IN THE UNITED STATES COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

WALTER BRIAN BILBRO, Plaintiff v. SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, et al. Defendants.	**CIVIL ACTION NO: 3:16-cv-00767-JFA** **DEFENDANT LUTHERAN SERVICES CAROLINAS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant Lutheran Services Carolinas (LSC), a private, not-for-profit organization involved in the resettlement of refugees in South Carolina, submits this Memorandum of Law in support of their Motion to Dismiss Plaintiff Walter Brian Bilbro's Complaint in its entirety pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6). Plaintiff Bilbro's Complaint should be dismissed because Bilbro's putative claims and the relief he seeks are wholly preempted by federal law. Alternatively, Bilbro's Complaint should be dismissed because he lacks any standing to bring his purported claims against Defendant LSC and he has generally failed to satisfy the minimum pleading standards of Fed. R. Civ. P. 8.

SUMMARY OF THE NATURE OF THE CASE

On February 12, 2016, Plaintiff Walter Brian Bilbro, a "resident of Richland County, South Carolina, and a taxpayer," filed the verified Complaint in this action in the Court of Common Pleas for Richland County, South Carolina. *See* Doc. 1-1 (Bilbro Pleadings). Bilbro's Complaint was accompanied by a "Motion for Temporary Injunction and Temporary Restraining Order and Appointment of Receiver." In addition to Defendant LSC, Bilbro also named as defendants Governor Nikki Haley, the South Carolina Department of Social Services (SCDSS), SCDSS officials Susan Alford and Dorothy Addison, and "World Relief Spartanburg (Jason Lee, Director)" (the incorrect name for World Relief, another non-profit organization that resettles refugees in South Carolina).

Bilbro's Complaint asserts that the resettlement of Syrian refugees in South Carolina by Defendant LSC is threatening "serious imminent harm" to him and his family because the federal government has not or cannot "vet" these refugees. Doc. 1-1 (Compl.) ¶ 5. He also alleges that LSC "mandate[s] that anyone involved in this program is not to 'proselytize,'" and that this mandate "IS CONTRARY to a legally protected interest that he has to freely share and practice his Christianity." *Id*. at ¶ 13 (emphasis in original). Bilbro contends that he is informed that this mandate "directly affects his personal protected rights and sets up this Program to be replete with fraud." *Id*. Bilbro also complains generally that state taxpayer funds are being expended on services that may be utilized and "overburden[ed]" by refugees, such as schools, law enforcement, and roads. *Id*. at ¶¶ 15, 24.

Through his Complaint and accompanying Motion for a Temporary Injunction, Bilbro seeks an injunction to: stop resettlement of refugees in South Carolina; "APPOINT[] A RECEIVER to oversee funding of this Program and stop using any state funds or resources or

county funds or resources for this program until a full accounting of any and all Federal money used in this program" (emphasis in original); "cease allowing asylum seekers to use the Family Court system as a means of circumventing any meaningful vetting process;" obtain "full disclosure and transparency" regarding services provided to refugees; and have the Court find that the "'non-Proselytizing' mandate in this policy be am [sic] imminent breach of a vested protected legal right that he has as the Plaintiff." *Id.* at ¶ 7 & Prayer for Relief. Bilbro cites no specific Constitutional, statutory, or other substantive authority as a basis for his claims against LSC or the relief he seeks.

On March 10, 2016, Defendant World Relief, with the consent of all other defendants, removed the case to this Court pursuant to 28 U.S.C. §§ 1331, 1441 and 1146. Pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6) and Fed. R. Civ. P. 81(c), Defendant LSC now moves to dismiss.

