



UNITED STATES

No Way to Live

Alabama's Immigrant Law

HUMAN
RIGHTS
WATCH



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Summary

[The proposed law] attacks every aspect of an illegal alien's life.... This bill is designed to make it difficult for them to live here so they will deport themselves.

—Alabama State Representative Mickey Hammon, during debate before the bill passed the House on April 5, 2011

Legal or illegal, I'm human.

—Sara M., unauthorized immigrant in the US for 20 years and mother of two US citizen children, October 29, 2011

On September 28, 2011, the state of Alabama began implementing a law intended by its sponsors to make everyday life unlivable for unauthorized immigrants to the United States. Every provision of this law, the “Beason-Hammon Alabama Taxpayer and Citizen Protection Act,” Act No. 2011-535 (the “Beason-Hammon Act” or “Alabama immigrant law,” also commonly known as “HB 56”), calls for unauthorized immigrants to be treated differently than other residents of Alabama, whether they are applying for a state-regulated service or seeking justice in court. The law denies unauthorized immigrants equal protection of the law guaranteed under the US constitution and applicable international human rights law. And it has encouraged local and state officials to deny unauthorized immigrants basic rights such as access to water and housing. Although the law is new and its full impact unclear, it has already severely affected the state's unauthorized immigrants, their children, many of whom are US citizens, and the broader community linked to this population.

Every country has the authority to regulate the entry of immigrants into its territory, to deport those who have made an unauthorized entry, and to enforce its immigration laws against those no longer authorized to remain. At the same time, international law requires that all persons, by virtue of their humanity, enjoy fundamental human rights. In the United States, these rights are reflected in US constitutional law as well as US international legal obligations which, in setting forth protections for fundamental rights, make clear that such rights apply to “persons,” “people,” and “everyone,” with only a few distinctions allowed between citizens and non-citizens, such as in the areas of voting rights and deportation procedures. These legal obligations bind states and local governments as well. Thus, while every state in the United States has a population of people who entered the country illegally who may lawfully be subject to deportation, no federal or state law may create a situation in which fundamental rights due all persons are infringed upon.

Alabama's immigrant law, however, does just that. As made explicit in the quote above from Representative Mickey Hammon, one of the law's sponsors in the Alabama House of Representatives, the law aims to attack "every aspect of an illegal alien's life."¹ That goal was underscored by the comments of State Senator Scott Beason, a co-author of the law, who stated that the best way to address the problem of illegal immigration is to "empty the clip, and do what has to be done."²

The breadth of the law is staggering. Like Arizona's highly problematic immigrant law (popularly known as "SB 1070"), the Beason-Hammon Act requires the police to determine the citizenship and immigration status of anyone they stop or arrest if they have "reasonable suspicion" the person is unauthorized. But the Alabama law reaches far beyond immigrant interactions with law enforcement officials. Unauthorized immigrants are prohibited from entering into broadly defined "business transactions" with the state. Schools are required to check the immigration status of children. Seeking work as an unauthorized immigrant constitutes a misdemeanor crime. Unauthorized immigrants who have had a contract violated, whether an employment contract or a lease, are not to receive protection from the courts. An unauthorized immigrant arrested for any offense, even one as minor as not having a driver's license, will automatically be denied bail. The law further makes it a crime for US citizens and legal residents to knowingly help unauthorized immigrants, such as by giving them a ride or helping them sign up for water service.

And these are merely the intended consequences of the law. The actual consequences, which continue to unfold, remain unclear. Much may ultimately depend on which provisions of the law survive review by the courts. As noted below, courts have preliminarily enjoined enforcement of some provisions; at the time of writing, it is unclear whether they will be permanently struck down. In the meantime, other provisions remain in effect or are due to go into effect in 2012, and many people's lives have already been drastically changed.

¹ Kim Chandler, "Alabama House passes Arizona-style immigration law," *The Birmingham News*, April 5, 2011, http://blog.al.com/spotnews/2011/04/alabama_house_passes_arizona-s.html (accessed November 10, 2011).

² State Senator Beason was initially quoted making this comment at a Cullman County Republican Party breakfast. See Sam Rolley, "Beason: Dems don't want to solve illegal immigration problem," *The Cullman Times*, February 6, 2011, <http://www.cullmantimes.com/local/x2072622472/Beason-Dems-don-t-want-to-solve-illegal-immigration-problem> (accessed November 10, 2011). When these comments proved controversial, Beason asserted his comments were taken out of context, in which he stated that the appropriate Republican response to a mugging would be a father that does not take only one shot but "empties the clip. He solves the problem." See Charles J. Dean, "Sen. Scott Beason catching flak over 'empty the clip' comment," *The Birmingham News*, February 8, 2011, http://blog.al.com/spotnews/2011/02/sen_scott_beason_catching_flak.html (accessed November 18, 2011).

Supporters of the law make no allowance for the fact that many unauthorized immigrants in Alabama—as in other states—have long been integrated into their communities. Most of the 50 unauthorized immigrants Human Rights Watch interviewed for this report have lived in the United States for more than 10 years, and in some cases, for more than 20. The majority have US citizen or permanent resident family members—not only children but also siblings and parents. One unauthorized immigrant said he had US citizen children, a US citizen father, a permanent resident mother, and four permanent resident siblings. Because the US immigration system functions so slowly, he has been “waiting in line” for residency status for nearly 19 years, since his father first petitioned for him.³ These numbers are echoed by recent research that indicate that nearly two-thirds of unauthorized immigrants in the US have lived in the country for at least 10 years, and that nearly half are parents of minor children.⁴

These immigrants work for, and sometimes own, Alabama businesses. They are important participants in local religious, educational, and civic life. Many described a fierce attachment to Alabama, and not just to the US. One 19-year-old, brought to the US when he was nine, struggled to articulate what Alabama meant for him: “It’s just home. I love here.”⁵ A 27-year-old father of two, who came to the US when he was 15, felt the same way: “Others go to Michigan, Florida. This is my home.”⁶

For years, Alabama has implicitly acknowledged their presence, as well as accepted their labor, taxes, and various state fees. But now, Alabama has decided that many state protections will not apply to these residents.

Shortly before this report went to press, Alabama Attorney General Luther Strange issued memorandums interpreting some provisions of the Beason-Hammon Act more narrowly than had been interpreted by local and state officials, and he recommended some provisions to be modified or repealed. As this report shows, however, the law both denies fundamental rights and encourages interpretations of the law that make violations of these rights more likely. The human rights of all residents in Alabama cannot be protected simply with modifications to a law that is grounded in discrimination.

³ Human Rights Watch interview with Jose A. (pseudonym), (location withheld), November 3, 2011.

⁴ Pew Hispanic Center, “Unauthorized Immigrants: Length of Residency, Patterns of Parenthood,” December 1, 2011, <http://www.pewhispanic.org/2011/12/01/unauthorized-immigrants-length-of-residency-patterns-of-parenthood> (accessed December 2, 2011).

⁵ Human Rights Watch interview with Felipe S. (pseudonym), (location withheld), November 2, 2011.

⁶ Human Rights Watch interview with Paolo B. (pseudonym), (location withheld), November 3, 2011.

Human Rights Concerns

The new law contains provisions that have been interpreted in a manner to prevent unauthorized immigrants from engaging in necessary everyday transactions, which denies them fundamental rights.

For instance, the law as implemented in the first two months barred unauthorized immigrants in some parts of the state from signing up for water or other utility service, as such service was considered a prohibited “business transaction” with the state. The law was similarly interpreted to deprive them of their ability to live in the homes they own: unauthorized immigrants were told they could not renew the registration tags on mobile homes they own, nor pay property taxes for their homes as they had for years. The attorney general in December issued a guidance letter stating that the phrase “business transaction” does not encompass access to water and other utility services. A federal court also temporarily enjoined enforcement of the “business transaction” provision as applied to mobile homes. At the time of writing, it remains unclear how these directives will be implemented at the local level.

The Beason-Hammon Act more explicitly denies equal protection of the law in several ways. Some unauthorized immigrants who are victims of wage theft and other crimes, having heard that Alabama courts will not uphold their contracts and that the police will engage in federal immigration enforcement, have decided not to report the crimes to the authorities. Judges and attorneys have raised concerns that the law might prevent them from fulfilling their legal duties towards unauthorized immigrants.

The people most affected by the law are overwhelmingly Hispanic, an ethnic minority in Alabama. While discrimination against Hispanics and other minorities has a long history in Alabama, passage of the Beason-Hammon Act appears to have given police and private individuals a license to harass and abuse unauthorized immigrants as well as minority US citizens and permanent residents. Several Hispanics told Human Rights Watch that since the law went into effect, the police stopped or arrested them for no reason or on pretext. They also reported harassment by private individuals. Some reported discrimination in private business transactions, such as one woman, a permanent resident, who was unable to get her prescription filled at a major discount store chain because she could not prove US citizenship.

Particularly hard hit have been the children of unauthorized immigrants, an especially vulnerable population, including the many such children who are US citizens. As their parents curtail driving, some no longer receive timely medical care. Although the provision requiring schools to check the immigration status of their students was enjoined by the

courts, many families withdrew their children while that provision was in effect, and the remaining students struggle to understand what has happened to their classmates and what may happen to their own families. Such difficulties are exacerbated by bullying from classmates who question other children, even US citizen children, asking: “What are you doing here? Why don’t you go back?”

That unauthorized immigrants could avoid many of these abuses by returning to their countries does not justify Alabama’s denial of their basic rights. The fact that the Alabama law also effectively infringes on the rights of many US citizens and permanent residents is additional cause for concern.

A Climate of Fear

In the first two months since the law went into effect, unauthorized immigrants, their families, and their communities have seen their lives changed in profound ways. Schools, businesses, and landlords have all reported a significant exodus of people from the state.⁷ Patricia T., a US citizen married to an undocumented Mexican, watched her neighbors move away the very night the law went into effect with only their cars and the clothes on their backs, leaving behind their homes, furniture, and other belongings.⁸ Families left behind not only all of their possessions, but also communities and school children traumatized by the sudden disappearance of their friends. One minister’s congregation decreased from 100 members to 25.⁹

Those who remain avoid as much contact with government officials as possible by adopting “underground” lives. One woman, describing the atmosphere in her community, stated, “We live in terror.”¹⁰ Nearly every unauthorized immigrant interviewed by Human Rights Watch reported curtailing everyday activities. To minimize the risk of being stopped by the police while driving, families reported staying home as much as possible, driving only to go to work or buy necessities. One couple shops at Walmart, a discount store chain, only under cover of darkness, when it is harder for the police to identify them as Latino.¹¹

⁷ See Campbell Robertson, “After Ruling, Hispanics Flee an Alabama Town,” *New York Times*, October 3, 2011, http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?_r=1&hp (accessed November 18, 2011).

⁸ Human Rights Watch interview with Patricia T. (pseudonym), (location withheld), November 2, 2011.

⁹ Human Rights Watch interview with minister, (location withheld), October 26, 2011.

¹⁰ Human Rights Watch interview with Sonia D. (pseudonym), (location withheld), October 27, 2011.

¹¹ Human Rights Watch interview with Eduardo and Alegria F. (pseudonyms), (location withheld), November 3, 2011.

Fear has also infringed upon the spiritual lives of Alabama’s unauthorized immigrants. Church is often an important source of solace and strength for many immigrant families. As one man put it, “There is a God and He won’t ask for papers.”¹² But in one rural community, several families decided the church was too far away to risk driving. Although the priest is now conducting Mass in one family’s trailer once a month, that family decided their child could not attend Communion classes.¹³

The impact on family life has been severe. Several families reported their children no longer participate in activities like soccer, cheerleading, and Boy Scouts, because they do not want to risk more driving. Not surprisingly, children have become anxious and fearful. One mother reported that when she is out of the house, her children call constantly, asking, “Mommy, are you coming? Where are you? When are you coming home?”¹⁴

* * *

There has been important opposition to the law in the state. Many Alabamians, including educators and police officers, have spoken out publicly against the law. Several unauthorized immigrants reported that many more unnamed individuals have softened the blow of the law by giving them a ride to work, taking children to school or soccer practice, signing powers of attorney to help take care of children in the event of a parent’s arrest, or signing up for water service in their own names. Sadly, many of these actions, done out of a sense of kindness and decency, are actions the Beason-Hammon Act seeks to criminalize.

As severe as the impact has been in the first two months, the effects of the law are likely to get worse as time goes on. Unless the courts intervene and the preliminary injunctions become permanent ones, more people will be denied access to utilities, more people will find themselves unable to renew their business permits and mobile home tags, and more people will become victims of crime, abuse, and harassment without any meaningful legal recourse.

Some of the state legislators who voted for the bill are now having second thoughts. State Senator Gerald Dial recently created a package of amendments to address “unintended consequences.”¹⁵ He has stated, “We’re loving, caring, compassionate people in Alabama,

¹² Human Rights Watch interview with Jose A. (pseudonym), (location withheld), November 3, 2011.

¹³ Ibid.

¹⁴ Human Rights Watch interview with Sofia and Juan G. (pseudonyms), (location withheld), October 29, 2011.

¹⁵ Thomas Spencer, “Alabama immigration law changes in the works; GOP senators say bill has ‘unintended consequences,’” *The Birmingham News*, November 16, 2011, http://blog.al.com/spotnews/2011/11/immigration_law_amendments_in.html (accessed November 19, 2011).

not hateful and mean as we've been painted by this bill. I want to remove some of that stigma."¹⁶ And as this report went to press, Attorney General Strange recommended repeal or modification of certain provisions, including some analyzed in this report. He also issued guidance letters that would limit the impact of the law on some rights. At the same time, however, supporters of the law insist they are open only to minor changes that would make the law more enforceable. Sen. Beason stated, "I have no intention of weakening the anti-illegal immigration law."¹⁷

The government of Alabama's recognition that there are serious problems with the Beason-Hammon Act may eliminate some "worst case" scenarios. But the proposed modifications do not change the fundamental intent and impact of the law: to deprive unauthorized immigrants of basic rights and equal protection of the law so as to make it difficult or nearly impossible for them to live in the state. Given the all-encompassing nature of the law, the only appropriate solution is an equally comprehensive one: repealing the Beason-Hammon Act altogether.

¹⁶ Patrik Jonnson, "Why Republicans are doing an about-face on tough Alabama immigration law," *The Christian Science Monitor*, November 16, 2011, <http://www.csmonitor.com/USA/Politics/2011/1116/Why-Republicans-are-doing-an-about-face-on-tough-Alabama-immigration-law> (accessed November 19, 2011).

¹⁷ Brian Lyman, "AG Strange: Immigration law needs change," *Montgomery Advertiser*, December 6, 2011, <http://www.montgomeryadvertiser.com/article/20111206/NEWS/111206013/AG-Strange-Immigration-law-needs-changes?odyssey=nav%7Chead> (accessed December 7, 2011); see also Brian Lawson, "Alabama Attorney General wants to end school data collection, no-bail provisions in immigration law," *The Huntsville Times*, December 7, 2011, http://blog.al.com/breaking/2011/12/alabama_attorney_general_wants.html (accessed December 7, 2011).

