



ACLU of Utah *Reporter*

Fall 2011

Newsletter of the American Civil Liberties Union of Utah

“Show You What Papers?” – The Unconstitutionality of HB 497



Plaintiffs and attorneys talk to the press following a temporary restraining order hearing on May 3, 2011

UCLR v Herbert - In May 2011, the ACLU of Utah along with the national ACLU, the National Immigration Law Center, and the law firm of Munger, Tolles, & Olsen filed a class-action lawsuit in Utah's federal district court challenging the constitutionality of HB 497 "Utah Illegal Immigration Enforcement Act", a Utah law passed during the 2011 legislative session. HB 497 limits the documents that law enforcement will accept as verification of lawful status. The law further permits law enforcement officers, upon stopping an individual, to demand that the individual produce one of the few acceptable

identification documents; and in some instances the law requires that officers do so.

The lawsuit charges that HB 497 is unconstitutional in that it violates the U.S. Constitution's Supremacy Clause, Fourth Amendment, Equal Protection Clause, and the fundamental right to travel. The lawsuit sought a temporary restraining order to prevent implementation of the law. HB 497 was in effect for a mere 13 hours before the federal district court granted the temporary restraining order. HB 497 is currently not being enforced.

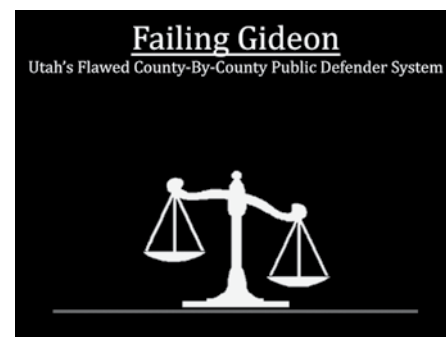
[Continued on page 7](#)

ACLU Report Exposes Constitutionally Inadequate Indigent Defense System

On August 24, the ACLU of Utah released a 95-page report entitled "Failing Gideon: Utah's Flawed County-By-County Public Defender System". Using a representative sample of nine Utah counties, the report delves into the state's and counties' chronic failures to fund or oversee trial-level public defense services in violation of the Sixth Amendment to the U.S. Constitution, which provides that an accused person has the right to the assistance of counsel in presenting a defense.

The report was the result of a three-year endeavor, entered into with the help of the Civil Rights Practicum at the S.J. Quinney College of Law, under the leadership of associate professor of law Emily Chiang. Students sent out numerous public information requests, conducted

[Continued on page 6](#)



More information about HB 497 can be found on the "Frequently Asked Questions" insert inside.

The Director's Chair



Karen McCreary
Executive Director

Dear friends,

Our newsletter spotlights the ways in which the ACLU of Utah continues to move forward in its integrated advocacy efforts on a range of civil liberties issues across the state.

Within the past few months, we worked with a terrific team from the ACLU's Immigrant Rights Project and the National Immigration Law Center, to file a challenge in Utah federal district court to Utah's unconstitutional and discriminatory Arionza style immigration enforcement bill, HB 497. Our efforts focused on meeting with members of the immigrant rights, law enforcement and faith communities as we identified plaintiffs and worked together to respond to civil liberties issues that continue to arise in this arena. Thanks to these efforts, HB 497 remains stayed from going into effect. A preliminary injunction hearing is now scheduled for December 2, 2011.

Our Public Policy Advocate, Esperanza Granados, meets across the state with numerous refugee and immigrant groups to provide "Know Your Rights" trainings regarding discrimination, law enforcement,

civic engagement and workplace rights in both Spanish and English as well as working with other language translators. Our investigative work on the generally sorry state of indigent defense was summarized in a lengthy report issued in late August "Failing Gideon" which examined the provision of indigent defense services in nine of Utah's counties- revealing the disparities in budgets between prosecutors and public defenders and the lack of oversight & standards by the state and counties. We will continue to move forward with our reform efforts.

With the next legislative session on the horizon, our Legislative and Policy Counsel, Marina Lowe, has been meeting with our constituents and advocacy groups to lay the groundwork to champion civil liberties issues offensively and defensively at the legislature. Marina is traveling around the state to meet with ACLU members and their legislators in their districts to enhance our lobbying efforts. She will partner with S.J. Quinney College of Law associate professor Emily Chiang and her Civil Rights

Employment Opportunity: Legal Director

The American Civil Liberties Union of Utah invites applications for the position of Legal Director to coordinate and manage all aspects of the legal program from our office in Salt Lake City.