FACTUAL BACKGROUND ON LSC AND REFUGEE RESETTLEMENT[1]

Defendant LSC is a private, not-for-profit, faith-based organization headquartered in Salisbury, North Carolina. LSC's work aims to fulfill the proclamation of Christ in John 10:10,

[1] LSC recognizes that, for the limited purposes of deciding this Motion, the Court must accept as true the factual allegations in the plaintiff's complaint and cannot resolve any of the parties' factual disputes at this stage. This background section relies largely on federal statutes and publicly available government documents of which the Court may take judicial notice, as well as the State of South Carolina Refugee Resettlement Program State Plan 2016, which Bilbro references in his Complaint as "the State Plan" and contemporaneously filed with his Complaint. *See Philips v. Pitt Cty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (in reviewing a Fed. R. Civ. 12(b)(6) motion to dismiss, courts may properly consider information posted on public government websites and authentic documents attached to the complaint). To the extent that any information contained in this section is not directly supported by these statutory or judicially noticeable sources, such factual assertions are provided for context alone and the Court need not rely on any the non-judicially noticeable sources cited in order to decide this Motion to Dismiss.

"I came that they may have life and have it abundantly."[2] In service of this vision, LSC undertakes numerous and varied charitable activities in North and South Carolina, including providing social services to veterans and the elderly, facilitating foster parenting and adoptions for children in need, and helping Carolinians meet their basic needs in times of natural disasters. Since 1992, LSC has also been assisting refugees — men, women, and children who are fleeing persecution in their countries of origin and who have been lawfully admitted to the United States by the federal government — with rebuilding their lives in South Carolina.

The laws governing the circumstances under which refugees may be admitted to live in the United States are entirely federal. The federal Immigration and Nationality Act ("INA") specifies that foreign nationals seeking entry to the United States as refugees must demonstrate, *inter alia*, that they cannot return to their country of nationality because they have been persecuted or have a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion.[3] Refugees additionally must prove that they are not inadmissible to this country,[4] a process which requires them to undergo extensive health, criminal background, and national security background checks involving multiple federal agencies prior to admission to the United States.[5] Persons claiming refugee status are only granted admission to the United States after they successfully pass

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[2] Lutheran Services Carolinas, *Vision, Mission, and Values*, http://www.lscarolinas.net/who-we-are/vision-mission-values/ (last visited March16, 2016).

[3] 8 U.S.C. § 1101(a)(42).

[4] *See* 8 U.S.C. § 1182(a).

[5] *See* U.S. Citizenship & Immigration Services, *Fact Sheet: Refugee Security Screening*, http://www.uscis.gov/refugeescreening (last visited March 16, 2016); Amy Pope, *Infographic: The Screening Process for Refugee Entry into the United States*, (Nov. 20, 2015 7:09 PM); https://www.whitehouse.gov /blog/2015/11/20/infographic-screening-process-refugee-entry-united-states.

through these legal, medical, and national security clearance procedures—a process which usually takes a total of 18 to 24 months.[6]

Refugees are resettled across the United States through the coordination of multiple federal agencies, including the U.S. State Department's Bureau of Population Refugees and Migration ("PRM") and the U.S. Department of Health and Human Services' Office of Refugee Resettlement ("ORR").[7] PRM contracts with nine national non-profit organizations, including Lutheran Immigrant and Refugee Services (LIRS) to provide resettlement services to individual refugees.[8] LIRS, in turn, subcontracts with Defendant LSC to carry out refugee resettlement through local affiliate offices in the Carolinas. The national refugee resettlement organizations consult with local affiliates like LSC to determine where certain refugees will be initially placed.[9] Refugees admitted to the United States are not required to remain in the state to which they are originally sent for resettlement.[10]

Under their agreements with PRM, the resettlement organizations receive federal funding in order to provide specific resettlement services to their refugee clients.[11] Pursuant to an

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[6] *See* U.S. Dep't of State, *U.S. Refugee Admissions Program*, http://www.state.gov/j/prm/ra/admissions/index.htm (last visited March 16, 2016) (the average time from initial referral to arrival as a refugee in the United States is about 18-24 months).
[7] *See* U.S. Dep't of State, *The Reception and Placement Program*, http://www.state.gov/j/prm/ra/receptionplacement/index.htm (last visited March 16, 2016).
[8] *Id.*
[9] *See id.*
[10] *See generally* U.S. Citizenship and Immigration Servs., *Refugees*, https://www.uscis.gov/humanitarian/refugees-asylum/refugees (last visited March 16, 2016) (describing immigration process and generally applicable immigration documentation provided to refugees); *see also Graham v. Richardson*, 403 U.S. 365, 378 (1971) ("[A]liens lawfully within this country have a right to enter and abide in any State in the Union"); *Truax v. Raich*, 239 U.S. 33, 39 (1915) (lawfully admitted aliens are "admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any state in the Union").
[11] *See* 8 U.S.C. § 1522(c)(1); U.S. Department of State, *FY 2011 Reception and Placement Basic Terms of the Cooperative Agreement Between the Government of the United States of America*