Recommendations

To the State of Alabama

To the Alabama State Legislature

- Promptly repeal the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535.

To Alabama Governor Robert Bentley and Law Enforcement Officials

Even before repeal,

- Direct all state and local officials to ensure all residents, regardless of immigration status, are able to access necessities like water and housing.
- Train local law enforcement on how to avoid illegal racial profiling and collect data on police stops and arrests to ensure racial profiling is not occurring.

To Alabama Attorney General Luther Strange

- Ensure that local and state officials implement policies in accordance with the attorney general's guidance letters that more narrowly interpret some provisions of the Beason-Hammon Act.

To All US State and Local Governments

- Repeal or oppose efforts to enact legislation that would infringe upon the fundamental rights of unauthorized immigrants guaranteed under the US constitution or international human rights law.

To the US Congress

- Enact comprehensive immigration reform in keeping with US obligations under international human rights law.

To the US President

- Direct the Department of Homeland Security and other US agencies not to participate in the enforcement of the Alabama immigrant law, and, specifically, ensure that unauthorized immigrants arrested under the law are not placed in removal proceedings.
- Direct the Department of Justice to continue to vigorously investigate all allegations of civil rights violations due to the Alabama law.

Methodology

This report is based on research conducted by Human Rights Watch in Alabama from October 26 to November 4, 2011. Human Rights Watch researchers visited several cities and towns in Alabama, including Birmingham and several of its suburbs, as well as Albertville, Decatur, Tuscaloosa, Troy, Dothan, and Foley. The report is also based on telephone interviews with Alabama residents in October and November 2011, as well as reports by local and national media and by other advocacy organizations.

Human Rights Watch conducted 57 interviews with people who reported they had personally experienced discrimination or abuses because of the new immigrant law, including 50 unauthorized immigrants and seven US citizens and lawful permanent residents living in Alabama. We also received over a dozen reports of discrimination and abuses from individuals who had personal knowledge of incidents experienced by others. We further interviewed people familiar with the application of Alabama's law, including lawyers, ministers, teachers, community leaders, and local immigrant advocates. Many of these people helped us identify the unauthorized immigrants whom we interviewed.

We also interviewed judges, police officers, and school administrators. We did not investigate specific incidents of police harassment where the person reporting the incident had requested anonymity, but we did interview ranking officers at police departments about their general policies regarding the Beason-Hammon Act and their response to allegations of racial profiling or abuse. We also visited local permit offices and utility boards in two towns and inquired into what documents were required for service and renewal. In total, we interviewed over 90 people.

Interviews were conducted in English, Spanish, or a combination of the two, depending on the interviewee's preferences. Most interviews were done individually, except in a few instances where interviewees preferred to speak with their spouses or in small groups.

No interviewee received compensation for providing information. Where appropriate, Human Rights Watch provided contact information for organizations offering legal or other services, including information on hotlines to report abuses to the US Department of Justice and to the Southern Poverty Law Center.

We have used pseudonyms for every unauthorized immigrant interviewed so as to protect their privacy. A few legal residents and US citizens also requested anonymity for

privacy reasons. All interviews were conducted in Alabama, except where we specifically note that we conducted the interview by telephone. The exact location of some interviews has been withheld, as have some identifying details, to protect the identity of interviewees.

I. Impact of the Beason-Hammon Act on Access to Everyday Necessities

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act contains provisions that have denied unauthorized immigrants the ability to engage in necessary everyday transactions.¹⁸ Immediately after the law went into effect, some unauthorized immigrants were told they could no longer apply to get access to water and other utilities, and many have found their ability to live in the homes they own compromised in several ways.

Section 30 prohibits “aliens not lawfully present in the United States” from entering into a “business transaction” with the state.¹⁹ To enter or attempt to enter into a business transaction with the state as an unauthorized immigrant now constitutes a Class C felony, punishable by one to ten years in prison and up to \$15,000 in fines.²⁰ Family and friends with US legal status who help known unauthorized immigrants enter into such transactions can be prosecuted for conspiracy and be subject to the same penalty.²¹

The term “business transaction” was not defined in the law, which resulted in confusing and inconsistent interpretations of the law. A significant number of public utility boards, departments of motor vehicles, and county offices across the state interpreted these provisions to mean unauthorized immigrants could no longer sign up for water, sanitation, gas, or electricity; renew the registration tags on their mobile homes and cars; renew business permits; and pay property taxes. In this way, a distinct group of Alabama’s residents—those whose presence is unauthorized under US federal law—may be denied as a matter of law the necessities for life and well-being.

Sonia D. is a single mother and restaurant owner who has been living in Alabama for seven years and in the United States for a total of 12 years. Of her four children, the two youngest, who are eight and twelve, are US citizens. The oldest, who is 27, has her own child, a five-year-old boy who is also a US citizen. All three generations live together in a trailer Sonia bought with years of work and savings. She is proud to own her home: “It’s not a big house, but I know it’s mine.”

¹⁸ Alabama Laws Act No. 2011-535 (2011), <http://www.ago.state.al.us/Page-Immigration> (accessed November 10, 2011).

¹⁹ Alabama Act No. 2011-535, sec. 30.

²⁰ Alabama Code secs. 13A-5-6(a)(3) and 13A-5-11(a)(3) (2011).

²¹ Alabama Act No. 2011-535, sec. 25.

Alabama’s immigrant law threatens to make it illegal for her to live in her home or run her business. Lacking legal status, she was unable to renew the registration tag on her trailer, and so she paid someone to obtain a tag for her. When her business permit expires, she fears she will not be able to renew it either without proof of legal status. The local water office told her she will have to show an Alabama driver’s license—unobtainable for unauthorized immigrants in the state—to pay her bill. Crying repeatedly, she told Human Rights Watch she has trouble sleeping at night.

Even before the law was enacted, Sonia had felt powerless without legal immigration status. Her daughter was paddled at school a couple of years ago without her consent. When she asked her daughter why she had not told her when it happened, her daughter replied, “I didn’t tell you because you don’t have papers. You can’t do anything.”

But now, Sonia says she feels even more strongly that she and others like her are being treated “like we’re not human beings.”²²

These provisions, when so interpreted, violate international human rights law, which recognizes the fundamental rights of all people to water, housing, and other essentials necessary for one’s health and well-being. The Universal Declaration of Human Rights provides that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”²³ The International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party, specifically prohibits

²² Human Rights Watch interview with Sonia D. (pseudonym), (location withheld), October 27, 2011.

²³ See, for example, Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), art. 25, which is widely accepted as reflecting customary international law (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”); International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 11(1), to which the US is a signatory but not a party (“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”). Article 18 of the Vienna Convention on the Law of Treaties (1969) provides that a state that is a signatory but not yet a party to a treaty “is obliged to refrain from acts which would defeat the object and purpose” of the treaty.

arbitrary interference with one's family or home.²⁴ The state of Alabama is obligated to respect rights protected under the ICCPR, which binds all government officials,²⁵ and is required to do so by the US Constitution, under which treaties are the law of the land that state governments must uphold.²⁶

Shortly before this report went to press, a federal judge issued a temporary restraining order blocking enforcement of section 30 as applied to mobile homes.²⁷ Additionally, the state Attorney General's Office issued guidance letters directing local and county officials not to implement this section unless they could verify a non-citizen's immigration status through a federal program, and stating that "business transaction" does not encompass water and similar utility services.²⁸ The Alabama League of Municipalities issued its own guidance stating that individuals still need to declare their citizenship or lawful status under penalty of perjury when entering into "business transactions" with the state,²⁹ and, at the time of writing, at least one county continues to post a notice on its website stating that all individuals conducting business transactions with any government office are required to provide proof of US citizenship or lawful presence.³⁰

²⁴ International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 17. ("No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."). According to the UN Human Rights Committee, the international expert body that monitors compliance with the ICCPR, in its general comment on the rights of aliens, "It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise." Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations, para, 5.

²⁵ ICCPR, art. 50 ("The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.").

²⁶ US Constitution, article VI, clause 2. See also *Asakura v. City of Seattle*, 265 U.S. 332 (1924) (holding that a treaty made under the authority of the United States stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States and "operate[s] of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts"). See also *Maiorano v. Baltimore & Ohio R. R. Co.*, 213 U.S. 268, 272, (1888); *Baldwin v. Franks*, 120 U.S. 678, (1887); *Head Money Cases*, 112 U.S. 580, 598 (1884); *Chew Heong v. United States*, 112 U.S. 536, 540 (1884); *Foster v. Neilson*, 2 Pet. 253, 314 (1829).

²⁷ See *Central Alabama Fair Housing Center v. Magee and Stubbs*, Opinion and Order, No. 2:11cv982-MHT (WO), November 23, 2011, <http://www.wsfa.com/link/525763/judge-myron-thompsons-immigration-ruling-from-nov-23> (accessed November 28, 2011).

²⁸ Guidance Letter from the Alabama Attorney General, No. 2011-01, December 1, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-01.pdf> (accessed December 2, 2011).

²⁹ Immigration Guidance from the Alabama League of Municipalities, December 2, 2011, <http://www.alalm.org/Home%20Page/Immigration-Guidance-2011-01WithALMLetter.pdf> (accessed December 5, 2011).

³⁰ See also Houston County, "Important New Requirements – Please Read," <http://www.houstoncounty.org/styles/files/1317736957.pdf> (accessed December 6, 2011).

The attorney general's guidance letters, as well as the temporary restraining order on enforcement of the law against mobile homes, may prevent some of the worst infringements of rights under the law, though it remains unclear whether these directives will be implemented statewide. However, the aim of the law to make life difficult for unauthorized immigrants encouraged broad and abusive legal interpretations when it went into effect, as described below. Until the law is repealed and the state is effectively protecting the rights of unauthorized immigrants to everyday necessities, Human Rights Watch remains concerned that the law will facilitate discrimination and denial of basic rights.

Clean Water, Sanitation, Gas, and Electricity

Alabama Attorney General Luther Strange asserted during litigation over the Alabama law that the US Department of Justice was “misinterpreting, or at least exaggerating,” when it argued that section 30 would prohibit unauthorized immigrants from having running water or sewer services.³¹ But several weeks before the law even went into effect, Allgood Alabama Water Works posted a notice stating, “You may lose water service” if customers did not have valid Alabama identification.³² Other utilities followed suit. The *Decatur Daily* reported that Decatur Utilities changed its policy to require proof of legal status to sign up for water, electricity, gas, and sewer service, in accordance with a legal opinion issued by the Electric Cities of Alabama, a coalition of the state's municipally owned electric utilities.³³ The ACLU of Alabama reported the Montgomery County and Houston County probate offices had indicated those requesting water service must meet the requirements of the new law.³⁴ Human Rights Watch visits to the Municipal Utilities Board in Albertville and the Dothan Utilities office in Dothan confirmed they were also requesting government-issued identification only available to US citizens and lawfully present non-citizens.³⁵

Utilities that announced such policies generally limited the requirement of proof of status to those who are signing up for new service, adding an account to existing service, or

³¹ *United States v. Alabama*, Case No. 2:11-cv-02746-SLB (N.D. Ala., pending), Alabama and Governor Bentley's Response to United States Motion for Preliminary Injunction at 37, August 15, 2011, <http://www.ago.alabama.gov/Page-Immigration-Litigation-Documents> (accessed November 10, 2011).

³² Ashley Portero, “Alabama Immigration Law: Prove Citizenship or Lose Clean Water Supply,” *International Business Times*, October 10, 2011, <http://www.ibtimes.com/articles/228331/20111010/alabama-immigration-law-cuts-off-water-supply-to-immigrants.htm> (accessed November 10, 2011).

³³ Eric Fleischauer, “DU: no water or power for illegal immigrants,” *Decatur Daily*, November 6, 2011, <http://www.decaturdaily.com/stories/DU-No-water-or-power-for-illegal-immigrants,87348> (accessed November 18, 2011).

³⁴ Portero, “Alabama Immigration Law,” *International Business Times*.

³⁵ Human Rights Watch visits to the Municipal Utilities Board, Albertville, October 27, 2011, and Dothan Utilities, Dothan, November 2, 2011. The researcher inquired into which documents were needed for service.

restoring service after it has been shut off for nonpayment.³⁶ Previously, utility offices may have required identification, but they did not seek to inquire whether the person seeking services was a legal resident.

While most of the families we interviewed were not seeking new utilities accounts and thus had not faced possible service disruption, some interviewees said they knew of people who had their electricity or their water cut off after the law went into effect³⁷ or who had to pay hundreds of dollars extra for service because they did not have the necessary identification documents.³⁸ A news program on Univision also reported that a family in Montgomery was told that in order to get water service without a US passport or an Alabama identification card, they would need to pay hundreds of dollars extra to construct their own system.³⁹ One woman, who had left Alabama for Georgia soon after the passage of the law, said her apartment building had announced residents would need to provide a Social Security number in order to receive water and light services. Her fear of losing these services contributed to her decision to leave Alabama, despite having lived in the state for 18 years with two US citizen children born in the state.⁴⁰

Our investigation also revealed that some utilities, including in Dothan and Decatur, were requiring state or federal-issued identification that unauthorized immigrants cannot obtain as a prerequisite for service even before Alabama passed its immigrant law, and they continue to do so today.⁴¹ Leticia M., a 20-year-old who has lived in Alabama since she was one year old, has been trying unsuccessfully since May 2011 to get water service for her trailer, where she intends to live with her husband and their one-year-old daughter, a US citizen.⁴² Unauthorized immigrants in other towns reported that local utilities had been requiring state-issued identification for years as well.⁴³

³⁶ Fleischauer, "DU: no water or power for illegal immigrants," *Decatur Daily*.

³⁷ Human Rights Watch interview with Ricardo J. (pseudonym), (location withheld), October 26, 2011.

³⁸ Human Rights Watch interview with Marisol M. (pseudonym), (location withheld), October 31, 2011; Human Rights Watch interview with Patricia T. (pseudonym), (location withheld), November 2, 2011.

³⁹ "Leyes contra indocumentados en Alabama" in *Despierta America*, Univision, September 28, 2011, <http://www.youtube.com/watch?v=kXgd9oOKtOc> (accessed November 23, 2011). A customer service representative at the Montgomery Water Works & Sanitary Sewer Board stated to us, however, that if an individual seeking water service has no Social Security number or valid visa, there is no extra fee to get water service, and in fact, he or she will be denied altogether. Human Rights Watch telephone interview with customer service, Montgomery Water Works & Sanitary Sewer Board, November 29, 2011.

⁴⁰ Human Rights Watch telephone interview with Leonor B. (pseudonym), October 27, 2011.

⁴¹ Human Rights Watch telephone interviews with customer service representatives, Dothan Utilities and Decatur Utilities, November 6, 2011.

⁴² Human Rights Watch telephone interviews with Leticia M. (pseudonym), November 16 and 17, 2011.

⁴³ Human Rights Watch interview with Jose M. (pseudonym), (location withheld), October 28, 2011; Human Rights Watch interview with Oscar de la Cruz, Albertville, October 26, 2011.