For more information about the position and how to apply visit www.acluutah.org/Legal_Director.html

Practicum law students for a very engaged and noticeable presence at the legislature as we anticipate battles in the areas of reproductive health, immigration, equality and criminal justice.

Our litigation work continues with several lawsuits in progress - with the assistance of cooperating attorneys - and others in various stages of prelitigation. Our interim legal director, Joe Cohn, brings both public interest and ACLU litigation experience with him from his work in Nevada and Pennsylvania.

Our outreach and education work thrives through meetings, public education events and house-parties coordinated by our development director, Anna Brower, and hosted by ACLU members in communities across the state. Our ACLU members are engaged, thoughtful and proactive. Together we can effect changes that will shape our communities to be more democratic, inclusive and respectful of civil liberties. In these challenging times, the work of the ACLU is critical as well as deeply hopeful. Thank you for your continued support.

Become an ACLU of Utah Activist

Participate in our campaigns, keep up-to-date with all of the ACLU of Utah's upcoming events and action alerts by signing up for the ACLU of Utah's Activist email list from our website at www.acluutah.org.

You can also follow us on Facebook and Twitter.

About the ACLU of Utah

Founded in 1920, the American Civil Liberties Union is the nation's largest non-partisan guardian of freedom. The ACLU works tirelessly to defend and preserve the individual rights and liberties guaranteed to all people in this country by both the Constitution and the laws of the United States.

The ACLU of Utah, chartered in 1958, operates to ensure the constitutional rights and freedoms of everyone living in or visiting Utah. Our priorities include: participatory democracy; racial justice; immigrants' rights; religious liberty & freedom of belief; and privacy & technology. In addition, we continue our commitment to reform the Utah criminal justice system, protect the First Amendment, reproductive freedoms, and equality for all.

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The President's Corner

Since its inception the ACLU of Utah has been the beneficiary of the talent of many dedicated individuals who have consented to serve on its board of directors and it has been my extreme pleasure to work with those on the board since I joined in 2001.

Although we have always been mindful of the need for diversity on the board, we have recently focused even more intentionally on increasing its diversity in ethnicity, gender, sexual orientation, religious views, disabilities, geography (within the state of Utah), profession, skills and expertise, background, age and others. If you are a member of the ACLU there will be a board ballot included in this newsletter. Please take the time to read the brief bios of those who have agreed to serve. I believe you will discover that this slate is an excellent representation of the diversity of directors for which we are striving.



Robert Wood
President

We, as members of the board of directors of your ACLU of Utah, are pleased to serve the organization and bring our diverse views to address the most pressing civil liberty issues facing this state. We intend to do so thoughtfully and with a commitment to bring all of the tools at our disposal to bear for the preservation of those liberties. We cannot continue this work without your involvement.

UDOT Requirement Impedes Free Speech



iMatter Utah supporters begin walking down the sidewalk of State St. on September 24, 2011. The event, "Swing into Action," made stops at the Capitol, the Federal Building, and the City County building.

iMatter v Udot – The ACLU of Utah and cooperating attorneys Brian Barnard and Stewart Gollen of the Utah Legal Clinic are challenging the Utah Department of Transportation's (UDOT) requirement that groups seeking to stage freedom of expression events obtain large liability insurance policies prior to holding such events on UDOT property. Local groups such as our clients, iMatter Utah, who are seeking to promote and educate the public on issues of climate change tried and were denied the opportunity to hold marches and/or parades on State Street, since State Street is a state highway

Continued on page 5

ACLU Challenges Unconstitutional Jail Policy

Uroza v SL County – Enrique Uroza, a 22-year-old college student, was held for a total of 39 days in the Salt Lake County Metro Jail after his family posted his court-ordered bail. Mr. Uroza's family posted the bail approximately 10 minutes after he was booked into the jail on June 13. The jail, however, continued to hold Mr. Uroza for several weeks effectively denying his right to due process. The jail cited a policy they said allowed them to hold individuals who cannot prove to the jail officials' satisfaction that they are lawfully present in the United States. The jail holds the individuals as a "courtesy" to Immigration and Customs Enforcement (ICE), giving ICE time to decide whether or not to investigate individuals' immigration status. The jail finally released Mr. Uroza near the end of July. They did so, however, without compensating

for the constitutional violations he suffered as a result of the prolonged detention. The ACLU of Utah along with cooperating attorney B. Kent Morgan of the Dyer Law Group filed a complaint on August 5, alleging that the policy jail officials purportedly relied on when keeping Mr. Uroza in jail is unconstitutional and deprives individuals of their personal liberty without due process of law.