agreement between LIRS and PRM, LSC has resettled an average of approximately 160 refugees of different nationalities in South Carolina over the past five years, many of whom are children.

Recognizing that refugees fleeing persecution often arrive with few resources, Congress has provided funding for certain essential services intended to facilitate the effective resettlement and integration of refugees into American society. These include short-term cash and medical assistance and access to programs such as employment and job training and English as a Second Language classes.[12] Congress has also provided that refugees are eligible for certain federally-funded public benefits for their first few years in this country, assuming they meet the other, generally-applicable program requirements.[13] The statutes establishing these programs reflect explicit Congressional intent that refugees gain the skills they need to become economically self-sufficient as soon as possible.[14] Refugee-specific benefits and services are fully funded by the federal government and administered by Defendant SCDSS pursuant to a federally-approved state plan.[15] SCDSS, which has been the state agency in charge of administering these benefits since 1975,[16] must administer such services in accordance with federal program requirements.[17]

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and the (Name of Organization) ("Sample Cooperative Agreement"), http://www.state.gov/j/prm/releases/sample/181172.htm (last visited March 16, 2016).

[12] 8 U.S.C. § 1522(c), (e); *see also* Doc. 1-1 (State of South Carolina Refugee Resettlement Program 2016 State Plan, attached to Pl. Temporary Injunction Motion) at 21-22 (hereinafter "State Plan")

[13] *See, e.g.*, 8 U.S.C. §§ 1613(b)(1), 1612(a)(2), 1612(b)(2)(A)(i)(I); 1612(b)(2)(A)(ii)(I).

[14] *See* 8 U.S.C. § 1522(a).

[15] *See* 8 U.S.C. § 1522(e)(1); *see also* State Plan at 4 (designating SCDSS as the state agency responsible for administering refugee resettlement programs and stating that "[p]rovision of all services included in this State Plan will be within the constraints and limitations of continued and contiguous availability of Federal funds at the 100% level.").

[16] State Plan at 4.

[17] *See* 45 C.F.R. § 400.4.

STANDARD OF REVIEW

To survive a motion to dismiss, a complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). Plausibility exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Plausibility requires more "than an unadorned, the-defendant-unlawfully-harmed-me accusation" or "naked assertions devoid of factual enhancement." *Id.* Conclusory statements are not entitled to the presumption of truth. *Id.* at 679.

ARGUMENT

Plaintiff Bilbro's Complaint should be dismissed in its entirety because Bilbro's putative claims and the relief he seeks are wholly preempted by federal law. Alternatively, Bilbro's Complaint is subject to dismissal because he lacks any standing to assert claims related to the operation of the refugee resettlement program in South Carolina, and because the Complaint generally fails to comply with Fed. R. Civ. P. 8.

I. Plaintiff Bilbro's Claims are Preempted by Federal Law because the Relief Sought Would Interfere with Refugee Resettlement in South Carolina and Unlawfully Discriminate against Refugees.

Bilbro's claims are completely preempted by (1) federal immigration law that comprehensively governs the refugee resettlement program; and (2) the Equal Protection Clause of the Fourteenth Amendment, under which lawfully admitted aliens (like refugees) have equal rights to access and enjoy state resources and services.

A. Bilbro's Attempt to Interfere with the Refugee Resettlement Program in South Carolina is Preempted by Exclusive Federal Authority over Immigration Matters

Bilbro's Complaint, particularly his demand that a court enjoin the resettlement of refugees in South Carolina, constitutes an impermissible attempt to interfere with Congress' authority to determine which foreign nationals are permitted to enter this country and the conditions under which they may reside. Accordingly, any claims Bilbro might assert or relief he might seek related to the operations of the refugee resettlement program in South Carolina are preempted.

Preemption doctrine arises from the Supremacy Clause of the United States Constitution, and provides that state laws which conflict with federal law must yield. *Arizona v. United States*, 132 S. Ct. 2492, 2500-01 (2012). Congress' intent is the "touchstone" of preemption analysis, and requires courts to examine the relevant statutory language and framework to determine whether preemption was intended. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485-86 (1996). Even in the absence of an explicit statutory preemption clause, preemption may be implied when (1) Congress has legislated in an area so pervasively as to exclusively regulate "the field" or (2) where compliance with both federal and state directives "is physically impossible" or where the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona*, 132 S. Ct. at 2501 (internal quotations omitted). A private individual's state common law claims may be preempted by federal law where the plaintiff proposes imposing a legal duty that would conflict with federal law.[18] *Johnson v. Am. Towers, LLC*, 781 F.3d 693, 706 (4th Cir. 2015).

[18] Although Bilbro does not specify any substantive legal basis for his claims, he asserts that the federal refugee resettlement program, as carried out in South Carolina, "threatens" harms to his person, family, personal finances, and property and constitutes "negligence" and failure of duty. *See, e.g.*, Doc. 1-1 (Compl.) ¶¶ 14, 24. To the extent Bilbro's claims could be construed to sound in any cognizable legal theory, they are arguably based in state tort law.

The federal government has "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona*, 132 S. Ct. at 2498. That authority "derives from various sources, including the Federal Government's power '[t]o establish [a] uniform Rule of Naturalization,' its power '[t]o regulate Commerce with foreign Nations,' and its broad authority over foreign affairs." *Toll v. Moreno*, 458 U.S. 1, 10 (1982) (citations omitted, alterations in original). This federal power to regulate immigration is "essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." *DeCanas v. Bica*, 424 U.S. 351, 355 (1976). Importantly, the "[p]ower to regulate immigration is unquestionably *exclusively* a federal power." *Id.* at 354 (emphasis added); *see also Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419 (1948) ("Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states."); *Truax v. Raich*, 239 U.S. 33, 42 (1915) ("The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal government.").

As explained in the Factual Background section above, the Congress has exercised its exclusive authority to regulate immigration by enacting a comprehensive statutory scheme that establishes the terms and conditions under which refugees may enter and reside in this country and the federally-funded, state-administered benefits to which they are legally entitled once they are here. Congress has specified the grounds for and mechanisms by which non-citizens can be removed from this country. *See generally* 8 U.S.C. §§ 1226–1229a. Bilbro's claims—which assert his right as a private citizen to interfere with and "stop" the refugee resettlement program in South Carolina — encroach upon the exclusively federal authority to regulate the residence of refugees admitted to the United States. As explained in greater depth below, Bilbro's claims are

preempted both because federal immigration law "occupies the field" of refugee resettlement and because Bilbro's claims conflict with federal policies governing the resettlement of refugees.

1. *Bilbro's Claims are Preempted Because Federal Immigration Law Occupies the Field by Comprehensively Regulating the Terms of Refugee Resettlement*

Bilbro's claims are preempted because the federal Immigration and Nationality Act (INA) is the comprehensive and exclusive authority on the terms and conditions under which refugees may enter and reside in the United States. With the INA, Congress "established a 'comprehensive federal statutory scheme for regulation of immigration and naturalization' and set 'the terms and conditions of admission to the country and the subsequent treatment of aliens lawfully in the country.'" *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968, 1973 (2011) (citation omitted). With regard to refugees specifically, Congress added extensive and detailed provisions for the admission and resettlement of refugees to the INA through enactment of the Refugee Act of 1980, Pub. L. No. 96–212, 94 Stat. 102.

Congress' stated objective in the Refugee Act was "to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States and to provide *comprehensive* and uniform provisions for the effective resettlement and absorption of those refugees who are admitted." Refugee Act of 1980, Title I, Pub. L. No. 96–212, 94 Stat 102 (emphasis added). To that end, and as discussed in the Background section above, Congress made refugees eligible for an array of specific benefits and services to facilitate their integration into American society. Where Congress saw a role for private organizations in the refugee resettlement process, it specified one. *See generally* 8 U.S.C. § 1522 (addressing participation of private voluntary nonprofit organizations—such as LSC— in assisting with resettlement).

Congress also specified that federal officials— not private citizens—would exercise direct oversight regarding the disbursement and use of federal funds to assist refugees. *See generally* 8 U.S.C. § 1522 (discussing management of federal funds for refugee resettlement); *see also id.* at § 1522(a)(7) (requiring the Secretary of the U.S. Department of Health and Human Services and Secretary of State to "develop a system of monitoring the assistance provided under this section" including "financial auditing and other appropriate monitoring to detect any fraud, abuse, or mismanagement in the operation of such programs"). Congress chose not to bestow private rights of action for individual citizens to challenge the resettlement of refugees in their states, to seek "receiverships" for refugee resettlement funds, or to demand personalized "disclosures" and "accounting" of funding related to refugee resettlement.

The comprehensiveness of the regulatory scheme governing refugees, as well as Congress' statement in the Refugee Act of 1980 that it sought to enact "comprehensive" measures for the resettlement and integration of refugees, leaves little doubt that Congress sought to preclude third parties from individually interfering in this area. That conclusion is further bolstered by the traditionally federal nature of immigration regulation. *See Arizona*, 132 S. Ct. at 2498-2501; *Hines v. Davidowitz*, 312 U.S. 52, 68-70 (1941); *United States v. S. Carolina*, 720 F.3d 518, 529 (4th Cir. 2013). Bilbro's attempts to intrude into the federally-regulated field of refugee resettlement are preempted.

2. *Bilbro's Claims are Preempted Because They Conflict with the Exclusive Federal Power to Determine Which Foreign Nationals May Reside within the United States.*

Bilbro's claims are also conflict preempted, for two distinct reasons. First, Bilbro's demand for a halt to the refugee resettlement program conflicts with the exclusively federal power to determine which foreign nationals may reside within the borders of this country and which should be excluded. Second, his claims conflict with the orderly functioning of the refugee

resettlement program by attempting to impose a receivership and subject the program to Bilbro's personalized vision of "disclosure" and "accounting."

By seeking an injunction to halt the refugee resettlement program in South Carolina, Bilbro is asking for a judicial order to effectuate his personal "determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." *DeCanas*, 424 U.S. at 355. Bilbro is attempting to regulate immigration, a power he has no right to claim. *See, e.g., Toll,* 458 U.S. at 11 ("State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid." (citation & emphasis omitted)); *Graham v. Richardson*, 403 U.S. 365, 380 (1971) (holding that "[s]tate alien residency requirements that either deny [federally authorized] welfare benefits to noncitizens or condition them on longtime residency" deny entrance and abode to these individuals and thus are constitutionally impermissible, as they "encroach upon exclusive federal power."); *Truax*, 239 U.S. at 42 ("[t]he assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work.").

Both the Supreme Court and the Fourth Circuit have observed that allowing state-by-state differences in the treatment of foreign nationals—an obvious consequence of Bilbro's attempts to "stop" refugee resettlement in South Carolina and impose a receivership for program funding —would severely undermine the federal government's ability to administer a uniform immigration policy throughout the nation. *See, e.g., Truax*, 239 U.S. at 42 (Arizona law that limited employment of non-citizens, if allowed to stand, would have "the practical result . . . that

those lawfully admitted to the country under the authority of the acts of Congress . . . would be segregated in such of the states as chose to offer hospitality."); *S. Carolina*, 720 F.3d at 533 (noting "the likelihood of chaos resulting from South Carolina enforcing its separate immigration regime"). If the states have no authority to exclude undocumented immigrants from their borders, it is clear that Bilbro, as a private citizen, has no legal right to seek exclusion of lawfully admitted refugees from South Carolina via court order.