More than two months after the law went into effect, the attorney general issued a guidance stating that the phrase “business transactions” “does not embrace the provision of services...such as water, sewer, power, sanitation, food, and healthcare”⁴⁴ and called on the legislature to modify the provision to specify that “business transaction” only deals with specific license transactions.⁴⁵ While the attorney general’s guidance, if applied consistently, will significantly lessen the impact of the law on unauthorized immigrants’ access to water, sewer, and power, it does not affirm the right of all residents of Alabama to everyday necessities. The attorney general’s memorandum contains the caveat that “[s]ome of these services may be within the scope of other provisions of Act No. 2011-535,” without further clarification on which services may be barred.⁴⁶ As described below, local offices are not equipped to interpret and implement the law, and it remains unclear how the attorney general’s guidance will be implemented throughout the state.

The attorney general’s guidance itself demonstrates how the law’s intent to make life difficult for unauthorized immigrants has encouraged local and state officials to interpret the law so broadly that unauthorized immigrants faced the denial of rights as basic as access to water.

Housing

For numerous families, possible loss of housing is one of the most pressing issues created by the new immigration law. The law, interpreted as barring unauthorized immigrants from renewing registration tags for mobile homes, effectively prohibits affected families and individuals from legally occupying homes that they own, often situated on property that they own. Several weeks after our visit to Alabama, the US District Court for the Middle District of Alabama issued a temporary restraining order enjoining enforcement of this provision as applied to mobile homes, set to expire December 7.⁴⁷ But the provision had been in effect from September 28 to November 23, with serious consequences for some of the individuals we interviewed. Even after the temporary restraining order went into effect, the Southern Poverty Law Center received complaints from individuals in six counties that

⁴⁴ Guidance Letter from the Alabama Attorney General, No. 2011-02, December 2, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-02> (accessed December 6, 2011).

⁴⁵ Lawson, “Alabama Attorney General wants to end school data collection, no-bail provisions in immigration law,” *The Huntsville Times*.

⁴⁶ *Ibid.*

⁴⁷ See *Central Alabama Fair Housing Center v. Magee and Stubbs*, Opinion and Order, No. 2:11cv982-MHT (WO), November 23, 2011, <http://www.wsfa.com/link/525763/judge-myron-thompsons-immigration-ruling-from-nov-23> (accessed November 28, 2011).

county offices were not complying with the temporary restraining order.⁴⁸ The guidance letter issued by the attorney general on December 1 provides that local and county offices may deny a non-citizen the right to proceed with a business transaction only if a federal government program verifies the individual does not have legal status.⁴⁹ Given that only one county is currently enrolled in the program, the provision should not be barring unauthorized immigrants from entering into housing-related “business transactions” at this time.⁵⁰ The guidance, however, does not affirm the right of unauthorized immigrants to live in the homes they own, and if the law is not permanently enjoined or repealed, more unauthorized immigrants and their families could find their housing rights threatened.

According to the Pew Hispanic Center, 43 percent of Hispanics⁵¹ in Alabama are homeowners.⁵² Although it is difficult to determine how many of those owners are undocumented, it is clear that a significant number of Hispanics may have their right to live in their own homes compromised by the Alabama immigrant law.

On September 29, 2011, the Alabama Department of Revenue sent a memorandum to all tax assessors, tax collectors, revenue commissioners, and tax valuation analysts in Alabama stating,

[A]ny person applying for a homestead exemption, the application of current use valuation of their property, or any other exemption of abatement of property taxes for the first time **must first prove his or her United States Citizenship**. If the person is an alien, he or she must demonstrate that they have a **lawful presence in the United States**. Any one [sic] registering a manufactured home must also **prove his or her United States Citizenship**. If the person is an alien, he or she must

⁴⁸ Kent Faulk, “Counties say they’re following judge’s order on mobile home registration,” *The Birmingham News*, December 1, 2011, http://blog.al.com/spotnews/2011/12/counties_say_theyre_following.html (accessed December 1, 2011).

⁴⁹ See Guidance Letter from the Alabama Attorney General, No. 2011-01, December 1, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-01> (accessed December 2, 2011); Guidance Letter from the Alabama Attorney General, No. 2011-02, December 2, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-02> (accessed December 6, 2011).

⁵⁰ Brian Lawson, “Alabama to stop immigration checks for government transactions, but fed help may be months away,” *The Huntsville Times*, December 4, 2011, http://blog.al.com/breaking/2011/12/alabama_to_stop_immigration_ch.html (accessed December 7, 2011).

⁵¹ This report uses Latino and Hispanic interchangeably to refer to individuals of Latin American descent.

⁵² Pew Hispanic Center, “Demographic Profile of Hispanics in Alabama, 2009,” <http://pewhispanic.org/states/?stateid=AL> (accessed November 15, 2011).

demonstrate that they have a lawful presence in the United States [emphasis in original].⁵³

The vast majority of families we interviewed live in trailers that are technically mobile homes but are now largely stationary. Nevertheless, they are considered mobile vehicles that need new registration tags every year. Families living in five cities across the state reported to Human Rights Watch that the Department of Motor Vehicles will no longer renew the tags on these trailers because that would constitute a “business transaction” with the state in violation of the Alabama law.⁵⁴ Local activists,⁵⁵ a radio program host,⁵⁶ and ministers⁵⁷ reported hearing this issue raised repeatedly in their communities as well. Those who own the land on which the trailers sit are also being told they cannot pay property taxes and receive the tag indicating proof of payment.⁵⁸ One woman reported that because of the law she had been compelled to sell her home very cheaply.⁵⁹ Others said they had transferred title to family and friends with legal status.⁶⁰

These trailers are not recreational vehicles but a family’s “home” in every sense of the word. Many families reported saving or making payments for years and investing additional expenses to renovate and make these trailers habitable. Human Rights Watch visited two sisters whose families live in adjacent trailers. Each trailer was meticulously maintained inside and out, with porches, playground sets, chicken and rabbit coops, and gardens. One sister and her husband had worked and saved for eight years to pay off the trailer and had also managed to buy the land on which the trailer sits.⁶¹ In another town, Victor, a 19-year-old who had come to Alabama when he was six, proudly showed off a home his father had spent \$20,000 renovating, putting in hardwood floors, tiles, and

⁵³ Memorandum from Will Martin, Valuation and Standards Supervisor, Property Tax Division, Alabama Department of Revenue to Tax Assessors, Tax Collectors, Revenue Commissioners, Tax Valuation Analyst, September 29, 2011.

⁵⁴ The restriction on renewing registration tags for mobile homes was reported by residents of Albertville, Tuscaloosa, Pelham, Dothan, and Foley.

⁵⁵ Human Rights Watch interview with Victor Spezzini, organizer with Hispanic Interest Coalition of Alabama, Birmingham, October 26, 2011; Human Rights Watch telephone interview with Gwen Ferreti, doctoral student, Tuscaloosa, October 21, 2011.

⁵⁶ Human Rights Watch interview with Oscar de la Cruz, radio show host on WWGC 1090 AM, Albertville, October 27, 2011.

⁵⁷ Human Rights Watch interview with Reverend Hernan Afanador, Birmingham, October 26, 2011; Human Rights Watch interview with Reverend Fernando Rodriguez, Albertville, October 27, 2011.

⁵⁸ Thomas Spencer, “Alabama immigration law shakes up mobile home parks,” *The Birmingham News*, October 15, 2011, http://blog.al.com/spotnews/2011/10/alabama_immigration_law_shakes.html (accessed November 10, 2011).

⁵⁹ Human Rights Watch interview with Isabel J. (pseudonym), (location withheld), October 30, 2011.

⁶⁰ Human Rights Watch interview with Lorena B. (pseudonym), (location withheld), October 30, 2011; Human Rights Watch interview with Lara P. (pseudonym), (location withheld), October 30, 2011; Human Rights Watch interview with Paolo B. (pseudonym), (location withheld), November 3, 2011.

⁶¹ Human Rights Watch interview with Ana S. (pseudonym), (location withheld), October 28, 2011.

chandeliers. His father owns two other trailers that he has fixed up and is renting out.⁶² At the time of the interviews, all three families were apprehensive about whether they could continue to live in their homes without renewing their tags.

Lorena B. is an unauthorized immigrant who has lived in the United States for fifteen years and in Alabama for nine. She was thrilled when she was able to buy a trailer and have “a safe place” for her four US citizen children. But after Alabama passed its immigrant law, Lorena received a letter saying that to renew her registration tag on her trailer, she would have to show an Alabama driver’s license or a birth certificate. She plans to transfer the title to someone she trusts, who will recognize that the trailer still belongs to Lorena and her family. She is grateful to know someone who is willing to do that for her, but she believes that “it’s not just” for her home not to be recognized as hers.⁶³

The inability of unauthorized immigrants to renew the tags on their mobile homes under section 30 is exacerbated by the law’s provision that Alabama courts are not to enforce contracts in which one of the parties is known to be undocumented.⁶⁴ The one court to rule on the contracts provision of the Beason-Hammon Act held that the law does not apply to lawsuits that were commenced before the law went into effect.⁶⁵ Courts conceivably could similarly rule that the law applies only to new contracts, and not to contracts that were entered into before the law, though no such case has yet been decided. But so long as there is uncertainty about the provision, many families will be extremely anxious about their home and greatest financial asset. For instance, Sara M. and her family remain apprehensive about what rights they have in two houses they own, one of which they are still paying off. Sara, who is now 27 years old, has lived in the United States since she was seven. With two US citizen children and the rest of her family in the state, she cannot imagine losing “all we worked to achieve.”⁶⁶

⁶² Human Rights Watch interview with Victor P. (pseudonym), (location withheld), October 31, 2011.

⁶³ Human Rights Watch interview with Lorena B. (pseudonym), (location withheld), October 30, 2011.

⁶⁴ Alabama Act No. 2011-535, sec. 27.

⁶⁵ *Perez v. GTX Auto Import & Auto Repair et al.*, Case No. CV 2010-904012 (Ala. 2011), <http://media.al.com/spotnews/other/Judge%20Vowell%20Immigration%20Order%2010.24.2011.pdf> (accessed November 14, 2011). The defendants raised the Beason-Hammon Act as a defense when the undocumented immigrant plaintiffs alleged fraud during an automobile sale. The judge stated that the law may violate Alabama’s state constitution, but that he did not have to reach that issue because in this case, the lawsuit was already pending before the law was passed. He entered a final judgment in favor of the plaintiffs.

⁶⁶ Human Rights Watch interview with Sara M. (pseudonym), (location withheld), October 29, 2011.

Although no one reported to Human Rights Watch that a bank had repossessed their home, realtors who work with Latino residents are concerned that the law may compromise unauthorized immigrants' claims to houses under mortgage. Freddy Guerra, a realtor in Birmingham, said that at a recent meeting of the National Association of Hispanic Real Estate Professionals, an attorney explained that the law may render mortgages involving unauthorized immigrants null and void. While courts may decide that the law does not apply retroactively to mortgages signed before the law went into effect, that will not be known until a case goes before the courts. Guerra believes that because house values have gone down, it has not been in the banks' interest to foreclose, but that if house values go up, "then we'll see big problems."⁶⁷

Regardless of how the law will eventually be interpreted, the uncertainty has been sufficient to encourage some sellers of mobile homes and houses to renege on installment agreements. One community leader reported that a family had called her seeking help after being told by the seller of their house that he was taking the house back. They had been making payments for three years, but the seller intended only to return the down payment.⁶⁸ And the Hispanic ministries coordinator at a Catholic church reported that families she knew who were still making installment payments on their mobile homes had been told by the sellers that they now needed to provide a Social Security number to continue making payments.⁶⁹

Unauthorized immigrants who rent are also finding their right to decent housing threatened by the law. The law makes it unlawful for a landlord to rent knowingly to a person without legal status.⁷⁰ Although this provision was preliminarily enjoined by a federal court,⁷¹ it appears to have encouraged some landlords to neglect duties to their tenants. One woman who lives with her husband and seven children in a rented trailer said

⁶⁷ Human Rights Watch telephone interview with Freddy Guerra, owner of Nextage Elite Realty, Birmingham, November 18, 2011.

⁶⁸ Human Rights Watch telephone interview with community leader, October 24, 2011.

⁶⁹ Human Rights Watch telephone interview with Dorothy McDade, October 14, 2011.

⁷⁰ Alabama Act No. 2011-535, sec. 13.

⁷¹ The US District Court in the Northern District of Alabama enjoined section 13 (criminalizing those who "conceal, harbor" or "transport" an unauthorized immigrant), as well as section 8 (barring non-citizens without permanent resident status or an "appropriate nonimmigrant visa" from enrolling in any public college or university); parts of section 11 (criminalizing unauthorized immigrants seeking work, including day laborers), section 16 (penalizing employers that take business deductions for wages paid to unauthorized immigrants), and section 17 (creating a cause of action for US citizens and legal residents who are not hired or are fired by an employer who employs an unauthorized immigrant). See *United States v. Alabama*, Memorandum Opinion, No. 2:11-CV-2746-SLB (N.D. Ala. September 28, 2011), <http://www.ago.state.al.us/File-Immigration-093-9-28-11-US-District-Court-Memorandum-Opinion> (accessed December 1, 2011); *Hispanic Interest Coalition of Alabama v. Bentley*, No. 5:11-CV-2484-SLB (N.D. Ala. September 28, 2011), <http://www.ago.state.al.us/File-Immigration-137-US-District-Court-9-28-11-Memorandum-Opinion> (accessed December 1, 2011). Attorney General Strange has also recommended "eliminating the idea that 'renting' property to an illegal immigrant is 'harboring.'" Lawson, "Alabama Attorney General wants to end school data collection, no-bail provisions in immigration law," *The Huntsville Times*.

that it has become infested with cockroaches. Before the Beason-Hammon Act passed, she could rely on her landlord to fix problems. But since then, the landlord has been unwilling to help her, and she fears that if she moves out and looks for new housing, she will be asked for proof of legal status.⁷² Another unauthorized immigrant reported having a similar problem with a management company that refused to address harassment from a neighbor,⁷³ while another knew a person whose landlord had refused to fix a broken window after a break-in.⁷⁴

Several community leaders noted that most landlords they knew were unhappy to lose the reliable immigrant tenants who had already left the state, and they were not interested in taking action to evict the remaining ones. However, a doctor at a rural health clinic reported that one trailer park landlord was taking advantage of people who had left and then returned by charging them double the rent they had paid before, and selling back to them the furniture they had left in their homes.⁷⁵

Carmen and Alberto G. are a young couple with a seven-month-old son whose lives have been turned upside down by the law. Prior to the law, they worked for the successful family business, a store owned by Carmen's mother. Because the "business transactions" provision of the law prevented Carmen's mother from renewing her business license, she closed the store after 10 years of successful operations and 15 years of living in Alabama. Left without an income, she moved back to Mexico.

