

**STATE OF MICHIGAN
COURT OF CLAIMS**

MICHIGAN IMMIGRANT RIGHTS
CENTER,

Plaintiff,

v.

Case No. _____

Hon. _____

GRETCHEN WHITMER, in her official
capacity as Governor of the State of
Michigan,

Defendant.

John C. Philo (P52721)
SUGAR LAW CENTER
FOR ECONOMIC & SOCIAL JUSTICE
4605 Cass Avenue
Detroit, Michigan 48201
(313) 993-4505
jphilo@sugarlaw.org
Attorneys for Plaintiff

David S. Muraskin*
PUBLIC JUSTICE, PC
1620 L St. NW
Washington, D.C. 20036
(202) 797-8600
dmuraskin@publicjustice.net
Attorneys for Plaintiff

* *Motion for Temporary Admission Forthcoming*

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. As Governor, Defendant Gretchen Whitmer is responsible for enforcing the laws in the State of Michigan and is in charge of administering Michigan's workers' compensation regime. In direct contravention of United States and Michigan Supreme Court precedent, the State of Michigan, through its workers' compensation officials and agents, is denying undocumented individuals' recovery for on-the-job injuries solely because of their immigration status, which workers' compensation officials' and agents' claim results in undocumented immigrants "committing a crime" by working.

2. In doing so, they are violating statutory and constitutional protections.

3. The State of Michigan, through its workers' compensation officials and agents, have also created a Catch-22. Undocumented workers can be placed in unsafe and unhealthy working conditions where they are injured on the job and thereby unable to provide for their families, and yet be held bound by the workers' compensation regime—which prevents them from redressing their injuries in court—but be denied statutory benefits.

4. This insulates and even encourages unfair business practices.

5. It has also harmed the Plaintiff Michigan Immigrant Rights Center ("MIRC") by requiring the diversion of limited resources to respond to undocumented worker intakes from persons unlawfully denied wage-loss benefits.

6. For these reasons MIRC, brings this action under MCR 2.605(A)(1) to obtain a declaration that: (i) it violates due process to deny workers' compensation benefits because an injured employee has purportedly "committed a crime," so that standard may never be used to deny undocumented workers compensation; (ii) even if that standard could be used, it is unlawful to deny benefits solely due to a workers' immigration status; and (iii) assuming benefits can be

denied because a worker has “committed a crime,” workers’ compensation officials can only take into account a workers’ immigration status if the employer proves that status has resulted in the injured worker committing a crime that keeps the worker from obtaining equivalent wages to those the worker earned prior to the injury.

7. MIRC also seeks an injunction under MCR 3.310 to enforce these rules.

SUMMARY

8. Michigan’s Workers’ Disability Compensation Act (“Workers’ Compensation Act”), like all workers’ compensation statutes, involves trade-offs. Workers give up the ability to pursue tort remedies in court, in exchange for a guarantee of certain recoveries set by the statute. Employers thus cap their potential liability and can insure against it. See, e.g., MCL 418.121 and 418.131. This is sometimes referred to as a “grand bargain” between employers and workers, although no worker is given the choice whether to join this system, rather the state decrees it is their “exclusive remedy against the employer for a personal injury or occupational disease.” MCL 418.131. In other words, the workers’ compensation regime is a state-imposed hedge against the unpredictability of civil litigation that workers would otherwise be entitled to pursue for on-the-job injuries.

9. Michigan’s Workers’ Compensation Act forces undocumented workers to be part of this system.

10. It also contains an exception that prevents workers from recovering statutorily provided “wage-loss” benefits if a person “is unable to obtain or perform work because of ... [the] commission of a crime. MCL 418.361(1) (“Section 361(1)”).

11. Relying on a Michigan Court of Appeals decision, *Sanchez v Eagle Alloy, Inc.*, 254 Mich App 651 (2003), Michigan’s workers’ compensation officials and their agents responsible

for administering the Workers' Compensation Act have concluded evidence a worker is an undocumented immigrant establishes the worker would "commit a crime" if the worker sought any employment following an on-the-job injury. Thus, the worker's status eliminates the worker's entitlement to wage-loss benefits, as, despite the worker's on-the-job injury, all wage loss is assumed to be the result of that "commission of a crime" that precludes the claimant from obtaining or performing work.

12. Put another way, a worker being undocumented enables an employer to treat that worker as disposable, receiving the benefit of the employee's labor while they work in dangerous, unhealthy conditions, but without the promised liability if that employee gets injured on the job.

13. This unfairly enriches employers, as well as insurance companies. Based on *Sanchez* and its progeny, MIRC has seen insurance companies that process workers' compensation claims routinely deny wage-loss benefits solely because the company cannot locate a social security number for the claimant. Thus, the insurance companies evade their obligation to pay without any actual evidence that a claimant has "committed a crime."

