IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Walter Brian Bilbro, Plaintiffs, vs. South Carolina Department of Social Services (directors, Susan Alford and Dorothy Addison) Office of Governor, Nikki Randhawa Haley, Lutheran Services Carolinas, World Relief Spartanburg, (Jason Lee, director), Defendants.	)	Civil Action No. 3:16-cv-767-JFA **MOTION TO DISMISS**

World Relief Corporation of National Association of Evangelicals ("World Relief"), incorrectly identified in the Complaint as World Relief Spartanburg, comes before the Court and files its Motion to Dismiss.[1] The Complaint seeks an injunction to halt the resettlement of refugees in South Carolina in direct opposition to federal immigration law as enacted by Congress and refugee policy as established by executive agencies such as the United States Department of State and Department of Homeland Security. The claims should be dismissed under Rule 12(b)(6) because the Complaint states no claim upon which relief may be granted. Alternatively, because the Plaintiff lacks standing to bring the claims in this lawsuit, the Complaint should be dismissed under Rule 12(b)(1).

[1] Pursuant to Local Civil Rule 7.04, and because a complete explanation of the grounds for this motion are contained herein, World Relief files this motion without a separate supporting memorandum.

BACKGROUND

World Relief was founded in 1944 as the "War Relief Commission" by the National Association of Evangelicals in response to the humanitarian crisis in Europe following World War II. Its motto at that time was "food for the body and food for the soul." World Relief, Our History, http://www.worldrelief.org/our-history (last visited March 13, 2016). In the 1950s the name of the organization became World Relief, and the mission evolved from providing humanitarian assistance in post-war Europe to providing food, medicine, clothing, relief assistance, and training all over the world. *Id.* The refugee resettlement ministry of World Relief began in 1979, when World Relief became the first evangelical organization to work directly with the U.S. State Department to resettle refugees. At that time, World Relief was working with Vietnamese refugees who were establishing new lives in the United States. *Id.* World Relief continues to grow its ministry, serving around the world to provide disaster relief, health and child development services, economic development initiatives, peace building efforts, and refugee and immigration assistance as it lives out its mission of empowering the local church to empower the local charge to serve the most vulnerable. World Relief, About, http://www.worldrelief.org/about/ (last visited March 13, 2016). In World Relief's own words, "we work holistically with the local church to stand for the sick, the widowed, the orphaned, the alienated, the displaced, the devastated, the marginalized and the disenfranchised." *Id.*

World Relief is currently one of nine organizations that have partnered with the Department of State through cooperative agreements to provide resettlement services to refugees who are entering the United States. U.S. Dep't of State, The Reception and Placement Program, http://www.state.gov/j/prm/ra/receptionplacement/ (last visited March 12, 2016). Through this cooperative agreement, World Relief empowers local churches around the country to assist

refugees with learning a new language, job training, housing support, and building relationships with Christians from a local church in their new community. World Relief, Refugee Crisis FAQs, http://refugeecrisis.worldrelief.org/faq/ (last visited March 12, 2016).

World Relief, its cohort of partner agencies, and state and local governments have no role whatsoever in determining which refugees enter the United States. The Constitution grants the federal government exclusive authority over immigration policy, through the provisions "[t]o establish an uniform Rule of Naturalization," and "[t]o regulate Commerce with foreign nations." U.S. Const. Art. I, Section 8, cl. 3, 4. The federal government has broad authority over foreign affairs through the operation of these Constitutional provisions. *Toll v. Moreno*, 458 U.S. 1, 10 (1982). Accordingly, the United States federal government has complete authority over which refugees may enter the United States.

