

INTELLIGENCE
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federal government or even if they are U.S. citizens. Section 5 contains no requirements that the state so much as notify

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this case arises under the U.S. Constitution and laws of the United States, pursuant to 28 U.S.C. § 1343 because this action seeks to redress the deprivation, under color of state law, of 3 ODLQWLIIV ¶ FLYLO ULJKWV DQG WR VHFXUH HTXLWDEOH P

8. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

9. Venue is proper in this District and Division pursuant to 28 U.S.C. § 1391(b). Defendants Collier and Hobson, who are sued in their official capacities, reside in this State and are employed as State officials in Montgomery, Alabama, within this District and Division. A VXEVWDQWLDO SDUW RI WKH HYHQWV DQG RPLVVLRQV JLYD will occur in this District and Division.

PARTIES

Plaintiffs

10. Plaintiff Jane Doe #1 resides in Montgomery, Alabama with her daughter, Plaintiff Jane Doe #2, and her son-in-law, Plaintiff John Doe #1. Plaintiff Jane Doe #1 is originally from Mexico and came to the United States approximately ten years ago. She was arrested for an alleged violation of a state law prohibiting fishing without a license. She is scheduled to appear in an Alabama state court in February 2013.

11. Plaintiff Jane Doe #2 resides in Montgomery, Alabama with her mother, Plaintiff Jane Doe #1, and her husband, Plaintiff John Doe #1. Plaintiff Jane Doe #1 was born in Mexico and came to the United States with her mother approximately ten years ago, when she was

public website in a convenient and prominent location, the information provided in the quarterly

UHSRUW IURP WKH \$GPLQLVWUDWLYH 2IILFH RI WKH &RXU

³VHDUFKDEOH E\ FRM Q W J HDQ \$ O D 13-32(0) is sued in his official

capacity.

FACTUAL ALLEGATIONS

\$ODEDPD V 2ULJLQDO ,PPLJUDWLRQ /DZ

16.

- b. SURKLELW ZLWK D IHZ H[FHSWLRQV ³>D@Q DOLH 8QLWHG 6WDWHV´ IURP ³UHFHLY>LQJi@§ 31-13-7(b);
- c. GLVTXDOLI\ ³DQ DOLH\ 8QLWHG 6WDWHV´ released on bail, id. § 31-13-18(b), or from being released from custody upon completing his or her criminal sentence, § 31-13-19;
- d. UHTXLUH ODZ HQIRUFHPHQW RIILFHUV ZKHQHYHU that DQ LQGLYLGXDO ³LV DQ DOLHQ ZKR LV XQODZIX to verify the immigration status of that individual, § 31-13-12(a); and
- e. PDNH LW D IHORQ\ IRU ³>D@Q DOLHQ QRW ODZIX apply for or renew a motor vehicle identification card, business license, commercial license, or professional license, id. § 31-13-29.

19. Several parts of HB 56, as amended by HB 658, have been preliminarily enjoined,

23. Upon information and belief, Section 5 of HB 658 was enacted with the purpose of publicly identifying and sharing information about individuals who are

24. Governor Bentley expressed his view that at least Senator Beason and Representative Hammon and possibly other legislators, and other legislators insisted on retaining the posting of names.

25. After HB 658 was passed by the Legislature, but before it was signed into law, Governor Bentley publicly implored the legislators to remove that part of Section 5 that required the posting of names, as well. Shortly thereafter, on May 18, 2012, Governor Bentley signed HB 658 into law as Act No. 2012491.

26. + % WRRN HIIHFW LPPHGLDWHO\ XSRQ WKH *RYHLL

Text of HB 658 § 5, codified at Ala. Code § 31-13-32

27. Section 5 imposes obligations upon the AOC the ADHS.

28. The AOC is required to develop and submit to the ADHS a quarterly report that identifies any violation or charge alleged to have been committed by the unlawfully present alien, including whether the unlawfully present alien was released from custody, remained in

GHWHQWLRQ RU ZDV WUDQVIHUHG WR WKH FXVWRG\ RI V
Id. § 31-13-32(a)(1)(4).

