

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

JANE ROE 1,
JANE ROE 2,
JANE ROE 3 ON BEHALF OF HERSELF AND HER
MINOR CHILDREN,
JANE ROE 4 AND JOHN DOE 1 ON BEHALF OF
THEMSELVES AND THEIR MINOR CHILDREN,
RUBIN OCHOA CONTRERAS,
JOSE BARRIENTOS,
HUGO GIRON,
JANE ROE 5 AND JOHN DOE 2, ON BEHALF OF
THEMSELVES AND THEIR MINOR CHILD,
JANE ROE 6 ON BEHALF OF HERSELF AND HER
MINOR CHILDREN,
JANE ROE 7,
JANE ROE 8,
LISANDRO VIGIL,
TULIO DIAZ,
YOLANDA LEMUS, and
WOODBIDGE WORKERS COMMITTEE;

Plaintiffs,

v.

PRINCE WILLIAM COUNTY,

COREY A. STEWART, MARTIN E. NOHE,
WALLY COVINGTON, MAUREEN S. CADDIGAN,
JOHN T. STIRRUP, JOHN D. JENKINS,
MICHAEL C. MAY, and HILDA M. BARG,
all in their official and individual capacities;

CHARLIE T. DEANE and CRAIG S. GERHART,
in their official capacities.

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiffs, by and through their undersigned Attorneys, bring this action challenging Prince William County Resolution No. 07-609 (“the Resolution”) under the United States Constitution, federal statutes, and the laws of Virginia and seeking declaratory, injunctive and related relief to halt its implementation and enforcement, and allege as follows:

PRELIMINARY STATEMENT

The United States is currently engaged in a national debate over the country’s immigration policy. On the one side of the debate are those who believe that the federal government inadequately enforces immigration laws and fails to provide sufficient resources to prevent the unlawful entry of immigrants into the country. They advocate for more border walls, more deportations, and more fines on employers who hire undocumented immigrants. On the other side of the debate are those who believe that our country has historically benefited from successive generations of immigrants, including undocumented aliens who fulfill labor needs and contribute billions to federal, state, and local tax coffers. They advocate for creating an easier path to citizenship, granting more immigrant visas, and improving and adding guest worker programs that will remove the taint of illegitimacy for millions. The views of many other Americans are somewhere in the middle. The debate is passionate, dynamic, and multi-faceted. It takes place at America’s dining room tables and in classrooms, boardrooms, and courtrooms. The debate has prominence in the United State Congress – the proper arbiter of this policy dispute. Congress has been working towards the enactment of a fair policy to reform current immigration laws, one that takes into account the concerns stemming from illegal immigration while also recognizing both the value that immigrants add to America’s economy and the lack of government resources necessary to deport these individuals.

Rather than recognize the federal government's exclusive authority to regulate immigration in the United States and wait for a solution from Congress, the Board of County Supervisors of Prince William County, Virginia ("the County Board") has passed an immigration regulation that directly conflicts with federal and Virginia law in an apparent attempt to curtail immigrant growth in its community. On July 10, 2007, the County Board passed Resolution No. 07-609, (attached hereto as Exhibit A) mandating that local police inquire into the citizenship or immigration status of any individual who is detained and requiring that the local police department create general orders establishing standards for when and how such inquiry should be made. The Resolution further authorizes any County-level entity or employee to gather, maintain and share its own information regarding the immigration status of any individual seeking benefits, for the purpose of determining to whom benefits can be denied. The effect of enforcing this unconstitutional and discriminatory Resolution will be dramatic. Indeed, enforcement will subject citizens, lawful permanent residents, and aliens with permission to be in the United States to unnecessary government intrusion and will violate their right to equal protection under the laws of the United States.

On its face, the Resolution is a poor attempt by the County Board to circumvent federal law and regulate immigration according to its own rules. Under the United States Constitution, the power to regulate immigration resides in the federal government—not local county legislative bodies. Accordingly, Congress has specifically and comprehensively occupied the field with respect to immigration regulation and civil immigration enforcement. The federal immigration scheme is the supreme law of the land and cannot be changed, supplemented, contradicted, or frustrated by state or local action. Thus, the Resolution passed by the County Board and the resulting General Orders 45.01 and 45.02 violate the Supremacy Clause of the

U.S. Constitution and the laws of the Commonwealth of Virginia. Accordingly, the Resolution must be struck down in its entirety.

In addition, the Resolution, as enforced by General Order 45.01 and 45.02, allows police officers to use race, color, and ethnicity as a factor in determining whether the officer should further investigate the immigration status of an individual. As such, the Resolution and General Orders violate the Equal Protection Clause of the 14th Amendment and should be struck down.

NATURE OF ACTION

1. Plaintiffs bring this proceeding for declaratory relief, and a permanent injunction under 28 U.S.C. § 2201, 42 U.S.C. § 1983, and Federal Rule of Civil Procedure 65, for the purpose of determining the actual controversy of whether the Resolution enacted by the County violates the Supremacy Clause of the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Code of Virginia.

JURISDICTION AND VENUE

2. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 2202.

3. This Court has supplemental jurisdiction under the Constitution of the Commonwealth of Virginia pursuant to 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over the County, which is located in the Eastern District of Virginia.

5. This Court has personal jurisdiction over the individual defendants, who all reside in the Eastern District of Virginia.

6. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. § 1391(a) in that the County is subject to personal jurisdiction within the Eastern District of

Virginia, and the events which give rise to this action occurred within the Eastern District of Virginia.

PARTIES

Individual Plaintiffs

Jane Roe 1

7. Plaintiff Jane Roe 1 is a resident of Prince William County and of Guatemalan national origin.

8. Plaintiff Roe 1 was petitioning for lawful status in the United States through her U.S. citizen husband, with whom she has a three-year-old son, but her husband began to physically abuse her and threaten to withdraw as her sponsor for adjustment of status.

9. Plaintiff Roe 1 has since separated from her husband and has submitted an application for immigration status based on spousal abuse under the Violence Against Women Act (“VAWA”). Her application is currently pending.

10. Unless the Resolution is enjoined, Plaintiff Roe 1 will likely be asked to demonstrate proof of her lawful status due to her racial and ethnic identity while traveling through the County as a motorist or a passenger in a vehicle in the County, or as a resident engaged in ordinary activities using the County’s services.

11. If detained by Prince William County police officers, or during an encounter with Prince William County employees while seeking to utilize the County’s services, Jane Roe 1 would not have any documents to confirm that she is entitled to remain in the United States while her VAWA application is pending. Accordingly, she is concerned that she may be unlawfully detained by the police or unfairly denied benefits or services by County employees.

Jane Roe 2

12. Plaintiff Jane Roe 2 is a resident of Prince William County, also originally from Guatemala. Plaintiff Roe 2 has a pending application for immigration status based on spousal abuse under VAWA.

