

Whatever his status under the immigration laws, an alien is surely a 'person'....Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.

-- U.S. Supreme Court Justice William J. Brennan (*Plyler v. Doe*, 1982)

Why does the ACLU defend immigrants' rights?

Immigration, along with the American ideals of equality, fairness and social tolerance have built the political, economic and cultural strength of this country from colonial days to the present. Yet, virtually every group of newcomers—from the Germans, Irish and Italians to the Chinese and others—has faced discrimination, hostility and stereotyping from those already here. The tensions between today's newest immigrants and established residents are much the same.

Regardless of one's views on U.S. immigration policy, the fundamental civil liberties protections of the Bill of Rights and the U.S. Constitution protect every person in this country—including non-citizens. The government can legitimately control its borders, but the power to exclude and deport people must be exercised fairly and humanely, subject to our constitutional norms and consistent with U.S. obligations under international law.

By eroding the fundamental rights of immigrants, state-based immigration laws threaten the rights of all Americans, while further reinforcing the second class status of non-citizens. The ACLU fights the very notion of a two-tiered system of law and justice and carries on our historic commitment to ensure that immigrants, like all other persons in this country, receive the Constitutional protections to which they are entitled.

What will House Bill 56, the “Alabama Taxpayer and Citizen Protection Act,” really do?

HB 56 is an extraordinary attempt to regulate every aspect of the lives of immigrants in Alabama. It will deter their children from going to school and interfere with their ability to rent housing, earn a living, and enter into contracts. It also requires state and local police officers to detain and investigate people based on a “suspicion” that they may be undocumented immigrants, thus inviting racial profiling and raising concerns about prolonged and erroneous detentions. It creates a range of new immigration-related crimes, with draconian penalties attached. It even authorizes the Alabama Department of Homeland Security to hire and maintain its own immigration police force. These and other provisions of HB 56 are unconstitutional in multiple respects. Consequently, they threaten to deny immigrants and Alabamans of color their most basic rights.

Here is a look at some of the most troubling provisions of this law:

Interfering with children's access to education

HB 56 provides that every public elementary and secondary school in Alabama shall determine whether the student enrolling was born outside the jurisdiction of the United States or is the child of an undocumented immigrant not lawfully present in the United States. At enrollment, each child must produce his or her birth certificate. If a child's birth certificate is unavailable or shows that the child was born outside the U.S., the child must prove his or her citizenship or immigration status; otherwise, the school shall presume that the student is an undocumented immigrant. Schools must maintain this information and periodically report to the state legislature how many undocumented children are in school.

Though ostensibly aimed at data collection, HB 56's inevitable effect will be to intimidate parents and to drive children—including U.S. citizen children with immigrant parents—out of school. The U.S. Supreme Court has held that a state cannot bar children from primary education based on their immigration status.

Further, HB 56 restricts educational access by prohibiting undocumented immigrants from enrolling in or attending any public postsecondary education institution in this state or receiving any educational benefits such as financial aid. Even lawful immigrant students may lose or be denied enrollment or financial aid if the educational institution seeks verification of their status and the federal government's response is delayed, erroneous or inconclusive.

Preventing people from renting, entering into contracts, and earning a living

HB 56 provides that no Alabama state court shall enforce any contract between a party and an undocumented immigrant, if the party had knowledge that the immigrant was undocumented. Though there are limited exceptions to this rule, the effect will be rampant exploitation of immigrants.

HB 56 makes it a felony for an undocumented immigrant to apply for a license plate, a driver's license, a nondriver identification card, a business license, etc. Lawful immigrants will face serious administrative hurdles and delays under this section, and potentially wrongful denials.

HB 56 also makes it a crime to enter into a rental agreement with an undocumented immigrant, if the landlord knows or recklessly disregards the fact that the immigrant is undocumented. Further, it will be a crime for an undocumented immigrant to knowingly apply for work, solicit work, or perform work.

Requiring law enforcement officers to verify immigration status

HB 56 requires that, upon any lawful stop or detention by a law enforcement officer, the officer must verify the person's immigration status if the officer has "reasonable suspicion" that the person is undocumented. The law does not explain what constitutes "reasonable suspicion" that a person is undocumented, and this vague formulation is an open invitation to racial profiling. Alabamans stopped by police for any reason will be subjected to interrogation and extended detention unless they carry documents which give rise to a "presumption" of citizenship.

Creating new immigration-related state crimes

HB 56 creates new state-law crimes related to immigration. The law criminalizes "harboring" and "transporting" any undocumented immigrant while knowing or recklessly disregarding the fact that the immigrant is undocumented. The crime of "transporting" includes activities such as driving someone to a doctor, to church, to a grocery store, to a legal service provider, to a homeless shelter, or to a soup kitchen. The crime of "harboring" may include providing temporary housing or allowing undocumented immigrants to attend church services. Felony violations of this section may be punishable by at least 1 year and up to 10 years in prison, and fines of up to \$15,000.

Creating a state immigration police force

HB 56 authorizes the Alabama Department of Homeland Security to hire and maintain state law enforcement officers whose job is not to engage in routine law enforcement activity, but instead to perform "investigative and analytical duties necessary to carry out the enforcement" of this law. The result is the creation of a new state immigration police force, supplanting the federal Immigration and Customs Enforcement. This is constitutionally impermissible: state law enforcement officers have no general authority to enforce federal civil immigration law.

What will the ACLU do about HB 56?

The ACLU and the ACLU of Alabama, along with Southern Poverty Law Center, the National Immigration Law Center and others, will bring a lawsuit challenging the constitutionality of HB 56 before it goes into effect on September 1.