The federal Immigration and Nationality Act ("INA") defines the term "refugee" as someone who has fled from his or her home country and cannot return because he or she is persecuted or "has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42). To be considered a refugee under this statute and internationally recognized criteria, an individual must first register with the United Nations High Commissioner for Refugees ("UNHCR"), who will determine if the individual meets the criteria for refugee status. If the individual is considered a refugee by the UNHCR and cannot safely return to her home country or remain in the country to which she has fled (the two most common solutions for refugees), the UNHCR works with nations to resettle the refugee in a third country. *See*, U.S. Dep't of State, Refugee Admissions, http://www.state.gov/j/prm/ra/index.htm (last visited March 12, 2016). In order to be allowed to enter the United States, refugees must undergo a rigorous screening process including health,

criminal background, and national security background checks to prove that they are not inadmissible to this country. *See* 8 U.S.C. § 1182(a); U.S. Citizenship & Immigration Services, Refugee Screening, https://www.uscis.gov/refugeescreening, (last visited March 12, 2016). Because of the intensity and scope of the background screening of refugees, the United States Department of State ("State Department") manages an interagency effort called the U.S. Refugee Admissions Program ("USRAP") to coordinate the myriad requirements. *Id.* "Refugee applicants have the highest level of background and security checks of any category of traveler to the United States." *Id.* The National Counterterrorism Center and intelligence community, the FBI, the Department of Homeland Security, and the State Department screen the individual's biometric and biographical data for any sign of criminal history or security risk. Syrians undergo an additional layer of review by the Department of Homeland Security to evaluate their credibility and risk of fraudulent activity. White House, Amy Pope, Screening Process Infographic, https://www.whitehouse.gov/blog/2015/11/20/infographic-screening-process-refugee-entry-united-states (last visited March 13, 2016). Refugees who successfully complete this exhaustive screening process and are granted permission to travel to the United States are assigned by the USRAP to World Relief or one of the other eight partner resettlement agencies in the Reception and Resettlement Program to be welcomed and assisted with the transition to life in the United States. This assignment occurs during a weekly meeting of the State Department and its partner agencies to match incoming refugees with communities that can meet the needs of the particular individual or family. *See* U.S. Dep't of State, The Reception and Placement Program, http://www.state.gov/j/prm/ra/receptionplacement/. World Relief then works with the refugees it is assigned to place them in their new communities in the United States.

Refugees fleeing their home countries because of persecution generally do not have access to the resources necessary to establish homes and lives in the United States when they arrive. Recognizing this, Congress established a statutory framework to provide services to refugees who are arriving in this country. Under the Refugee Act, the Department of Health and Human Services' Office of Refugee Resettlement ("ORR") is responsible for funding and administering, in consultation with the State Department, programs that aid resettled refugees. 8 U.S.C. § 1521. ORR disburses federal funding to states and nonprofit organizations for programs to assist refugees. 8 U.S.C. § 1522. To participate and receive these federal grant funds, a state must submit a state plan that meets INA requirements. 45 C.F.R. § 400.4. States receive grants directly from ORR to provide medical screening and treatment to refugees. *Id.* These grants also provide certain refugees with cash assistance to establish their lives in the U.S. *Id.* There are also federal grants whose funds are directed to nonprofit organizations like World Relief to assist refugees in developing skills, including language skills, job skills, and other areas in which refugees need transition assistance. 8 U.S.C. § 1522(c). ORR also provides grants to states to pay for programs that provide eight months of cash and medical assistance to eligible refugees. *Id.* Though the states and partner agencies work with the ORR, they have no authority to determine which individuals are eligible to enter the United States or receive assistance through federal refugee programs.

STANDARD OF REVIEW

I. Dismissal for Failure to State a Claim Under 12(b)(6)

For a complaint to survive a motion to dismiss for failure to state a claim upon which relief can be granted, the Federal Rules of Civil Procedure require that it contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.

8(a)(2). Although Rule 8(a) does not require "detailed factual allegations," it "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–57 (2007)), in order to "give the defendant fair notice . . . of what the claim is and the grounds upon which it rests," *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Stated otherwise, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw [a] reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). A complaint alleging facts which are "merely consistent with a defendant's liability . . . stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted).

II. Dismissal for Lack of Standing Under 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) allows dismissal for "lack of jurisdiction over the subject matter" of claims asserted in the Complaint. Fed. R. Civ. P. 12(b)(1). A motion to dismiss for lack of standing is properly brought under Rule 12(b)(1) "because "Article III gives federal courts jurisdiction only over cases and controversies,' and standing is 'an integral component of the case or controversy requirement.'" *CGM, LLC v. BellSouth Telecomm.*, 664 F.3d 46, 52 (4th Cir. 2011) (quoting *Miller v. Brown*, 462 F.3d 312, 316 (4th Cir. 2006)).

