

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 before the Court for the purpose of resolving the following issues: 10\*7R -5 bth] TJ ET Q q 0.00000912 0 612 792 re W\* n BT /F2 12 T

<sup>3</sup>+RSH' DQG :HVWPLQVWHU 3UHVE\WHULDQ &KXUFK 8QLWHG RI  
behalf of theirRUJJDQLJDWLRQV FROOHFWLYHO\ <sup>3</sup>3ODLQWLIIV'

<sup>3</sup> Amici Curiae LQFOXGH 5XUDO :RPHQV +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 /HJD Amici Curiae FRAMi F BeEC FNW[14]HO\ <sup>3</sup>

**I. BACKGROUND AND PROCEDURAL HISTORY**

On May 2, 2019, the Florida  
to further  
WKH HQIRUFHPHQW RI IHGHUDO LPPLJUDWLRQ ODZV ZLWKL

Case No. 19

QRW DGRSW RU KDYH LQ HIIHFW D VDQFWXDU\ SR The F\ ' )OD  
Sanctuary Definition and the Sanctuary Prohibition will be collectively referred to as the  
36 DQFWXDU\ 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 ( & ) O D 6 W D W † 3 ( Q I R U  
3 U R Y L V L R Q V ' )

**Antidiscrimination Provision.** Section 908.109 prohibits state and local entities or their  
D J H Q W V I U R P G L V F U L P a r t i o n s w i t h i n S B 1 6 8 ] o n t h e b a s i s o f r a c e ,  
national origin, or physical disability of a person except to the extent authorized by the United  
States Constitution or the State Constitution. Z K H Q D F W L Q J S X S e e K i d S t a t . W R 6 %  
§ 908.109 3 \$ Q W L G L V F U L P I L L Q D L W Q R Q

**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 ( & ) 1 R > @ 3 & R P S O D R Q W ' @ 3 \$ a ~ N s ' a t P ä R P S O D L Q W &

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 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 standing to bring the claims asserted in Counts III, and VIII, (2) denying a preliminary injunction against the Detainer Mandate, the Best Efforts Provision, and the Sanctuary Provisions, and (3) granting their request to preliminarily enjoin the Transport Requirement ECF No. [64] 3 3 U H O L P L Q D U \ G , Q M X Q F W L R Q 2 U

Moreover, on September 4, 2019, Defendants filed Motion to Dismiss arguing that Plaintiffs lacked standing to bring many of their claims and that 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 DDC  
II that the Transport Requirement violates the Supremacy Clause because it is preempted by the

**II. MATERIAL FACTS**

Respective Statements of Material fact 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.

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

ORULGLDQV IRU ,PPLJUDWLRQ (QIRUFHPHQW )/,0(1' IRXQG HG LQ WR DG YRFDWH IRU OHJDO LPPLJUDWLRQ LPPLJUDWLRQ [1136] at 15:17-19, 17:14 The organization works to advance laws HQGLQJ VDQFWXDULHV DQG UHTXLULQJ FRRSHUDWLRQ (QIRUFHPHQW 30:20-25, 31:15-18; ECF No. [1167] (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. [1136] at 15:16-24.

DYLG & DXONHWW 30U & DXONHWW currently serves as the R U J D Q L Director of the highest position. ECF No. [1136] at 14:3-5, 14:18-25, 15:10, 18:210; ECF No. [1169] (FLIMEN website page,

7KH )HGHUDWLRQ IRU \$PHULFDQ ,PPLJUDWLRQ 5HIRUP



3 O H D V H J H W W K H E L O E C F N W [13-6] at 142. The Encl. attached to SB 1543  
 page document prepared by FAIR sanctuary jurisdictions, stating that PHU 6 H Q D W R U \* U X W  
 request, the list of sanctuaries in Florida, or as I call them Q D U F K \ & L W L H M. at 142 D W W D F K  
 298. \$ G G L W L R Q D O O \ - P O U L O & Q R O N H G W W K \ D W H 3 O , P R N H G D D W D Q B 1 Q H \ V  
 made the following V X J J H V W L R Q S V State Attorneys so just the Attorney General handles  
 prosecutions, and 2) remove several courts Id. at 142, ECF No. [120-8].

As the year progressed, FLIMEN continued to correspond with Representative Byrd and  
 Senator Gruters issues that arose with SB 168 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 V D Q F W see ECF No. [139] ¶ W

Legislature finds that it is an important state interest to cooperate and assist the federal government

L Q W K H H Q I R U F H P H Q W R I I H G H U D O L P P L J U D W L R Q O D Z V Z L W

### 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) (court may grant a motion for summary judgment

[non-PRYLQJ Adversely affected] 7 U.S. at 252<sup>3</sup>, I PRUH WKDQ RQH LQIHUHQFH F  
from the facts by a reasonable fact finder, and difference introduces a genuine issue of material  
IDFW WKHQ WKH GLVWULFW FRXUW Bank, N.C. City of Fort U D Q W 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)).