More information available at www.acluutah.org/uroza-v-salt-lake-county.html



Lawsuit Seeks to Maintain Free Speech on the Internet

Florence v Shurtleff – In order to push for progress in a case that has been ongoing for many years, the ACLU of Utah filed a request for a permanent injunction with the federal district court in Salt Lake City on June 8. This request is a response to a Utah statute that restricts constitutionally-protected speech on the Internet. In August 2006, the federal district court entered a stipulated preliminary injunction, which blocked the enforcement of the challenged sections of the statute. The ACLU of Utah's most recent request seeks to permanently block the enforcement

of those challenged sections. The statute seeks to regulate all speech on the Internet that could be considered "harmful to minors." If enforced, this statute would restrict visual art, photography, graphic novels, information about sexual health, and information about the rights of lesbian, gay, bisexual, and transgender youth. The ACLU of Utah would like to ensure that access to such information remains available in accordance with the constitutional right to freedom of expression.

More information available at www.acluutah.org/Florence-v-Shurtleff.html

Details on Cell Phone Tracking Sought

In a massive coordinated information-seeking campaign, the ACLU of Utah joined 34 other ACLU affiliates in filing over 381 requests in 32 states across the country with local law enforcement agencies large and small that seek to uncover when, why and how they are using cell phone location data to track Americans. The ACLU of Utah is seeking records from the Salt Lake County Sheriff, Salt Lake City Police Department, Washington County Sheriff's Office, Weber County Sheriff, Utah County Sheriff, and West Valley City Police Department. The requests seek cell phone data usage information from these agencies, including whether law enforcement agents demonstrate probable cause and obtain a warrant to access cell phone location data; statistics on how frequently law enforcement agencies obtain cell phone location data; how much money law enforcement agencies spend tracking cell phones and other policies and procedures used for acquiring location data. The information requests are part of the ACLU's national Demand Your dotRights Campaign, an effort to make sure that as technology advances, privacy rights are not left behind. Responses to the ACLU of Utah's requests from local law enforcement agencies will be compiled with information from other affiliates to form a nationwide picture of how and what cell phone data is being used by law enforcement.

For more information visit www.acluutah.org/CellPhoneGRAMA.html



Supporters and friends catching up with each other, celebrating the ACLU of Utah's work this past year, and honoring local civil liberties heroes.



2011 AWARDEES:

STEPHEN P. SMOOT

Torch of Freedom
Lifetime Achievement Award

KENT HART

Adam "Mickey" Duncan
Award for Legal Advocacy in
Civil Liberties

2011-12 Youth Activist
Scholarship Winners

NATHAN GOODMAN

ELIZABETH LOPEZ-MEDINA
Academy of Math, Engineering
and Science

LUISSANA GOMEZ

Pine View High School



Keynote speaker DARRYL HUNT inspired the crowd of 600 with his story of injustice and eventual exoneration after 19 years in prison for a crime he didn't commit.

To learn about exoneration work in Utah, visit the Rocky Mountain Innocence Center's website, www.rminnocence.org



UDOT Requirement continued from page 3

under UDOT's jurisdiction. An insurance policy of the magnitude UDOT requires would cost up to \$2500. The groups do not have the existing funds or the ability to engage in the extensive fundraising that would be required in order to afford a liability insurance policy of the type UDOT requires. UDOT policies do not provide for any waiver of the insurance requirements for indigent groups. Without the liability insurance, the groups can only march on the sidewalk, instead of on State Street. On the sidewalk, the individual marcher's ability to assemble as a unified group is impeded and their message to the public and Utah lawmakers is diminished. State Street is an ideal location, both geographically and metaphorically, to stage a protest or march, and so the ACLU of Utah will continue to request that the liability insurance requirement be relaxed enough to allow groups, especially groups without strong financial support, to exercise their First Amendment right to freedom of expression on UDOT property.