A litigant must demonstrate that his claims present the Court with a case or controversy under the Constitution that crosses the threshold of the "irreducible constitutional minimum of standing." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). This requires that a

plaintiff show the following: (1) he has suffered an injury in fact; (2) the injury is fairly traceable to the challenged action of the defendant: and (3) it is likely, and not merely speculative, that the injury will be redressed by a decision in his favor. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S. 167, 180–81 (2000). In the absence of standing, the district court must dismiss the case. *See Lujan*, 504 U.S. at 574.

ARGUMENT

I. The Complaint Fails to State a Claim Upon Which Relief Can be Granted and Must be Dismissed.

A. Bilbro's Complaint Does Not Meet Rule 8's Minimum Pleading Requirements.

Bilbro's Complaint fails to state claims upon which relief can be granted and should be dismissed. World Relief cannot ascertain what the Plaintiff's claims against it are from the allegations of the Complaint. The Complaint does not meet the most fundamental requirement of "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Each allegation must be simple, concise, and direct. *Id.* at 8(e). Although Rule 8 does not require "detailed factual allegations," it "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–57 (2007)), in order to "give the defendant fair notice . . . of what the claim is and the grounds upon which it rests," *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Bilbro's stream-of-consciousness style Complaint is not simple, concise, or direct. Its long and winding allegations and discussion of his personally-held beliefs pose nothing more than conclusions that utterly fail to give World Relief or the other defendants fair notice of his claims or their grounds in the law. Without anything more than the assertions and conclusions in the present Complaint, Bilbro's claims should be dismissed. *See Iqbal*, 556 U.S. at 678 ("Nor does a complaint suffice if it

tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" (quoting *Twombly*., 555 U.S. at 557)).

B. The Refugee Act Does Not Confer a Cause of Action

"[P]rivate rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). The role of a court evaluating whether a particular statute confers a private right of action is to "determine whether it displays an intent to create not just a private right but also a private remedy." *Id.* The Northern District of Texas recently considered this issue in *Texas Health and Human Services Commission v. United States* ("*Texas* HHS"), in the context of a motion for preliminary injunction against another of the nine organizations like World Relief who provide refugee resettlement services, the United States, and a collection of federal agencies that are involved in effectuating federal refugee policy. 3:15-cv-03851-N (N.D. Tx., Feb. 8, 2016) (attached as **Ex. A**). In *Texas HHS*, the district court reviewed Supreme Court precedent addressing the creation of a private right of action:

> "[T]he right- or duty-creating language of the statute" is the most reliable indicator of congressional intent to create a cause of action. *Cannon v. Univ. of Chicago*, 441 U.S. 677, 690 n.13 (1979). The Supreme Court has previously implied causes of action "where the language of the statute explicitly conferred a right directly on a class of persons that included the plaintiff in the case." *Id.* (collecting cases). "Conversely, it has noted that there 'would be far less reason to infer a private remedy in favor of individual persons' where Congress, rather than drafting the legislation 'with an unmistakable focus on the benefited class,' instead has framed the statute simply as a general prohibition or a command to a federal agency." *Universities Research Ass'n v. Coutu*, 450 U.S. 754, 772 (1981) (quoting *Cannon*, 441 U.S. at 690–92).

Id. at 8. Analyzing the Refuge Act in this precedential framework, the court determined that the specific consultation provision at issue in the *Texas HHS* is simply a command to a federal agency and does not create a private right of action. *Id.* "Without a congressional intent to

create a private remedy, "a cause of action does not exist and courts may not create one." *Id.* at 9 (quoting *Sandoval*, 532 U.S. at 286–87).

Congress has established a comprehensive statutory scheme that regulates the process and criteria for allowing refugees to enter the United States in the federal Immigration and Nationality Act (INA), with even more specific provisions for the admission and resettlement of refugees in the Refugee Act of 1980 (Refugee Act). Nowhere in these acts is there any indication of a Congressional intent to create a private right of action for challenges to resettlement of particular refugees or implementation of the program in particular geographic areas, or for judicially ordered "receivership" for funds used to operate the programs, or for an "accounting" of such funding." In the present case, Bilbro does not identify the INA or Refugee Act at all, much less a specific provision upon which he bases his claims. Nevertheless, Bilbro cannot identify any other provision of the either of those statutes that could potentially be construed as more than a set of commands to federal agencies to create a private right of action. Accordingly, the claims should be dismissed.