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5800 S.W. 74th Ave., Miami, Fla. 33149, 1103 n.6 (11th Cir. 2004).  
Prop. , Q G H H G H Y H Q ³ Z K H U H W K H S D U W L E E A B O U T T H E F A C T U A L 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 Fu, 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 A S T A T E C O U O F T X H V W L F  
NAACP v. Fayette Cty. Bd. of Comm, 775 F.3d 1336, 1345 (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. Co., 408 F.3d at 1331).<sup>10</sup> , Q S D U W L F X O D U Z K H U H ³ W K H S

<sup>10</sup> , 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 R E G A T I N G W K H W R / S & B Q R I W K H I V V L  
F O D C e P o t é x 8 6 D W L Q R U G H U W R G L E F E D W V H Y Q K L W H D Q L  
W K H P R Y L Q J S D U W \ V L I P A S O P I N D O U T T O T H E C O U R T O F F T H A T T H E R E  
L V D Q D E V H Q F H R I H Y L G H Q F H W R V I X S S P U A W E N A T I K E Y , Q R Q P R Y L Q J  
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.<sup>131</sup>  
(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(a).  
Italian Activewear, Inc. 931 F.2d 1472, 1477 (11th Cir. 1991). If the nonmoving party fails  
W R ³ P D N H D W I N G O N E S S E N T I A L E L E M E N T  
K D V W K H E X U C I O E X 4 7 7 U S J R 3 2 B , the moving party is entitled to summary  
judgment.

When the moving party has the burden of proof at trial, that party must 294 6c,c /F2 11.04 Tf 1

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  
 D G G L W L R Q D n e l D i n g W f V c r o s s M o t i o n s 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 K H U H L V Q R G L t e S i x A d s H D V W R  
 Z L W K W K H H Y L G H Q F H D Q G D O O L Q I H U H Q F H V G U D z i e W K H U H  
 non-moving party. Shook v. United States, 313 F.2d 662, 665 (11th Cir. 1963) (citing M/V Nan  
 Fung, 695 F.2d at 1296-97).

**IV. DISCUSSION**

Defendants seek V X P P D U \ M X G J P H Q W R Q D O O R and O r d e r O n L I I V ¶ U  
 Plaintiffs have failed to demonstrate the existence of any genuine issue of material fact  
 regard to the Equal Protection claims in Counts X and XI, which challenge constitutionality of  
 the Best Efforts Provision and the Sanctuary Prohibition, Defendants argue that Plaintiffs  
 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  
 F X U U H Q W O \ V X E M H F W W R D S U H O L P L Q D U \ L Q M X Q F W L R Q R  
 3 S U H V H U Y H W K H L U D U J X P H Q W W K D W W K H S U R Y L W s i d e Q L V Q R

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See id. at 1477. If the moving party makes such 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 and 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 held in *Washington v. Davis*, 426 U.S. 229, 239 (1976), and *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (citing *Davis*, 426 U.S. 229)

*Arlington Heights*, 429 U.S. at 265. *Davis*, 426 U.S. at 239. The Court has held that a law is facially neutral if it does not discriminate on its face. *Washington v. Davis*, 426 U.S. 229, 239 (1976). In *Arlington Heights*, 429 U.S. at 265, the Court held that a law is facially neutral if it does not discriminate on its face. *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 law is discriminatory. *Washington v. Davis*, 426 U.S. 229, 239 (1976). [The plaintiffs] shall then prevail unless the [defendants] prove by a preponderance of the evidence that the law is facially neutral. *Washington v. Davis*, 426 U.S. 229, 239 (1976). *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)).

<sup>12</sup> 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. In *Walker v. Boyle*, 800 F.2d 1074 (11th Cir. 1986), the court held that racial considerations were a motivating factor behind those desires, and that members of the decision-making body were aware of the motivation.

*Sully v. Hallmark Dev. Co., Inc.*, 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 Uryl v. Qj Wkh Prwl*, 471 U.S. at 228 (citing *Rogers v. Lodge*, 458 U.S. 613, 619 (1982)).

*3 Uryl v. Qj Wkh Prwl*, 471 U.S. at 228 (citing *Rogers v. Lodge*, 458 U.S. 613, 619 (1982)).

