IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

JANE DOE #1, et al.,)
Plaintiffs,)
v.) CASE NO. 2:13-
RICH HOBSON, et al.,)
Defendants.)

12(b)(1) facial attack, the court evaluates whether the plaintiff "has sufficiently alleged a basis of subject matter jurisdiction" in the complaint and employs standards similar to those governing Rule 12(b)(6) review. *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1335 (11th Cir. 2013).

WR KHDU WAKFIKEHDUNHIR'UH 3QR SUHVXPSWLEMEH WUXWSODLQWLII¶V DOOHJDWLRQV DQG WKH H[LVWHQFHWKH WULDO FRXUW IURP HYDOXDWLQJ IRHU LWVHOI

Here, Defendant first and second arguments egarding ripeness and standing DUH IDFLDO DWWDFNV ROZK SLOOD DHLQHWILLING VG PDOFW No argument, which implicates mootness doctrine and relies XSRQ 'HIHQGDQ No affidavit testimories, is a factual attack.

III. BACKGROUND

A. Facts

Plaintiffs Jane Doe #1, Jane Doe #2, JoDhone #1, and John Doe #2 are residents of MontgomeryAlabama All of themwere born in Mexico andhoved WR WKH 8QLWHG 6WDWHV VHYHUDO \HDUV DJR Doe #2 is married to John Doe #1. etsle three Dodsve together. John Doe #2 is the nephew of Jane Doe #1 and the cousin of Jane Doe #42es separately from but near the otheDoes All

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Plaintiffs went fishing, allegedly without a state licenteedo so and were arrested. Jane Doe #1 was detained for approximately twoindaysounty jail DQG GHQLHG EDLO EHFDXVH IHGHUDO , PPLJUDWLF officers wished to investigate whether she had permission to remain in the United States. The other Plaintiffs were detained in ail for several hours. ICE officials determined that Jane Doe #1 lacked permission to remain in the United States, but exercised their discretion on to keep her in custody or to initiate removal proceedings against her. Plaintiffs appeared in state district court to contest the chargesof fishing without licenses All four were convicted, but they have appealed their convictions to state citrosourt. (Doc. #31, at3 1/4; see also Docs. #31-1, 31-2, 31-3, 31 3 ODLQWLIIV 1) Plaintiffs Dhave Woll informed the court of further developments in the state court criminal proceedings.

Plaintiffs are suing Defendant Rich Hobson, in his official capacity as \$GPLQLVWUDWLYH 'LUHFWRU RI \$ODEDP®\$ \$\mathbb{R}\$ \$\mathbb{K}\$, \$GPLQ and Defendant Spencer Collier, in his official capacity as Director of the Alabama Department of Homeland Security \$\mathbb{S}' + 6, now part of the Alabama Law (QIRUFHPHQW \$JHPQDEfenda\$ts) (asé charged with enforcing various

² Mr. Collier is now

provisions of Section 5 R I + R X V H % L O O \$30 B E D P D ¶ V O H J L enacted HB 658in May, WR D P H Q G V H Y H U D O S U R Y L V L controversialimmigration law commonly called HB 5,6 which was enacted in 2011. The text of Section 5 is set out in full below.

- (a) The[AOC] shall submit a quarterly report, organized by county, to the [ADHS] summarizing the number of cases in which an unlawfully present alien was detained by law enforcement and appeared in court for any violation of state law and shall include all of the following information in the report:
 - (1) The name of the unlawfully prent alien.
 - (2) The violation or charge alleged to have been committed by the unlawfully present alien.
 - (3) The name of the judge presiding over the case.
 - (4) The final disposition of the case, including whether the unlawfully present alien was releasted custody, remained in detention, or was transferred to the custody of the appropriate federal immigration authorities.
- (b) The [ADHS] shall publish on its public website, in a convenient and prominent location, the information provided in the quarterly report from the [AOC]. The display of this information on the GHSDUsWpBbHcQwbbSite shall be searchable by county and presiding judge.
- (c) For the purposes of this section, the determination of whether a person is an unlawfully present alien shall be verified by the federal government pursuant to 8 U.S.C. § 1373(c).

