UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-22927-BLOOM/Louis

CITY OF SOUTH MIAMI, et al.,

Plaintiffs,

v.

RON DESANTIS, et al.,

Defendants.
_________________________________/

OMNIBUS ORDER

THIS CAUSE is befor10*7R -5 bth] TJ ET Q q 0.00000912 0 612 792 re W* n BT /F2 12 Tf

³+RSH´ DQG :HVWPLQVWHU 3UHVE\WHULDQ &KXUFK 8QLWHG RI
behalf of their RUJDQL]DWLRQV FROOHFWLYHO\ ³3ODLQWLIIV´

[3] Amici Curiae LQFOXGH 5XUDO :RPHQ¶V +HDOWK 3URMHFW WKH)ORU
M.U.J.E.R., Tahirih Justice Center, Los Angeles Center for Law and Justice, Oxfam America, The Center for Gender & Refugee Studies, University of Miami School of Law Human Rights Clinic, Human Rights :DWFK DQG)ORULGD /HJDO 6HUYLFHV Amici Curiae ³Amici´ See ECF No. [149] ³

I. BACKGROUND AND PROCEDURAL HISTORY

On May 2, 2019, the Florida Legislature passed Senate Bill 7066 to further the State of Florida's interest in "cooperation with the enforcement of federal immigration laws within the enforcement of federal immigration laws within

QRW DGRSW RU KDYH LQ HIIHFW D VDQFWXDU\ SROLF\ ´)OD Sanctuary Definition and the Sanctuary Prohibition will be collectively referred to as the ³6DQFWXDU\ 3URYLVLRQV ´

Enforcement Provision. Section 908.107 sets forth the authority of the Governor and the Attorney General to enforce SB 168, in the event that state and local officers fail to comply with the immigration enforcement efforts specified therein. See)OD 6WDW † ³(QIRU 3URYLVLRQ´

Antidiscrimination Provision. Section 908.109 prohibits state and local entities or their DJHQWV IURP GLVFULPLQDWLQJ DJDLQVW RU JUDQWLQJ SUHIHUHQFHV WR DQ LQGLYLGXDO RU JURXS EDVHG RQ UDFH color, religion, national origin, or physical disability of a person except to the extent authorized by the United States Constitution or the State Constitution. ZKHQ DFWLQJ SXUVXDQW WR 6HFWLRQ 6WDW WR 6% § 908.109 ³$QWLGLVFULPLQDWLRQ´

B. This Action

Following its enactment, on July 16, 2019, Plaintiffs initiated this action for declaratory and injunctive relief against Defendants, challenging the constitutionality of numerous provisions of SB 168. See (&) 1R > @ ³&RPSODLQW´ @ ³$PHQGHG &RPSODLQW´ @ ³6HFRQG $PHQGHG &RPSODLQW&

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On August 30, 2019, Plaintiffs filed an Amended Motion for Preliminary Injunction, seeking to H Q M R L Q 6 % ¶ V ' H W D L Q H U 0 D Q G D W H 7 U D Q V S R U W 5 H Efforts Provision, and Sanctuary Provisions. ECF No. [47]. On September 26, 2019, the Court held a hearing on the Amended Motion for Preliminary Injunction, during which the parties argued their respective positions. On October 1, 2019, the Court granted in part and denied in part 3 O D L Q W L I I V ¶ $ P H Q G H G 0 R W L R Q, (1) including that Plaintiffs lacked Q M X Q F W standing to bring the claims asserted in Counts III, IV, and VIII, (2) denying a preliminary injunction against the Detainer Mandate, the Best Efforts Provision, and the Sanctuary Provisions, and (3) granting the request to preliminarily enjoin the Transport Requirement. ECF No. [64] [3] 3 U H O L P L Q D U \ G, H Q W´ X Q F W L R Q 2 U

Moreover, on September 4, 2019, Defendants filed a Motion to Dismiss, arguing that Plaintiffs lacked standing to bring many of their claims and that the Amended Complaint failed to state a claim upon which relief can be granted on any asserted. ECF No. [52]. On December W K L V & R X U W J U D Q W H G ' H I H Q G D Q W V ¶ 0 R W L R Q W R

on the basis of race, color, and national origin (&) 1 R > @ ^ ^ the claim in Count