13. The federal government had granted her employment authorization while her application is pending, but her employment authorization document expired in June 2007 and a renewal application is pending.

14. Unless the Resolution is enjoined, Plaintiff Roe 2 will likely be asked to demonstrate proof of her lawful status due to her racial and ethnic identity while traveling through the County as a motorist or a passenger in a vehicle in the County, or as a resident engaged in ordinary activities using the County's services.

15. If Plaintiff Roe 2 is stopped by Prince William County police officers or encountered Prince William County employees in the course of attempting to utilize the County's services, Jane Roe 2 would not have any documents to confirm that she is entitled to remain in the United States while her VAWA application is pending. Accordingly, she is concerned that she may be unlawfully detained by the police or unfairly denied benefits or services by County employees.

Jane Roe 3 and Her U.S. Citizen Children

16. Plaintiff Jane Roe 3 is a resident of Prince William County and an undocumented immigrant.

17. Plaintiff Roe 3 is 26 years old and has lived in Prince William County since she was nine years old. As such, Plaintiff Roe 3 has deep roots in the Prince William County

community. Since the passage of the Resolution, however, Plaintiff Roe 3 no longer feels safe and secure in Prince William County.

18. She no longer enjoys traveling through the County, visiting the area shopping mall, or shopping at the grocery store because she is afraid that she and her family will be targeted by the police or by anti-immigrant members of the community.

19. As a result of the tension created in the community by the passage of the Resolution and her constant fear, Plaintiff Roe 3 cries frequently and has difficulty sleeping. Plaintiff Roe 3 distrusts the police and is afraid that they will not provide her and her family with protection.

20. Plaintiff Roe 3 works in real estate and also volunteers for a non-profit organization that seeks to improve the welfare of Latino immigrants. She answers calls from the organization's hotline from other similarly situated immigrants living in Prince William County, some of whom recount being harassed by members of the community since the passage of the Resolution.

21. Plaintiff Roe 3 is married to an undocumented immigrant, and they have two U.S. citizen children, ages 5 and 9 respectively. Plaintiff Roe 3's 9 year old daughter is afraid that her parents will be deported and she is upset that her parents are being classified as criminals. As a result, Plaintiff Roe 3's daughter cries frequently. Like similarly situated children of undocumented parents, Plaintiff Roe 3's children live in constant fear of sudden or forced separation from their parents.

22. Plaintiff Roe 3 owns rental properties in Prince William County and is concerned about losing income as a result of her tenants' announcement that they plan to leave the jurisdiction at the end of the year out of fear of the Resolution.

Jane Roe 4, John Doe 1, and their U.S. Citizen Children

23. Plaintiff Jane Roe 4 and John Doe 1 are married and reside in Prince William County. Plaintiff Roe 4 and Doe 1 were both born in El Salvador and arrived in the United States in 1994.

24. Plaintiff Roe 4 is an undocumented immigrant.

25. The federal government granted Plaintiff Doe 1 permission to remain in the United States by granting him Temporary Protected Status (“TPS”) in 2001, and has renewed his temporary work authorization approximately every eighteen months since then. Plaintiff Doe 1’s application as a Legal Permanent Resident (“LPR”) is currently pending. Plaintiff Doe 1 is concerned that if he does not receive his “green” card soon, he will have no valid documentary proof of his “lawful presence” in the United States even though the federal government has granted him such lawful status.

26. Unless the Resolution is enjoined, Plaintiff Doe 1 will likely be asked to demonstrate proof of his lawful status due to his racial and ethnic identity while traveling through the County as a motorist or a passenger in a vehicle in the County, or as a resident engaged in ordinary activities using the County’s services.

27. Plaintiff Doe 1 indeed fears that a police officer may stop him based on an officer’s belief or perception of Plaintiff Doe 1’s legal status and ask him to demonstrate proof of his lawful status due to his racial and ethnic identity. Plaintiff Doe 1 further fears that if questioned by Prince William County police officers or other County employees, he may not be able to sufficiently describe or provide proof of his immigration status, and, accordingly, may be needlessly, unlawfully detained or denied services to which he is entitled.

28. Plaintiff Roe 4 and Doe 1 have two daughters who were both born in the United States and are U.S. citizens. Plaintiff Roe 4 and Doe 1's daughters are ages 7 and 9, and both attend public school in Prince William County.

29. Since the passage of the Resolution, Plaintiff Roe 4 is afraid to put her daughters on a school bus, participate in school activities, or take her daughters to the Prince William County public parks and libraries for fear of being targeted by police officers or other County employees because of her ethnicity, race, and/or color.

30. As a result of the Resolution, Plaintiff Roe 4's daughters are being deprived of their right to enjoy the range of public services available to Prince William County residents, and the Resolution has interfered with their right to have their mother participate in their care, education, and development.

31. The Resolution has also interfered with Plaintiff Roe 4's right to participate in the care, education, and development of her children. Moreover Plaintiff Roe 4 and Doe 1's daughters are worried about the effect of the Resolution on their parents, and the risk that their parents will be detained or deported.

32. Plaintiff Roe 4 and Plaintiff Doe 1 also jointly own two residential properties in Prince William County, one of which they rent to individuals. Upon information and belief, Plaintiff Roe 4 and Doe 1 have lost at least one tenant due to the Resolution, and are at risk of losing additional tenants and rental income.

Rubin Ochoa Contreras

33. Plaintiff Rubin Ochoa Contreras is a resident of Prince William County and has been a Lawful Permanent Resident ("LPR") of the United States since February 2007.

34. Plaintiff Contreras was born in Venezuela in 1968 and has lived in the U.S. for the past eight years.

35. Plaintiff Contreras is not proficient in the English language, but is attending English classes in the evenings in an effort to become proficient.

36. Unless the Resolution is enjoined, Plaintiff Contreras will likely be asked to demonstrate proof of his lawful status due to his racial and ethnic identity while traveling through the County as a motorist or a passenger in a vehicle in the County, or as a resident engaged in ordinary activities using the County's services.

37. Plaintiff Contreras fears that if questioned by Prince William County police officers or other County employees, because of his limited English proficiency, he may not be able to effectively communicate with the officers or other County employees, and, accordingly, may be needlessly, unlawfully detained or denied benefits or services to which he is entitled.

José Barrientos

38. Plaintiff José Barrientos is a resident of Culpepper County and works in Prince William County. Plaintiff Barrientos was born in El Salvador in 1970 and immigrated to the United States as a young adult.

39. Plaintiff Barrientos is authorized by the Federal Government to live and work in the United States.

40. Plaintiff Barrientos is concerned about his ability to travel freely to and from Prince William County as a result of the passage of the Resolution.