When the store closed, Carmen and her husband lost their source of income as well. The only job Alberto has been able to find is in a factory in North Dakota. Because he will be traveling and living with men, they have decided it would be better for Carmen and their son to remain for now in Alabama in the community they know best.⁷⁶

When we spoke with them, they were getting ready to be separated for nine months. "In about an hour," Alberto said, "I have to go drive 14 hours to Iowa." He was due to meet some friends there and then drive another 13 hours to North Dakota. "It's the first time I will be separated from my family after two years of marriage."⁷⁷

⁷² Human Rights Watch interview with Paolo M. (pseudonym), (location withheld), November 2, 2011.

⁷³ Human Rights Watch interview with Ricardo J. (pseudonym), (location withheld), October 26, 2011.

⁷⁴ Human Rights Watch interview with Elena G. (pseudonym), (location withheld), November 1, 2011.

⁷⁵ Human Rights Watch interview with rural medical professional, (location withheld), November 2, 2011.

⁷⁶ Human Rights Watch interview with Carmen and Alberto G. (pseudonyms), (location withheld), October 30, 2011.

⁷⁷ Human Rights Watch interview with Carmen and Alberto G. (pseudonyms), (location withheld), October 30, 2011.

Business Permits

Renewing a business permit is considered a “business transaction” with the state, and the new law thus requires people seeking renewal of such permits to show proof of citizenship or lawful presence in the US.⁷⁸ The burden this has placed on all business owners, including US citizens and legal residents, led the state to extend the deadline for renewals due in October 2011.⁷⁹ And as noted above, the attorney general has directed local and county offices to refuse a “business transaction” with an individual under the law only if he or she is verified to be undocumented through a federal program.⁸⁰ But there has already been an enormous impact on unauthorized immigrants, several of whom have reported they closed or likely would close their businesses because of the law.⁸¹ The case of Carmen’s mother described above is one illustration. Another is the case of Sonia D., who fears she will not be able to renew the business permit for her restaurant when it expires next year but told us she cannot yet bring herself to leave the business on which her entire family depends.⁸² The case of a US permanent resident of El Salvadoran origin forced to close his mechanic shop because he could not renew his permit is described in the section below.

It should also be noted that section 11 of the Alabama immigrant law criminalizes unauthorized immigrants who seek work or even work for themselves,⁸³ while other sections of the law penalize employers who knowingly hire unauthorized immigrants (some of the latter sections have been enjoined pending further court proceedings).⁸⁴

⁷⁸ Alabama Department of Revenue, “Immigration Act Ruling,” <http://www.revenue.alabama.gov/licenses/menu.html> (accessed November 18, 2011). See also Guidance Letter from the Alabama Attorney General, No. 2011-02, December 2, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-02> (accessed December 6, 2011).

⁷⁹ Alabama Department of Revenue, “What’s New,” <http://www.revenue.alabama.gov/whatsnew.html> (accessed November 18, 2011).

⁸⁰ Guidance Letter from the Alabama Attorney General, No. 2011-01, December 1, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-01> (accessed December 2, 2011); Guidance Letter from the Alabama Attorney General, No. 2011-02, December 2, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-02> (accessed December 6, 2011).

⁸¹ Human Rights Watch interview with Carmen and Alberto G. (pseudonyms), (location withheld), October 30, 2011.

⁸² Human Rights Watch interview with Sonia D. (pseudonym), (location withheld), October 27, 2011. MSNBC has reported on another family that owns a business, in this case a bakery, and can no longer renew their business permit. “Help (not) Wanted: Alabama immigration law sparks feud,” in “Rock Center with Brian Williams,” MSNBC, November 14, 2011, <http://www.msnbc.msn.com/id/21134540/vp/45298288/#null> (accessed November 23, 2011).

⁸³ Alabama Act No. 2011-535, sec. 11.

⁸⁴ Alabama Act No. 2011-535, secs. 11, 15, 16, and 17. Sections 16 and 17 were preliminarily enjoined. See *United States v. Alabama*, Memorandum Opinion, No. 2:11-CV-2746-SLB (N.D. Ala. September 28, 2011), <http://www.ago.state.al.us/File-Immigration-093-9-28-11-US-District-Court-Memorandum-Opinion> (accessed December 1, 2011); *Hispanic Interest Coalition of Alabama v. Bentley*, No. 5:11-CV-2484-SLB (N.D. Ala. September 28, 2011), <http://www.ago.state.al.us/File-Immigration-137-US-District-Court-9-28-11-Memorandum-Opinion> (accessed December 1, 2011). Section 15, requiring all employers to use E-Verify, is to go into effect April 1, 2012.

Beyond the immense hardships imposed on the families of unauthorized immigrants, the Alabama immigrant law is expected to have a significant negative impact on the state's economy. Businesses that cater to Latino communities are already struggling to survive,⁸⁵ farmers report a shortage of workers,⁸⁶ and foreign companies are reconsidering or cancelling plans to come to Alabama.⁸⁷ Despite assertions to the contrary, most unauthorized immigrants do pay taxes; the unauthorized immigrant population of Alabama is estimated to have paid \$130 million in taxes in 2010.⁸⁸ Professor Samuel Addy at the Center for Business and Economic Research at the University of Alabama has estimated that an absence of 10,000 unauthorized workers in the state would lead to a \$40 million contraction in the Alabama economy.⁸⁹

Inconsistent and Discriminatory Document Verification

While the Beason-Hammon Act requires state and local officials to take on the task of verifying immigration and citizenship documents for everything from registering mobile homes to renewing business permits, it provides no funding for training or monitoring to ensure that officials do so in compliance with all relevant laws. Immigration law is complex, and even Immigration and Customs Enforcement (ICE), the federal agency charged with immigration enforcement, makes serious mistakes, including deporting US citizens.⁹⁰ The long lines for Alabama residents trying to renew tags and licenses indicate that the new law is burdensome even for Alabama residents with legal status.⁹¹ But early reports indicate that the burden is likely to fall particularly on legal residents who are perceived to be unauthorized, namely those of Latino descent, as state and local officials in Alabama

⁸⁵ Rick Jervis and Alan Gomez, "Fear in Ala. Towns over tough immigration law," *USA Today*, October 19, 2011, <http://www.usatoday.com/news/nation/story/2011-10-18/immigrants-leave-alabama-town-over-immigration-law/50819276/1> (accessed November 18, 2011).

⁸⁶ David Martin, "Farmers complain about rotting crops but Sen. Scott Beason says no to immigration law changes (updated)," Associated Press, October 3, 2011, http://blog.al.com/wire/2011/10/chandler_mountain_farmers_comp.html (accessed November 18, 2011)

⁸⁷ George Talbot, "Immigration law may cost Alabama a key economic recruit," *Press-Register*, November 16, 2011, http://blog.al.com/live/2011/11/immigration_law_may_cost_alaba.html (accessed November 18, 2011).

⁸⁸ "Top 10 Reasons Alabama's New Immigration Law is a Disaster for the State's Economy," *Center for American Progress*, November 18, 2011, http://www.americanprogress.org/issues/2011/11/alabama_top10_economy.html (accessed November 18, 2011).

⁸⁹ Samuel Addy, "The New Alabama Immigration Law: A Preliminary Macroeconomic Assessment," Center for Business and Economic Research, The University of Alabama, October 2011, http://media2.fox10tv.com/news_documents/New-AL-Immigration%20Law-Prel-Macro-Assessment-1.pdf (accessed December 1, 2011). See also Johnson, "Why Republicans are doing an about-face on tough Alabama immigration law," *The Christian Science Monitor*.

⁹⁰ "US: Confused, Alone, and in Legal Limbo," Human Rights Watch news release, July 26, 2010, <http://www.hrw.org/news/2010/07/20/us-confused-alone-and-legal-limbo>.

⁹¹ "Long lines for car tags at Jefferson County courthouse," *The Birmingham News*, September 30, 2011, http://blog.al.com/spotnews/2011/09/long_lines_for_car_tags_at_jef.html (accessed November 19, 2011).

may not always understand the distinctions between citizens, non-citizens with some form of legal status, and unauthorized immigrants.

When a tax preparer in Dothan tried to help her client, a permanent resident business owner, renew his business permit, she found her local permit office did not know that a permanent resident card, or “green card,” constituted proof of legal status. When she showed them a permanent resident card, a permit official asked, “Who made this? Who is USCIS?” The office did not understand that USCIS, or the US Citizenship and Immigration Service, is the federal agency in charge of issuing permanent resident cards. They said they could only accept a “Form I-551,” indicating they did not know that a permanent resident card is also known as a Form I-551.⁹² When Human Rights Watch followed up with an inquiry if this office would accept a “green card,” the researcher was asked, “Does it have a photo?”⁹³

Elsewhere in the state, a woman reported that her friend, a national of El Salvador, had been forced to close his mechanic shop because he could not renew his business permit. Although he is a permanent resident and has been in the United States for 20 years, he was told by the local office in Shelby County that he needed a birth certificate to renew his business permit.⁹⁴ Alfredo Chavez, a US citizen and owner of several businesses in Decatur, believed he had been racially profiled when he recently renewed his business permit. He said that the office did not request a driver’s license from two Caucasians in line before him, but they did request it from him and another Hispanic person.⁹⁵

Some memorandums issued by state agencies soon after the law went into effect contained incorrect information, such as listing a foreign passport with an “*expired* United States visa”⁹⁶ and a “valid (unexpired) tribal enrollment card or other form of tribal identification”⁹⁷ as proof of lawful presence for non-citizens.

⁹² A permanent resident card is also known as a “green card” (its former color) or Form I-551. See US Citizenship and Immigration Service, “I am a Permanent Resident,” M-562 (June 2010), <http://www.uscis.gov/USCIS/Resources/B2en.pdf> (accessed November 18, 2011).

⁹³ Human Rights Watch visit to Dothan Business License Office, November 2, 2011.

⁹⁴ Human Rights Watch interview with Marisol M. (pseudonym), (location withheld), October 31, 2011. Shelby County has posted on its website the documents it now requires for any business transaction with any Shelby County office, and it does enumerate a list of documents that non-citizens may show. See Shelby County, “Notice of New Requirements, Effective October 1, 2011,” <http://www.shelbyal.com> (accessed November 21, 2011).

⁹⁵ Human Rights Watch interview with Alfredo Chavez, Decatur, October 28, 2011.

⁹⁶ Memorandum from Will Martin, Valuation and Standards Supervisor, Property Tax Division, Alabama Department of Revenue to Tax Assessors, Tax Collectors, Revenue Commissioners, Tax Valuation Analyst, September 29, 2011 (emphasis added).

⁹⁷ The text of the Beason-Hammon Act itself provides a puzzling list of documents the possession of which entitles one to the presumption that one is lawfully present. Section 3(10) states that an alien with a “valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier” will be considered lawfully present. American Indians and

On December 1, after the above incidents had reportedly occurred, the Attorney General's Office issued a guidance letter directing local and county officials that an "alien may be denied the right to proceed with a business transaction with the State...only on the basis of a federal determination that the alien is unlawfully present," namely through the Systematic Alien Verification for Entitlements (SAVE) program run by the federal Department of Homeland Security.⁹⁸ A corresponding memorandum was issued by the Alabama Revenue Department rescinding an earlier directive to local and county officials to verify the immigration status of non-citizens seeking to enter into "business transactions" with the state.⁹⁹ At time of writing, it is not yet clear whether these steps will effectively prevent discriminatory or inconsistent document verification. Furthermore, even if all agencies were to enroll in SAVE and accurately recognize non-citizens who are lawfully present, denial of everyday necessities to unauthorized immigrants would still constitute a violation of international human rights law.

Alaska natives, however, are obviously not "aliens;" legally, they are US citizens, as well as citizens of their tribes. US Department of the Interior, Bureau of Indian Affairs, "Frequently Asked Questions," <http://www.bia.gov/FAQs/index.htm> (accessed November 21, 2011). Some American Indian tribes include Canadian- and Mexican-born members, who have the right to travel freely into the US in limited cases. See Immigration and Nationality Act Section 289 and 25 US Code Section 1300B-11. According to the Office of Public Affairs at the Bureau of Indian Affairs, however, non-citizen members of these tribes who wish to travel into the US are subject to the same visa requirements as all non-citizens. Human Rights Watch telephone interview with Office of Public Affairs, Bureau of Indian Affairs, November 21, 2011.

⁹⁸ Guidance Letter from the Alabama Attorney General, No. 2011-01, December 1, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-01> (accessed December 2, 2011).

⁹⁹ Memorandum re: Modification to Prior Instructions Concerning Act. No. 2011-535, Immigration Act from Julie P. Magee, Commissioner, Alabama Department of Revenue to County Probate Judges, County Revenue Commissioners, County Tax Assessors, County Tax Collectors, County License Commissioners, County Licensing Officials, County Licensing Inspectors, County Directors of Revenue, November 28, 2011, http://www.revenue.alabama.gov/documents/memo_manuhomes_modification_112011.pdf (accessed December 1, 2011). See also David White, "Alabama revenue department says counties need federal verification to deny tag renewals," *The Birmingham News*, November 30, 2011, http://blog.al.com/spotnews/2011/11/alabama_revenue_department_say.html (accessed December 1, 2011).

II. Denial of Equal Protection of the Law

We cannot make claims [about workplace abuses] because we are undocumented. We have the same size heart, blood, only the color of our skin is different.

—Miguel, unauthorized immigrant, October 28, 2011

The US Constitution and international human rights law guarantee equal protection to all “persons” under the law.¹⁰⁰ The Fourteenth Amendment of the US Constitution first defines which “persons” are “citizens of the United States” and then goes on to declare that no state shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹⁰¹ Similarly, the provisions of the International Covenant on Civil and Political Rights (ICCPR) typically refer to “everyone” or “all persons” rather than citizens. Besides article 13 on expulsion and article 25 on voting rights, the ICCPR does not distinguish between the rights of citizens and non-citizens.¹⁰² Article 26 sets out the right to equal protection under law:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁰³

The ICCPR also specifically ensures that “any person” whose human rights have been violated shall have access to a remedy, “all persons” shall be equal before the courts, and “everyone” shall have a right of recognition as a person before the law.¹⁰⁴

¹⁰⁰ The Human Rights Committee stated in its general comment on aliens, “Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these [Covenant] rights.” Human Rights Committee, General Comment 15, para. 7.

¹⁰¹ US Constitution, amendment 14, sec. 1.

¹⁰² According to the UN Human Rights Committee, “In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.... Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.” Human Rights Committee, General Comment 15, paras. 1-2.

¹⁰³ ICCPR, art. 26.

¹⁰⁴ ICCPR, arts. 2, 14, and 16.