II that the Transport Requirement violates the Supremacy Clause because it is preempted by the

II. MATERIAL FACTS

%DVHG RQ WKH 3DUWLHV¶ respective statements of material facts in support of and in opposition to the Motions, along with the evidence in the record, the following facts are not genuinely in dispute unless otherwise noted.[8]

Based upon the record, the following are relevant individuals and entities:

)ORULGLDQV IRU ,PPLJUDWLRQ (QIRUFHPHQW ³)/,0(1´ IRXQGHG LQ WR ³DGYRFDWH IRU OHJDO LPPLJUDWLRQ LPPLJUDWLRQ´ ECF No. [113-6] at 15:17-19, 17:14. The organization works to advance laws ³HQGLQJ VDQFWXDULHV´ DQG UHTXLULQJ ³FRRSHUDWLRQ (QIRUFHPHQW´ Id. at 30:20-25, 31:15-18; ECF No. [116-7] (FLIMEN 2018 endorsement of Senator Gayle Harrell). It also advocates for certain bills and occasionally submits model bills as part of its mission. ECF No. [113-6] at 15:16-24.

'DYLG &DXONHWW ³0U &DXONHWW´ who currently serves as the)RXQGHU RI RUJDQL]DWLRQ¶V vice-president, the highest position. ECF No. [113-6] at 14:3-5, 14:18-25, 15:1-10, 18:2-10; ECF No. [116-9] (FLIMEN website page,

7KH)HGHUDWLRQ IRU $PHULFDQ ,PPLJUDWLRQ 5HIRUP

3OHDVH JHW WKH ELOO´ ECF No. [119-6] at 142. The email attached a 154-page document prepared by FAIR on sanctuary jurisdictions, stating that, 3Per Senator *UXW[illegible] request, the list of Sanctuaries in Florida, or as I call them, $QDUFK\ &LWLHV.´ Id. at 142; DWWDFK[illegible] 298. $GGLWLRQDOO\, [illegible] made the following VXJJHVWLRQV: 1) drop State Attorneys so just the Attorney General handles prosecutions, and 2) remove several carve-outs.´ Id. at 142; ECF No. [120-8].

As the year progressed, FLIMEN continued to correspond with Representative Byrd and Senator Gruters on issues that arose with SB 168. See ECF Nos. [119-1], [119-2], [119-3], & [120-1]. FLIMEN also supplied the bill sponsors with statistical data that supported the bill, including)$,5¶V VDQFWXDU\ [illegible] See ECF No. [119-1].[9]

Legislature finds that it is an important state interest to cooperate and assist the federal government in the enforcement of federal immigration laws within

III. LEGAL STANDARD

The standard of review on cross-motions for summary judgment does not differ from the standard applied when only one party files a motion. *See Am. Bankers Ins. Grp. v. United States*, 408 F.3d 1328, 1331 (11th Cir. 2005). A court may grant a motion for summary judgment

[non-PRYLQJ Anderson, 477 U.S. at 252[3], IPRUH WKDQ RQH LQIHUHQFH FH from the facts by a reasonable fact finder, and the inference introduces a genuine issue of material IDFW WKHQ WKH GLVWULFW FRXUW Barfield, Inc. v. City of Fort LDQW V Lauderdale, 901 F.2d 989, 996 (11th Cir. 1990). Courts do not weigh conflicting evidence. See Skop v. City of Atlanta, Ga., 485 F.3d 1130, 1140 (11th Cir. 2007) (quoting v. S. Bell Tel. & Tel. Co., 802 F.2d 1352, 1356 (11th Cir. 1986)).

