FILED
2013 Oct-29 PM 03:29
U.S. DISTRICT COURT
N.D. OF ALABAMA

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ALABAMA**

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| HISPANIC INTEREST COALITION OF ALABAMA, *et al.*, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | Case Number: 5:11-cv-02484-SLB |
| ROBERT BENTLEY, in his official capacity as Governor of the State of Alabama, *et al.*, | ) | |
| Defendants. | ) | |

**JOINT REPORT REGARDING CASE STATUS AND DISPOSITION**

Plaintiffs (collectively "*HICA* Plaintiffs"), State Defendants[1] and Local Superintendent Defendants[2] (collectively "Defendants") have conferred about the proper disposition of this matter in light of decisions by the Supreme Court and the Eleventh Circuit. (The parties in *United States v. Alabama*, No. 5:11-cv-02746-SLB, and *Parsley v. Bentley*, No. 5:11-cv-02736-SLB, have also conferred about the proper disposition of those related matters.) All parties believe a full consensual resolution of these cases is now possible. In the interests of aiding the

[1] The State Defendants are Governor Bentley, Attorney General Strange, Superintendent Bice, Chancellor Heinrich, and District Attorney Broussard. The State Defendants are sued in their official capacities.

[2] The Local Superintendent Defendants are: E. Casey Wardyniski, Jamie Blair, Randy Fuller, Charles D. Warren, Barbara W. Thompson, and Jeffrey E. Langham. The Local Superintendent Defendants are sued in their official capacities.

Court to bring about a proper and efficient resolution of these cases, the parties in *HICA* make the following representations and requests regarding the various statutory provisions at issue:

1. **Section 28 of H.B. 56.**[3] The parties in *HICA* agree that the Eleventh Circuit panel's decision in *Hispanic Interest Coalition of Alabama v. Bentley*, 691 F.3d 1236 (11th Cir. 2012), holds that Section 28 of H.B. 56 (Ala. Code § 31-13-27) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The *HICA* Plaintiffs and State Defendants agree that the plaintiff previously expressly found by the Eleventh Circuit Court of Appeals to have standing to challenge Section 28, Alabama Appleseed, satisfies the other requirements for obtaining a final injunction against Section 28.[4] The parties therefore agree that a final injunction is due to be issued in the *HICA* case against Section 28. State Defendants reserve their rights, should circumstances change in the future, to seek modification of a final injunction against these provisions via a post-judgment motion, to the extent permitted under the Federal Rules of Civil Procedure.

[3] All references herein to H.B. 56 incorporate any amendments made thereto by H.B. 658 (Act 2012-491).

[4] The *HICA* Plaintiffs maintain all organizational plaintiffs and plaintiffs Jane Does ##1-6, and John Does ##1-2 have standing to challenge Section 28 and satisfy the other requirements for obtaining a final injunction against Section 28.

2. **Section 11(f) and (g) of H.B. 56.** The *HICA* Plaintiffs and State Defendants agree that in light of this Court's reasoning in its previous preliminary-injunction order (Doc. # 137) and other considerations, Sections 11(f) and (g) of H.B. 56 (Ala. Code § 31-13-11(f) and (g)) violate the First Amendment to the United States Constitution. The *HICA* Plaintiffs and State Defendants agree that the plaintiff previously expressly found by this Court to have standing to challenge Section 11(f) and (g), John Doe #6, satisfies the other requirements for obtaining a final injunction against these provisions.[5] The *HICA* Plaintiffs and State Defendants therefore agree that a final injunction is due to be issued in the *HICA* case against Sections 11(f) and (g). State Defendants reserve their rights, should circumstances change in the future, to seek modification of a final injunction against these provisions via a post-judgment motion, to the extent permitted under the Federal Rules of Civil Procedure.

3. **Sections 10, 11(a), 13, and 27 of H.B. 56 and Section 6 of H.B. 658.** The *HICA* Plaintiffs and State Defendants agree that, based on the Eleventh Circuit panel's decision in *United States v. Alabama*, 691 F.3d 1269, Sections 10, 11(a), 13, and 27 of H.B. 56 (Ala. Code §§ 31-13-10, -11(a), -13, & -26), and Section 6 of H.B. 658 (Ala. Code § 31-13-33), violate the Supremacy Clause of Article VI of

[5] The *HICA* Plaintiffs maintain that plaintiff John Doe #5 has standing to challenge Section 11(f) and (g) and can satisfy the other requirements for obtaining a final injunction against Section 11(f) and (g).

the United States Constitution. The *HICA* Plaintiffs and State Defendants further agree that, because the *HICA* Plaintiffs also challenged these sections as violating the Supremacy Clause, it is appropriate for this Court to enter a permanent injunction in the *HICA* Plaintiffs' favor as to these provisions. The *HICA* Plaintiffs and State Defendants further understand that the parties to *United States v. Alabama*, No. 5:11-cv-02746-SLB, are simultaneously agreeing that this Court is due to issue permanent injunctions in that case against Sections 10, 11(a), 13, and 27 of H.B. 56 (Ala. Code §§ 31-13-10, -11(a), -13, & -26), and Section 6 of H.B. 658 (Ala. Code § 31-13-33).

