard of living than their nation of origin. No other country offers
3 what we offer – the chance to become fully American. Every year our
4 country naturalizes more than 1 million new citizens. And another 1.5
5 million come here legally on work visas. But, with great privilege comes
6 great responsibility. The most basic of which is the responsibility to
7 adhere to the rule of law. It is the keystone of an orderly society that
8 makes America desirable for those that flee their country of origin and
9 come to our shores. And, as Americans now know we have experienced
10 a complete and total breakdown with respect to our nation’s federal
11 immigration enforcement. None of us could possibly begrudge
12 somebody trying to make a better life for their families. But to do so
13 outside of legal channels is simply unacceptable. How could that practice
14 ever be defended as fair when you consider the fact right now, all of the
15 world in some of the most desperate places on the planet people are
16 waiting their turn in line for the American dream. They are waiting right
17 now sometime 5, 10 years for their immigration paperwork to come
18 through. Meanwhile, we continue to sanction the presence of the line
19 jumpers. The folks that didn’t bother to come here through legal
20 channels. The folks that came here in the dark of night in circumvention
21 of our nation’s laws. And, folks this is not a gray issue. It’s a black and

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1 white issue. The law is the law. The cornerstone that has sustained our
2 Republic for 200 years is a notion that we as people will submit to and be
3 governed by laws. And, there is a consequence for breaking those laws.
4 Now, you are gonna' make a choice in a couple of minutes. And you have
5 heard a lot of speeches. And, now I believe we have a pretty crystal clear
6 choice to make. If you vote 'No' you're gonna' be tellin' the state and the
7 country that Georgia is not serious about the rule of law. That Georgia is
8 going to continue the status quo in what amounts to a *de facto* state
9 amnesty for illegal aliens. I hope that's not the choice you make. The
10 authors of this bill refuse to put a price on the rule of law and we are
11 resolute in our determination to protect jobs and taxpayers by helping to
12 discourage illegal aliens from coming to our state. I know that siding with
13 the law and the majority of the American people is the right thing. I urge
14 your favorable consideration of HB 87. Thank you Mr. Speaker. I yield
15 back the Well.

16 **Mr. Speaker:** The gentleman has yielded the Well. The chair now recognizes the
17 Chairman of the Judiciary Non-civil Committee Chairman Golick for the
18 last word.

19 **Rep. Golick:** Thank you Mr. Speaker and ladies and gentlemen of the house. I'll be
20 brief. Debates like this are good for the state and I think they are good
21 for the body. Because I think it forces us to make a very clear choice.

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1 And, in this case it forces us to make a very clear choice about our
2 approach to our laws. On the one hand, we can choose to make sure
3 that ours is a culture of enforcement or we can choose to be a culture of
4 excuses and entitlement. I think if you go to the vast majority of our
5 districts across the state: city, suburban, exurban, rural, costal,
6 mountain, the vast majority of our districts: democrats, republicans,
7 black, white -- across the board. And you ask the question should we
8 seek to enforce the law or should we wait on an act of Congress? I think
9 what you will find in the vast majority of our districts. The *vast* majority
10 of our districts is that the people of this state across gender lines, across
11 partisan lines, across racial lines would want us to act to enforce the law.
12 And, Mr. Smyre is right Congress has failed both parties. That's no secret.
13 Democrats in Washington failed. Republicans in Washington failed. And,
14 where Congress fails it is inevitable. It is *inevitable* that states will step
15 into the breach and lead. And, that is what we are doing here today. We
16 are leading. We choose to lead because that is what it is going to take to
17 make Congress act. And, the fact of the matter is as said so eloquently
18 and simply and succinctly by the Chairman of the Agriculture Committee,
19 Tom McCall earlier, our oath of office dictates nothing less. Thank you
20 for your time. Thank you Mr. Speaker, I yield the Well.

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1 **Mr. Speaker:** All those in favor of passage of HB 87. On the passage of HB 113/56.

2 Bill passed.

3 **CONCLUSION OF PM SESSION**

EXHIBIT F

Declaration of Judith K. Headrick

I, Judith K. Headrick hereby declare:

1. I am older than 18 years. I make this declaration based on my personal knowledge. I am the Owner of Able Transcription Company.

2. I transcribed the February 8, 2011 Georgia House Judiciary Non-Civil Committee hearing in which HB 87 was discussed, which is published by the House Legislative Network at the following URL:

http://www1.legis.ga.gov/legis/2011_12/house/Committees/judiciaryNonCivil/judyncArchives.htm. I transcribed the entire House Judiciary Non-Civil Committee hearing about HB 87, which is available at the above web address. Attached hereto as Exhibit A is the transcript I personally prepared after listening to the audio/video recording of the Senate floor debate on HB 87. Exhibit A is an accurate transcription of that audio/video recording.

3. I have reviewed the above-described document in its entirety upon completion of same.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on this 7th day of June, 2011 at Atlanta, Georgia.


Judith K. Headrick

State of Georgia – 2011 General Legislative Session

Georgia House of Representatives Judiciary: Non-Civil re HB 87

Hearing Date: February 8, 2011

1 Chairman: Good morning. We're going to continue our consideration of House Bill
2 87. I think what will be most constructive is if we – today we've got –
3 there's a fairly long list of people and/or organizations; I think what might
4 be most constructive today we focused on organizations, by that I mean
5 business organizations, local government organizations, religious
6 organizations, certainly issue advocacy organizations and what I'd like to
7 do is sort of try to confine it to that 10 to 15 minutes each. I would ask
8 the folks who are called forward to testify if they could limit any remarks
9 that they have to about 5 minutes because what that will do is allow a
10 window of time for members to ask questions, if there are any of that
11 particular speaker. That way, we can hear from folks who are interested
12 in the issue from an organizational standpoint and those various again,
13 the variety of organizations and then – but also keep the wheels on the
14 track in terms of moving the process forward. I would anticipate the
15 possibility of – and looking at the list and the amount of time to be
16 allotted which I hope is realistic, looking at the list I think it's going to be
17 likely we'll go ahead and continue this for a final hearing on Friday
18 morning at the same time, 9:30 until noon. We will be out of here at
19 noon today and if we do a hearing on Friday which I think appears likely
20 we'll go ahead at 9:30 and that will conclude the public hearing portion of
21 consideration for legislation. Any questions from members about that?



1 There are more members that are stuck in traffic right now but I want to
2 go ahead and start on time for purposes of having a good hearing and
3 they'll come in as they arrive.

4 With that let me – I've got you know this list of organizations and I'll just
5 go ahead and start with the Georgia Chamber of Commerce, David
6 Raynor who is Senior Vice President of Government Affairs. Mr. Raynor,
7 welcome. I look forward to your testimony. I'll admonish everybody as
8 we go along that you can confine remarks to 5 minutes, we can allow for
9 questions if any that will be helpful to us. Let me also ask before I forget if
10 we can just put all cell phones on silent or vibrate that would be most
11 courteous to our speakers. Mr. Raynor.

12 Raynor: Yes Mr. Chairman my name is David Raynor; I'm the Senior Vice President
13 of Government Affairs for the Georgia Chamber of Commerce and
14 certainly appreciate the opportunity to be here today. On behalf of the
15 Georgia Chamber of Commerce and our statewide constituents who have
16 businesses of all size and across all industry we certainly appreciate the
17 ability to comment on this important issue. First I wanted to publicly
18 thank Representative Ramsey for his willingness to continually work with
19 all stakeholders as this issue moves forward. The Chamber feels that
20 reforming the immigration system is necessary as we see more of the
21 State's resources consumed at the expense of having tax paying citizens
22 as well as the business community. I would however caution the

1 Committee as you deliberate on this issue to please be mindful of the
2 unintended consequences on business that could compromise our future
3 economic vitality. I don't think anyone here today would argue that
4 businesses who knowingly employ illegal labor should be penalized. I
5 would stress the importance of compliance however to create a level
6 playing field for businesses and citizens. Out of this process – I guess the
7 number one thing that the Chamber would like to see is that employers
8 would be provided with uniform standards and procedures for employee
9 verification and then indemnify those employers when they make good
10 faith efforts to follow the law. The reason for indemnification we believe
11 is mainly due to the fact that there are some inaccuracies that exist
12 within pilot programs such as E-Verify. The State's business community
13 should not be subjected to penalties and sanctions because an
14 undocumented worker has gained the system to receive employment.
15 That's all I really have at this point. We certainly again appreciate the
16 opportunity and I'll be happy to entertain any questions.

17 Q: What is your sense on the error rating on E-Verify and when I say your
18 sense I assume that's being backed up by some sort of documentation. If
19 you don't have it there I understand.

20 Raynor: I don't have it Mr. Chairman in front of me today, I know that we've seen
21 you know quotes from different reports that have shown anywhere from

1 50% all the way up to in excess of 80. I know there is going to be folks
2 here to testify today that would have more information along those lines.

3 Q: Okay we'll look forward to hearing that from whoever may have it. If not
4 today then we'll get it from somewhere. Any questions from the
5 committee? Mr. Vice Chairman.

6 Q: You mentioned indemnification, who would provide the
7 indemnification?

8 Raynor: Well we would just hope that employers would be held harmless when
9 they make good faith efforts to comply with – if the Committee's will is to
10 move forward on the E-Verify we just don't want to see any criminal civil
11 sanctions brought against these employers.

12 Q: So what you're really saying is that they should be immune or exempt as
13 long as they make a good faith attempt.

14 Raynor: Comply with the law, right, in good faith.

15 Chairman: Mr. Raynor, thank you. We appreciate your time and attention this
16 morning. Let me call on Todd Edwards representing the Association of
17 County Commissioners of Georgia. Mr. Edwards I'll go ahead and
18 admonish you like I have everybody else.

19 T. Edwards: I should be fairly quick Mr. Chairman.

20 Chairman: You're a seasoned professional, I understand.

21

1 T. Edwards: Well I don't know about that. Thank you. I certainly would be testifying
2 long enough before this Committee. Again, I'm Todd Edwards. I'm with
3 the Association of County Commissioners of Georgia and as far as the
4 question of compliance which, was asked earlier, currently we have as
5 you know state, local government, cities, school boards are currently
6 required to use either FIN Save. As of February 1st, 158 out of 159
7 counties were signed up for E-Verify. We have 87% complying with the
8 Save requirements. We'll work with you, whatever is passed by the
9 General Assembly, in fact we have over the past few years through our
10 webinars, workshops, training and tools on our website to insure that
11 counties (a) knew that this was the law; and (b) try to make them come
12 into compliance with it. We're not all there yet. We're getting better and
13 as we move forward whatever legislation is passed we shall continue with
14 those efforts. We too wanted to express our appreciation to
15 Representative Ramsey for working with us so far and addressing some of
16 our concerns. Obviously, as was mentioned earlier by the Georgia
17 Chamber we would like to insure that those counties that are working in
18 good faith effort do not come over some of the penalties either in this
19 proposed Bill or in others. I mean if there is a clerical error, if the
20 information is not provided to them correctly, if there was something
21 that you know to lessen those or not subject them to a liability we would
22 certainly appreciate that. A couple of points in the Bill, the substitute,

1 several of them were addressed; I'll just go over them down the list right
2 quick.

3 The Private Right of Action still is a major concern to Georgia counties to
4 subjecting us to several lawsuits whether or not they're based on fact.
5 Substantive evidence, those sorts of things as well as if they are what it
6 would do to our courts, the taxpayer resources at the local level. We will
7 continue to work with Representative Ramsey in that regard but that is
8 the major concern of local governments. Another one is the standard
9 which is applied for sanction. Finding that any agency has violated or
10 failed to advise the language that follows throughout, it goes back to if
11 there could language possibly inserted from knowingly, blatantly, I don't
12 know if knowingly, I don't want to shield them but again if they were
13 working in good faith I'd like to have some consideration given them not
14 to be subjected to the standing, the penalties, etc.

15 Another area is Paragraph H in Section 8, it gives law enforcement
16 officers immunity under this but it doesn't necessarily protect the law
17 enforcement agency. If there were some – you know some language
18 perhaps that can be considered in that regard that would be appreciated.

19 Paragraph 4 of Section 9 mandates that counties include measures for
20 entering and the methods of understanding with the federal government
21 with the 287G program; it also requires us to put these in our
22 comprehensive plans. These plans are not updated except every 5 or 10

1 years so language to say when updated. As far as all counties complying
2 with the 287G I don't think that's required in the Act but as we do or
3 move in that direction then please keep in mind that the federal
4 government at this point it's still very difficult. We have several on the
5 waiting list and whatever barricades or obstacles are you know – we
6 encounter with the federal government that that's taken into
7 consideration with compliance with anything that may make it through
8 finally in this legislation.

9 Another area is the verification requirements. The Bill does not include
10 the state in the list. To make it as broad as possible if indeed that is the
11 intent of the author this Committee and the General Assembly you might
12 want to take into consideration expanding the reach to all corporations
13 required to register with the state. Title 43, they do licensing for
14 engineers, architects, etc., and there is also a great deal of special
15 licenses that are issued by state agencies such as the Departments of
16 Revenue, insurance and agriculture which are not included in this Bill.

17 Section 16 I just have two more Mr. Chairman and I'll be done. Section
18 16, the AGS task with providing the list of acceptable securer and
19 identifiable documents so that we know as local governments that these
20 may change over time. We do appreciate –

21 Chairman: Could we get a little bit of order as someone is actually sitting here
22 testifying? Thank you. I apologize.

1 T. Edwards: Yes sir, Mr. Chairman, I appreciate that. Section 16 the Attorney General
2 has been tasked and this was the language we had originally
3 recommended with providing a list each year of what is a secure and
4 verifiable document. Should this go into – and we appreciate that – but
5 we would ask for a month or so leeway or time in advance like before the
6 law was to take effect, say it was July 1st as is currently in this Bill, if we
7 could have our local governments, our clerks that would be administering
8 this that list one month in advance of the effective date I think that would
9 make it more efficient and maybe further insure we're better able to
10 comply with the law.

11 And last, Section 16 again refers to part of what you know, presenting a
12 secure and verifiable document as for a license, permit or official
13 document, we're not quite sure what is an official document. If the Bill
14 could somehow provide some definition and make it clear, I mean say is
15 this for a marriage license, are they going to have to present this for a
16 gun permit or what sort of open records request from a county, is that an
17 official document? But again we will work with the General Assembly,
18 with Georgia counties to come into compliance. I'm here to present you
19 recommendations for making sure that we facilitate that process, make it
20 more efficient and ultimately you know make it easier for us to comply
21 with what may pass.

1 Chairman: On the Private Right of Action there have been some conversation about
2 you know and this is not my sense of it from the author and as a co-
3 sponsor, myself it's not meant to be punitive on local governments but
4 really to drive compliance more than anything else. It strikes me just
5 speaking personally that an opportunity to cure if there is a non-
6 compliance for x period of days prior to litigation kicking in and some
7 context might be constructive for everyone. It drives compliance; it
8 certainly will lessen any kind of litigation costs, attorneys fees are
9 certainly on the table in terms – for frivolous litigation. That's something
10 the cities need to be fortified on and the counties excuse me so I mean I
11 assume that's something that you would see as a constructive middle
12 ground in terms of . . .

13 T. Edwards: We would very much welcome that as a constructive improvement on
14 this proposed legislation sir.

15 Chairman: Mr. Franklin.

16 Q: Thank you, I wanted to also address that Private Right of Action. You
17 were expressing concern that if a citizen were to bring – to bring an
18 action because of the county's non-compliance that would clog up the
19 courts and be undue financial burden on the counties if I understood that
20 correctly but don't you also believe that if the counties act unlawfully
21 that a citizen of the county should be able to remedy that or to begin to
22 address that in a lawful manner?

1 T. Edwards: If a county is willfully non-compliant with the provisions of existing law or
2 whatever may pass then there should be remedy and if the – I think our
3 major concern was whether or not there is any proof being brought
4 forward, is there any evidence, is there – I mean to validate this so they
5 don't get . . .

6 Mr. Franklin: Isn't that what a trial is for is to look at evidence and let the trier – the
7 trier of the facts determine whether that evidence is sufficient?

8 T. Edwards: By that point you're already engaged in significant county resources. If
9 we could somehow before those resources are engaged in this process
10 with a trial and I'm not an attorney so forgive me, I do –

11 Chairman: You're better off.

12 T. Edwards: Yeah. This is always rather tough but it's just an area of concern, the
13 major one by counties. If there is some sort of evidence we're not going
14 to defend the county; I'm not up here to defend any county that's
15 willfully non-compliant with the Act. I would offer that removing their
16 qualified local government status would also achieve those objectives. As
17 far as the citizens, again we're continuing to work with the author to
18 address that but I certainly understand the other point of view is to be
19 able to file a complaint or an issue or bring it to the attention of when a
20 government is not acting in good faith to comply with the letter of the
21 law sir.

22 Chairman: Mr. Ramsey.

1 Mr. Ramsey: And I apologize for missing the beginning of your presentation and I just –
2 I really don't have a question, just want to say publicly I appreciate the
3 opportunity I've had to work with you and the counties from the time I
4 introduced the Bill to now and I'm committed to continuing to work with
5 you. We may end up having some philosophical kind of we're going to
6 have to agree to disagree but I will continue to work with you to address
7 clarifying technical – technical concerns and to the extent that you have
8 your recommendations in writing please provide them to me.

9 T. Edwards: I will and just to recap my initial remarks were expressing our sincere
10 gratitude to you Mr. Ramsey for working with us in this process and I will
11 do so.

12 Chairman: Ms. Abrams.

13 Ms. Abrams: Thank you. Would it be effective, going to your concern about Private
14 Rights of Action, would it be appropriate or effective to include a
15 provision that penalizes false accusations so that there is a heightened
16 standard if someone is going to engage in a Private Right of Action.
17 Currently I see there is a penalty for the county or city if its found to be in
18 non-compliance but there is no penalty for any person who tries to take
19 advantage of this but submits a false accusation or somehow tries to use
20 this new Private Right of Action to create harm or concern. Would you
21 have a reaction to that type of proposal?

1 Unidentified Speaker: Any proposal in that regard I think would be appreciated by members
2 whether or not the – you know it works both ways with the loser paying
3 the attorneys’ fees, court action, that sort of – to protect us against
4 mounting – they may not be frivolous but without merit. I think we would
5 welcome what I would consider enhancements in that regard.

6 Ms. Abrams: Thank you.

7 Chairman: Mr. Edwards, thank you. We appreciate your time. Let me call Mark
8 Woodall with the Associated General Contractors. Mr. Woodall, there he
9 is. Welcome, good morning.

10 Mark Woodall: Mr. Chairman. Mark Woodall with Associated General Contractors. We
11 are a statewide organization comprised of 600 member firms throughout
12 the state representing the commercial construction community. First of
13 all I want to thank you for the opportunity to be part of this discussion
14 and specifically recognize the sponsor for his willingness to meet with us
15 to address some of the concerns that we raised with the earlier drafts of
16 the Bill and we’re going to continue to hopefully work with the sponsor;
17 we commit to you that we understand this is a tough issue for everybody
18 and we want to be part of that discussion. For the record, I want to state
19 what our official position is on immigration reform. For the record our
20 position, we support comprehensive federal reform; we support reform
21 that strengthens our national security; we support reform that is fair and
22 consistent and uniformly applied and lastly we hope our market turns

1 around and we support reform that hopefully addresses our future of
2 workforce needs. Having said that we understand the frustration that
3 you as elected officials in the State of Georgia are going through,
4 everybody in the state and our country is going through for our federal
5 government's inability or unwillingness to address this issue at a federal
6 level. So as our state and other states go forward with addressing this
7 copy at this state level we would urge you to use caution that we don't
8 do something that puts us in a position of again Mr. Raynor mentioned it,
9 we're trying to comply with a complex federal law to the extent that
10 we're addressing it at the state level or local level not putting business in
11 harms way by potentially violating federal standard to comply with a
12 state law.

13 Mr. Chairman, just real briefly we want to get the Committee up to speed
14 on what our current status is as public works contractors in the State of
15 Georgia. In 2006 with Senate Bill 529 we passed legislation in the State of
16 Georgia that requires our public employers to participate in E-Verify,
17 cities, counties, state agencies. We also required our public works
18 contractors' mandatory participation in federal E-Verify and that
19 requirement flows down the stream for all contract parties,
20 subcontractors, sub-sub. Last year we passed some legislation that
21 actually was needed. Although the definition of subcontractor include
22 every tier there really wasn't a mechanism to assure public owner has the

1 obligation to participate. They secure an affidavit from the prime
2 regarding their participation in E-Verify. The prime has an obligation to
3 secure an affidavit from their first tier subs, your plumber, your
4 electrician, whatever that they're participating but if that first tier sub
5 contracts down the stream there really wasn't a mechanism to verify that
6 that party is participating. A situation occurred last year that brought
7 that to light and now the law is abundantly clear, anyone in the chain of
8 contracts has to comply and has to participate. And we currently are the
9 only sector of our economy that is subject to penalty for willfully and
10 intentionally violating or falsifying public documents and we can support
11 that but we would echo Mr. Raynor's comments as well that folks that
12 are trying to comply with this tough confusing law that they be given, you
13 know the benefit of the doubt if they make an honest error in trying to
14 comply as opposed to a willful and intentional violation.

15 Chairman: Let me just make sure it's clear. A good faith effort is not to be ignored
16 nor will it be. I just want to make sure that that's abundantly clear but
17 you know a good faith effort has to pass a straight face test. I'm not
18 saying that it won't. An example of the contractors or anybody else
19 frankly but no one should walk away from this morning thinking that
20 good faith effort is just somehow invalid. It absolutely is.

21 Mark Woodall: Again, we appreciate the opportunity to work with the General Assembly
22 on the prior activities on this, we can continue; we want to continue to

1 be at the table, but again if we are going to go forward as a state we
2 believe this should be uniform application. My industry is not the only
3 industry that is impacted by this debate and it should be applicable to all
4 industries and segment of our economy and not just the commercial
5 construction industry.

6 Chairman: Mr. Ramsey.

7 Mr. Ramsey: Thank you Mr. Chairman and I'm sorry I missed Mr. Raynor's
8 presentation as well and I will – I will direct this question to him and you.
9 I would just encourage you to the extent that you believe there is a
10 provision in the Bill that would expose a business acting in good faith to
11 liability; I would ask you to point it out to me. You can have privately, you
12 can send it to me in writing, I don't believe that exists in the Bill but I
13 want to work with you. If you believe – if you believe there is an
14 opportunity for a company acting in good faith to be exposed to liability
15 so just – that's just an open invitation. I know I've expressed that to you
16 on numerous occasions and again to reiterate what I said to the – to the
17 Associated County Commissioners of Georgia I look forward to working
18 with you as we move this process forward.

19 Mark Woodall: You certainly have and we sincerely appreciate it.

20 Chairman: And just to make sure it's clear to audience members and members alike,
21 you know it's an evolving document as we all know and that there maybe
22 concerns expressed by individuals that maybe two or three drafts ago for

1 those of us that are working on the issue and more importantly listening
2 to concerned constituencies on it, so – and we understand that so, if
3 there maybe issues that are being addressed that may not have quite
4 come into the public conversation yet so I would ask folks you know err
5 on the side of caution, let us know but also know that those comments
6 aren't lost on us since we are looking at an evolving draft. Mr. Sussman.

7 Mr. Sussman: Thank you Mr. Chairman. Again Mr. Woodall appreciate you being here
8 today and I appreciate what your industry does for the state and I also
9 appreciate your industry's commitment to comprehensive federal
10 immigration reform. I think most folks in this room would recognize
11 there needs to be comprehensive meaningful reform. However, with our
12 role as state policy makers having jurisdiction of state law would you
13 agree that even if the federal government were to act in a
14 comprehensive way, we as a legislature do have a responsibility to make
15 sure laws enforcing identity theft, fraud, misrepresentation of documents
16 through contracts, those kinds of things, would you agree are within the
17 purview of the state legislature?

18 Unidentified Speaker: Certainly.

19 Mr. Sussman: And I think you – again I think you would also obviously agree that you
20 know we've got to make sure that as there are advances in people's
21 understanding of how to sidestep the law and get around the law and
22 you know, violate this long-standing law as a state we as a legislature

1 have to make sure that we're closing loopholes and gaps and I know you
2 agree with that, I wanted to just hear you, get your opinion on the fact
3 that there are elements within the immigration debate that are
4 specifically state issues. The federal governmental loom can't handle
5 without some involvement by the legislature.

6 Unidentified Speaker: Representative Sussman we did not oppose and I think Mr. Edwards said
7 the same thing but any party that is willfully and intentionally violating
8 the laws should be held accountable. We don't want to have someone
9 caught up in a gotcha for an honest error.

10 Mr. Sussman: Thank you very much.

11 Chairman: Mr. Franklin.

12 Mr. Franklin: You had mentioned the desire for some comprehensive federal
13 immigration reform. Looking at the United States Constitution I don't see
14 where the states delegated any particular authority to the federal
15 government over immigration. I see where we gave them the ability to
16 establish uniform rule of naturalization. I don't see anything in the
17 United States Constitution where the states authorize the federal
18 government to have any policy on immigration which would mean under
19 the Tenth Amendment that immigration is reserved to the states so don't
20 you – wouldn't you agree then that immigration is a state issue not a
21 federal issue?

1 Unidentified Speaker: Representative Franklin [unintelligible] my pay grade to respond to some
2 of that but we are bound and governed by Federal Employment law that
3 dictates what we can and cannot do to determine eligibility status for
4 hiring [unintelligible]. It's federal law. We also have people that not only
5 work in Cobb County or the State of Georgia, they work throughout the
6 country and to the extent that they can't be bound to comply with
7 potentially fifty different state requirements – who knows how many
8 county or municipal requirements so the notion that the requirements
9 that businesses go through to determine valid eligibility status we do
10 believe federal governments rule and we cannot be placed in a position
11 of violating a federal employment law in order to comply with a state
12 standard and that's what I was trying to address.

13 Chairman: Thank you for the statement and just to make sure it's clear the intent
14 behind the legislation of course, intent is not what matters, what matters
15 is the words on paper is that any law that does pass will be in compliance
16 with the federal law because if we don't do that we will have spent a
17 whole lot of time and a lot of resource for naught. That is not our
18 intention, that's not the way we're operating under this Bill. That being
19 said you know getting good guidance from those both on the Committee
20 and not on the Committee who have more of a background and good
21 subject matter understanding of the issues that are presented in terms of
22 that compliance helps us fashion a better Bill frankly and we're all ears

1 and all eyes when it comes to that. We'd be foolish not to go ahead and
2 welcome that input and that includes your organization as well. So thank
3 you.

4 Unidentified Speaker: Thank you very much for the opportunity.

5 Chairman: Let me call on Bryan Tolar with the Georgia Agribusiness Council. Is he
6 here? Mr. Tolar?

7 Unidentified Speaker: Mr. Chairman I believe he's in another room watching.

8 Chairman: With no doubt the audio not working in there if I had to take a wild guess
9 about that. Okay. Let me go ahead and let me ask Ms. Bazemore if you
10 might be able to identify him in the overflow room if you could or if we
11 have a contact number for him maybe and we'll – and we'll come back.
12 Was there a representative from the Georgia Municipal Association that
13 wanted to be heard? I know we heard from Mr. Edwards of ACCG earlier.

14 Unidentified Speaker: Yes sir I'd like to wait until the Friday hearing if that's possible.

15 Chairman: It would be the Committee's preference to go ahead and have
16 organizations such as yours to go ahead and take your time today. Don't
17 get me wrong that doesn't preclude your ability to go ahead and have
18 another meeting you know either privately or otherwise or submit
19 written materials. It's not a one-time shot but for purposes of the
20 hearing that would help us expedite matters. And let me go ahead and
21 admonish you as well. If you could confine your remarks to 5 – no more

1 than 5 minutes in order to allow for questions. And, Mr. Patel if you could
2 put the microphone closer to you. Thank you.

3 Rusi Patel: I'd like to thank the Committee here and Representative Ramsey for
4 hearing our remarks. My name is Rusi Patel, I'm with the Georgia
5 Municipal Association and first I'd like to read our policy statement for
6 immigration and it's pretty simple. GMA will seek to insure that any state
7 laws placing mandates on cities related to immigration enforcement are
8 practical, unambiguous and reasonably administrable. GMA has been
9 working with Representative Ramsey pretty consistently on this Bill and
10 we plan on continuing to work with him. He's been very forthright in
11 listening to our questions and comments and sometimes we agree and
12 sometimes we don't but that's the process there. Our major issue with
13 the Bill is related to the litigation aspect and we've worked with
14 Representative Ramsey on that issue and he has definitely listened to our
15 ideas, and moving forward we hope to get something out in this Bill that
16 will work for both organizations, the state and so on and so forth.
17 Basically when it comes to the litigation we are greatly concerned that
18 cities will be faced with a burden of litigation costs that they're not
19 prepared to handle. As the language is currently written in the Bill
20 anyone over the age of 21 can file a lawsuit, and that might lead to
21 litigation that is unwarranted. Obviously the intent of the Bill is to allow
22 individuals to file these lawsuits and certainly there will be instances

1 where there are lawsuits that are valid. However, our concern is this
2 opens the door for a large amount of lawsuits that aren't valid and so
3 working with Representative Ramsey I believe he understands that
4 concern and has been working on this Bill to alleviate those concerns and
5 moving forward we continue to hope to do so.

6 Further on in the Bill in Section 8 there are immunity provisions for police
7 officers. As our associate, our colleague at the ACCG has pointed out we
8 would like to see that extended to law enforcement agencies as well. It
9 just helps law enforcement officers. I was previously a city solicitor in
10 Brunswick, I know police officers tend to get the feeling that they're
11 being targeted sometimes in these kind of cases and we want to make
12 sure that they don't have that fear and that they're able to perform their
13 duty as public safety officers and protect the public. And on that note
14 back to the litigation part, back to the litigation part we are concerned
15 that officials, public officials maybe targeted with litigation. We feel that
16 it should be the agency, the city that is targeted if there is a litigation
17 portion. We also believe that perhaps the Attorney General or District
18 Attorney would be a better source for potential litigation. That would
19 reduce the potential for frivolous lawsuits; the DA or Attorney General
20 would be able to discover which ones were actually valid claims and
21 move forward with those. And on that note also officials – if we're going
22 after officials it might not create an atmosphere where certain officials

1 feel like they're able to perform their duty. An official could include a
2 police officer so.

3 Chairman: Mr. Patel, let me interrupt you and just say – I'll tell you the same thing
4 that we told Mr. Edwards and that is that you know the purpose of the
5 Bill, the author can speak for himself certainly is compliance. It's not a
6 punitive – it is ultimately not going to be a punitive measure against local
7 governments or local officials or law enforcement officers individually in
8 any way, shape or form. It's about compliance. We don't want to have –
9 we understand the recessionary effect isn't felt here at the state level, we
10 know it's the local level as well and probably more impactful at the local
11 level now that we're talking about it. And, we certainly don't want to
12 offer any sort of chilling effect for individuals to step up and to surf. If
13 there is one thing we do know about it's public service is a sacrifice. It's a
14 willing, voluntary sacrifice, no one puts a gun to our head but it is a
15 sacrifice nonetheless. Very challenging to be a local official. That is not
16 lost on us. Many of us here in this body were local officials so the walk
17 has been walked by many of us around here so I want to make sure it's
18 clear to you and of course Mr. Edwards and other officials including my
19 own city at home. I represent the City of Smyrna; the author represents
20 Peachtree City and so forth, we understand the balance there and it's
21 about compliance, it's not about a punitive nature and my sense is that
22 the Committee substitute ultimately will reflect that. Ms. Abrams?

1 Ms. Abrams: As a former solicitor, I'm going to raise the same question I raised for Mr.
2 Edwards which is do you believe that it would be beneficial to include a
3 penalty for false accusations or false – frivolous lawsuits where there's a
4 threshold issue so that you could discourage individuals from taking
5 advantage of the Private Right of Action? My concern would be that if the
6 only consequence is court costs, that's sort of the solving the problem
7 after you've already expended the resources, but if there is an earlier
8 threshold issue where a person knows that if they institute a false action
9 they could face a misdemeanor or some penalty that that may serve as a
10 caution to their behavior. What would you respond to that?

11 Rusi Patel: I would certainly believe that any sort of penalty that could be issued on
12 a person that filed a frivolous lawsuit would be useful but the problem
13 with court costs and attorneys' fees is a court can order those. The
14 person might not actually comply with paying those fees. So we would
15 have an issue there but the main issue is the litigation and from the
16 Chairman and Representative Ramsey, they do seem to be wanting to
17 work towards making sure that this is not a punitive Bill so.

18 Ms. Abrams: Thank you.

19 Chairman: Mr. Ramsey.

20 Mr. Ramsey: To your point about potentially subjecting law enforcement officers in
21 the Private Right of Action you would agree the way the Bill is drafted
22 now it is narrowly limited to the three code sections the requirement

1 that public agencies enroll and participate in the Save, the Save program,
2 requirement of public agencies to collect E-Verify affidavits at the point
3 of application of public works contracts and the prohibition against
4 sanctuary cities. None of those three code sections is going to be
5 something that a law enforcement officer is in any way participating in, in
6 compliance or enforcement of it. Isn't that true?

7 Rusi Patel: Yes sir.

8 Mr. Ramsey: Okay and I guess to my colleague, Representative Abrams point, isn't
9 there in the law right now and I am committed to continue to work with
10 you on the Private Right of Action and addressing some of the concerns
11 but in the law right now there exists in the Civil Practice Act sanctions
12 available that a judge can order for truly frivolous suits. Isn't that correct?

13 Unidentified Speaker: That's correct and that's why that's not really a large concern right now
14 for the GMA.

15 Chairman: Mr. Sussman.

16 Mr. Sussman: Appreciate you coming today. Would you agree if you know in the
17 broader effort to enforce the laws of the state that if there were a city or
18 a county that were – that was willfully ignoring immigration law, both the
19 federal level or the mandates put out in 2006 in Senate Bill 529 to use an
20 E-Verify program for employees and for contractors, would you agree
21 that if cities and counties were either willfully ignoring it or just being

1 generally unconcerned, sort of passive neglect, do you agree there would
2 be a material, a potential material effect on compliance with state law?

3 Rusi Patel: Willful ignorance of any law that's already been passed in this Bill were to
4 be passed, GMA does not condone that at all. Willful ignorance of the
5 law is something that we should all go after. GMA has been working with
6 our member cities trying to get them, the ones that are not fully
7 compliant with E-Verify or Save, to get them up to speed. We have
8 employees going to the cities to show them to them. In a few weeks I'm
9 actually giving a presentation on how to – walking people through the
10 Save process because as I'm sure everyone on this committee is aware, E-
11 Verify and Save are very different in signing up. E-Verify is rather simple
12 compared to Save. Save involves many steps and sometimes, especially
13 in smaller communities folks are having a hard time understanding how
14 to go from step to step so GMA has been working with our member cities
15 and I agree that willful disobeying any of these laws, Save, E-Verify or
16 anything that may come forth from the state is not something that GMA
17 is willing to accept from our members.

18 Unidentified Speaker: Briefly please.

19 Unidentified Speaker: I just wanted to comment once again, existing law does require that
20 again public works contractors comply with certain provisions of the law.
21 Would you agree that for contracts that are being executed for cities on

1 city contracts it is in fact the city's requirement to insure enforcement of
2 that provision?

3 Rusi Patel: Cities are required to get an affidavit from those contractors. Whether
4 the contractors are falsifying those affidavits or the subcontractors or
5 sub-subs that's something that we can't fully go after. They're testifying
6 on the affidavit that they are E-Verify compliant.

7 Unidentified Speaker: I understand but broadly under Georgia law it is the responsibility of
8 cities to insure compliance with the law on contracts which they're
9 executing with their vendors.

10 Rusi Patel: Right, we're supposed to make sure they sign that affidavit and that they
11 say that they're E-Verify compliant.

12 Unidentified Speaker: So you would agree with the proposition that there is a rule for cities in
13 this process in insuring compliance.

14 Rusi Patel: I completely agree with that. Thank you sir.

15 Chairman: Thank you Mr. Patel, we appreciate your coming down this morning. We
16 have located Mr. Tolar with the Georgia Agribusiness Council, thank you.
17 Mr. Tolar I'm going to tell you what I've told other witnesses. If you could
18 confine any statement you have to five minutes that will go ahead and
19 allow us to go ahead and have a few questions before the time has
20 expired.

21 Bryan Tolar: Absolutely. Glad to, thank you Mr. Chairman; I'm sorry I was located in
22 the Senate.

1 Chairman: Yeah, not a problem. You shouldn't be sorry about that. I was about to
2 forgive you but not anymore. We appreciate you taking the time. We
3 understand this is an important issue for the [unintelligible] of the
4 community and look forward to working with you on the issue.