41. Unless the Resolution is enjoined, Plaintiff Barrientos will likely be asked to demonstrate proof of his lawful status due to his racial and ethnic identity while traveling

through the County as a motorist or a passenger in a vehicle in the County, or as a resident engaged in ordinary activities using the County's services.

42. Plaintiff Barrientos fears that if questioned by Prince William County police officers or other County employees, he may not be able to effectively describe or prove his lawful status, and, accordingly, may be needlessly, unlawfully detained or denied benefits or services to which he is entitled.

43. Moreover, Plaintiff Barrientos, who works as a realtor and tax preparer, has noticed a decline in his business since the passage of the Resolution.

44. Based upon information and belief, Plaintiff Barrientos attributes this loss of business to his clientele moving out of Prince William County as a result of the Resolution.

Hugo Giron

45. Plaintiff Hugo Giron is a resident of Prince William County. Plaintiff Giron was born in Guatemala in 1977 and he has a U.S. citizen son who was born in the U.S. in 1997.

46. Plaintiff Giron has been granted "Temporary Protected Status" ("TPS") by the federal government and his adjustment application to become a "Legal Permanent Resident" ("LPR") is currently pending.

47. While his application is pending, the federal government has issued Plaintiff Giron an employment authorization document, which authorizes him to work in the United States.

48. Unless the Resolution is enjoined, Plaintiff Giron will likely be asked to demonstrate proof of his lawful status due to his racial and ethnic identity while traveling through the County as a motorist or a passenger in a vehicle in the County, or as a resident engaged in ordinary activities using the County's services.

49. Plaintiff Giron fears that if questioned by Prince William County police officers or other County employees, he may not be able to effectively describe or prove his lawful status, and, accordingly, may be needlessly, unlawfully detained or denied benefits or services to which he is entitled.

50. Plaintiff Giron also owns three properties in Prince William County, two of which he has rented out as residences for the past several years to immigrant tenants. After the Resolution was passed, tenants in the two rental properties gave Plaintiff Giron their notice and moved out of Prince William County, citing the passage of the Resolution as their reason for leaving the area.

51. As a result, Plaintiff Giron has suffered economic loss and may be forced to sell his rental properties at a loss due to the soft housing market.

52. Plaintiff Giron also runs a landscaping business in Prince William County. After the Resolution was passed, a number of his immigrant clients moved out of Prince William County citing the passage of the Resolution as a reason for their moves. As a result, Plaintiff Giron has lost business and has suffered economic loss.

53. In addition, Plaintiff Giron's quality of life has deteriorated since the passage of the Resolution. Plaintiff Giron feels that residents of Prince William County have grown antagonistic and unwelcoming towards him and his son. Plaintiff Giron has told his U.S. citizen son that unless the Resolution is rescinded, that he and his son may have to leave the United States.

Jane Roe 5, John Doe 2, and their U.S. Citizen Children

54. Plaintiff Jane Roe 5 is a U.S. citizen resident of Prince William County. Plaintiff Roe 5 is married to Plaintiff John Doe 2, an undocumented immigrant.

55. Plaintiff Roe 5 and Doe 2 have a U.S. citizen son who was born in the United States in 2001.

56. Plaintiff Roe 5 is a homemaker and relies on her husband for financial support. Plaintiff Roe 5 is concerned for the safety, well-being, and financial sustainability of her family if the Resolution remains in effect.

57. If the implementation and enforcement of the Resolution is not halted, Plaintiff Roe 5 will likely move her family from Prince William County.

Jane Roe 6 and her U.S. Citizen Daughter

58. Plaintiff Jane Roe 6 is a resident of Prince William County and an undocumented immigrant from Mexico. Plaintiff Roe 6 was born in 1981 and immigrated to the United States in 1998.

59. Plaintiff Roe 6 is a single mother caring for her U.S. citizen daughter who was born in the United States in 2000.

60. Plaintiff Roe 6's daughter attends public school in Prince William County. Because of the Resolution, Plaintiff Roe 6 is afraid to participate in her daughter's school activities for fear that school officials will inquire into her immigration status.

61. Plaintiff Roe 6's daughter fears that the police may take her mother and send her to Mexico because she has heard this on television. Plaintiff Roe 6's daughter is preoccupied by this and says she will not go on school trips or even go to the library because her mother cannot accompany her.

62. Plaintiff Roe 6 is afraid of having to seek health and mental health services for her daughter out of concern that County employees will inquire into her immigration status.

63. The Resolution has not only interfered with Plaintiff Roe 6's right to participate in the care, education and development of her child, but has interfered with Plaintiff Roe 6's daughter's right to have her mother participate in her care, education and development.

Jane Roe 7

64. Plaintiff Jane Roe 7 is a resident of Prince William County. Plaintiff Roe 7 was born in El Salvador in 1981 and became a U.S. citizen in 2004. Plaintiff Roe 7 is married to an undocumented immigrant.

65. On August 6, 2007, Plaintiff Roe 7 was denied charitable food supplies at the Vineyard Christian Fellowship church in Woodbridge, Virginia, because she could not provide proof of immigration status. A church volunteer asked for documentation as to Plaintiff Roe 7's immigration status, citing the Resolution, and denied her supplies when Plaintiff Roe 7 had no documentary proof that she was a U.S. citizen.

66. Plaintiff Jane Roe 7 is concerned that if the Resolution is not enjoined, the Prince William County community will grow more antagonistic towards individuals of Hispanic descent.

Lisandro Vigil

67. Plaintiff Lisandro Vigil is a resident of Prince William County and has Temporary Protected Status ("TPS"). Plaintiff Vigil was born in El Salvador, and was granted TPS status by the federal government.

68. Plaintiff Vigil has a work authorization card, which expired on September 30, 2007. This work authorization card serves as Mr. Vigil's proof that the federal government has given him permission to work in the United States. Mr. Vigil has submitted his application to renew his work authorization, but has yet to receive his renewal letter from the federal

government. Without an unexpired work authorization document, Mr. Vigil is not able to demonstrate his lawful status to a local official or police officer if asked.

69. Plaintiff Vigil is married and has a U.S. citizen child born in the United States.

Tulio Diaz

70. Plaintiff Tulio Diaz, a Latino U.S. citizen, was born in Puerto Rico in 1943 and moved to the United States in 1968. Plaintiff Diaz has lived in Prince William County for over thirty-five years.

71. As a U.S. citizen, neither federal nor state law requires him to carry proof of lawful status on his person, nor does he carry a U.S. passport or any other proof of his U.S. citizenship and nationality.

72. Nevertheless, unless the Resolution is enjoined, Plaintiff Diaz fears that, due to his race, color and ethnicity, he will be asked to demonstrate proof of his lawful status due to his racial and ethnic identity while traveling through the County as a motorist or a passenger in a vehicle in the County, or as a resident engaged in ordinary activities using the County's services.