No Right to Enforce Contracts

The Beason-Hammon Act, however, explicitly excludes unauthorized immigrants from certain legal protections. Section 27 states, “No court of this state shall enforce the terms of, or otherwise regard as valid, any contract between a party and an alien unlawfully present in the United States.”¹⁰⁵ The provision has some exceptions—it does not apply to a party that does not know the other party is unlawfully present, and it excludes contracts that can be performed in less than 24 hours, as well as contracts for lodging for one night, food, medical services, and transportation that “facilitates the alien’s return to his or her country of origin.” The law also excludes contracts “authorized by federal law,” but with no definition of what that means.¹⁰⁶ Beyond these exceptions, section 27 applies to all other contracts that are part of everyday life, from employment contracts to leases and mortgage agreements.¹⁰⁷

Although the law has not been in effect for very long, in at least one lawsuit, defendants accused of defrauding unauthorized immigrants in the sale of two cars raised Alabama’s immigrant law as a defense, stating that the plaintiffs were “illegal residents.”¹⁰⁸ The judge found in favor of the plaintiffs because their lawsuit was already pending before the law passed.¹⁰⁹

Several people reported that they or unauthorized immigrants they knew had been the victims of wage theft, but felt they could not seek a remedy because of the law.¹¹⁰ One

¹⁰⁵ Alabama Act No. 2011-535, sec. 27(a).

¹⁰⁶ *Ibid.*

¹⁰⁷ A memorandum recently issued by the attorney general on section 30 (prohibiting unauthorized immigrants from entering into “business transactions” with the state) states, “[A]ctivities such as filing and defending lawsuits...can enjoy constitutional protections.” However, the memorandum also noted that other provisions of the law include the judiciary, and it did not explicitly opine that all restrictions on filing and defending lawsuits created by the Beason-Hammon Act are unconstitutional. Guidance Letter from the Alabama Attorney General, No. 2011-02, December 2, 2011, <http://www.ago.state.al.us/File-Immigration-Guidance-2011-02> (accessed December 6, 2011).

¹⁰⁸ *Perez v. GTX Auto Import & Auto Repair et al.*, Case No. CV 2010-904012, Circuit Court of Jefferson County, Alabama October 24, 2011, <http://media.al.com/spotnews/other/Judge%20Vowell%20Immigration%20Order%2010.24.2011.pdf> (accessed November 14, 2011). The judge stated that the contracts provision of the Beason-Hammon Act may violate Alabama’s state constitution, but that he did not have to reach that issue because in this case, the lawsuit was already pending before the law was passed.

¹⁰⁹ Attorney General Strange has called on the legislature to modify section 27 of the Beason-Hammon Act to clarify that it should only apply to contracts created after the law went into effect. See Lawson, “Alabama Attorney General wants to end school data collection, no-bail provisions in immigration law,” *The Huntsville Times*.

¹¹⁰ Human Rights Watch interview with Sofia and Juan G. (location withheld), October 29, 2011; Human Rights Watch interview with Luz S. (pseudonym), (location withheld), October 30, 2011; Human Rights watch telephone interview with Leticia M. (pseudonym), November 16, 2011. Juan G. described how two men he knew had worked at a company making concrete blocks for eight months, but were told after the law went into effect that if they did not have papers, they should not come to work, and that they needed to present a Social Security number to pick up their last paycheck.

woman said that her husband had been paid with a check that bounced. When he confronted the employer, the latter said, “I don’t have to pay you anything because you don’t have papers.”¹¹¹

When Human Rights Watch interviewed Alejandro V., he and his family were days away from moving to Kansas. He had been living in Alabama for 13 years. He and his wife have an eight-year-old US citizen daughter. They had just sold everything they had for almost nothing. Their matrimonial bed was sold for \$15; they even had to sell their car for moving expenses. He was leaving his brothers and his community behind. Alejandro struggled to hold back tears as he said, “Thirteen years, you make a life here.... Seeing my daughter lose everything is very difficult.”¹¹²

The pain of leaving the state he considers his home was sharpened when he tried to get payment for three weeks of work at a restaurant. Two weeks after the law went into effect, Alejandro and his co-worker, who was also owed wages, met with the owner of the restaurant and his son to seek payment. The owner allegedly said, “You’re a piece of shit. Get the hell out of here or I’ll kick your ass.” His son threatened to call the police, saying, “Get out of here if you don’t want to go back to Mexico.”

Alejandro said he “was really counting on that money.” He believed the owner knew full well what he could get away with. He found it troubling that the owner, who is not Latino, had become successful in the last several years with businesses catering to the Latino community.

Alejandro met with a lawyer to see if he could recover the lost wages, but the lawyer told him because of the new immigrant law, there was nothing he could do.¹¹³

¹¹¹ Human Rights Watch telephone interview with Leticia M. (pseudonym), November 16, 2011. The Southern Poverty Law Center reported that it also received a story through its hotline of an employer telling a worker he had no right to be paid under the immigrant law. Mary Bauer, Testimony for Ad Hoc Congressional Hearing, “HB 56: Alabama’s 2011 Civil Rights Crisis,” November 21, 2011, <http://www.splcenter.org/get-informed/news/testimony-before-congressional-ad-hoc-hb56-hearing> (accessed November 23, 2011).

¹¹² Human Rights Watch interview with Alejandro V. (location withheld), October 28, 2011.

¹¹³ Ibid. While an individual may not be able to make a claim under state contract law if the Beason-Hammon Act were found to apply retroactively, redress for wage theft is available under federal law. The Fair Labor Standards Act protects workers on the basis of the federal minimum wage, though not actual promised wages. See “The Fair Labor Standards Act,” United States Department of Labor, <http://www.dol.gov/compliance/laws/comp-flsa.htm> (accessed November 19, 2011).

Unauthorized immigrants were vulnerable to wage theft even before the Beason-Hammon Act passed, but the law sends a clear message to employers that they do not need to fear a lawsuit brought under contract law by unauthorized workers. Regardless of the ultimate legal interpretation of section 30, the law will likely make wage theft and other abuses against unauthorized immigrants more frequent and undermine broader recognition of the importance of the rule of law within Alabama.

Unequal Access to Remedies for Victims of Crimes

The Alabama law requires local law enforcement to make a “reasonable attempt” to ascertain the citizenship or immigration status of any person upon any stop, detention, or arrest if “reasonable suspicion” exists that the person is unlawfully present.¹¹⁴ The law stays “all provisions of this act” until legal proceedings have concluded if an unauthorized immigrant is the victim of a crime or a critical witness in any prosecution, but it specifically notes that all law enforcement officers shall comply with any request by federal immigration officers to take custody of the person. The law further does not provide guidance on how an officer should assess whether any immigrant who is stopped is a victim of a crime or a critical witness in a prosecution. The law, overall, has the practical effect of making unauthorized immigrants extremely reluctant to have any dealings with the police, even when they are victims of crimes.¹¹⁵

Sara M., who has lived in the US since she was seven years old and speaks English fluently, tried to help when she heard a Honduran immigrant had been beaten and robbed, the fourth recent robbery she had heard about in a particular neighborhood of Birmingham. Two neighbors had seen the assault, brought the victim inside, and tended to his wounds, but they had not called the police nor taken him to the hospital, at his request. Sara called the police and asked if they would ask about his immigration status if he came in to report the crime. When they replied, “Yes,” she hung up. Sara said, “Before, you could call the police and feel safe. Now there’s no safety for Hispanics.”¹¹⁶

¹¹⁴ Alabama Act No. 2011-535, sec. 12. Section 18 also requires the police to make a reasonable attempt to ascertain the immigration status of anyone driving without a driver’s license.

¹¹⁵ Alabama Act No. 2011-535, sec. 21. Arizona’s immigrant law, which similarly gives broad discretion to local law enforcement to arrest persons suspected of unlawful presence, has discouraged undocumented immigrants from reporting crimes. “US: Arizona Violating Human Rights Treaty,” Human Rights Watch news release, April 30, 2010, <http://www.hrw.org/en/news/2010/04/30/us-arizona-violating-human-rights-treaty>.

¹¹⁶ Human Rights Watch interview with Sara M. (pseudonym), (location withheld), October 29, 2011.

A young man in another part of the state similarly reported that a friend, who had been the victim of an attempted burglary, chose not to report the incident to the police.¹¹⁷

Some people expressed fears that Latino immigrants were increasingly being targeted by criminals who viewed them as unlikely to report robberies. Blanca Taylor, who works for the Jefferson County District Attorney’s Victim Assistance Unit, told Human Rights Watch that although she had no concrete data, “fear has been greatly increased.”¹¹⁸ She had spoken the previous day with a friend who knew someone who had been robbed but who did not want to call the police.¹¹⁹ Reverend Fernando Rodriguez said of his community, “They don’t know who is the enemy, the police or the criminals.”¹²⁰

Some police departments have publicly expressed concerns about how the Beason-Hammon Act would affect their ability to work with immigrant and minority communities. For example, Birmingham Police Chief A.C. Roper stated in a declaration in support of the US Department of Justice’s Motion for a Preliminary Injunction, “HB 56 will deeply undermine our Department’s efforts to police all of Birmingham in a fair and equal manner because we will be viewed as State immigration officers, not law enforcement officers trying to protect everyone in Birmingham.”¹²¹ Some police departments interviewed by Human Rights Watch similarly reiterated a desire to “solve crime” and “not to be out looking for people to arrest under the [immigrant] law.”¹²² However, some officers denied that active involvement by the police in immigration enforcement could affect the willingness of unauthorized immigrants to report crime. Although the Elberta police department was inquiring into the immigration status of people they stopped even before the immigrant law was passed, the police chief told Human Rights Watch, “I’ve never had anyone not come in because of [their immigration status].”¹²³

¹¹⁷ Human Rights Watch interview with Felipe S. (pseudonym), (location withheld), November 2, 2011.

¹¹⁸ Human Rights Watch telephone interview with Blanca Taylor, October 25, 2011.

¹¹⁹ Ibid.

¹²⁰ Human Rights Watch interview with Reverend Fernando Rodriguez, Albertville, October 27, 2011.

¹²¹ *United States v. Alabama*, Case No. 2:11-cv-02746-SLB (N.D. Ala., pending), United States Department of Justice’s Motion for Preliminary Injunction, Exhibit 5, Declaration of A.C. Roper, Chief of Police of the Birmingham Police Department, August 1, 2011, <http://www.justice.gov/opa/ail-docs.html> (accessed November 19, 2011).

¹²² Human Rights Watch telephone interview with Lieutenant Ron Gentry, Public Information Officer, Warrior Police Department, November 22, 2011.

¹²³ Human Rights Watch telephone interview with Chief Julie Joyner, Elberta Police Department, November 22, 2011. Chief Joyner cited a “brutal rape case” she had investigated as an example of a situation where the victim’s lack of immigration status had not stopped her from reporting to the police or going to the hospital.

Unequal Access to Courts

The Alabama law has created considerable uncertainty regarding unauthorized immigrants who appear in criminal or civil courts as witnesses, defendants, or plaintiffs. As with interactions with police, people are reluctant to go to court for fear it could lead to their arrest and deportation.

This apprehension stems in large part from section 19 of the law, which denies bail to all unauthorized immigrants charged with an offense, no matter how minor or how unlikely the flight risk.¹²⁴ This means they will be detained for long periods before trial, while US citizens charged with far more serious crimes will be freed on bail. As a matter of international law, this provision violates the right to equality before the courts and equal protection of the law under the ICCPR. It also violates ICCPR article 9(3), which states that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.” Alabama Attorney General Strange has also stated that this provision violates Alabama’s state constitution, and has recommended its repeal.¹²⁵ At the time of writing, however, the provision remains on the books.

The law also prohibits “an officer of a court of this state”—judges, attorneys, and court officers—from adopting any policy or practice that restricts state officers in their enforcement of the law.¹²⁶ It further specifies that an officer of a court may not be prohibited from sharing information to “[verify] any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding of this state.”¹²⁷ This has led to confusion among lawyers, judges, and court interpreters as they question the extent to which they have a duty to ascertain and report the undocumented status of clients and those who appear in court.

Melissa Fridlin, a Spanish-language interpreter, told Human Rights Watch that she received a phone call from a court-appointed criminal defense lawyer who was confused about whether she had a duty to report the immigration status of her client.¹²⁸ When that lawyer asked a judge, he reportedly said she did have such a duty. He continued that should anyone request an interpreter in his court, he would assume that person was

¹²⁴ Alabama Act No. 2011-535, sec. 19.

¹²⁵ Lawson, “Alabama Attorney General wants to end school data collection, no-bail provisions in immigration law,” *The Huntsville Times*.

¹²⁶ Alabama Act No. 2011-535, sec. 5(a).

¹²⁷ Alabama Act No. 2011-535, sec. 5(c)(2).

¹²⁸ Human Rights Watch interview with Melissa Fridlin, Troy, November 2, 2011.

undocumented, and he would have a duty to report any such persons in his court. The attorney ultimately decided after consultation with other lawyers that the attorney-client privilege applied to her client's immigration status, but she did advise her client that although he was required to go to court, he would be subject to arrest. He did not appear for court the next day.¹²⁹

The *Decatur Daily* reported that lawyer Eric Summerford, in an email to the Morgan County Bar Association, had advised attorneys to err on the side of disclosure.¹³⁰ Judge J. Scott Vowell of the Jefferson County Civil Court had heard reports of a municipal judge in Birmingham who had announced that if anyone in the courtroom did not have proof of status, they would be subject to arrest.¹³¹

Not surprisingly, Latinos are choosing not to go to court, even to pay traffic tickets. Mavi Figueres, a Spanish-language interpreter who works frequently in the Jefferson County courts, reported that she has seen no Latino defendants appear in court to pay traffic tickets since September, which leads to additional criminal charges for failure to appear.¹³²

Lawyers interviewed by Human Rights Watch were emphatic that attorney-client privilege trumped any duty created by the Alabama law, while most of the judges Human Rights Watch interviewed felt their role as impartial arbiters would be jeopardized if they were required to ascertain immigration status of people in their courtrooms. Judge Laura Petro said that if she were told she needed to do so, "I would fight it with every cell in my body. I am not a law enforcement agent. As a judge, it is my responsibility to interpret the law. We're supposed to be neutral and detached."¹³³ Although Judge Sheldon Watkins stated he would inquire into immigration status if required to, he felt it would be disruptive to proceedings, as he would need to call the sheriff to arrest the individual. He did not know if the sheriff's department even had the capacity to send someone to his courtroom given budget cuts.¹³⁴ Judge Vowell said, "Courts have always been places where people who

¹²⁹ Human Rights Watch interview with Melissa Fridlin, Troy, November 2, 2011.

¹³⁰ Eric Fleischauer, "Lawyers say clients' rights supersede new state law," *Decatur Daily*, November 6, 2011, <http://decaturdaily.com/stories/Lawyers-say-clients-rights-supersede-new-state-law,87350> (accessed November 14, 2011).

¹³¹ Human Rights Watch interview with Presiding Circuit Judge J. Scott Vowell, 10th Judicial Circuit, Civil Division, Jefferson County, Birmingham, October 31, 2011.

¹³² Human Rights Watch interview with Mavi Figueres, Birmingham, October 29, 2011.

¹³³ Human Rights Watch interview with Circuit Judge Laura Petro, 10th Judicial Circuit, Criminal Division, Jefferson County, Birmingham, October 31, 2011.