More information available at www.acluutah.org/imattersmarch.html

**The Civil Liberties Event
Of The Coming Year!**

SAVE THE DATE

MAY 2

**2012 Bill of Rights
Celebration**

**at the Rall Event Center
in Salt Lake City**

ACLU of Utah Immigrants' Rights Project in Action

The ACLU of Utah has been working with other organizations to provide relevant information regarding Utah's immigration-related laws that were passed during the 2011 legislative session. The laws have caused confusion for everybody around the state, from attorneys to advocates and to members of our immigrant community. Between the months of March and June of



Esperanza Grandos participates in the SLC Mayor's Antidiscrimination Campaign presentation for the group United Africans of Utah

this year, Esperanza Granados, our Public Policy Advocate participated in 19 presentations throughout the community. The presentations were provided in English and Spanish or both languages when necessary. Translators were provided for presentations to the refugee community from Africa.

Twelve of the nineteen presentations were in coordination with the Enriching Utah Coalition. In addition, the ACLU of Utah presented at the MECHa Conference at the University of Utah, the Community Action Program ("CAP") Conference, and accepted invitations from the Utah AIDS Foundation as well as the Utah

LULAC chapter and the Mexican Consulate for presentations in Provo and Logan.

The ACLU of Utah also continues to participate in the SLC Mayor's Anti-Discrimination Campaign in providing "Know Your Rights" presentations to the immigrant and refugee community throughout the city. The Utah Labor Commission and Worker's Compensation Fund have been partners with the ACLU of Utah in this campaign for the last year and a half.

Throughout the month of September we have presented and collaborated with numerous organizations throughout the state and will continue through the fall.

Indigent Defense Report continued from page 1

interviews and court observations, and compiled the information into a comprehensive analysis of Utah's indigent defense system.

Utah is one of only two states (Pennsylvania being the other) that does not provide any state funding or oversight of public defense. Instead, Utah delegates those responsibilities to the 29 individual counties. Each county is burdened with the financial and administrative costs of providing legal representation for people who cannot afford to pay for a lawyer themselves.

Our extensive research led to findings that public defense budgets are often only 25-35% of the amounts budgeted for County Attorney's Offices (i.e., the prosecution). Public defenders are also required to pay for most of their resources, including office space and support staff. The minimal

compensation public defenders receive does not leave much money to dedicate to these resources and as a result many defenders practice with little to no support staff, and have insufficient access to experts and investigators, making it difficult to mount an adequate defense.

Our research further shows that counties often do not have substantive criteria or requirements guiding the public defender selection process. Many counties award the public defender contract to the lowest bidder, regardless of experience, and often the contracts are awarded based on a recommendation from the County Attorney, creating a conflict of interest.

Besides the conflicts of interest between the prosecution and defense, conflicts can arise between public defenders and their clients. Many of the public defender contracts provide that when a

conflict of interest arises which ethically prevents a public defender from representing a client, the defender must pay for a replacement out of pocket. This requirement creates an incentive for public defenders to not screen for conflicts or to not disclose conflicts to the courts.

A majority of counties do not track public defender caseloads. In some counties, due to the high caseloads, public defenders may only have 10 hours (or less) to mount an entire defense for a felony case.

Utah's current system requires a complete overhaul to come into compliance with the Sixth Amendment right to assistance of counsel. This report is hopefully the beginning of many discussions among the public and lawmakers about how to rework Utah's failing approach to indigent defense.

Read the full report on our website at www.aclutah.org/FailingGideon.html

[“Show You What Papers?” continued from page 1](#)

HB 497 violates the Supremacy Clause because it is a state regulation of immigration, which is an area under the exclusive authority of the federal government. Immigration needs to be controlled by the federal government because otherwise there will be a “patchwork” of state laws, that may often be inconsistent with one another. Several other states have attempted to pass laws similar to HB 497. Litigation in Arizona, Georgia, and Indiana has enjoined those laws, preventing their enforcement because of the numerous constitutional violations such state regulations of immigration cause.

The lawsuit in Utah was initiated on behalf of civil rights, labor, social justice and business organizations, including Utah Coalition of La Raza, Service Employees International Union, Latin American Chamber of Commerce, Workers’ United Rocky Mountain Joint Board, Centro Civico Mexicano, Coalition of Utah Progressives, Salt Lake City Brown Berets, and individually named plaintiffs who would be subject to harassment or arrest under the law, and a class of similarly situated people.