Yolanda Lemus

73. Plaintiff Yolanda Lemus, who was born in El Salvador and immigrated to the United States, is now a naturalized U.S. citizen and resident of Prince William County.

74. As a U.S. citizen, neither federal nor state law require that she carry proof of her lawful status on her person, nor does she carry a U.S. passport, naturalization certificate, or any other proof of her U.S. citizenship and nationality.

75. Nevertheless, unless the Resolution is enjoined, Plaintiff Lemus fears that, due to her race, color and ethnicity, she will be asked to demonstrate proof of her lawful status due to

her racial and ethnic identity while traveling through the County as a motorist or a passenger in a vehicle in the County, or as a resident engaged in ordinary activities using the County's services.

Woodbridge Workers Committee

76. Plaintiff Woodbridge Workers Committee ("WWC") is a tax-exempt 501(c)(3) located in the Northern Virginia region.

77. WWC is comprised of several hundred immigrant day laborers and a base of community volunteers. The Woodbridge day laborers have overwhelmingly recognized the WWC as their official representative organization by electing representatives and actively participating in the organization.

78. The WWC Board of Directors, elected by the membership, functions through regular democratic decision-making meetings. The WWC works to obtain justice and dignity for immigrant workers by observing principles of solidarity, unity, and mutual respect.

79. The vast majority of WWC's members are immigrants, both documented and undocumented, from Latin America.

80. As a result, WWC's members have Latino surnames, speak with accents, may appear or sound foreign owing to their national origin and ancestry, and fear that they will be targeted and adversely affected by the Resolution.

81. WWC's members fear that, due to their race, color, national origin, and accents and/or weak English language skills, they will be detained and subjected to interrogation regarding their immigration status.

82. The interests that WWC seeks to protect are germane to its purpose, and neither the claims asserted nor the relief requested herein require the participation of WWC's members.

83. After the passage of the Resolution, the WWC became concerned that it was a discriminatory resolution with the intent and potential effect of discouraging Latino families from residing in Prince William County.

84. The WWC organized multiple informational meetings to educate hundreds of Prince William County residents and distributed educational materials to the community describing the complicated provisions of the Resolution.

85. The passage of this Resolution has interfered and continues to interfere with the WWC's efforts and programs, and the County has frustrated and continues to frustrate the WWC's mission of obtaining justice and dignity for its immigrant worker members.

86. The County's actions have injured and will continue to injure the WWC. The WWC has been damaged by having to divert significant resources from other, planned programs involving counseling, education, outreach, and referral services to immigrant workers. Instead, the WWC has devoted substantial resources, including staff time, to identify and educate the Latino community in an attempt to allay the fears within the community, and organizing support for the Resolution's repeal.

Defendants

87. Defendant Prince William County ("PWC") is a county existing pursuant to Virginia law, with its principal place of business located at 1 County Complex Court, Prince William, Virginia, 22192.

88. Defendant Corey A. Stewart is a resident of Virginia. Mr. Stewart is a member of the County Board of County Supervisors in Prince William County, Virginia.

89. Defendant Martin E. Nohe is a resident of Virginia. Mr. Nohe is a member of the County Board of County Supervisors in Prince William County, Virginia.

90. Defendant Wally Covington is a resident of Virginia. Mr. Covington is a member of the County Board of County Supervisors in Prince William County, Virginia.

91. Defendant Maureen S. Caddigan is a resident of Virginia. Ms. Caddigan is a member of the County Board of County Supervisors in Prince William County, Virginia.

92. Defendant John T. Stirrup is a resident of Virginia. Mr. Stirrup is a member of the County Board of County Supervisors in Prince William County, Virginia.

93. Defendant John D. Jenkins is a resident of Virginia. Mr. Jenkins is a member of the County Board of County Supervisors in Prince William County, Virginia.

94. Defendant Michael C. May is a resident of Virginia. Mr. May is a member of the County Board of County Supervisors in Prince William County, Virginia.

95. Defendant Hilda M. Barg is a resident of Virginia. Ms. Barg is a member of the County Board of County Supervisors in Prince William County, Virginia.

96. Defendant Chief Charlie T. Deane is a resident of Virginia. Chief Deane is the commanding officer of the Prince William County Police Department. As Chief of Police, Chief Deane has been charged with overseeing the development of appropriate standards for the determination of probable cause to believe that a person is not lawfully present in the United States.

97. Defendant Craig S. Gerhart is a resident of Virginia. Mr. Gerhart is the County Executive of Prince William County. As County Executive, Mr. Gerhart was charged in the Resolution with providing the Board with a work session that would assist the County Board in identifying which local public benefits it could lawfully deny to undocumented immigrants.

**THE REGULATION OF CITIZENSHIP AND IMMIGRATION MATTERS IS THE
EXCLUSIVE PROVINCE OF THE FEDERAL GOVERNMENT**

98. The power to regulate immigration is unquestionably reserved to the Federal government.

99. This power is derived from various sources, including the Federal government's power under the U.S. Constitution to establish a uniform rule of naturalization, its power to regulate Commerce with foreign nations, and its broad authority over foreign affairs.

100. Article VI, Section 2 of the United States Constitution states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

101. Moreover, Article I, Section 8, Clauses 3 and 4 of the United States Constitution states that the federal government has the power to “establish a uniform Rule of Naturalization” and to “regulate Commerce with foreign Nations.”

102. Indeed, the Supreme Court of the United States has held that the federal government's power to control immigration is inherent in the nation's sovereignty.

103. With the enactment of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*; 8 C.F.R. § 1 *et seq.*, Congress fully occupied the field of immigration regulation and sought a complete ouster of state power over the direct enforcement of its civil provisions.

104. The INA created a comprehensive statutory and regulatory scheme that regulates the terms and conditions of admission to the United States, the length of stay, the residence status of aliens, the removal and deportation of aliens, and the manner in which federal immigration law will be enforced.

Only The Federal Government May Set Classification Standards

105. The federal government has established a comprehensive system of administrative agencies, statutes, regulations, and procedures to determine, subject to judicial review, whether and under what conditions aliens may enter, live, work in the United States -- and, if desired, become citizens thereof.

106. The federal government has chosen to allow certain non-citizens to remain in the United States, even though such persons may not have valid immigrant (permanent) or non-immigrant (temporary) status and/or may otherwise be removable or subject to deportation under the Federal Immigration and Nationality Act. *See* 8 U.S.C. § 1229b. For example, under federal law, various categories of persons can receive permission from the federal government to work, stay, and reside in the United States even though they may have been or may be violating immigration laws. In addition, persons with pending applications to adjust to a lawful status are often permitted to remain in the United States despite a lack of valid immigrant status, such as domestic violence victims seeking lawful status under VAWA. 8 U.S.C. § 1229b(b)(2).