¹³⁴ Human Rights Watch interview with District Judge Sheldon Watkins, 10th Judicial Circuit, Criminal Division, Jefferson County, Birmingham, October 31, 2011.

need protection can seek protection.... Citizenship should have nothing to do with whether people get protection.”¹³⁵

Even in the absence of courtroom arrests of unauthorized immigrants, there is a real danger that the vagueness of the law, as well as ambiguous or even hostile statements from judges and other officers of the court, will have a serious chilling effect on undocumented immigrants seeking justice in the courts. By enacting this law, Alabama has already sent a message to unauthorized immigrants that their right to equal protection of the law will not be respected.

¹³⁵ Human Rights Watch interview with Presiding Circuit Judge J. Scott Vowell, 10th Judicial Circuit, Civil Division, Jefferson County, Birmingham, October 31, 2011.

III. Discriminatory Harassment and Abuse

The Alabama immigrant law sends a strong message that unauthorized immigrants should be treated differently from other Alabama residents. Unsurprisingly, such people, as well as those who are perceived to be “illegal,” have reported increased incidents of discriminatory harassment by state authorities and by private individuals.

The discrimination and harassment experienced by Latinos, including citizens and permanent residents, is not new. Some people interviewed by Human Rights Watch reported being subject to racial discrimination and profiling long before the Beason-Hammon Act was passed.¹³⁶ But the new immigration law has created an environment in which such abuse is more likely to occur and in which victims are less likely to report such abuse.

¹³⁶ Mavi Figueres, a naturalized US citizen born in Costa Rica, believed she was racially profiled last year when a police officer in Birmingham stopped the car she was in and demanded her “papers,” even though she was a passenger and her friend who is Caucasian was driving. Human Rights Watch interview with Mavi Figueres, Birmingham, October 29, 2011.

A week before the law went into effect, Ana S.’s husband, Isaac, an unauthorized immigrant, made a U-turn to avoid a checkpoint, and was stopped. In addition to receiving a ticket for not having a driver’s license, he was given five additional tickets, including one for not having insurance even though he showed the officer proof of insurance. Another ticket was given for an open container, although he also had a bag full of cans for recycling in the car. When Isaac protested, the officer allegedly told him, “I can give you as many tickets as I want.” According to the provisions under which he was cited, the fines are likely to be more than \$1000. Human Rights Watch interview with Ana S. (pseudonym), (location withheld), October 30, 2011. Others also reported incidents in which they believed they had received an excessive number of tickets. Human Rights Watch interview with Soledad B. (pseudonym), (location withheld), November 2, 2011; Human Rights Watch interview with Jose M. (pseudonym), (location withheld), October 27, 2011.

A young Hispanic woman was allegedly stopped by police in Elberta several weeks before the law went into effect. When she was unable to produce an Alabama driver’s license, the police officer started yelling and hitting the top of the car. Although she could not understand everything he said, she did understand when he shouted, “All these freakin’ Mexicans!” Human Rights Watch telephone interview with Daniel R. (pseudonym), November 16, 2011.

When asked for comment, the Elberta Police Chief Julie Joyner stated she could not respond without more information about the specific day and person involved, but she did state that even before the Beason-Hammon Act had gone into effect, the Elberta Police Department had regularly inquired into the immigration status of people they stopped and they contacted ICE if they thought the person was not here legally. Joyner further stated that she has never received a complaint about abusive, racial comments of this kind. Cameras have been installed in all patrol cars, and when she receives a complaint, she said she reviews the footage. She discounted suggestions that unauthorized immigrants might be afraid to file complaints, saying “it would be easy” to file a complaint given that she receives 10 complaints a week. Human Rights Watch telephone interview with Chief Julie Joyner, Elberta Police Department, November 22, 2011.

An unauthorized immigrant in another town said that a police officer had been regularly parking outside a mobile home park and stopping Latino residents who are leaving, most of whom do not have authorized immigration status. He repeatedly was demanding \$100 or more from them in exchange for not writing a ticket. Human Rights Watch interview with Elena G. (pseudonym), (location withheld), November 1, 2011. Such shakedowns have also been reported outside Alabama. In New Jersey, a police officer was recently indicted for pulling over Latino men, questioning them about their immigration status,

Harassment and Abuse by Local Authorities

It doesn't depend on the law. It depends on the police [officer] who stops you.
—Mariana F., unauthorized immigrant, November 2, 2011

At the time of our research in Alabama, sheriff and police departments in Alabama had not yet begun consistently enforcing the immigrant law. There was no uniformity in requesting documentation of legal status from those they stopped or arrested, or in jailing people for driving without a driver's license.¹³⁷ While some departments have arrested and charged people under the new law, others have publicly expressed reluctance to enforce a law they find "confusing."¹³⁸ As of October 30, the Alabama Department of Homeland Security knew of only 10 cases in which the provisions of the law relevant to police action had been applied.¹³⁹

Several people told Human Rights Watch that they had troubling interactions with local police after the law went into effect or just prior to that date. Press accounts, summarized below, provide other examples. Although Human Rights Watch was not able to independently verify the particulars of all of these incidents, if true, they suggest that US citizens and permanent residents of Latino descent, as well as unauthorized immigrants, are at increased risk of discriminatory treatment.

Fernando Rodriguez, a legal permanent resident and the minister of a church in Albertville, reported that he and his friend, another pastor, were given no reason for being stopped in the town of Warrior, soon after pulling out of a gas station. Instead, according to Rev. Rodriguez, the officer made abusive and derogatory statements like, "Why are you in the US?" and "Go back to Mexico."¹⁴⁰ When the officer patted him down and found his wallet with his permanent resident card inside, he was let go, but his friend, Rev. Hernandez, was arrested.

and threatening to report them to federal immigration officials unless they gave him money. See "NJ officer indicted in alleged immigrant shakedown," Associated Press, November 21, 2011, <http://www.nj.com/newsflash/index.ssf/story/nj-officer-indicted-in-alleged-immigrant-shakedown/26f5b3be85c34ac29909976a93c14dd6> (accessed November 22, 2011);

¹³⁷ Alabama Act No. 2011-535, secs. 12 and 18.

¹³⁸ Cameron Steele, "New immigration law brings in not just illegal residents but legal ones, too," *The Anniston Star*, November 6, 2011, <http://annistonstar.com/bookmark/16304989> (accessed November 16, 2011).

¹³⁹ Lisa Osburn, "Confusion remains over Alabama immigration law," *The Birmingham News*, October 30, 2011, http://blog.al.com/spotnews/2011/10/confusion_remains_over_alabama.html (accessed November 16, 2011).

¹⁴⁰ The arrest of Reverend Rodriguez's friend, Manuel Hernandez, has received press coverage. See Osburn, "Confusion remains over Alabama immigration law," *The Birmingham News*; see also, Valeria Fernandez, "Pastor narra su historia al ser victim de HB 56," *La Opinion*, October 8, 2011, <http://www.impre.com/laopinion/noticias/2011/10/8/pastor-narra-su-historia-al-se-276165-1.html> (accessed November 16, 2011).

The police officer has been quoted stating that he stopped them for speeding,¹⁴¹ but the Public Information Officer at the Warrior Police Department could not confirm what happened at the time of arrest because he was not the arresting officer.¹⁴² Although Rev. Hernandez was taken into ICE custody, he was released shortly thereafter without having to pay a bond, and no date has yet been set for his removal proceeding.¹⁴³ All state charges have been dropped.¹⁴⁴

In another part of the state, Rafael B., a 23-year-old unauthorized immigrant who has been in the US since he was 17 years old, reported he was repeatedly told, “You have no rights,” when he was stopped and eventually arrested two weeks after the law went into effect, allegedly for not using his turn signal.¹⁴⁵ Rafael could not show his driver’s license because he, like all other unauthorized immigrants, is barred from getting an Alabama’s driver’s license. When he showed his Mexican passport, the officer did not believe it was real because it did not have a “seal.” (The Mexican consulate in Atlanta stated that it could not vouch for the authenticity of a passport without looking at it, but that depending on where and when the passport was issued, it may or may not have a raised seal on the photo.)¹⁴⁶ The officer then arrested him. When Rafael asked if he could call a lawyer, the officer allegedly told him, “No. You don’t have any rights. You’re on the street.”¹⁴⁷ Rafael then asked if he could call someone else. Rafael recounted, “He said no, I don’t have a right to anything.” They continued to ask him where he got his passport, and he continued to respond he got it at the consulate. They then took him to the police station, where “[t]hey said I didn’t have a right to anything, that if I was legal, I could get out with \$300 but I didn’t have a right to anything.” They allegedly asked him questions like, “Why are there so many Mexicans here? Because there’s lots of US citizens who don’t have a job here. You’re taking away their jobs,” and “Where did you cross the border?” They compelled him to sign papers without explaining to him what they were, saying they would write more tickets for him if he did not sign.

¹⁴¹ Ibid.

¹⁴² Human Rights Watch telephone interview with Lt. Ron Gentry, Public Information Officer, Warrior Police Department, November 22, 2011. Lt. Gentry further stated that he would not condone such statements and “would be very disappointed if the officer said anything like that.”

¹⁴³ Fernandez, “Pastor narra su historia al ser victim de HB 56,” *La Opinion*.

¹⁴⁴ Osburn, “Confusion remains over Alabama immigration law,” *The Birmingham News*.

¹⁴⁵ Human Rights Watch interview with Rafael B. (pseudonym), (location withheld), October 30, 2011.

¹⁴⁶ Human Rights Watch telephone interview with Edurne Pineda, consul for legal affairs, Mexican Consulate in Atlanta, November 21, 2011.

¹⁴⁷ This incident did not occur in Tuscaloosa, but Gwen Ferreti, a doctoral student and community leader in Tuscaloosa, reported that the Tuscaloosa Police Department had told her they do not read Miranda rights (including the right to remain silent and the right to an attorney) for similar traffic stops. Human Rights Watch interview with Gwen Ferreti, Tuscaloosa, October 30, 2011. Upon further inquiry, the Tuscaloosa Police Department informed us that during an “on-view arrest,” if no further questions will be asked, their policy is not to read the suspect his Miranda rights and they “don’t stop for lawyers.” When the suspect arrives at the county jail, the county jail has its own policy about how to give suspects the opportunity to call a lawyer. See Human Rights Watch telephone interview with Sergeant Brent Blankley, Spokesperson, Tuscaloosa Police Department, November 22, 2011.

The next day, Rafael was taken to court. He was eventually allowed to contact his family, who arranged for an attorney. He was not offered an interpreter. The judge did not sentence him for the tickets, and he was given no documents relating to his arrest. Eventually, ICE took him into custody and then released him without setting a date for his removal proceedings. Altogether, he was detained for one week.¹⁴⁸

In another case, a Latino doctor who is a permanent resident of the US said that a few weeks after the law went into effect, a state trooper stopped his car but did not offer a reason for doing so. According to the doctor, the trooper, who was standing in the street, merely put his hand out, arm extended, after “look[ing] at the color of my skin.” After the officer saw he had a driver’s license, he gave it back and let him go.¹⁴⁹

A Mexican national and unauthorized immigrant in Elberta, a small town outside of Foley, described a similar incident a week after the law went into effect. A police officer followed his car for three miles and then pulled him over immediately before he crossed into the jurisdiction of the Foley police. He gave no reason for the stop, but when the driver was unable to produce a driver’s license, the officer repeated a couple of times, “I’m going to give you one shot to get out of Alabama. Next time, I’m going to send you back to Mexico.”¹⁵⁰

Several people reported accounts of people being stopped or arrested on what they believed were pretextual grounds. Stephen McGowan, an attorney in Dothan, reported that a client of his had been deported after he was pulled over, allegedly for having his radio on too loud. According to McGowan, however, the radio was broken and could not be turned on.¹⁵¹

One woman, who was born in the US and whose family is from the Dominican Republic, wondered if she had been racially profiled when she was pulled over soon after the law went into effect. The officer said he thought she had not been wearing her seatbelt. She admitted it was possible the seatbelt had not been visible against her dark clothing, but at the same time, in all the years she had lived in the area, she had never been stopped for not wearing a seatbelt before. The officer made comments about her job that suggested he was presuming she was a recent immigrant. After showing him her driver’s license, she

¹⁴⁸ Human Rights Watch interview with Rafael B. (pseudonym), (location withheld), October 30, 2011.

¹⁴⁹ Human Rights Watch interview with a rural medical professional, (location withheld), November 3, 2011.

¹⁵⁰ Human Rights Watch telephone interview with Daniel R. (pseudonym), (location withheld), November 16, 2011. The Elberta Police Department stated they could not respond to allegations without more information about the incident, such as a specific date. Human Rights Watch telephone interview with Elberta Police Chief Julie Joyner, November 22, 2011. For more information on the Elberta Police Department’s policies, see footnote 154.

¹⁵¹ Human Rights Watch telephone interview with Stephen McGowan, October 21, 2011.

was let go, but when she told the story to friends in the police department, they suggested she start carrying her birth certificate.¹⁵²

Harassment and Abuse by Private Individuals and Businesses

We feel the sentiment of racism has grown among the American people.

—Lorena B., unauthorized immigrant, resident of Alabama for 15 years, and mother of four US citizen children, October 30, 2011

In this moment, we can see who is really Christian.

—Lara P., unauthorized immigrant, resident of Alabama for 15 years, and mother of a US citizen child, October 30, 2011

Many of those we spoke to said that everyday life in Alabama has become increasingly difficult for Latino residents since the Beason-Hammon Act passed because of increased harassment and discrimination by private individuals and businesses. When the state declares that a particular group of people, predominantly of one ethnic minority, is unwelcome, it is not surprising that private citizens would feel they have license to discriminate against that minority. The incidents of harassment reported to Human Rights Watch since enactment of the law all involved US citizens, permanent residents, and unauthorized immigrants of Latino descent.

Katherine Guzman, a native Alabamian whose family has lived in Alabama for generations, is married to a US permanent resident from Mexico.

She said that soon after the law passed, her “eight-year-old came home from school really crying one day.”¹⁵³ A girl had told her “she was going to have to go back to Mexico, and that they were going to send her whole family back.” Guzman said:

I explained to her that she’s not *from* Mexico; she’s not a Mexican. She was born in America, that makes her an American, and that we were staying here, and it was just a misinformed kid.

¹⁵² Human Rights Watch telephone interview with Sally P. (pseudonym), November 16, 2011. Also Human Rights Watch interview with Patricia Armour, Foley, November 3, 2011.

¹⁵³ Human Rights Watch interview with Katherine Guzman, Montevallo, October 26, 2011.

But she was also called a “dirty Mexican” from another girl at the bus....

She was born here, she’s been raised here. It’s the only life she knows. It’s not going *back* to Mexico—she hasn’t *been* to Mexico....