Ala. Code §31-13-32.

Plaintiffs allege that Section is unconstitutional under the United States & RQVWLWXWLRCQUISeberoaxissBerthion5(ar) creates at a te immigration classification ± 3 XQODZIXOO\, SUBIRFQQV31D00)VAHarQuintrudes into a field reserved exclusively to the jurisdiction of federal government by attempting to create an alien registration scheme, (Compl., at .63 642.82 Tm -0.11

Mr. Collier has UHSHDWHGO\ DVVHUW HrGnoWstkept3 Wb \$'+6 implement Section ¶V SURYLVLRQV IRULSQX R D P D D WW 200Q C R I'R at 2 (citing Collier Aff.); see alsoDocs. #33-1 (Collier Supp. Aff.),#47-1 (Collier Second Supp. Aff.). Having consulted with ICEMr. Collier believes that if he complied with Section 5a public registry would constitute an improper use of federalimmigration information.

that he would not enforce the publications pect of Section(5) because doing so would jeopardize\$'+6 ¶access to federal immigration which it needs for law enforcement purposes to date, the Alabama Attorney General has taken no

directed the parties submit supplemental briefing(Doc. #43.) The parties complied. (Docs. #7, 48.)

33ODLQWLIIV KDYH QR ZD\ RI NQRZLQJ ZKDW LQI

enforced as writtenBecause Plaintiffs were not born in the United States, because they appear to be in the United States in violation federal law and because ICE has already determined that Jane Doe #1 is not lawfully presign tealistic that 'HIHQGentary entering the Section 5 would be worth at least some of the ways alleged in the Complaint'HIHQGDQWV¶ Dheldasse is Qnly ever KDW without merit.

B. Standing

TR KDYH VWDQGLQJ 3>D@ SODLQWLII PXVW DOWWKH GHIHQGDQW¶V DOOHJHGO\ XQODZIXO FRQGXUHTXHVWHIDDaim WehrDortysheri Corp. v. Cuno547 U.S. 332, 342 (2006)

(quoting Allen v. Wright 8 6 7KH SODLQWLI must be both concrete and particularized and actual or imminelung an v. Defenders of Wildlife 504 U.S. 555, 560 (1992). There must be associated by the speculative with the control of the concrete and particularized and actual or imminelung and v. Defenders of Wildlife 504 U.S. 555, 560 (1992). There must be associated by the control of t

7KH HOHPHQWV RI VWDQGLQJ 3PXVW EH VXSSR matter on which the plaintiff bears the burden of process, with the manner and degree of evidence required at the XFFHVVLYH VWDJHLVajaR, 504WKH OL

U.S. at 3 \$ W WKH SOHDGLQJ VWDJH JHQHUDO IDF VIURP WKH GHIHQGDQW¶V FRQGXFW PD\ VXIILFH IF presume[s] that general allegations becance those specific facts that are necessary WR VXSSRUWd. (All text betion Computed).

Defendants argue that ODLQWLIIV DOOthhah Hage Coeffal Wiele Lood JPRU Section ¶V HQIRUFLHD PITH TO LIVE and particularized in jeurs 'HIHQGDQWVVD\ WKDW 3ODLQWLIIV¶ Dace Coeffal Lood DWLRC entirely on speculation and assumption.