5800 S.W. 74th Ave., Miami, Fla., 363 F.3d 1099, 1103 n.6 (11th Cir. 2004) (One Piece of Real Prop.´ , Q G H H G H Y H Q ³ Z K H U H W K H S D U W L H V disagree about the factual Q W K H L Q I H U H Q F H V W K D W V K R X O G E H G U D Z Q I U R P W K R V H I D F W V Warrior Tombigbee Transp. Co., Inc. v. M/V Nan Fung, 695 F.2d 1294, 1296 (11th Cir. 1983).

Additionally ³ F U R V V P R W L R Q V I R U V X P P D U \ M X G J P H Q W P D \ E of a factual dispute, but this procedural posture does not automatically empower the court to G L V S H Q V H Z L W K W K H G H W H U P L Q D W L R Q Z K L F K W K H U T X H V W L F NAACP v. Fayette Cty. Bd. of Comm'rs, 775 F.3d 1336, 1345-46 (11th Cir. 2015). Indeed, even where the issues presented on motions for summary judgment overlap, a court must consider each motion on its own merits, resolving all reasonable inferences against the party whose motion is under consideration´ S. Pilot Ins. Co. v. CECS, Inc., 52 F. Supp. 3d 1240, 1243 (N.D. Ga. 2014) (citing Am. Bankers Ins. Gp., 408 F.3d at 1331).[10] , Q S D U W L F X O D U Z K H U H ³ W K H S

[10] , Q G H H G W K H & R X U W R I $ S S H D O V I R U W K H (O H Y H Q W K & L U F X L W summary judgment stage:

> When the nonmoving party has the burden of proof at trial, the moving party is not required W R ³ V X S S R U W L W V P R W L R Q Z L W K negating the elements of the nonmoving party's F O D L P´ Celotex, 477 U.S. at 323. Instead, the moving party may simply point out to the district court that there L V D Q D E V H Q F H R I H Y L G H Q F H W R V X S S R U W W K H nonmoving party's claim. Id. at 325. Alternatively, the moving party may support its motion for summary judgment with affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial. Id. at 331 (Brennan, J., dissenting). If the moving party shows the absence of a triable issue of fact by either method, the burden on summary judgment shifts to the nonmoving party, who must show that a genuine issue remains for trial. Fed. R. Civ. P. 56(e); Hilzinger Hansel, Inc. v. Italian Activewear, Inc., 931 F.2d 1472, 1477 (11th Cir. 1991). If the nonmoving party fails W R ³ P D N H D Z L Q J V K R Z L Q J R I D Q H V V H Q W L D O H O H P H Q W of her case with respect to which she K D V W K H E X U G H Q R I S U R R I ´ Celotex, 477 U.S. at 323, the moving party is entitled to summary judgment.
>
> When the moving party has the burden of proof at trial, that party must

each respective summary judgment motion with disputes as to undisputed facts, add[] material facts of their own, and then repl[y] with subsequent objections to the other party's additional facts. Merely filing cross motions for summary judgment is not conclusive. Thus, where the parties disagree as to the facts, summary judgment cannot be entered unless one of the parties meets its burden of demonstrating that there is no genuine issue as to any material fact with the evidence and all inferences drawn therefrom viewed in the light most favorable to the non-moving party. Shook v. United States, 713 F.2d 662, 665 (11th Cir. 1983) (citing M/V Nan Fung, 695 F.2d at 1296-97).

IV. DISCUSSION

Defendants seek summary judgment on all claims and argue that Plaintiffs lack standing. Defendants also argue that Plaintiffs have failed to demonstrate the existence of any genuine issue of material fact with regard to the Equal Protection claims in Counts X and XI, which challenge the constitutionality of the Best Efforts Provision and the Sanctuary Prohibition. Defendants argue that Plaintiffs have presented no evidence to satisfy their heavy burden of proving that the Legislature acted with discriminatory intent in enacting SB 168. Additionally, Defendants remind the Court that they are currently subject to a preliminary injunction Order that is not

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See id. at 1477. If the moving party makes such an affirmative showing, it is entitled to

from this preservation, Defendants do not present any additional argument on the lawfulness of the Transport Requirement.