[The Alabama law] doesn’t affect just immigrant people. It’s affecting people who were born and raised here as well.¹⁵⁴

Some private businesses, which have no legal duty to require proof of legal status, seem to have taken it upon themselves to verify citizenship or lawful presence for routine transactions. A woman reported that her 55-year-old mother, a permanent resident of Latino descent, was shaken when a clerk at a major discount store told her she had to provide proof of US citizenship to fill her prescription. When she followed up with the store, they told her that there had been a problem with her mother’s insurance, but her mother had no difficulty filling the prescription at a different pharmacy.¹⁵⁵ Leticia M., an unauthorized immigrant who has lived in Alabama since she was one year old, had opened a layaway account at a chain retail store for her family’s winter clothes. After making the payments, she came to pick up the clothes. Because she had lost her receipt, she was asked to provide photo identification, but the manager refused to accept identification that was not issued by Alabama.¹⁵⁶ Suzanna Collerd, an organizer with Alabama Coalition for Immigrant Justice, reported she had spoken with a woman who was asked for her identification when she asked to look at some jewelry at a major discount department store, and another woman who could not get her warranty honored at a major electronics retailer without an Alabama driver’s license.¹⁵⁷

Several people reported that their workplaces had become hostile, with co-workers making discriminatory and hurtful statements, such as, “You hear about the new law? They’re going to get you!”¹⁵⁸ Delia R., a permanent resident, was shocked because her co-workers

¹⁵⁴ Human Rights Watch interview with Katherine Guzman, Montevallo, October 26, 2011.

¹⁵⁵ Human Rights Watch telephone interview with Lucia D. (pseudonym), October 31, 2011.

¹⁵⁶ Human Rights Watch telephone interview with Leticia M., (pseudonym), November 16, 2011. When Human Rights Watch called the store’s customer service number on November 16, 2011, the researcher was told that someone without a US government-issued ID should not have a problem, though ultimately, it is up to the manager’s discretion. After several complaints, Leticia M. was able to collect the clothes.

¹⁵⁷ Human Rights Watch telephone interview with Suzanna Collerd, organizer with Alabama Coalition for Immigrant Justice, November 3, 2011.

¹⁵⁸ Human Rights Watch interview with Delia R. (pseudonym), (location withheld), October 26, 2011.

had never made such statements before the law was passed.¹⁵⁹ Leticia M.'s husband managed to get a job at a car parts factory that uses E-Verify, a federal program intended to ensure that new employees are authorized to work in the US, despite not having such authorization. Although the company officially considers him a documented worker, his co-workers and supervisor treat him and others who are working without authorization differently, giving them more work and making threatening statements like, "I'm not going to listen to a Mexican without papers.... Fire me! If you do, I will call immigration on you."¹⁶⁰

Some people reported that even strangers at grocery stores have made abusive remarks, such as, "Why are you still here? Don't you understand you have to leave?"¹⁶¹ A teacher in Foley reported that "Frequently Asked Questions" fliers about the Alabama immigrant law had been defaced with words like, "Go back to Mexico," and placed on car windshields at a parking lot outside a major discount chain store.¹⁶²

Such statements, when made at work or school, can rise to the level of illegal harassment. The greater fear among unauthorized immigrants, though, is that verbal harassment is only the beginning. As Katherine Guzman stated, "It affects me...to know my eight-year-old is afraid and to not really know how to help her with that, because I'm somewhat afraid, too.... You don't know how far other people will go."¹⁶³

¹⁵⁹ Human Rights Watch interview with Delia R. (pseudonym), (location withheld), October 26, 2011.

¹⁶⁰ Human Rights Watch telephone interview with Leticia M. (pseudonym), November 16, 2011. Carlos G. also reported that co-workers who had never said anything before the law passed now make comments like, "They're going to come get you. We're going to call immigration on you." Human Rights Watch interview with Carlos G. (pseudonym), (location withheld), November 2, 2011.

¹⁶¹ Human Rights Watch interview with Elena G. (pseudonym), (location withheld), November 1, 2011.

¹⁶² Human Rights Watch interview with Patricia Armour, Foley, November 3, 2011.

¹⁶³ Human Rights Watch interview with Katherine Guzman, Montevallo, October 26, 2011.

IV. Impact of the Beason-Hammon Act on Children

Someone should be fighting for children's rights.

—Alma R., unauthorized immigrant, resident of Alabama for 14 years, and mother of two US citizen children, October 30, 2011

The Alabama immigrant law also threatens children's well-being. By giving parents incentives to avoid authorities and avoid even being seen in public, it has created new obstacles to the ability of their children—many of whom are US citizens¹⁶⁴—to obtain healthcare and education.

Both US constitutional law and international human rights law recognize the special status of children and their particular needs for protection and care. In 1982 the US Supreme Court held in *Plyler v. Doe* that the children of unauthorized immigrants were entitled to receive education in public schools. The court stated that even when a state may impose consequences on adults who enter the US illegally, “legislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.”¹⁶⁵ Various international human rights treaties protect the rights of children. Article 24 of the International Covenant on Civil and Political Rights entitles children “to such measures of protection as are required by [their] status as a minor, on the part of the family, society and the state.”¹⁶⁶ The International Covenant on Economic, Social and Cultural Rights states that “[t]he widest possible protection and assistance should be accorded to the family...particularly for its establishment and while it is responsible for the care and education of dependent children.... Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.”¹⁶⁷ The Convention on the Rights of the Child provides that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.”¹⁶⁸

¹⁶⁴ Over 83 percent of children in Alabama with at least one immigrant parent are native-born US citizens. “Children in Immigrant and Native Families by State, 1990 to 2009,” Migration Policy Institute, <http://www.migrationinformation.org/DataHub/charts/MPIDataHub-Children-in-immigrant-families.xls> (accessed November 17, 2011).

¹⁶⁵ *Plyler v. Doe*, 457 U.S. 202, 220 (1982).

¹⁶⁶ ICCPR, art. 24.

¹⁶⁷ ICESCR, art. 18.

¹⁶⁸ Convention on the Rights of the Child, (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990. Although the US has not ratified the treaty, as a signatory to the CRC, the US is obliged to

The Alabama law takes none of these concepts of children’s rights into account, making it more likely parents with US citizen children will be separated from them. It ramps up enforcement without there being a corresponding reform of immigration policy, exacerbating the federal immigration system’s failings at preserving family unity.¹⁶⁹ Unauthorized immigrants with US citizen children not only face the difficult decision, if being deported, of whether or not to leave their US citizen children in the US, but also risk losing custody and contact with their children altogether.¹⁷⁰ Unauthorized immigrants in Alabama are well aware of these risks, and some have responded by preparing power-of-attorney agreements with US citizen family and friends in case they are arrested, deported, and separated from their children.¹⁷¹

Impact on Access to Necessities and Health Care

When the necessities of life, such as water and housing, are denied to unauthorized immigrant parents, their children are inevitably denied these rights as well. As some parents in Alabama told Human Rights Watch, the Beason-Hammon Act has caused them to severely curtail their activities, with negative implications for their children’s health.

Sara M., who has been living in the US since she was seven years old, and in Alabama since she was 13, described why she and her family decided not to leave.

Sara is divorced and a single mother to two US citizen children. Most of her family—her parents and her sister—also live in Alabama. Together, they own two houses. When they were able to move into their first house, “it was like a blessing from God. I never thought we’d have a house of our own.”¹⁷²

refrain from acts that would defeat the treaty’s object and purpose. See Vienna Convention on the Law of Treaties, concluded May 23, 1969, 1155 U.N.T.S. 331, entered into force January 27, 1980, art. 18.

¹⁶⁹ See Human Rights Watch, *Tough, Fair, and Practical: A Human Rights Framework for Immigration Reform in the United States*, July 8, 2010, <http://www.hrw.org/reports/2010/07/09/tough-fair-and-practical-o>; Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*, July 16, 2007, <http://www.hrw.org/reports/2007/07/16/forced-apart-o>.

¹⁷⁰ Applied Research Center, “The Perilous Intersection of Immigration Enforcement and the Child Welfare System,” November 2, 2011, <http://arc.org/shatteredfamilies> (accessed November 19, 2011).

¹⁷¹ Human Rights Watch interview with Lorena B. (pseudonym), (location withheld), October 30, 2011; Human Rights Watch interview with Miriana Nichele, Dothan, November 2, 2011. See also Ed Pilkington, “Alabama parents prepare for the worst: separation from their kids,” *The Guardian*, October 11, 2011, <http://www.guardian.co.uk/world/2011/oct/11/alabama-immigration-children-power-of-attorney> (accessed November 19, 2011).

¹⁷² Human Rights Watch interview with Sara M. (pseudonym), (location withheld), October 29, 2011.

Before the Beason-Hammon Act was passed, she had thought of Alabama as her home. “I wouldn’t fight for [Mexico]. This is the place I would fight for. This is where I belong.” And so she initially did not believe the law would pass. “I could never think that people would have the heart to...say that I’m a criminal because I am illegal.”

But now she sees people looking at her differently: “You’re just not a person any more. You’re being pointed [at] because of your race.” Now she and her family stay at home as much as possible: “You’re at home, but you’re in jail.”

A week before the interview, her 11-year-old daughter had an asthma attack at night. “She has a breathing machine and her chest was wheezing really bad and she had a very hard time breathing.” But she did not take her to the hospital because she was afraid of being stopped while driving. The next day, when her daughter’s condition did not improve, she took her to the hospital, where they found her oxygen level was low. “If that had been worse and I was afraid to go out...I couldn’t...” Sara M. had trouble finishing the thought.

Recently, a stranger came up to her and her sister, a US citizen, in a store. She asked, “Are y’all legal?” Sara M. wanted to say to her, “What is an illegal to you? Is he not human?... Legal or illegal, I’m human.”¹⁷³

A receptionist for a pediatrician in Albertville and staff at a rural health clinic reported seeing more cancellations and fewer patients after the Alabama law went into effect.¹⁷⁴ One mother of a nine-year-old girl with a serious heart condition fought back tears as she told us she had cancelled the check-up her daughter is supposed to get every six months because she felt she could not risk driving to a hospital in Birmingham an hour and a half away.¹⁷⁵ Others reported they also feared taking children to medically necessary check-ups.¹⁷⁶ Another reported that several mothers she knew were afraid to drive to pick up milk for their children under the Special Supplemental Nutrition Program for Women, Infants, and Children (also known as WIC), a federal program that provides food to low income

¹⁷³ Human Rights Watch interview with Sara M. (pseudonym), (location withheld), October 29, 2011.

¹⁷⁴ Human Rights Watch interview with community leader, Albertville, October 26, 2011; Human Rights Watch interview with rural medical professionals, (location withheld), November 2, 2011.

¹⁷⁵ Human Rights Watch interview with Maria B. (pseudonym), (location withheld), October 27, 2011.

¹⁷⁶ Human Rights Watch interview with Belen S. (pseudonym), (location withheld), October 29, 2011; Human Rights Watch interview with Ana C. (pseudonym), (location withheld), October 28, 2011.

pregnant women and children up to five years old who are at nutritional risk. Although she herself is unauthorized, she was taking the risk to pick up the milk for her neighbors.¹⁷⁷ Luis Robledo, an interpreter, reported to the ACLU that a woman and her young US citizen son, who are both HIV-positive, had decided to leave Alabama and move to Guatemala after the law went into effect, even though the closest medical center to the woman's hometown is a three-hour drive away.¹⁷⁸

As previously noted, parents' decisions to avoid driving and any possible contact with law enforcement officers has had a significant impact on their children's activities as well. Several parents stated they no longer take their children to meetings or games for activities like soccer, cheerleading, and Boy Scouts.¹⁷⁹ Children who long to go "trick or treating" on Halloween or to the carnival at the local peanut festival are told it is too dangerous; families have stopped fishing or going to the beach.¹⁸⁰ Many parents told Human Rights Watch that their children understood why they could no longer be a part of the soccer team or the Boy Scouts, but that the psychological impact remains. When Ana S. explained to her six- and eleven-year-old daughters that if she took them to soccer practice or games, she could get detained, "they understand but they cry."¹⁸¹ Another mother was pained to report her daughter no longer feels she belongs in the state in which she was born and asks, "Why are we here? They don't want us."¹⁸²

Impact on Access to Education

Section 28 of the Beason-Hammon Act had an immediate impact on children by requiring schools to check the immigration status of their students. The right to education is a fundamental right belonging to all children, regardless of immigration status, and is

¹⁷⁷ Human Rights Watch interview with Paola M. (pseudonym), (location withheld), November 2, 2011.

¹⁷⁸ Vesna Jaksic, "For One Family, Alabama Anti-Immigrant Law a Fate Worse than Possible Death," post to "ACLU Blog of Rights (blog), ACLU, November 8, 2011, <http://www.aclu.org/blog/immigrants-rights-racial-justice/one-family-alabama-anti-immigrant-law-fate-worse-possible> (accessed November 22, 2011).

¹⁷⁹ Human Rights Watch interview with Ana S. (pseudonym), (location withheld), October 29, 2011; Human Rights Watch interview with Sofia and Juan G. (pseudonyms), (location withheld), October 30, 2011; Human Rights Watch interview with Alma R. (pseudonym), (location withheld), October 30, 2011; Human Rights Watch interview with Lorena P. (pseudonym), (location withheld), October 30, 2011; Human Rights Watch interview with Marisol P. (pseudonym), (location withheld), October 31, 2011; Human Rights Watch telephone interview with Laura R., November 2, 2011; Human Rights Watch interview with Eduardo and Alegria F. (pseudonyms), (location withheld), November 3, 2011; Human Rights Watch interview with Isabel J. (pseudonym), (location withheld), October 30, 2011; Human Rights Watch interview with Paola M. (pseudonym), (location withheld), November 2, 2011; Human Rights Watch interview with Felipe S. (pseudonym), (location withheld), November 2, 2011.

¹⁸⁰ Ibid.

¹⁸¹ Human Rights Watch interview with Ana S. (pseudonym), (location withheld), October 29, 2011.

¹⁸² Human Rights Watch interview with Marisol M. (pseudonym), (location withheld), October 31, 2011.

protected under both US law and international human rights law.¹⁸³ Although the Alabama law does not explicitly bar any children from attending school, the provision has had a severe chilling effect, the full implications of which remain unclear. Between the time the law went into effect on September 28, 2011, and the time the 11th Circuit Court of Appeals preliminarily enjoined section 28 on October 14, 2011,¹⁸⁴ attendance among Hispanic children in Alabama public schools was significantly lower than usual. According to the state Department of Education, over 5,000 Hispanic children were absent at a point when normally about 1,000 absences could be expected.¹⁸⁵ This is out of a total Hispanic school population in Alabama of about 31,000 students, including US citizens.¹⁸⁶ Attorney General Strange in December recommended that this provision be repealed by the legislature,¹⁸⁷ but as the accounts below demonstrate, the law's detrimental impact on children's right to education has not been created solely by section 28.

The school administrators who spoke to Human Rights Watch said that after section 28 was enjoined, some children returned to school, but others had already formally withdrawn. Students who were in Head Start, a federal pre-school program for disadvantaged children, could not re-enroll because they had lost their place.¹⁸⁸ Some students who withdrew presumably moved to another state, but lost valuable time and educational opportunity even assuming they were able to re-enroll in school in the new

¹⁸³ The US Supreme Court in *Plyler v. Doe*, 457 U.S. 202, 221-222 (1982) found that there is no "right" to education under the US Constitution, but that denying public education to undocumented children violates the Equal Protection Clause of the 14th Amendment ("The inestimable toll of [educational] deprivation on the social, economic, intellectual, and psychological wellbeing of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause."). For the right to education under international law, see, for example, the UN Charter on Human Rights, art. 26(1) ("Everyone has the right to education.... Elementary education shall be compulsory.").