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**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 O D X Q W D U V ¶ M X G I P D H L Q  
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 t h a t S B 1 6 8 w a s e n a c t e d w i t h  
discriminatory p 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  
 UH D V R Q D E O H W U L H U R I I D F W W R H I L Q O G a n d J u d g e D e B o r o 6 6 6 G L V F U L P L  
 \$ S S ¶ [ W K ³ & I L B O D L Q W L I I V D U H X Q D E a c h e f f e c t , R h e r V W D E O L  
 F R Q V W L W X W L R e d e B r o n g h a n W i n i S t r e 9 6 6 F . 3 d a t 1 2 2 5 W h e r e , o n t h e o t h e r  
 hand, a plaintiff sufficiently shows the existence of discriminatory intent and effect, the inquiry  
 proceeds to the second prong, D Q G ³ W K H E X U G H Q V K L I W V W R W K H O D Z ¶ V G  
 O D Z Z R X O G K D Y H E H H Q H Q B u n t e r , 1 4 7 U S 1 1 2 8 . X W W K L V I D F W R U

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  
 U H J D U G L Q J 3 O D L Q W L I I V ¶ ( T X D O 3 U R A M i n g f o r H e r i o s f r o m D o r k P V % \ L  
 suggests an in-depth, highly factual inquiry into the purported discriminatory legislative intent  
 after a thorough examination of the various facts. See Davis 8 6 D W ³ D Q L Q Y I  
 G L V F U L P L Q D W R U \ S X U S R V H P D \ R I W H Q E H L Q ( I D U K H S D U W R L P H W  
 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  
 D O O H J H G O \ ² X a c t p a t t e r n s , X W H e C o u n , d e m o n s t r a t e t h a t g r a n t i n g s u m m a r y j u d g m e n t  
 L Q H L W K H U S D U W i n a p p r o p r i a t e m t h e c a s e R i x o n e F o r d , g i v e n t h e o u t s t a n d i n g  
 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 consideration and highlight the significant disputes of material fact that exist

**a. Sequence of Events & Departures from the Norm**<sup>15</sup>

Defendants first argue that the evidence Plaintiffs present on the specific sequence of 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 a letter sent to Senator Bean on December 13, 2016, No. [16-5], 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 SB 168. The evidence Plaintiffs

EQV

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



about ) / , 0 ( 1 ¶ V L Q Y R O Y H P H Q W E C F N W ¶ 268 ] E t 20 On a G t b D F W M E N J o  
Mr. Barnhill L Q G L F D W L Q J W K D W ) / , 0 ( 1 ¶ V D W W R U Q H \ V O R R N H G R Y  
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 email communications  
suggest that the list of sanctuary cities created by FA, which was e-mailed to Mr. Barnhill and  
was ultimately included in the Senate staff analysis, should be subject to some criticism. See, e.g.  
ECF No. ¶ 117-1] at 2 (e- P D L O I U R P ) / , 0 ( 1 V W D W L Q J L Q S D U W W K D W 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. ¶ Q 6 % ¶ V H Q D F ¶ 17 ¶ Q ¶ W e e v e r ¶ W a s ¶ E o ¶ S t e d by the bill  
sponsors, Plaintiffs have provided email correspondence between FLIMEN ¶ Q 6 H Q D W R U \* U X W



Clause Moreover, Defendants argue that, contrary to Plaintiffs' 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 the organization representatives which describe the disproportionate impact that SB 168 has on minorities. See 3 O D L Q W L I I V - 16 (collective citations to exhibits.) Plaintiffs also point to the extensive statistical data presented in L Q ' U / L F K W Pa D O P v S e d S R i S J e p o s i t i o n 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. [1091]. Finally, Amici Curiae submitted a brief in support of Plaintiffs in this case that provided the Court with valuable and informative evidence on how law like SB 168 ha



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 animus on the part of the entire legislative body. The resolution of 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 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 cited 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 in favor of the non-movants, the Court concludes that the record evidence consists of significant disputes of fact, which are more appropriately submitted for resolution by a trier of fact. *See* [113-6] at 22:1723, which is also buttressed by evidence of a history of 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 as a matter of 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 this 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.



U.S. at 267. Furthermore, the existence of any noteworthy procedural or substantive abnormalities or the implications of these abnormalities is dependent upon the facts and circumstances. The arguments for the Court's decision 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

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First, with regard to the contemporary statements made by Senator Gruters, which suggest racial animus, the Court concludes that these statements, when read in context, do not support the inference of discriminatory intent. The resolution of other outstanding factual questions, like the extent to which the evidence can reasonably lead to an inference of discriminatory intent.