Plaintiffs seek summary judgment on Counts II, X, and XI of the Amended Complaint, each of the remaining claims in this case, and seek declaratory and injunctive relief, arguing that they are entitled to judgment as a matter of law on these claims. Plaintiffs contend that summary judgment is warranted on their Equal Protection claims because the evidence conclusively establishes SB 168's underlying discriminatory purpose and discriminatory effect. Specifically, Plaintiffs take the position that the discriminatory intent of SB 168 is evidenced by the fact that bill sponsors relied extensively on the assistance and input from known anti-immigrant hate groups in working to pass the bill, and even included their biased data.

LV WR SUHYHQW WKH 6WDWHV IURP SXUSRVHIXOO\ GLVFULP

Shaw v. Reno, 509 U.S. 630, 642 (1993) (citing Washington v. Davis, 426 U.S. 229, 239 (1976)).

The United States Supreme Court previously H[SODLQHG WKDW ³RIILFLDO DF

XQFRQVWLWXWLRQDO VROHO\ EHFDXVH LW UHVXOWV LQ D Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264-65 (1977) (citing Davis, 426 U.S. 229) Arlington Heights´.[12] ³'LV SURSRUWLRQDWH LPSDFW LV QRW LUUHOH RI DQ LQYLGLRXV UDFLDO GLVFULPLQDWLRQ Davis, 426 U.S. at 242. Rather, '[p]roof of racially discrimin DWRU\ LQWHQW RU SXUSRVH LV UHTXLUHG WR VKRZ D Arlington Heights, 429 U.S. at 265.

In asserting a claim that a facially neutral law violates the Fourteenth Amendment based on mixed motives, a plaintiff must establish, by a preponderance of the evidence, that the alleged ³UDFLDO GLVFULPLQDWLRQ ZDV D VXEVWDQWLDO RU PRWLY [The plaintiffs] shall then prevail unless the [defendants] prove by a preponderance of the evidence WKDW WKH VDPH GHFLVLRQ ZRXOG KDYH UHVXOWHG KDG W Hunter v. Underwood, 471 U.S. 222, 225 (1985) (citing Arlington Heights, 429 U.S. at 252; Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977)). ,Q WKLV VXPPDU\ MXGJPH

[12] Similarly, the Eleventh Circuit has elaborated that

> Equal protection claims can be divided into three broad categories. The first and most common type is a claim that a statute discriminates on its face. In such a case, a plaintiff can prevail by showing that there is no rational relationship between the statutory classification and a legitimate state goal. When the statute facially discriminates against certain groups or trenches upon certain fundamental interests, courts have required a closer connection between the statutory classification and the state purpose.
>
> The second type of equal protection claim is that neutral application of a facially neutral statute has a disparate impact. In such a case, a plaintiff must

when the defendant has pointed to the absence of evidence of discriminatory intent, it becomes the

intentional discrimination L I W K H µG H F L V L R Q making body acted for the sole purpose of effectuating the desires of private citizens, that racial considerations were a motivating factor behind those desires, and that members of the decision-making body were aware of the motivations of the S U L Y D W H F L W L] H Q V ¶ *Hallmark Devs, Inc. v. Fulton Cty., Ga.*, 466 F.3d 1276, 1284 (11th Cir. 2006) (quoting *United States v. Yonkers*, 837 F.2d 1181, 1225 (2d Cir. 1987)); *see also Jackson v. City of Auburn*, 41 F. Supp. 2d 1300, 1311 (M.D. Ala. 1999).[3] (. . D] R Q L Q J E R D U G ¶ V U H V S R Q V H S R O L W L F D O S U H V V X U H D P R X Q W V W R L P S O H P H Q W D W L R Q R I E R D U G ¶ V D F W L R Q V P D \ J L Y H U L V H W R D F D X V H R I D F W L R Q

[3] 3 U R Y L Q J W K H P R W L Y D W L R Q E H K L Q G **R** I W H Q D S U R E O H P *Hunter*, 471 U.S. at 228 (citing *Rogers v. Lodge* E H K L Q G R

W R H Q D F W L W D Q G W K H V W D N H V D U H V X I I L F L H Q W O \ K L J K I F

B. Defendants' Motion for Summary Judgment

As noted, ' H I H Q G D Q W V ¶ 0 R W L R Q V H H N 3V O D L Q W L U V ¶ M X G J P H Q W
Equal Protection claims and their claim that the Transport Requirement is conflict preempted.