14. The current administration of the Workers' Compensation Act is unlawful.

15. The notion that working while undocumented is a crime is false. There is nothing criminal about working while undocumented. "Federal law does not make it a crime for an alien to work without authorization, and th[e Supreme] Court has held that state laws criminalizing such conduct are preempted." *Kansas v Garcia*, 140 S Ct 791, 798; 206 L Ed 2d 146 (2020). Indeed, the Immigration Reform and Control Act makes "it illegal for employers to knowingly hire, recruit, refer, or continue to employ unauthorized workers," but also "reflects a considered judgment that making criminals out of aliens engaged in unauthorized work—aliens who already face the possibility of employer exploitation because of their removable status—would be inconsistent with

federal policy and objectives.” *Arizona v United States*, 567 US 387, 405; 132 S Ct 2492, 2504; 183 L Ed 2d 351 (2012).

16. Moreover, in cutting off wage-loss benefits as soon as it is revealed the claimant is undocumented—because workers’ compensation officials wrongly state this amount to “committing a crime”—the workers’ compensation regime is operating in conflict with Michigan Supreme Court precedent as established by *Sweatt v Dep’t of Corrections*, 468 Mich 172 (2003) (plurality opinion). *Sweatt* provides that even if a worker’s wages are reduced because the worker has “committed a crime,” the employer still must pay wage-loss benefits to compensate for on-the-job injuries, unless the employer can establish the entirety of the wage loss is due to the fact the worker committed a crime. In fact, an employer must pay some wage-loss benefits except if the employer can show the workers’ commission of a crime reduces the worker’s wage-earning capacity to zero, both domestically *and internationally*. *Romero v Burt Moeke Hardwoods, Inc.*, 280 Mich App 1, 10 (2008). In holding a worker’s status alone is sufficient to deny wage-loss benefits, Michigan workers’ compensation officials have wrongfully relieved employers of their evidentiary burdens and thereby improperly denied a host of workers compensation they are owed.

17. Further still, because Michigan’s workers’ compensation regime has allowed officials to declare that working while undocumented amounts to the “commission of a crime,” that exception to wage-loss benefits violates due process, including by being void for vagueness. Workers enter a civil, administrative proceeding, and leave having been found to have engaged in criminal conduct, when no such crime exists, and without the proper party being obligated to present cognizable evidence that satisfies the burden of proof to eliminate benefits. As a result, workers’ compensation officials should only be allowed to consider whether a worker’s wage loss is due to the worker being “imprisoned,” a distinct exception to wage-loss benefits. MCL

418.361(1).

18. Indeed, to allow employers to reduce their compensation to workers merely because the worker is undocumented upends the objectives of the workers' compensation regime. Rather than upholding the "grand bargain" by ensuring workers receive some benefits for on-the-job injuries and employers have predictable liability, Michigan's current regime encourages hiring undocumented workers because employers can avoid liability to them entirely.

19. That Michigan's Workers' Compensation Act would be administered in this manner is especially absurd because the State and nation depends on undocumented workers' labor.

20. Immigrant workers are overrepresented in some of the most dangerous industries.¹ Undocumented workers especially fulfill many essential functions. For example, nearly half of all farmworkers workers are undocumented.² Undocumented workers are also widely represented in construction (1.4 million workers, accounting for 13% of all construction workers); food services (nearly 1 million workers, accounting for 8.4% of all food services workers); and administrative support and waste management (710,000 workers, accounting for 10% of the industry's workforce).³

21. In Michigan, there are over 100,000 undocumented workers.⁴ In addition to

¹ Eric Zuehlke, *Immigrants Work in Riskier and More Dangerous Jobs in the United States*, Population Reference Bureau, <<https://www.prb.org/resources/immigrants-work-in-riskier-and-more-dangerous-jobs-in-the-united-states/>> (accessed October 25, 2021).

² *Farm Labor*, United States Dept. of Ag, <<https://www.ers.usda.gov/topics/farm-economy/farm-labor/>> (accessed October 25, 2021).

³ *Millions of Undocumented Immigrants are Essential to America's Recovery, New Report Shows*, Ctr for Am Progress, <<https://www.americanprogress.org/press/release/2020/12/02/493404/release-millions-undocumented-immigrants-essential-americas-recovery-new-report-shows/>> (accessed October 25, 2021).

⁴ *Fact Sheet: Immigrants in Mich*, Am Immigration Council, <<https://www.americanimmigrationcouncil.org/research/immigrants-in-michigan>> (accessed October 25, 2021).

carrying out necessary jobs—and participating in the community as neighbors, parents, and friends—they pay taxes on their wages. In 2019, undocumented workers in Michigan contributed \$381.3 million in federal, state, and local taxes.⁵

22. Nonetheless, without liability, employers have markedly less incentive to eliminate or reduce dangerous and unsafe workplace conditions for these, and really all, workers.

23. Beyond these harms, the State’s administration of the Workers’ Compensation Act harms MIRC. The Michigan Immigrant Rights Center must dedicate a significant portion of its highly limited resources to respond to intakes involving undocumented workers who have been unlawfully denied wage-loss benefits. This diversion of resources frustrates MIRC’s mission by keeping it from pursuing the legal activities it was specifically set up to undertake; and this diversion of resources and frustration of mission will continue as long as Michigan officials’ inappropriate application of the law persists.