Many organizations have filed amicus briefs in the case, demonstrating how the law impacts all members of our community not just the undocumented. These groups include national organizations such as Immigration Equality who are concerned that HB 497’s provision that would find a person guilty of a Third Degree Felony if s/he “induces” or “encourages” a person who is undocumented to enter the State of Utah would criminalize the conduct of lesbian and gay U.S. citizens who

“harbor” foreign-born, same-sex spouses or partners.

“[U]nlike heterosexual couples, who are afforded the legal means to sponsor foreign-born spouses and partners, providing them a path to residency and U.S. citizenship through marriage, lesbian and gay citizens are deprived of the ability to affect the status of their same-sex partners, because they cannot sponsor a foreign-born spouse or partner to immigrate lawfully.” – Amicus Curiae of Immigration Equality in Support of Plaintiffs, UCLR, et al., v. Herbert, et al.

Additionally, the country of Mexico submitted an amicus brief joined by 13 other Central American and South American countries making evident the widespread effect of this law. The concern of these groups and the litigation challenging similar laws in other states supports the position that Utah’s “show me your papers” law is unconstitutional and needs to be enjoined.

In December, the lawsuit will be back in court for further adjudication. This time, the ACLU of Utah will be seeking a preliminary injunction to ensure that HB 497 continues to not be enforced. This hearing was initially scheduled for September, however, it was postponed due to the U.S. Department of Justice’s interest in becoming involved in the lawsuit. The Department of Justice has involved itself in similar lawsuits by challenging equally troubling laws in Alabama and Arizona.

On September 28, a federal district



ACLU of Utah Executive Director Karen McCreary explains the lawsuit at a press conference on May 3

court judge in Alabama blocked some parts of Alabama’s anti-immigrant law. However, the judge also ruled that significant parts of the law were constitutional and allowed those portions of the law to stand, including a provision requiring public school officials to check the immigration status of students and parents. However federal courts in Arizona, Georgia, and Indiana, have blocked enforcement of the harmful portions of similar immigration laws passed in those states. The portions of the laws that were blocked included provisions authorizing law enforcement to investigate the immigration status of criminal suspects when an officer has probable cause to do so (Georgia); allowing law enforcement to make warrantless arrests of individuals with questionable immigration status (Indiana); and making it a crime for immigrants to not carry the appropriate identification documents at all times (Arizona).

The challenged laws expose an anti-immigrant pattern spreading across the United States, which we are trying to stop from taking over here in Utah. The hearing for the preliminary injunction will take place at the federal courthouse on December 2.

For more information visit www.acluutah.org/UCLRvHerbert.html



Frequently Asked Questions about Utah's HB 497, "Show Me Your Papers" Law

During the 2011 General Session, the Utah State Legislature passed a "package" of laws addressing immigration. Included in the package are **HB 497 "Utah Illegal Immigration Enforcement Act"**, **HB 116 "Utah Immigration Accountability and Enforcement Amendments"**, **HB 466 "Migrant Workers and Related Commission Amendments"**, and **HB 469 "Utah Pilot Sponsored Resident Immigrant Program"**. Both HB 116 and HB 469 have an effective date of 2013 and are unlikely to ever take effect because they violate Article III of the U.S. Constitution. HB 466, (the guest worker bill) which establishes a partnership between the Mexican State of Nuevo Leon and the State of Utah is constrained by the federal limitation on visas. Therefore, of these four laws, only HB 497, with an effective date of July 2011 would be implemented and have an immediate negative impact on our community. The ACLU of Utah initiated a lawsuit in May, arising out of the unconstitutionality of HB 497, also known as the "show me your papers law". A federal district court judge quickly granted a temporary restraining order, prohibiting enforcement of HB 497. There will be a hearing for a preliminary injunction in December.

SAY
NO
TO
HB497

1. What is wrong with Utah's HB 497?

HB 497 requires and/or allows (depending on the alleged offense) local law enforcement to request immigration status papers from anyone they stop, detain, or arrest. In some cases, whether the officer decides to request proof of immigration status will likely be based on factors such as appearance or English-speaking ability, which will encourage racial profiling. Furthermore, HB 497 sets forth a limited list of documents that law enforcement will accept as verification of immigration status. Many individuals who are lawfully present in the U.S. do not have one of the acceptable documents, or do not regularly carry such documents, putting them at risk of being subjected to unreasonably long detentions during traffic stops or other encounters with law enforcement. This law turns Utah into a "show me your papers" police state, which is inconsistent with traditional American ideals of freedom and democracy.