1. Equal Protection

Defendants first argue that because neither the Best Efforts Provision nor the Sanctuary Prohibition of SB 168 violate the Equal Protection Clause, summary judgment is warranted 6 S H F L I L F D O O \ Z L W K U H J D U G W R that SB 168 was enacted with a discriminatory pu U S R V H D Q G H I I H F W ' H I H Q G D Q W V

judgment on an equal protection claim, a plaintiff must produce enough evidence to allow a UHDVRQDEOH WULHU RI IDFW WR Hill v. Orange Cty. Sheriff, 666 F. LVFULPL $SS¶[WK³&LU. 3ODLQWLIIV DUH XQDEOH and effect, their WDEOL FRQVWLWXWLRQDO Greater Birmingham Ministries, 966 F.3d at 1225. Where, on the other hand, a plaintiff sufficiently shows the existence of discriminatory intent and effect, the inquiry proceeds to the second prong, DQG ³WKH EXUGHQ VKLIWV WR WKH ODZ¶V G ODZ ZRXOG KDYH EHHQ HQ Hunter, 471 U.S. at 228. XW WKLV IDFWRU ´

Upon a thorough review of the briefing and consideration of all of the evidence submitted by the parties, it is abundantly clear to the Court that this case is rife with material disputes of fact UHJDUGLQJ 3ODLQWLIIV¶ (TXDO 3URWHFWLRQ Arlington Heights framework %\ L suggests an in-depth, highly factual inquiry into the purported discriminatory legislative intent after a thorough examination of the various factors. See Davis, 8 6 DW ³DQ LQYL GLVFULPLQDWRU\ SXUSRVH PD\ RIWHQ EH LQ (DFK SDUW\ respective briefing on the Motions sets forth markedly different renditions of pertinent facts and the inferences that can be drawn from the record evidence. These highly contradictory yet DOOHJHGO\ ³XQGLVSXWHG fact patterns, on their own, demonstrate that granting summary judgment LQ HLWKHU SDUW\¶V inappropriate in this case.[14] In other words, given the outstanding issues in this case, the question of whether the Florida Legislature acted with discriminatory purpose or intent in enacting SB 168 is one that must necessarily be submitted to the trier of fact

Nevertheless, the Court will discuss the Arlington Heights considerations and highlight the significant disputes of material fact that exist.

a. Sequence of Events & Departures from the Norm[15]

Defendants first argue that the evidence Plaintiffs present on the specific sequence of events leading to SB 168—“FLIMEN’s, FAIR’s and CIS’s alleged role in drafting SB 168” is insufficient as a matter of law because it fails to indicate any discriminatory intent. For this factor, Defendants note that although Plaintiffs have relied significantly on FLIMEN’s e-mail to Senator Bean on December 13, 2016, ECF No. [116-5], which attached model legislation similar to the language of SB 168, Plaintiffs fail to recognize that Senator Bean had previously introduced a bill prohibiting sanctuary policies with similar wording to that of SB 168 and FLIMEN’s model legislation, ECF Nos. [110-3]. The evidence Plaintiffs

were actively involved in drafting, editing, and reviewing SB 168 leading up to its enactment. For

about)/,0(1¶V LQYROYHPHQW LQ WKH ECF No. [117-8] at 2 (e-mail from FLIMEN to Mr. Barnhill LQGLFDWLQJ WKDW)/,0(1¶V DWWRUQH\V ORRNHG RY changes be made), but they also suggest some awareness on the part of Senator Gruters and his staff about the controversial nature of FLIMEN. For example, these e-mail communications suggest that the list of sanctuary cities created by FAIR, which was e-mailed to Mr. Barnhill and was ultimately included in the Senate staff analysis, would be subject to some criticism. See, e.g., ECF No. [117-1] at 2 (e-PDLO IURP)/,0(1 VWDWLQJ LQ SDUW WKDW ³> the list of Sanctuaries in Florida, or as I call them Anarchy Cities, is attached. . . . FLIMEN suggests you consider not widely distributing the list as that would just create problems´). Taken together, the evidence is sufficient to withstand summary judgment on the issue of discriminatory intent.