24. Thus, MIRC brings this action to declare that: (i) Section 361(1)’s exception to wage-loss benefits that allows those benefits to be reduced because a person “committed a crime” is unconstitutional and unenforceable; (ii) assuming it is enforceable, immigration status alone cannot be used to deny wage loss benefits; and (iii) again assuming Section 361(1)’s “commission of a crime” exception is enforceable, officials must follow the procedures and evidentiary burdens set out in *Sweatt* in order to reduce wage-loss benefits, which prohibits relying on immigration status alone.

PARTIES & JURISDICTION

25. Plaintiff MIRC is a non-profit organization with a mission of providing legal

⁵ *Immigrants in Michigan*, Mich League for Pub Policy, <<https://mlpp.org/wp-content/uploads/2020/01/immigration-in-michigan-2021.pdf>> (accessed October 25, 2021).

resources and services to Michigan's immigrant communities. MIRC has three offices throughout the state, located at: 15 S. Washington Street, Suite 201, Ypsilanti, MI 48197; 350 E. Michigan Ave., Suite 315, Kalamazoo, MI 49007; and 1550 E. Beltline SE, Suite 375, Grand Rapids, MI 49506.

26. Defendant Gretchen Whitmer is the Governor of the State of Michigan and is being sued in her official capacity. As Governor, Defendant Whitmer is responsible for enforcing the laws in the State of Michigan and is in charge of administering Michigan's workers' compensation regime. She appoints all the key officials. *See* MCL 418.203 (providing that the Governor shall appoint the Director of the Workers' Disability Compensation Agency); 418.213 (providing that the Governor shall appoint Magistrates to sit upon the Workers' Compensation Board); Executive Reorganization Order No. 2011-6(I)(D) (providing the Governor the power to appoint the Michigan Compensation Appellate Commission). She also has the power to remove those individuals if she determines they are improperly applying the law, making her ultimately responsible for their enforcement decisions. MCL 418.203 (empowering the Governor to remove the director of the Workers' Disability Compensation Agency); 418.212(3) (empowering the governor to remove Magistrates upon "neglect of duties"); Executive Reorganization Order No. 2011-6(I)(N) (2011) (empowering the Governor to remove the workers' compensation Appellate Commission upon "neglect of duties").

27. The Court of Claims has jurisdiction over this case pursuant to MCL 600.6419(1)(a).

ADDITIONAL FACTUAL ALLEGATIONS

I. Michigan's Workers' Compensation Act.

28. Michigan's workers' compensation system is established through the Workers'

Compensation Act. See MCL 418.101, *et seq.*

29. The Workers' Compensation Act requires employers to furnish two types of compensation for employees injured in the course of employment.

30. The Workers' Compensation Act requires employers to compensate employees for reasonable medical expenses relating to the injury. See MCL 418.315.

31. The Workers' Compensation Act also requires employers to compensate employees for "wage loss," which reflects the lost income arising out of inability to work following a workplace injury. See, e.g., MCL 418.301 (governing wage-loss benefits for personal injuries); MCL 418.401 (governing wage-loss benefits for occupational diseases).

32. The Act further provides for certain vocational rehabilitation services. MCL 418.319.

33. The Workers' Compensation Act contains Section 361(1), that exempts certain employees from receiving wage-loss benefits:

An employer is not liable for compensation under Section 301(7) or (8) [governing wage-loss benefits for personal injuries causing total and partial disability], 351 [governing wage-loss benefits where incapacity for work resulting from personal injury is total], 371(1) [capping wage-loss benefits in relation to an employee's average weekly earnings], or 401(5) or 6 [governing wage-loss benefits for occupational diseases causing total and partial disability] for periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.

MCL 418.361(1) (emphasis added).

34. Typically, a Workers' Compensation Act claim proceeds as follows. First, the injured worker files a claim with their employer or the employer's insurer. Second, if the claim is disputed, a party files an application for mediation with the Workers' Disability Compensation agency, which is conducted by an Agency-appointed mediator who serves under the agency Director. Third, if resolution cannot be achieved through mediation, the case is tried before a

workers' compensation Magistrate, who issues a decision. Fourth, parties may appeal Magistrate decisions to the Workers' Disability Compensation Appeals Commission (the "Appeals Commission"). Fifth, parties may appeal Appeals Commission decision to the Michigan Court of Appeals. Finally, decisions of the Michigan Court of Appeals are appealed to the Michigan Supreme Court.⁶

35. In these proceedings, to obtain wage-loss benefits, the initial burden is on the worker. The worker must demonstrate that an on-the-job injury prevents the worker from obtaining the highest paying work suitable for the worker's pre-existing qualifications and training. A "prima facie" case entitling a worker to recover solely consists of the worker "showing his work-related injury prevents him from performing some or all of the jobs identified as within his qualifications and training that pay his maximum wages." *Stokes v Chrysler LLC*, 481 Mich 266, 283 (2008). Only "if there are jobs at the same salary or higher that [the claimant] is qualified and trained to perform and the claimant's work-related injury does not preclude performance" must the worker show they made a "good faith" effort to secure those jobs and he was not able to do so in order to receive wage-loss benefits. *Id.*

36. Once these steps are completed, the burden is on an employer challenging wage-loss benefits to produce evidence that limits or eliminates recovery. *Id.*