107. Determinations of who may continue living in the United States are within the exclusive province of the federal government – and any attempt by state or local officials to usurp that function constitutes an inappropriate interference with a federal function.

108. State and local officials may not create their own standards to assess an alien's immigration status, as the formulation of such a standard amounts to essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain, regardless of whether this results in the actual deportation of any particular alien. Thus, formulating a legal immigration standard is a regulation of immigration that states cannot make, given that this power belongs exclusively to the federal government.

The Federal Government Has Limited the Assistance State and Local Officers Can Provide in the Enforcement of U.S. Immigration Laws

109. State and local officers may not assist with the enforcement of federal civil immigration law, unless specifically authorized by the federal government. For example, 8 U.S.C. § 1357(g) permits certain authorized individual state and local law enforcement officers to exercise the investigation and arrest powers of federal immigration officers, but only after first entering into an agreement with ICE and only after the authorized individual officer receives training from the federal government regarding the enforcement of immigration law.

110. When the federal government establishes statutory rules and regulations concerning the rights, privileges, and obligations or burdens of aliens, the statute and regulations are the supreme law of the land. No state or locality can add to or take away from the force and effect of such a statute or regulation.

AUTHORITY OF THE PRINCE WILLIAM COUNTY BOARD OF COUNTY SUPERVISORS AND POLICE FORCE

Governing Municipal and State Law

111. Under Virginia law, the County Board may provide for the protection of its inhabitants and property and for the preservation of peace and good order therein. Va. Code. Ann. § 15.2-1700.

112. To accomplish this objective, the County Board may enact any law that it deems expedient to secure and promote the health, safety and general welfare of its inhabitants, Va. Code. Ann. § 15.2-1200, including the establishment of a local police force, Va. Code. Ann. § 15.2-1701.

113. The County Board may act upon adoption of a resolution or ordinance. Rules of Procedure, Board of County Supervisors, Prince William County, Virginia, Section C.3(b).

114. Any resolution or ordinance passed by the County, however, cannot violate any provision of the United States Constitution, the laws of the United States, the Constitution of the Commonwealth of Virginia, or the laws of the Commonwealth. Va. Code. Ann. § 1-248; Va. Code. Ann. § 15.2-1427(c).

115. Nor can the County Board enact any resolution that confers more power than the United States Constitution, the laws of the United States, the Constitution of the Commonwealth of Virginia, or the laws of the Commonwealth of Virginia.

116. Instead, the County Board may only exercise those powers that are expressly granted, those powers necessary or fairly implied in or incident to the express powers, and essential powers that are indispensable to the objects and purposes of the County Board.

117. Furthermore, any resolution cannot conflict with public policy of the Commonwealth of Virginia.

County Board Procedure for Enacting Resolution

118. In Prince William County, the County Board is the only legislative body which may pass a resolution.

119. In order for a resolution to go into effect, a majority of the County Board must vote to adopt the resolution.

The Authority of the County Police

120. Virginia Code only invests limited authority and responsibilities to members of local police forces. *See* Va. Code Ann. § 15.2-1704.

121. This authority includes “the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.” *Id.*

122. With the exception of a few limited areas not relevant to the case at hand, a local police officer has no authority in civil matters. *See id.*

THE PASSAGE OF THE RESOLUTION

Proponents of the Resolution

123. The idea for and language of the Resolution was the result of a collaborative effort between the Prince William County Board of Supervisors and a number of nativist and anti-immigrant organizations located in Prince William County and the Greater Washington Metro area.

124. Upon information and belief, the County Board received assistance from a number of anti-immigrant groups, including the Immigration Reform Law Institute (IRLI), and its parent organization, the Federation of American Immigration Reform (FAIR), in drafting the Resolution. Both IRLI and FAIR are organizations whose sole mission it is to promote restrictionist immigration policy.

125. Furthermore, Supervisor John T. Stirrup, the sponsor of the Resolution, has publicly acknowledged the assistance he received from an anti-illegal immigrant organization of which he is allegedly a member, in drafting the Resolution.

Opposition to the Passage of the Resolution

126. Upon information and belief, on June 5, 2007, County Supervisor John T. Stirrup requested a copy of Police Department General Order 26.05, which relates to the Police Department's policy and practice of assisting the enforcement of federal immigration laws. Supervisor Stirrup requested General Order 26.05 as part of the County Board's investigation into its options for passing a resolution or ordinance that would address the County's perceived immigration "problem."

127. Police Department General Order 26.05 (attached as Exhibit B) recognized that “the enforcement of our nation’s immigration laws is the primary responsibility of the US Immigration and Customs Enforcement (“ICE”) and that Prince William County police officers have “no statutory authority to arrest undocumented immigrants for violation of Federal immigration laws.” The Order further noted that the Prince William County Police Department would not carry out immigration-related investigations nor routinely make inquiries into the immigration status of persons encountered during police operations.

128. On June 15, 2007, Chief of Police Charlie Deane, in a letter responding to Mr. Stirrup’s request to view General Order 26.05 (attached as Exhibit C), contested the County Board’s characterization that Prince William County is a sanctuary for undocumented immigrants and expressed his disapproval for the passage of any resolution that would require police officers to enforce Federal immigration laws.

129. Chief Deane noted several main concerns with any such resolution. First, he warned that police resources are limited and are better spent on crime control and ensuring public safety.

130. Second, Chief Deane highlighted the potential chilling effect that the Resolution could have on crime reporting, law enforcement relations, and victim/witness cooperation, three key factors that relate to the police department’s ability to maintain a safe community in Prince William County. Chief Deane explained that crime reporting and victim/witness cooperation was an important issue in the immigrant community as 40% of the robberies and two of the murders that occurred in Prince William County in the past year involved immigrant victims, with most occurring at the hands of non-immigrant predators. As a

result, he believed that if the County Board were to pass any such resolution, fewer immigrants will be willing to report crimes or cooperate with police in conducting criminal investigations.

131. Finally, Chief Deane worried that holding individuals in jail solely on a violation of a Federal civil immigration charge will seriously cripple the already overcrowded jail system in the County.

132. On June 26, 2007, Supervisor John Stirrup introduced the first public draft of a resolution (attached as Exhibit D) targeting the presence of undocumented immigrants in Prince William County. The draft resolution was revised and reintroduced at a County Board meeting held on July 10, 2007.

133. At the July 10 meeting, Chief Deane again pointed out the likely adverse impact the passage of the Resolution would have on the effectiveness of the police force. (See Exhibits D & E).

134. First, Chief Deane recognized that local police officers have almost no authority to hold suspected undocumented immigrants based solely on a violation of civil immigration law.

135. Second, Chief Deane warned that the passage of the Resolution would actually make the community less safe. Chief Deane explained that the passage of the Resolution would, among other things, end community policing efforts, diminish trust between the public and the police, increase the perception of racism and tarnish the Police Department's image, marginalize youth causing an increase in youth crime and gang participation, and possibly cause an increase in vigilantism. He specifically warned against the creation of a class of silent victims and witnesses, whose fear of coming forward would allow perpetrators of crimes to remain free, and thereby undermining the safety of the community as a whole.

136. Third, Chief Deane explained that police resources are limited and must be focused on crime control and ensuring public safety. Accordingly, he emphasized that resources be allocated on the basis of where the resources will be most effective in furthering and maintaining a safe community.

137. Fourth, Chief Deane reemphasized that holding individuals in jail solely on a Federal immigration charge will seriously cripple the already overcrowded jail system in the County.

138. Chief Deane also stated that the Police Department was already in the process of working *within* the Federal scheme to establish an ongoing professional relationship with the U.S. Immigration and Customs Enforcement (“ICE”) authorities in order to better address immigration issues. He also noted that the Police Department was working in conjunction with the Police Chiefs of Manassas and Manassas Park, the Sheriff of the County, and the Jail Superintendent to establish common policies and deportation standards.

139. Despite the voiced concerns of Chief Deane and many immigrant and citizen residents of Prince William County who spoke or otherwise manifested their opposition to the proposed bill, the County Board voted unanimously on July, 10, 2007 to pass the Resolution.

Voting on the Resolution

140. Specifically, Defendant Corey A. Stewart voted in favor of the Resolution; Defendant Martin E. Nohe voted in favor of the Resolution; Defendant Wally Covington voted in favor of the Resolution; Defendant Maureen S. Caddigan voted in favor of the Resolution; Defendant John T. Stirrup voted in favor of the Resolution; Defendant John D. Jenkins voted in favor of the Resolution; Defendant Michael C. May voted in favor of the Resolution; Defendant Hilda M. Barg voted in favor of the Resolution.

141. In so voting in favor of the passage of the Resolution, the defendants knew or willfully ignored the fact that Congress has limited the determination of a person's immigration status and the investigation of violations of federal civil immigration law to trained federal officials or those acting under the direction of such trained and authorized federal officials.

142. Furthermore, in so voting in favor of the passage of the Resolution, the defendants knew or willfully ignored the fact that the powers granted to County police officers by the Resolution exceeded the limited authority granted to police officers by laws of the Commonwealth of Virginia.

OPERATION OF THE RESOLUTION

Resolution 07-609

143. The County Board enacted the Resolution for the stated purpose of alleviating the alleged economic hardship and lawlessness supposedly caused by the *presence* of undocumented immigrants in their community. To effectuate their goal of deterring undocumented immigrants from residing in, visiting, or passing through the County, the County Board approved five measures authorizing a variety of County officials, employees and private agents to investigate and determine the immigration status of individuals with whom they come into contact.

144. The first measure mandates that all County Police Officers investigate the immigration status of a person incident to any lawful detention of the individual for violation of state law or county ordinance, but only if the officer determines that there is probable cause to believe that such individual is in violation of federal immigration law, and only when such inquiry will not expand the duration of detention.

145. The first measure requires police officers to inquire as to the immigration status of an individual where there is “probable cause” to believe the individual is present in violation of federal civil immigration provisions. Police officers are required to do so regardless of whether the United States Department of Homeland Security has deemed the officer qualified to perform the functions of an immigration officer.

146. Under the terms of the first measure, the inquiry into a person’s immigration status involves a three step process. First, the officer must determine whether there is probable cause to believe that the individual is in violation of federal immigration law. Second, the officer must somehow inquire into the citizenship or immigration status of the individual. Third, if the inquiry reveals that the person is not lawfully present in the United States, the officer must somehow verify whether the person is “lawfully present” in the United States, pursuant to United States Code Title 8, Subsection 1373(c).

147. The first measure also mandates that the County Police Department establish the appropriate standards for probable cause as well as the methods for verifying if one is “unlawfully present” in such cases.

148. The second measure mandates that the County Police Department enter into an agreement with the United States Department of Homeland Security, pursuant to United States Code Title 8, Subsection 1357(g), in order to: (1) designate *specific* County law enforcement officers qualified to exercise the enforcement powers of federal immigration officers in the United States; (2) to revise the Police Department immigration policy to incorporate the County detention center’s training and authority; and (3) establish a protocol for the expedited transfer of verified illegal aliens into federal custody. The measure also grants the Prince William County

Police Department the authority to negotiate the cooperative agreement or participate in its implementation in partnership with other state or local law enforcement agencies.

149. The third measure of the Resolution allows any official, personnel, or agent of the County to obtain, maintain, or share information regarding the immigration status, lawful or unlawful, of any individual, or to exchange such information with any other federal, state, or local government entity for the purposes of determining eligibility for certain federal, state, or local benefits and verifying any claim of legal domicile within the County.

150. The fourth measure of the Resolution requires the County Executive to provide the County Board with a work session outlining the enabling authority and legal conditions under which the County provides public benefits and services to local residents.

151. The fifth measure of the Resolution states that the preceding directives purportedly will be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.

152. Lastly, the Resolution states that the County Board will send a letter to its federal delegation in Congress, the President of the United States, and the Governor of Virginia, advising them of the passage of the Resolution and requesting that they act expeditiously to enact meaningful immigration reform.

153. Taken as a whole, the Regulation has as its purpose and effect the regulation of immigration and the enforcement of federal civil immigration law.

154. In fact, according to Chairman Stewart, the County Board was forced to pass the Resolution because, at least in the opinion of the County Board, the federal government was not living up to its responsibility of enforcing U.S. immigration laws. (*See Exhibit G*).

FURTHER ACTION ON THE RESOLUTION

General Orders 45.01 and 45.02

155. Pursuant to the authority delegated to the Prince William County Police Department (“the Police Department”) in the Resolution, on September 18, 2007, the Police Department presented to the County Board the Police Department’s recommendations for the police enforcement of the Resolution. The Police Department also issued General Orders 45.01 and 45.02 (collectively “the General Order”) (attached as Exhibits H & I, respectively), which set forth the police department’s policy for the “enforcement of immigration laws.”

156. The General Order mimics the mandate of the Resolution and requires all police officers, regardless of whether they are authorized by the DHS to perform the functions of an immigration officer, “to investigate the citizenship or immigration status of a person who is lawfully detained for a violation of state law or county ordinance.”

157. The General Order, further, empowers a police officer to investigate the immigration status of an individual prior to the development of probable cause if the officer “has reasonable articulable suspicion as part of an initial identification inquiry to acquire an understanding of the facts which may lead to the discovery of additional facts that would lawfully support an extension of the initial detention for further investigation into immigration matters.”