C. If the Complaint Alleges a State Court Claim, it is Completely Preempted

To the extent that the Complaint alleges a claim that could be construed as arising under South Carolina law, it is completely preempted by federal law. If the law governing a complaint is exclusively federal, its claims "arise under" federal law even if the claims purport to rest on state law. *Vaden v. Discover Bank*, 556 U.S. 9, 61 (2009). The Fourth Circuit has held that complete preemption exists where "an area of state law has been [so] completely preempted [that] any claim purportedly based on th[e] preempted state law is considered . . . a federal claim." *Rosciszewski v. Arete Assocs. Inc.*, 1 F.3d 225 (4th Cir. 1993) (extending complete preemption to a particular section of the Copyright Act). In this case, the only law governing the

admission and placement of refugees in the United States is exclusively federal. The Constitution vests authority for the establishment and implementation of immigration policy exclusively with the federal government. *See Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012); *see also Mathews v. Diaz*, 426 U.S. 67, 81–82 (1976) ("For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government."). States thus may not interfere with the federal law or policy of immigration. *See Arizona*, 132 S. Ct. at 2498 (underscoring the extent of "federal power to determine immigration policy"). Because of the well-recognized comprehensive federal control over immigration policy, it is clear that any possible state claim by Bilbro is preempted and should be dismissed.

II. Bilbro fails to allege facts that establish that he has suffered or is likely to suffer a particularized injury that is traceable to the conduct of the Defendants, and thus he lacks standing to bring the claims asserted in the Complaint.

Bilbro's Complaint is presented in a stream of consciousness manner, and thus is confusing and difficult to follow; despite its lengthy expositions about his disapproval of the refugee resettlement program, it establishes no facts that demonstrate he has standing to bring claims regarding the federal refugee program or immigration regulations. To cross the minimum threshold requirement of standing under Article III, a plaintiff's alleged injury must meet three criteria: the injury must be (1) "concrete, particularized, and actual or imminent;" (2) "fairly traceable to the challenged action;" and (3) "redressable by a favorable ruling." *Monsanto Co. v. Geerston Seed Farms*, 130 S.Ct. 2743, 2752 (2010). Particularity, the first criterion, means that only those injuries that "affect the plaintiff in an personal and individual way" will confer standing. *Lujan*, 504 U.S. at 560 n.1. "[C]onjectural or hypothetical" injuries are insufficient to meet the case or controversy requirement. *Id.*

Bilbro lacks standing to bring his claims because he does not meet any of the three criteria, each of which is addressed in turn.

A. Bilbro's Purported Injury Is Not Concrete, Particularized, Actual, or Imminent

A perceived threat of possible harm in the future cannot confer standing upon a plaintiff. *Lujan*, 504 U.S. at 566 ("Standing is not 'an ingenious academic exercise in the conceivable,', but as we have said requires, at the summary judgment stage, a factual showing of perceptible harm" (quoting U.S. v. Students Challenging Reg. Agency Procedures, 412 U.S. 669, 688, (1973)).

Bilbro's Complaint is replete with references to "serious concerns" about "serious imminent harm that is irreparable damage," Compl. ¶ 5, "huge legitimate personal concern," "potential for severe and devastating irreparable damage" Compl. ¶ 8, and "high risk and potential for irreparable damage to the Plaintiff and the people of South Carolina [which] is substantial and prejudicial," Compl. ¶ 16, all based on his information and belief. Each of these allegations could only fairly be described as conjectural or hypothetical. *E.g.* Compl. ¶ 8, "*potential*" damage from the purported failure of the refugee vetting process; ¶ 11, "allows for people who *may not even* actually be properly defined as refugees . . . and other *potentially* nefarious criminals or terrorists from abusing this program;" ¶ 14, "the failure of the Plain itself to take into consideration the *inherent potential* for fraud; ¶ 17, "[i]t is too likely to present a dangerous outcome if it is not Stopped fully and to not allow one more person into the State of South Carolina under this Program." The potential harms anticipated by the plaintiff are conclusory and based on mere speculation, precisely the types of harms that the Supreme Court has said will not confer standing upon a plaintiff. Bilbro does not identify a single harm that he has suffered, nor has he articulated a coherent basis for any imminent harm particular to him, in

connection with the operation of the refugee resettlement program in South Carolina. In failing to meet even the first standing requirement, Bilbro's claims must be dismissed. *Lujan*, 504 U.S. at 566.