B. Bilbro's Attempt to Deny or Burden Refugees' Access to State Services is Preempted by the Equal Protection Clause.

Bilbro's attempts to interfere with refugee resettlement—in part by demanding that the defendants "stop using state funds or resources or county funds or resources" for services which refugees might benefit —are additionally preempted because they conflict with the mandates of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. As support for his claimed right to "stop" use of county and state "funds or resources" and demand a personalized audit of "funding," Bilbro suggests that expenditure of state funds on basic services such as infrastructure, "first responder" protection, court system access, and public schools are improperly benefiting refugees along with other South Carolinians.

Exclusive federal authority to regulate the residence of foreign nationals, discussed extensively above, as well as the Equal Protection clause, preempt any theoretical legal claims for relief arising from Bilbro's concerns. The Equal Protection Clause of the Fourteenth Amendment provides that a state shall not "deny to *any person* within its jurisdiction the equal protection of the laws." U.S. Constit., am. XIV (emphasis added). Classifications based on alienage, like those based on race or nationality, "are inherently suspect and subject to close scrutiny." *Graham*, 403 U.S. at 371-72. Accordingly, once the federal government has granted permission to refugees to reside in the United States, they cannot be discriminatorily denied

public services or resources provided to similarly situated state residents. *See id.* at 380 ("lawfully admitted resident aliens "are entitled to the full and equal benefit of all state laws for the security of persons and property"); *Takahashi*, 334 U.S. at 420 ("The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws."); *see also Hines*, 312 U.S. at 62-69 (states do not have authority to add additional burdens to the residence of a lawfully admitted resident alien).

Notably, the Equal Protection Clause and federal preemption principles preclude denial of certain basic state services to foreign nationals residing in the United States, regardless of their immigration status. *See Plyler v. Doe*, 457 U.S. 202 (1982) (state law that withheld funds for the education of children who were not "legally admitted" into the United States and permitted them to be denied enrollment in public schools violated the Equal Protection Clause of the Fourteenth Amendment); *S. Carolina*, 720 F.3d at 529-30 (holding that state law which had the effect of making it impossible for undocumented immigrants to conduct basic activities of daily life without facing a criminal penalty impermissibly conflicted with federal policy to make unlawful residence a civil, rather than criminal, offense); *United States v. Alabama*, 691 F.3d 1269, 1299 n.25 (11th Cir.2012) (reasoning that state law that sought to deny undocumented immigrants "basic needs, such as water, garbage, and sewer services …. amounted to an impermissible policy of expulsion"). It follows that if water and sewer services and access to public schooling cannot be denied to undocumented immigrants, basic state services like public school access, first responder services and access to public infrastructure must be extended on equal basis to refugees, who have been lawfully admitted to the United States.

"Opposition to laws permitting invasion of the personal liberties of law-abiding individuals, or singling out aliens as particularly dangerous and undesirable groups, is deep-seated in this country." *Hines*, 312 U.S. at 70. One does not have to read between the lines of Bilbro's complaint, with its highly generalized depictions of refugees as terrorists and criminals and sweeping request to "stop" the refugee resettlement program, to understand that he is asking the Court to order the very "singling out" that is forbidden by the Constitution. Bilbro's claims are preempted by the Equal Protection Clause.

II. Bilbro Has No Standing to Bring Claims or Seek Relief Related to the Refugee Resettlement Program in South Carolina

If this Court does not find that Bilbro's claims are preempted, Bilbro's Complaint should be dismissed because it is evident from the face of the Complaint that he lacks standing to bring any claims related to the refugee resettlement program or immigration policy, particularly against LSC. Under Article III of the Constitution, federal courts' jurisdiction to adjudicate claims is limited to "actual cases or controversies." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In order to meet the "case or controversy" requirement, a plaintiff must establish that he has standing to sue. *Id.* To establish minimum Constitutional standing, a plaintiff must show an injury that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Monsanto Co. v. Geertson Seed Farms*, 130 S.Ct. 2743, 2752 (2010). The requirement that an injury be particularized means "that the injury must affect the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560 n.1. Injuries that are "conjectural or hypothetical" do not support standing. *Id.* at 560. As detailed below, Bilbro does not meet the minimum requirements for Article III standing.

A. Bilbro's Claimed Injuries are not Concrete, Particularized, and Actual or Imminent

The "threatened harms" alleged by Bilbro throughout his Complaint—generally consisting of his theories that "potential terrorists or criminals" are being resettled in South Carolina due to inadequate vetting by the federal government — are entirely conclusory and speculative, falling far short of the injury necessary to confer standing. Bilbro does not allege any concrete, personalized harm that he, his family, or his property have actually suffered as a result of LSC's refugee resettlement activities in South Carolina. Likewise, his claims of imminent harm are nakedly conclusory, conjectural and hypothetical. *See, e.g.*, Doc. 1-1 (Compl.) ¶ 8 ("[T]he failure of this program to have integrity in the vetting process of these alleged 'refuges'[sic] is a huge legitimate personal concern for the Plaintiffs and concern has *the potential* for severe and devastating irreparable damage if it does not stop for which there would be no legal remedy that could make up for the damage done by continuing this Program" (emphasis added)); *id.* at ¶ 14 ("This implementation of the State Plan has caused *potential* for imminent harm, which is so willfully dangerous as to create irreparable harm and damage to Plaintiff and his family.") (emphasis added).

Bilbro also claims that he is injured by a "mandate that anyone involved in this program is not to 'proselytize.'" *Id.* at ¶ 13. Bilbro does not actually assert that he is personally involved with any refugee resettlement organizations or refugee resettlement programs, or that he has any contact with refugees where such a "mandate,"[19] even as he interprets it, would apply to him.[20]

[19] Bilbro's claim to standing fails under his own conceptualization of the "no proselytizing mandate," but his broad characterization of the "mandate" also notably conflicts with the U.S. Department of State's statements regarding restrictions on proselytizing in the refugee resettlement program. Of particular note, restrictions on proselytizing extend only to resettlement agencies and their representatives, not private citizens like Bilbro. *See The Reception and Placement Program*, *supra* note 7 ("The Department of State has cooperative agreements with nine domestic resettlement agencies to resettle refugees. While some of the agencies have

B. Bilbro's Claimed Injuries Are Not Fairly Traceable to LSC's Actions

Bilbro also fails to explain how his alleged injuries are fairly traceable to LSC's refugee resettlement activities. Bilbro asserts that LSC is resettling Syrian refugees, then expresses his belief that the federal government is not properly "vetting" or cannot properly "vet" Syrian refugees as a group.[21] Even if Bilbro's allegations about "vetting" were true, his own Complaint acknowledges that responsibility for "vetting" refugees and deciding to admit them to the United States rests with the federal government, not LSC. Moreover, neither LSC nor any other defendant has the power to prevent lawfully admitted refugees from entering South Carolina. If LSC were to stop its refugee resettlement activities, refugees are lawfully admitted by the federal government and thus may travel freely between the fifty states. *See Graham*, 403 U.S. at 378 ("Aliens lawfully within this country have a right to enter and abide in any State in the Union"); *Truax*, 239 U.S. at 39-42 (lawfully admitted alien was "admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any state in the Union"). Because the refugee resettlement program is a nationwide, federally-controlled program, Bilbro's (speculative) injuries are not fairly traceable to LSC.[22]

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religious affiliations, they are not allowed to proselytize."); *see also* Sample Cooperative Agreement at § 8.C.1 (n), *supra* note 11 ("Faith-based Recipients should take steps to ensure their inherently religious activities, such as religious worship, instruction, or proselytizing, are separate in time or location from the government-funded services that they offer. Also the Recipients may not require refugees to profess a certain faith or participate in religious activities in order to receive services.").

[20] Indeed, given Bilbro's assertions that refugees are "persons from hostile territory" and potential "criminals, narco-drug traffickers, terrorists, rapist[s], people hostile to assimilation and the laws of South Carolina" who threaten "imminent harm" to his family and himself, it is implausible from the face of his Complaint that he would voluntarily place himself in proximity to these individuals for proselytizing purposes. *See id.* at ¶¶ 5, 9.