The C

from what matters. The proper focus a Rule 12(b)(1) facial challengelongs on the Complaint ± Q R W 'HIHQGDQVSALEQ awd on the Complaint ± Q R W 'HIHQGDQVSALEQ awd on the Complaint of the Complaint must be taken as trued. 3 O D L Q W L I I V Complaint allege that Section 5 violates the Supremacy Clause and the Due Process Clause Plaintiffs assert that he State is invading W K H I H G H U D O J R Y H I role of registering

contest their likely designation as unlawfully present aliens and their inclusion on WKH $6WDWH\PVUHJ\pm VWU\$ RI WKH VDPH

Plaintiffs are denied public benefits or are prosecuted for attempting to enter a public records transaction with the State, it will not be because a State official

release public benefits, or the engagement public records transactions with the State. Defendants have not raised ith justy-in-fact issue, and in the absence of an argument from their adversaries, neither have Plaintiffs

Yet, presuming that Section is enforced and Plaintiffs are identified on the ADHS website as unlawfully present aliens, it is plausible that private employers or state agencies and rely upon the AOO Net published by the ADHS. The court elects not parse these suspect injuries and published by the ADHS. The court problems and redressability problems a motion to dismisse specially where some of the issues identified above have not been briefed he court prefers the resolution of disputed facts, where possible, and the crystallization of those resolved, in order to deal with issues of law on a solid record at the summary judgment jundent

In sum, Plaintiffs have constitutional standing to bring this suit

C. <u>Mootness</u>

'HIHQGDQWV¶ ILQDO DUJXPHQW LV WKH PRVW thaW WKH\ ³KDYH QR LQWHQWLRQ RI HQIRUFLQJ W 6 HFWLRQ 20, at7 Refting Collier and Hobson Affs).) Thus, they argue, the threat of injuryanticipated by Plaintiffs will not materialize.

⁷ + R Z H Y H U Z L W K U H V S H F W Wilk disa Dilition by Letinonal Kerralties R I R V [that Plaintiffs might endure] should the preliminary injunction be lifted on any other provision R I + % & \$\mathbb{R}\$57(3)) the SelVinjuries are not actual or imminent because the preliminary injunction has been and e permanent by order of the Northern District of Alabai (See Docs. # 47-2, 47-3 (Stipulated Permanent Injunctions). Hence, any alleged injuries relating to provisions of HB56 that have been enjoined are insufficient to confer standing.

1. Arguments

Defendants rely on Doe v. Pryor 344 F.3d 1282, 1283 (11th Cir. 2003), where the Eleventh Circuit affirmed Raule 12(b)(1) dismissal for lack of standing after the defendant attorney General argued that he had no intention of enforcing a challenged statute In Doe, one of the plaintiffs J.B., maintained openles bian relationship and lost custody of her child to her exhusband. In ruling in the ex KXVEDQG¶VIDYRU WKH \$0 FEDVING \$XXSDLEHDPPHD¶&R criminalizing devide sexual intercourse. J.B. and others sued the Attorney General of Alabama challenging the statute on queal protection and freedom of expression grounds.

With respect to the equal protection claiming Eleventh Circuit heldthat, assuming J.B. had pleadedgnizable injuries,- % ¶ V DOOHJH @eithle@ MXULF fairly traceable to any actionaken by the Attorney Generalion redressable a suit against the Attorney Generalid. at 1285-86. The court considered the Attorney Generalii V SR What Whebard @eithler threatened to enforce nor enforced the challenged law Id. at 1285. The countound credible WKH \$ WWRUQH* H assurance hat he would notenforce the law based on his concessionat, in the wake of the Supreme Court decision Linuwrence v. Texas 539 U.S. 558 (2003), the challenged Alabamas tatutewas unconstitutional Id. Similarly, with regard to the SODL @inter Annex Alabamas tatutewas unconstitutional Id. Similarly, with regard to

threat of prosecutionId. at 1287. The court noted again that the Attorney General viewed the law to be unconstitutional in light Louis wrence and that even without the Lawrence GHFLVLRQ LW DSSDUHQWO\ KDG EHHQ 3\HI Alabama had enforced the challenged lawd. Hence, the court affirmed the dismissal of the suit for SODL Qual of Istan Ging.

Here, Defendarstargue that like the Attorney General Alabamain Doe v.