29. 7KH \$'+6 LV UHTXLHUHG³ puW@, in a convenient and prominent location, the information provided in the quarterly report from the Administrative
211LFH RI &R § 31-13-32(b). The ADHS is required to ensure that the information

GLVSOD\HG RQ LWV SXEOLF ZHEVLWH LV³ HDUFDKDEOH E\ F
30. The final subsection of 6HFWRQ For the purpose of this section, the determination of whether a person is an unlawfully present shall be verified by the federal
JRYHUQPHQW SXUVXDQW³ § 31-13-32(6). & † F

31. 7KH WHUP³ XQODZIXOO\ SUHVHQW DOLHQ' LV QRW
does the term have any relevant definition in federal law.

32. There is no system under 8 U.S.C. § 1373(c) that would enable a State to post immigration status information on the internet. To the contrary, the federal government expressly limits how that information shared with state authorities pursuant to 8 U.S.C. § 1373(c) may be disseminated, and does not authorize state or local jurisdictions receiving information from the federal government pursuant to that section to post that information online. Moreover,

34. Information about an individual provided by any system set up pursuant to 8

into custody, and charged with violating Ala. Code §1955, which prohibits nonresidents from fishing without a license.

47. Jane Doe #2, John Doe #1, and John Doe #2 were all detained in the county jail for several hours.

48. Jane Doe #1 was detained in the county jail for approximately two days during which time she was denied bail because officials from the federal Immigration and Customs Enforcement (ICE) wanted to investigate whether she had legal permission to remain in the country.

49. Although the ICE officials determined that Jane Doe #1 did not appear to have legal permission to remain in the country, they chose not to take her into custody or to initiate removal proceedings against her as a matter of prosecutorial discretion.

50. In mid-February 2013, all of the Named Plaintiffs scheduled to appear in a district court for the State of Alabama located within the Middle District of Alabama on the fishing without a license charges.

51. All of the Named Plaintiffs were born in Mexico.

52. At this time, none of the Named Plaintiffs have documents proving that they currently have permission to reside in the United States.

53. Pursuant to Section 5(c) and AOC policy, a State or local official will or has attempted to verify the Named Plaintiffs' status.

54. The state or local official who will or has attempt(ed) to verify the Named Plaintiffs' status is the State of Alabama. The state or local official who will or has attempt(ed) to verify the Named Plaintiffs' status is the State of Alabama. The state or local official who will or has attempt(ed) to verify the Named Plaintiffs' status is the State of Alabama.

55. Pursuant to Section 5(a) and AOC policy, the Named Plaintiffs will be included in
D UHSRUW RI ³XQODZIXOO\ SUHVHQW DOLHQ>V@´ WKH \$2 & Z

56. Pursuant to Section 5(b), the ADHS will post the names and other identifying
information of the Named Plaintiffs on its public website.

57. If the Named Plaintiffs are FODVVLILHG DQG UHJLVWHUHG WK
SUHVHQW DO List of @VKHDQG-RUW SXEOL They Face Val High De VXFK
risk, now and into the future, of:

- a. losing employment opportunities, as employers prefer not to employ

LQGLYLGXDOV SXEOLFO\ LGHQWLILHG E\ WKH 6WD

- f. being subjected to private harassment, discrimination, or even vigilantism by individuals who view the public list;
- g. being subjected to a host of other civil disabilities and criminal penalties should the preliminary injunction be lifted on any other provision of HB 56;
- h. EHLQJ SHUPDQH QWO\ EUDQG HG ³XQODZIXOO\ SUH to obtain some immigration status ~~the~~ permits them to remain in the United States in the future.

CLASS ALLEGATIONS

58. The Named Plaintiffs are filing this Complaint as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

59. The Named Plaintiffs request that this Court identify a class of all similarly situated individuals. The proposed class definition ~~All~~ persons who are or will be subjected to Section 5 of HB 658, Ala. Code § 313-32.