Moreover, the April 17, 2019, press conference further bolsters the likely existence of discriminatory purpose LQ 6% ¶V HQDFWPHQW. Although the event was hosted by the bill sponsors, Plaintiffs have provided e-mail correspondence between FLIMEN and 6HQDWRU *UXW

Clause. Moreover, Defendants argue that, contrary to Plaintiffs' claims, SB 168 will not lead to increased racial profiling by law enforcement officers because SB 168 contains an explicit provision that prohibits discrimination. *See* Fla. Stat. § 908.109.

For their part, Plaintiffs rely on declarations and deposition testimony of their organizational representatives, which describe the disproportionate impact that SB 168 has on minorities. *See* [illegible] (collective citations to exhibits). Plaintiffs also point to the extensive statistical data presented [illegible] and discussed in Plaintiffs' Motion, which describe the negative effects of anti-sanctuary policies, proactive policing policies, and immigration partnerships between ICE officers and local law enforcement agencies. *See* ECF No. [109-1]. Finally, Amici Curiae submitted a brief in support of Plaintiffs in this case that provided the Court with valuable and informative evidence on how a law like SB 168 has a

With regard to the remaining statements that Defendants argue fail as a matter of law, the Court cannot fully assess, at this stage, whether such statements rise to the level of suggesting racial animius on the part of the entire legislative body. The resolution of these outstanding factual questions, like

Moreover, Plaintiffs contend that the bill sponsors also departed from the substantive norms by providing Senate staff analysis that relied on biased data supporting the ban on sanctuary cities that was produced by FAIR and CIS, and the issue of this flawed data was raised at a Senate committee meeting. Despite being alerted that these organizations were characterized as anti-immigrant hate groups, Plaintiffs point out that a few weeks later, the sponsors of SB 168 nonetheless co-hosted a press conference with FLIMEN and other known xenophobic groups. Plaintiffs thus contend that this cumulative evidence, along with additional circumstantial evidence, warrants granting judgment as a matter of law on the issue of discriminatory intent.

However, as Defendants point out, the evidence in the record contains many contradictions to the factual assertions recited above, thus creating genuine issues of material fact. In construing all facts in the light most favorable to Defendants, and in drawing all reasonable inferences therein in favor as the non-movants, the Court concludes that the record evidence contains significant disputes of fact, which are more appropriately submitted for resolution by a trier of fact. Indeed, 0 U & D X O N H W Vice p)U ,H0 V(1 ¶ GV-H Q W W H V W L I L H G W K D W) / , 0 (1 ³ G L G [113-6] at 22:17-23, which is also buttressed by evidence of 6 H Q D W R U % H D Q ¶ V G U D history introducing similar legislation, see ECF Nos. [110-3] & [110-4]. The ultimate resolution of this issue turns on nuanced credibility determinations and weighing of evidence, which cannot be done at summary judgment.

Moreover, turning to the erroneous inclusion of data produced by FAIR and CIS on sanctuary policies within the Senate staff analysis, Defendants note the complete absence of evidentiary support establishing that either the Legislature as a whole, or even a single legislator, mistakenly relied on the improper data in deciding on SB 168. Nor do Plaintiffs indicate that the data was of any significance in the ultimate decision to pass SB 168. See Arlington Heights, 429

U.S. at 267. Furthermore, the existence of any noteworthy procedural or substantive abnormalities or the implications of these abnormalities is dependent upon the trier of fact's evaluation of the evidence in the record, including arguments or explanations for departures from the norm are more appropriately resolved by the trier of fact.

b. Contemporary Statements & Historical Background

Plaintiffs also rely on statements made by Senator Gruters during the legislative proceedings as evidence of an intent to discriminate on national origin. Likewise, they argue that the discriminatory intent is inferable from the legislative history.