II. The Michigan Court of Appeals' Decision in *Sanchez v Eagle Alloy, Inc.*

37. In January 2003, the Michigan Court of Appeals decided *Sanchez v Eagle Alloy, Inc.*, 254 Mich App 651 (2003).

38. In *Sanchez*, two undocumented workers suffered workplace injuries and filed

⁶ See *Overview of Workers' Compensation in Mich* at 30-36, Bureau of Workers' Disability Comp. Mich Dep't of Consumer & Industry Servs., <https://www.michigan.gov/documents/cis_bwuc_over698_30939_7.pdf?src=tdn_2> (accessed October 25, 2021).

claims for wage-loss benefits against the same employer. *Id.* at 656-57. Their cases went before Magistrates, and during the proceedings, it was revealed that the workers were undocumented. *Id.* at 672. The Magistrates then denied the workers wage-loss benefits after the date on which the employer learned of the workers' undocumented status, stating that as of that date the worker would be "committing a crime" to seek any form of future employment, and that "commission of a crime" is what resulted in any future wage loss. *Id.* at 672.⁷

39. The Michigan Court of Appeals affirmed.

40. It began by noting that Michigan's workers' compensation scheme remains the "exclusive remedy" for undocumented immigrants injured on-the-job. *Id.* at 655. That is, Michigan requires undocumented workers to give up "any tort-based remedy" on the assumption they will be able to benefit from workers' compensation. *Id.*

41. Nonetheless, the *Sanchez* court went on:

We further hold that the Magistrate[s] correctly reasoned that when defendant learned of plaintiffs' employment status and could not legally retain them as employees or find them other work, plaintiffs became unable to obtain or perform work 'because of' the commission of [a] crime within the meaning of subsection 361(1).

Id. at 672-73. *Sanchez* recognized the argument that an employee is not entitled to wage-loss benefits because they have "committed a crime" is an "affirmative defense" that the employer must show applies. *Id.* at 661. Nonetheless, it held, "the Magistrate appropriately suspended weekly wage-loss benefits" from the time the employer learned the employees were undocumented, "until

⁷ The Magistrates took "judicial notice of the fact that working in the United States without a valid Social Security card or work visa is illegal." *Sanchez*, 254 Mich App at 672. Again, this is incorrect, as the Supreme Court has made clear: "Federal law does not make it a crime for an alien to work without authorization, and this Court has held that state laws criminalizing such conduct are preempted." *Kansas v Garcia*, 140 S Ct 791, 798, 798 (2020). While some uses of invalid work authorization documents can rise to the level of a federal crime, the offenses must be made "knowingly." See 18 U.S.C. § 1546(a).

such time as authorized documentation to work could be acquired.” *Id.* at 672. In other words, the employer learning that *it* could not “legally retain” the workers as employees sufficed to establish the workers will be “committing a crime” to be employed, and, as of that moment, the workers should lose all wage-loss benefits for any injuries they suffered during the course of employment. *Id.* at 672-73.

III. Michigan Workers’ Compensation Officials Apply *Sanchez*.

42. Based on *Sanchez*, Michigan’s workers’ compensation officials have categorically disqualified undocumented workers from receiving wage-loss benefits solely because they are undocumented.

43. For example, in the workers’ compensation case *Gonzalez v Modar*, a Magistrate cited *Sanchez* in holding “an undocumented alien is entitled to both medical and wage loss benefits until their undocumented status is identified. Once the undocumented status is identified, wage loss benefits cease to be available.” Op. at 23 (Crawford, Mag. June 22, 2007) (emphasis added) (attached as Ex. A).

44. Similarly, in the case *Quijas v Americo Carvalho*, a Magistrate cited *Sanchez* in holding that an undocumented worker was disqualified from receiving wage loss benefits “when he testified at trial that he was an undocumented alien.” Op. at 22-23 (Leventer, Mag. Feb. 19, 2008) (emphasis added) (attached as Ex. B). The Appeals Commission then affirmed this ruling. See *Quijas v Am Carvalho*, 2010 Mich ACO 99, (“Thus the revelation of plaintiff’s illegal status on November 13, 2007, when plaintiff testified before the Magistrate, is the basis for closing plaintiff’s [wage-loss] award on that date.” (quoting prior affirmance order issued Apr. 20, 2009, and citing *Sanchez*, 254 Mich App at 651)) (attached as Ex. C).

IV. The Continued Application of *Sanchez* Violates Federal Law.

45. Michigan’s workers’ compensation scheme has determined the “commission of a

crime” exception allows it to deny wage-loss benefits as soon as a person’s “undocumented status is identified,” *Gonzalez*, at 23; but, under controlling federal law this does not and cannot amount to the “commission of a crime.” *Kansas*, 140 S Ct at 798; *Arizona v United States*, 132 S Ct 2492, 2504-05 (2012).

46. Indeed, depending on what facts Michigan’s workers’ compensation officials are relying on to deny benefits, those officials may themselves be violating federal law in ruling against the worker. “Congress has made clear . . . that any information employees submit to indicate their work status ‘may not be used’ for purposes other than prosecution under specified federal criminal statutes for fraud, perjury, and related conduct.” *Arizona*, 132 S Ct at 2504 (quoting and citing 8 USC 1324a(b)(5), (d)(2)(F)-(G)).