¹⁸⁴ The 11th Circuit Court of Appeals enjoined section 28, as well as section 10, which criminalizes unlawful presence under state law. See *United States v. State of Alabama*, Order, No. 11-13432-CC (11th Cir. October 14, 2011), <http://www.ca11.uscourts.gov/unpub/ops/201114532ord.pdf> (accessed November 22, 2011).

¹⁸⁵ Campbell Robertson, "Critics See 'Chilling Effect' in Alabama Immigration Law," *New York Times*, October 27, 2011, <http://www.nytimes.com/2011/10/28/us/alabama-immigration-laws-critics-question-target.html> (accessed November 16, 2011). The US Department of Justice has requested detailed enrollment information from school districts across Alabama in order to fully assess the impact of the new law. Alabama's Attorney General, however, has advised school districts not to respond to the request. See Mary Orndorff, "Alabama attorney general challenges DOJ request for school data on Hispanic students," *The Birmingham News*, November 2, 2011, http://blog.al.com/sweethome/2011/11/alabama_attorney_general_chall.html (accessed November 23, 2011).

¹⁸⁶ Pew Hispanic Center, "Demographic Profile of Hispanics in Alabama, 2009."

¹⁸⁷ Lawson, "Alabama Attorney General wants to end school data collection, no-bail provisions in immigration law," *The Huntsville Times*.

¹⁸⁸ Human Rights Watch interview with Patricia Armour, public school teacher, Foley, November 3, 2011; Human Rights Watch interview with Paola M. (pseudonym), (location withheld), November 2, 2011.

location.¹⁸⁹ An English-as-a-second-language teacher in Birmingham said, “I had to sit with one little boy whose father was withdrawing him.... I told him his dad was doing what he thought was best, but he was devastated to leave his friends.”¹⁹⁰

Most unauthorized immigrant parents who spoke to Human Rights Watch said their school administrators had encouraged children to continue attending when the law went into effect,¹⁹¹ and the Birmingham Board of Education issued a resolution opposing the law.¹⁹² However, some teachers reported that some children are still absent because parents are afraid to drive to school, and a US citizen said she takes another woman’s daughter to school because she is afraid to drive.¹⁹³ One significant reason for their fear is the presence of police officers at schools. Patricia Armour, a teacher in Foley, noted that police officers were a presence in schools before the law went into effect, but now, with Alabama’s immigrant law, their presence has taken on a new meaning, and parents will call and say that they saw the police and did not want to drop off their children.¹⁹⁴ In another town, as described below, a woman stated that she drops her children off at school at 6:30 a.m. in order to avoid the police.¹⁹⁵ A Human Rights Watch visit to the school in question confirmed that police are a visible presence, with patrol cars parked along the roads leading to the school’s driveways.¹⁹⁶

¹⁸⁹ Human Rights Watch interview with Dr. Rosalva Ballin, educator, Birmingham, November 1, 2011. Dr. Ballin noted that research indicates a child ends up being about three to six months behind with every move, and that the Alabama immigration law had thus essentially put children behind.

¹⁹⁰ Human Rights Watch interview with public school teacher, Birmingham, November 1, 2011.

¹⁹¹ Rena Havner Philips, “After immigration ruling at Foley school with Hispanic population, students cry, withdraw, no-show,” *Press-Register*, September 30, 2011, http://blog.al.com/live/2011/09/foley_elementary_students_pare.html (accessed November 19, 2011).

¹⁹² Marie Leech, “Birmingham Board of Education will condemn Alabama’s immigration law officially, members say,” *The Birmingham News*, November 8, 2011, http://blog.al.com/spotnews/2011/11/birmingham_board_of_education_28.html (accessed December 1, 2011).

¹⁹³ Human Rights Watch interview with Patricia T. (pseudonym), (location withheld), November 2, 2011.

¹⁹⁴ Human Rights Watch interview with Patricia Armour, public school teacher, Foley, November 3, 2011. Human Rights Watch phone calls and a faxed letter to the Foley Police Department were not returned.

¹⁹⁵ Human Rights Watch interview with Paola M. (pseudonym), (location withheld), November 2, 2011.

¹⁹⁶ Human Rights Watch visit to elementary school, (location withheld), November 3, 2011. Human Rights Watch could not inquire into the presence of police at this particular school without violating Paola M.’s anonymity, but we did ask the Tuscaloosa Police Department about their policy for schools. Sgt. Brent Blankley confirmed that “school resource officials” have been stationed at the middle and high schools for years and that they are there to prevent school violence and “build a rapport with kids.” When asked if he thought it might have a detrimental effect on school attendance in the atmosphere created by the new immigration law, he stated, “We’ve talked in our community about if you’re a victim of a crime, you still need to report it,” but had no specific plans to modify their policy of police stationed at schools. Human Rights Watch telephone interview with Sgt. Brent Blankley, Tuscaloosa Police Department, November 22, 2011.

Paola M. and her husband, who are unauthorized immigrants, care for seven children, comprising their five children, three of whom are US citizens, and two additional US citizen children whose mother returned to Honduras to obtain medical care. Paola has lived in Alabama for the past eight years.

After the law was enacted, Paola immediately pulled all seven children out of school. When the education provision was enjoined, the older children returned to school. But her youngest was in Head Start, and when he left, he lost his place, which has been devastating to her. “He was learning so much, to sing, to dance, to count. He’s so smart!... It is a wonderful program.” He did not initially understand that he could not go, and he would get up, get dressed, and announce, “Mommy, I’m ready for school!” Paola cried at the memory.

The older children continue to go to school, but there are still challenges. The police sit outside the elementary school every morning, and she fears being stopped for having expired tags. So she now drops them off at 6:30 in the morning, before the police arrive. It’s hard for her when they say, “Mommy, it’s dark outside!” but she does not want to risk being arrested and separated from them.

To minimize the amount of time she spends driving, she also pulled the seven- and nine-year-old boys out of Boy Scouts. But given how much Paola wants her children to have all the opportunities she did not have in her home country, it was not an easy decision.¹⁹⁷

Some teachers and an administrator reported that some of the children who remain in school are traumatized and have difficulty understanding why many of their classmates are gone. Foley Elementary School, where 20 percent of the student body is Latino, went into “crisis-management mode” in the days after the Beason-Hammon Act went into effect to help children who were crying and afraid.¹⁹⁸ One mother was deeply concerned because her 12-year-old son’s grades had gone down and he no longer wanted to do even the activities he could continue.¹⁹⁹ A teacher in Birmingham described how she struggled to reassure one little girl, who would arrive at school and want to go home immediately to check on her parents, despite the fact that her parents are legal permanent residents.²⁰⁰ The same teacher

¹⁹⁷ Human Rights Watch interview with Paola M. (pseudonym), (location withheld), November 2, 2011.

¹⁹⁸ Philips, “After immigration ruling at Foley school with Hispanic population, students cry, withdraw, no-show,” *Press-Register*.

¹⁹⁹ Human Rights Watch interview with Isabel J. (pseudonym), (location withheld), October 30, 2011.

²⁰⁰ Human Rights Watch interview with public school teacher, Birmingham, November 1, 2011.

reported students had asked her and her fellow teachers if they would adopt them if anything happened to their parents.²⁰¹

Even when students are able to regularly attend school, many parents reported they were subject to increased bullying and harassment. Patricia T., who is Puerto Rican and a native-born US citizen, reported her US citizen son was asked by his classmate, “Do you have a green card?” When he naturally responded in the negative, his classmate declared, “You’ll have to leave the country.”²⁰² Other classmates have asked him, “Why are you here?”²⁰³ Six other parents, living in different towns across Alabama, reported similar stories of children saying things like, “What are you doing here? Why don’t you go back?” while a teacher in Foley reported that neighbors are throwing things and yelling at students as they walk to the bus stop.²⁰⁴ In some cases, school administrators were helpful and addressed the bullying, but parents in two different schools were disappointed by teachers who did nothing and made statements like, “It’s just things between kids.”²⁰⁵

Miriana Nichele, a permanent resident with a pending application for US citizenship, wrote the following prayer in support of her community:

*Mi corazón late lento y con dolor, mi alma hoy esta de gris color, mi espíritu
esta partido en dos y mi mente no hace más que pensar en Dios!
A ti mi señor, te pido por todos los inmigrantes asustados y separados,
por todos los niños que no serán educados,
por la pérdida de los que nos quedamos,
por los granjeros que sus siembras no han cosechado,
por las iglesias que tus fieles han dejado,
por los hogares en donde faltara un hermano,
por los doctores que a sus hispanos han curado,
por los maestros que a sus alumnos se han llevado.
Por toda nuestra comunidad maltratada,*

²⁰¹ Ibid.

²⁰² Human Rights Watch interview with Patricia T. (pseudonym), (location withheld), November 2, 2011.

²⁰³ Ibid.

²⁰⁴ Human Rights Watch interview with Patricia Armour, public school teacher, Foley, November 3, 2011.

²⁰⁵ Human Rights Watch interview with Lorena P., October 30, 2011; Human Rights Watch interview with Marisol M. (pseudonym), October 31, 2011; Human Rights Watch interview with Elena G. (pseudonym), November 1, 2011; Human Rights Watch interview with Soledad B. (pseudonym), November 3, 2011; Human Rights Watch telephone interview with Laura R. (pseudonym), November 3, 2011.

*por una ley que solo separa!
Y por los que han hecho de esta ley un castigo al que le ha dado alimentos y
en este país ha contribuido.*

Señor en ti confié.

Translation:

My heart beats slowly and with pain, my soul today is colored gray, my spirit is split in two, and my mind does nothing but think of God!

To you, Father, I pray for all frightened and separated immigrants,
for all children who are not educated,
for the loved ones who have left,
for the farmers whose crops have not been harvested,
for the churches that your faithful have left,
for the homes that are missing a brother,
for the doctors who have cured their people,
for the teachers whose students have fled.

For our entire mistreated community,
for the law that only separates, and
for those that have made this law to punish those who have grown food and
made contributions to this country.

Father, in you I trust.²⁰⁶

²⁰⁶ Human Rights Watch interview with Miriana Nichele, Dothan, November 2, 2011.

Conclusion

At this writing, Alabama’s new immigrant law has been in effect for only a little over two months, but the consequences have been immediate and severe. The economic impact has reverberated throughout the state—some farmers and other businesses have complained of having insufficient workers, businesses that depend on the immigrant community are faltering, and some foreign companies are reconsidering plans to invest in the state. State and local officials find themselves with an unfunded mandate to carry out the law at a time when the state budget has no room to spare.

The initial human impact has been devastating, though the full consequences remain unknown. A group of people have found themselves unable to live the lives they had lived for many years. Some were barred from access to basic services like water, and many more were told they could not live in homes they own. The interpretation of some provisions continues to be modified by state officials or enjoined by the courts, but other provisions still deny unauthorized immigrants equal protection of the law. This has already discouraged some from reporting crimes and wage theft. Particularly hard hit have been the children of unauthorized immigrants, an especially vulnerable population, including the many who are US citizens. Legislators contend that these are “unintended consequences” of the legislation, but the proponents of the Alabama law made clear from the start their intention to make it impossible for unauthorized immigrants to live in the state.

Responsibility for fixing the US immigration system ultimately lies with the US Congress and the president. The federal government has failed to take responsibility for a situation whereby American society both benefits from and disregards the rights of a large and growing group of people. But it cannot continue to permit local economies to rely on the labor of unauthorized immigrants without providing those residents some process that would ensure that their human rights are fully respected.

The solution cannot be broad denial of rights at the local level. Alabama needs to take responsibility for enacting an extremely misguided and abusive law. Other states and localities have passed similar laws, but most of them have been spared the consequences because the harshest provisions were blocked by the courts. Alabama legislators are now talking of amending the law, and the courts may yet strike down the law or its worst provisions. But the impact of the Alabama law on the state and its residents in its first two months is a lesson to all state governments struggling with the issue of unauthorized

immigrants. Although state governments in the United States have no power to pass legislation that would create a path to earned citizenship for unauthorized immigrants, states should do what is in their power: ensure that those who live in their communities, regardless of status, are accorded their fundamental human rights, and put political pressure on the US government to reach a comprehensive solution.

Voters in the United States also have an obligation to ensure that the rights of all people within the country, including unauthorized immigrants, are protected. The consequences of the Alabama law make clear that efforts to deny rights to unauthorized immigrants impact the larger population, particularly US citizens and permanent residents connected to these unauthorized immigrants through family, business, and community ties.

Paolo B., a 27-year-old man who has lived in Alabama since he was 15, continues to believe in the state that has given him so much: a family, a home, a job that he loves. He told Human Rights Watch, “The people who pushed the law don’t represent everyone in this state.”²⁰⁷ We urge the citizens of Alabama to push their representatives to repeal the law and justify his faith in them.

²⁰⁷ Human Rights Watch interview with Paolo B. (pseudonym), (location withheld), November 3, 2011.

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Most of all, we thank the unauthorized immigrants of Alabama who described to Human Rights Watch the lives they have built, the abuses they have endured, and all that they are at risk of losing, in order to gain recognition of their fundamental human rights.

No Way to Live

Alabama's Immigrant Law

The sponsors of Alabama's new immigrant law, widely known as HB 56, intended to make life difficult for unauthorized immigrants in Alabama. As the bill's co-sponsor State Rep. Mickey Hammon stated during debate, "[HB 56] attacks every aspect of an illegal alien's life...This bill is designed to make it difficult for them to live here so they will deport themselves." Although the law only went into effect on September 28, 2011, it has largely succeeded.

No Way to Live is based interviews with 50 unauthorized immigrants as well as several dozen affected citizens, activists, and local government officials in Alabama. It documents the ways in which the Beason-Hammon Alabama Taxpayer and Citizen Protection Act has radically transformed the lives of unauthorized immigrants in that state. Most of the people we interviewed have lived in the state for more than 10 years, and have deep ties to the state through US citizen family, work, and community.

In the first two months the law was in effect, local officials have used it to deny unauthorized immigrants access to everyday necessities such as water and housing in violation of their basic rights. The law also denies all unauthorized immigrants fundamental rights protections that should apply to everyone, not just citizens, making them more susceptible to discriminatory harassment and abuse by local authorities and ordinary people. They live in a climate of fear and uncertainty, which has had a particularly severe impact on children, many of whom are US citizens.

Under international law, governments are empowered to regulate immigration. However, no government at any level may enact a law that denies fundamental rights to people based on their status. The experience of Alabama's unauthorized immigrants and their families underscores the urgent need for comprehensive federal immigration reform that is respectful of human rights, and for Alabama's immediate repeal of the Beason-Hammon Act.

An unauthorized immigrant who has lived in the US for 12 years sits with her US citizen grandson in her Mexican restaurant. Alabama's new immigrant law could prevent her from renewing her business permit when it expires next year.

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