5 Bryan Tolar: Great. Real quickly my name is Bryan Tolar; I'm the President of the
6 Georgia Agribusiness Council. We're a statewide trade association; we
7 represent over 700 companies representing all parts of agriculture,
8 everything from the farm to the table and the clothes on your back so
9 we're very proud to do that. We're certainly the State's largest industry,
10 \$68.8 billion and we want to grow and we want this legislation to do
11 everything except hinder us from growing. So I will first say that I know it
12 is the mission of the members of this body and certainly the author of
13 this legislation, Representative Ramsey who I consider, always have and
14 always will to be a great friend and loves the State of Georgia just as we
15 all do. This is a very delicate issue for agriculture because being the
16 largest industry and representing economic impact in all 159 counties, we
17 have a lot at stake in this. We are in the midst of trying to grow our
18 industry in several ways one of which we've heard the governor talk
19 about it and many of you have probably waited on it, the expansion of
20 the port in Savannah. We want those large container ships to come to
21 Georgia to carry agricultural products out not bring agricultural products
22 in. In the system that we have in place now with the technology that's in

1 place, with the natural resources that are abundant to our great state we
2 are poised to grow this industry because commodity prices have finally
3 reached a point where people are not talking about what do I have to
4 plant to make a profit but what can I plant so I can make the most profit.
5 And, when we look at that we need to have a labor force to be able to
6 harvest that product and we want obviously, want to utilize and do utilize
7 a legal workforce.

8 The federal government puts in place the parameters for hiring a legal
9 workforce. If we have employers now whether they're agricultural or
10 otherwise that are not completing the I-9 then they're already in
11 violation of federal law. We can't help them, this Bill can't help them, I'm
12 not going to try to help them but when we look at the E-Verify portion
13 that really is the part of the Bill that gives us the most challenge and
14 you've heard from others and there is certainly different parts that give
15 people challenges of their own. But for ours it's the E-Verify requirement
16 and I apologize, I have not seen the latest draft to know where we are on
17 the E-Verify part so I'll wait to get details on that later. But, if we require
18 the E-Verify then we are putting another layer of government on an
19 already challenged workforce that's out there for agricultural production
20 and I'm talking getting your hands dirty workforce. Very difficult to find
21 those workers no matter where you are and over two-thirds of our
22 counties agriculture is either the number one or the number two industry

1 in those counties so we're not talking about small beans here. We're
2 talking about real economic impact. So as we move forward we need to
3 see and it is a federal issue, I know you've heard that time and time
4 again, it is a federal issue and Representative Franklin I'll say and I heard
5 your comment earlier about the Constitution that we don't have any
6 Georgia citizens, they're also U.S. citizens and so we have to operate
7 because the U.S. is the one that provides us – federal government
8 provides us the Visas that we need to get those workers in a guest worker
9 program, to get those citizenship papers so that we can have those legal
10 citizens here. And that's what we're trying to comply with, we're trying to
11 comply with the federal system that also provides a federal outlet
12 through Visa programs through H2A which many of you maybe familiar
13 with and H2B and I'll touch on them very quickly.

14 H2A is a very good program if you can afford it. The federal government
15 says that the minimum wage for H2A workers is \$9.11 and you provide
16 transportation and you provide housing and you cover all the Visa costs.
17 It ends up costing about \$13.50 per employee per hour for those
18 operations. If we could all drive Cadillacs it would be great but everyone
19 can't drive a Cadillac. Some people can, others can't so we don't need a
20 Cadillac system and that's what the H2A program is, it's a Cadillac system.
21 Now let's talk about H2B. This is where we get to our landscape workers,
22 our urban agriculture, the environment we're in right now. That program

1 is capped by the federal government. It was capped in 1990 with 66,000
2 Visas nationwide. In 2004 we reached the cap of that. We can't expand
3 it; the State of Georgia can't expand that cap. All we can do is apply for it
4 and hope like heck that we get the workers because if we don't you're
5 out of business and if we're out of business, if we take a \$68.8 billion
6 industry and we take just a 10% hit we're talking almost a \$7 billion hit to
7 Georgia's economy and that's real. And when those farming operations,
8 when those landscapers, when they go away they don't come back
9 especially in rural Georgia. It's that much more difficult if you're trying to
10 harvest a crop or if you're trying to milk a cow, you're trying to care for
11 chickens, it's a very diverse industry; it's a very complex industry, this
12 problem is a very complex problem and it requires a federal solution.
13 But we understand immigration reform needs to happen and we
14 understand there are things the State of Georgia can do and we
15 recognize that this legislation carries a lot of different components in it
16 that will serve the State of Georgia and will serve the State of Georgia
17 well but we take the biggest challenge if this legislation is with the E-
18 Verify part and mandating that on private employers. And at that point
19 Mr. Chairman I'll take any questions.

20 Chairman: Let me ask you a question that warrants a – probably a 10 to 15 minute
21 answer but I'm going to ask you to do it in 30 seconds, very reasonably I
22 think you agree.

1 Bryan Tolar: Yes sir.

2 Chairman: Where's the line? Where's the line between those folks in the
3 agricultural community who this is perhaps not as big a deal and with the
4 folks where it is? In other words where is that line of you know where
5 compliance with H2A, E-Verify and everything that you talked about,
6 what's the comfort level and I understand that's something of a
7 subjective determination and you know in our minds we take an oath to
8 support and defend and protect the law and we all take it seriously. I'm a
9 little concerned about the fact that what I'm hearing is a message from
10 you that says well we should enforce the law, protect the law and adhere
11 to it but only if we can afford it and that's what I think I'm hearing. Tell
12 me if I'm hearing something differently and then tell me about who is it
13 in your mind just from your industry, intra industry where – who can
14 afford it and who can't and the size of that operation. Talk about the law
15 first and how it is, that's the message that I just heard and I want to make
16 sure I didn't hear it wrong.

17 Bryan Tolar: That's actually a 30 minute answer so I'll do my best.

18 Chairman: I warned you.

19 Bryan Tolar: With regard to who can and who can't take advantage of the H2A
20 program because it is an expensive program the answer is it depends. It
21 depends on what your commodity is, it depends on your locale for where
22 your market is and I know that's a lawyer type answer, I think you all say

1 it depends a lot too but there is no simple answer. It's because the
2 industry is not simple. The solution is not simple and it's not a matter of
3 drawing a line to say well if we get above this point or we're below this
4 point then we're in or we're out. It's all about that individual operation
5 and who they serve and where they provide those products in the
6 market. As far as where do we go and how do we adapt to the system
7 that's in place, well as I said when we put the I-9 out, when the federal
8 government put the I-9 system in place and they created the guest
9 worker program and the guest worker program is flawed. Don't get me
10 wrong I mean it's a nightmare because it is so hard for operations of all
11 sizes to be able to utilize it. We need those outlets for those workers at
12 the critical times whether its harvest or whether its to run a dairy
13 operation because dairy cows, they've got to be milked everyday. I mean
14 they don't wait for harvest season. I mean harvest season is everyday.
15 And so the State of Georgia can certainly look to put different programs
16 in place to put restrictions on private industry on how they go about
17 hiring individuals but they can't provide that outlet. They can't provide a
18 guest worker program. They can't provide a source of individuals and I
19 understand we have a 10.2 unemployment rate here in the State of
20 Georgia but if you go to South Georgia they're welcoming people
21 everyday. So it's not a matter if there is people unemployed, it's a matter
22 of are they willing to be employed in this particular arena and so we're

1 trying to find workers that will go out and will commit to the jobs that
2 need to be done and make a very fair wage so that we can all enjoy the
3 things that we enjoy, so that we can be here today having this discussion.
4 And Mr. Chairman I've tried to address – again a 30 minute answer but
5 really it depends and it depends on a lot of variables but our diversity is
6 what creates those variables and the opportunities for expanding in
7 markets globally also impacts those variables because if we don't
8 produce it somebody else very well may and we're already seeing Brazil
9 and China and others that are taking advantage of those opportunities.
10 But we want to provide our own resources here not just in Georgia but in
11 this country and we want to help do that and we need workers to get
12 that done.

13 Chairman: Understand that we understand that it's a balance; it's a balance
14 between an enforcement responsibility that we feel that we have
15 compared with the understanding and appreciation of the fact that we
16 don't want to be counterproductive as it relates to economic
17 development in a major industry of our state. That's not lost on anyone.

18 Bryan Tolar: I understand.

19 Chairman: But it needs to be understood by all constituencies involved whether it's
20 in your business or without that doing nothing is not an option and
21 relying to our detriment on a federal government that is not going to do
22 anything anytime soon is not a realistic alternative. But we hear, what

1 some of us hear and I'm not saying you're saying this but in general when
2 we hear someone say it's a federal issue let the federal government do it
3 that's really just a euphemism for do nothing and that's not an option at
4 this point.

5 Bryan Tolar: [Unintelligible], and I apologize I haven't articulated; I know we got to the
6 point.

7 Chairman: No I don't take issue with you but . . .shades of that.

8 Bryan Tolar: There are two things I'd like us to do and it does not require legislation to
9 do either one of them. One of them might be a good piece of legislation
10 but one of them not at all. We talked about the expansion, you've
11 probably heard, you probably will hear people talking about how E-
12 Verify, that companies can utilize it now, it's voluntary and that we have
13 companies everyday to sign up in Georgia utilize it and that's great and
14 they didn't need a law to do that. I think we should do more to
15 encourage businesses that want to get into E-Verify. They can do it
16 themselves right now today, sign up, go online and knock it out. It takes
17 just a few minutes, as everyone likes to say, I haven't done it so I don't
18 know. But I think we need to expand that opportunity and encourage
19 business and what can we do as the State of Georgia to encourage
20 businesses to voluntarily do that? Now the other part I would like to say
21 Mr. Chairman is that over this last year, in 2010 we took on a six-month
22 process that ya'll passed legislation last year to examine Georgia's tax

1 code and put together a great panel of great business leaders and
2 economic experts and went on a tour of the State of Georgia and met
3 with business leaders, and met with citizens, met with all different types
4 of groups and got input and we put this stuff together and we talked
5 about how can we, how can we accomplish a goal of making Georgia
6 more competitive, more attractive, more economic and a more viable
7 state. We can do that with this program right here. We can go around
8 the State, we can talk to folks in North Georgia; we can talk to folks in
9 South Georgia; in Middle Georgia and we can get their input and we can
10 talk about with them what would be the impact if we did this to a dairy
11 producer or if we did this to a car dealer, if we did this to an auto
12 manufacturer or construction, I mean all the different private sectors that
13 are out there. We can have that conversation and we can come back and
14 we can synthesize all of that and see if we can't come up with a solution
15 that works for everybody. So I would challenge this group to think about
16 those particular areas to move forward.

17 Chairman: We've gone a little over on your portion but I think it's necessary Mr.
18 Ramsey.

19 Mr. Ramsey: Thank you Mr. Chairman and a good and long-standing friend, we've
20 been working together for a lot of years. I guess I'm trying to get to the
21 heart of your I guess your testimony that the concern from your

1 perspective is the requirement to enroll in E-Verify for employers that
2 have five or more employees, well for any private . . .

3 Bryan Tolar: That's the way it exists . . . that's

4 Mr. Ramsey: That's the way it exists under the Bill.

5 Bryan Tolar: I didn't know how it was . . .

6 Mr. Ramsey: Is it the nature of – is it the nature of the E-Verify program because in my
7 experience I've enrolled in E-Verify, it took a few minutes, it was an
8 extremely easy process. The process of verifying an employee is a very
9 quick process. Is it the nature of the E-Verify program you're concerned
10 about imposing an onerous burden on employers or is it just that it's
11 going to limit – it's going to identify employees that are ineligible to work
12 under federal law? So I'm just trying to get to the heart of what you're
13 suggesting with respect to your concerns on E-Verify.

14 Bryan Tolar: Right and let me do my best to address that. It is not the issue with
15 regard to E-Verify and how do you sign up. I know our folks in agriculture
16 and certainly others all across this state are very capable of handling the
17 registration process for E-Verify. I'm not worried about that. The part
18 that I'm concerned about is where do we go, where do we draw the line,
19 as I stated earlier when the State of Georgia is looking to impose a hurdle
20 for private businesses without providing an outlet for those workers to
21 come in. Just like the federal government with I-9 they put H2A and H2B
22 and other Visa programs in place; they provided a system to bring people

1 in when they didn't qualify under the current structure of that system.
2 And the State of Georgia as you and I have discussed does not have that
3 opportunity to provide that and so that is the challenge because when
4 we talk about farming, we talk about agriculture, we talk about 383,000
5 jobs and those are jobs that I know we all want to keep here. I want to
6 keep them here. And, E-Verify is not going to do anything to enhance
7 that economic viability of that industry or any other industry.

8 Mr. Ramsey: But you're not really answering my question.

9 Bryan Tolar: I'm trying.

10 Mr. Ramsey: If it's not E-Verify ... the nature of the program, is it . . . it sounds to me
11 you're saying it's just going to limit . . . it's going to limit and it's going to
12 provide a process by which employers are able to ascertain whether their
13 employees are eligible to work under federal . . . this is going to protect
14 employers for that matter. In terms of making sure that they're not
15 violating any federal law that prohibits them from employing those that
16 are ineligible to work under federal law. So it seems to me what you're
17 suggesting is, is by . . . by requiring enrollment in E-Verify the concern
18 from your perspective is that it's going to put a mechanism in place
19 where we're identifying. . . identifying employees that are ineligible to
20 work under federal law. Is that . . .

21 Bryan Tolar: And I'm sorry if that's what you're hearing because that's not what I'm
22 saying because there is an assumption that E-Verify is the end all be all

1 for our immigration reform issues and as you well know and as your Bill
2 articulates in a lot of different areas, there is a lot of changes that are
3 recommended for immigration reform in Georgia and so this is one part
4 of it and what we're saying is and I've tried to demonstrate is that where
5 that program is available, is currently available and we should encourage
6 businesses to get into it, not mandate businesses to get into it, that we
7 should tour the State and meet with different types of businesses in
8 different types of climates and different types of business atmosphere so
9 that we can determine what the impact would be, not pass a piece of
10 legislation and sit back and say wow I didn't see that, I didn't see that
11 coming because by then it's too late. And I know that's not your intent, I
12 know that's not your intent but the challenge is do we have the workers
13 to do the jobs we need at the time we need them done and so . . .

14 Mr. Ramsey: What you're suggesting is we should research the impact on the State of
15 Georgia of putting in place a mechanism that will prohibit those that are
16 ineligible to work under federal law from gaining employment in Georgia.
17 That's . . . you're suggesting that we as policy makers should go engage in
18 a process by which we study what the impact will be if we had a process
19 in place that identifies those that are ineligible to work under federal law.
20 I just . . . it's . . . I know we're kind of talking around this here but that's
21 what I hear you say.

1 Bryan Tolar: Well then I guess it's more of a . . . at this point it's more of a
2 philosophical issue too. The issue is do we want to – do we want the
3 State of Georgia to mandate a control mechanism for hiring practices for
4 private employers? It doesn't matter if it's agriculture or what and I say
5 no we don't. And I say that if we pursue that without going through a
6 process of vetting the impact to different industry sectors in different
7 parts of the State that we're setting ourselves up for unintended
8 consequences. Matter of fact I can just about guarantee it.

9 Chairman: Regardless of the fact that we know that if we don't setup a verification
10 mechanism that we know that there will be aspects of that industry that
11 are outside the law.

12 Bryan Tolar: Again we're assuming that E-Verify is the end all, be all to this whole
13 problem and we know it's not – it's not a perfect system either but the
14 challenge we have is maintaining an economic base of workers regardless
15 of whether we have E-Verify mandated or not. We already have an I-9
16 process. It's not like . . . we're not just throwing the borders open and
17 say ya'll come because we're not looking. That's not what we're saying at
18 all. We're trying to follow the federal process and utilize the federal
19 program to be able to bring those workers in when we cannot get
20 seasonal workers under the current hiring practice for getting locals in
21 the door. So that's all I'm saying Mr. Chairman.

1 Chairman: I want to apologize to members. I'm going to have to excuse Mr. Tolar
2 but we're going to reserve the right to ask you to come back if necessary.

3 Bryan Tolar: Sure.

4 Chairman: Because we do . . . we do have to go ahead and move on to other people
5 who want to be heard.

6 Bryan Tolar: I understand.

7 Chairman: Like I said, this is not a one-time process but we'll go ahead and perhaps
8 have you back.

9 Bryan Tolar: Mr. Chairman if I could, this is not an advertisement but the data that I
10 used comes from the University of Georgia in this little Ag-snapshots, I'll
11 be happy to provide us all Ag-economic data as provided by the
12 University of Georgia so it's not my data, it's theirs.

13 Chairman: We understand, we understand your time, we just have the difficulty of
14 the position that you're in, we can only hope that you appreciate the
15 balance that we have to strike as well.

16 Bryan Tolar: Oh, absolutely.

17 Chairman: Mr. Tolar is a fixture in this capitol and so members are free to get with
18 him but we again will . . . as we go on we'll be talking about having other
19 meetings to perhaps hear out individual issues

20 Bryan Tolar: So you need me to stick close right now just for later on during the
21 session? I'll be in the building.

22 Chairman: Thank you. Thank you.

1 Mr. Atwood: If I could just ask Mr. Tolar if he would please get with me offline, I need
2 some statistics from you and . . .

3 Bryan Tolar: Yes sir.

4 Chairman: Thank you Mr. Atwood. Let me also ask just individually if anyone has
5 written materials they want to use as a supplement to their testimony
6 today or in the past or in the future to please get them to Ms. Bazemore
7 and we'll go ahead and distribute that as you know, as a supplement to
8 any comments the people have. Thank you.

9 Ms. Abrams: This is the second time I've had my button pushed [unintelligible] about
10 to ask a question and while I do respect the right of the Chairman and the
11 sponsor of the legislation to inquire of our . . . of those test times before
12 the Committee I think it's only appropriate that at least one question
13 from an opposing view be allowed to be asked of [unintelligible].

14 Chairman: You were recognized in the previous round. We did have a couple of
15 questions that you know I thought I might go ahead and ask a question or
16 two for a change of Mr. Tolar. There is no preclusion on your
17 communicating with Mr. Tolar you know whether it's here or outside of
18 it. What I have to do is strike a balance Ms. Abrams between having a full
19 fair hearing and also making sure that we have people heard from so.

20 Ms. Abrams: Okay. With all due respect this is not simply a conversation with Mr.
21 Tolar, it's a conversation with the audience members who are present to
22 this public testimony and [unintelligible] and I'm not asking that we

1 extend the time but I would ask that if there are only going to be two
2 questions allowed that we try to strike a balance between asking
3 questions that maybe favorable to both sets of opinions that maybe
4 present in this room and whether it's asking me or another member of
5 my caucus or of the other caucus I think it's important that we have a
6 balanced approach to the questioning and this I do not believe has
7 demonstrated a fair balance in terms of questioning in regards to the
8 agriculture as its relating to this legislation.

9 Chairman: Well I appreciate the lady's input and now that we're spending a little
10 more time on it, in the previous hearing when the author went ahead and
11 went through section by section I think we went through a full process of
12 questioning on behalf of . . . from anyone who was actually in attendance
13 at the time not including the minority leader and we went ahead and did
14 strike that balance and certainly the reputation of this Committee and I
15 hope of myself of providing that balance but we do have to keep the train
16 on the track and I appreciate the General Lady's suggestion. Mr. Tolar
17 thank you very much. Thank you. Let me ask D.A. King of the Dustin
18 Inman Society to come on up. Mr. King we would admonish you as well,
19 if you can keep your remarks limited to five minutes. If we need to go
20 longer however as the agricultural industry I don't think anybody will go
21 ahead and begrudge us that and then we'll leave some time for
22 questions.

1 D.A. King: Yes sir Mr. Chairman, thank you very much. Please let me respectfully
2 note that I could easily go as long as Mr. Tolar with a 180 degree different
3 presentation. Good morning, my name is D.A. King, Mr. Chairman,
4 members of the Committee I am president of a self-funded organization
5 called the Dustin Inman Society. We are a group of citizens and real legal
6 immigrants who have taken a pro enforcement position on America's
7 very liberal immigration laws. Because I am limited to five minutes I'm
8 probably not going to use a prepared remarks. This for me is very much
9 like being stuck in the movie Groundhog Day. Mr. Chairman in that I was
10 in this very seat in 2006 when we ran the Georgia Security & Immigration
11 & Compliance Act through this very Committee in this very room. In
12 2006 the State of Georgia passed a law that was intended to create an
13 atmosphere in which everybody in Georgia would not only comply with
14 but local governments would help enforce the existing federal
15 immigration law. I find it very interesting that on the one hand people
16 are saying that this is a federal law and the State of Georgia should leave
17 it alone but then the federal law can be used as a crux sometimes.
18 Before I begin I wanted to point out a couple of facts. The State of
19 Georgia is number 6 in the nation according to the Department of
20 Homeland Security in the population of people in this country illegally
21 who are properly called illegal aliens. We have more people here illegally
22 than does Arizona. We are number 1 in the rate of increase of the

1 population of illegal aliens from 2000 to 2009 at 114%; Arizona's was
2 somewhere around 45%. The Pugh Hispanic Center recently came out
3 with figures that estimates the workforce in Georgia that's illegal is
4 somewhere around 7% and I don't remember the last figures. I'm sure
5 everybody knows better than I but unemployment in Georgia is either 10
6 or 9.4%, I've lost track. My position and most Georgians is that if there is
7 one Georgian going without a job because anybody in Georgia is ignoring
8 the federal immigration laws that are not enforced then it's too many
9 and I respectfully submit that not only does the Georgia legislature have
10 the ability and the right but very respectfully I think the duty to do
11 everything it can including enforce the laws we've already put on the
12 books to protect the American worker and I think equally as important if
13 not more to protect the jobs and the benefits and the services for the
14 real legal immigrants who obeyed our laws and joined the American
15 family lawfully like my sister and while I'm at it, from an experience I can
16 tell you members of the Committee that you will hear people testify and
17 use the word immigrant and what they're really talking about in most
18 cases is somebody here illegally. And it's deeply offensive to me for
19 people to mix the word immigrant with illegal alien. It's insulting to our
20 immigration process.

21 Mr. Chairman, members of the Committee there are many states in the
22 country who are passing laws similar to what Arizona did recently. The

1 whole world is watching. The whole world is watching to see whether or
2 not Georgia is going to become a pro enforcement state on our
3 employment laws and immigration or an anti enforcement state. We
4 cannot be in the middle on this. The federal government has refused to
5 secure our borders and to efficiently enforce our immigration laws.
6 That's not a mystery to anyone. You will hear from many people who will
7 tell you as did your last witness that there are various reasons for not
8 enforcing our laws and they will use E-Verify as an example. I have been
9 an authorized E-Verify user since April of 2005. The concept that E-Verify
10 is not accurate is easily disproven from very recent information from the
11 Department of Homeland Security. The little pie chart paper that I just
12 asked to be passed out that you should have in front of you is also
13 reflected on this graph here. The pie chart shows the efficiency level of
14 E-Verify and I heard somebody a moment ago say that E-Verify was either
15 50 or 80% inaccurate. That is no more true than I might stop on the way
16 home and buy a hair dryer. It is complete fantasy. But it's numbers that
17 are constantly put out both by the media and in the media to throw
18 people off. These numbers are easily recognizable to demonstrate the
19 efficiency of E-Verify and its accuracy. This is a list printed from date of 3
20 September. In very small print, of E-Verify users here in the State of
21 Georgia more than 16,000 companies are listed in that book, again as of 3
22 September of last year of employers who are voluntarily using this

1 system. Now they have put themselves on an unequal playing ground,
2 playing field. They have created a sense of integrity in their own business
3 but they still have to compete with other employers who don't use E-
4 Verify who can hire cheap black market labor, labor that has escaped
5 capture at our borders. I have traveled the state since 2007 when the
6 2006 law went into effect speaking to local governments and official
7 agencies and checking on compliance. I did that at my own expense
8 because there is no oversight agency in the state to monitor or educate
9 local governments on compliance. I'm happy to answer a question on
10 that but I wanted it to be clear that use of E-Verify is a deterrent, it's very
11 effective and the reason that a lot of very powerful lobbying groups don't
12 want E-Verify used is because it is so efficient. Every business that uses
13 E-Verify is bound by the law to have one of these in their office that's in
14 clear . . . it is clearly visible to anyone who comes in. It is a huge
15 deterrent. A very small amount of the people who will get a negative
16 response from E-Verify after being hired ever come back to contest that
17 because they're here illegally and they've been caught and they go down
18 the road to an employer who's not using E-Verify. But this is what goes
19 up in an office and it serves as a deterrent.

20 If I may have one more minute Mr. Chairman, the H2A Visa which has
21 successfully remained a secret for a large part of this debate does not
22 have any limits to it. I want to say that very carefully. The agriculture

1 industry nationwide including here in Georgia has the ability to lawfully
2 import as much temporary legal foreign workers as they would ever need
3 to work in an agriculture business. Mixing up another piece of it does
4 have a limit with the H2A. While it maybe good politics in a rather slick
5 presentation has absolutely no basis in reality. The argument that
6 Georgia somehow cannot afford to enforce the law is insulting to the
7 millions of Georgians who cannot be here today who are howling to be
8 protected by their state government from the ravages of the crime of
9 illegal immigration and illegal employment. That anybody in Georgia
10 would hire illegal labor while our countrymen are standing in the
11 unemployment line says a lot about where we have gone as a country.
12 Again, the world is watching. I hope that not only this Committee but the
13 legislature as a whole will make the decision to become a strict pro
14 enforcement state, protect the American worker, protect the real
15 immigrants and honor the tradition of immigration into our country. I
16 don't know if that was 5 minutes or not but I'm happy for any questions.

17 Chairman: It was actually 10 and as a result your time has expired but we appreciate
18 your coming down here today and offering testimony and we're going to
19 reserve the right as all members should to ask questions and later on
20 offline and to provide us additional information if you see fit.

21 D.A. King: Thank you for your time Mr. Chairman. If I may and I hope this doesn't
22 count on anybody else's time there is a deputy here from Gwinnett

1 County Sheriff's Department who I forgot to make known to the
2 Chairman at the beginning of the meeting and I apologize. His name is
3 John Spears.

4 Chairman: Deputy Spears, wherever you are, thank you for your service. Let me call
5 on Judith Martinez-Sadri. If I'm mispronouncing that I apologize on
6 behalf of GALEO. I'll tell you what, while we're waiting for her let me go
7 ahead and recognize Kyle Jackson with the National Federation of
8 Independent Business. I know Ms. Jackson you were up in the Mezz and
9 came on down and then we'll have Ms. Martinez-Sadri in the on-deck
10 circle.

11 K. Jackson: Thank you Mr. Chairman. I apologize to the members of the Committee.
12 I ran out this morning and forgot copies of my written testimony but I
13 have emailed it to the Chairman's office and I'll be happy to get to all of
14 you either later today or tomorrow. I will be brief. My name is Kyle
15 Jackson, I'm the State Director for the Georgia Chapter of the National
16 Federation of Independent Business. Thank you for the opportunity to be
17 here today to provide interested party testimony on House Bill 87.
18 Before I get to my comments, let me speak briefly to NFIB Georgia and
19 who we represent. We are the nation's and state's largest small business
20 advocacy organization with 8,000 small employers here in Georgia and
21 about 325,000 small employers nationwide. We are a member driven
22 organization in that before we take a position on any piece of legislation,

1 state or federal, we poll or survey our members as to make sure the
2 organization always represents the true position of small business.
3 House Bill 87 is a very large comprehensive and complex piece of
4 legislation and credit to the sponsor, Representative Ramsey as well as
5 this Committee for tackling such a difficult and important issue. The
6 legislation contains many topics that don't have a small business impact
7 and I'm not in a position to comment on those areas of the Bill. I can
8 however provide you with some perspective on the provisions of the Bill
9 that do impact small business. As an organization our members
10 consistently and vociferously oppose efforts by government at any level
11 to enforce mandates on small business. However, my members have
12 identified illegal immigration as an area where they support tougher
13 sanctions on employers who knowingly, key word being knowingly, hire
14 illegal workers. On the 2011 NFIB Georgia member ballot, 77% of
15 respondents supported stiffer penalties on employers who knowingly
16 hire illegal immigrants. This result is consistent with the calls and emails I
17 have received from honest, well-intentioned employers who are
18 competing on an unfair playing field with employers who cut corners and
19 employ illegal labor as a cost cutting measure. That isn't to say I don't
20 have concerns about the legislation, E-Verify while it is an improved, free
21 and online tool is not perfect and mandating its usage does add another
22 layer to the regulatory burden on small employers in this state.

1 Furthermore it is important that the legislation provide ironclad
2 protection for employers who use E-Verify to protect them from future
3 actions in the case of a false-positive in the system. I also recognize and
4 appreciate Representative Ramsey's efforts to exempt employers of 5
5 and under in the Bill.

6 Regulation and compliance are a very serious challenge for the smallest
7 of Georgia's businesses. In closing I would suggest any action taken by
8 the legislature ought to be coupled with an education and outreach
9 program to help insure compliance in the small business community;
10 phasing in employers over time as House Bill 87 would do; does allow for
11 a period of education and I hope the State would be a partner with NFIB
12 in reaching out to the small business community. I know this legislation is
13 a continued work in progress and I appreciate the sponsor's willingness
14 to entertain input and suggested improvements. Thank you again to the
15 Committee for considering small business and allowing me the time to
16 discuss this legislation. I'd be happy to answer any questions.

17 Chairman: Thank you Mr. Jackson. Any questions for Mr. Jackson of NFIB? Mr.
18 Sussman.

19 Mr. Sussman: Thank you Mr. Chairman. This is a question that could be also directed to
20 an agricultural business much like many of your members but when Mr.
21 Tolar was here earlier he talked about his business owners being very
22 capable of signing up for the system, even the small ones, he recognized

1 it's a relatively trivial amount of time to register for E-Verify, maybe 20
2 minutes and maybe 30 seconds per you know, per check per employee.
3 But, looking at this chart that shows the 85% of folks that are identified
4 as not being eligible through the E-Verify system don't pursue action
5 shows a little effectiveness. I wanted you to comment on the capability
6 of a small business whether it's got 6 employees; whether it has 2 or 3
7 employees; aren't they really basically run the same way and isn't it really
8 just the same for a business with 2 or 3 employees as it would be for a
9 business of 6 or 7 employees?

10 K. Jackson: Well to answer your question Representative, all small businesses are
11 unique. There are certainly common themes and trends when it comes
12 to hiring practices. You know it's hard to get in the mind in the
13 operations of a really small business because you keep in mind anytime
14 you're taking a person at a 3 employee, 4 employee, 5 employee shop
15 away from the actual running of their business that's time that they're
16 not spending generating you know tax revenue for the State or jobs for
17 the State. You know it's somewhat of a concern.

18 Mr. Sussman: But given the 30 seconds to do an E-Verify check relative to the other
19 social security registrations and things for employers, wouldn't you agree
20 that the 30 second check is a trivial amount of time?

21 K. Jackson: I don't think that's an insurmountable burden.

22 Mr. Sussman: Thank you.

1 Chairman: I see no further questions. Thank you Mr. Jackson. Has Ms. Martinez-
2 Sadri entered the room? Am I saying that right, Sadri?

3 Ms. Martinez-Sadri: Yes, that's correct.

4 Chairman: Alright.

5 Ms. Martinez-Sadri: You got that right.

6 Chairman: Ms. Martinez-Sadri I know you're speaking on behalf of GALEO. We're
7 allotting everyone 10 minutes if you could.

8 Ms. Martinez-Sadri: That's fine, I'll be brief.

9 Chairman: Limit your comments to 5 and then that would allow a few minutes for
10 questions if you can. That's up to you.

11 Ms. Martinez-Sadri: Yeah I'm speaking on behalf of the Georgia Association of Latino Elected
12 Officials, thank you for the opportunity Mr. Chairman and Committee
13 members. My name is Judy Martinez-Sadri, an entrepreneur and
14 engaged member of the Latino community, a mother and a Georgia
15 taxpayer. You want me to be louder? You want me to start over? Good.
16 That's a good practice. Good morning Mr. Chairman and Committee
17 members. Thank you for the opportunity. My name is Judy Martinez-
18 Sadri, a GALEO Board member, an entrepreneur, an engaged member of
19 the Latino community, a mother and a taxpayer. I'm here to provide
20 testimony on behalf of Jerry Gonzales, Executive Director of GALEO.
21 Unfortunately he's out of town and he cannot be here with us today. This
22 is what he wished to testify before you today. Last Friday this Committee

1 began the consideration of House Bill 87, a copycat version of the
2 controversial Arizona immigration law. Despite the fact that similar
3 legislation across the country is being delayed due to serious economic
4 concerns and that such laws have been challenged by federal courts and
5 the Department of Justice, Georgia's legislators insist on moving forward
6 with their immigration enforcement law. The passage of such a
7 controversial legislation would be fiscally disastrous for our state on a
8 number of fronts. To begin with any state regulatory scheme of
9 immigration enforcement would require a [unintelligible] of resources for
10 implementation. Georgia, like many other states is in a serious fiscal
11 crisis and considering budget cuts. How can the state come up with the
12 resources required for an implementation of such an expensive
13 immigration enforcement law? How much will Georgia will have to pay
14 for the potential litigation costs associated with the future of lawsuits? In
15 addition, Georgia has worked hard to build a business and investment
16 friendly image that would be harmed by passing such as anti immigrant
17 laws. Our state is the home of many, many multi national corporations. It
18 has the world's busiest airport. It has a thirst for expanding international
19 trade and is the cradle of the Civil Right Movement. Passing such a law is
20 a step backward for Georgia. Georgia's economic development efforts
21 rely upon it being seen as a good place to do business. If HB87 moves
22 forward that reputation will certainly be irreparably tarnished. The

1 tourism and convention business is very important to the City of Atlanta
2 and to our state as a whole. It is our state's second largest industry and
3 has the total economic impact of about \$34.8 billion. In 2009, \$1.8 billion
4 was expended in Georgia from foreign travelers in direct expenditures.
5 For every \$1 million spent by international visitors in our state, increased
6 11.5 new jobs; generates over \$330,000.00 in payroll and generates over
7 \$123,000.00 in state taxes. If HB87 moves forward the international
8 community will get the message that they are not welcome into Georgia
9 and therefore our state will not only lose millions of dollars but we'll also
10 be known internationally as a hostile type state towards business and for
11 investors. Georgia's leading industry is agriculture which generates \$65
12 billion annually towards the state's economy and employes 1 of every 7
13 residents. U.S. Senator Saxby Chambliss has estimated that our nation's
14 agriculture workforce is made up of 50-70% undocumented immigrants.
15 Because of this fact the Georgia Farm Bureau has weighed in opposition
16 the consideration of an Arizona copycat legislation for Georgia. In fact
17 Georgia Senator Jack Murphy has opposed . . . proposed accepting over
18 [unintelligible] agriculture industry from any immigration enforcement or
19 regulatory consideration such as HB87. It is a move that certainly points
20 to the hypocrisy of the rhetorical enforcement of the Rule of
21 [unintelligible] and the practical impact on the industry. The solution to
22 our immigration crisis isn't reckless and harmful legislation. It lies here in

1 our gold dome leadership working with Georgia's congressional
2 delegation and President Obama to help overcome the [unintelligible] of
3 immigration reform and to develop a bipartisan workable solution
4 through Congress that will move our nation forward while also upholding
5 our values as Americans. The Arizona copycat legislation is a job killer for
6 Georgia. My fellow Georgians we can and we must do better than this.
7 Again this testimony is on behalf of Jerry Gonzalez, Executive Director of
8 the GALEO. Any questions that I'll be asked I'll be answering as a regular
9 citizen. Like I said an entrepreneur, a business owner and a mother and
10 I'll just add I hate reading but I had to do it. I just want to tell you that I
11 moved to Georgia 14 years ago and this is my home. I'm originally from
12 Mexico but I made Georgia my home and I'm so proud to be a Georgian
13 and it really hurts me and it bothers me that we're spending time trying
14 in the 21st Century, trying to discuss such laws that will just take us
15 backwards. Let's be open like many other cities around the world who
16 are looking for opportunities to expand their business and to be part of
17 this global economy. Thank you.

18 Chairman: Thank you Ms. Martinez-Sadri. Do you want to answer a question or
19 would you prefer not to?

20 Ms. Martinez-Sadri: I will answer a question as . . .

21 Chairman: Okay, you have 3 minutes left so I'm going to call on Mr. Pack.

1 Mr. Pack: Thank you Ms. Martinez. During your written reading of I guess Mr.
2 Gonzalez' testimony you stated that passage of such laws are Arizona
3 copycat laws result in fiscal damage or destruction to the state. The state
4 as I understand it right now on previous testimony that there is already a
5 similar statute just not being enforced in 2006. So what is the basis for
6 the additional supposed economic loss that you're citing? If the law
7 exists all we're doing is to put enforcement mechanisms to a law that
8 already exists?

9 Ms. Martinez-Sadri: Sure well I have to say that I'm no lawyer here so I'm not very familiar
10 with all your lingo and you know the way you guys ask but I'm just a
11 regular citizen like many others out there and I see that our state has
12 many other issues. I mean our teachers are not getting paid; there is a
13 lot of cuts everywhere so where is the money for those laws? In the last
14 legislation other laws were passed that are not even enforced so why are
15 we turning around here just wasting out time trying to implement laws
16 that won't get enforced and where's the money? I mean I would . . .
17 clearly this proposal is a copy of the immigration of the Arizona law, isn't
18 it? Are they successful? No. Why are we following them? Why are we
19 doing something that hasn't given results? Let's let our federal
20 government do what they're supposed to do. Is that okay?

1 Chairman: Thank you Ms. Martinez-Sadri. Your time has expired. We appreciate
2 your taking the time to be here this morning. Let me call on Mr. John
3 Ciancio, Jobs for Georgians. Am I pronouncing that last name properly?