47. In light of the controlling Supreme Court precedent, interpreting and providing preemptive effect to federal immigration law under the Supremacy Clause of the federal Constitution, Michigan workers’ compensation official cannot continue to rely on *Sanchez* to deny injured undocumented workers benefits. A person’s immigration status alone cannot amount to a “commission of a crime” that justifies any denial of wage-loss benefits.

V. The Continued Application of *Sanchez* Is Inconsistent with the Michigan Supreme Court’s Decision in *Sweatt v Dept. of Corrections*.

48. Moreover, several months after *Sanchez*, the Michigan Supreme Court issued a separate ruling regarding Section 361(1), *Sweatt v Dep’t of Corrections*, 468 Mich 172 (2003) (plurality opinion). In *Sweatt*, a Michigan Department of Corrections (“DOC”) employee suffered a knee injury on the job and began collecting wage-loss benefits from DOC. Several years later, he was incarcerated for a drug offense. That conviction prevented DOC from rehiring him after his release, due to a state law prohibiting the employment of convicted felons. *Id.* at 175-76. DOC stopped paying wage-loss benefits, taking the position that the employee’s prior conviction was a

disqualifying “commission of a crime” under Section 361(1) because DOC could not, as a matter of law, hire the employee back. *Id.* at 175-76. (It was undisputed that throughout this time, the employee’s injury was continuing. *Id.*) The Magistrate, Appeals Commission, and Michigan Court of Appeals disagreed with the DOC and awarded the employee with wage-loss benefits. *Id.* at 176-77.

49. The Michigan Supreme Court held: The “defendant must pay” proper wage-loss benefits for lost earnings “to the extent that this difference is attributable to plaintiff’s work-related injury,” although it was “not required to pay” wage-loss benefits for “the difference that is attributable to plaintiff’s ‘commission of a crime.’” *Id.* at 174. As a result, the *Sweatt* court explained, “it could be possible for the reduction in pay to be partly because of an ‘imprisonment or commission of a crime’ and partly because of a work-related injury. In such a situation, as well may be the case here, the employer would be liable for the reduction in pay attributable to the work-related injury. The employer would not be liable for the reduction in pay attributable to the ‘imprisonment or commission of a crime.’” *Id.* at 208 n 8.

50. Put another way, *Sweatt* requires two separate and distinct inquiries in applying Section 361(1): an adjudicator must “determine [i] to what extent, if any, plaintiff’s loss of wage-earning capacity is because of a work-related injury, and, [ii] to what extent, if any, plaintiff’s loss of wage-earning capacity is because of the ‘commission of a crime.’” *Id.* at 190 (emphases added).

51. Thus, for *all* workers, including undocumented workers, *Sweatt* requires the employer to provide wage-loss benefits to the extent the reduction in earning is caused by the workplace injury. That award can only be decreased due to the “commission of a crime” to the extent the employer shows the reduction in pay is the result of the employee’s conduct through the commission of a crime, and not the injury. *Id.* at 190 (“[A]n employer is liable to an employee for

a percentage of the employee's loss of wage-earning capacity, except when this loss of wage-earning capacity is because of the 'commission of a crime.'").

52. Contrary to *Sanchez*, simply being found to have "committed a crime" is not enough to limit benefits, the commission of a crime must be shown by the employer to impact wages.

53. Moreover, even if an undocumented worker was shown to "commit a crime" that led to wage loss, only if it was shown by the employer that the worker could not earn any other wages because of that crime could wage-loss benefits be cut off entirely.

54. Thus, by relying on *Sanchez* to cut off wage-loss benefits as soon as it is discovered a worker is undocumented, Michigan's workers' compensation regime is operating in violation of Michigan law. Per *Sweatt*, the Magistrates were not entitled to deny recovery based on status. Rather, they were required to determine if the injury kept the worker from obtaining a job using the worker's pre-existing qualifications and training that would have allowed the worker to obtain the same maximum wage as he received prior to the injury. If so, the worker has shown a prima facie case entitling the worker to wage-loss benefits. Then the burden was on the employer to show that the worker's "commission of a crime" reduced the worker's potential salary. Without such a showing the worker was entitled to the full extent of wage-loss benefits the worker would have received regardless of the workers' conduct.

55. Demonstrating just how erroneous Michigan's current application of workers' compensation law is, the Michigan courts make clear that even if an employer shows that a worker's undocumented status resulted in the "commission of a crime" that prevents the worker from working in the United States, this *cannot* eliminate wage-loss recovery entirely. Even if a claimant cannot legally work in the United States, the Michigan courts have held the workers'

compensation regime must take into account that the worker could work elsewhere. *Romero v Burt Moeke Hardwoods, Inc.*, 280 Mich App 1, 10 (2008). If the worker’s injury would keep them from obtaining employment in another country, the employer must still provide them wage-loss benefits. *Id.*

56. Michigan workers’ compensation officials should only be allowed to deny wage-loss benefits due to the “commission of a crime,” if at all, if they do so consistent with the procedures laid out in *Sweatt*.