Pryor, they are the persons charged with enforcing Section 5, they are represented by the Attorney General this matter and Mr. Collier has sworn to their intent not to enforce the public disclosure provisions of the illaw Section 5(b)

Plaintiffs respond that Defendants are versimplifying the significance of the holding in Pryor. Plaintiffs distinguish Pryor in three ways. First, there is not a binding Eleventh Circuit or Supreme Conuruling like Lawrence which has held that Section 5, or any virtually identicated law, is unconstitutional. Second, unlike the Attorney General in Pryor, Defendants have not conceded and admitted ly will not concede that Section is unconstitutional. Third, unlike the criminal statute at issue in Pryor, which the State had ignored for each section 5 is a novel law enacted within the last two years. Plaintiffs and sphasize that there are consequences for Defendants if they do not enforce the Slaw Ala.

Code §31-13-6.9 'HIHQGDQWV¶ UHSO\ EULHILV VLOHQW arguments. 3 ODLQWLIIV¶ Denkylod XisPollhis Oun by Wuish Water Distribution by Welfaken.

Additional distinctions between Pryor and this case include WKDW \$ODEDPI
Attorney General had no causal confine LRQ WR WKH SOOD in Or WLII¶V

(i.e.

promised not to enforce public disclosure provisions of Section 5(b). Plaintiffs have challenged all of Section 5,QFOXGLQJ 6HFWLRQ D ¶V SURY report unlawfully present aliens to DAHS. Plaintiffs say that the public disclosure provisions of Section 5(b) are not severable rom Section 5 and therefore, 3ODLQWLIIV¶ FODLPV DUH QRW PRRW

In reply, Defendants countethat a discussion of the mootness doctrine as applicability only where the Government actually engages in the allegedly unlawful conduct at the time the suit is filed, alrader voluntarily ceases the offensive conduct during the pendeynof a lawsuit In this case Mr. Collier has QHYHU 3FHDVHG DQ\RIIHQVLYH FRQGXFW, QV Section 5(b) prior to the filing of this litigation, and ADHS has never published a list of unlawfully present aliens who have appeare LQ \$ODEDPD¶V F Notwithstanding their doubts as to the applicability of voluntary cessation analysis, Defendant arguethat the non-enforcement policy is unambiguous, the product of substantial deliberation, and one of the substantial deliberation and one of the substantial deliberation, and one of the substantial deliberation and one of the substantial deli

, Q 3 O D L Q W Ltdrlet, They Xnthblatsize Othat Defendants were preparing

mootness by characterizing their mootness guments as an attack on ODLQWLIIV standing. Finally, Plaintiffs reiterate that the & RPSODLQW¶ WhatDOOHJ Section 5(b), asit was written by the Legislature ould be enforced immediately must be accepted as true.

2. Analysis

It is significant that Defendants did not argue mootness in their motion to dismiss (See Doc. #20.) Plaintiffs classified 'HIHQG DoQ & Mfor fement argument

at 1265). But government actors like Defendants FDUU\ DOHV MUHU EXU They must first show that the cessation of offensione duct, or in this case, the decision not to initiate offenive conduct, is unambiguous Id. On this element of the test the timing and content DOGHIH QLOGISION WAY Most relevant.

law enforcement capabilities could be compromised by oroompliance with its agreement with the federal government to access and use immigration information.

Th H V H D O V R D U H U H O H Y D Q W F R Q V L G H U D W L R Q V W K enforcement policy is ambiguous there is little to suggest that the law will not be enforced in the futur see id.

Additionally, Mr. Hobson does not ispute that eintends

again at summary judgment if additional evidence supports reevaluation of their arguments.

Because the ocurt is not deferring ruling on the alternative motion for summaryju GJPHQW 3ODLQWLIIV¶ UHTXHVW IRU UHOLHI

V. CONCLUSION

Accordingly, it is ORDERED that:

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- (2) 3 O D L Q W L I I Vre¶liePpRunds/uanR tQ RuRe 156 (d)Doc. #32) is DENIED as moot.

DONE this 2ndday of May, 2014.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE