



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC

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**PREPARED REMARKS ON H.B. 116 “GUEST WORKER PROGRAM ACT”
PRESENTED BY ESPERANZA GRANADAS
AMERICAN CIVIL LIBERTIES UNION OF UTAH
HOUSE WORKFORCE SERVICES AND COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE
FEBRUARY 15, 2011
SALT LAKE CITY**

Mr. Chairman and members of the committee, for the record, my name is Esperanza Granados. I am an attorney and Public Policy Advocate for the ACLU of Utah. Today I am here to testify regarding the negative implications of passing a state guest worker bill such as HB 116.

Cities and states cannot be allowed to supersede national immigration policy by enacting their own laws and creating a patchwork of illusory benefits throughout the country. Doing so would create an untenable situation for state and local government agencies, including law enforcement and may result in time-consuming, expensive litigation for the State of Utah.

This bill would require undocumented immigrants to self-report in a State database without any guarantee that the information they provide will not be used in a federal deportation proceeding against them or that state criminal charges will not be filed against them. This violates the fourth and fifth amendment to the U.S. Constitution. Some like to claim that undocumented immigrants have no rights or that because of their method of entry into this country they should expect to give up their rights. But that is not the case. The U.S. constitution protects ALL people in this country against compelled self-incrimination and unreasonable searches and seizures. ALL people in this country have a right to due process and equal protection. Any laws that attempt to grind away at the constitutional and civil rights

of the most vulnerable groups in our communities will by consequence grind away at the constitutional rights of all people in the United States.

Lawmakers should also be mindful of the likelihood of misinformation and confusion in the community. Without a federal waiver, any state laws regulating immigration benefits are moot, impractical, unsound, and may cause great confusion in the immigrant community. Members of our community who will be affected by this law are not always familiar with the challenges of the legal issues involved and shouldn't be provided a false sense of hope. In addition, state agencies are not qualified to make determinations as to someone's eligibility for an immigration benefit.

Because the federal government has exclusive jurisdiction over immigration matters, in order for undocumented immigrants to be granted a state worker's permit, the state has to obtain a federal waiver first and foremost. There is no law that anyone has ever been able to cite to which would grant the State of Utah the right to implement a worker's permit program for undocumented immigrants. If the state moves forward with implementation in the absence of the waiver on July 1, 2013, we are likely to be sued by the federal government. While the case is in court, the state will likely be enjoined from implementing the bill, which means, no worker's permits in the meantime. A case in court could take many months and possibly years to be resolved. In the meantime, the state would have to pay the legal fees and court costs in order to defend itself against the lawsuit by the federal government.

Hypothetically speaking, if the state were granted a waiver, the worker's permits provided in this bill would be valid ONLY for employment purposes, and ONLY in the state of Utah. A permit holder would not be employable outside the state of Utah. In addition, permit holders would not be granted any protection from deportation in Utah or anywhere else in the U.S.

The Identification Enforcement Act incorporated in this bill is also concerning. For example, it creates a database which would include information on

ANY individual who refused to be photographed or fingerprinted upon request by a law enforcement officer in the course of a "lawful stop". This would impose a huge financial and logistical burden on law enforcement and on ALL individuals living or traveling through the state of Utah. The fourth amendment right to be free from unreasonable searches and seizures and the right of due process and equal protection would be put at risk with this type of practice.

We understand the intent of trying to provide a means for undocumented immigrants to provide for their families in this state and we also understand the frustration with the federal government at ignoring the immigration issue for such a long time. But a solution that compromises our constitutional and civil rights is no solution at all.

Thank you for your time.