VI. The “Commission of a Crime” Exception Violates Due Process.

57. But, the “commission of a crime” exception to the workers’ compensation regime should not be applied at all, because it is unconstitutional.

58. Under the Federal and State Constitutions, due process requires fair adjudication, including the opportunity to have decisions made by an impartial decision maker who seeks to accurately and consistently apply governing law, including requiring the side bearing the burden of proof to produce sufficient, cognizable evidence that meets the elements of the claim. *Gantz v City of Detroit*, 399 Mich 649, 652 (1977) (“Due process of law requires that the determination of a disputed question of fact be based on evidence.”); *see also Bayagich v Twp. of Rose*, unpublished per curiam decision of the Court of Appeals, issued Nov. 8, 2011 (Docket No. 298466).

59. Consistent with this, under the Federal and State Constitutions, statutes may be void for vagueness. *State Treas. v Wilson*, 150 Mich App 78, 80-81 (1986) (citing US Const. Am XIV, Mich Const., art. 1, § 17). A statute is unconstitutionally vague when it is “so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether an offense has been committed.” *State Treasury v Wilson*, 150 Mich App 78, 80-81 (1986).

60. In ruling that undocumented workers have engaged in the “commission of a crime”

under Section 361(1) by virtue of their immigration status alone, Michigan workers' compensation officials have demonstrated Section 361(1)'s "commission of a crime" language allows for unstructured and unlimited discretion. They have determined a person "committed a crime" without identifying any actual criminal conduct.

61. They have reached these findings without holding employers to their burden of proof—and potentially relying on improper evidence.

62. As a result, they have undermined the purpose of the workers' compensation regime—placing essential immigrant workers harmed on the job in dire financial straits without redress, while freeing the employer and its insurer from any liability.

63. Therefore, so that the Workers' Compensation Act is applied consistent with federal and state constitutional requirements, the courts should hold the "commission of a crime" exception to wage-loss benefits null and void.

VII. Harm to MIRC.

64. Not only is the present administration of Section 361(1) unlawful and damaging to workers, but it has also harmed and is harming MIRC.

65. MIRC is a legal resource center that serves Michigan's immigrant communities and has three offices throughout the state.

66. In 2017, MIRC began its "Farmworker and Immigrant Rights" ("FWIR") project. MIRC's FWIR project currently employs three attorneys and one paralegal.

67. The FWIR project was designed to provide legal services to indigent farmworkers in Michigan with a focus on particular employment and immigration issues facing Michigan' migrant and seasonal farmworker communities that MIRC believed could not be adequately addressed by the private bar. Specifically, FWIR was set up to provide legal services countering

immigration raids at workplaces, labor trafficking, wage-and-hour violations, and workplace discrimination, and ensuring proper employer-provided housing in compliance with federal and state regulations.

68. MIRC's FWIR practice was not set up or intended to handle workers' compensation cases, given the robust network of private workers' compensation attorneys that exist to handle those cases, as well as the fact that the workers' compensation system should, by virtue of its existence, ensure protections of injured workers.

69. Nonetheless, since its founding, MIRC's FWIR staff have had to field calls from injured immigrant workers, including farmworkers, day laborers, and landscapers who were seeking legal assistance with their workers' compensation claims because they were denied workers' compensation on the basis that they had "committed a crime"; on numerous occasions a conclusion reached solely due to their immigration status.

70. Consistent with its design and mission, MIRC's FWIR staff sought to refer those injured workers to private counsel, yet numerous such referrals were unsuccessful because the private bar was unwilling to take the cases, given the courts reliance on *Sanchez* to deny wage-loss benefits based on the determination that an undocumented worker has by definition "committed a crime."

71. As a result, MIRC's FWIR project has been forced to divert a substantial amount of its highly limited resources to evaluating workers' compensation claims, frustrating its ability to pursue the legal activities it was designed to pursue.

72. For example, MIRC's FWIR staff have had to attend workers' compensation trainings, review treatises specific to workers' compensation practice in Michigan, join workers' compensation specific list serves, and consult with local workers' compensation attorneys to be able

to counsel and advise immigrant injured workers being denied wage loss benefits.

73. MIRC's FWIR attorneys have also had to dedicate time to handling intakes, investigating and pursuing claims, and advising undocumented workers regarding wage-loss benefits.

74. Due to MIRC and the FWIR project's limited resources, where intakes have resulted in representing a client, it has only been for the limited purpose of representing the individual in workers' compensation proceedings, not the project's stated goals.

75. That representation has imposed additional costs on MIRC's FWIR project, such as the mileage involved in serving injured workers across the state and the purchase of treatises specific to workers' compensation practice in Michigan.

76. Due to the ongoing drain on its resources, in 2019, MIRC's FWIR project hired a part-time law clerk to help with wage-loss benefits intakes and related research.

77. MIRC would not have needed to expend these resources absent workers' compensation officials' improper application of Section 361(1).