First, with regard to the contemporary statements made by Senator Gruters which suggest racial animus, the Court concludes that these statements must be submitted to the trier of fact. The resolution of other outstanding factual questions, like the extent of the evidence's probative value and whether certain pieces of evidence can reasonably lead to an inference of discriminatory intent.

Likewise, with regard to Plaintiffs' attempt to attribute [illegible] to the Legislature that passed SB 168, the Court finds these arguments unpersuasive and unsupported by law. The Supreme Court has made [illegible]

Court previously granted a preliminary injunction against the enforcement of the Transport Requirement and concluded that the provision was conflict preempted. See Desantis, 608 F. Supp. 3d at 1301-02. The Court also found that this provision was severable from the rest of SB 168. Id. at 1309. Plaintiffs urge the Court to apply the same reasoning as the Preliminary Injunction Order because 6 % The Transport Requirement is conflict preempted by federal immigration law and is therefore unconstitutional. Defendants do not present any arguments in response, but rather refer back to their Motion, preserving their position on the lawfulness of the Transport Requirement.

³)HGHUDOLVP FHQWUDO WR WKH FRQVWLWXWLRQDO GH and State Governments have elements of sovereignty the other is not to [illegible] United States, 567 U.S. 387, 398 (2012). Nonetheless, the Supremacy Clause mandates that federal ODZ ³VKDOO EH WKH VXSUHPH /DZ RI WKH /DQG DQG WKH - any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." DUW 9, † 7KXV ³>Z@KHUH WKH WZR FRQIOLFW IHGHUD :KDW FRQVWLWXWHV D FRQIOLFW [illegible] F.3d 1153, 1167 (11th Cir. 2008) (citations omitted).

Under the preemption doctrine, Congress has the power to preempt state law, and this SUHHPSWLRQ W\SLFDOO\ IDOOV LQWR RQH RI ³WKUHH FD preemption; and (3) FRQIOLFW Id.; Arizona, 567 U.S. at 399 ³([SUHVV SUHHPSV RFFXUV ZKHQ &RQJUHVV PDQLIHVWV LWV LQWHQW WR GLVS Browning) G DW ³,PSOLHG SUHHPSWLRQ´ KDV JHQHUD and conflict preemption. Id. ³)LHOG SUHHPSWLRQ RFFXUV ZKHQ D FRQJU µVR SHUYDVLYH DV WR PDNH WKH UHDVRQDEOH inference that the States [illegible] VXSSOHPHQWLQJ [illegible]´ Santa Fe Elevator Corp. 8 6 RU ³ZK

WKHUH LV D µIHGHUDO LQWHUHVW VR GRPLQDQW WKDW enforcement of state laws on the same VXEMHFW DUHDV, 567 U.S. at 399 (quoting Rice, 331 U.S. DW [3] &RQIOLFW SUHHPSWLRQ RFFXUV HLWKHU ZKHQ LW

RIILFHUV DUH UHVSRQVLEOH IRU WKH LGHQtification, apprehension, and removal of illegal aliens from the 8QLWHG 6WDWHV ¶´ Id.

³$V D JHQHUDO UXOH LW LV QRW D FULPH IRU D UHPRY 6WDWHV ´ Id. at 396. 0RUHRYHU ³>U@HPRYDO LV D FLYLO QRW FU

> The federal statutory structure instructs when it is appropriate to arrest an alien during the removal process. For example, the Attorney General can exercise GLVFUHWLRQ WR LVVXH D ZDUUDQW IRU DQ DOLHQ¶V DU RQ ZKHWKHU WKH DOLHQ LV WR EH UHPRYHG IURP WKH And if an alien is ordered removed after a hearing, the Attorney General will issue a warrant. See 8 C.F.R. § 241.2(a)(1). In both instances, the warrants are executed by federal officers who have received training in the enforcement of immigration law. See §§ 241.2(b), 287.5(e)(3). If no federal warrant has been issued, those officers have more limited authority. See 8 U.S.C. § 1357(a).

Id. at 407-08 (some citations omitted).