4. **Sections 12, 18, and 20 of H.B. 56.** The *HICA* Plaintiffs and State Defendants agree that they understand the Supreme Court to have held in *Arizona* that it would "raise constitutional concerns" for state or local officers to "[d]etain[] individuals solely to verify their immigration status" or to "delay the release of some detainees for no reason other than to verify their immigration status." *Arizona v. United States*, 132 S. Ct. 2492, 2509, 183 L. Ed. 2d 351 (2012). The *HICA* Plaintiffs and State Defendants further agree that they understand the Supreme Court to have held that "[t]he program put in place by Congress does not allow" state or local officers to "hold[] aliens in custody for possible unlawful presence without federal direction and supervision" and thus that a state law that authorized this law-enforcement mechanism would violate the Supremacy Clause

of the United States Constitution. *Id.* Accordingly, the State Defendants represent that, to address those constitutional problems, they interpret Sections 12, 18, and 20 of H.B. 56 (Ala. Code §§ 31-13-12, 31-13-19, & 32-6-9) to neither require nor authorize state or local law-enforcement officers to stop, detain, arrest, or prolong the detention of any person for the purpose of ascertaining that person's immigration status or because of a belief that the person lacks lawful immigration status.[6] On the basis of State Defendants' representations about their interpretation of Sections 12, 18, and 20 as executive officials of the Alabama government, the *HICA* Plaintiffs will move to voluntarily dismiss their claims as to Sections 12, 18, and 20, without prejudice to the *HICA* Plaintiffs' ability to re-file claims against Sections 12, 18, and 20 in the future. The State Defendants consent to the voluntary dismissal of these claims.

5. **Section 19 of H.B. 56.** The State Defendants represent that, to comport with constitutional requirements as set forth by the Supreme Court in *Arizona*, they interpret Section 19(a) to neither require nor to authorize state or local law-enforcement officers to stop, detain, arrest, or prolong the detention of any person for the purpose of ascertaining that person's immigration status or

[6] The State Defendants note that their representation is limited to the proper meaning of Sections 12, 18, and 20 under state law, and that they are not making any representations in this document about whether officials have separate authority under federal law, independent of any provisions set out in H.B. 56, to take actions at the direction of the federal government.

because of a belief that the person lacks lawful immigration status.[7] State Defendants further represent that in light of Article 1, Section 16, of the Alabama Constitution, they understand that Section 19(b) of H.B. 56 (Ala. Code § 31-13-18(b)) can only be applied to deny bail to persons arrested for a capital crime, and cannot be applied to deny bail to individuals arrested for or charged with solely for non-capital crimes, regardless of their immigration status. On the basis of State Defendants' representations, *HICA* Plaintiffs move to voluntarily dismiss their claims as to Section 19, without prejudice to *HICA* Plaintiffs' ability to re-file claims against Section 19 in the future. The State Defendants consent to the voluntary dismissal.

6. ***HICA* Plaintiffs' Remaining Claims.** The *HICA* Plaintiffs will voluntarily dismiss all claims not specifically referenced above without prejudice. The Defendants consent to the voluntary dismissal of these claims.

7. **Attorneys' Fees and Costs.** State Defendants shall remit to counsel for the *HICA* plaintiffs payment in the amount of $350,000.00, as settlement of plaintiffs' claim to any and all attorneys' fees and expenses incurred, charged, or otherwise generated by counsel for the *HICA* plaintiffs from the inception of this

[7] The State Defendants note that their representation is limited to the proper meaning of Section 19(a) under state law, and that they are not making any representations in this document about whether officials have separate authority under federal law, independent of any provisions set out in H.B. 56, to take actions at the direction of the federal government.

litigation through the date of entry of this Joint Report and accompanying Proposed Final Judgment. In consideration of the foregoing payment by the State Defendants the *HICA* plaintiffs and their counsel hereby voluntarily, completely, and unconditionally waive any and all right, claim, and/or entitlement to the recovery of any other monies of any kind from any Defendant in this litigation for any and all attorneys' fees and expenses incurred, charged, or otherwise generated by counsel for the *HICA* plaintiffs from the inception of this litigation through the date of entry of this Joint Report and accompanying Proposed Final Judgment. The parties further agree that the above-referenced sum will be paid to *HICA* plaintiffs' counsel within 21 days after entry of the accompanying Proposed Final Judgment by the Court.

8. **Final order.** Accordingly, all parties consent to the form of Final Judgment submitted herewith, subject to the reservations and other statements made herein.

9. **Reservations.** The *HICA* Plaintiffs' voluntary dismissals of various claims are without prejudice to the filing of new claims against any of those provisions in the future should there be a legal and factual basis for such claims. Likewise, the State Defendants reserve their right, should pertinent circumstances change in the future, to seek modification of the injunctions in the Final Judgment via a post-judgment motion under the Federal Rules of Civil Procedure.

Respectfully submitted,

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