4 John Ciancio: Yes.

5 Chairman: Okay. Two for two. And again, you're under the ten minute rule as well
6 and we appreciate your taking the time to be here this morning.

7 John Ciancio: Yes sir, thank you Mr. Chairman. I appreciate the Representatives. My
8 name is John Ciancio, I'm with Jobs for Georgians and we are a group of
9 Georgian workers mainly construction that have gone around and they're
10 sick and tired of being shut out of work, our work in the State of Georgia.
11 We have gone all over the state and we've exposed Cobb County last
12 year of . . . of just being shut out because we're not . . . we're regular
13 Georgians and taxpaying citizens and I feel, we feel that the . . . the
14 construction industry has really been decimated with these illegal
15 immigration and illegals working on these construction sites, that we've
16 been shut out. Again, we're working with Fox 5, it was on last night.
17 We've uncovered numerous jobs all over the state where these
18 contractors and these general contractors and subcontractors, they know
19 what's going on. I'm not going to sugarcoat it. We are getting shut out
20 because of our wages. They are using these folks, abusing these folks and
21 paying them a lesser wage and this is what's happening all across the
22 State of Georgia right now in the construction industry and we are sick

1 and tired of it and we are not going to stop until this Bill goes through.
2 We are for it; we hope it passes; everybody should E-Verify and that's it,
3 that's who we are.

4 Chairman: We appreciate you taking the time to be here this morning. Would you
5 like to answer questions from members of the Committee?

6 John Ciancio: Sure.

7 Chairman: Mr. Ramsey.

8 Mr. Ramsey: I actually – I pushed the button. In your subsequent testimony you kind
9 of got the point I was going to ask you make but I just appreciate you
10 coming down here. I think you live in my district, don't you?

11 John Ciancio: I absolutely live 30 houses away from you. And I do apologize, I'm usually
12 in this setting and I thank you very much.

13 Mr. Ramsey: No, we're grateful for you to be here and whether it's on your side of the
14 issue or Ms. Martinez-Sadri's side of the issue, we appreciate you know
15 input from across the state. We are where we are, we agree, we
16 disagree, sometimes we agree to disagree. The hope is that we can do so
17 without being disagreeable and represent our constituencies
18 respectively.

19 Chairman: I see no further questions. Appreciate you coming out again.

20 John Ciancio: Thank you very much.

21 Chairman: Let me call Mr. Arnie Geiger representing the American Legion. Mr.
22 Geiger.

1 A. Geiger: Thank you Mr. Chairman.

2 Chairman: No I think the first thing I need to do is thank you isn't it, don't I for your
3 service?

4 A. Geiger: I appreciate that. I just want to thank the Committee for working hard on
5 this and particularly Representative Ramsey. The American Legion
6 opposes any person or persons being in this country illegally regardless of
7 race, sex, creed, color or national origin. We believe that current laws
8 governing immigration should be impartially and equally enforced.
9 However unfortunately the federal government is not doing that and so I
10 see the need for Georgia to come forth with laws under the Tenth
11 Amendment of the Constitution. The American Legion members have
12 served the United States around the world and Americans . . . so that
13 Americans can be safe here at home. They know third world countries.
14 We've seen poverty, we've seen political instability, we've seen disease
15 and we've seen war and the sacrifices that the American Legion
16 members, veterans, American Legion veterans have made gives them a
17 little bit different perspective on national security issues than many other
18 Americans may have. Legionnaires describe the creed to uphold and
19 defend the Constitution of the United States of America to maintain law
20 and order and to foster and perpetuate 100% Americanism. That's not
21 just words those are the things that we veterans do not only when
22 they're in the service but after service. So American Legion has been a

1 leader in monitoring candidates who want to be legal citizens and we've
2 done a lot of work in that particular area. But we are definitely not in
3 favor of illegal immigration. Illegal immigration under the federal laws
4 Title 8 Section 1325 which I'm sure most you are familiar with is very
5 precise and very clear what law is in that and one of the questions that
6 was brought up here earlier today is simply stated in the federal law and
7 this law HB87 is going to simply back that up. The section very clearly it
8 says in that section it says anyone employing or contracting with an illegal
9 alien without verifying his work or authorization status is guilty of a
10 misdemeanor. So we need to have the E-Verify. Unfortunately the cost
11 of illegal immigration they are saying that Georgia is going to lose a lot of
12 money by enforcing this Bill but on the contrary the cost to the state is
13 enormous since the cost of illegal immigration in terms of government
14 expenses, expenditures, excuse me, education, criminal justice and
15 medical care. These costs are staggering. California alone is over ten
16 billion dollars a year. That's half of Georgia's budget. And unfortunately
17 since the states must pay this high cost of providing such services, illegal
18 immigration has become one of the largest unfunded federal mandates.
19 The agricultural concerns in this state, yeah, that's our biggest industry
20 and we certainly appreciate everything they do. I was born and raised on
21 a farm myself and I fully understand farm labor. However, the illegal
22 immigration population overstays their Visa. Over 50% of the illegal

1 aliens in the United States have had a Visa at one time but now they
2 overstay and pay no attention to returning as their Visas have suggested.
3 So we have a real problem with that particular end of the industry. The
4 E-Verify program certainly would help that particular situation. Crime, I
5 don't have to talk about crime. I'm sure that all the people in this room
6 are familiar with the crime that cost, the cost of the crime and the
7 insecurity to the citizens of Georgia that illegal aliens have brought her.
8 Education, education in Georgia is a very sticky point and we have put a
9 lot of money into education and the Supreme Court ruled prior and
10 though in 1982 that we must, as a state we must educate the people, the
11 students of illegal aliens. So the court noted this season that the
12 Congress could reverse that decision if illegal alien students prove to be a
13 financial hardship to the taxpayers and if the students of legal citizens
14 were having their education negatively impacted but unfortunately
15 Congress has never taken that step because that is exactly what is
16 happening in our state today. The proponents to open borders and guest
17 workers amnesty programs say illegal immigrants take jobs that
18 Americans won't do. That is absolutely not true. And what it is that is a
19 demeaning to the general population of this country and it is a
20 demeaning to legal immigrants. People who have come here legally to
21 work are being put out of jobs because of illegal immigration. I feel that

1 we need to go forward with this bill and I believe it is well written and will
2 up stand the constitutional test. Thank you sir.

3 Chairman: Thank you Mr. Geiger. Your time is actually expired. I want to thank you
4 for taking the time to be heard this morning and would you share with us
5 where and when you served?

6 A. Geiger: I served during the Viet Nam era. I was not in Viet Nam but I was in
7 England, France, Germany, North Africa, Norway and a few other places.

8 Chairman: Thank you for your time and for your service. Let me call on Frank
9 Mulcahy with the Georgia Catholic Conference. I think I just saw him
10 walk in. Mr. Mulcahy good morning, thank you for taking the time to
11 speak with us, you're under the ten minutes rule like everyone else is and
12 if we have any extra time look forward to the possibility of questions
13 after your comments.

14 F. Mulcahy: Good morning Mr. Chairman. That's fine Mr. Chairman, I appreciate it. I
15 also appreciate the opportunity to have a separate room for some of us
16 to listen by streaming, so thank you for that. My name is Frank Mulcahy.
17 I am an attorney. I am also the Executive Director of the Georgia Catholic
18 Conference. The Georgia Catholic Conference is the spokesperson for the
19 Catholic Bishops of Georgia. We currently have in the range of 950,000
20 Catholic people in the state of Georgia divided into two Dioceses. The
21 Archdiocese of Atlanta with Archbishop Wilton Gregory as the
22 Archbishop and Bishop Luis Zarama as the Auxiliary Bishop and Bishop J.

1 Kevin Boland, Bishop of Savannah. They have asked me to testify this
2 morning and I will give you a brief statement of where we stand on these
3 issues. The Catholic Church has been involved in these issues well for
4 hundreds of years actually. So there is some history there. There is some
5 history there. As far as the current status of legislation we have been
6 very actively involved with federal legislation as some of the previous
7 speakers have said we do support comprehensive immigration reform as
8 a way to solve a very complex problem. We come really in two aspects
9 this morning. First we come because we have a firm belief in the dignity
10 of each and every human being. Whether they have documents,
11 whether they do not. Whether they come from the United States or they
12 come from any other country. Every person has inherent dignity and
13 rights and we support those rights and we would oppose any legislation
14 which would demean a people or any individuals. Secondly we come
15 here because we are a very large provider of charitable services in the
16 state of Georgia. We have schools, we have hospitals, we have night
17 shelters, we have emergency food services, we have pregnancy care
18 centers, we have social workers, we deal with virtually every type of
19 person who may come out. We do not discriminate on the basis nor
20 could we, would we or could we discriminate on the basis of race, color
21 or any other aspect. And so coming from those two places I would like to
22 direct my comments to several provisions of House Bill 87. I think one of

1 our concerns and this is just overriding concern that came to my
2 attention by one of our previous speakers who referred to the
3 employment issue that people are being employed in agriculture and
4 construction and in other industries and the attraction of the
5 undocumented is they don't have any way of enforcing higher wages.
6 We would support any legislation that's not in here we would support
7 into legislation which would increase those wages for all. That would
8 help in solving the human problem and also the immigration problem.
9 Second thing we do have a problem with the term illegal alien. I realize
10 that is a term but certainly in federal law you're talking about at least
11 three different people. We're talking about people who have committed
12 a felony by their presence in the United States. We're talking about
13 people who have committed a misdemeanor by failing to be inspected
14 when they cross the border and thirdly we have people who have
15 overstayed their Visas which is not a criminal penalty it is only a civil
16 violation. But this legislation lumps all three together. Our concern if we
17 look at, I'm looking at my version of Page 6, Article 5 which has to do with
18 the transportation and harboring, I'll lump the two together. This is
19 much, much, much broader than federal law. Federal law as you know
20 limits it to those who are transporting or harboring individuals in
21 furtherance of violations of a federal immigration law. This limits it to
22 people who are acting in violation of any criminal offense which certainly

1 would include a misdemeanor traffic offense. Speeding of course is a
2 misdemeanor traffic offense. Having improper equipment like broken tail
3 lights is a misdemeanor. So any traffic stop could result in those people
4 who are transporting people being arrested under this provision. Now
5 who might that be? It can certainly be people who are taking children to
6 summer camps, we have our confirmation retreats and I know other
7 religions have various activities where parents are asked to transport
8 they would have put their cars at risk. Another area that would be at
9 severe risk is ambulances, private ambulances, ambulances run by
10 organizations other than the City or the County. Example: we run night
11 shelters. Occasionally we will come across night shelters' individuals who
12 have TB. Who have communicable diseases. If the only thing we can do
13 is call the police and the police can't arrest them because having TB is not
14 a violation although it creates a public policy risk, a public health risk,
15 there is nothing we can do because there is no exception for carrying
16 people for charitable purposes, for health services or for any other
17 services of that nature. As you may know our Mercy Hospitals, St.
18 Joseph's Hospital has a Mercy Mobile which is on the streets of Atlanta
19 every night. Every night they are on the street taking people in who are
20 hurt, who are in any way sick. Another area is the harboring I think that's
21 sort of the same principal, it is much, much, much broader than federal
22 law and I think the questions would be raised and not just for our

1 denomination but any church or any organization which has people who
2 may be overstaying their Visa which would be subject to criminal
3 penalties. This is I think is far, far in excess of what this situation really
4 requires. A third area or about my fifth area by my calculations is
5 concerns about other foreign nationals we have on Page 8 under Section
6 8. Those sorts of identification forms of identification which people can
7 use to justify their existence in the United States. Those things are very
8 limited. Certainly Georgia driver's licenses which we have a lot of
9 conferences where we bring people from many other states and from
10 many other countries. And all of them are not required to have Visas.
11 All of them are not required to have these documents. The question
12 would be can we have these conferences in the future and we have some
13 trouble with diplomatic passports. You're not including diplomats in
14 here. Although you probably couldn't enforce that anyway because of
15 federal law. Another area we have a concern is the limitation on the
16 reporting of crimes. Now I realize we do have a limited exception in here.
17 The problem is it only covers certain people. Example: We had this and
18 those of you who may have been at the Violence Against Women
19 conference the other day we had up in the Rotunda, one of the women
20 from our Catholic charities was testifying about a situation which they
21 had where a woman will be abused in a home or a child will be abused in
22 a home, the police will come in and they are worried about grandma in

1 the corner. She wasn't a witness, she wasn't a victim, but the next time
2 that child is abused, the next time that woman is abused, they are not
3 going to call the police. The abuser gets away. And this is what we don't
4 believe should happen. We believe in the human dignity of every person
5 and people who are abused should not be left out in the lurch simply
6 because they may have overstayed their Visa or they don't have
7 documentation.

8 Chairman: Let me ask you to wrap up Mr. Mulcahy if you could.

9 F. Mulcahy: Sure, the last thing I would suggest people may think this law on Page 16
10 on the Bill, you do provide an exemption there for people giving services
11 to infants and children, we also think it is very important to have
12 pregnant women included in there. Mr. Chairman I thank you very much.

13 Chairman: Mr. Mulcahy we appreciate your taking the time to share your thoughts
14 about the legislation this morning.

15 F. Mulcahy: Thank you very much.

16 Chairman: Let me call on Wendell Phillips representing the Presbytery of Greater
17 Atlanta.

18 W. Phillips: Thank you very much Mr. Chairman. And following Frank as I have done
19 a couple of times it's always tempting just to say you know what he said.

20 Chairman: That would be fine.

21 W. Phillips: I know it would. I do want to add a couple of things. But my name is
22 Wendell Phillips, I'm the Public Policy Advocate for the Presbytery of

1 Greater Atlanta which is a governing body of the Presbyterian Church
2 USA. I am an ordained Presbyterian Minister and I really could say pretty
3 much you know what Frank said and just leave it at that, but I do want to
4 add a couple of things that may be at least somewhat unique to the
5 Presbyterian, our Presbyterian General Assembly perspective on these
6 and I'll jump right over the things I was going to say that was going to
7 sway the day and bring everything to a nice conclusion and simply report
8 what our Presbyterian General Assembly has said. As others have said
9 too and as Frank did say with the Catholic Bishops and the conference,
10 the Presbyterian Church USA General Assembly has long held that any
11 laws enacted with regard to immigration including laws governing
12 undocumented immigration and our country must be first of all based on
13 a sense of understanding and compassion. The compassionate desire
14 that families be preserved, that they be kept together and many cases
15 reunited when they are broken apart by occasions when arrests are
16 made. We do have a lot of information regarding when this happens.
17 When children are quite often left alone for long periods of time, when
18 parents are arrested at work. These kinds of things. I would hope that
19 any kind of legislation that is considered here for us would include an
20 understanding of what happens to the families of that veteran involved
21 when the police or ICE or someone else does extend the law to the arrest
22 level and what happens to the families in those cases, especially to the

1 children. Like many other groups our Presbyterian General Assembly has
2 supported for many years, for a number of years at least, the work at the
3 federal level to create a responsible, meaningful immigration reform
4 system that is fair and equitable and comprehensive. We have reams of
5 letters that our General Assembly moderators over a series of years, our
6 steady clerk of our General Assembly has sent to Congress and even to
7 the President urging that comprehensive immigration reform be
8 accomplished. This covers of course as you know Republican and
9 Democratic administrations. And we remain pretty much in support of
10 that taking place. Just one last comment and that is that our last General
11 Assembly, the 219th General Assembly just met last year felt so strongly
12 about these issues especially in light of the fact that during this time we
13 have had the measure from Arizona, Senate Bill 1070, now one in
14 Kentucky very similar to ours I think, Senate Bill 6 I think in Kentucky and
15 now our House Bill 84, House Bill 72 and also Senate Bill 40 that we're
16 looking at. They felt so strongly about this that by a super majority vote
17 the General Assembly asked our entire denomination to refrain from
18 even holding national meetings in states that have enacted such laws.
19 That's not to say that that's a threat from our, you know, General
20 Assembly, when our General Assembly has met in Atlanta has it has on
21 occasion we're not exactly some of the biggest spenders. You know we
22 don't add to the economy as much as some other conferences, other

1 folks and businesses who meet here but we do spend money. It is in
2 moderation of course but we do like to do that. And this is not a threat
3 from our General Assembly to say that if you pass this, you know, we're
4 never coming back. But this is just to show the level of concern and
5 seriousness with which our General Assembly has approached issues such
6 as these. One of the primary fears is that since we are such a
7 multi-cultural denomination at so many different levels and when we
8 lead with our General Assembly we have guests who come from around
9 the world. The General Assembly leadership simply doesn't want to take
10 the risk of them being perhaps harassed or put in some kind of
11 compromising situation because they're in a place where laws of maybe
12 such a nature that they could be impacted upon. So I thank you very
13 much for this opportunity to speak, I especially thank Frank again for
14 preceding me, for making so many good points and I will answer any
15 questions that you may have except for the ones that you were going to
16 ask Frank.

17 Rep. Neil: Thank you Mr. Chairman. And thank you for being here. I just wanted to
18 make a comment or reference to when you reference what would
19 happen to the children. Being a part of law enforcement and just
20 knowing our common practice whether the person is a citizen or not and
21 especially if a clause is not added into the Bill the only option that local
22 police would have I can't speak for federal or GBI or anything of that

1 nature by the only option local police would have if no other family
2 member is available to take the children at the time of an arrest, those
3 children will have to go to DFCS. That is our only option for local police.
4 And from there they will in the DFCS system. They'll go through that
5 process like any other child would whether a child is a legal immigrant or
6 not. Because I'm not sure, I'm not familiar with the practice of where an
7 illegal child stands under this Bill or any other similar Bill that we might
8 have in place already, if there, what is your sense on the error rating on
9 E-Verify and when I say your sense I assume that's being backed up by
10 some sort of documentation. If you don't have it there I understand.

11 W. Phillips: Mr. Chairman may I ask a question of Representative Neil?

12 Chairman: Sure.

13 W. Phillips: Are you I know you're in law enforcement, do you know of any
14 responsibility for informing other family members or taking the time, like
15 when a situation arises, just like you described where a child is left alone
16 or more than one child, does law enforcement, I know they have to take
17 the child to DFACS if there's nobody else present, is there some process
18 about which they can inform other family members so that that step of
19 the way wouldn't necessarily have to be taken.

20 Rep. Neil: Now, when it comes to the DFACS side, I'm not familiar with that because
21 for the most part once DFACS gets involved we're kind of cut off at that
22 point. They handle it based on what their protocol is. But as far as the

1 law enforcement side, like I said if there is no immediate family member
2 to aid in where the child should be or where they should be put that then
3 falls on the DFACS to be responsible for placement with a family member
4 or a non-family member.

5 W. Phillips: I think we would be very happy, you know if there could be some type of
6 inclusion in a Bill such as this that would act as a protector for children in
7 situations like that or for whole families, just an acknowledgement that
8 we know what is possible to happen and it's very seldom good that there
9 be some kind of protection in the Bill such as this because I think
10 somebody said awhile ago that it is a compliance type Bill, it's not
11 necessarily punitive but for the families that are directly affected it is.
12 And for the undocumented immigrant who may be arrested or detained
13 it is punitive. And that would be something that could help us look at this
14 Bill a lot differently.

15 Rep. Neil: I understand, thank you.

16 Chairman: Thank you Mr. Phillips, we appreciate your testimony this morning. Let
17 me call on Dave Allen Grady with the United Methodist Church.

18 Dave Allen Grady: Good morning.

19 Chairman: Good morning. Thank you for being with us this morning and I'll ask you
20 to confine yourself to ten minutes or shorter if you'd like to answer
21 questions after your presentation. That's up to you though.

22

1 Dave Allen Grady: I won't be very long. I commend you all for you all's hard work. It's a
2 daunting task and also to Representative Ramsey for shepherding this
3 process and thank you for the great conversation with me, I appreciate
4 that. There are I could just say ditto and get up and be done. And going
5 after Wendell is kind of like seeing preach after one of your famous
6 preachers. Our denomination has several documents that has been
7 approved repeatedly over the years about immigration and I have
8 forwarded those onto Representative Ramsey as this Bill was put
9 together. I would like to share a resolution that was adopted by the
10 United Methodist that meet in Athens every year. That represent the
11 thousand churches in North Georgia. Just the bullet points, I'll forward
12 the whole resolution onto your office if that's okay. The United
13 Methodist in North Georgia are not for an open borders policy or general
14 amnesty but we are for providing a path to citizenship. Opportunities
15 should be provided for undocumented immigrants currently living in the
16 U.S. to receive work permits and travel permission and access
17 educational opportunities once they undergo background and security
18 checks. There should be fair and consistent process for persons wanting
19 to settle in the United States to pursue permanent residence and
20 citizenship. Protect workers to replace the deadly chaotic and illegal flow
21 of worker to jobs. Let me stop and say that the section on criminalizing
22 the trafficking of human beings is amazing. There needs to be wider legal

1 channels so needed workers can be admitted legally to fill available jobs,
2 to avoid the exploitation and abuses of flawed guest worker programs.
3 The nation needs a worker Visa program that adequately protects the
4 wages and working conditions of the U.S. and immigrant workers. It
5 should also allow workers to change jobs meaningfully enforce both the
6 programs rules and existing labor laws, protect law abiding employers
7 from unscrupulous competitors and provide a path to permanent status
8 reunite families. Immigration reform will not succeed if public policy
9 does not recognize one of the main factors driving immigration as well as
10 one of America's most cherished values, family unity. Restrictive laws
11 and bureaucratic delays too often undermine this cornerstone of our
12 legal immigration system. Those waiting in line should have their
13 admission expedited and those admitted on work Visas should be able to
14 keep their nuclear families intact. And lastly to restore the rule of law
15 and enhance security. Enforcement only works when the law is realistic
16 and enforceable. This can be best achieved by a comprehensive overhaul
17 that combines reform, a path to permanent status for immigrants here
18 and wider channels for those coming in the future with effective
19 enforcement. A viable enforcement regime should include smart
20 inspections and screening practices, fair proceedings, efficient processing
21 as well as strategies that crack down on criminal smugglers, get tough
22 with law breaking employers and reduce illegality. Such a system will be

1 better to enable this nation to know who is already here and who is
2 coming in the future and bringing our system into line with our tradition
3 as a nation of immigrants and a nation of laws, and then, etc. etc., etc.

4 Chairman: Thank you Mr. Brady would you like to answer some questions from
5 members of the committee.

6 Dave Allen Grady: Sure, sure.

7 Rep. Abrams: Thank you Mr. Chairman. I just have two questions. One speaks to the
8 conversation about punitive nature of the Bill. And while I recognize that
9 by in large it is more compliant oriented I draw your attention to Section
10 7 which would require the forfeiture of vehicles used in the
11 transportation of any person captured under this Bill. Would it be your
12 understanding that that would apply to church vehicles or the vehicles of
13 non-profits that are being used to provide services such as domestic
14 violence support, homeless support, those types of charitable behaviors
15 that require the transport of persons that you may know to be
16 undocumented?

17 Dave Allen Grady: Representative Abrams I do not know exactly. I know that pastors, I sit as
18 the Chair of the North Georgia Conferences Advocacy Team and that's
19 why I'm here today and some of the concerns that have been addressed
20 to me by other pastors has been if something like an Arizona stall
21 immigration bill comes into effect in Georgia that the ability to help the
22 stranger, people coming at our doors and knock and seek and assistance

1 might be limited and so I don't know exactly if that would be prohibitive
2 but I do know that there are concerns over what church would be able to
3 do in our longstanding tradition of helping the poor.

4 Rep. Abrams: If I may ask one follow-up question Mr. Chairman? The other concern I
5 would raise is Section 16, the section that provides a safe harbor, would
6 you and your conference as a United Methodist, I'm happy to see you
7 here, would you support a safe harbor that includes victims of domestic
8 violence and persons receiving support from support services from
9 religious and charitable organizations which would essentially exempt
10 those persons from being captured under the provisions of this Bill?

11 Dave Allen Grady: Yeah, other, that hits exactly what the other allegorical piece that I've
12 been e-mailed and phone called about a lot recently is that there are
13 people who are pastors of churches. One of the fastest growing
14 demographics in the state of Georgia is the Latino/Latina community and
15 as such the United Methodist Churches are starting new churches that
16 are for Latino/Latina persons and so one of the things that's being told to
17 me is I've got people that are afraid to come to church.

18 Rep. Abrams: Thank you.

19 Chairman: Mr. Sessler.

20 Rep. Sessler: Mr. Chairman just a quick statement again I would encourage you, I know
21 we in the legislature we debate concepts but we, you know we vote
22 words on a page, would you characterize this as an Arizona-style

1 immigration law? I ask that as a rhetorical question because there is vast
2 distinctions between this and I know in your role of advocate for a church
3 in the denomination in which I was married, I was married in a United
4 Methodist Church, so I appreciate your being here, I would just caution
5 you to be real careful about the quote Arizona-style immigration law that
6 congers up for a number of reasons right and wrong notions of profiling
7 and those kinds of things there is nothing in this Bill that does that and I
8 appreciate your being here, I just wanted to caution your use of that
9 because I think it's not helpful, it's frankly although I know unintentional
10 misleading when really looking to get into the crux of what's really in this
11 Bill.

12 Chairman: Mr. Grady we really do appreciate your coming in.

13 Dave Allen Grady: Can I add one more thing.

14 Chairman: Sure.

15 Dave Allen Grady: Our general commission on religion and race has a campaign going right
16 now that says drop the "I" word and what it's encouraging United
17 Methodists to do is to stop using the word "illegal" as an adjective for
18 persons. There is illegal unemployment, there is illegal immigration, but
19 there is no illegal child of God. Thank you.

20 Chairman: Ms. Melanie Velez with the Southern Center for Human Rights. Thank
21 you very much for appearing this morning. Welcome back we've seen
22 you before and welcome back.

1 M. Velez: Thank you for your time. I appreciate being here. My name is Melanie
2 Velez. I'm a managing attorney with the Southern Center for Human
3 Rights and I wanted to focus my comments today, I realize I must brief,
4 on an area that we've worked on in the Southern Center for about the
5 past 30 years and that's the area of jails and prisons. One of the concerns
6 that we have at the Southern Center about the current draft of the Bill is
7 the potential impact on jail conditions and jail facilities throughout
8 Georgia. We at the Southern Center have monitored a consented
9 that is currently before Judge Shoob in the Northern District of Georgia
10 since about 2004. As many of you may know the Fulton County Jail has
11 had continuous problems regarding the number of people in their
12 custody and we believe that several provisions of the current legislation
13 will contribute to the problems that the Fulton County Jail and perhaps
14 many others are having. I want to focus on a couple of things that we've
15 learned through our time at the Fulton County Jail. Currently, the
16 population at the Fulton County Jail is 3,002 people. Its capacity is about
17 2,500. Fulton County Jail continuously is unable to house all of the
18 individuals in their custody so they must continuously outsource. There
19 are about 330 individuals currently outsourced and by that I mean
20 individuals who are in the custody of Fulton County Jail but must be
21 transferred to be held in the custody of other jail facilities including for
22 example Hall County. The overcrowding issues at the Fulton County Jail

1 breed other concerns that will perhaps and likely be exacerbated by the
2 additional criminal violations that are created by the current draft of the
3 Bill and by encouraging the use of 287Gs. I wanted to highlight three
4 concerns that we've seen again and again at the Fulton County Jail. And
5 that is first security issues, second, public health concerns that we heard
6 stated to you earlier in a different context and a third, due process
7 considerations. With regard to security, the population at the Fulton
8 County Jail as in numerous other jails throughout Georgia is so high that
9 the sheriff and county administrators and jail administrators themselves
10 are continuously challenged at being able to separate individuals that
11 impose a danger to one another. Recently Fox News reported on the
12 beating injuries that a detainee there experienced simply because the jail
13 doesn't always have the capacity to separate out individuals that may
14 pose a danger to one another. Overcrowding feeds this concern. Second
15 with regard to public health. Although the sheriff and others in the jail
16 administration certainly make good efforts to try to process all the
17 individuals that come into their custody very quickly what happens in the
18 sort of there's an area of the jail where someone first comes in where
19 they are detained for a certain period of time while they have TB tests
20 and other mandatory testing that's required by state law, there's often
21 such a backlog that individuals end up sleeping on the floor. There's not
22 the capacity to be able to transfer individuals to beds quickly. And this is

1 certainly exacerbated the higher the numbers go in the jail. Lastly there
2 are due process considerations. The Southern Center has been involved
3 in two suits against the Fulton County Jail. One of these suits was
4 prompted by the jail's incapacity to quickly release individuals once there
5 was no longer a legal basis for detaining them. Our experience has been
6 not only at the Fulton County Jail but in other state jail facilities that once
7 you introduce immigration detainees into a jail facility it becomes quite a
8 challenge and individuals often can be over-detained. I'm not saying this
9 occurs all the time but certainly it's an additional burden on the jail
10 system which in our experience they haven't proven to have a the
11 capacity to handle in facilities that are already overcrowded and
12 overburdened. I will leave my comments at that. We just wanted to
13 highlight the burden of this legislation especially on jails and Fulton
14 County Jail is a classic example of the problems that will be posed.

15 Chairman: Thank you for those constructive comments, that is people can be in
16 different places on a particular issue, but that is, you know, the capacity,
17 the mechanics of the capacity issue as you get into an enforcement look
18 at this particular issue is absolutely relevant and I appreciate your
19 bringing that to the forum. Mr. Vice Chairman did you have something.

20 Rep. Abrams: Thank you. I actually wanted to ask you a question in your capacity as a
21 member of the Southern Center for Human Rights. There was a
22 comment made earlier that this Bill does not contain any capacity for

1 racial profiling. However is it not true that traffic stops which are I think
2 it's Line 243 and 243 allow a peace officer to stop someone for a traffic
3 offense and use that as grounds for invoking this language. Is it not true
4 that traditionally traffic stops have been a common pretext for racial
5 profiling and that has been almost universally seen as the sort of gateway
6 to racial profiling among police officers?

7 M. Velez: You're absolutely correct representative. I think that those provisions in
8 Article 5 beginning at Line 238 certainly pose that concern. And in our
9 read of the legislation and I'm not sure that I have the current one but
10 the line that instructs officers not to consider race or color or national
11 origin are insufficient to address concerns of racial profiling.

12 Chairman: I think it would be very unfortunate to go ahead and cast a really wide
13 net as some sort of universal truth that officers engage in that type of
14 conduct. I don't think that's personally is the truth. Do I believe that that
15 has occurred and does occur and will occur in the future, yes I do, but I
16 don't believe it presents itself as an example of some widespread
17 phenomenon or problem that warrants any action on this issue. Just
18 speaking for myself. I see no further questions I appreciate your time
19 coming in this morning. We really do and look forward to seeing you
20 again, I'm sure we will see you again on other issues.

21 M. Velez: Thank you.

1 Chairman: Mary Kay Woodworth representing the Urban Agriculture Counsel. Okay
2 if she's here and she comes back we can always come back. Mr. Larry
3 Peligrany with the Georgia Latino Alliance for Human Rights.
4 Well, we've got you down here and I mean you're welcome to join us, I
5 know is it Cook, that's fine Mr. Cook, I also take notice that the fact that
6 you are a board member of Gallegos. Is that not correct. Okay we're to
7 go ahead and if we can limit organization to one spokesman in the
8 interest of fairness. I understand but you know the lines do get gray
9 every now and then don't they. Yeah they do, but we err on the side of
10 more information than less. Mr. Peligrany do you want to you're under
11 no duty but you can, Mr. Cook, it's not precluding you but I just want to
12 make sure those lines are clear.

13 Larry Peligrany: Thank you Mr. Chairman and members of the Committee. Like I said I am
14 around a lot. I am here on behalf of the Georgia Latino Alliance for
15 Human Rights and I'm sort of going to go off the original script based on
16 some of the things that I heard here today. It was really good I think to
17 see a progression of people who testified move from some of the more
18 practical issues and technical things that we all have to think about and
19 deal with into some of the effect on people, the human issues and of
20 course how we see each other and the importance of thinking when we
21 get into this kind of legislation that is so controversial about how we
22 affect the fabric of society and so I want to turn to I guess an appeal that

1 we spend as much time thinking about the public policy that comes out
2 of the words on the page and think about how it does affect people. I do
3 feel that having looked at many of the issues from racial profiling to E-
4 Verify to the harboring, right of action, the role of law enforcement, that
5 over the years I've learned a whole lot about this and I would really
6 appreciate the time of meeting with everyone to be in more detail
7 however I want to give sort of an example of what I ran into last week.
8 We did hear from agribusiness and I met with some small farmers. And
9 they were quite alarmed but they didn't really know how to engage in
10 the process so it was really interesting to talk to them that literally
11 they're lives are affected. They're business are affected. And what they
12 wanted to talk about was as how different and they did see this Bill as a
13 model coming from Arizona and they wanted to be sure, they actually
14 had two messages that they asked me to bring. But they wanted to be
15 sure that if that was the model that everyone was aware that very
16 different consideration in Arizona agriculture and especially small farms
17 play a different role. The figures that they had showed that Georgia has
18 three times the number of farms that employ migrant workers than
19 Arizona does, that the size of the farms are eight times larger in Arizona
20 which means that it's more agribusiness rather than family farms and
21 small farms and the number of farms in the 70 to 99 acre range there are
22 11 times more in Georgia. And that message, the point of that for them

1 was that somebody had to say that and I don't speak for the farmers, I
2 speak from a meeting with farmers. But when we talk about our two top
3 industries we do have to talk about impressions and if the impression is
4 that this is something that has to be done because the federal
5 government isn't responding to comprehensive national reform we
6 should be putting our energy of course into trying to make that happen
7 at the same time. To see a dedication from folks to put pressure on the
8 congregational delegation to do comprehensive reform that would
9 eventually solve the problem because what we do here and I realize
10 everybody is searching to see what is within the scope of possibilities for
11 state law but what we do here is just sort of squeeze in the crevices and
12 do what we can and ultimately play for the dedication of folks to see real
13 solutions because some of these things are really not the solutions that
14 we all want to see, because on the federal level is something that is their
15 domain. Some of the people that are going to follow who will talk about
16 E-Verify system and sometimes there's a difference in kind of business
17 and what the error rate is that it's really on all of the issues depending on
18 the legal language it depends the kind of people that are involved, the
19 kind of businesses involved, what the problems are with it and I hope we
20 spend a lot of time talking about that and the impression of people out
21 there the first thing we sort of heard about was the fear that people
22 could not have the same relationship with law enforcement if there was

1 this Bill that would be passed. They would be afraid, that was the first
2 thing that we heard. So like I said I look forward really not to a couple of
3 seconds here but more one-on-one, even if we disagree, to talk about the
4 different affects on people for each of the issues.

5 Chairman: Thank you Mr. Peligrany. Just a couple of quick points. The federal, you
6 know on the federal issue our federal government has failed on the issue.
7 Republicans on the federal side have failed. Democrats on the federal
8 side have failed. So it's not a partisan issue it is a federal versus state
9 issue. You know when the federal government displays its inertia over
10 the course of time; states notice that, states act one other general point
11 because I've heard it throughout this morning there is a lot of
12 sensationalism going, Arizona, Arizona, this type of bill. One of the
13 unfortunate realities of politics is number one, people take someone
14 else's example and just presume that we're going to go ahead and follow
15 a particular example when in fact we are ultimately not and
16 unfortunately one of the other unfortunate realities of this process is that
17 when you have a Bill as introduced which ultimately gets refined over
18 time but then people want to hang their hat on a provision or two and
19 they're more than welcome to do that, that's part of the process as well,
20 to use that as some sort of public whipping boy for lack of a better term,
21 it really just sort of devolves the dialogue. So what where're doing is
22 looking toward a productive piece of work product that will actually be

1 implementable and that will survive scrutiny. That's easier said than
2 done and we're the first ones to admit that but it's important that people
3 understand that we're not Arizona. So.

4 Larry Peligrany: No I understand.

5 Chairman: You know our work product ultimately is what we will be judged by not
6 the rhetoric of frankly people on both sides of the issue.

7 Larry Peligrany: Right and I hope I didn't slip and say.

8 Chairman: No you didn't I just wanted to make sure, no you didn't but I just wanted
9 to make sure that's clear for general consumption. Mr. Vice Chairman.

10 Vice Chairman: Thank you Mr. Chairman. You made the statement something along the
11 lines that people were afraid I think in connection with the harboring and
12 transportation and all that, my question to you is don't you think that
13 somebody who harbors or knowingly harbors, knowingly transports an
14 illegal alien, someone who has intentionally violated our country's
15 borders shouldn't they be afraid? They have assisted in the violation of
16 our borders and the breaking of our law. Shouldn't they be afraid?

17 Larry Peligrany: Well you know it's depends again you have mixed status families and you
18 have people who may not have as we have trouble sometimes
19 communicating with membership and you all with the general public in
20 doing public education about an issue there are different levels of
21 understanding of what's happening. Sometimes the first impression
22 sticks. Even if it changed. And the folks have a fear because they really

1 don't know what to expect. And they fear the worst. And how do we
2 address that, we have to talk to them, they do but I go back to saying you
3 know I must think about how things affect people and that's what I hear
4 and that's what tugs at my heart first.

5 Vice Chairman: Well I understand but I mean we can all sit around and feel and you know
6 sympathize and all this but I mean the rule of law is what we're really
7 talking about here. And you talk about people, mixed families and things
8 like that, those are conditions that were brought about by the people
9 themselves when they came into the country illegally. They knew what
10 they were doing.

11 Larry Peligrany: And if we're going to offer remedies I believe and try to legislate
12 procedures or policies then we ought to really, there are some things that
13 just may not be able to be fixed and how do we address that, we don't
14 want to make a mistake, well like I said I keep going back to are people
15 going to be hurt. So we don't want to make a mistake. So there are
16 some things that probably ought to be left behind if they're issues that
17 we cannot fix but we just want to try at the risk of making a mistake, and
18 that's where the families come in that do have a fear for others that they
19 may be broken up, they may be targeted, all the elements that have been
20 pointed out are controversial on the issue have, it's on the minds of folks.

21 Vice Chairman: Well I can only speak for myself, I'm not speaking for anybody else on this
22 committee but my thought is that you know the way to fix it is if you're a

1 foreign national and you're in this country illegally then the way to fix it
2 would be go back home. Go back where you came from. That would be
3 my answer.

4 Larry Peligrany: Well, we've seen the once again, it depends, we've seen the folks that
5 came here to help us build the Olympics, they were told we have a job for
6 you, bring all your friends and you'll get your paperwork to become
7 citizens and that didn't happen.

8 Chairman: We're a little bit over but we'll let, Mr. Atwood has been quiet the whole
9 morning, so he's got his light on you'd like to be recognized Mr. Atwood.

10 Mr. Atwood: Just a short minute, thank you Mr. Chair. But I truly believe in if you wish
11 to be understood that you first seek to understand and I have
12 appreciated the thoughtful nature of everyone whose testified. I will tell
13 you that I've served as a little magistrate judge and an attorney but a
14 large part of my career I also served Mr. Speaker as a federal agent
15 working for the United States Customs Service. I can tell you that it was
16 extremely frustrating for us, for the good men and women that worked in
17 that organization, I can remember when I was in South Carolina and we
18 had to cover the entire state during the height of the primarily Marine
19 and air drug smuggling that we did and we encountered many folks that
20 were not here legally, they were bringing those drugs in and we had 15
21 agents to cover the entire state and we welcomed local law enforcement
22 to help us, we welcomed that and we needed it. We had two of our

1 young men that were murdered on the southwest border and we did not
2 find them until the next day because we did not have adequate radio
3 communication and we were so spread so thin and covered such a wide
4 area that it was extremely difficult for us to even locate their bodies. And
5 they were shot and killed by a man trying to enforce the law against folks
6 coming in illegally. So just from a personal standpoint I can tell you an
7 experience standpoint that I think that the effort that we're trying so
8 hard to do and to do constitutionally is important for us and where we
9 could elicit local folks I think it's well served that we do that.

10 Chairman: Thank you Mr. Peligrany, thank you. We appreciate it. We have one
11 more witness and that is Dr. Bill Jacks, excuse me, Dr. Bill Hudson
12 representing Georgia Tea Party. And Dr. Hudson I'll go ahead and say the
13 same thing that I've said to everybody else, you're a ten minute rule. We
14 appreciate your joining us this morning and your patience this morning.

15 Bill Hudson: Yes, you're welcome. I got a minute to say good morning Chairman and
16 Committee members. My name is Dr. Bill Hudson, I am here testifying
17 and making comments representing myself and the Georgia Tea Party.
18 First of all I'd like to say that I'm here because I support.

19 Chairman: Excuse me, sorry I'd like you to pull the microphone a little bit closer.
20 Thank you. Thank you.

21 Bill Hudson: Thank you, sorry. First I would like to say that I am here because I
22 support immigration reform legislation in the great state of Georgia. First

1 and foremost the fact that the rule of law of the United States
2 Constitution is being broken with these illegal aliens coming into our
3 country illegally or overstaying Visas that have expired. So they are
4 illegally here in our state and have no rights to obtain social government
5 handout programs or to take jobs away from Georgia citizens that are
6 unemployed and cannot find work. There should be stiff penalties for
7 employers in Georgia for hiring these illegal aliens. These people are
8 illegally here and that needs to end with them being gone sooner rather
9 than later. I realize that this Bill is mostly about compliance but I think
10 there needs to be some penalties in here too to see that compliance
11 happens. After being here on Friday for Representative Ramsey's public
12 debut of his measure it appeared to me that the brunt of the
13 enforcement for this Bill is laid upon the law enforcement agencies across
14 the state. It would seem to me that the enforcement of this legislation
15 should be across all pertinent agencies in the state government.
16 Examples: the Department of Labor, the Department of Education, the
17 Department of Health and Human Services and make sure that these
18 agencies can be trusted the department and assistant department heads
19 would be facing either loss of their employment or jail time if their
20 agency did not obey the finer points of this Bill should it become law.
21 And that's what the federal government did in Sarbays Oxley, that's the
22 reason they are being very careful. The CEO and the CFO will go to jail if

1 their numbers do not jive excluding a mathematical error. And thus, not
2 just have the majority of enforcement dumped into the laps of the law
3 enforcement community that pretty much have all sustained budget cuts
4 and thus manpower shortages or you can have a one stop shop agency
5 that checks with the state program to get reliable immigration status on
6 all immigrants to verify if a person is eligible for government social
7 services assistance. Lastly this enforcement is going to require a cost. So
8 in the stopping the social services support and payouts to these illegal
9 aliens to the tune of approximately 2.4 billion dollars annually which is
10 sure to rise if for no other reason but quantitative easing to by the
11 federal reserve this enforcement is going to require the state to spend
12 some money. One must spend money to make money. And the money
13 made will be the state funds that are not paid out for illegal aliens and to
14 the Georgia families that are unemployed and receiving state funded
15 social services because with illegal aliens not being able to get work in
16 the state the employers in Georgia will be hiring Georgia citizens to fill
17 these vacated positions. Then the Georgia citizens won't be on
18 unemployment and state run assistance programs. Any questions.

19 Chairman: Dr. Hudson, thank you for your testimony this morning. I see no
20 questions. Thank you for taking the time and also for being patient with
21 our process. Along those lines I've made a commitment at the last
22 hearing that if people wanted to be heard they would be heard, one of

1 the curses of this process is the process. And that is that it's sometimes
2 time consuming. And pursuant to that commitment we will go ahead and
3 have a final hearing on Friday morning at 9:30. It will go from 9:30 to
4 noon. Just like today. And we are at 12:03 p.m. right now. So
5 miraculously we have been able to keep on schedule, that will probably
6 never happen again. But I want to thank everyone for their feedback, for
7 their input and for their measured presentations this morning. I think it's
8 been beneficial regardless of what side of the issue folks may be on.
9 We'll be here at 9:30 Friday morning. We will go ahead and limit time as
10 we have today. These are for individuals as opposed to organizations to
11 speak and we'll probably limit that time to five minutes if we end up
12 being more economical with time then we thought we'll try to expand
13 that, we're just trying to do the best we can while keeping the wheels on
14 the process turning. If there are any written materials that people want
15 to go ahead and supplement either their testimony from this morning or
16 in preparation for any testimony this coming Friday that is certainly fine.
17 We welcome that. We would rather have more information rather than
18 less. And we'll march on from there. Just wanted to make sure that's
19 clear. And we're adjourned. Thank you.

EXHIBIT 28

EXHIBIT G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF JAMES B. STEINBERG

Pursuant to 28 U.S.C. 1746, I, James B. Steinberg, declare and state as follows:

1. I am Deputy Secretary of State. I make this declaration based on my personal knowledge and on information I have received in my official capacity.

2. I have served as Deputy Secretary of State since January 28, 2009.

Immediately prior to joining the Department of State, I served as Dean of the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. From 1993 to 1994, I served as Deputy Assistant Secretary of State for analysis in the Bureau of Intelligence and Research, and from 1994 to 1996 as Director of the Department of State's Policy Planning Staff. From December 1996 to August 2000, I served as Deputy National Security Adviser on the staff of the National Security Council. From 2001-2005, I was the President and Director of Foreign Policy Studies at the Brookings Institution in Washington, D.C.

3. In my capacity as Deputy Secretary of State, I assist the Secretary of State in

the formulation and conduct of U.S. foreign policy and in giving general supervision and direction to all elements of the Department. I have delegated authority to act on behalf of the Secretary of State, and assist the Secretary in representing the United States at international meetings and performing other representational assignments with senior foreign government officials.

4. I have read and am familiar with Arizona law S.B. 1070. I am also familiar with the reactions of foreign governments to the law.

5. As I explain further below, U.S. federal immigration law incorporates foreign relations concerns by providing a comprehensive range of tools for regulating entry and enforcement. These may be employed with sensitivity to the spectrum of foreign relations interests and priorities of the national government. By contrast, Arizona law S.B. 1070 establishes a single, inflexible, state-specific immigration policy based narrowly on criminal sanctions that is not responsive to these concerns, and will unnecessarily antagonize foreign governments. If allowed to enter into force, S.B. 1070 would result in significant and ongoing consequences for U.S. foreign relations.

6. Through the Immigration and Nationality Act (“INA”) and other federal laws, the national government has developed a comprehensive regime of immigration regulation, administration, and enforcement, in which the Department of State participates. This regime is designed to accommodate complex and important U.S. foreign relations priorities that are implicated by immigration policy -- including humanitarian and refugee protection, access for diplomats and official foreign visitors, national security and counterterrorism, criminal law enforcement, and the promotion of

U.S. human rights policies abroad. To allow the national government flexibility in addressing these concerns, the INA provides the Executive Branch with a range of regulatory options governing the entry, treatment and departure of aliens. Moreover, foreign governments' reactions to immigration policies and the treatment of their nationals in the U.S. impacts not only immigration matters, but also any other issue in which we seek cooperation with foreign states, including international trade, tourism, and security cooperation. These foreign relations priorities and policy impacts are ones to which the national government is sensitive in ways that individual states are not.

7. By rigidly imposing a singular, mandatory form of criminal immigration enforcement through mandatory verification of immigration status and criminal enforcement of alien registration, S.B. 1070 deviates from the national government's policy of calibrated immigration enforcement. The Arizona law also uniquely burdens foreign nationals by criminalizing work and travel beyond the restrictions imposed by U.S. law. These multiple, interlinking procedural and criminal provisions, adopted in order to enforce an explicit state policy of "attrition through enforcement," all manifest Arizona's intention to globally influence immigration enforcement. S.B. 1070 thereby undermines the diverse immigration administration and enforcement tools made available to federal authorities, and establishes a distinct state-specific immigration policy, driven by an individual state's own policy choices, which risks significant harassment of foreign nationals, is insensitive to U.S. foreign affairs priorities, and has the potential to harm a wide range of delicate U.S. foreign relations interests.

8. Indeed, although it was only adopted in April 2010, is the law of only one

state, and has not yet gone into effect, Arizona law S.B. 1070 already has provoked significant criticism in U.S. bilateral relationships with many countries, particularly in the Western Hemisphere, as well as in a variety of regional and multilateral bodies. Foreign governments and international bodies have expressed significant concerns regarding the potential for discriminatory treatment of foreign nationals posed by S.B. 1070, among other issues.

9. By deviating from federal immigration enforcement policies as well as federal rules governing work and travel by foreign nationals, S.B. 1070 threatens at least three different serious harms to U.S. foreign relations. *First*, S.B. 1070 risks reciprocal and retaliatory treatment of U.S. citizens abroad, whom foreign governments may subject to equivalently rigid or otherwise hostile immigration regulations, with significant potential harm to the ability of U.S. citizens to travel, conduct business, and live abroad. Reciprocal treatment is a significant concern in immigration policy, and U.S. immigration laws must always be adopted and administered with sensitivity to the potential for reciprocal or retaliatory treatment of U.S. nationals by foreign governments.

10. *Second*, S.B. 1070 necessarily antagonizes foreign governments and their populations, both at home and in the U.S., likely making them less willing to negotiate, cooperate with, or support the United States across a broad range of important foreign policy issues. U.S. immigration policy and treatment of foreign nationals can directly affect the United States' ability to negotiate and implement favourable trade and investment agreements, to coordinate disaster response arrangements, to secure cooperation on counterterrorism or drug trafficking operations, and to obtain cooperation

in international bodies on priority U.S. goals such as nuclear non-proliferation, among other important U.S. interests. The law has already complicated our efforts to pursue broader U.S. priorities. S.B. 1070's impact is likely to be most acute, moreover, among our many important democratic allies, as those governments are most likely to be responsive to the concerns of their constituents and the treatment of their own nationals abroad.

11. Third, S.B. 1070 threatens to undermine our standing in regional and multilateral bodies that address migration and human rights matters and to hamper our ability to advocate effectively internationally for the advancement of human rights and other U.S. values. Multilateral, regional and bilateral engagement on human rights issues and the international promotion of the rule of law is a high priority for the United States, and for this Administration. Consistency in U.S. practices at home is critical for us to be able to argue for international law consistency abroad. By deviating from national policy in this area, S.B. 1070 may place the U.S. in tension with our international treaty obligations and commitments and compromise our position in bilateral, regional and multilateral conversations regarding human rights.

12. In all activities relating to U.S foreign relations, including immigration, the United States is constantly engaged in weighing multiple competing considerations and choosing among priorities in order to develop an overall foreign policy strategy that will most effectively advance U.S. interests. The United States likewise is constantly seeking the support of foreign governments through a delicately-navigated balance of interests across the entire range of U.S. national policy goals. Only the national government has

the information available to it to be able to appropriately evaluate these choices on a continuing basis in response to fluctuating events on the international stage. Because of the broad-based and often unintended ways in which U.S. immigration policies can adversely impact our foreign relations, it is critically important that national immigration policy be governed by a uniform legal regime, and that decisions regarding the development and enforcement of immigration policy be made by the national government, so that the United States can speak to the international arena with one voice in this area.

13. While isolated state enactments that incidentally touch on immigration may not implicate foreign policy concerns (or may implicate them only slightly), Arizona's law more directly and severely impacts United States foreign policy interests by establishing an alternative immigration policy of multiple, interlinking procedural and criminal provisions, all of which manifest Arizona's intention to globally influence immigration enforcement. As I understand it, Arizona's effort to set its own immigration policy is markedly different from instances in which states and localities assist and cooperate with the federal government in the enforcement of federal immigration laws. When states and localities work in concert with the federal government, the likelihood for conflicts with U.S. foreign policy interests is greatly diminished. When states and localities assist the federal government, and take measures that are in line with federal priorities, then the United States retains its ability to speak with one voice on matters of immigration policy, which in turn enables it to keep control of the message it sends to

foreign states and to calibrate responses as it deems appropriate, given the ever-changing dynamics of foreign relations.

14. By contrast, by pursuing a singular policy of criminal enforcement-at-all-costs through, among other things, imposing an extraordinary mandatory verification regime coupled with what is effectively state criminalization of unlawful presence, S.B. 1070 is likely to provoke retaliatory treatment of U.S. nationals overseas, weaken public support among key domestic constituencies abroad for cooperating with the U.S, and endanger our ability to negotiate international arrangements and to seek bilateral, regional or multilateral support across a range of economic, human rights, security, and other non-immigration concerns, and be a source of ongoing criticism in international fora. Arizona's unprecedented effort to set its own, contrary immigration policy predictably conflicts with U.S. foreign policy interests and with the United States' ability to speak with one voice.

I. U.S. Immigration Law Incorporates Foreign Relations Concerns

15. The Secretary of State is charged with the day-to-day conduct of U.S. foreign affairs, as directed by the President, and exercises authority derived from the President's powers to represent the United States under Article II of the Constitution and from statute. As part of these responsibilities, the Department of State plays a substantial role in administering U.S. immigration law and policy, as well as in managing and negotiating its foreign relations aspects and impact. Within the Department of State, the Bureau of Consular Affairs has responsibility for the adjudication and issuance of passports, visas, and related services; protection and welfare of U.S. citizens and interests

abroad; third-country representation of interests of foreign governments; and the determination of nationality of persons not in the United States. See 1 Foreign Affairs Manual 250.¹ Several other bureaus within the Department of State, including the Bureau of Population, Refugees and Migration; the Bureau of Human Rights, Democracy and Labor; the Bureau of International Organization Affairs; and all regional bureaus are routinely engaged in negotiations and multilateral diplomatic and policy work in global, regional, and bilateral forums on migration issues. Collectively, the Department of State promotes U.S. policies internationally in this area and bears the burden of managing foreign governments' objections to the treatment of their nationals in the United States.

16. U.S. law, and particularly Section 104 of the INA, as amended by the Homeland Security Act, invests the Secretary of State with specific powers and duties relating to immigration and nationality. A 2003 Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002, ¶ 1(b), provided that the Secretary of Homeland Security would establish visa policy, review implementation of that policy, and provide additional direction as provided in the MOU, while respecting the prerogatives of the Secretary of State to lead and manage the consular corps and its functions, to manage the visa process, and to execute the foreign policy of the United States.

¹ The Secretary of State's authorities under the INA are found in various provisions, including §§ 104, 105, 349(a)(5), 358, and 359 (8 U.S.C. §§ 1104, 1105, 1481(a)(5), 1501, and 1502) (visa and other immigration-related laws). The Department also exercises passport-related authorities, including those found at 22 U.S.C. §§ 211a, et seq.

17. Our immigration laws, including those administered by the Department of State, are crafted to incorporate and accommodate a wide range of sensitive U.S. foreign relations concerns. Our visa regime, for example, both embodies and permits consideration of U.S. diplomatic, human rights, and other foreign relations interests. To give but a few examples, the INA authorizes the Secretary of State to help determine which diplomats are entitled to diplomatic visas to represent their countries in the United States. INA § 101(a)(15)(A). INA § 243(d) authorizes the Secretary of State to determine the scope of visa sanctions that will be imposed on countries, upon notification from DHS that such countries have denied or unreasonably delayed accepting their nationals back from the United States. The INA also authorizes the Secretary of State to deny visas to aliens whose entry or proposed activity in the United States “would have potentially serious adverse foreign policy consequences.” *See* INA § 212(a)(3)(C). During the Honduran constitutional crisis in 2009, the State Department imposed visa restrictions and revoked several visas under this authority to encourage the de facto government to enter into good faith negotiations with deposed President Zelaya. Likewise, under the auspices of INA § 212(f) and Presidential Proclamation 7750, the State Department recently revoked several visas for officials who engaged in or benefited from corruption, in an effort to bring pressure to bear on other countries to investigate and eliminate corruption by their government officials.

18. Further, our law provides for the denial of U.S. visas on security and related grounds to aliens who are anticipated to violate U.S. law following entry into the United States and those with a broad range of ties to terrorism, including those with

certain ties to groups that a consular officer or the Secretary of State reasonably believes has engaged in terrorist activity, as defined in the INA, § 212(a)(3)(B). Our visa laws also deny admission and make subject to removal aliens who participated in human rights violations such as genocide or torture.² And even the general authority to issue visas requires Department officials to monitor the political, legal, economic, and cultural developments in foreign countries for matters directly relevant to the full range of visa ineligibilities (e.g., economic, demographic, political, ethnicity, criminal, and security issues).

19. Finally, under section 244 of the INA, 8 U.S.C. § 1254a, U.S. law also provides for temporary protected status (“TPS”), a temporary immigration status which permits eligible foreign nationals who are already present in the United States to remain in the United States and obtain employment authorization. TPS is available to eligible foreign nationals who, due to armed conflict, an environmental disaster, or extraordinary and temporary conditions in their states of nationality, may face risk to personal safety if returned to that state while such conditions persist. Recent examples include the designation this year of Haiti for TPS following the devastating earthquake in that country, and the extension of Sudan’s designation as a result of ongoing armed conflict. DHS administers the program and, pursuant to the statute, routinely consults with the State Department for its views on issues relevant to determinations whether to designate or continue to designate a foreign state or part thereof for TPS, including whether the

² 8 U.S.C. §§ 1182(a)(2)(G), 1182(a)(3)(E), and 1182(a)(3)(G) (inadmissible); 8 U.S.C. §§ 1227(a)(4)(D)-(4)(F) (removable).

statutory criteria are satisfied in each case. TPS furthers certain U.S. foreign policy interests by facilitating provision of humanitarian protection to eligible persons who might otherwise be subject to removal to their home countries in times of armed conflict, environmental disasters, or other extenuating and temporary conditions. The impact of the program can be significant: DHS estimated that 100,000 to 200,000 individuals were eligible for TPS under the Haiti designation.

II. U.S. Immigration Practices Significantly Impact Our Foreign Relations

20. In addition to incorporating foreign relations concerns, the United States' choices with respect to immigration policies and practices also have a significant impact on our foreign relations. Again using State Department visa processes as an example, the process for visa issuance and denial is of great interest to foreign governments, owing to the direct impact the visa process has on the affairs of their own nationals. Similarly, domestic processes for arrest, detention, and removal of aliens and other aspects of their treatment in the U.S. are of great interest to foreign governments because of the impact these processes have on foreign nationals and their families. Aspects of U.S. immigration laws, such as the prohibitions on removal of an individual to a country where it is more likely than not that he would be tortured, and on removal of a refugee to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political affiliation, implement U.S. treaty obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1967 Protocol to the U.N. Convention relating to the Status of Refugees.

21. Given the diplomatic, legal, and policy sensitivities surrounding immigration issues, even small changes in U.S. immigration laws, policies, and practices can provoke a substantial international reaction -- both in the immigration context and across American diplomatic concerns. It is for this reason that, although federal law recognizes that states and localities may play beneficial roles in assisting in the enforcement of federal immigration law, *see* 8 U.S.C. § 1357(g)(10), the authority to directly regulate immigration has been assigned exclusively to the federal government.

22. Indeed, countries routinely raise concerns about such changes in bilateral, regional and multilateral arenas. The exercise of immigration functions can quickly provoke a significant bilateral or multilateral problem that harms U.S. interests if handled without appropriate consideration of relevant foreign policy impacts. The Department of State is often in the position of interacting directly with foreign governments in managing the impact of these bilateral problems. For example, decisions regarding the issuance of individual visas to controversial figures, such as leaders of foreign governments with which the United States experiences significant diplomatic tensions, prominent individuals with checkered pasts, and delegates to international bodies, require a full review of U.S. government equities, including foreign policy interests and consideration of international treaties to which the United States is a party. Requirements that a consular officer adjudicating a visa application obtain a Security Advisory Opinion (“SAO”) or Advisory Opinion (“AO”) can significantly delay visa processing and create tension, particularly, but not only, when the applicant is a foreign government official or other high profile individual. The broad terrorism-related provisions in the INA have also

been criticized by foreign governments and officials and raised as obstacles to bilateral cooperation.

A. Reciprocal Harm to U.S. Citizens Abroad

23. Specifically, U.S. immigration policies and practices can have immediate and substantial impacts on the treatment of U.S. nationals abroad. INA § 221(c), for example, requires the length of validity for visas to be reciprocal as far as practicable. Even relatively non-controversial issues such as the period of validity of a visa and the fees charged are the subject of discussion, negotiation, and agreement among countries and have a direct impact on how other governments treat U.S. citizens who wish to travel abroad. For example, in the recent past, some countries have responded to changes in U.S. visa charges by significantly raising the entry fees charged to U.S. nationals by those countries. The Enhanced Border Security and Visa Entry Reform Act of 2002, which requires the fingerprinting of foreign nationals for the visa application process and in order to enter the United States, was the subject of much criticism by other governments and caused some governments to consider taking reciprocal retaliatory action against U.S. nationals. For example, Brazil reserves the right to require a thumbprint of Americans upon entry into Brazil.

24. In the area of consular services, how we treat foreign nationals who are present in the United States likewise can impact how a foreign government treats U.S. citizens present in its country. For example, the Department of State proactively takes a number of steps to ensure U.S. compliance with our obligation under Article 36 of the Vienna Convention on Consular Relations (“VCCR”), which requires that all foreign

nationals in custody in the United States be informed of their option to request to meet with a consular official. The Department does so in important part in order to increase the likelihood that such notification and consular access are provided to U.S. citizens who are detained abroad.

25. Accordingly, the State Department not only considers carefully the foreign policy goals and consequences of its immigration-related decisions, but also the potential impact of those decisions on the reciprocal treatment of U.S. citizens by the relevant foreign government.

B. Impact in Regional and Multilateral Fora

26. The situation of foreign nationals within a country, particularly questions relating to the protection of the human rights of migrants, regardless of their immigration status, is a matter of international concern and is addressed by international treaties. The United Nations and regional bodies such as the Organization of American States (“OAS”), a regional intergovernmental organization comprised of all thirty-five States of the Americas, have established institutions and mechanisms for the discussion, examination, and oversight of international migration policy. As a matter of longstanding human rights and humanitarian policy, the United States government strongly supports international efforts to protect migrants, who are typically especially vulnerable to mistreatment and abuse. Accordingly, the United States as a matter of its foreign policy engages actively in regional and multilateral human rights fora, through which the United States promotes respect for human rights (including the human rights of migrants), the rule of law, and respect for other U.S. values.

27. As part of the international migration framework, the United States has ratified several global human rights treaties which impose obligations on States Parties regarding the rights of persons, including migrants, within their territories, often without regard to the legal status of a non-national within a State's territory. Such treaties include the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture. The United States is party to law enforcement conventions that address multilateral cooperation on immigration issues and the rights of certain migrants, including the United Nations Convention Against Transnational Organized Crime and two of its supplementing Protocols: the Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. These protocols require States Parties to protect the rights of smuggled aliens. Other relevant conventions include the 1967 Protocol relating to the Status of Refugees, the Vienna Convention on Consular Relations, and various bilateral Friendship, Commerce and Navigation treaties creating reciprocal treatment obligations toward foreign nationals.

28. Many UN human rights conventions, including those referenced above, establish expert treaty bodies which are responsible for monitoring compliance by reviewing and commenting upon reports from States Parties regarding implementation of their treaty obligations. These expert bodies routinely address immigration and migration-related issues, and criticize states, including the United States, for laws and policies which, in their view, raise questions about unfair, arbitrary, or racially

discriminatory treatment of migrants, or other human rights concerns. Such criticisms are public, are often the subject of further discussion in UN bodies, and may be raised directly with the United States in bilateral exchanges with foreign countries.

29. Additionally, the United Nations General Assembly and other UN organs routinely adopt resolutions regarding the human rights and protection of migrants. The UN has also established “special mechanisms” or “independent experts,” including special rapporteurs, that investigate and issue reports and make recommendations regarding the human rights of migrants.

30. At the regional level, the OAS has several organs in which issues related to migration policy and the treatment of migrants are raised. Like the UN General Assembly, the OAS General Assembly adopts resolutions on a range of topics including the human rights of migrants. Additionally, within the OAS system, the Inter-American Commission on Human Rights (“IACHR”), which is based in Washington, D.C., promotes respect for human rights, including by issuing statements and reports and holding hearings and adopting findings in response to individual petitions regarding a breach of a Member State’s human rights commitments. The IACHR often expresses concern about the treatment of migrants by OAS Member States, including the United States. For example, in addition to recent hearings related to the enforcement of U.S. immigration laws and policies, the IACHR is in the process of preparing a thematic report which we understand will address issues related to enforcement of U.S. immigration laws and policies.

31. Other intergovernmental organizations and international bodies, not

specifically focused on issues related to the human rights of migrants, also provide venues in which States address issues related to migration generally, and which often include issues related to the treatment of migrants within a State's domestic legal and policy framework. These include the International Organization for Migration, the Regional Conference on Migration (Western Hemisphere), the UN High Level Dialogue on International Migration and Development, the Global Forum on Migration and Development, the International Labor Organization, the UN Office for Drug Control and Crime Prevention, and others.

32. As both a matter of international law and practice, the federal government is held accountable internationally for the actions of state and local authorities regarding our treatment of foreign nationals. International bodies and foreign governments do not typically distinguish between the conduct of the national government and the conduct of an individual state within a federal system. This is starkly evidenced by the United States' experience in cases where state and local government authorities have failed to comply with U.S. obligations under the VCCR to provide consular notification to all foreign nationals in U.S. custody. Failure to provide such notice by state officials has led to three suits by Paraguay, Germany and Mexico against the United States in the International Court of Justice, an advisory opinion sought by Mexico in the Inter-American Court of Human Rights, a petition against the United States in the Inter-American Commission on Human Rights, and bilateral complaints by numerous foreign governments.

33. The United States takes seriously allegations that it has failed to adhere to

its international law obligations and foreign policy commitments and engages in these fora to address such claims. Although the government is fully prepared to defend U.S. practices against unjustified claims of human rights shortcomings, criticism from an international body over immigration human rights issues can directly undercut the credibility of U.S. efforts to advance human rights and can lead to significant diplomatic obstacles – both on immigration issues of bilateral concern and on other interests that might be the subject of diplomatic negotiations. As discussed below, in this context, S.B. 1070’s sweep into subjects left properly to federal direction and control subjects the United States to this criticism while denying the United States the tools to decide for itself whether and how to adjust such policies. The federal government should have to make its defenses or consider appropriate modifications only with regard to policies that are adopted through a considered process that reflects the interests of all the American people, not with regard to the views of one state.

III. Arizona Law S.B. 1070’s Harm to U.S. Foreign Relations

34. Given the diplomatic and foreign relations sensitivities surrounding U.S. immigration policy generally, and the significant foreign relations consequences that can result from even small changes in these policies, and given that S.B. 1070 purports to impose Arizona’s own immigration policy of “attrition through enforcement” through, among other provisions, mandatory verification of immigration status and state criminal enforcement of alien registration, it is not surprising that S.B. 1070 already has provoked significant international controversy. The law elevates the criminal aspect of federal immigration enforcement above all others, threatening state criminal penalties for

violations of federal immigration law. United States immigration law – and our uniform foreign policy regarding the treatment of foreign nationals – has been that the unlawful presence of a foreign national, without more, ordinarily will not lead to that foreign national’s criminal arrest or incarceration, but instead to civil removal proceedings. This is a policy that is understood internationally and one which is both important to and supported by foreign governments. S.B. 1070 violates this aspect of American immigration law and foreign policy by effectively allowing for criminal sanctions based on unlawful presence alone. It deviates from federal law by imposing mandatory verification of immigration status and criminal enforcement of alien registration, and by criminalizing work and travel by foreign nationals beyond the restrictions imposed by U.S. law. In so doing, the law has already provoked significant negative reaction in U.S. bilateral relationships and in regional and multilateral fora.

35. Such criticism is not without costs. To the contrary, the criticism provoked by the Arizona law threatens at least three direct harms to U.S. foreign relations. As noted above, such a change in immigration policy invariably risks the adoption of harmful reciprocal policies toward U.S. nationals by foreign governments. It also undermines the willingness of foreign states to engage bilaterally and multilaterally with the United States to advance U.S. foreign policy goals, and it erodes the credibility of United States efforts in regional and multilateral intergovernmental bodies to advance human rights.

A. Impact on Bilateral Relationships

36. S.B. 1070 has unquestionably generated negative reaction that has damaged

the public image of the United States and has thereby undermined the United States' ability to pursue various diplomatic objectives. The law has provoked numerous public criticisms by governments with which the United States maintains important and sensitive diplomatic relations.

37. In Mexico, S.B. 1070 has precipitated a sharply negative public perception of the attitude toward immigrants in Arizona (and potentially by extension elsewhere in the U.S.), which in turn has negatively affected diplomatic processes with Mexican government officials. The Mexican President, Mexican Cabinet Members, the Mexican Congress, and opinion makers in Mexico all have reacted strongly in response to the law. These voices have also expressed concern about the safety of Mexicans in Arizona.

38. During his recent visit to Washington, for example, Mexico's President Calderón pointedly criticized the law, both during his joint press conference with President Obama on May 19 and in his address to the United States Congress on May 20. Speaking to the Congress, he emphasized the need for comprehensive immigration reform and focused attention specifically on the Arizona law:

I am convinced that comprehensive immigration reform is also crucial to secure our common border. However, I strongly disagree with the recently adopted law in Arizona. It is a law that not only ignores a reality that cannot be erased by decree but also introduces a terrible idea: using racial profiling as a basis for law enforcement. And that is why I agree with President Obama, who said the new law "carries a great amount of risk when core values that we all care about are breached." I want to bridge the gap of feelings and emotions between our countries and our peoples. I believe in this. I believe in communications, I believe in cooperation, and we together must find a better way to face and fix this common problem.

39. President Calderón's criticisms reflect how negatively S.B. 1070 has

affected public attitudes in Mexico toward the United States. A recent poll in Mexico by the Pew Global Attitudes Project, for example, indicates that whereas before the adoption of the Arizona law 62 percent of those polled had a favorable attitude toward the United States and only 27 percent had an unfavorable attitude, following its adoption only 44 percent had a favorable attitude toward the U.S., while 48 had an unfavorable attitude. *See The Arizona Effect on U.S. Favorability in Mexico*, available at www.pewglobal.org. The poll demonstrates that an effort to establish a divergent immigration policy by a single state, which has not yet even gone into effect, nevertheless can significantly harm foreign attitudes toward the United States as a whole. Such effect in turn can seriously undermine support among important Mexican constituencies for Mexico's cooperation with the United States.

40. Bolivia's President Morales, Ecuador's President Correa, El Salvador's President Funes and Guatemala's President Colom have also voiced public criticism of the Arizona law. Other governments, including that of Brazil, Colombia, Honduras, and Nicaragua have issued statements criticizing the law. Additionally, the National Assemblies in Ecuador and Nicaragua, and the Central American Parliament based in Guatemala, have adopted critical resolutions or other statements. S.B. 1070 has also been raised with high level U.S. officials by various foreign states on a number of occasions in nonpublic settings.

41. Concrete steps also have been taken in response to S.B. 1070. For example, Mexico and El Salvador have issued travel warnings or alerts to their citizens traveling in the United States.

42. S.B. 1070 also already has negatively affected other American interests.

As a direct result of the Arizona law, at least five of the six Mexican Governors invited to travel to Phoenix to participate in the September 8-10, 2010 U.S.-Mexico Border Governors' Conference have declined the invitation. Although not a formal binational government-to-government meeting, this annual conference is an important venue for improving binational coordination of border issues that inherently involve federal, state, and other levels of government. It is normally attended by most of the 10 U.S. and Mexican state governors, as well as some federal U.S. and Mexican government representatives who serve as technical advisors.

43. The Mexican Senate stated it would postpone review of a U.S.-Mexico agreement on emergency management cooperation to address natural disasters and accidents signed on October 23, 2008 because of the new Arizona law.

44. Negative effects such as these are only likely to intensify if S.B. 1070 goes into effect.

B. Impact on Regional and Multilateral Relationships

45. The Arizona legislature's adoption of S.B. 1070 also prompted harsh criticism of the law in human rights forums, demonstrating in practical terms the negative consequences that unilateral action by a single U.S. state can have on U.S. foreign policy interests. The law has diminished our credibility in advocating for human rights compliance abroad by others, and if allowed to go into effect, will continue to do so.

46. A number of U.N. and regional intergovernmental organizations and bodies,

including those whose mandates explicitly include the promotion of human rights, have criticized S.B. 1070. For example, on May 10, 2010, six UN human rights experts (the Special Rapporteur on the Human Rights of Migrants, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, the Independent Expert in the Field of Cultural Rights, the Special Rapporteur on the Right to Education, and the Independent Expert on Minority Issues) issued a joint statement specifically addressing the Arizona law:

A disturbing pattern of legislative activity hostile to ethnic minorities and immigrants has been established with the adoption of an immigration law [in Arizona] that may allow for police action targeting individuals on the basis of their perceived ethnic origin.... In Arizona, persons who appear to be of Mexican, Latin American, or indigenous origin are especially at risk of being targeted under the law.

The UN independent experts stressed that “legal experts differ on the potential effects of recent amendments to the immigration law that relate to the conditions for the official detention of suspected illegal aliens,” and expressed concern about the “vague standards and sweeping language of Arizona’s immigration law, which raise serious doubts about the law’s compatibility with relevant international human rights treaties to which the United States is a party.”

47. Additionally, in June 2010, at the 14th session of the UN Human Rights Council, the membership body within the United Nations system charged with promoting human rights and addressing situations of human rights violations, many countries criticized laws that criminalize irregular migration and discriminatory practices in the enforcement of immigration laws, and several states explicitly singled out S.B. 1070 for criticism in their plenary remarks.

48. Within the Inter-American regional system, on April 28, 2010, OAS Secretary General José Miguel Insulza stated that S.B. 1070 “is an issue of concern to all citizens of the Americas” and warned against the possibility of creating an environment of discrimination in the United States, in light of its significant Hispanic population. He added that “the rich tradition we all admire, of recognizing immigrants in the United States has been harmed, undermined.” He recognized the efforts of the U.S. government to legislate on the matter in a constructive way, adding,

This has been a painful moment, difficult for everyone, and it is why we recognize and salute with energy the way in which the government of President Barack Obama has reacted faced with this fact. For our part, we are going to follow up and always act with greater unity of purpose because I believe that all of us here present share the problems this law creates.

Many permanent representatives of OAS Member States also criticized the law both at the Permanent Council in Washington and at the June 2010 OAS General assembly in Lima, Peru.

49. Separately, on April 28, 2010, the IACHR voiced its concern over the “high risk of racial discrimination in the implementation of the law” and expressed concern “with the criminalization of the presence of undocumented persons.” The IACHR exhorted “U.S. authorities to find adequate measures to modify the recently approved law in the State of Arizona in order to bring it into accordance with international human rights standards for the protection of migrants.”

50. Finally, on May 4, 2010, heads of government at a summit of the Union of South American Nations (“UNASUR”), which is comprised of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela,

adopted a statement condemning the law, claiming it could lead to the legitimization of racist attitudes and the latent risk of violence.

51. In short, the passage of Arizona S.B. 1070 has provoked broad-based criticism and concern among U.S. allies in the Western Hemisphere, by human rights experts, and in numerous intergovernmental fora. Nor can such criticism be readily dismissed. Such criticism, particularly when provoked by an independent immigration enforcement policy being pursued by a U.S. state, and which the national government does not control or endorse, affects the United States' standing in bilateral, regional and international relationships, and ultimately the leadership role of the United States as we seek to advance a wide range of policy goals within the international community. It risks retaliatory harms against to the legal rights of U.S. nationals abroad. And it compromises our ability to engage effectively in bilateral, regional and multilateral conversations regarding human rights.

C. Future Ramifications

52. If S.B. 1070 were to enter into effect, criticism will likely increase, and the risk of such harms will escalate. The Arizona law could have an increasingly caustic impact on the United States' relations with important regional allies, undermine additional diplomatic arrangements or opportunities for international cooperation, constitute an ongoing irritant in U.S. bilateral, regional and multilateral relationships, and subject the United States to ongoing criticism in international fora.

53. A few such circumstances are readily foreseeable. This fall, for example,

the United States will send a high level U.S. delegation to the UN Human Rights Council's Universal Periodic Review in Geneva, at which the United States will be questioned by other UN Member States regarding our human rights practices. This Universal Periodic Review is conducted once every four years for each UN Member State, and the United States will be presenting for the first time. It is highly likely that the Arizona law will be one of the concerns raised during the questioning by other delegations.

54. Likewise, the United States would undoubtedly be criticized for S.B. 1070 by UN human rights treaty monitoring bodies in the context of U.S. human rights treaty reporting requirements. Within the next two years alone, the United States will be expected to report to both the UN Human Rights Committee and the Committee on the Elimination of Racial Discrimination, and thereafter will be expected to appear before each body to defend the United States' record of human rights compliance. S.B. 1070, if still in effect, would very likely be the subject of criticism before both bodies.

55. If S.B. 1070, Arizona's attempt to set its own immigration policy in pursuit of "attrition through enforcement," were to go into effect, it would directly call into question the ability of the United States to speak with one voice at the international level on issues related to immigration and migration policy. Only the national government is in a position to accurately assess the impact of a policy such as S.B. 1070 on our overall foreign relations agenda and to balance the competing foreign relations considerations involved in the adoption and enforcement of such a law. When the United States incurs criticism of immigration law and policies adopted at the federal level, the United States is

normally in a position to review the criticism and determine whether to defend the practices against attack or else to take appropriate action to modify its practices. The United States is also able to develop and implement immigration policy in anticipation of these and other foreign relations concerns. In this case, however, the policy being pursued has not been developed, nor would it be implemented, with sensitivity to the full range of foreign policy information and considerations available to the national government, and the United States is unable to calibrate its immigration and foreign policies to respond effectively to these claims.

56. If the several states were each allowed to pursue independent immigration enforcement policies such as the Arizona law, these serious concerns would be multiplied significantly, as the United States could be subjected to a cacophony of competing immigration enforcement priorities and agendas, with little regard for the sensitive diplomatic and foreign relations considerations that immigration policy addresses, and with an extreme adverse impact on the United States' ability to speak with one voice.

57. S.B. 1070 – and in particular the mandatory verification regime requirement – thus poses a risk of provoking retaliatory treatment against U.S. nationals by other states, and threatens ongoing adverse consequences for important and sensitive bilateral relationships with U.S. allies such as Mexico, for our regional relations in the western hemisphere, and for our global relations in regional and multilateral institutions. It is likely to hinder our ability to secure the cooperation of other states in efforts to promote U.S. interests internationally across a range of trade, security, tourism, and other interests unrelated to immigration. Finally, it is likely to undermine the United States'

ability to engage effectively with the international community to promote the advancement and protection of human rights. Moreover, repairing such harm to international relations and U.S. stature in bilateral, regional and multilateral relationships after the fact can be extremely difficult.

58. Accordingly, after having analyzed S.B. 1070, considered how it would interact with existing federal immigration policy and practice, and assessed the international reaction to it, I have concluded that S.B. 1070 runs counter to American foreign policy interests, and that its enforcement would further undermine American foreign policy.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed the 2 day of July, 2010 in Washington, D.C.

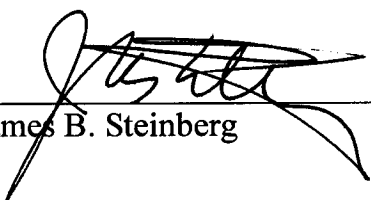

James B. Steinberg

EXHIBIT H



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The Mexican Government Regrets the Enactment of HB 87 in Georgia

Friday, May 13 | Press Release # 157 | Mexico City

The government of Mexico regrets the enactment of HB 87 (Illegal Immigration Reform Enforcement Act of 2011) in the state of Georgia (U.S.). The new law criminalizes immigration and may lead to the incorrect enforcement of the law by local authorities.

Its implementation, scheduled for next July 1, potentially affects human and civil rights of Mexicans who live in or visit Georgia.

During the legislative process, the Mexican government, through the Ministry of Foreign Affairs, the Embassy of Mexico in the United States and the Consulate General in Atlanta, expressed its concerns and objections to provisions in this law.

The legislators who voted for the law and the Governor of Georgia overlooked the many contributions made by the immigrant community to the state's economy and society, as well as Mexico's importance as its third-largest export market.

The vision promoted by this law goes against the principles of shared responsibility, trust and mutual respect under which the federal governments of Mexico and the United States have determined to work to address shared challenges in North America.

The Mexican government has developed and implemented a strategy of preventive protection to keep the Mexican population informed of this situation.

Taking into account the legal precedent set by the Ninth Circuit Court of Appeals regarding Arizona law SB 1070, and given the stated intention of U.S. organizations to mount a legal challenge to prevent the law from entering into force, all means available will be used to defend the rights and dignity of the Mexicans in Georgia. In addition, a legal analysis is underway to determine actions that could be taken to assist Mexicans affected by this measure.

A [brochure](#) with information on the legislation and practical advice is now available at the Mexican Consulate in Atlanta and on its web page. The Consulate will help explain the scope of this legislation and the rights of all individuals in forums and other events organized by civil society organizations.

The Government of Mexico respects the sovereign right of all countries to decide on the laws that will be applied in its territory. However, it reiterates its firm commitment to provide the assistance and protection that Mexicans should require, to ensure due respect for their fundamental rights, regardless of their immigration status.

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EXHIBIT I

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF MICHAEL AYLES

Pursuant to 28 U.S.C. § 1746, I, Michael Ayles, declare and state as follows:

1. I am employed by U.S. Citizenship and Immigration Services (USCIS), an agency of the Department of Homeland Security (DHS), as Senior Advisor to the Director of USCIS. I have been employed in this position since January 2010. My duties as Senior Advisor include, among other things, directing the USCIS planning effort for comprehensive immigration reform legislation and advising the Director about the direction and progress of USCIS efforts to transform its business processes. Prior to my current position, I have held a number of executive level positions since 1989 involving immigration benefit management at USCIS and its predecessor before March 2003, the Immigration and Naturalization Service (INS), including serving as: Acting Deputy Director of USCIS between 2008 and 2010 (the highest ranking official in the agency at that time); Associate Director, USCIS Domestic Operations Directorate (2006-2008); Director, Information and Customer Service (1999-2006); and Assistant Commissioner for Service Center Operations (1989-1997). I began my federal career with the INS in 1977. I make this declaration based on personal knowledge of the subject matter

acquired by me in the course of the performance of my official duties and upon information provided to me by personnel with relevant knowledge.

2. As explained below, there are several situations in which aliens in the United States have been lawfully admitted, or are pursuing a process for obtaining a lawful status under Federal immigration law, but will not have filed an application or other form that has been designated as complying with registration requirements, and will not have been issued a document designated as evidence of registration. Nonetheless, DHS is aware of their presence through the processes provided by federal immigration law and may, in certain cases, have affirmatively decided not to pursue either removal or criminal prosecution.

3. DHS regulations at 8 C.F.R. § 264.1(a) list certain DHS applications and other forms as registration forms for the purpose of complying with the alien registration requirements in 8 U.S.C. § 1302. DHS regulations at 8 C.F.R. § 264.1(b) designate certain DHS-issued cards and other documents (also referred to in the regulations as “forms”) as forms constituting evidence of registration for the purpose of complying with 8 U.S.C. § 1304(d). In this Declaration, the DHS regulations at 8 C.F.R. § 264.1(a) and (b) are referred to as the “registration regulations.”

4. In many cases, aliens who are eligible to apply for a particular immigration benefit may file with USCIS a designated form that also is designated as a registration form in the registration regulations. Once the application is processed and/or approved, the alien is issued a document designated as evidence of registration in the registration regulations. An example of a designated registration form is the Form I-485, Application to Register Permanent Residence or Adjust Status (commonly known as an “adjustment application”). Approval of an adjustment application will result in issuance of a Form I-551 Permanent Resident Card

(commonly known as a “green card”). Adjustment applicants are also eligible to file a Form I-765, Application for Employment Authorization, which, if approved, results in the issuance of an Employment Authorization Document (EAD). Both the green card and the EAD are designated as evidence of registration in the registration regulations.

5. However, in a number of specific situations involving aliens within the United States who have been lawfully admitted to the United States or have a pending or approved application for a lawful immigration status, the registration regulations do not designate a DHS form currently in use as a lawful application for registration, do not specifically designate a document issued to the alien as evidence of registration, or both. These situations include, but are not limited to: Certain aliens eligible for relief under the Violence Against Women Act; aliens applying for asylum; aliens applying for “T” or “U” nonimmigrant status; aliens applying for Temporary Protected Status (TPS); and aliens applying for and granted nonimmigrant admission to the United States pursuant to the Visa Waiver Program. The registration regulations do not designate any form as a general “catch-all” that aliens present in the United States who have not otherwise submitted a form described in the regulations may submit to register with DHS. Accordingly, under these circumstances, aliens seeking the various humanitarian immigration benefits described below will not be in possession of a registration document, despite the fact that they have an application for such benefit pending with the federal government and that the federal government is aware of their presence in the United States.

6. **Violence Against Women Act.** The Violence Against Women Act (VAWA) enables certain aliens who have been subjected to battery or extreme cruelty by their U.S. citizen or lawful permanent resident spouse, parent, or child to self-petition for immigration benefits (8 U.S.C. § 1101(a)(51) (defining VAWA self-petitioner)). USCIS granted 6,258 VAWA self

petitions in fiscal year 2009. To file a VAWA self-petition, applicants submit a Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant), and written confirmation of receipt of the petition is issued by USCIS. Battered aliens who file a VAWA self-petition also receive a notice of action of a prima facie determination by USCIS, which, if positive, may be used to access certain public benefits available to victims of domestic violence. When a VAWA self-petition is approved, the battered alien receives an approval notice. Upon receipt of the approval notice, the battered alien becomes eligible, but is not required, to apply for employment authorization. When the battered alien is eligible to file for adjustment of status, which requires among other things that an immigrant visa number is immediately available, the alien may file the Form I-485 as described above; otherwise, no form or document used in the VAWA self-petition process, including USCIS confirmation of receipt of the Form I-360, is included in the registration regulations.

7. Under current DHS policy, an approved VAWA self-petitioner is placed in deferred action status by USCIS. Deferred action is a form of prosecutorial discretion by which the agency elects not to assert the full scope of its authority. Generally, a grant of deferred action stays immigration enforcement based on convenience to the government, and provides a basis for the alien to apply for employment authorization. This policy provides battered aliens some protection against immigration enforcement such as removal, and allows opportunities such as seeking protective orders against their abusers and cooperating with law enforcement in criminal cases brought against their abusers.

8. Once a battered alien receives notice of approval of the VAWA self-petition and is placed in deferred action, the battered alien may, but is not required to, file a Form I-765 (Application for Employment Authorization), which will result in issuance of an EAD. Current

processing times for VAWA self-petitions are 6 months, and current general processing times for EADs are 1.5 months. Therefore, on average, a battered alien would not receive a registration document until at least 7.5 months after the initial filing of the Form I-360. With the exception of the EAD, no form or document used in the deferred action process is included in the registration regulations.

9. Accordingly, a battered alien who is in the United States, regardless of immigration status, and who has filed such a VAWA self petition and is awaiting an adjudication, generally will not -- by virtue of this federal immigration process -- have submitted or obtained a form satisfying the registration regulations.

10. **Asylum.** Subject to certain statutory limitations, an alien who is physically present in the United States, regardless of immigration status, may apply for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. § 1158). To apply for asylum, applicants submit a Form I-589 (Application for Asylum and Withholding of Removal). The registration regulations do not designate the Form I-589 as a form by which aliens may comply with registration requirements.

11. Under current DHS policy, arriving aliens who have established a credible fear of persecution and who are paroled from the custody of U.S. Immigration and Customs Enforcement (ICE) are provided with an approved Form I-94 (Arrival/Departure Record) reflecting parole status. Although the Form I-94 is designated as evidence of registration, not all asylum applicants are arriving aliens paroled from ICE custody.

12. For aliens affirmatively applying for asylum with USCIS, as opposed to defensively in removal proceedings before the U.S. Department of Justice's Executive Office for Immigration Review (EOIR), the applicant receives written confirmation of USCIS' receipt of

the application as well as directions for providing fingerprints. As a general matter, DHS concludes its asylum adjudication process before undertaking enforcement of immigration consequences against the alien. The applicant will then be interviewed by an asylum officer. Where a USCIS asylum officer, following an interview, determines that an alien is not eligible for asylum and the alien is not currently in a lawful immigration status, the alien is referred, typically through a Form I-862 (Notice to Appear (NTA)), for further consideration of the asylum application in removal proceedings before EOIR. If a USCIS asylum officer determines that an alien is not eligible for asylum and the alien is in a lawful immigration status, the alien is denied asylum. Any alien whose application for asylum has been pending before USCIS or EOIR at least 150 days may file a DHS Form I-765. USCIS may approve the Form I-765 as a matter of discretion if the application for asylum has been pending at least 180 days, which will result in issuance of an EAD. But before the issuance of the EAD, the alien would not necessarily possess evidence of registration. An alien whose application for asylum has been granted is issued a Form I-94, and also may file a Form I-765, which will result in issuance of an EAD. Except for the Form I-94 and EAD, which the registration regulations designate as evidence of registration, none of the forms or documents used in the USCIS asylum process are designated in those registration regulations as an application for, or evidence of, registration. USCIS granted 11,933 individuals asylum in fiscal year 2009.

13. Accordingly, an alien who is in the United States, regardless of immigration status, and who has filed a pending application for asylum with DHS, generally will not -- by virtue of this federal immigration process -- have submitted or obtained a federal form satisfying the registration regulations, except as stated above with respect to the EAD for certain applicants whose applications have been pending more than 180 days..

14. **T and U nonimmigrant status.** Federal law provides for the grant of “T” nonimmigrant status to certain victims of trafficking and their family members in the United States (8 U.S.C. § 1101(a)(15)(T)). In order to establish eligibility for T nonimmigrant status, aliens must establish, in part, that they are or have been a victim of a severe form of trafficking in persons, which means sex trafficking in which a commercial sex act was induced by force, fraud, or coercion, or the obtaining of a person for labor or services through the use of force, fraud, or coercion. Aliens seeking T nonimmigrant status must submit Form I-914 (Application for T Nonimmigrant Status), which generates written confirmation of receipt of the application. Written confirmation of receipt of the application does not, however, constitute evidence of registration under the registration regulations. The applicant must comply with fingerprinting requirements and may be interviewed, and all applications are subject to detailed review to determine eligibility and whether DHS will exercise its discretionary authority to waive applicable grounds of inadmissibility. Approval of an application for T nonimmigrant status automatically generates an EAD and a Form I-94. Except for the EAD and Form I-94, no form or document used in the T nonimmigrant application process is included in the registration regulations. The current processing time for applications for T nonimmigrant status is 6 months. USCIS granted 710 individuals T nonimmigrant status in fiscal year 2009.

15. Federal law provides for the grant of “U” nonimmigrant status to certain crime victims and their family members in the United States (8 U.S.C. § 1101(a)(15)(U)). In order to establish eligibility for U nonimmigrant status, aliens must establish, in part, that they suffered substantial physical or mental abuse as a result of being a victim of certain delineated crimes. Those crimes include rape, torture, trafficking, incest, domestic violence, sexual exploitation, and other similarly serious crimes. Applicants seeking U nonimmigrant status must submit a

Form I-918 (Petition for U Nonimmigrant Status). Submission of the application does not, however, provide an alien with evidence of registration designated under the registration regulations. Although an interview is not required, applicants are subject to fingerprinting and capture of other biometric indices, and applications are subject to detailed review to determine eligibility. Approval of an application for U nonimmigrant status automatically generates an EAD and Form I-94, which, as noted above, satisfy the proof of registration requirement. Except for the EAD and Form I-94, no form or document used in the U nonimmigrant application process is included in the registration regulations. The current average processing time for petitions for U nonimmigrant status is 6.1 months. U nonimmigrant status was granted to 8,663 individuals in fiscal year 2009.

16. DHS may grant an administrative stay of a final order of removal to aliens with pending applications or petitions for T or U nonimmigrant status who have set forth a prima facie case for approval (8 U.S.C. § 1227(d)(1)). Approval of an application for a stay of removal does not automatically generate an EAD and no form or document used in the stay of removal application process is included in the registration regulations. So an alien who received a stay of removal might still not possess evidence of registration, notwithstanding an administrative order authorizing the alien's temporary presence.

17. Accordingly, an alien who is in the United States, regardless of immigration status, and who is in the process of seeking "T" or "U" nonimmigrant status, generally will not -- by virtue of this federal immigration process -- have submitted or obtained a federal form satisfying the registration regulations.

18. **Temporary Protected Status.** Under 8 U.S.C. § 1254a, the Secretary of Homeland Security may designate foreign states whose nationals in the United States may apply

for Temporary Protected Status (TPS) in certain cases where conditions in the foreign state prevent such aliens from being returned. Eligible nationals cannot be detained and removed on the basis of immigration status during the period in which they have TPS. The eligible alien must apply using DHS Form I-821 (Application for Temporary Protected Status) and DHS Form I-765. Pursuant to the statute an alien is entitled to temporary treatment benefits, including an EAD, if the alien is prima facie eligible for TPS pending final adjudication. An alien applying for TPS can request an EAD, which may be granted based either on a prima facie determination of eligibility or upon a final adjudication granting TPS. Except for the EAD, no document used in the TPS application process is included in the registration regulations. As of June 3, 2010, USCIS has approved 23,475 applications for TPS under the designation of Haiti made by the Secretary of Homeland Security on January 15, 2010 in response to the devastating earthquake in that country three days before. The following other countries are currently within a period of designation for TPS: El Salvador; Honduras; Nicaragua; Somalia; and Sudan.


19. Accordingly, an alien who is in the United States, regardless of immigration status, and who is in the process of seeking TPS or has applied for TPS, generally will not -- by virtue of this federal immigration process -- have submitted or obtained a federal form satisfying the registration regulations.

20. **Visa Waiver Program:** The Visa Waiver Program (VWP) is administered by U.S. Customs and Border Protection (CBP), an agency of DHS. The only proof of admission currently issued to VWP travelers is the I-94W, and after implementation of the Electronic System for Travel Authorization (ESTA) is complete, the only proof of admission issued to most VWP travelers will be the entry stamp on his or her passport reflecting the date of admission. Although the registration regulations designate the Form I-94 generally as both the application

for registration and the evidence of registration for nonimmigrant aliens, the registration regulations do not refer specifically to the Form I-94W. Moreover, the ESTA process is not designated in those registration regulations as an application for, or evidence of, registration.

21. Accordingly, an alien who is admitted to the United States through the VWP and who abides by the terms of admission, will be lawfully present but will not -- by virtue of this federal immigration process -- have submitted or obtained a federal form satisfying the registration regulations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 22nd day of June, 2010 in Washington, D.C.



Michael Aytes

EXHIBIT J

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF DAVID V. AGUILAR

Pursuant to 28 U.S.C. § 1746, I, David V. Aguilar, declare and state as follows:

1. I am employed by U.S. Customs and Border Protection (CBP), within the U.S. Department of Homeland Security, in the position of Deputy Commissioner. I have held this position since April 11, 2010. Prior to holding the position of Deputy Commissioner, I served as Acting Deputy Commissioner beginning on January 2, 2010, previously as the Chief of the Border Patrol for just short of six years and, prior to that, as the Chief Patrol Agent of the Tucson Sector. I began my service with the U.S. Border Patrol in 1978. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. I am aware that the State of Arizona has enacted new immigration legislation, known as Senate Bill 1070 (SB 1070).

2. In deploying resources between the ports of entry, CBP seeks to incorporate the appropriate mix of personnel, infrastructure, and technology that will allow us to best advance our objectives: specifically, preventing the commission of crimes, apprehending those who have endangered or will endanger public safety, and securing the border. As explained below, our assets at

and between the ports of entry in Arizona are deployed to establish and maintain operational control of the border in the state of Arizona.

3. CBP currently maintains six land ports of entry within the State of Arizona, found in the following locations: Douglas, Lukeville, Naco, Nogales, San Luis, and Sasabe. These ports of entry accommodate private and commercial vehicles, as well as pedestrians seeking entry or admission into the United States. The Nogales Port of Entry also accommodates rail traffic. CBP's port operations include seven air ports of entry in Douglas, Nogales, Phoenix, Scottsdale Air Force Base, Williams Gateway Air Force Base (Mesa), San Luis, and Tucson. CBP's Office of Field Operations (OFO) currently has 780 CBP Officers stationed in Arizona, both at these ports of entry and in the Arizona operational offices, as well as ninety-four agriculture specialists and fourteen import specialists.

4. As of June 2, 2010, CBP has processed over 4,562,900 pedestrians, 3,918,000 personal vehicles, 246,600 commercial vehicles (for purposes of this declaration this number does not include rail), 10,745 private aircraft passengers and crew, and 456,459 commercial aircraft passengers and crew in Arizona this fiscal year alone.¹ This traffic is processed through seventy-five lanes of traffic as well as those entering at the airports — thirty-one for personal vehicles inbound into the United States, ten for personal vehicles outbound from the United States, seventeen for pedestrians inbound to the United States, thirteen for commercial vehicles inbound to the United States, and four for commercial vehicles outbound from the United States. The volume for fiscal year 2010 is in keeping with the high volume that CBP has consistently processed in Arizona since 2005:

¹ These numbers and those in the subsequent bullets represent the number of crossings and may not be unique persons or vehicles, as individuals or vehicles may make repeated crossings.

- a. In fiscal year 2009, CBP processed over 8,288,000 pedestrians, 7,416,700 personal vehicles, 341,100 commercial vehicles, 17,474 private aircraft passengers and crew, and 670,821 commercial aircraft passengers and crew.
- b. In fiscal year 2008, CBP processed over 11,393,800 pedestrians, 7,938,000 personal vehicles, 381,100 commercial vehicles, 22,662 private aircraft passengers and crew, and 711,553 commercial aircraft passengers and crew.
- c. In fiscal year 2007, CBP processed over 11,856,100 pedestrians, 8,282,500 personal vehicles, 368,100 commercial vehicles, 23,091 private aircraft passengers and crew, and 672,593 commercial aircraft passengers and crew.
- d. In fiscal year 2006, CBP processed over 10,890,500 pedestrians, 9,117,300 personal vehicles, 367,300 commercial vehicles, 21,711 private aircraft passengers and crew, and 685,043 commercial aircraft passengers and crew.
- e. In fiscal year 2005, CBP processed over 9,867,800 pedestrians, 10,025,600 personal vehicles, 341,300 commercial vehicles, 20,722 private aircraft passengers and crew, and 698,277 commercial aircraft passengers and crew.

5. CBP processed 357 trains in Arizona in fiscal year 2009. Moreover, at the rail port in Nogales, CBP implemented 100 percent screening of all outbound rail traffic as of March 16, 2009.

6. As of May 31, 2010, during CBP's processing of individuals at the ports of entry in Arizona, 5,975 were determined to be inadmissible into the United States under the Immigration and Nationality Act during fiscal year 2010, with another 5,358 withdrawing their applications for admission. Since the beginning of fiscal year 2005, 48,549 individuals have been found inadmissible at the Arizona Ports of Entry, with another 42,069 withdrawing their

applications for admission. In addition, from the beginning of fiscal year 2005 through the present the Office of Field Operations has arrested 9,428 individuals in Arizona and referred them for criminal prosecution for a variety of criminal violations.

7. In 2009 CBP deployed additional canine teams to the Southwest Border to augment teams previously in place. Of these, forty-nine teams are permanently assigned to ports of entry within Arizona.

8. In 2009, CBP deployed additional Z-Backscatter Van Units to the Southwest border to augment those previously in place, which help CBP identify anomalies in passenger vehicles—that is, a deviation from the normal reading which may be indicative of the presence of unlawful or undeclared merchandise, as well as potentially smuggled individuals. CBP deployed eight units at ports of entry within Arizona.

9. CBP has also implemented the Western Hemisphere Travel Initiative (WHTI) for land and sea travel to the United States, including upgrades to the physical and technical capabilities at the ports of entry. Under WHTI, radio frequency identification (RFID) technology and next generation license plate readers were deployed, along with coordinate hardware and software updates. The new license plate readers (which provide CBP officers with pre-positioned traveler information) are ten percent more accurate than those they replaced, now reading at or above ninety percent accuracy, saving officers from manually correcting almost 10 million erroneous license plate queries per year. As a result, CBP is able to process travelers more efficiently. The technology deployed as part of WHTI allows law enforcement queries to proceed at a pace 60 percent faster than manual queries. These upgrades were completed at the Arizona land ports of entry, ending with Naco in February 2010 (though due to its size Sasabe has a hybrid solution in place with many, though not all, of these technical capabilities).

10. CBP's Office of Border Patrol (Border Patrol) maintains a presence between the ports of entry in Arizona as well. For operational purposes, the Border Patrol divides the United States into geographical areas known as "sectors." Two of these Border Patrol sectors are located in Arizona. The Tucson sector is located wholly within the State of Arizona. The sector known as the Yuma sector largely covers area found within the State of Arizona, but also includes an unpopulated area of the southeastern portion of California along the border. CBP's activities in the Yuma sector are based on a variety of factors and are not driven by the state—*i.e.*, Arizona versus California—where the activities take place.

11. The Border Patrol nationwide is better staffed today than at any time in its eighty-five year history, having nearly doubled the number of agents from approximately 10,000 in 2004 to more than 20,000 in 2009. As of May 22, 2010, there are over 4,000 agents stationed in Arizona alone. This is an increase from the approximately 3,500 agents stationed during fiscal year 2007 in Arizona and the approximately 2,800 agents stationed in Arizona in fiscal year 2005.

12. The Border Patrol utilizes various technologies to assist in locating, identifying, and apprehending those attempting to cross the border illegally. Nearly every piece of technology utilized between the ports of entry is found in northern, southern, and coastal border operations. Technology deployments are based on operational need and the technology's ability to fit within that area's operating environment. The following technologies, among others, are being used between ports of entry: night vision and thermal imaging equipment; magnetometers; infrared and seismic sensors; mobile x-ray, gamma ray and backscatter nonintrusive inspection systems; and additional remote video and sensing equipment.

13. The Border Patrol participates in a program known as Immigration Quick Court. This is a program in which an Immigration Judge holds hearings at the Border Patrol Tucson Sector Processing Center. The Quick Court is an initiative that works to ease the dockets of the traditional immigration courts. The process expedites the formal removal proceedings of illegal aliens arrested within the Tucson Sector. As of April 2010, the Court has presided over 3,153 cases for fiscal year 2010.

14. The Border Patrol operates check-points at twenty-five locations in Arizona, though given the nature of checkpoints these are not all operational at any one given time.

15. The United States has also erected approximately 305.7 miles of border fence in Arizona. Of that, 123.2 miles is pedestrian fence and 182.5 miles consist of vehicle fence.

16. The work performed by CBP's Office of Air and Marine augments these operations. In addition to the technology described above, the Office of Air and Marine conducts continuous operations along our borders nationally with more than 290 aircraft, including Unmanned Aircraft Systems (UAS), and 253 vessels. As of this date, eight fixed winged aircraft, thirty rotary wing aircraft, three unmanned aerial systems, as well as 125 Air Interdiction Agents are based in Arizona. The Office of Air and Marine is an integral part of the overall efforts of CBP and in fiscal year 2009 participated in over 34,800 apprehensions nationally and flew over 45,679 sorties for a total of 100,639 flight hours.

17. Another CBP effort is the Operation Against Smugglers Initiative on Safety and Security (OASISS), a bi-national initiative designed to increase the ability of the U.S. and Mexican governments to prosecute alien smugglers and human traffickers on both sides of the border. The OASISS program was established because, among other reasons, the prosecution of smugglers and human traffickers is a high immigration priority and because DHS has recognized

the need for international cooperation in pursuit of this goal. Conducted in cooperation with Mexico's Attorney General's Office, under OASISS select alien smuggling cases that are declined by United States Attorney's Offices are subsequently turned over to the Government of Mexico for prosecution under Mexico's judicial system. Since its inception on August 17, 2005, the OASISS program has generated 2,031 cases and led to the prosecution of 2,290 principal defendants in Mexico. During fiscal year 2009, 261 alien smuggling cases originating in Arizona were referred to Mexico.

18. CBP also conducts a program known as Operation Streamline, which is a geographically focused prosecution initiative that targets aliens who illegally enter the U.S. through a designated focus area. Currently, approximately seventy (70) illegal aliens are criminally prosecuted each court day. The illegal aliens are prosecuted for violation of 8 U.S.C. § 1325, 8 U.S.C § 1326, or both. Currently, CBP has two attorneys who are full time Special Assistant United States Attorneys for the District of Arizona dedicated to Operation Streamline prosecutions.

19. As of May 28, 2010, approximately 10,700 prosecutions have been brought under Operation Streamline in the Tucson Sector for fiscal year 2010. In fiscal year 2009 over 15,500 prosecutions were brought, which was an increase from the approximately 9,600 prosecutions which were brought in fiscal year 2008.

20. Consistent with DHS's prioritization of enforcement efforts that focus on the promotion of public safety, CBP initiated the Operation Alliance to Combat Transnational Threats (ACTT) in September 2009. ACTT is a multi-agency operation in the Sonora-Arizona Corridor involving over fifty (50) Federal, tribal, state, and local law enforcement and public safety organizations. The ACTT works collaboratively to deny, degrade, disrupt, and ultimately

dismantle criminal organizations and their ability to operate; engage communities to reduce their tolerance of illegal activity; and establish a secure and safe border environment, which will ultimately improve the quality of life of affected communities. Examples of the coordinated operations taken to date to target aliens affiliated with drug trafficking and prevent the expansion of these criminal organizations include the enhanced targeting associates of drug trafficking organizations and, in conjunction with Immigration and Customs Enforcement, the strategic removal of aliens to locations in the interior of Mexico to minimize the recruitment of inadmissible aliens by criminal organizations operating in the border environment.

21. CBP also participates in Operation Stonegarden. The intent of the operation is to provide funding to designated localities to enhance cooperation and coordination between federal, state, local, and tribal law enforcement agencies to secure the United States Southwest Border. In 2009, DHS provided \$90 million in funding for Operation Stonegarden to border law enforcement agencies, a record amount. Eighty-five percent of this funding went to the Southwest border—up from fifty-nine percent in fiscal year 2008. The fiscal year 2011 budget request focuses Stonegarden funding solely on the Southwest border.

22. At times, certain state and local law enforcement entities may contact CBP, either through the Office of Field Operations or the Office of Border Patrol, to verify or ascertain the citizenship or immigration status of an individual within the jurisdiction of that agency. Responding to these inquiries takes the time of officers and agents at our ports of entry, offices, and stations.

23. CBP has seen the overall apprehensions of illegal aliens by Border Patrol decrease from our highest point of over one million apprehensions in FY 2000. These numbers

demonstrate the effectiveness of our layered approach to security, comprised of a balance of tactical infrastructure, technology, and personnel at our borders.

- a. Specifically, in the Yuma sector the Border Patrol apprehended 138,419 individuals in fiscal year 2005. In fiscal year 2009, Border Patrol apprehended 6,949 individuals, down ninety-four percent from 2005.
- b. In the Tucson Sector 439,005 individuals were arrested in fiscal year 2005. In fiscal year 2009, Border Patrol apprehended 241,558 individuals, down forty-five percent from 2005.

24. As part of CBP's processing of individuals for admissibility, it administers the inspection and admissions process for aliens seeking admission to the United States under the Visa Waiver Program (VWP). The VWP enables eligible nationals from thirty-six (36) designated countries to travel to the United States temporarily for business or pleasure for up to ninety (90) days without obtaining a visa. In fiscal year 2009, more than 14 million aliens were admitted to the United States under the VWP. Historically, upon arrival in the United States and during the inspection and admission process, VWP travelers signed and submitted Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Form), which was stamped by a CBP Officer to reflect the date of admission and authorized period of stay as a nonimmigrant visitor (as described in 8 U.S.C. § 1101(a)(15)(B)). The lower portion of the Form I-94W was retained by the alien.

25. As of January 12, 2009, VWP travelers must complete an Electronic System for Travel Authorization (ESTA) application prior to initiating travel by air or sea carrier to the United States when they intend to apply for admission under the VWP. The ESTA application contains the questions that appeared on the Form I-94W. Approval of the ESTA application

represents a determination by CBP that an alien may travel (absent a subsequent revocation by CBP) to the United States under the VWP for the duration of the validity of the authorization, which generally is two years. CBP, however, retains authority to make the determination as to the alien's admissibility upon the alien's arrival and inspection at a port of entry, as well as the period of each VWP admission, not to exceed 90 days.

26. On May 25, 2010, the Secretary of Homeland Security began the process of eliminating the paper Form I-94W requirement for VWP travelers whose ESTA applications are approved prior to boarding a carrier to travel by air or sea to the United States. The transition to paperless processing of ESTA-compliant travelers is expected to be completed by the end of June 2010. As a result, the only proof of admission issued to most VWP travelers will be the entry stamp on his or her passport reflecting the date of admission.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed the 27th day of June, 2010 in Washington, D.C.



David V. Aguilar

EXHIBIT 29

EXHIBIT K

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF DAVID C. PALMATIER

Pursuant to 28 U.S.C. § 1746, I, David C. Palmatier, declare and state as follows:

1. I am the Unit Chief for the Law Enforcement Support Center (LESC) within U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). I have served in this position since March 16, 2008. Prior to my current position, I served as the Assistant Special Agent in Charge in Boston, Massachusetts, from December 2005 to March 2008. Prior to that, I served as the Director of the Office of Investigations Training Division from November 2000 to December 2005. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. I am aware that the State of Arizona has enacted new immigration legislation, known as Senate Bill 1070 (SB 1070), and I have read and reviewed SB 1070 as amended.

2. The purpose of my declaration is to describe the adverse effects of Arizona SB 1070 on the LESC's ability to respond, supervise, and monitor requests from law enforcement

partners in an effort to provide accurate and timely alien status determinations for subjects arrested or under investigation.

3. As the LESC Unit Chief, I have direct managerial and supervisory authority over all sections that comprise the LESC, including three Operations Sections, the National Crime Information Center (NCIC) Section, the Communications Center Section, the Tip-line Section, the Training Section, and the Administration Section. The Operations Sections respond to requests for alien status determinations sent to the LESC via computer. The NCIC Section enters and validates all ICE lookout records in the NCIC computer system for immigration absconders (those who have been ordered removed but have absconded), previously deported aggravated felons, and fugitives sought for criminal violations of customs and immigration laws investigated by ICE. The Communications Center Section responds to phone requests for information and assistance by our state, local, and federal law enforcement partners. The Tip-line Section handles phone tips from the public relating to the full range of crimes enforced by DHS. The Training Section provides basic and advanced training to LESC employees. The Administration Section provides personnel, budget, and logistical support for the LESC.

4. The LESC also responds to FBI requests for alien status determinations on non-U.S. citizens seeking to purchase firearms; responds to U.S. Secret Service alien status determinations for aliens seeking access to a protected area (*e.g.*, the White House Complex); and responds to alien status determinations related to employment issues at national security related locations that could be vulnerable to sabotage, attack, or exploitation.

5. Congress established the LESC to provide alien status determination support to federal, state, and local law enforcement on a 24-hours-a-day, seven-days-a-week basis. The enabling legislation is codified in 8 U.S.C. §§ 1226(d)(1)(A) & 1252 Note.

6. The core mission of the LESC is to receive and respond to Immigration Alien Queries (IAQ) from law enforcement partners in an effort to provide accurate and timely alien status determinations for subjects arrested or under investigation. Biographic queries are routed to the LESC via the International Justice and Public Safety Information Sharing Network (NLETS). Biometric queries are routed to the LESC via state information bureaus and the FBI Criminal Justice Information Services (CJIS). Both biographic and biometric queries are sent and received via computer systems. Queries contain basic information such as name, date of birth, place of birth, sex, and other identifying information. LESC Law Enforcement Specialists query as many as ten DHS, FBI, and Interpol databases in order to produce a written alien status determination for the requesting agency.

7. Like other components within DHS, the LESC prioritizes its efforts in order to focus on criminal aliens and those most likely to pose a potential threat to their communities. For example, criminal violations of the Immigration and Nationality Act (INA) are given priority over administrative violations. The goal is to invest our finite resources on the criminals who pose the largest threat to public safety or national security risks. In addition, LESC supervisors monitor incoming requests for information and prioritize those that are time sensitive, such as roadside traffic stops and subjects that are about to be released from police custody. The LESC also conducts “enhanced responses” for IAQs that are associated with crimes such as murder, sexual assault, terrorism, gang-related crimes, and other serious crimes. As a general practice, IAQs are processed in the order they are received at the LESC. Older queries are generally completed before work is completed on new queries. However, there are exceptions made in an effort to respond to time-sensitive queries and those queries that involve serious offenders; one example, listed above, would be traffic stops, where a highway patrolman has a limited amount

of time to detain a suspected illegal alien. Likewise, illegal aliens arrested for serious crimes such as homicide are made a priority in the queue if the subject will be released on bail or bond. This prioritization ensures that aliens arrested for particularly serious or violent crimes are not released into the general public if LESC's verification allows for the further detention of the alien. But the two priorities (responding on illegal aliens arrested for particularly serious crimes and responding to time sensitive inquiries, such as traffic stops) compete with each other, meaning that a surge in time-sensitive inquiries from the enforcement of the Arizona law will adversely affect responses regarding aliens arrested for particularly serious crimes. Additionally, the LESC has several queues that allow for the prioritization of queries based upon originating agency. Examples of unique queues include interoperability queries based upon fingerprints, biographical queries sent via NLETS, and Brady Act queries for firearms purchasers. The LESC does not currently have the ability to separate queries from Arizona as they arrive. Furthermore, creating an Arizona queue would not prioritize queries based upon the risk posed by the violator or the seriousness of the charge. Separating data in that manner is not currently possible using the data fields provided in the current IAQ formatted messages

8. Currently, the average query waits for approximately 70 minutes before a Law Enforcement Specialist is available to work on the request. On average, it takes an additional 11 minutes per query to research DHS data systems and to provide the written alien status determination.

9. Over the years, the LESC has experienced continuous and dramatic increases in alien status determination queries. IAQs from fiscal year (FY) 2007 to date were:

FY 2007	727,903
FY 2008	807,106
FY 2009	1,064,261
FY 2010	726,275 (through May 31, 2010)

10. From FY 08 to FY 09, the LESC had a 20% increase in the number of IAQs. Although FY 10 is not over yet, LESC personnel project there will be at least a 10% increase in IAQs from FY 09 to FY 10.

11. The internal LESC computer system (ACRIME) is dynamically updated as records are added or deleted. ACRIME alien status determination records are retained for 75 years. Law Enforcement Specialists also access approximately six to ten other federal databases, depending on the circumstances regarding the subject, in order to determine alien status. The ACRIME computer system randomly selects approximately 5% of all alien status determination responses for quality assurance. Quality assurance reviews determine if the search protocols were followed and if the correct status determination was made. LESC employees do not typically review alien files in order to provide alien status determinations. If an alien file review is required, that review will have to be completed by the ICE field office, and depending on the physical location of the alien file, the review may take two days or more.

12. Many U.S. citizens, if queried through the LESC, result in a “no match” response to the requesting agency, meaning that the Law Enforcement Specialist was unable to locate any records or prior encounters in the DHS databases queried. However, to arrive at the no match response for U.S. citizens requires the same level of investment in staffing resources to determine the subject is a no match. And, notably, a “no match” response would not guarantee that the subject of the search was an American citizen—it would simply reflect an absence of records in the LESC system.

13. The LESC has 153 Law Enforcement Specialists (LES) assigned to respond to IAQs from all partner agencies. If queries come to the LESC in a consistent and steady manner,

a fully trained and experienced LES can process approximately 10,000 IAQs per year. Based on current LES staffing, the LESC theoretically has the capacity to handle approximately 1.5 million IAQs per year. However, the number of queries that come to the LESC at any given time is not consistent. This makes it difficult to predict and staff in a manner that accounts for temporary spikes in activity. On a weekly basis, the LESC experiences activity spikes that require the use of overtime in order to handle the incoming IAQs from LESC partners. In addition, personnel from other LESC sections are routinely diverted from other critical missions to deal with IAQ activity spikes.

14. The LESC also performs a significant role in supporting the ICE Secure Communities Program by producing alien status determinations based on biometric (fingerprint) booking information. Secure Communities was created to improve, modernize, and prioritize ICE's efforts to identify and remove criminal aliens from the United States. Secure Communities arranges for willing jurisdictions to access biometric technology so they can simultaneously check a person's criminal and immigration history when the person is charged criminally. Once illegal aliens are identified, ICE must then determine how to proceed and whether to lodge a detainer or otherwise pursue the alien's detention and removal from the United States upon the alien's release from criminal custody. ICE first deployed the technology in October of 2008, and as of June 8, 2010, has deployed it to 281 jurisdictions. ICE plans to deploy the technology nationwide to more than 3,000 jurisdictions by the end of FY 2013. The LESC has already experienced an increase in processing times since the establishment of the Secure Communities Program due to the receipt of extensive criminal records and previous DHS encounters with more serious criminal aliens. As our support for Secure Communities continues to grow, we anticipate an increased workload due to the need for more complex queries that will

further increase LESC response times. Thus, the expansion of the Secure Communities Program alone will likely utilize much of the capacity of the LESC.

15. In my professional judgment, Arizona SB 1070 will inevitably result in a significant increase in the number of IAQs. The LESC processed just over 1,000,000 IAQs in FY 09. According to the FBI Criminal Justice Information Services (CJIS), in FY 09 criminal justice agencies in Arizona submitted 563,474 arrest records to CJIS, but just over 80,000 IAQs originated from all agencies within the state of Arizona in FY 09. Thus, Arizona SB 1070's requirement that "[a]ny person who is arrested shall have the person's immigration status determined before the person is released" could, by itself, dramatically increase the LESC's workload. Moreover, because Arizona's law calls for status verifications for lawful stops—whether or not such stops result in an arrest—the number of IAQ's will increase dramatically. If even a small percentage of these stops, detentions, and arrests lead to new IAQs, the LESC will be forced to process thousands of additional IAQs annually. Moreover, Arizona's new law will result in an increase in the number of U.S. citizens and lawful permanent residents being queried through the LESC, reducing our ability to provide timely responses to law enforcement on serious criminal aliens.

16. This increase in queries from Arizona will delay response times for all IAQs and risks exceeding the capacity of the LESC to respond to higher priority requests for criminal alien status determinations from law enforcement partners nationwide. Furthermore, the potential increase in queries by Arizona along with the possibility of other states adopting similar legislation could overwhelm the system.

17. If the LESC's capacity to respond to requests for assistance is exceeded, the initial impact would be delays in responding to time-sensitive inquiries from state, local, and federal

law enforcement, meaning that very serious violators may well escape scrutiny and be released before the LESC can respond to police and inform them of the serious nature of the illegal alien they have encountered. If delays continue to increase at the LESC, ICE might have to divert personnel from other critical missions to serve the needs of our law enforcement partners. The LESC directly supports both the public safety and national security missions of DHS. These are critical missions which cannot be allowed to fail.

18. I expect no increase in LESC resources in terms of personnel. As such, I anticipate an increase in inquiries will slow response times for inquiries without respect to the priority level of the subject in question. Based on my professional experience, slower response times result in an increased likelihood that the subject of an inquiry, including subjects who are high-priority, will be released, potentially resulting in the commission of additional violent crimes, greater difficulty in locating the alien to initiate removal proceedings, and further impediments to ICE's ability to efficiently obtain removal orders and remove criminal aliens from the United States.

19. It is important to note that LESC's responses to IAQs do not always provide a definitive answer as to an alien's immigration status. Indeed, almost 10,000 of the 80,000 IAQs the LESC processed from Arizona in FY 2009 resulted in an indeterminate answer (for comparison, just over 15,000 of the IAQs from Arizona in FY 2009 resulted in a response of lawful presence). Moreover, a U.S. citizen, when queried through the LESC, would likely be returned with a "no match" response. Many—if not most—U.S. citizens have no records contained in the databases available to the LESC. Experience has demonstrated that some police officers are confused in these types of situations and sometimes want to detain the suspected

illegal alien (actually a U.S. citizen) until they can call the LESC or their local ICE field office to confirm the subject's immigration status.

20. This declaration has focused on the impact of SB 1070 on the LESC system. If other populous states adopted similar laws, the LESC would be unable to respond to inquiries in a time frame which would be useful to law enforcement needs.

21. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 28th day of June, 2010 in Williston, Vermont.



David C. Palmatier
Unit Chief
Law Enforcement Support Center

EXHIBIT L

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF DANIEL H. RAGSDALE

Pursuant to 28 U.S.C. § 1746, I, Daniel H. Ragsdale, declare and state as follows:

1. I am the Executive Associate Director for Management and Administration at U.S. Immigration and Customs Enforcement (ICE) within the U.S. Department of Homeland Security (DHS). I have served in this position since January 2010. Before that, I served as a Senior Counselor to ICE's Assistant Secretary from November 2008 until October 2009, and, prior to that, as the Chief of the ICE Enforcement Law Division from October 2006 until November 2008. From September 1999 until September 2006, I served in several positions in ICE's Office of Chief Counsel in Phoenix, Arizona. I also was designated as a Special Assistant U.S. Attorney (SAUSA), which allowed me to prosecute immigration crimes.

2. Under the supervision of ICE's Assistant Secretary, I have direct managerial and supervisory authority over the management and administration of ICE. I am closely involved in the management of ICE's human and financial resources, matters of significance to the agency, and the day-to-day operations of the agency. I make this declaration based on personal

knowledge of the subject matter acquired by me in the course of the performance of my official duties.

Overview of ICE Programs

3. ICE consists of two core operational programs, Enforcement and Removal Operations (ERO), which handles civil immigration enforcement, and Homeland Security Investigations (HSI), which handles criminal investigations. I am generally aware of the operational activities of all offices at ICE, and I am specifically aware of their activities as they affect and interface with the programs I directly supervise.

4. HSI houses the special agents who investigate criminal violations of the federal customs and immigration laws. HSI also primarily handles responses to calls from local and state law enforcement officers requesting assistance, including calls requesting that ICE transfer aliens into detention. However, because of the policy focus on devoting investigative resources towards the apprehension of criminal aliens, the responsibility of responding to state and local law enforcement is shared with, and is increasingly transitioning to, ERO to allow HSI special agents to focus more heavily on criminal investigations. On an average day in FY 2009, HSI special agents nationwide arrested 62 people for administrative immigration violations, 22 people for criminal immigration offenses, and 42 people for criminal customs offenses.

5. ERO is responsible for detaining and removing aliens who lack lawful authority to remain in the United States. On an average day, ERO officers nationwide arrest approximately 816 aliens for administrative immigration violations and remove approximately 912 aliens, including 456 criminal aliens, from the United States to countries around the globe. As of June 2, 2010, ICE had approximately 32,313 aliens in custody pending their removal proceedings or removal from the United States.

6. In addition to HSI and ERO, ICE has the Office of State and Local Coordination (OSLC) which focuses on outreach to state, local, and tribal law enforcement agencies to build positive relationships with ICE. In addition, OSLC administers the 287(g) Program, through which ICE enters into agreements with state, local, and tribal law enforcement agencies for those agencies to perform certain federal immigration enforcement functions under the supervision of federal officials. Each agreement is formalized through a Memorandum of Agreement (MOA) and authorized pursuant to Section 287(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(g).

7. Consistent with its policy of focusing enforcement efforts on criminal aliens, ICE created the Secure Communities program to improve, modernize, and prioritize ICE's efforts to identify and remove criminal aliens from the United States. Through the program, ICE has leveraged biometric information-sharing to ensure accurate and timely identification of criminal aliens in law enforcement custody. The program office arranges for willing jurisdictions to access the biometric technology so they can simultaneously check a person's criminal and immigration history when the person is booked on criminal charges. When an individual in custody is identified as being an alien, ICE must then determine how to proceed with respect to that alien, including whether to lodge a detainer or otherwise pursue the alien's detention and removal from the United States upon the alien's release from criminal custody. ICE does not lodge detainers or otherwise pursue removal for every alien in custody, and has the discretion to decide whether lodging a detainer and / or pursuing removal reflects ICE's policy priorities.

ICE Initiatives and Activities in Arizona and at the Southwest Border

8. ICE has devoted substantial resources to increasing border security and combating smuggling of contraband and people. Indeed, 25 percent of all ICE special agents are stationed in the five Southwest border offices. Of those, 353 special agents are stationed in Arizona to investigate crimes, primarily cross-border crimes. ERO currently has 361 law enforcement officers in Arizona. Further, the ICE Office of the Principal Legal Advisor (OPLA) has 147 attorneys stationed in the areas of responsibility on the Southwest border, including 37 attorneys in Arizona alone to prosecute removal cases and advise ICE officers and special agents, as well as one attorney detailed to the U.S. Attorney's Office for the District of Arizona to support the prosecution of criminals identified and investigated by ICE agents. Two additional attorneys have been allocated and are expected to enter on duty as SAUSAs in the very near future.

9. ICE's attention to the Southwest Border has included the March 2009 launch of the Southwest Border Initiative to disrupt and dismantle drug trafficking organizations operating along the Southwest border. This initiative was designed to support three goals: guard against the spillover of violent crime into the United States; support Mexico's campaign to crack down on drug cartels in Mexico; and reduce movement of contraband across the border. This initiative called for additional personnel, increased intelligence capability, and better coordination with state, local, tribal, and Mexican law enforcement authorities. This plan also bolstered the law enforcement resources and information-sharing capabilities between and among DHS and the Departments of Justice and Defense. ICE's efforts on the Southwest border between March 2009 and March 2010 have resulted in increased seizures of weapons, money, and narcotics along the Southwest border as compared to the same time period between 2008 and 2009. ICE also

increased administrative arrests of criminal aliens for immigration violations by 11 percent along the Southwest border during this period.

10. ICE has focused even more closely on border security in Arizona. ICE is participating in a multi-agency operation known as the Alliance to Combat Transnational Threats (ACTT) (formerly the Arizona Operational Plan). Other federal agencies, including the Department of Defense, as well as state and local law enforcement agencies also support the ACTT. To a much smaller degree, ACTT receives support from the Government of Mexico through the Merida initiative, a United States funded program designed to support and assist Mexico in its efforts to disrupt and dismantle transnational criminal organizations, build capacity, strengthen its judicial and law enforcement institutions, and build strong and resilient communities.

11. The ACTT began in September 2009 to address concerns about crime along the border between the United States and Mexico in Arizona. The primary focus of ACTT is conducting intelligence-driven border enforcement operations to disrupt and dismantle violent cross-border criminal organizations that have a negative impact on the lives of the people on both sides of the border. The ACTT in particular seeks to reduce serious felonies that negatively affect public safety in Arizona. These include the smuggling of aliens, bulk cash, and drugs; document fraud; the exportation of weapons; street violence; homicide; hostage-taking; money laundering; and human trafficking and prostitution.

12. In addition to the ACTT, the Federal Government is making other significant efforts to secure the border. On May 25, 2010, the President announced that he will be requesting \$500 million in supplemental funds for enhanced border protection and law enforcement activities, and that he would be ordering a strategic and requirements-based

deployment of 1,200 National Guard troops to the border. This influx of resources will be utilized to enhance technology at the border; share information and support with state, local, and tribal law enforcement; provide intelligence and intelligence analysis, surveillance, and reconnaissance support; and additional training capacity.

13. ICE also is paying increasing attention to alien smuggling, along with other contraband smuggling, with the goal of dismantling large organizations. Smuggling organizations are an enforcement priority because they tend to create a high risk of danger for the persons being smuggled, and tend to be affiliated with the movement of drugs and weapons. ICE has had success of late in large operations to prosecute and deter alien smugglers and those who transport smuggled aliens. During recent operations in Arizona and Texas, ICE agents made a combined total of 85 arrests, searched 18 companies, and seized more than 100 vehicles and more than 30 firearms.

14. This summer, ICE launched a surge in its efforts near the Mexican border. This surge was a component of a strategy to identify, disrupt, and dismantle cartel operations. The focus on cartel operations is a policy priority because such cartels are responsible for high degrees of violence in Mexico and the United States—the cartels destabilize Mexico and threaten regional security. For 120 days, ICE will add 186 agents and officers to its five Southwest border offices to attack cartel capabilities to conduct operations; disrupt and dismantle drug trafficking organizations; diminish the illicit flow of money, weapons, narcotics, and people into and out of the U.S.; and enhance border security. The initiative, known as Operation Southern Resolve, is closely coordinated with the Government of Mexico, as well as Mexican and U.S. federal, state and local law enforcement to ensure maximum impact. The initiative also includes

targeting transnational gang activity, targeting electronic and traditional methods of moving illicit proceeds, and identifying, arresting, and removing criminal aliens present in the region.

15. Although ICE continues to devote significant resources to immigration enforcement in Arizona and elsewhere along the Southwest border, ICE recognizes that a full solution to the immigration problem will only be achieved through comprehensive immigration reform (CIR). Thus, ICE, in coordination with DHS and the Department's other operating components, has committed personnel and energy to advancing CIR. For example, ICE's Assistant Secretary and other senior leaders have advocated for comprehensive immigration reform during meetings with, and in written letters and statements to, advocacy groups, non-governmental organizations, members of the media, and members of Congress. Other ICE personnel have participated in working groups to develop immigration reform proposals to include in CIR and to prepare budget assessments and projections in support of those proposals.

ICE Enforcement Priorities

16. DHS is the federal department with primary responsibility for the enforcement of federal immigration law. Within DHS, ICE plays a key role in this enforcement by, among other functions, serving as the agency responsible for the investigation of immigration-related crimes, the apprehension and removal of individuals from the interior United States, and the representation of the United States in removal proceedings before the Executive Office for Immigration Review within the Department of Justice. As the department charged with enforcement of federal immigration laws, DHS exercises a large degree of discretion in determining how best to carry out its enforcement responsibilities. This discretion also allows ICE to forego criminal prosecutions or removal proceedings in individual cases, where such forbearance will further federal immigration priorities.

17. ICE's priorities at a national level have been refined to reflect Secretary Napolitano's commitment to the "smart and tough enforcement of immigration laws." Currently, ICE's highest enforcement priorities—meaning, the most important targets for apprehension and removal efforts—are aliens who pose a danger to national security or a risk to public safety, including: aliens engaged in or suspected of terrorism or espionage; aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders; certain gang members; and aliens subject to outstanding criminal warrants.

18. Other high priorities include aliens who are recent illegal entrants and "fugitive aliens" (*i.e.*, aliens who have failed to comply with final orders of removal). The attention to fugitive aliens, especially those with criminal records, recognizes that the government expends significant resources providing procedural due process in immigration proceedings, and that the efficacy of removal proceedings is undermined if final orders of removal are not enforced. Finally, the attention to aliens who are recent illegal entrants is intended to help maintain control at the border. Aliens who have been present in the U.S. without authorization for a prolonged period of time and who have not engaged in criminal conduct present a significantly lower enforcement priority. And aliens who meet certain humanitarian criteria may not be an "enforcement" priority at all—in such humanitarian cases, federal immigration priorities may recommend forbearance in pursuing removal.

19. ICE bases its current priorities on a number of different factors. One factor is the differential between the number of people present in the United States illegally—approximately 10.8 million aliens, including 460,000 in Arizona—and the number of people ICE is resourced to remove each year—approximately 400,000. This differential necessitates prioritization to ensure that ICE expends resources most efficiently to advance the goals of protecting national security,

protecting public safety, and securing the border. Another factor is ICE's consideration of humanitarian interests in enforcing federal immigration laws, and its desire to ensure aliens in the system are treated fairly and with appropriate respect given their individual circumstances. Humanitarian interests may, in appropriate cases, support a conclusion that an alien should not be removed or detained at all. And yet another factor is ICE's recognition that immigration detainees are held for a civil purpose—namely, removal—and not for punishment. Put another way, although entering the United States illegally or failing to cooperate with ICE during the removal process is a crime, being in the United States without authorization is not itself a crime. ICE prioritizes enforcement to distinguish between aliens who commit civil immigration violations from those who commit or who have been convicted of a crime.

20. Consequently, ICE is revising policies and practices regarding civil immigration enforcement and the immigration detention system to ensure the use of its enforcement personnel, detention space, and removal resources are focused on advancing these priorities. For example, ICE has two programs within ERO designed to arrest convicted criminal aliens and alien fugitives. These are the Criminal Alien Program (CAP) and the National Fugitive Operations Program (fugitive operations). ICE officers assigned to CAP identify criminal aliens who are incarcerated within federal, state, and local prisons and jails, as well as aliens who have been charged or arrested and remain in the custody of the law enforcement agency. ICE officers assigned to fugitive operations seek to locate and arrest aliens with final orders of removal. These officers also seek to locate, arrest, and remove convicted criminal aliens living at large in communities and aliens who previously have been deported but have returned unlawfully to the United States. They also present illegal reentry cases for prosecution in federal courts to deter such recidivist conduct.

21. Likewise, in keeping with the Secretary's policy determination that immigration enforcement should be "smart and tough" by focusing on specific priorities, ICE issued a new strategy regarding worksite enforcement. This strategy shift prioritized the criminal investigation and prosecution of employers and de-emphasized the apprehension and removal of illegal aliens working in the United States without authorization. Although Federal law does not make it a distinct civil or criminal offense for unauthorized aliens merely to seek employment in the U.S., such aliens may be removed for being in the U.S. illegally. ICE's new strategy acknowledges that many enter the United States illegally because of the opportunity to work. Thus, the strategy seeks to address the root causes of illegal immigration and to do the following: (i) penalize employers who knowingly hire illegal workers; (ii) deter employers who are tempted to hire illegal workers; and (iii) encourage all employers to take advantage of well-crafted compliance tools. At the same time, the policy recognizes that humanitarian concerns counsel against focusing enforcement efforts on unauthorized workers. The strategy permits agents to exercise discretion and work with the prosecuting attorney to assess how to best proceed with respect to illegal alien witnesses. One of the problems with Arizona Senate Bill 1070 (SB 1070) is that it will divert focus from this "smart and tough" focus on employers to responses to requests from local law enforcement to apprehend aliens not within ICE's priorities.

22. In addition to refocusing ICE's civil enforcement priorities, ICE has also refocused the 287(g) program so that state and local jurisdictions with which ICE has entered into agreements to exercise federal immigration authority do so in a manner consistent with ICE's priorities. The mechanism for this refocusing has been a new MOA with revised terms and conditions. Jurisdictions that already had agreements were required to enter into this revised MOA in October of 2009. Also, ICE opted not to renew 287(g) agreements with task force

officers with the Maricopa County Sheriff's Office and officers stationed within the Los Angeles County Sheriff's Office's jail. These decisions were based on inconsistency between the expectations of the local jurisdiction and the priorities of ICE.

23. ICE communicates its enforcement priorities to state and local law enforcement officials in a number of ways. With respect to the 287(g) program, the standard MOA describes the focus on criminals, with the highest priority on the most serious offenders. In addition, when deploying interoperability technology through the Secure Communities program, local jurisdictions are advised of ICE's priorities in the MOA and in outreach materials.

24. In addition to the dissemination of national civil enforcement priorities to the field, the refocusing of existing ICE programs, and other efforts to prioritize immigration enforcement to most efficiently protect the border and public safety, the Assistant Secretary and his senior staff routinely inform field locations that they have the authority and should exercise discretion in individual cases. This includes when deciding whether to issue charging documents, institute removal proceedings, release or detain aliens, place aliens on alternatives to detention (*e.g.*, electronic monitoring), concede an alien's eligibility for relief from removal, move to terminate cases where the alien may have some other avenue for relief, stay deportations, or defer an alien's departure.

25. The Assistant Secretary has communicated to ICE personnel that discretion is particularly important when dealing with long-time lawful permanent residents, juveniles, the immediate family members of U.S. citizens, veterans, members of the armed forces and their families, and others with illnesses or special circumstances.

26. ICE exercises prosecutorial discretion throughout all the stages of the removal process—investigations, initiating and pursuing proceedings, which charges to lodge, seeking

termination of proceedings, administrative closure of cases, release from detention, not taking an appeal, and declining to execute a removal order. The decision on whether and how to exercise prosecutorial discretion in a given case is largely informed by ICE's enforcement priorities.

During my tenure at ICE as an attorney litigating administrative immigration cases, as well as my role as a SAUSA prosecuting criminal offenses and in my legal and management roles at ICE headquarters, I am aware of many cases where ICE has exercised prosecutorial discretion to benefit an alien who was not within the stated priorities of the agency or because of humanitarian factors. For example, ICE has released an individual with medical issues from detention, terminated removal proceedings to allow an alien to regularize her immigration status, declined to assert the one year filing deadline in order to allow an individual to apply for asylum before the immigration judge, and terminated proceedings for a long-term legal permanent resident who served in the military, among numerous other examples.

27. ICE's exercise of discretion in enforcement decisions has been the subject of several internal agency communications. For example, Attachment A is a true and accurate copy of a November 7, 2007 memorandum from ICE Assistant Secretary Julie Myers to ICE Field Office Directors and ICE Special Agents in Charge. Pursuant to this memorandum, ICE agents and officers should exercise prosecutorial discretion when making administrative arrests and custody determinations for aliens who are nursing mothers absent any statutory detention requirement or concerns such as national security or threats to public safety. Attachment B is a true and accurate copy, omitting attachments thereto, of an October 24, 2005 memorandum from ICE Principal Legal Advisor William J. Howard to OPLA Chief Counsel as to the manner in which prosecutorial discretion is exercised in removal proceedings. Attachment C is a true and accurate copy of a November 17, 2000 memorandum from Immigration and Naturalization

Service (INS) Commissioner Doris Meissner to various INS personnel concerning the exercise of prosecutorial discretion. The Assistant Secretary also outlined in a recent memorandum to all ICE employees the agency's civil immigration enforcement priorities relating to the apprehension, detention, and removal of aliens (available at http://www.ice.gov/doclib/civil_enforcement_priorities.pdf).

28. In sum, ICE does not seek to arrest, detain, remove, or refer for prosecution, all aliens who may be present in the United States illegally. ICE focuses its enforcement efforts in a manner that is intended to most effectively further national security, public safety, and security of the border, and has affirmative reasons not to seek removal or prosecution of certain aliens.

International Cooperation with ICE Enforcement

29. ICE cooperates with foreign governments to advance our criminal investigations of transnational criminal organizations (such as drug cartels, major gangs, and organized alien smugglers) and to repatriate their citizens and nationals who are facing deportation. With respect to our criminal investigations, ICE's Office of International Affairs has 63 offices in 44 countries staffed with special agents who, among other things, investigate crime. In Mexico alone, ICE has five offices consisting of a total of 38 personnel. Investigators in ICE attaché offices investigate cross-border crime, including crime that affects Arizona and the rest of the Southwest. In addition, they work with foreign governments to secure travel documents and clearance for ICE to remove aliens from the United States. ICE negotiates with foreign governments to expedite the removal process, including negotiating electronic travel document arrangements. International cooperation for ICE is critical.

30. International cooperation advances ICE's goal of making the borders more secure. To address cross-border crime at the Southwest border, ICE is cooperating very closely with the

Government of Mexico in particular. Two prime examples of ICE and Mexican cooperation include Operation Armas Cruzadas, designed to improve information sharing and to identify, disrupt, and dismantle criminal networks engaged in weapons smuggling, and Operation Firewall, as part of which Mexican customs and ICE-trained Mexican Money Laundering-Vetted Units target the illicit flow of money out of Mexico on commercial flights and in container shipments.

31. Also to improve border security and combat cross-border crime, ICE is engaged in other initiatives with the Government of Mexico. For instance, ICE is training Mexican customs investigators. ICE also provides Mexican law enforcement officers and prosecutors training in human trafficking, child sexual exploitation, gang investigations, specialized investigative techniques, and financial crimes. ICE has recruited Mexican federal police officers to participate in five of the ICE-led Border Enforcement Security Task Forces (BESTs). The BEST platform brings together multiple law enforcement agencies at every level to combat cross-border crime, including crime touching Arizona. Sharing information and agents is promoting more efficient and effective investigations. ICE has benefited from the Government of Mexico's increased cooperation, including in recent alien smuggling investigations that resulted in arrests in Mexico and Arizona.

32. In addition to the importance of cooperation from foreign governments in criminal investigations, ICE also benefits from good relationships with foreign governments in effecting removals of foreign nationals. Negotiating removals, including country clearance, to approvals and securing travel documents, is a federal matter and often one that requires the cooperation of the country that is accepting the removed alien. ICE removes more nationals of Mexico than of any other country. In FY 2009, ICE removed or returned approximately 275,000

Mexican nationals, which constitutes more than 70 percent of all removals and returns. Not all countries are equally willing to repatriate their nationals. Delays in repatriating nationals of foreign countries causes ICE financial and operational challenges, particularly when the aliens are detained pending removal. Federal law limits how long ICE can detain an alien once the alien is subject to a final order of removal. Therefore, difficulties in persuading a foreign country to accept a removed alien runs the risk of extending the length of time that a potentially dangerous or criminal alien remains in the United States. Thus, the efficient operation of the immigration system relies on cooperation from foreign governments.

Reliance on Illegal Aliens in Enforcement and Prosecution

33. ICE agents routinely rely on foreign nationals, including aliens unlawfully in the United States, to build criminal cases, including cases against other aliens in the United States illegally. Aliens who are unlawfully in the United States, like any other persons, may have important information about criminals they encounter—from narcotics smugglers to alien smugglers and beyond—and routinely support ICE’s enforcement activities by serving as confidential informants or witnesses. When ICE’s witnesses or informants are illegal aliens who are subject to removal, ICE can exercise discretion and ensure the alien is able to remain in the country to assist in an investigation, prosecution, or both. The blanket removal or incarceration of all aliens unlawfully present in Arizona or in certain other individual states would interfere with ICE’s ability to pursue the prosecution or removal of aliens who pose particularly significant threats to public safety or national security. Likewise, ICE can provide temporary and long-term benefits to ensure victims of illegal activity are able to remain in the United States.

34. Tools relied upon by ICE to ensure the cooperation of informants and witnesses include deferred action, stays of removal, U visas for crime victims, T visas for victims of human

trafficking, and S visas for significant cooperators against other criminals and to support investigations. These tools allow aliens who otherwise would face removal to remain in the United States either temporarily or permanently, and to work in the United States in order to support themselves while here. Many of these tools are employed in situations where federal immigration policy suggests an affirmative benefit that can only be obtained by not pursuing an alien's removal or prosecution. Notably, utilization of these tools is a dynamic process between ICE and the alien, which may play out over time. An alien who ultimately may receive a particular benefit—for example, an S visa—may not immediately receive that visa upon initially coming forward to ICE or other authorities, and thus at a given time may not have documentation or evidence of the fact that ICE is permitting that alien to remain in the United States.

35. Although ICE may rely on an illegal alien as an informant in any type of immigration or custom violation it investigates, this is particularly likely in alien smuggling and illegal employment cases. Aliens who lack lawful status in the United States are routinely witnesses in criminal cases against alien smugglers. For example, in an alien smuggling case, the smuggled aliens are in a position to provide important information about their journey to the United States, including how they entered, who provided them assistance, and who they may have paid. If these aliens were not available to ICE, special agents would not be positioned to build criminal cases against the smuggler. ICE may use a case against the smuggler to then build a larger case against others in the smuggling organization that assisted the aliens across the border.

36. ICE also relies heavily on alien informants and witnesses in illegal employment cases. In worksite cases, the unauthorized alien workers likewise have important insight and

information about the persons involved in the hiring and employment process, including who may be amenable to a criminal charge.

37. ICE also relies heavily on alien informants and cooperators in investigations of transnational gangs, including violent street gangs with membership and leadership in the United States and abroad. Informants and cooperating witnesses help ICE identify gang members in the United States and provide information to support investigations into crimes the gang may be committing. In some cases, this includes violent crime in aid of racketeering, narcotics trafficking, or other crimes.

38. During my years at ICE, I have heard many state and local law enforcement and immigration advocacy groups suggest that victims and witnesses of crime may hesitate to come forward to speak to law enforcement officials if they lack lawful status. The concern cited is that, rather than finding redress for crime, victims and witnesses will face detention and removal from the United States. To ensure that illegal aliens who are the victims of crimes or have witnessed crimes come forward to law enforcement, ICE has a robust outreach program, particularly in the context of human trafficking, to assure victims and witnesses that they can safely come forward against traffickers without fearing immediate immigration custody, extended detention, or removal. If this concern manifested itself—and if crime victims became reluctant to come forward—ICE would have a more difficult time apprehending, prosecuting, and removing particularly dangerous aliens.

Potential Adverse Impact of SB 1070 on ICE's Priorities and Enforcement Activities

39. I am aware that the State of Arizona has enacted new immigration legislation, known as SB 1070. I have read SB 1070, and I am generally familiar with the purpose and

provisions of that legislation. SB 1070 will adversely impact ICE's operational activities with respect to federal immigration enforcement.

40. I understand that section two of SB 1070 generally requires Arizona law enforcement personnel to inquire as to the immigration status of any individual encountered during "any lawful stop, detention or arrest" where there is a reasonable suspicion to believe that the individual is unlawfully present in the United States. I also understand that section two contemplates referral to DHS of those aliens confirmed to be in the United States illegally.

41. As a federal agency with national responsibilities, the burdens placed by SB 1070 on the Federal Government will impair ICE's ability to pursue its enforcement priorities. For example, referrals by Arizona under this section likely would be handled by either the Special Agent in Charge (SAC) Phoenix (the local HSI office), or the Field Office Director (FOD) Phoenix (the local ERO office). Both offices currently have broad portfolios of responsibility. Notably, SAC Phoenix is responsible for investigating crimes at eight ports of entry and two international airports. FOD Phoenix is responsible for two significant detention centers located in Florence and Eloy, Arizona, and a large number of immigration detainees housed at a local county jail in Pinal County, Arizona. FOD Phoenix also has a fugitive operations team, a robust criminal alien program, and it manages the 287(g) programs in the counties of Maricopa, Yavapai, and Pinal, as well as at the Arizona Department of Corrections.

42. Neither the SAC nor the FOD offices in Phoenix are staffed to assume additional duties. Inquiries from state and local law enforcement officers about a subject's immigration status could be routed to the Law Enforcement Support Center in Vermont or to agents and officers stationed at SAC or FOD Phoenix. ICE resources are currently engaged in investigating criminal violations and managing the enforcement priorities and existing enforcement efforts,

and neither the SAC nor FOD Phoenix are scheduled for a significant increase in resources to accommodate additional calls from state and local law enforcement. Similarly, the FOD and SAC offices in Arizona are not equipped to respond to any appreciable increase in requests from Arizona to take custody of aliens apprehended by the state.

43. Moreover, ICE's detention capacity is limited. In FY 2009, FOD Phoenix was provided with funds to detain no more than approximately 2,900 detention beds on an average day. FOD Phoenix uses that detention budget and available bed space not only for aliens arrested in Arizona, but also aliens transferred from Los Angeles, San Francisco, and San Diego. Notably, the President's budget for FY 2011 does not request an increase in money to purchase detention space. And with increasing proportions of criminal aliens in ICE custody and static bed space, the detention resources will be directed to those aliens who present a danger to the community and the greatest risk of flight.

44. Thus, to respond to the number of referrals likely to be generated by enforcement of SB 1070 would require ICE to divert existing resources from other duties, resulting in fewer resources being available to dedicate to cases and aliens within ICE's priorities. This outcome is especially problematic because ICE's current priorities are focused on national security, public safety, and security of the border. Diverting resources to cover the influx of referrals from Arizona (and other states, to the extent similar laws are adopted) could, therefore, mean decreasing ICE's ability to focus on priorities such as protecting national security or public safety in order to pursue aliens who are in the United States illegally but pose no immediate or known danger or threat to the safety and security of the public.

45. An alternative to responding to the referrals from Arizona, and thus diverting resources, is to largely disregard referrals from Arizona. But this too would have adverse

consequences in that it could jeopardize ICE's relationships with state and local law enforcement agencies (LEAs). For example, LEAs often request ICE assistance when individuals are encountered who are believed to be in the United States illegally. Since ICE is not always available to immediately respond to LEA calls, potentially removable aliens are often released back into the community. Historically, this caused some LEAs to complain that ICE was unresponsive. In September 2006, to address this enforcement gap, the FOD office in Phoenix created the Law Enforcement Agency Response (LEAR) Unit, a unit of officers specifically dedicated to provide 24-hour response, 365 days per year. ICE's efforts with this project to ensure better response to LEAs would be undermined if ICE is forced to largely disregard referrals from Arizona, and consequently may result in LEAs being less willing to cooperate with ICE on various enforcement matters, including those high-priority targets on which ICE enforcement is currently focused.

46. In addition to section two of SB 1070, I understand that the stated purpose of the act is to "make attrition through enforcement the public policy of all state and local government agencies in Arizona," and that the "provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States." To this end, I understand that section three of SB 1070 authorizes Arizona to impose criminal penalties for failing to carry a registration document, that sections four and five, along with existing provisions of Arizona law, prohibit certain alien smuggling activity, as well as the transporting, concealing, and harboring of illegal aliens, and that section six authorizes the warrantless arrest of certain aliens believed to be removable from the United States.

47. The Arizona statute does not appear to make any distinctions based on the circumstances of the individual aliens or to take account of the Executive Branch's determination with respect to individual aliens, such as to not pursue removal proceedings or grant some form of relief from removal. Thus, an alien for whom ICE deliberately decided for humanitarian reasons not to pursue removal proceedings or not to refer for criminal prosecution, despite the fact that the alien may be in the United States illegally, may still be prosecuted under the provisions of the Arizona law. DHS maintains the primary interest in the humane treatment of aliens and the fair administration of federal immigration laws. The absence of a federal prosecution does not necessarily indicate a lack of federal resources; rather, the Federal Government often has affirmative reasons for not prosecuting an alien. For example, ICE may exercise its discretionary authority to grant deferred action to an alien in order to care for a sick child. ICE's humanitarian interests would be undermined if that alien was then detained or arrested by Arizona authorities for being illegally present in the United States.

48. Similarly, certain aliens who meet statutory requirements may seek to apply for asylum in the United States, pursuant to 8 U.S.C. § 1158, based on their having been persecuted in the past or because of a threat of future persecution. The asylum statute recognizes a policy in favor of hospitality to persecuted aliens. In many cases, these aliens are not detained while they pursue protection, and they do not have the requisite immigration documents that would provide them lawful status within the United States during that period. Under SB 1070, these aliens could be subjected to detention or arrest based on the state's priorities, despite the fact that affirmative federal policy supports not detaining or prosecuting the alien.

49. Additionally, some aliens who do not qualify for asylum may qualify instead for withholding of removal under 8 U.S.C. § 1231(b)(3). Similar to asylum, withholding of removal

provides protection in the United States for aliens who seek to escape persecution. Arizona's detention or arrest of these aliens would not be consistent with the Government's desire to ensure their humanitarian treatment.

50. Further, there are many aliens in the United States who seek protection from removal under the federal regulatory provisions at 8 C.F.R. § 208.18 implementing the Government's *non-refoulement* obligations under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In many cases, these aliens are not detained while they pursue CAT protection. Under SB 1070, these aliens could be subjected to detention or arrest based on the state's priorities. The detention or arrest of such aliens would be inconsistent with the Government's interest in ensuring their humane treatment, especially where such aliens may have been subject to torture before they came to the U.S.

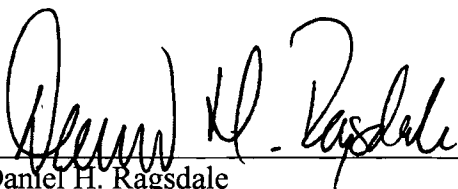
51. Application of SB 1070 also could undermine ICE's efforts to secure the cooperation of confidential informants, witnesses, and victims who are present in the United States without legal status. The stated purpose of SB 1070, coupled with the extensive publicity surrounding this law, may lead illegal aliens to believe, rightly or wrongly, that they will be subject to immigration detention and removal if they cooperate with authorities, not to mention the possibility that they may expose themselves to sanctions under Arizona law if they choose to cooperate with authorities. Consequently, SB 1070 very likely will chill the willingness of certain aliens to cooperate with ICE. Although ICE has tools to address those concerns, SB 1070 would undercut those efforts, and thus risks ICE's investigation and prosecution of criminal activity, such as that related to illegal employment, the smuggling of contraband or people, or human trafficking.

52. Moreover, just as the ICE offices in Arizona are not staffed to respond to additional inquiries about the immigration status of individuals encountered by Arizona, or to arrest or detain appreciably more aliens not within ICE's current priorities, the offices are not staffed to provide personnel to testify in Arizona state criminal proceedings related to a defendant's immigration status, such as a "Simpson Hearing" where there is indication that a person may be in the United States illegally and the prosecutor invokes Arizona Revised Statute § 13-3961(A)(a)(ii) (relating to determination of immigration status for purposes of bail). In some federal criminal immigration cases, Assistant United States Attorneys call ICE special agents to testify to provide such information as a person's immigration history or status. If ICE agents are asked to testify in a significant number of state criminal proceedings, as contemplated under SB 1070, they will be forced either to divert resources from federal priorities, or to refuse to testify in those proceedings, thus damaging their relationships with the state and local officials whose cooperation is often of critical importance in carrying out federal enforcement priorities.

53. Enforcement of SB 1070 also threatens ICE's cooperation from foreign governments. For example, the Government of Mexico, a partner to ICE in many law enforcement efforts and in repatriation of Mexican nationals, has expressed strong concern about Arizona's law. On May 19, 2010, President Barack Obama and Mexican President Felipe Calderón held a joint news conference, during which President Calderón criticized the Arizona immigration law, saying it criminalized immigrants. President Calderón reiterated these concerns to a joint session of the United States Congress on May 20, 2010. Any decrease in participation and support from the Government of Mexico will hinder ICE efforts to prioritize and combat cross-border crime.

54. The Government of Mexico is not the only foreign nation that has expressed concern about SB 1070. Should there be any decreased cooperation from foreign governments in response to Arizona's enforcement of SB 1070, the predictable result of such decreased cooperation would be an adverse impact on the effectiveness and efficiency of ICE's enforcement activities, which I have detailed above.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 1st day of July 2010 in Washington, D.C.



Daniel H. Ragsdale
Executive Associate Director
Management and Administration
U.S. Immigration and Customs Enforcement

ATTACHMENT A

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

NOV - 7 2007

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge

FROM: Julie L. Myers *JLM*
Assistant Secretary

SUBJECT: Prosecutorial and Custody Discretion

This memorandum serves to highlight the importance of exercising prosecutorial discretion when making administrative arrest and custody determinations for aliens who are nursing mothers. The commitment by ICE to facilitate an end to the "catch and release" procedure for illegal aliens does not diminish the responsibility of ICE agents and officers to use discretion in identifying and responding to meritorious health related cases and caregiver issues.

The process for making discretionary decisions is outlined in the attached memorandum of November 7, 2000, entitled "Exercising Prosecutorial Discretion." Field agents and officers are not only authorized by law to exercise discretion within the authority of the agency, but are expected to do so in a judicious manner at all stages of the enforcement process.

For example, in situations where officers are considering taking a nursing mother into custody, the senior ICE field managers should consider:

- Absent any statutory detention requirement or concerns such as national security, threats to public safety or other investigative interests, the nursing mother should be released on an Order of Recognizance or Order of Supervision and the Alternatives to Detention programs should be considered as an additional enforcement tool;
- In situations where ICE has determined, due to one of the above listed concerns or a statutory detention requirement to take a nursing mother into custody, the field personnel should consider placing a mother with her non-U.S. citizen child in the T. Don Hutto or Berks family residential center, provided there are no medical or legal issues that preclude their removal and they meet the placement factors of the facility. For a nursing mother with a U.S. citizen child, the pertinent state social service agencies should be contacted to identify and address any caregiver issues the alien mother might have in order to maintain the unity of the mother and child if the above listed release condition can be met;
- The decision to detain nursing mothers shall be reported through the programs' operational chain of command.

Requests for Headquarters assistance to address arrests and custody determinations as they relate to this issue may be addressed to the appropriate Assistant Director for Operations within OI or DRO.

Attachment

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INS PRESS OFFICE

002



U.S. Department of Justice
Immigration and Naturalization Service

HQOPP 50/4

Office of the Commissioner

1425 I Street NW
Washington, DC 20536

NOV 7 2000

MEMORANDUM TO REGIONAL DIRECTORS
DISTRICT DIRECTORS
CHIEF PATROL AGENTS
REGIONAL AND DISTRICT COUNSEL

FROM

Doris Meisner
Commissioner
Immigration and Naturalization Service

SUBJECT: Exercising Prosecutorial Discretion

Since the 1996 amendments to the Immigration and Nationality Act (INA) which limited the authority of immigration judges to provide relief from removal in many cases, there has been increased attention to the scope and exercise of the Immigration and Naturalization Service's (INS or the Service) prosecutorial discretion. This memorandum describes the principles with which INS exercises prosecutorial discretion and the process to be followed in making and monitoring discretionary decisions. Service officers are not only authorized by law but expected to exercise discretion in a judicious manner at all stages of the enforcement process—from planning investigations to enforcing final orders—subject to their chains of command and to the particular responsibilities and authority applicable to their specific position. In exercising this discretion, officers must take into account the principles described below in order to promote the efficient and effective enforcement of the immigration laws and the interests of justice.

More specific guidance geared to exercising discretion in particular program areas already exists in some instances,¹ and other program-specific guidance will follow separately.

¹ For example, standards and procedures for placing an alien in deferred action status are provided in the Standard Operating Procedures for Enforcement Officers: Arrest, Detention, Processing, and Removal (Standard Operating Procedures), Part X. This memorandum is intended to provide general principles, and does not replace any previous specific guidance provided about particular INS actions, such as "Supplemental Guidelines on the Use of Cooperating Individuals and Confidential Informants Following the Enactment of IIRIRA," dated December 29, 1997. This memorandum is not intended to address every situation in which the exercise of prosecutorial discretion may be appropriate. If INS personnel in the exercise of their duties recognize apparent conflict between any of their specific policy requirements and these general guidelines, they are encouraged to bring the matter to their supervisor's attention, and any conflict between policies should be raised through the appropriate chain of command for resolution.

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INS PRESS OFFICE

003

Memorandum for Regional Directors, et al.
Subject: Exercising Prosecutorial Discretion

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However, INS officers should continue to exercise their prosecutorial discretion in appropriate cases during the period before more specific program guidance is issued.

A statement of principles concerning discretion serves a number of important purposes. As described in the "Principles of Federal Prosecution,"² part of the U.S. Attorneys' manual, such principles provide convenient reference points for the process of making prosecutorial decisions; facilitate the task of training new officers in the discharge of their duties; contribute to more effective management of the Government's limited prosecutorial resources by promoting greater consistency among the prosecutorial activities of different offices and between their activities and the INS' law enforcement priorities; make possible better coordination of investigative and prosecutorial activity by enhancing the understanding between the investigative and prosecutorial components; and inform the public of the careful process by which prosecutorial decisions are made.

Legal and Policy Background

"Prosecutorial discretion" is the authority of an agency charged with enforcing a law to decide whether to enforce, or not to enforce, the law against someone. The INS, like other law enforcement agencies, has prosecutorial discretion and exercises it every day. In the immigration context, the term applies not only to the decision to issue, serve, or file a Notice to Appear (NTA), but also to a broad range of other discretionary enforcement decisions, including among others: Focusing investigative resources on particular offenses or conduct; deciding whom to stop, question, and arrest; maintaining an alien in custody; seeking expedited removal or other forms of removal by means other than a removal proceeding; settling or dismissing a proceeding; granting deferred action or staying a final order; agreeing to voluntary departure, withdrawal of an application for admission, or other action in lieu of removing the alien; pursuing an appeal; and executing a removal order.

The "favorable exercise of prosecutorial discretion" means a discretionary decision not to assert the full scope of the INS' enforcement authority as permitted under the law. Such decisions will take different forms, depending on the status of a particular matter, but include decisions such as not issuing an NTA (discussed in more detail below under "Initiating Proceedings"), not detaining an alien placed in proceedings (where discretion remains despite mandatory detention requirements), and approving deferred action.

² For this discussion, and much else in this memorandum, we have relied heavily upon the Principles of Federal Prosecution, chapter 9-27.000 in the U.S. Department of Justice's United States Attorneys' Manual (Oct. 1997). There are significant differences, of course, between the role of the U.S. Attorneys' offices in the criminal justice system, and INS responsibilities to enforce the immigration laws, but the general approach to prosecutorial discretion stated in this memorandum reflects that taken by the Principles of Federal Prosecution.

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INS PRESS OFFICE

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Subject: Exercising Prosecutorial Discretion

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Courts recognize that prosecutorial discretion applies in the civil, administrative arena just as it does in criminal law. Moreover, the Supreme Court "has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." Heckler v. Chaney, 470 U.S. 821, 831 (1985). Both Congress and the Supreme Court have recently reaffirmed that the concept of prosecutorial discretion applies to INS enforcement activities, such as whether to place an individual in deportation proceedings. INA section 242(g); Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999). The "discretion" in prosecutorial discretion means that prosecutorial decisions are not subject to judicial review or reversal, except in extremely narrow circumstances. Consequently, it is a powerful tool that must be used responsibly.

As a law enforcement agency, the INS generally has prosecutorial discretion within its area of law enforcement responsibility unless that discretion has been clearly limited by statute in a way that goes beyond standard terminology. For example, a statute directing that the INS "shall" remove removable aliens would not be construed by itself to limit prosecutorial discretion, but the specific limitation on releasing certain criminal aliens in section 236(c)(2) of the INA evidences a specific congressional intention to limit discretion not to detain certain criminal aliens in removal proceedings that would otherwise exist. Personnel who are unsure whether the INS has discretion to take a particular action should consult their supervisor and legal counsel to the extent necessary.

It is important to recognize not only what prosecutorial discretion is, but also what it is not. The doctrine of prosecutorial discretion applies to law enforcement decisions whether, and to what extent, to exercise the coercive power of the Government over liberty or property, as authorized by law in cases when individuals have violated the law. Prosecutorial discretion does not apply to affirmative acts of approval, or grants of benefits, under a statute or other applicable law that provides requirements for determining when the approval should be given. For example, the INS has prosecutorial discretion not to place a removable alien in proceedings, but it does not have prosecutorial discretion to approve a naturalization application by an alien who is ineligible for that benefit under the INA.

This distinction is not always an easy, bright-line rule to apply. In many cases, INS decisionmaking involves both a prosecutorial decision to take or not to take enforcement action, such as placing an alien in removal proceedings, and a decision whether or not the alien is substantively eligible for a benefit under the INA. In many cases, benefit decisions involve the exercise of significant discretion which in some cases is not judicially reviewable, but which is not prosecutorial discretion.

Prosecutorial discretion can extend only up to the substantive and jurisdictional limits of the law. It can never justify an action that is illegal under the substantive law pertaining to the

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conduct, or one that while legal in other contexts, is not within the authority of the agency or officer taking it. Prosecutorial discretion to take an enforcement action does not modify or waive any legal requirements that apply to the action itself. For example, an enforcement decision to focus on certain types of immigration violators for arrest and removal does not mean that the INS may arrest any person without probable cause to do so for an offense within its jurisdiction. Service officers who are in doubt whether a particular action complies with applicable constitutional, statutory, or case law requirements should consult with their supervisor and obtain advice from the district or sector counsel or representative of the Office of General Counsel to the extent necessary.

Finally, exercising prosecutorial discretion does not lessen the INS' commitment to enforce the immigration laws to the best of our ability. It is not an invitation to violate or ignore the law. Rather, it is a means to use the resources we have in a way that best accomplishes our mission of administering and enforcing the immigration laws of the United States.

Principles of Prosecutorial Discretion

Like all law enforcement agencies, the INS has finite resources, and it is not possible to investigate and prosecute all immigration violations. The INS historically has responded to this limitation by setting priorities in order to achieve a variety of goals. These goals include protecting public safety, promoting the integrity of the legal immigration system, and deterring violations of the immigration law.

It is an appropriate exercise of prosecutorial discretion to give priority to investigating, charging, and prosecuting those immigration violations that will have the greatest impact on achieving these goals. The INS has used this principle in the design and execution of its border enforcement strategy, its refocus on criminal smuggling networks, and its concentration on fixing benefit-granting processes to prevent fraud. An agency's focus on maximizing its impact under appropriate principles, rather than devoting resources to cases that will do less to advance these overall interests, is a crucial element in effective law enforcement management.

The Principles of Federal Prosecution governing the conduct of U.S. Attorneys use the concept of a "substantial Federal interest." A U.S. Attorney may properly decline a prosecution if "*no substantial Federal interest would be served by prosecution.*" This principle provides a useful frame of reference for the INS, although applying it presents challenges that differ from those facing a U.S. Attorney. In particular, as immigration is an exclusively Federal responsibility, the option of an adequate alternative remedy under state law is not available. In an immigration case, the interest at stake will always be Federal. Therefore, we must place particular emphasis on the element of substantiality. How important is the Federal interest in the case, as compared to other cases and priorities? That is the overriding question, and answering it requires examining a number of factors that may differ according to the stage of the case.

ATTACHMENT B


U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration and Customs Enforcement

October 24, 2005

MEMORANDUM FOR: All OPLA Chief Counsel

FROM: William J. Howard 
Principal Legal Advisor

SUBJECT: Prosecutorial Discretion

As you know, when Congress abolished the Immigration and Naturalization Service and divided its functions among U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (CIS), the Office of the Principal Legal Advisor (OPLA) was given exclusive authority to prosecute all removal proceedings. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 442(c), 116 Stat. 2135, 2194 (2002) (“the legal advisor * * * shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review”). Complicating matters for OPLA is that our cases come to us from CBP, CIS, and ICE, since all three bureaus are authorized to issue Notices to Appear (NTAs).

OPLA is handling about 300,000 cases in the immigration courts, 42,000 appeals before the Board of Immigration Appeals (BIA or Board), and 12,000 motions to reopen each year. Our circumstances in litigating these cases differ in a major respect from our predecessor, the INS’s Office of General Counsel. Gone are the days when INS district counsels, having chosen an attorney-client model that required client consultation before INS trial attorneys could exercise prosecutorial discretion, could simply walk down the hall to an INS district director, immigration agent, adjudicator, or border patrol officer to obtain the client’s permission to proceed with that exercise. Now NTA-issuing clients or stakeholders might be in different agencies, in different buildings, and in different cities from our own.

Since the NTA-issuing authorities are no longer all under the same roof, adhering to INS OGC’s attorney-client model would minimize our efficiency. This is particularly so since we are litigating our hundreds of thousands of cases per year with only 600 or so attorneys; that our case preparation time is extremely limited, averaging about 20 minutes a case; that our caseload will increase since Congress is now providing more resources for border and interior immigration enforcement; that many of the cases that come to us from NTA-issuers lack supporting evidence like conviction documents; that we must prioritize our cases to allow us to place greatest emphasis on our national security and criminal alien dockets; that we have growing collateral duties such as

assisting the Department of Justice with federal court litigation; that in many instances we lack sufficient staff to adequately brief Board appeals or oppositions to motions to reopen; and that the opportunities to exercise prosecutorial discretion arise at many different points in the removal process.

To elaborate on this last point, the universe of opportunities to exercise prosecutorial discretion is large. Those opportunities arise in the pre-filing stage, when, for example, we can advise clients who consult us whether or not to file NTAs or what charges and evidence to base them on. They arise in the course of litigating the NTA in immigration court, when we may want, among other things, to move to dismiss a case as legally insufficient, to amend the NTA, to decide not to oppose a grant of relief, to join in a motion to reopen, or to stipulate to the admission of evidence. They arise after the immigration judge has entered an order, when we must decide whether to appeal all or part of the decision. Or they may arise in the context of DRO's decision to detain aliens, when we must work closely with DRO in connection with defending that decision in the administrative or federal courts. In the 50-plus immigration courtrooms across the United States in which we litigate, OPLA's trial attorneys continually face these and other prosecutorial discretion questions. Litigating with maximum efficiency requires that we exercise careful yet quick judgment on questions involving prosecutorial discretion. This will require that OPLA's trial attorneys become very familiar with the principles in this memorandum and how to apply them.

Further giving rise to the need for this guidance is the extraordinary volume of immigration cases that is now reaching the United States Courts of Appeals. Since 2001, federal court immigration cases have tripled. That year, there were 5,435 federal court cases. Four years later, in fiscal year 2004, that number had risen to 14,699 federal court cases. Fiscal year 2005 federal court immigration cases will approximate 15,000. The lion's share of these cases consists of petitions for review in the United States Courts of Appeal. Those petitions are now overwhelming the Department of Justice's Office of Immigration Litigation, with the result that the Department of Justice has shifted responsibility to brief as many as 2,000 of these appellate cases to other Departmental components and to the U.S. Attorneys' Offices. This, as you know, has brought you into greater contact with Assistant U.S. Attorneys who are turning to you for assistance in remanding some of these cases. This memorandum is also intended to lessen the number of such remand requests, since it provides your office with guidance to assist you in eliminating cases that would later merit a remand.

Given the complexity of immigration law, a complexity that federal courts at all levels routinely acknowledge in published decisions, your expert assistance to the U.S. Attorneys is critical.¹ It is all the more important because the decision whether to

¹ As you know, if and when your resources permit it, I encourage you to speak with your respective United States Attorneys' Offices about having those Offices designate Special Assistant U.S. Attorneys from OPLA's ranks to handle both civil and criminal federal court immigration litigation. The U.S.

proceed with litigating a case in the federal courts must be gauged for reasonableness, lest, in losing the case, the courts award attorneys' fees against the government pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412. In the overall scheme of litigating the removal of aliens at both the administrative and federal court level, litigation that often takes years to complete, it is important that we all apply sound principles of prosecutorial discretion, uniformly throughout our offices and in all of our cases, to ensure that the cases we litigate on behalf of the United States, whether at the administrative level or in the federal courts, are truly worth litigating.

* * * * *

With this background in mind, I am directing that all OPLA attorneys apply the following principles of prosecutorial discretion:

1) Prosecutorial Discretion Prior to or in Lieu of NTA Issuance:

In the absence of authority to cancel NTAs, we should engage in client liaison with CBP, CIS (and ICE) via, or in conjunction with, CIS/CBP attorneys on the issuance of NTAs. We should attempt to discourage issuance of NTAs where there are other options available such as administrative removal, crewman removal, expedited removal or reinstatement, clear eligibility for an immigration benefit that can be obtained outside of immigration court, or where the desired result is other than a removal order.

It is not wise or efficient to place an alien into proceedings where the intent is to allow that person to remain unless, where compelling reasons exist, a stayed removal order might yield enhanced law enforcement cooperation. See Attachment A (Memorandum from Wesley Lee, ICE Acting Director, Office of Detention and Removal, Alien Witnesses and Informants Pending Removal (May 18, 2005)); see also Attachment B (Detention and Removal Officer's Field Manual, Subchapters 20.7 and 20.8, for further explanation on the criteria and procedures for stays of removal and deferred action).

Examples:

- **Immediate Relative of Service Person-** If an alien is an immediate relative of a military service member, a favorable exercise of discretion, including not issuing an NTA, should be a prime consideration. Military service includes current or former members of the Armed Forces, including: the United States Army, Air Force, Navy, Marine Corps, Coast Guard, or National Guard, as well as service in the Philippine Scouts. OPLA counsel should analyze possible eligibility for citizenship under

Attorneys' Offices will benefit greatly from OPLA SAUSAs, especially given the immigration law expertise that resides in each of your Offices, the immigration law's great complexity, and the extent to which the USAOs are now overburdened by federal immigration litigation.

sections 328 and 329. See Attachment C (Memorandum from Marcy M. Forman, Director, Office of Investigations, Issuance of Notices to Appeal, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service (June 21, 2004)).

- **Clearly Approvable I-130/I-485-** Where an alien is the potential beneficiary of a clearly approvable I-130/I-485 and there are no serious adverse factors that otherwise justify expulsion, allowing the alien the opportunity to legalize his or her status through a CIS-adjudicated adjustment application can be a cost-efficient option that conserves immigration court time and benefits someone who can be expected to become a lawful permanent resident of the United States. See Attachment D (Memorandum from William J. Howard, OPLA Principal Legal Advisor, Exercising Prosecutorial Discretion to Dismiss Adjustment Cases (October 6, 2005)).
- **Administrative Voluntary Departure-** We may be consulted in a case where administrative voluntary departure is being considered. Where an alien is eligible for voluntary departure and likely to depart, OPLA attorneys are encouraged to facilitate the grant of administrative voluntary departure or voluntary departure under safeguards. This may include continuing detention if that is the likely end result even should the case go to the Immigration Court.
- **NSEERS Failed to Register-** Where an alien subject to NSEERS registration failed to timely register but is otherwise in status and has no criminal record, he should not be placed in proceedings if he has a reasonable excuse for his failure. Reasonably excusable failure to register includes the alien's hospitalization, admission into a nursing home or extended care facility (where mobility is severely limited); or where the alien is simply unaware of the registration requirements. See Attachment E (Memorandum from Victor Cerda, OPLA Acting Principal Legal Advisor, Changes to the National Security Entry Exit Registration System (NSEERS)(January 8, 2004)).
- **Sympathetic Humanitarian Factors-** Deferred action should be considered when the situation involves sympathetic humanitarian circumstances that rise to such a level as to cry for an exercise of prosecutorial discretion. Examples of this include where the alien has a citizen child with a serious medical condition or disability or where the alien or a close family member is undergoing treatment for a potentially life threatening disease. DHS has the most prosecutorial discretion at this stage of the process.

2) Prosecutorial Discretion after the Notice to Appear has issued, but before the Notice to Appear has been filed:

We have an additional opportunity to appropriately resolve a case prior to expending court resources when an NTA has been issued but not yet filed with the immigration court. This would be an appropriate action in any of the situations

identified in #1. Other situations may also arise where the reasonable and rational decision is not to prosecute the case.

Example:

- **U or T visas-** Where a “U” or “T” visa application has been submitted, it may be appropriate not to file an NTA until a decision is made on such an application. In the event that the application is denied then proceedings would be appropriate.

3) Prosecutorial Discretion after NTA Issuance and Filing:

The filing of an NTA with the Immigration Court does not foreclose further prosecutorial discretion by OPLA Counsel to settle a matter. There may be ample justification to move the court to terminate the case and to thereafter cancel the NTA as improvidently issued or due to a change in circumstances such that continuation is no longer in the government interest.² We have regulatory authority to dismiss proceedings. Dismissal is by regulation without prejudice. See 8 CFR §§ 239.2(c), 1239.2(c). In addition, there are numerous opportunities that OPLA attorneys have to resolve a case in the immigration court. These routinely include not opposing relief, waiving appeal or making agreements that narrow issues, or stipulations to the admissibility of evidence. There are other situations where such action should also be considered for purposes of judicial economy, efficiency of process or to promote justice.

Examples:

² Unfortunately, DHS’s regulations, at 8 C.F.R. 239.1, do not include OPLA’s attorneys among the 38 categories of persons given authority there to issue NTAs and thus to cancel NTAs. That being said, when an OPLA attorney encounters an NTA that lacks merit or evidence, he or she should apprise the issuing entity of the deficiency and ask that the entity cure the deficiency as a condition of OPLA’s going forward with the case. If the NTA has already been filed with the immigration court, the OPLA attorney should attempt to correct it by filing a form I-261, or, if that will not correct the problem, should move to dismiss proceedings without prejudice. We must be sensitive, particularly given our need to prioritize our national security and criminal alien cases, to whether prosecuting a particular case has little law enforcement value to the cost and time required. Although we lack the authority to sua sponte cancel NTAs, we can move to dismiss proceedings for the many reasons outlined in 8 CFR § 239.2(a) and 8 CFR § 1239.2(c). Moreover, since OPLA attorneys do not have independent authority to grant deferred action status, stays of removal, parole, etc., once we have concluded that an alien should not be subjected to removal, we must still engage the client entity to “defer” the action, issue the stay or initiate administrative removal.

- **Relief Otherwise Available-** We should consider moving to dismiss proceedings without prejudice where it appears in the discretion of the OPLA attorney that relief in the form of adjustment of status appears clearly approvable based on an approvable I-130 or I-140 and appropriate for adjudication by CIS. See October 6, 2005 Memorandum from Principal Legal Advisor Bill Howard, *supra*. Such action may also be appropriate in the special rule cancellation NACARA context. We should also consider remanding a case to permit an alien to pursue naturalization.³ This allows the alien to pursue the matter with CIS, the DHS entity with the principal responsibility for adjudication of immigration benefits, rather than to take time from the overburdened immigration court dockets that could be expended on removal issues.
- **Appealing Humanitarian Factors-** Some cases involve sympathetic humanitarian circumstances that rise to such a level as to cry for an exercise of prosecutorial discretion. Examples of this, as noted above, include where the alien has a citizen child with a serious medical condition or disability or where the alien or a close family member is undergoing treatment for a potentially life threatening disease. OPLA attorneys should consider these matters to determine whether an alternative disposition is possible and appropriate. Proceedings can be reinstated when the situation changes. Of course, if the situation is expected to be of relatively short duration, the Chief Counsel Office should balance the benefit to the Government to be obtained by terminating the proceedings as opposed to administratively closing proceedings or asking DRO to stay removal after entry of an order.
- **Law Enforcement Assets/CIs-** There are often situations where federal, State or local law enforcement entities desire to have an alien remain in the United States for a period of time to assist with investigation or to testify at trial. Moving to dismiss a case to permit a grant of deferred action may be an appropriate result in these circumstances. Some offices may prefer to administratively close these cases, which gives the alien the benefit of remaining and law enforcement the option of calendaring proceedings at any time. This may result in more control by law enforcement and enhanced cooperation by the alien. A third option is a stay.

4) **Post-Hearing Actions:**

Post-hearing actions often involve a great deal of discretion. This includes a decision to file an appeal, what issues to appeal, how to respond to an alien's appeal, whether to seek a stay of a decision or whether to join a motion to reopen. OPLA

³ Once in proceedings, this typically will occur only where the alien has shown prima facie eligibility for naturalization and that his or her case involves exceptionally appealing or humanitarian factors. 8 CFR §1239.1(f). It is improper for an immigration judge to terminate proceedings absent an affirmative communication from DHS that the alien would be eligible for naturalization but for the pendency of the deportation proceeding. *Matter of Cruz*, 15 I&N Dec. 236 (BIA 1975); see *Nolan v. Holmes*, 334 F.3d 189 (2d Cir. 2003) (Second Circuit upholds BIA's reliance on *Matter of Cruz* when petitioner failed to establish prima facie eligibility.).

attorneys are also responsible for replying to motions to reopen and motions to reconsider. The interests of judicial economy and fairness should guide your actions in handling these matters.

Examples:

- **Remanding to an Immigration Judge or Withdrawing Appeals-** Where the appeal brief filed on behalf of the alien respondent is persuasive, it may be appropriate for an OPLA attorney to join in that position to the Board, to agree to remand the case back to the immigration court, or to withdraw a government appeal and allow the decision to become final.
- **Joining in Untimely Motions to Reopen-** Where a motion to reopen for adjustment of status or cancellation of removal is filed on behalf of an alien with substantial equities, no serious criminal or immigration violations, and who is legally eligible to be granted that relief except that the motion is beyond the 90-day limitation contained in 8 C.F.R. § 1003.23, strongly consider exercising prosecutorial discretion and join in this motion to reopen to permit the alien to pursue such relief to the immigration court.
- **Federal Court Remands to the BIA-** Cases filed in the federal courts present challenging situations. In a habeas case, be very careful to assess the reasonableness of the government's detention decision and to consult with our clients at DRO. Where there are potential litigation pitfalls or unusually sympathetic fact circumstances and where the BIA has the authority to fashion a remedy, you may want to consider remanding the case to the BIA. Attachments H and I provide broad guidance on these matters. Bring concerns to the attention of the Office of the United States Attorney or the Office of Immigration Litigation, depending upon which entity has responsibility over the litigation. See generally Attachment F (Memorandum from OPLA Appellate Counsel, U.S. Attorney Remand Recommendations (rev. May 10, 2005)); see also Attachment G (Memorandum from Thomas W. Hussey, Director, Office of Immigration Litigation, U.S. Department of Justice, Remand of Immigration Cases (Dec. 8, 2004)).
- **In absentia orders.** Reviewing courts have been very critical of in absentia orders that, for such things as appearing late for court, deprive aliens of a full hearing and the ability to pursue relief from removal. This is especially true where court is still in session and there does not seem to be any prejudice to either holding or rescheduling the hearing for later that day. These kinds of decisions, while they may be technically correct, undermine respect for the fairness of the removal process and cause courts to find reasons to set them aside. These decisions can create adverse precedent in the federal courts as well as EAJA liability. OPLA counsel should be mindful of this and, if possible, show a measured degree of flexibility, but

only if convinced that the alien or his or her counsel is not abusing the removal court process.

5) Final Orders- Stays and Motions to Reopen/Reconsider:

Attorney discretion doesn't cease after a final order. We may be consulted on whether a stay of removal should be granted. See Attachment B (Subchapter 20.7). In addition, circumstances may develop whether the proper and just course of action would be to move to reopen the proceeding for purposes of terminating the NTA.

Examples:

- **Ineffective Assistance-** An OPLA attorney is presented with a situation where an alien was deprived of an opportunity to pursue relief, due to incompetent counsel, where a grant of such relief could reasonably be anticipated. It would be appropriate, assuming compliance with Matter of Lozada, to join in or not oppose motions to reconsider to allow the relief applications to be filed.
- **Witnesses Needed, Recommend a Stay-** State law enforcement authorities need an alien as a witness in a major criminal case. The alien has a final order and will be removed from the United States before trial can take place. OPLA counsel may recommend that a stay of removal be granted and this alien be released on an order of supervision.

* * * * *

Prosecutorial discretion is a very significant tool that sometimes enables you to deal with the difficult, complex and contradictory provisions of the immigration laws and cases involving human suffering and hardship. It is clearly DHS policy that national security violators, human rights abusers, spies, traffickers both in narcotics and people, sexual predators and other criminals are removal priorities. It is wise to remember that cases that do not fall within these categories sometimes require that we balance the cost of an action versus the value of the result. Our reasoned determination in making prosecutorial discretion decisions can be a significant benefit to the efficiency and fairness of the removal process.

Official Use Disclaimer:

This memorandum is protected by the Attorney/Client and Attorney Work product privileges and is for Official Use Only. This memorandum is intended solely to provide legal advice to the Office of the Chief Counsels (OCC) and their staffs regarding the appropriate and lawful exercise of prosecutorial discretion, which will lead to the efficient management of resources. It is not intended to, does not, and may not be relied upon to create or confer any right(s) or benefit(s), substantive or procedural, enforceable at law by any individual or other party in

removal proceedings, in litigation with the United States, or in any other form or manner. Discretionary decisions of the OCC regarding the exercise of prosecutorial discretion under this memorandum are final and not subject to legal review or recourse. Finally this internal guidance does not have the force of law, or of a Department of Homeland Security Directive.

ATTACHMENT C



U.S. Department of Justice
Immigration and Naturalization Service

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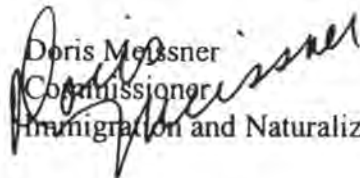
Office of the Commissioner

425 I Street NW
Washington, DC 20536

NOV 17 2000

MEMORANDUM TO REGIONAL DIRECTORS
DISTRICT DIRECTORS
CHIEF PATROL AGENTS
REGIONAL AND DISTRICT COUNSEL

FROM:


Doris Measner
Commissioner
Immigration and Naturalization Service

SUBJECT: Exercising Prosecutorial Discretion

Since the 1996 amendments to the Immigration and Nationality Act (INA) which limited the authority of immigration judges to provide relief from removal in many cases, there has been increased attention to the scope and exercise of the Immigration and Naturalization Service's (INS or the Service) prosecutorial discretion. This memorandum describes the principles with which INS exercises prosecutorial discretion and the process to be followed in making and monitoring discretionary decisions. Service officers are not only authorized by law but expected to exercise discretion in a judicious manner at all stages of the enforcement process—from planning investigations to enforcing final orders—subject to their chains of command and to the particular responsibilities and authority applicable to their specific position. In exercising this discretion, officers must take into account the principles described below in order to promote the efficient and effective enforcement of the immigration laws and the interests of justice.

More specific guidance geared to exercising discretion in particular program areas already exists in some instances,¹ and other program-specific guidance will follow separately.

¹ For example, standards and procedures for placing an alien in deferred action status are provided in the Standard Operating Procedures for Enforcement Officers: Arrest, Detention, Processing, and Removal (Standard Operating Procedures), Part X. This memorandum is intended to provide general principles, and does not replace any previous specific guidance provided about particular INS actions, such as "Supplemental Guidelines on the Use of Cooperating Individuals and Confidential Informants Following the Enactment of IIRIRA," dated December 29, 1997. This memorandum is not intended to address every situation in which the exercise of prosecutorial discretion may be appropriate. If INS personnel in the exercise of their duties recognize apparent conflict between any of their specific policy requirements and these general guidelines, they are encouraged to bring the matter to their supervisor's attention, and any conflict between policies should be raised through the appropriate chain of command for resolution.

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However, INS officers should continue to exercise their prosecutorial discretion in appropriate cases during the period before more specific program guidance is issued.

A statement of principles concerning discretion serves a number of important purposes. As described in the “Principles of Federal Prosecution,”² part of the U.S. Attorneys’ manual, such principles provide convenient reference points for the process of making prosecutorial decisions; facilitate the task of training new officers in the discharge of their duties; contribute to more effective management of the Government’s limited prosecutorial resources by promoting greater consistency among the prosecutorial activities of different offices and between their activities and the INS’ law enforcement priorities; make possible better coordination of investigative and prosecutorial activity by enhancing the understanding between the investigative and prosecutorial components; and inform the public of the careful process by which prosecutorial decisions are made.

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The “favorable exercise of prosecutorial discretion” means a discretionary decision not to assert the full scope of the INS’ enforcement authority as permitted under the law. Such decisions will take different forms, depending on the status of a particular matter, but include decisions such as not issuing an NTA (discussed in more detail below under “Initiating Proceedings”), not detaining an alien placed in proceedings (where discretion remains despite mandatory detention requirements), and approving deferred action.

² For this discussion, and much else in this memorandum, we have relied heavily upon the Principles of Federal Prosecution, chapter 9-27.000 in the U.S. Department of Justice’s United States Attorneys’ Manual (Oct. 1997). There are significant differences, of course, between the role of the U.S. Attorneys’ offices in the criminal justice system, and INS responsibilities to enforce the immigration laws, but the general approach to prosecutorial discretion stated in this memorandum reflects that taken by the Principles of Federal Prosecution.

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Courts recognize that prosecutorial discretion applies in the civil, administrative arena just as it does in criminal law. Moreover, the Supreme Court “has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.” Heckler v. Chaney, 470 U.S. 821, 831 (1985). Both Congress and the Supreme Court have recently reaffirmed that the concept of prosecutorial discretion applies to INS enforcement activities, such as whether to place an individual in deportation proceedings. INA section 242(g); Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999). The “discretion” in prosecutorial discretion means that prosecutorial decisions are not subject to judicial review or reversal, except in extremely narrow circumstances. Consequently, it is a powerful tool that must be used responsibly.

As a law enforcement agency, the INS generally has prosecutorial discretion within its area of law enforcement responsibility unless that discretion has been clearly limited by statute in a way that goes beyond standard terminology. For example, a statute directing that the INS “shall” remove removable aliens would not be construed by itself to limit prosecutorial discretion, but the specific limitation on releasing certain criminal aliens in section 236(c)(2) of the INA evidences a specific congressional intention to limit discretion not to detain certain criminal aliens in removal proceedings that would otherwise exist. Personnel who are unsure whether the INS has discretion to take a particular action should consult their supervisor and legal counsel to the extent necessary.

It is important to recognize not only what prosecutorial discretion is, but also what it is not. The doctrine of prosecutorial discretion applies to law enforcement decisions whether, and to what extent, to exercise the coercive power of the Government over liberty or property, as authorized by law in cases when individuals have violated the law. Prosecutorial discretion does not apply to affirmative acts of approval, or grants of benefits, under a statute or other applicable law that provides requirements for determining when the approval should be given. For example, the INS has prosecutorial discretion not to place a removable alien in proceedings, but it does not have prosecutorial discretion to approve a naturalization application by an alien who is ineligible for that benefit under the INA.

This distinction is not always an easy, bright-line rule to apply. In many cases, INS decisionmaking involves both a prosecutorial decision to take or not to take enforcement action, such as placing an alien in removal proceedings, and a decision whether or not the alien is substantively eligible for a benefit under the INA. In many cases, benefit decisions involve the exercise of significant discretion which in some cases is not judicially reviewable, but which is not prosecutorial discretion.

Prosecutorial discretion can extend only up to the substantive and jurisdictional limits of the law. It can never justify an action that is illegal under the substantive law pertaining to the

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conduct, or one that while legal in other contexts, is not within the authority of the agency or officer taking it. Prosecutorial discretion to take an enforcement action does not modify or waive any legal requirements that apply to the action itself. For example, an enforcement decision to focus on certain types of immigration violators for arrest and removal does not mean that the INS may arrest any person without probable cause to do so for an offense within its jurisdiction. Service officers who are in doubt whether a particular action complies with applicable constitutional, statutory, or case law requirements should consult with their supervisor and obtain advice from the district or sector counsel or representative of the Office of General Counsel to the extent necessary.

Finally, exercising prosecutorial discretion does not lessen the INS' commitment to enforce the immigration laws to the best of our ability. It is not an invitation to violate or ignore the law. Rather, it is a means to use the resources we have in a way that best accomplishes our mission of administering and enforcing the immigration laws of the United States.

Principles of Prosecutorial Discretion

Like all law enforcement agencies, the INS has finite resources, and it is not possible to investigate and prosecute all immigration violations. The INS historically has responded to this limitation by setting priorities in order to achieve a variety of goals. These goals include protecting public safety, promoting the integrity of the legal immigration system, and deterring violations of the immigration law.

It is an appropriate exercise of prosecutorial discretion to give priority to investigating, charging, and prosecuting those immigration violations that will have the greatest impact on achieving these goals. The INS has used this principle in the design and execution of its border enforcement strategy, its refocus on criminal smuggling networks, and its concentration on fixing benefit-granting processes to prevent fraud. An agency's focus on maximizing its impact under appropriate principles, rather than devoting resources to cases that will do less to advance these overall interests, is a crucial element in effective law enforcement management.

The Principles of Federal Prosecution governing the conduct of U.S. Attorneys use the concept of a "substantial Federal interest." A U.S. Attorney may properly decline a prosecution if "*no substantial Federal interest would be served by prosecution.*" This principle provides a useful frame of reference for the INS, although applying it presents challenges that differ from those facing a U.S. Attorney. In particular, as immigration is an exclusively Federal responsibility, the option of an adequate alternative remedy under state law is not available. In an immigration case, the interest at stake will always be Federal. Therefore, we must place particular emphasis on the element of substantiality. How important is the Federal interest in the case, as compared to other cases and priorities? That is the overriding question, and answering it requires examining a number of factors that may differ according to the stage of the case.

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As a general matter, INS officers may decline to prosecute a legally sufficient immigration case if the Federal immigration enforcement interest that would be served by prosecution is not substantial.³ Except as may be provided specifically in other policy statements or directives, the responsibility for exercising prosecutorial discretion in this manner rests with the District Director (DD) or Chief Patrol Agent (CPA) based on his or her common sense and sound judgment.⁴ The DD or CPA should obtain legal advice from the District or Sector Counsel to the extent that such advice may be necessary and appropriate to ensure the sound and lawful exercise of discretion, particularly with respect to cases pending before the Executive Office for Immigration Review (EOIR).⁵ The DD's or CPA's authority may be delegated to the extent necessary and proper, except that decisions not to place a removable alien in removal proceedings, or decisions to move to terminate a proceeding which in the opinion of the District or Sector Counsel is legally sufficient, may not be delegated to an officer who is not authorized under 8 C.F.R. § 239.1 to issue an NTA. A DD's or CPA's exercise of prosecutorial discretion will not normally be reviewed by Regional or Headquarters authority. However, DDs and CPAs remain subject to their chains of command and may be supervised as necessary in their exercise of prosecutorial discretion.

Investigations

Priorities for deploying investigative resources are discussed in other documents, such as the interior enforcement strategy, and will not be discussed in detail in this memorandum. These previously identified priorities include identifying and removing criminal and terrorist aliens, deterring and dismantling alien smuggling, minimizing benefit fraud and document abuse, responding to community complaints about illegal immigration and building partnerships to solve local problems, and blocking and removing employers' access to undocumented workers. Even within these broad priority areas, however, the Service must make decisions about how best to expend its resources.

Managers should plan and design operations to maximize the likelihood that serious offenders will be identified. Supervisors should ensure that front-line investigators understand that it is not mandatory to issue an NTA in every case where they have reason to believe that an alien is removable, and agents should be encouraged to bring questionable cases to a supervisor's attention. Operational planning for investigations should include consideration of appropriate procedures for supervisory and legal review of individual NTA issuing decisions.

³ In some cases even a substantial immigration enforcement interest in prosecuting a case could be outweighed by other interests, such as the foreign policy of the United States. Decisions that require weighing such other interests should be made at the level of responsibility within the INS or the Department of Justice that is appropriate in light of the circumstances and interests involved.

⁴ This general reference to DDs and CPAs is not intended to exclude from coverage by this memorandum other INS personnel, such as Service Center directors, who may be called upon to exercise prosecutorial discretion and do not report to DDs or CPAs, or to change any INS chains of command.

⁵ Exercising prosecutorial discretion with respect to cases pending before EOIR involves procedures set forth at 8 CFR 239.2 and 8 CFR Part 3, such as obtaining the court's approval of a motion to terminate proceedings.

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Careful design of enforcement operations is a key element in the INS' exercise of prosecutorial discretion. Managers should consider not simply whether a particular effort is legally supportable, but whether it best advances the INS' goals, compared with other possible uses of those resources. As a general matter, investigations that are specifically focused to identify aliens who represent a high priority for removal should be favored over investigations which, by their nature, will identify a broader variety of removable aliens. Even an operation that is designed based on high-priority criteria, however, may still identify individual aliens who warrant a favorable exercise of prosecutorial discretion.⁶

Initiating and Pursuing Proceedings

Aliens who are subject to removal may come to the Service's attention in a variety of ways. For example, some aliens are identified as a result of INS investigations, while others are identified when they apply for immigration benefits or seek admission at a port-of-entry. While the context in which the INS encounters an alien may, as a practical matter, affect the Service's options, it does not change the underlying principle that the INS has discretion and should exercise that discretion appropriately given the circumstances of the case.

Even when an immigration officer has reason to believe that an alien is removable and that there is sufficient evidence to obtain a final order of removal, it may be appropriate to decline to proceed with that case. This is true even when an alien is removable based on his or her criminal history and when the alien—if served with an NTA—would be subject to mandatory detention. The INS may exercise its discretion throughout the enforcement process. Thus, the INS can choose whether to issue an NTA, whether to cancel an NTA prior to filing with the immigration court or move for dismissal in immigration court (under 8 CFR 239.2), whether to detain (for those aliens not subject to mandatory detention), whether to offer an alternative to removal such as voluntary departure or withdrawal of an application for admission, and whether to stay an order of deportation.

The decision to exercise any of these options or other alternatives in a particular case requires an individualized determination, based on the facts and the law. As a general matter, it is better to exercise favorable discretion as early in the process as possible, once the relevant facts have been determined, in order to conserve the Service's resources and in recognition of the alien's interest in avoiding unnecessary legal proceedings. However, there is often a conflict

⁶ For example, operations in county jails are designed to identify and remove criminal aliens, a high priority for the Service. Nonetheless, an investigator working at a county jail and his or her supervisor should still consider whether the exercise of prosecutorial discretion would be appropriate in individual cases.

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between making decisions as soon as possible, and making them based on evaluating as many relevant, credible facts as possible. Developing an extensive factual record prior to making a charging decision may itself consume INS resources in a way that negates any saving from forgoing a removal proceeding.

Generally, adjudicators may have a better opportunity to develop a credible factual record at an earlier stage than investigative or other enforcement personnel. It is simply not practicable to require officers at the arrest stage to develop a full investigative record on the equities of each case (particularly since the alien file may not yet be available to the charging office), and this memorandum does not require such an analysis. Rather, what is needed is knowledge that the INS is not legally required to institute proceedings in every case, openness to that possibility in appropriate cases, development of facts relevant to the factors discussed below to the extent that it is reasonably possible to do so under the circumstances and in the timeframe that decisions must be made, and implementation of any decision to exercise prosecutorial discretion.

There is no precise formula for identifying which cases warrant a favorable exercise of discretion. Factors that should be taken into account in deciding whether to exercise prosecutorial discretion include, but are not limited to, the following:

- Immigration status: Lawful permanent residents generally warrant greater consideration. However, other removable aliens may also warrant the favorable exercise of discretion, depending on all the relevant circumstances.
- Length of residence in the United States: The longer an alien has lived in the United States, particularly in legal status, the more this factor may be considered a positive equity.
- Criminal history: Officers should take into account the nature and severity of any criminal conduct, as well as the time elapsed since the offense occurred and evidence of rehabilitation. It is appropriate to take into account the actual sentence or fine that was imposed, as an indicator of the seriousness attributed to the conduct by the court. Other factors relevant to assessing criminal history include the alien's age at the time the crime was committed and whether or not he or she is a repeat offender.
- Humanitarian concerns: Relevant humanitarian concerns include, but are not limited to, family ties in the United States; medical conditions affecting the alien or the alien's family; the fact that an alien entered the United States at a very young age; ties to one's home country (e.g., whether the alien speaks the language or has relatives in the home country); extreme youth or advanced age; and home country conditions.
- Immigration history: Aliens without a past history of violating the immigration laws (particularly violations such as reentering after removal, failing to appear at hearing, or resisting arrest that show heightened disregard for the legal process) warrant favorable consideration to a greater extent than those with such a history. The seriousness of any such violations should also be taken into account.

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- Likelihood of ultimately removing the alien: Whether a removal proceeding would have a reasonable likelihood of ultimately achieving its intended effect, in light of the case circumstances such as the alien's nationality, is a factor that should be considered.
- Likelihood of achieving enforcement goal by other means: In many cases, the alien's departure from the United States may be achieved more expeditiously and economically by means other than removal, such as voluntary return, withdrawal of an application for admission, or voluntary departure.
- Whether the alien is eligible or is likely to become eligible for other relief: Although not determinative on its own, it is relevant to consider whether there is a legal avenue for the alien to regularize his or her status if not removed from the United States. The fact that the Service cannot confer complete or permanent relief, however, does not mean that discretion should not be exercised favorably if warranted by other factors.
- Effect of action on future admissibility: The effect an action such as removal may have on an alien can vary—for example, a time-limited as opposed to an indefinite bar to future admissibility—and these effects may be considered.
- Current or past cooperation with law enforcement authorities: Current or past cooperation with the INS or other law enforcement authorities, such as the U.S. Attorneys, the Department of Labor, or National Labor Relations Board, among others, weighs in favor of discretion.
- Honorable U.S. military service: Military service with an honorable discharge should be considered as a favorable factor. See Standard Operating Procedures Part V.D.8 (issuing an NTA against current or former member of armed forces requires advance approval of Regional Director).
- Community attention: Expressions of opinion, in favor of or in opposition to removal, may be considered, particularly for relevant facts or perspectives on the case that may not have been known to or considered by the INS. Public opinion or publicity (including media or congressional attention) should not, however, be used to justify a decision that cannot be supported on other grounds. Public and professional responsibility will sometimes require the choice of an unpopular course.
- Resources available to the INS: As in planning operations, the resources available to the INS to take enforcement action in the case, compared with other uses of the resources to fulfill national or regional priorities, are an appropriate factor to consider, but it should not be determinative. For example, when prosecutorial discretion should be favorably exercised under these factors in a particular case, that decision should prevail even if there is detention space available.

Obviously, not all of the factors will be applicable to every case, and in any particular case one factor may deserve more weight than it might in another case. There may be other factors, not on the list above, that are appropriate to consider. The decision should be based on the totality of the circumstances, not on any one factor considered in isolation. General guidance such as this cannot provide a "bright line" test that may easily be applied to determine the "right" answer in every case. In many cases, minds reasonably can differ, different factors may point in different directions, and there is no clearly "right" answer. Choosing a course of action in difficult

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cases must be an exercise of judgment by the responsible officer based on his or her experience, good sense, and consideration of the relevant factors to the best of his or her ability.

There are factors that may not be considered. Impermissible factors include:

- An individual's race, religion, sex, national origin, or political association, activities or beliefs;⁷
- The officer's own personal feelings regarding the individual; or
- The possible effect of the decision on the officer's own professional or personal circumstances.

In many cases, the procedural posture of the case, and the state of the factual record, will affect the ability of the INS to use prosecutorial discretion. For example, since the INS cannot admit an inadmissible alien to the United States unless a waiver is available, in many cases the INS' options are more limited in the admission context at a port-of-entry than in the deportation context.

Similarly, the INS may consider the range of options and information likely to be available at a later time. For example, an officer called upon to make a charging decision may reasonably determine that he or she does not have a sufficient, credible factual record upon which to base a favorable exercise of prosecutorial discretion not to put the alien in proceedings, that the record cannot be developed in the timeframe in which the decision must be made, that a more informed prosecutorial decision likely could be made at a later time during the course of proceedings, and that if the alien is not served with an NTA now, it will be difficult or impossible to do so later.

Such decisions must be made, however, with due regard for the principles of these guidelines, and in light of the other factors discussed here. For example, if there is no relief available to the alien in a removal proceeding and the alien is subject to mandatory detention if

⁷ This general guidance on factors that should not be relied upon in making a decision whether to enforce the law against an individual is not intended to prohibit their consideration to the extent they are directly relevant to an alien's status under the immigration laws or eligibility for a benefit. For example, religion and political beliefs are often directly relevant in asylum cases and need to be assessed as part of a prosecutorial determination regarding the strength of the case, but it would be improper for an INS officer to treat aliens differently based on his personal opinion about a religion or belief. Political activities may be relevant to a ground of removal on national security or terrorism grounds. An alien's nationality often directly affects his or her eligibility for adjustment or other relief, the likelihood that he or she can be removed, or the availability of prosecutorial options such as voluntary return, and may be considered to the extent these concerns are pertinent.

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placed in proceedings, that situation suggests that the exercise of prosecutorial discretion, if appropriate, would be more useful to the INS if done sooner rather than later. It would be improper for an officer to assume that someone else at some later time will always be able to make a more informed decision, and therefore never to consider exercising discretion.

Factors relevant to exercising prosecutorial discretion may come to the Service's attention in various ways. For example, aliens may make requests to the INS to exercise prosecutorial discretion by declining to pursue removal proceedings. Alternatively, there may be cases in which an alien asks to be put in proceedings (for example, to pursue a remedy such as cancellation of removal that may only be available in that forum). In either case, the INS may consider the request, but the fact that it is made should not determine the outcome, and the prosecutorial decision should be based upon the facts and circumstances of the case. Similarly, the fact that an alien has not requested prosecutorial discretion should not influence the analysis of the case. Whether, and to what extent, any request should be considered is also a matter of discretion. Although INS officers should be open to new facts and arguments, attempts to exploit prosecutorial discretion as a delay tactic, as a means merely to revisit matters that have been thoroughly considered and decided, or for other improper tactical reasons should be rejected. There is no legal right to the exercise of prosecutorial discretion, and (as stated at the close of this memorandum) this memorandum creates no right or obligation enforceable at law by any alien or any other party.

Process for Decisions

Identification of Suitable Cases

No single process of exercising discretion will fit the multiple contexts in which the need to exercise discretion may arise. Although this guidance is designed to promote consistency in the application of the immigration laws, it is not intended to produce rigid uniformity among INS officers in all areas of the country at the expense of the fair administration of the law. Different offices face different conditions and have different requirements. Service managers and supervisors, including DDs and CPAs, and Regional, District, and Sector Counsel must develop mechanisms appropriate to the various contexts and priorities, keeping in mind that it is better to exercise discretion as early in process as possible once the factual record has been identified.⁸ In particular, in cases where it is clear that no statutory relief will be available at the immigration hearing and where detention will be mandatory, it best conserves the Service's resources to make a decision early.

Enforcement and benefits personnel at all levels should understand that prosecutorial discretion exists and that it is appropriate and expected that the INS will exercise this authority in appropriate cases. DDs, CPAs, and other supervisory officials (such as District and

⁸ DDs, CPAs, and other INS personnel should also be open, however, to possible reconsideration of decisions (either for or against the exercise of discretion) based upon further development of the facts.

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Sector Counsels) should encourage their personnel to bring potentially suitable cases for the favorable exercise of discretion to their attention for appropriate resolution. To assist in exercising their authority, DDs and CPAs may wish to convene a group to provide advice on difficult cases that have been identified as potential candidates for prosecutorial discretion.

It is also appropriate for DDs and CPAs to develop a list of “triggers” to help their personnel identify cases at an early stage that may be suitable for the exercise of prosecutorial discretion. These cases should then be reviewed at a supervisory level where a decision can be made as to whether to proceed in the ordinary course of business, to develop additional facts, or to recommend a favorable exercise of discretion. Such triggers could include the following facts (whether proven or alleged):

Lawful permanent residents;
Aliens with a serious health condition;
Juveniles;
Elderly aliens;
Adopted children of U.S. citizens;
U.S. military veterans;
Aliens with lengthy presence in United States (i.e., 10 years or more); or
Aliens present in the United States since childhood.

Since workloads and the type of removable aliens encountered may vary significantly both within and between INS offices, this list of possible trigger factors for supervisory review is intended neither to be comprehensive nor mandatory in all situations. Nor is it intended to suggest that the presence or absence of “trigger” facts should itself determine whether prosecutorial discretion should be exercised, as compared to review of all the relevant factors as discussed elsewhere in these guidelines. Rather, development of trigger criteria is intended solely as a suggested means of facilitating identification of potential cases that may be suitable for prosecutorial review as early as possible in the process.

Documenting Decisions

When a DD or CPA decides to exercise prosecutorial discretion favorably, that decision should be clearly documented in the alien file, including the specific decision taken and its factual and legal basis. DDs and CPAs may also document decisions based on a specific set of facts not to exercise prosecutorial discretion favorably, but this is not required by this guidance.

The alien should also be informed in writing of a decision to exercise prosecutorial discretion favorably, such as not placing him or her in removal proceedings or not pursuing a case. This normally should be done by letter to the alien and/or his or her attorney of record, briefly stating the decision made and its consequences. It is not necessary to recite the facts of the case or the INS’ evaluation of the facts in such letters. Although the specifics of the letter

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will vary depending on the circumstances of the case and the action taken, it must make it clear to the alien that exercising prosecutorial discretion does not confer any immigration status, ability to travel to the United States (unless the alien applies for and receives advance parole), immunity from future removal proceedings, or any enforceable right or benefit upon the alien. If, however, there is a potential benefit that is linked to the action (for example, the availability of employment authorization for beneficiaries of deferred action), it is appropriate to identify it.

The obligation to notify an individual is limited to situations in which a specific, identifiable decision to refrain from action is taken in a situation in which the alien normally would expect enforcement action to proceed. For example, it is not necessary to notify aliens that the INS has refrained from focusing investigative resources on them, but a specific decision not to proceed with removal proceedings against an alien who has come into INS custody should be communicated to the alien in writing. This guideline is not intended to replace existing standard procedures or forms for deferred action, voluntary return, voluntary departure, or other currently existing and standardized processes involving prosecutorial discretion.

Future Impact

An issue of particular complexity is the future effect of prosecutorial discretion decisions in later encounters with the alien. Unlike the criminal context, in which statutes of limitation and venue requirements often preclude one U.S. Attorney's office from prosecuting an offense that another office has declined, immigration violations are continuing offenses that, as a general principle of immigration law, continue to make an alien legally removable regardless of a decision not to pursue removal on a previous occasion. An alien may come to the attention of the INS in the future through seeking admission or in other ways. An INS office should abide by a favorable prosecutorial decision taken by another office as a matter of INS policy, absent new facts or changed circumstances. However, if a removal proceeding is transferred from one INS district to another, the district assuming responsibility for the case is not bound by the charging district's decision to proceed with an NTA, if the facts and circumstances at a later stage suggest that a favorable exercise of prosecutorial discretion is appropriate.

Service offices should review alien files for information on previous exercises of prosecutorial discretion at the earliest opportunity that is practicable and reasonable and take any such information into account. In particular, the office encountering the alien must carefully assess to what extent the relevant facts and circumstances are the same or have changed either procedurally or substantively (either with respect to later developments, or more detailed knowledge of past circumstances) from the basis for the original exercise of discretion. A decision by an INS office to take enforcement action against the subject of a previous documented exercise of favorable prosecutorial discretion should be memorialized with a memorandum to the file explaining the basis for the decision, unless the charging documents on their face show a material difference in facts and circumstances (such as a different ground of deportability).

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Legal Liability and Enforceability

The question of liability may arise in the implementation of this memorandum. Some INS personnel have expressed concerns that, if they exercise prosecutorial discretion favorably, they may become subject to suit and personal liability for the possible consequences of that decision. We cannot promise INS officers that they will never be sued. However, we can assure our employees that Federal law shields INS employees who act in reasonable reliance upon properly promulgated agency guidance within the agency's legal authority – such as this memorandum—from personal legal liability for those actions.

The principles set forth in this memorandum, and internal office procedures adopted hereto, are intended solely for the guidance of INS personnel in performing their duties. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Training and Implementation

Training on the implementation of this memorandum for DDs, CPAs, and Regional, District, and Sector Counsel will be conducted at the regional level. This training will include discussion of accountability and periodic feedback on implementation issues. In addition, following these regional sessions, separate training on prosecutorial discretion will be conducted at the district level for other staff, to be designated. The regions will report to the Office of Field Operations when this training has been completed.

EXHIBIT M

Proof of identity

When you apply for a Washington State driver license, instruction permit, or identification (ID) card, you must:

1. Be a Washington State resident.
2. Show us [proof of identity](#).
3. Provide your [Social Security number](#) if you're applying for a **driver license**.
 - o **If you don't have a Social Security number when you apply for a driver license, photo instruction permit, or ID card**, you'll need to show [proof of Washington residence](#).
4. Have your [photograph](#) taken.

1. Proof of identity

What you'll need

- [If you're under 18 years:](#)

Show us **1** of the options from the list below:

- **Option 1:** 1 "Stand-alone Document"
- **Option 2:** 2 "A-List Documents"
- **Option 3:** 1 "A-List Document" and 2 "B-List Documents"
- **Option 4:** At least 4 "B-List Documents", including:
 - o **1** from the list that has your name and date of birth, **and**
 - o **1** that has your name and signature.
- **Option 5:** A completed [Parental Authorization Affidavit](#).
 - o Your parent/guardian must come with you to sign the affidavit.
 - o Before signing the affidavit, your parent/guardian must show us **all** of the following:
 - All documents required to prove their identity. (Their Washington state driver license or U.S. passport.)
 - Proof that they're your parent/guardian. (Your certified birth certificate, adoption papers, or a school transcript with their name on it.)
 - o If your last name is different than your parent's or guardian's, **or** if their proof of identity is an out-of-state driver license **and** they don't have a Social Security number, we'll require more documents (A divorce decree or marriage certificate).

- [If you're 18–25 years old:](#)

Show us **1** of the options from the list below:

- **Option 1:** 1 "Stand-alone Document"
- **Option 2:** 2 "A-List Documents"
- **Option 3:** 1 "A-List Document" and 2 "B-List Documents"
- **Option 4:** At least 4 "B-List Documents", including
 - o **1** from the list that has your name and date of birth, **and**
 - o **1** that has your name and signature.
- **Option 5:** All of the following:
 - o 1 "B-List Document" with your **name and photo**, **or** your parent/guardian's verbal attestation.
 - o 1 "B-List Document" with your **name and date of birth**. (Your certified birth certificate, adoption papers, or Ward of the Court Decree/Order of Dependency.)
 - o Your Social Security number, **or** another 'B-List Document' with your **name and signature**.
 - o Your parent or guardian must prove their identity. (Washington state driver license or U.S. passport.)
 - o Your parent or guardian must prove they're your parent/guardian. (Your certified birth certificate, adoption papers, or a school transcript with the parent/guardian's name.)

- [If you're over 25 years old:](#)

Show us **1** of the options from the list below:

- **Option 1:** 1 "Stand-alone Document"

- **Option 2:** 2 "A-List Documents"
- **Option 3:** 1 "A-list Document" and 2 "B-List Documents"
- **Option 4:** At least 4 "B-List Documents" including:
 - 1 from the list of documents that have your name and date of birth, **and**
 - 1 showing your name and signature.
- If you're 18 or older and have been assigned court guardians:

You may prove your identity by coming to a driver licensing office with your parent or guardian and showing us **all** of the following:

 - All documents required to prove your parent or guardian's identity. (Their Washington state driver license or U.S. passport.)
 - A court document assigning guardianship.
 - 1 "B-List Document" that has your name and date of birth. (Your certified birth certificate, adoption papers, or Ward of the Court Decree/Order of Dependency.)
 - Your Social Security number.
- If you're enrolled in Job Corps:

Show us 1 of the options from the list below:

 - **Option 1:** 1 "Stand-alone Document"
 - **Option 2:** 2 "A-List Documents"
 - **Option 3:** 1 "A-List Document" and 2 "B-List Documents"
 - **Option 4:** At least 4 "B-List Documents", including
 - 1 from the list of documents that have your name and date of birth **and**
 - 1 showing name and signature.
 - **Option 5:** All of the following:
 - Your valid Job Corps ID card
 - Your Social Security number (we will verify it)
 - 1 "B-List Document" that has your name and date of birth (Your certified birth certificate, adoption papers, or Ward of the Court Decree/Order of Dependency).

Acceptable documents

- We only accept **original or certified copies** of the documents listed below.
- If you present multiple documents issued by a foreign government or organization, **and** we've approved of their issuance processes, we'll accept them as separate documents.
 - Currently, we accept multiple documents issued by:
 - Mexican government
 - Guatemalan government
- When necessary, we may ask for more documents.
- The list of acceptable documents may change without notice.
- Stand-alone Documents
 - **Washington State driver license, ID card, or instruction permit** — Valid or has expired within 1 year, has your signature, date of birth and photo.
 - **Out-of-state driver license, ID card, or instruction permit (if you have a Social Security number)** — Valid or expired within 60 days and has your photo. Also tell us your Social Security number so we can verify it.
 - **US armed services ID card with photo and signature.**
 - **US passport** — Valid, has your signature and photo (an emergency passport isn't acceptable).
 - **Immigration ID with signature** — Valid, from the United States Citizenship and Immigration Service, has your signature and photo (I-327, I-551, I-766) which are identifiable, or has a "Signature Waived" notation.
 - **U.S. Certificate of Citizenship or Naturalization** — An original with your signature and photo.
 - **Out-of-state Enhanced Driver License or Enhanced ID Card** — A valid US state other than Washington state, has your signature, date of birth, and photo.
 - **Department of Social and Health Services Children's Administration (DSHS CA) ID letter** —
If you're in:

- Court-ordered foster care with DSHS, **or**
- Another supervising Washington agency as your legal custodian, **then**
- You may prove your identity with an ID letter from DSHS CA.

- A-List Documents

- **Out-of-state driver license, ID card or instruction permit (if you don't have a Social Security number)** — Valid or has expired within 60 days **and** has your photo.
- **Driver license from a foreign country** — Valid or has expired within 60 days, has security features and is verifiable.
- **Federal or state employee ID card** — Valid, shows your signature and photo.
- **Foreign passport** — Valid and stamped US Customs and Border Protection (USCBP) entry form I-94/I94W or Temporary I-551 ADIT stamp.
- **Tribal enrollment ID card** —
 - Must be federally-recognized Indian tribal enrollment card, **or** US Bureau of Indian Affairs ID card
 - Must have your signature and photo.
- **Active-duty US military ID without signature** — Valid with no signature.
- **Immigration ID with encrypted signature** — Valid, from the United States Citizenship and Immigration Service (USCIS), and in the new format where your signature is encrypted.
- **Original US Certificate of Citizenship or Naturalization** Where your signature and photo aren't identifiable.
- **Verification letter** — If you're on work release, supervised by an agency, or in one of their eligible programs, you may provide a verification letter from any of the following agencies (we won't accept letters from any other sources):
 - Washington State Department of Corrections (electronic version only)
 - US Federal correction authorities
 - DSHS Juvenile Rehabilitation Administration
 - DSHS Children and Family Services
- **Washington city or county police employee ID card** — Valid, has your signature and photo.
- **US Passport Card** — Has your name and photo.

- B-List Documents

Documents that establish your name and date of birth

- Certified birth certificate.
- Certified Washington birth registration card.
- A valid concealed weapons permit issued by a Washington county.
- Consular report of birth abroad.
- Court-issued adoption papers.
- Military DD 214.
- US driver license or ID card (invalidated or expired within the past 5 years).
- US passport (expired within the past 5 years).
- Valid US visa.
- Veteran Administration ID with your name, photo, and date of birth.
- Ward of the Court decree/Order of Dependency.
- Washington State driver license or ID card (invalidated or expired within the past 5 years).

Other acceptable "B-List Documents" with your name and date of birth, signature, photo, or address

- Divorce decree that has your name and signature (filed with the county).
- Driving record from another state issued within the past 30 days.
- Foreign passport that has expired within 5 years, or without an I-94/I-94W form or temporary I-551 ADIT stamp.
- Foreign driver license expired not more than 5 years. The license must have security features and be verifiable.
- Valid Guatemala Consulate ID card.
- Marriage license or certificate (filed with the county).

- Medicare card.
- Valid Mexican Matricula Consular ID card.
- Mexican Federal Electoral Card issued 1991 or later.
- Mexican school record with a seal and your photo at the age when issued.
- Mortgage document or mortgage coupon payment book.
- Professional license (nurse, physician, engineer, etc.)
- Property deed or title (filed).
- Property tax bill or statement issued within the last 12 months.
- Selective Service card.
- School transcript includes your date of birth.
- Form I-20 for foreign exchange students.
- School yearbook with your recognizable photo.
- Social Security card with your signature. We'll verify it.
- Transportation Worker Credential (TWIC).
- US Merchant Mariner's card (valid or expired within the past 5 years).
- Vehicle title (not a super service title with a tamper-proof tape over the VIN and title number).

Foreign documents

If you present authentic foreign documents, we'll make every effort to read and interpret them. We may need to fax your document to another location. If no bilingual staff members are available, we may ask you to provide a certified English translation by an approved translator along with the original document.

Unaccepted documents

If we can't accept your identification documents, you may request an additional document review by speaking with the driver licensing office ID Review Specialist. If the specialist is unable to determine positive identification, we may refer your documents for further evaluation.

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2. Social Security number

You **must** provide your [Social Security](#) number to get a driver license.

- If you **don't have a Social Security number**, you may sign a declaration form and provide proof of Washington residence.
- If you're applying for a **Commercial Driver License (CDL)**, you must provide your Social Security number. We can't issue you a CDL if you don't have one.

Proof of Washington residence

If you **don't have a Social Security number**:

1. Bring **1 of the following documents** as proof you have a Washington residence address.
 - Home utility bill (gas, electric, water, garbage, land-line telephone, or ISTA, etc).
 - **Not acceptable:** cable, internet or satellite TV bills.
 - A college or university document that has your current residential address on file.
 - For **off-campus students**: Bring the printout from the SEVIS database which has **all** of the following:
 - Your address
 - Is in a sealed envelope with the college return address
 - Proof it was printed by the "Designated School Official" or "Responsible Officer."
 - WA Department of Corrections (DOC) electronic ID Letter that has your current residential address.
 - Selective Service card with your current residential address.
 - Vehicle title (not a super service title with a tamper proof tape over the VIN and Title number).
 - Bank-issued documents, for the last 30 days which include your current residential address, such as:
 - Account statement
 - Credit card statement
 - Mortgage statement

Note: Your documents must include your **name** and **current Washington residential address**. **It's illegal to present fraudulent documents**. If we find that your documents are fraudulent, you won't be able to reapply for 364 days.

2. When you apply, you'll get a handout with instructions for completing the application process.
3. Within 2 weeks, we'll send you a letter and form to request an appointment with us to review your documents.
4. Complete the form and send it back to us by mail or fax following the instructions on the form.
5. We'll call you to schedule an appointment, and meet with you to verify your proof of Washington residence.
6. After we verify your Washington residence address, we'll issue your driver license, photo instruction permit, or ID card.

How your Social Security number is used

Your Social Security number (SSN) is used to help enforce child support laws. We'll verify your SSN with the Social Security Administration. Your SSN doesn't appear on your driver license.

Related laws

- [RCW 26.23.150](#): Recording of social security numbers — Compliance with federal requirement — Restricted disclosure.
- [RCW 46.25.070](#): Application — Change of address — Residency — Hazardous materials endorsement.
- [42 CFR 405](#): Evidence, procedure, and certification for payments.
- [42 CFR 666\(a\)\(13\)](#): Recording of social security numbers in certain family matters.
- [49 CFR 383.153](#): Commercial driver's license document; Information on the document and application.

3. Your photograph

Your new license, instruction permit, or ID card will include a photo of the front view of your face.

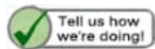
Before we take your photo, we'll ask you to remove anything that covers your face or head (like a hat or sunglasses). If you choose not to remove it, your license will be marked "Not Valid for Identification." We'll make exceptions for medical and religious reasons.

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[Proof of citizenship, identity, and residence: EDL/EID](#) (for enhanced driver license or enhanced ID card)

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STAY CONNECTED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

)	
Georgia Latino Alliance for Human)	
Rights, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 1:11-cv-1804-TWT
v.)	
)	
Governor Nathan Deal, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

This matter comes before the Court on the Plaintiffs’ Motion for a Preliminary Injunction to enjoin all Defendants from enforcing Georgia’s House Bill 87 (“HB 87”). Having considered the parties’ papers filed in support and in opposition to the motion, as well as oral arguments, the Court rules as follows:

Plaintiffs are likely to succeed on the merits of their claim that HB 87 violates the United States and Georgia Constitutions, including the Supremacy Clause, the Fourth Amendment, the constitutional right to travel, and the separation-of-powers requirement of Article I, Section II, Paragraph 3 of the Georgia Constitution. Plaintiffs have demonstrated that they will suffer irreparable injury by being subjected to the enforcement of an unconstitutionally preempted state law as well as a law that violates their constitutional protection against unreasonable searches and seizures, infringes on the constitutional right to travel,

and undermines Georgia's separation of powers. Defendants, on the other hand, will suffer no real harm from delay in enforcement of HB 87 pending final resolution of this action. Plaintiffs have demonstrated that the balance of hardships tips strongly in their favor; and that a preliminary injunction advances the public interest in preventing the enforcement of unconstitutional laws.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiffs' Motion for Preliminary Injunction be GRANTED
2. Until such time as the Court makes a final ruling on the merits, or until further ordered from the Court, the Defendants and their officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them are HEREBY ENJOINED AND RESTRAINED from giving any effect to or otherwise taking action to enforce HB 87.

This order is effective immediately, and shall continue in effect until this Court enters a final judgment in this action or otherwise lifts the preliminary injunction.

Dated: June ____, 2011

United States District Judge