&RQJUHVV KDV GHOLQHDWHG VSHFLILF ³OLPLWHG FLU SHUIRUP WKH IXQFWLRQV RI DQ LPPLJUDWLRQ RIILFHU´ Id. at 408. Relevant to the instant case, the Attorney General may grant this authority to specific state or local law enforcement officers SXUVXDQW WR D IRUPDO DJUHHPHQW FRPPRQO\ UHIHUUHG[21] which allows officers to perform the duties of a federal immigration officer under the direction and supervision of the Attorney General after completing adequate immigration training. 8 U.S.C. § 1357(g)(1); Arizona, 567 U.S. at 408-09. Without a 287(g) Agreement, local law enforcement agencies are not

[21] 7KH IHGHUDO JRYHUQPHQW¶V DXWKRUL]DWLRQ WR HQWHU LQWR

> (1) Notwithstanding section 1342 of Title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

Id. § 1357(g)(1).

permitted to unilaterally perform the functions of federal immigration officers, such as detaining an DOLHQ IRU EHLQJ UHPRYDEOH [3] DEVHQW DQ\ UHTXHVW D
*RYHUQRU RI Arizona, 567 U.S. at 410.

1HYHUWKHOHVV WKH 6XSUHPH &RXUW KDV UHFRJQL]HG WKDW IHGHUDO EH
VWDWH RIILFLDOV LV DQ LPSRUWDQW but federal and Id. at 411. Accordingly, the Supreme Court has WKH LI
explicitly stated that state and local law enforcement agencies do not need agreement (A)
A287(g)

[3] WR FRPPXQLFDWH ZLWK WKH >)HGHUDO *RYHUQPHQ

§ J ³DQ RIILFHU RU HPSOR\HH RI WKH 6WDWH RU V

Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subGLYLVLRQ´ HPSKDVLV DGGHG As such, consistent with its conclusion in the Preliminary Injunction Order, here, the Court finds that the Transport Requirement in SB 168 impermissibly encroaches upon the Congressional objectives set forth in § 1357(g)(1). *See Desantis*, 408 F. Supp. 3d at 1302.

Indeed, 6 % ¶V DWWHPSW WR JUDQW WKLV specifically enumerated transport power to local RIILFHUV IUXVWUDWHV &RQJUHVV¶V REMHFWLYHV IRU the transportation of undocumented immigrants because it renders the express language in §1357(g)(1) on the transport of aliens pursuant to a 287(g) Agreement meaningless. *Robbins v. Garrison Prop. & Cas. Ins. Co.*, 809 F.3d 583, 586 WK &LU ³,W LV µD[LRPDWLF WKDW DOO SDUWV RI D V D FRQVLVWHQW ZKROH ¶ µ:KHUH SRVVLEOH FRXUWV PXVW FRQVWUXH UHODWHG VWDWXWRU\ SURYLVLRQV LQ KDUPR *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992))). The Transport 5HTXLUHPHQW¶V ODQJXDJH H[SOLFLWO\ JUDQWV ORFDO OD transport an undocumented immigrant LQWR IHGHUDO FXVWRG\ ³DEVHQW DQ\ instruction from the Federal Government.´ *Arizona*, 567 U.S. at 410. This is precisely the type of unilateral conduct that *Arizona* expressly prohibited. *Id.*

Likewise, the mandate requiring law enforcement officers to obtain prior judicial authorization does not rectify the issue of unilateral conduct. Instead, this judicial authorization requirement seeks to vest additional powers in the state judiciary that could otherwise only be

performed by federal immigration officials

V. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. ' H I H Q GSummary Judgment Motion, **ECF No. [111]**, is **DENIED**.
2. 3 O D L QMotion for Summary Judgment, **ECF No. [112]**, is **GRANTED in part and DENIED in part**. Defendants are **PERMANENTLY ENJOINED** from enforcing the Transport Requirement, Fla. Stat. § 908.104(4), because this statutory provision is preempted by federal immigration law and is therefore unconstitutional

DONE AND ORDERED in Chambers at Miami, Florida, on December 14, 2020.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record