2. How is HB 497 like Arizona's SB 1070?

Although the language of Utah's HB 497 is not identical to SB 1070, its impact on average residents of the state is the same. Both laws compel all people, citizens and non-citizens alike, to carry specified identification documents at all times, or risk investigation into their citizenship and immigration status by local police officers. Both laws give local police officers unbridled and unconstitutional authority to suspect the citizenship and immigration status of anyone they stop for allegedly committing any crime, including jaywalking or minor traffic offenses. Both laws also give state and local police the authority to arrest people without a warrant for presumed violations of civil immigration laws. The Utah legislature experimented with the language of HB 497 in an effort to distinguish its provisions from those in SB 1070. Superficial language changes alone are not enough to cure the law of its constitutional defects.

3. How does HB 497 cause racial profiling?

The "reasonable suspicion" language of the law will allow and invite law officers to second-guess a person's immigration status based on stereotypes, i.e., race, ethnicity, or accent. Demanding "papers" based on a person's appearance is not "reasonable" and is not constitutional.

4. What's wrong with having Utah police enforce federal immigration laws?

Salt Lake City Police Chief Chris Burbank and other top law enforcement officers recognize that HB 497 will significantly harm the public trust of local law enforcement agencies, thereby discouraging people from approaching the police for help or assisting the police in solving local crimes. It will also divert already scarce resources from local law enforcement efforts.

5. What is the difference between HB 497 and federal law?

HB 497 encourages racial profiling, something that federal law recognizes can undermine fundamental American values of fairness and equality for all people. Like Arizona's law, Utah's law would give state and local police the authority to arrest people without a warrant for presumed violations of civil immigration laws. Not even federal immigration agents have the authority to do that. Also, HB 497 would only be enforceable within the state of Utah, and thus people traveling to or through Utah would not necessarily have notice of the law and be able to abide by it. Federal law applies uniformly across the United States, while HB 497 and other similar laws enacted in other states only apply in their respective states, leading to a "patchwork" of often inconsistent state immigration laws.

6. How does HB 497 interrelate with other bills passed by Utah this year that seek to regulate the presence and employment of immigrants in the state?

Along with HB 497, the Utah Legislature enacted HB 116, HB 466 and HB 469. This package of bills was designed to regulate the presence and employment of immigrants in the state of Utah. HB 497 takes effect without regard to the availability of the illusory and constitutionally suspect state guest-worker permits or state-based immigration sponsorship contemplated by

HB 116 and HB 469. In essence, although it enacted a package of bills and promoted them as a "kinder, gentler" alternative to Arizona's SB 1070, Utah has established a harsh enforcement-only, "papers please" approach to immigration that is very much modeled after Arizona's unconstitutional law.

7. Why doesn't this law live up the ideals of "The Utah Compact"?

Utah's immigration-related laws do not reflect the five principles of the Utah Compact. The Compact recognizes that immigration is a federal issue, that local law enforcement should not focus on civil violations of federal code, opposes policies that separate families, and recognizes the need to adopt a humane approach to the immigration issue. HB 497 is contrary to those principles.

8. What is the ACLU doing about HB 497?

The ACLU and the National Immigration Law Center (NILC) filed a lawsuit in federal court to stop the law from taking effect. The premise of the suit is that the new law violates various provisions of the U.S. Constitution, including the Supremacy Clause and the Fourteenth Amendment's Equal Protection Clause. A federal court judge granted a temporary restraining order to keep the law from going into effect on May 10, 2011. A hearing for a preliminary injunction, which would further block enforcement of the law, will follow in the coming months.

9. Why does the ACLU defend the rights of immigrants?

The ACLU has a long history of defending the Constitution, which from the very beginning has included defending the rights of immigrants. Regardless of one's views on U.S. immigration policy, the fundamental civil liberty protections of the Bill of Rights and the U.S. Constitution protect every person in this country – including non-citizens. Laws such as HB 497 target immigrants who are politically disenfranchised. When the government has the power to deny legal rights and due process to one vulnerable group of people, it endangers all of us.

For more information about the ACLU of Utah's work on Immigrants' Rights, visit our website at www.acluutah.org/immigration.shtml

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