158. Pursuant to the General Order, the Police Department will be guided by the Virginia Code in determining what forms of identification are sufficient to establish lawful presence. Legal presence may also be verified by checking national databases maintained by ICE or by contacting the ICE Law Enforcement Support Center (LESC).

159. The General Order also provides that “a person may prove legal presence by producing a valid Virginia Operator’s License or Special Identification Card [] with an ORIGINAL issue date of after January 1, 2004 or later, as noted in § 46.2-328.1 *Code of Virginia* (Virginia’s lawful presence law took effect on January 1, 2004).” As such, U.S. citizens, legal permanent residents, and conditional permanent residents with driver’s licenses originally issued prior to January 1, 2004 will be required to carry proof of their lawful presence on their person at all times.

160. On October 2, 2007, the County Board voted to adopt the Police Department’s recommendations and accepted the General Order.

Work Session

161. On October 2, 2007, as ordered pursuant to the Resolution, County Executive Craig Gerhart held a work session with the County Board where he outlined the benefits that the County could deny, could not deny, and in its discretion should deny to undocumented individuals. He recommended that the Board deny certain benefits to homeless, elderly, and disabled persons. He proposed denying the following benefits to individuals unlawfully present in the United States: Sheriff Adult Identification Services, Homeless Intervention Programs aimed at providing rental and mortgage assistance to residents, the DORM Substance Abuse Program, DSS Services that enable the elderly and disabled to remain in their homes, Adult Day Care, Aging In-Home Care, Bluebird Bus Tours, Senior Centers, Business Licenses, Community Leadership Institute, Elderly and Disabled Tax Relief Program, tax exemptions for residential home renovations and rehabilitations, and access to the Public Works Warehouse Sale. (See Exhibit J).

CAUSES OF ACTION

FIRST CAUSE OF ACTION VIOLATION OF THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION

162. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

163. The Resolution at issue is preempted by federal law because: a) the Resolution constitutes an impermissible regulation of immigration; b) the Resolution attempts to regulate fields that Congress intended to occupy; and c) the Resolution conflicts with federal law.

The Resolution Is an Impermissible Regulation of Immigration

164. States may not create their own standards to assess an alien's immigration status, as the formulation of such a standard essentially amounts to a regulation of immigration, which is a power reserved exclusively to the federal government.

165. The Resolution empowers local County employees with the ability to request, maintain, and share information regarding the lawful or unlawful status of an individual for the sole purpose of determining whether that individual is lawfully present in the United States.

166. Specifically, the Resolution impermissibly mandates that local County law enforcement officials use their independent judgment to make a determination of whether it is probable that a detained individual is "in violation of federal immigration law."

167. Upon such a determination, the Resolution impermissibly requires a police officer to restrict the liberty of an individual and invade the privacy of an individual by detaining and conducting an interrogation of the individual.

168. The Resolution also impermissibly empowers police to establish the methods for verification of an individual's lawful presence in the United States.

169. The Resolution impermissibly empowers the County Police Department with absolute discretion to establish standards for the determination of when there is probable cause to believe that an individual is not lawfully present in the United States.

170. The Resolution also empowers County employees to demand, maintain, or share information regarding the immigration status of an individual for the purposes of determining the individual's eligibility for certain public benefits.

171. As a result, the Resolution authorizes local County employees to collect their own information regarding a person's immigration status and to impermissibly make an independent determination of the person's lawful presence.

172. As any determination of immigration status by local County employees amounts to immigration regulation, the Resolution is preempted by federal law.

173. In addition, basing the classification standard of the Resolution on the terms "lawfully present" or "unlawfully present" is vague and fails to adequately represent the complexity of the classification system of the federal immigration scheme. For instance, under 8 C.F.R. 103.12, while an immigrant cannot be deemed to be lawfully present solely on the basis of the federal government's decision not to enforce an outstanding order of deportation or to issue an Order to Show Cause, the federal government can exercise discretion to make a specific decision that the immigrant is allowed to stay in the United States. Furthermore, 8 C.F.R. 103.12 makes clear that the term "lawfully present" is to be used for the purposes of applying Title II Social Security Benefits under Public Law 104-193, and not to determine whether an individual is removable or is to be deported. As such, the term does not necessarily represent the entire class of immigrants who are present in the United States with the permission of the federal

government. This is but one example demonstrating why the Resolution's classification scheme fails to adequately mirror the federal classification scheme.

174. As the Resolution creates an alien classification scheme different than that of the federal government, the Resolution is preempted by federal statutes and regulations.

175. The Resolution's purpose is to identify individuals and ensure they are processed for deportation and, as a result, the Resolution is an impermissible regulation of immigration.

176. As the Resolution has a direct and substantial impact on immigration and impermissibly adds to the federal statutory and regulatory scheme, the Resolution is a regulation of immigration that violates the Supremacy Clause of the United States Constitution.

The Federal Government has Expressed an Intent to Fully Occupy the Field of Immigration Regulation and Civil Immigration Enforcement

177. The federal government, through its comprehensive statutory and regulatory classification scheme, has occupied the field of formulating the governing definitions and standards for determining a person's immigration status.

178. As the Resolution seeks to implement an independent classification system as to the length of time certain aliens may stay in the United States, the Resolution is preempted.

179. Furthermore, through its comprehensive statutory and regulatory enforcement scheme, Congress sought a complete ouster of state and local power in the field of direct enforcement of federal civil immigration law.

180. Specifically, the INA and its parallel regulations give exclusive power over the enforcement of federal civil immigration law to certain federal immigration officers and employees.

181. Pursuant to an agreement between the state or county and the Attorney General of the United States (or his or her designee), certain local officials or employees may carry out the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States if they have been determined by the Department of Homeland Security to be qualified to perform such tasks. However, while state and local officials may be deputized to enforce federal civil immigration law, the state and local officials must adhere to the federal law relating to the function they are performing and they may only perform such function subject to the direction and supervision of the Attorney General.

182. As such, even though state and local officials, in limited circumstances, may perform the function of an immigration officer in enforcing federal civil immigration law, federal law makes clear that there is no room for the interposition of state law in the civil immigration enforcement scheme.

183. Because the Resolution mandates that local County police officers perform the functions of an immigration officer without first being so qualified by the Department of Homeland Security **or** directs local County police officers to follow certain local procedures during the performance of their function as an immigration officer, the Resolution impermissibly regulates a field that Congress intended to fully occupy.

The Resolution Conflicts with Federal Law and Priorities

184. The Resolution impermissibly empowers *all* local County police officers charged with enforcing local criminal law to investigate and enforce federal civil immigration law. Delegating enforcement powers to local officials who are not authorized by the U.S. Department of Homeland Security to perform the functions of an immigration officer creates an

additional layer of immigration regulation not authorized under the current federal statutory and regulatory scheme.