60. This action is properly maintained as a class action because:

(a) Joinder of all members of the class is impracticable because of the size of the proposed class. Alabama is home to approximately 65,000 immigrants, approximately 120,000 of whom currently lack lawful immigration status.

is very likely that many more than 40 such individuals in the State of Alabama have been or will be detained by law enforcement, will appear in court for a

YLRODWLRQ RI VWDWH ODZ DQG ZLOO UXQ WKH XQODZIXOO\ SUHVHQW DOLHQ´ XQGHU 6HFWLRQ

(b) The claims alleged on behalf of the proposed class raise questions of law and fact that are common to the class. This is a facial challenge to the validity of

Section 5. All class members will challenge the same statutory section on the same legal grounds: federal preemption (Supremacy Clause) and Due Process.

All class members are subject to the same injuries: the mandatory classification, collection, and publication of their names and other identifying data pursuant to Section 5.

(c) The claims of the Named Plaintiffs are typical of the proposed class. All members of the proposed class, including the Named Plaintiffs, will be listed RQ WKH \$'+6 ZHEVLWH DV ³XQODZIXOO\ SUHVHQW prevail on their facial challenges to Section 5, that statutory provision will LQYDOLG IRU DOO FODVV PHPEHUV DQG QR FODV data collection and publication requirements.

(d) The proposed class representatives and class counsel will fairly and adequately represent the interests of the class. The Named Plaintiffs have no interests that are antagonistic to the interests of other members of the proposed class, and class counsel have substantial experience in civil rights and class action litigation.

62. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 4 through 61 above.

63. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

64. The Supremacy Clause mandates that federal law preempts state law in any area over which Congress expressly or impliedly has reserved exclusive authority or which is constitutionally reserved to the federal government, or where state law conflicts or interferes with federal law. States are also forbidden from regulating immigration under the Supremacy Clause and other provisions in the Constitution.

65. Section 5 creates a scheme to register and publicize the presence of certain non-citizens in the State of Alabama. ~~W K R V H Z K R P W K H 6 W D W H F O D V V L I L H V D O L H Q n s b @ o i n g~~, it impermissibly intrudes into the field of alien registration reserved exclusively to the federal government.

66. Section 5 impermissibly regulates immigration by creating an immigration classification ~~3 X Q O D Z I X O O \ S t a t e D o e s N o t E x i s t O n F e d e r a l~~ that does not exist on federal law, and by requiring State and/or local officials to assign individuals to this ~~S t a t e~~ classification by making immigration status determinations that they are not trained, equipped, or permitted to make.

67. Section 5 impermissibly conflicts with and interferes with federal immigration law by imposing state law burdens and consequences based upon a state law classification of aliens, where the federal Immigration and Nationality Act is a comprehensive federal system

through whi

73. Section 5 does not provide any opportunity for individuals to contest their public
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74. 6HFWLRQ GHSULYHV LQGLYLGXDOV ZKR ZRXOG EH
SUHVHQW DOLHQ>V@ ' RI D OLEHUW\ DQG RU SURSHUW\ LQW

75. Defendants cannot, consistent with state and federal law, provide due process to
WKR VH LW ZLVKHV WR SXEOLF\ GHVLJQDWH DV³XQODZIXO

76. 'HIHQGDQWV¶ HQRUFHPHQW RI 6HFWLRQ SXUVXD
actors under color of law and therefore actionable under the Fourteenth Amendment through
42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court grant the following relief:

- (1 & HUWLI\ WKH FODVV DV GHILQH of this Complaint, & ODVV \$OO
- (2 (QWHU D GHFODUDWRU\ MXGJPHQW ILQGLQJ WKDW '

violates the Supremacy Clause of Article VI of the U.S. Constitution and the Due Process Clause
of Amendment XIV of the U.S. Constitution;.

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* Pro hac vice admission to be sought

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