78. This diversion frustrates MIRC's FWIR project's mission because, but for workers' compensation officials' incorrect application of the law, MIRC would have dedicated its attorney time and resources to its intended advocacy, such as regarding wage-and-hour violations, labor trafficking, agricultural employer-provided housing, workplace discrimination, and non-citizen access to benefits like unemployment insurance. MIRC's FWIR project would also conduct further outreach to migrant workers.

79. Absent a court ruling that remedies the incorrect application of the law, MIRC's FWIR project will continue to have to divert this substantial volume of resources in response to the erroneous interpretations of Section 361(1), frustrating its mission.

80. MIRC's FWIR project has seen no decline in workers' compensation intakes since the project's founding.

81. MIRC's FWIR project intends to continue advising undocumented workers about wage loss benefits, represent at least one undocumented worker in administrative proceedings seeking wage-loss benefits, and create community education materials and provide community presentations on wage loss eligibility for immigrant workers.

82. This expenditure of resources will continue to keep MIRC's FWIR project from pursuing its planned mission-driven activities to the same extent it would if the Section 361(1) were properly applied and thus more undocumented workers were deemed eligible for wage-loss benefits—which would reduce the number of intakes the FWIR would receive and increase the availability of private representation to handle these matters.

CAUSES OF ACTION

COUNT I: DECLARATORY JUDGMENT

83. MIRC incorporates the foregoing allegations into this Count.

84. MCR 2.605(A)(1) provides: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

85. MIRC has been harmed by Michigan workers' compensation officials' unlawful application of Section 361(1). MIRC has suffered organizational injury by being compelled to divert substantial resources to address the incorrect application of the law in a manner that has frustrated its organizational mission.

86. The improper application of the Workers' Compensation Act will continue to cause MIRC to divert resources and be harmed in this manner.

87. MIRC's injury is fairly traceable to Defendant Whitmer. As Governor of the State

of Michigan, Defendant Whitmer is responsible for enforcing the Workers' Compensation Act. She appoints and can remove the key workers' compensation officials. See, e.g., MCL 418.203, 418.213; Executive Reorganization Order No. 2011-6(I)(D), N; see also *Mich Bldgs. & Const. Trades Council, AFL-CIO v Snyder*, 846 F Supp 2d 766, 777 (ED Mich 2012) ("The Court finds that the alleged injuries are fairly traceable to" the Governor where they stem from the enforcement of a statute and the Governor "is responsible for its enforcement.").

88. MIRC therefore seeks a declaratory judgment that Section 361(1)'s "commission of a crime" language is unenforceable as it violates the federal and state constitutional protections of due process of law.

89. Such a ruling will redress MIRC's injury because it will reduce the extent to which it will have to continue to divert resources to correct the current unlawful administration of Workers' Compensation Act.

90. For these same reasons, MIRC is entitled to an injunction that directs Defendant to administer the Workers' Compensation Act consistent with the declaration.

91. MIRC has no other adequate remedies at law.

COUNT II: DECLARATORY JUDGMENT

92. MIRC incorporates the foregoing allegations into this Count.

93. MCR 2.605(A)(1) provides: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

94. MIRC has been harmed by Michigan workers' compensation officials' unlawful application of Section 361(1). MIRC has suffered organizational injury by being compelled to divert substantial resources to address the incorrect application of the law in a manner that has frustrated its organizational mission.

95. The improper application of the Workers' Compensation Act will continue to cause MIRC to divert resources and be harmed in this manner.

96. MIRC's injury is fairly traceable to Defendant Whitmer. As Governor of the State of Michigan, Defendant Whitmer is responsible for enforcing the Workers' Compensation Act. She appoints and can remove the key workers' compensation officials. See, e.g., MCL §§ 418.203, 418.213; Executive Reorganization Order No. 2011-6(I)(D), N; see also *Mich Bldgs & Constr Trades Council, AFL-CIO v Snyder*, 846 F Supp 2d 766, 777 (ED Mich 2012) ("The Court finds that the alleged injuries are fairly traceable to" the Governor where they stem from the enforcement of a statute and the Governor "is responsible for its enforcement.").

97. MIRC therefore seeks a declaratory judgment that it is unlawful to deny wage loss benefits because a worker has been found to be undocumented—as was authorized in *Sanchez v Eagle Alloy, Inc.*, 254 Mich App 651 (2003).

98. Such a ruling will redress MIRC's injury because it will reduce the extent to which it will have to continue to divert resources to correct the current unlawful administration of Workers' Compensation Act.

99. For these same reasons, MIRC is entitled to an injunction that directs Defendant to administer the Workers' Compensation Act consistent with the declaration.

100. MIRC has no other adequate remedies at law.

COUNT III: DECLARATORY JUDGMENT

101. MIRC incorporates the foregoing allegations into this Count.

102. MCR 2.605(A)(1) provides: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

103. MIRC has been harmed by Michigan workers' compensation officials' unlawful

application of Section 361(1). MIRC has suffered organizational injury by being compelled to divert substantial resources to address the incorrect application of the law in a manner that has frustrated its organizational mission.

104. The improper application of the Workers' Compensation Act will continue to cause MIRC to divert resources and be harmed in this manner.