B. Bilbro's Purported Injury Is Not Traceable to the Challenged Action

It appears that Bilbro's complaint fundamentally seeks to halt the admission of refugees into the United States because of his feeling that they are dangerous and, in his estimation, not appropriately "vetted." Assuming Bilbro's opinion about this subject were correct, World Relief and the other defendants to this action have no control over the federal refugee admission policy or immigration law. Nor can the defendants control the travel of refugees (or any other individuals) among the fifty states. Accordingly, there is no connection between Bilbro's claimed potential injuries and the actions of World Relief or any other defendant. Where the alleged injury is not fairly traceable to the challenged action, there is no standing to bring the plaintiff's claim. *Monsanto*, 130 S.Ct. at 2752 For this reason, Bilbro's claims must be dismissed.

C. Bilbro's Purported Injury Is Not Redressable by a Favorable Ruling

The redressability analysis of Bilbro's purported injury follows the same path as the traceability criteria set forth above. Halting World Relief and the other defendants from resettling refugees in South Carolina would not protect Bilbro from his feared harm. The federal government's refugee resettlement program will continue to assess the eligibility of refugees for admission to the United States, and refugees who are allowed to travel to the United States will continue to be free to travel the country as they please. A ruling in favor of the Plaintiff would not redress his hypothetical harm; therefore, he lacks standing and his claim should be dismissed.

D. Bilbro Lacks Taxpayer Standing

From the allegations of the Complaint, Bilbro seems to come before the court based on taxpayer status standing. He asserts in the first paragraph that he "has standing to bring this action as a taxpayer," and goes on later to allege that state and local funds are supporting services for refugees. Compl. ¶¶ 1, 15. He makes subsequent references to taxation, public funding, and costs of refugee resettlement throughout the Complaint. *See, e.g.*, Compl. ¶¶ 15, 21, 24.

An individual's status as a taxpayer challenging government funding actions because it might impact the tax liability does not confer standing. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006) (rejecting standing for taxpayers who sought to challenge state and local officials' decisions to extend tax credits to a car manufacturer). Much like Bilbro, the taxpayers in *DaimlerChrysler* claimed "they were injured because the tax breaks for DaimlerChrysler diminished the funds available to the city and State, imposing a 'disproportionate burden'" on them. *Id.* at 339.

The Court held that the taxpayers' lacked standing to challenge the tax credits. The claimed injury was not concrete and particularized, but part of a common or general interest that was not distinguishable from other taxpayers. *Id.* at 343-44. The injury was also too conjectural and hypothetical: "Establishing injury requires speculating that elected officials will increase a taxpayer-plaintiff's tax bill to make up a deficit." *Id.* at 344. The Court noted that the tax credits themselves could lead to increased tax revenue overall by leading to economic growth, rendering the claimed injury even more uncertain. *Id.* at 344.

Here, Bilbro's claimed taxpayer interest is similarly generalized and conjectural. His interest in the disposition of state and local funds towards public resources or services used by refugees is not particularized because his taxpayer interest is not unique from that of any other

South Carolina taxpayer. His predictions of fiscal consequences are openly conjectural. *See, e.g.*, Compl. ¶ 15 (discussing the "*possibility* of imminent tax increases" (emphasis added)). His theory also fails to account for the possibility—even probability—that refugees currently being resettled in South Carolina will obtain employment, contributing to the economy and tax base of their new home state. Bilbro's theory of taxpayer injury does not suffice to establish Article III standing.

CONCLUSION

For the reasons set forth above, the Court should dismiss the Plaintiff's claims for failure to state a claim for which relief may be granted pursuant to Rule 12(b)(6), or, in the alternative, should dismiss the Plaintiff's claims for lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1).

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