185. As the Resolution grants authority to local county police officers to investigate violations of federal civil immigration law, the authority granted by the County Board pursuant to the Resolution and General Order directly contradicts the limits placed upon police officers regarding the enforcement of civil law and clearly exceeds the powers granted to police officers to enforce federal civil immigration law.

186. The federal government has an interest in the uniform enforcement of federal civil immigration law across every jurisdiction. A jurisdiction by jurisdiction approach to immigration conflicts with the ability of the federal government to ensure that its civil immigration laws are being enforced in a uniform manner and in accordance with the priorities set by the federal government.

187. Moreover, the federal government has expressed an interest in comprehensive and fair reform of the current civil immigration law. However, increased demands by local governments for the training of local law enforcement and for the deportation or detainment of various individuals conflict with the federal enforcement scheme by disturbing priorities set by the Department of Homeland Security and potentially overburdening its allocated resources.

188. In addition, Prince William County's current efforts stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

189. For example, upon information and belief, as Prince William County police officers begin detaining individuals on the basis of a violation of federal immigration laws, Prince William County will likely have to rent prison beds outside of the County in order to hold

these individuals. Upon information and belief, these prison beds are the same beds rented by ICE in order to hold the individuals that ICE detains for violations of federal immigration law.

190. As such, Prince William County and ICE will compete for the same prison space, and ICE's ability to place detained individuals will be compromised.

SECOND CAUSE OF ACTION
42 U.S.C. § 1983
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

191. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

192. General Order 45.01 (D) states:

Racial profiling, the practice of stopping, detaining, or searching a person based solely on factors such as their race, color, or ethnicity, is prohibited and in fact, illegal. Race, color, ethnicity, or other non-criminal traits *are not, in and of themselves*, sufficient to constitute reasonable suspicion or probable cause to justify stopping, detaining, or searching a person. (emphasis added).

193. The unstated negative implication of this provision of the General Order is that race, color, and ethnicity can be considered evidence that a person is unlawfully present in the United States as long as it is not the sole basis for stopping, detaining, searching, or interrogating a person.

194. However, race, color, and ethnicity are not valid predictors of a person's immigration status. As such, the use of race, color, and ethnicity is not narrowly tailored to the purpose of ferreting out violations of federal immigration law.

195. Furthermore, the enforcement of federal civil immigration law is not so compelling a state interest that it would justify this overtly discriminatory scheme.

196. This is especially true when this overtly discriminatory scheme is being used by a local county, which has no power over the regulation of federal civil immigration law and its enforcement.

197. Thus, as the use of race, color, and ethnicity as *a factor* in determining whether there is reasonable articulable suspicion or probable cause to believe that a person is unlawfully present in the United States is prohibited at all times, the Resolution and implementing General Order violate the Equal Protection Clause.

**THIRD CAUSE OF ACTION
VIOLATION OF THE CODE OF VIRGINIA, SECTION 1-248
INCONSISTENCY WITH THE U.S. CONSTITUTION**

198. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

199. The Code of Virginia, Section 1-248 states:

The Constitution and laws of the United States and of the Commonwealth shall be supreme. Any ordinance, Resolution, bylaw, rule, regulation, or order of any governing body or any corporation, County Board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.

200. As demonstrated in the preceding paragraphs, the Resolution is an impermissible regulation of immigration and, thus, violates the Supremacy Clause and the Equal Protection Clause of the 14th Amendment of the United States Constitution.

201. As the Resolution contradicts the U.S. Constitution, it violates the laws of Virginia and is invalid.

**FOURTH CAUSE OF ACTION
ULTRA VIRES ACTION VIOLATIVE OF DILLON'S RULE**

202. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

203. The Code of Virginia, Section 15.2-1704(B) states:

A police officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders and any other powers granted to law-enforcement officers in § 37.2-808 or § 37.2-809, (ii) to serve an order of protection pursuant to §§ 16.1-253.1, 16.1-253.4 and 16.1-279.1, (iii) to execute all warrants or summons as may be placed in his hands by any magistrate for the locality and to make due return thereof, and (iv) to deliver, serve, execute, and enforce orders of isolation and quarantine issued pursuant to §§ 32.1-48.09, 32.1-48.012, and 32.1-48.014 and to deliver, serve, execute, and enforce an emergency custody order issued pursuant to § 32.1-48.02. A town police officer, after receiving training under subdivision 8 of § 9.1-102, may, with the concurrence of the local sheriff, also serve civil papers, and make return thereof, only when the town is the plaintiff and the defendant can be found within the corporate limits of the town.

204. However, in direct contradiction of this express prohibition imposed upon local police officers by the laws of the Commonwealth of Virginia, the County Board, through the Resolution and enforcing General Orders, unlawfully authorizes and mandates that County Police officers investigate violations of federal civil immigration law and detain individuals based on a perceived violation of such law. *See* Va. Code. Ann. § 15.2-1102.

205. Furthermore, Code of Virginia § 19.2-81.6 states:

All law-enforcement officers enumerated in § 19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law-enforcement officer enumerated in § 19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of

Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to § 19.2-82.

206. The Code of Virginia does not grant law-enforcement officers any other authority to enforce the immigration laws of the United States. As a result, the County Board has exceeded its authority under the laws of the Commonwealth of Virginia by mandating that local county police officers enforce federal immigration law in a manner not sanctioned by Virginia law.

207. As the Resolution and General Orders grant local county police officers the authority to investigate violations of federal civil immigration law, the authority granted by the County Board pursuant to the Resolution and General Orders directly contradicts the limits placed upon police officers regarding the enforcement of civil law and clearly exceeds the powers granted to police officers to enforce federal civil immigration law. As a result, the Resolution and General Orders are invalid under Virginia law.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request the following relief:

- (a) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring Resolution No. 07-609 and General Orders 45.01 and 45.02 void because they violate the Supremacy Clause of the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the Code of Virginia, § 1-248, and Dillon's Rule;

(b) an injunction restraining and enjoining Prince William County from implementing and enforcing the Resolution and General Orders, specifically enjoining Prince William County, its agents, and employees in the Commonwealth of Virginia from:

- i. enforcing immigration regulations enacted in violation of the Supremacy Clause of the United States Constitution, usurping the power – specifically delegated to the Federal Government – to regulate the immigrants who are in the United States;
- ii. enforcing immigration regulations enacted in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- iii. enforcing immigration regulations in conflict with Federal laws, regulations, policies, and objectives;
- iv. enforcing immigration regulations in a manner not authorized by the law of the Commonwealth of Virginia.

(c) an order awarding Plaintiffs the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988; and

(d) such other relief the Court deems just and proper.

Respectfully submitted,

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