105. MIRC injury is fairly traceable to Defendant Whitmer. As Governor of the State of Michigan, Defendant Whitmer is responsible for enforcing the Workers' Compensation Act. She appoints and can remove the key workers' compensation officials. See, e.g., MCL 418.203, 418.213; Executive Reorganization Order No. 2011-6(I)(D), N; see also *Mich Bldgs. & Const. Trades Council, AFL-CIO v Snyder*, 846 F Supp 2d 766, 777 (ED Mich 2012) ("The Court finds that the alleged injuries are fairly traceable to" the Governor where they stem from the enforcement of a statute and the Governor "is responsible for its enforcement.").

106. MIRC's therefore seeks a declaratory judgment that workers' compensation officials and their agents must follow *Sweatt v Department of Corrections*, 468 Mich 172 (2003) (plurality opinion), when addressing a claim that an undocumented worker has committed a crime. That is, undocumented workers are only required to make out the same prima facie case for wage-loss benefits as other workers. If they do so, employers may seek to reduce those benefits by demonstrating part of the wage loss is due to the "commission of a crime," but the fact that a worker is not authorized to work in the United States is insufficient to reduce their wage-loss benefits.

107. Such a ruling will redress MIRC's injury because it will reduce the extent to which it will have to continue to divert resources to correct the current unlawful administration of Workers' Compensation Act.

108. For these same reasons, MIRC is entitled to an injunction that directs Defendant to administer the Workers' Compensation Act consistent with the declaration.

109. MIRC has no other adequate remedies at law.

PRAYER FOR RELIEF


For the foregoing reasons, Plaintiff MIRC respectfully requests an order and judgment:

- a. Declaring that Section 361(1)'s "commission of a crime" language is unconstitutional and null and void;
- b. Declaring that and workers' compensation officials and their agents cannot rely on a worker's undocumented immigration status to remove wage-loss benefits, as had been authorized under *Sanchez v Eagle Alloy, Inc.*, 254 Mich App 651 (2003);
- c. Declaring that undocumented workers' claims for wage-loss benefits and allegations that they have "committed a crime" must be considered by workers' compensation officials and their agents consistent with *Sweatt v Department of Corrections*, 468 Mich 172 (2003);
- d. Ordering Defendant, as well as all officers, agents, employees, attorneys, and other persons in active concert or participation with Defendant, to comply with the court's declarations; and
- a. Providing any further relief, including equitable relief, that this Court deems just and proper.

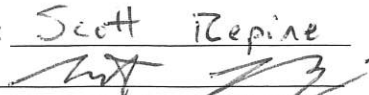
VERIFICATION

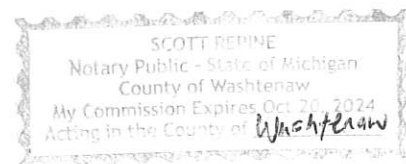
I declare that I have read and made this verified complaint on behalf of the Michigan Immigrant Rights Center and attest that those facts stated of my own knowledge are true and those matters stated of which I have been informed I believe to be true after reasonable inquiry.

Date: November 3, 2021

By: 
Diana Marin (P81514)
Supervising Attorney
Michigan Immigrant Rights Center

Subscribed and sworn before me in Washtenaw County, Michigan on November 3, 2021.

By: 
Notary public, State of Michigan, County of Washtenaw.
My commission expires 10-20-2024.



Date: November 4, 2021

Respectfully submitted,

/s/ John C. Philo

John C. Philo (P52721)
SUGAR LAW CENTER FOR ECONOMIC
AND SOCIAL JUSTICE
4605 Cass Ave.
Detroit, MI 48201
(313) 993-4505
jphilo@sugarlaw.org

- And -

David S. Muraskin*
PUBLIC JUSTICE, PC
1620 L St. NW
Washington, D.C. 20036
(202) 797-8600
dmuraskin@publicjustice.net

Attorneys for Plaintiff

** Motion for Temporary Admission
Forthcoming*

STATE OF MICHIGAN Court of Claims JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO.
--	----------------	-----------------

Court address

Hall of Justice, 925 W. Ottawa St., P.O. Box 30185, Lansing, MI 48909

Court telephone no.

Plaintiff's name(s), address(es), and telephone no(s).

Michigan Immigrant Rights Center

15 S Washington St Ste 201

Ypsilanti, MI 48197

(734) 239-6863

Plaintiff's attorney, bar no., address, and telephone no.

John Philo (P52721)

Sugar Law Center for Economic & Social Justice

4605 Cass Avenue

Detroit, MI 48201

(313) 993-4505

v

Defendant's name(s), address(es), and telephone no(s).

Governor Gretchen Whitmer

111 S Capitol Ave,

Lansing, MI 48933

(517) 373-3400

- and -

P.O. Box 30013

Lansing, Michigan 48909

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106.
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
------------	------------------	-------------

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

Document received by the MI Court of Claims

SUMMONS

Case No. _____

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

☐ I served personally a copy of the summons and complaint,

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____

List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.

Date

My commission expires: _____ Signature: _____

Date

Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

_____ on _____
Day, date, time

Signature _____ on behalf of _____

Document received by the MI Court of Claims.