[21] Bilbro does not explain what he means by "vetting" or what aspects of "vetting" he believes are lacking.

[22] Similarly, the federal government, not LSC, is the source of the "no proselytizing" rule of which Bilbro complains. *See* note 17 *supra*.

C. Bilbro's Claimed Injuries Are Not Redressable by a Favorable Ruling

For the same reasons that Bilbro's alleged injuries are not fairly traceable to LSC, they are also not redressable by a favorable ruling. To satisfy redressability requirements, it must be "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal quotations omitted). That likelihood is not shown here. Bilbro cannot plausibly claim that blocking an entire category of lawfully admitted aliens from resettling in South Carolina will "likely" keep his family safe from the broad spectrum of terrorism, crime, and social ills that he fears.

D. Bilbro's Status as a Taxpayer Does Not Confer Standing

Bilbro contends that he "has standing to bring this action as a taxpayer," and asserts that state and local funds are being expended on public resources and services that benefit refugees. *See* Doc. 1-1 (Compl.) ¶¶ 1, 15. Bilbro further asserts that "The State [refugee resettlement] Plan will overburden the local resources and law enforcement and Public Health and Public Safety and local education . . . . [w]ith the possibility of imminent tax increases for Roads and Infrastructure and other tax increases to the Plaintiff he is informed he is directly harmed by this 'Plan' and it is irreparable if not stopped." *Id*. at ¶ 15.

Even if there were truth to these allegations, the Supreme Court has rejected the notion that a taxpayer has standing to challenge governmental funding decisions simply because such decisions may have implications for their tax bills. In *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006), the Court rejected 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' interest was insufficient to support standing to challenge the tax credits. The claimed injury was not concrete and particularized; it was part of a common or general interest that was not distinguishable from that of other taxpayers. *Id.* at 343-44. The asserted 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 also 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.

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.*, Doc. 1-1 (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 or even start their own businesses, thereby 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.

III. Bilbro's Complaint Should be Dismissed Because it Fails to Comply with Fed. R. Civ. P. 8

Even if this Court were to find that Bilbro's claims are not preempted by federal law or that Bilbro has standing to assert his claims, Bilbro's Complaint is subject to dismissal for its failure to comply with the basic tenets of Fed. R. Civ. P. 8. Rule 8 requires, among other things,

"a short and plain statement of the claim showing that the pleader is entitled to relief," and further requires that "[e]ach allegation must be simple, concise, and direct." Fed. R. Civ. P. 8 (a), (e). In contravention of Rule 8, Bilbro utterly fails to specify any legal basis for the relief he seeks. His Complaint is devoid of substantive law and meaningful factual allegations, relying instead on vague and conclusory assertions of "vested interests," "huge legitimate personal concern[s]," "serious problems," "subversive acts," and "taxpayer rights." These are the kinds of "naked assertions" and "labels and conclusions" that the Supreme Court has held are insufficient to survive a motion to dismiss. *See Iqbal*, 556 U.S. at 678.[23] Bilbro's imprecise allegations and lengthy paragraphs also fall short of Rule 8's requirements of simplicity, concision, and directness. If Bilbro's Complaint is not dismissed on preemption grounds or for lack of standing, it should be dismissed because it falls far short of compliance with basic requirements of Fed. R. Civ. P. 8.

CONCLUSION

For the reasons set forth in this Memorandum of Law, Plaintiff Bilbro's claims should be dismissed with prejudice.

Respectfully submitted,

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[23] Even the allegations that might be characterized as factual rather than purely conclusory fail to articulate an actual cause of action against LSC. For example, Bilbro fails to explain what "legally protected interest" LSC, a private organization, is breaking by "mandat[ing] that anyone involved in this program is not to 'proselytize.'" Doc. 1-1 (Compl.) ¶ 13.

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2016, a copy of this document was served on counsel for all parties by filing this document electronically with the Court's CM/ECF system.

_/s/ Stephen Suggs_____
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