RI )/,0(1 V LQYROYHPHQW LQ GUDWHQJ arguments for the Court's

Likewise, with regard to Plaintiff's arguments submitted to the Legislature that passed SB 168, the Court finds these arguments unpersuasive and unsupported by law. The Supreme Court has made it clear that



Court previously granted a preliminary injunction against the enforcement of the Transport Requirement and concluded that the provision was conflict preempted. See Desantis, 408 F. Supp. 3d at 1301-02. The Court also found that this provision was severable from the rest of SB 1068. at 1309. Plaintiffs urge the Court to apply the same reasoning as the Preliminary Injunction Order because 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. *Arizona v. United States*, 567 U.S. 387, 398 (2012). Nonetheless, the Supremacy Clause mandates that federal any Thing in the Constitution or DUW 9, † 7KXV 3>Z@KHUH WKH WZR FRQIOLFW IHGHUD :KDW FRQVWLWXWHV D F. 3d 1153, 1167 (11th Cir. 2006) (citations omitted).

Under the preemption doctrine, Congress has the power to preempt state law, and this SUHHP SWLRQ W\SLFDOO\ IDOOV LQWR RQH RI 3WKUHH FD preemption; and (3) FRQIOLFW SUHHP SWLRQ at 399 3([SUHV SUHHP SW RFFXUV ZKHQ &RQJUHVV PDQLIHVVV LWV LQWHQW WR GLVS Browning ) G DW 3, PSOLHG SUHHP SWLRQ' KDV JHQHUD and conflict preemption. 3) LHO G SUHHP SWLRQ RFFXUV ZKHQ D FRQJUI μVR SHUYDVLYH DV WR PDNH WKH UH DV R Q D E S T A T E S Q D H U H Q F V X S S O H F d (Quinn-Mcree v. Santa Fe Elevator Corp. 8 6 RU 3ZK

WKHUH LV D μIHGHUDO LQWHUHVW VR GRPLQDQW WKD

enforcement of state laws on the same ~~Arizona~~ <sup>Arizona</sup> § 67 U.S. at 399 (quoting ~~Rice~~ <sup>Rice</sup> 331 U.S.

DW <sup>3</sup> & RQIOLFW SUHHP SWLRQ RFFXUV HLWKHU ZKHQ LW

RIILFHUV DUH UHV Sif Civil Apprehension, and Removal of Illegal aliens from the  
8QLWHG ID.WDWHV ¶´

3\$V D JHQHUDO UXOH LW LV QRW D FULPH IRU D UHPRY  
6WDW.DDW´ 0RUHRYHU 3>U@HPRYDO Id. at 396 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 D 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 40708 (some citations omitted).

&RQJUHVV KDV GHOLQHDWHG VSHFLILF 3OLPLWHG FLU SHUIRUP WKH IXQFWLRQV Id. at 408. Relevant to the instant case, the U Attorney General may grant this authority to specific state or law enforcement officers SXUVXDQW WR D IRUPDO DJUHHPHQW FRPPRWD allows IHUUHG 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 4089. 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, 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 <sup>3</sup>DEVHQW DQ\ UHTXHVW D.  
\* RYHUQPHQW 567 U.S. at 410.

1HYHUWKHOHVV WKH 6XSUHPH &RXUHQWED Federal and JQL]HC  
VWDWH RIILFLDOV LV DQ LPSRUWDQW. at 411. Congress has WKH L  
explicitly stated that state and local law enforcement agencies do not need a 287(e)

<sup>3</sup>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, carry out such function at the expense of the State or political subdivision. See *Arizona*, 567 U.S. at 410. In its conclusion in the Preliminary Injunction Order, here, the Court finds that the Transport Requirement in SB 168 impermissibly encroaches upon Congressional objectives set forth in § 1357(g)(1). See *Desantis*, 408 F. Supp. 3d at 1302.

Indeed, 6 % ¶ V D W W H P Specifically, under the Transport Requirement, local law enforcement officers are required to transport aliens to a detention facility, which is a violation of the 287(g) Agreement meaningfully. See *Robbins v. Garrison Prop. & Cas. Ins. Co.*, 609 F.3d 583, 586

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 FRQVWUXH UHODWHG VWDWXWRU\ SURYLVLFRYH\ KDUPR  
 Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 455 (Fla 992)). The Transport Requirement, which requires law enforcement officers to transport undocumented immigrants to a detention facility, is precisely the type of unilateral conduct that Arizona expressly prohibited.

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 conflict with

performed by federal immigration officials



**V. CONCLUSION**

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

1. Plaintiff's Summary Judgment Motion, ECF No. [111], is **DENIED**.
2. Defendant's Summary Judgment ECF No. [112], is **GRANTED in part and DENIED in part**. Defendants are **PERMANENTLY ENJOINED** from enforcing the Transport Requirement, Fla. Stat. § 908.404 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




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**BETH BLOOM**  
**UNITED STATES DISTRICT JUDGE**

Copies to:

Counsel of Record