CENTRAL ALABAMA FAIR HOUSING CENTER;

FAIR HOUSING CENTER OF NORTHERN ALABAMA;

CENTER FOR FAIR HOUSING, INC.; and

JOHN DOE #1 and JOHN DOE #2, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JULIE MAGEE, in her official capacity as Alabama Revenue Commissioner, and

WILLIAM HARPER, in his official capacity as Elmore County Revenue Commissioner,

Defendants

Civil Action File No.

_____

[illegible]

Statutes

Plaintiffs Central Alabama Fair Housing Center, Fair Housing Center of Northern Alabama, Center for Fair Housing, Inc., John Doe #1, and John Doe #2 seek a temporary restraining order and preliminary injunction immedi

and keep manufactured homes, have adopted a policy

enforcement of HB 56 Section 30 is preempted by federal law because it amounts to an impermissible state regulation of immigration by attempting to drive those Alabama perceived to be undocumented immigrants from their homes, and ultimately from the State. In addition, Defendants' enforcement of HB 56 Section 30 is preempted because it conflicts with federal law and intrudes into an area that Congress has indicated a clear intent to occupy.

Representative Hammon, who introduced the bill in the House, explained: "This [bill] attacks every aspect of an illegal immigrant's life. They will not stay in Alabama . . . . [T]his bill is designed to make it difficult for them to live here so they will deport themselves." Ex. G to Brooke Decl. (Ex. 2) at 9:4-7.[4] He also noted, "[W]e do want to affect every aspect of someone's life and make it a little more difficult for them to live here." Ex. D to Brooke Decl. at 21:3-4. In no uncertain terms, Representative Hammon stated: "[T]he intent of this bill is to slow illegal immigration in Alabama through attrition." Id. at 1:42-43. He emphasized: "We are going to deter illegal immigrants from the State of Alabama." Id. at 13:27.

Senator Beason, who introduced a similar omnibus immigration bill in the Senate, and who ultimately consolidated his bill with Hammon's to form HB 56, also expressed his views that the intent of HB 56 was to drive immigrants from the State. In a speech he delivered in February, 2011, just before the legislative session commenced, he noted, "The reality is that if you allow illegal immigration to continue in your area you will destroy yourself eventually . . . . If you don't believe illegal immigration will destroy a community go and check out parts of Alabama around Arab and Albertville." Ex. D to Brooke Decl.

Section 30 of HB 56 is one of several provisions in HB 56 that were clearly designed to make it impossible for undocumented individuals to rent, buy, or sell dwellings. For example, Section 13(a)(4) of HB 56 criminalizes the entering into of a rental agreement with an undocumented individual, and Section 25 of HB 56 makes soliciting a rental agreement a crime for the undocumented individual as well.[5] Furthermore, Section 27 of HB 56 makes unenforceable in state court virtually any contract that takes more than 24 hours to complete, and

[4] The Declaration of Samuel Brooke is attached hereto as Exhibit 2.
[5] These rental provisions have been preliminarily enjoined in other litigation and are not

Section 30 requires probate offices in Alabama to demand proof of U.S. citizenship or lawful immigration status before engaging in any transactions with the office, including recording a deed. See Ex. F to Brooke Decl. These provisions effectively prevent Plaintiffs Doe #1 and Doe

to be the Latino Hispanic Americans . . . .” Ex. M to Brooke Decl. at 7:12-16. Representative Holmes stated: “The purpose of this bill is . . . these Mexican[s] . . . . [Y]ou all are trying to get as many in here out and trying to stop as many coming in [as you can] . . . .” Ex. G to Brooke Decl. at 55:1-4.

current identification decal, "shall be guilty of a Class C misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $50." Id., § 40-12-255(l). Under Alabama law, a Class C misdemeanor is punishable with a three-month jail term, in addition to a fine of up to $500. I

"reasonable suspicion" that they are here without current immigration status—an undefined but unquestionably low standard of proof. Thus Plaintiffs Doe #1 and Doe #2, as well as numerous members of the Class, will be at risk not only of criminal charges, but also of immigration proceedings, detention, and removal.

Furthermore, under Defendants' policy they will be unable to move their manufactured homes out of Alabama because they cannot apply for a moving permit, as required by Alabama Code Section 40-12-255(j) in order to travel on public roads. Plaintiffs Doe #1 and Doe #2 have no other way to obtain a current identification decal or moving permit because Section 30 of HB 56 makes it a crime for any other person to attempt to submit a registration payment, obtain a current identification decal, or apply for a moving permit on behalf of Plaintiffs Doe #1 and Doe #2. HB 56 § 30 (b), (d).

Section 30 of HB 56 applies statewide. Thus, the same unconscionable dilemma faced by Plaintiffs Doe #1 and Doe #2 will be and is already being faced by every member of the Class regardless of which County they live in.[7]

Representative Hammon, one of the two sponsors of

Plaintiff Doe #1 is afraid that he and his family will have to abandon their home in Elmore in order to avoid the fines, penalties, and criminal charges that are authorized under Alabama Code Section 40-12-255 for failure to display a valid identification decal. Id.

the issue. In order to counteract the discriminatory and unlawful impact of HB 56 Section 30 on the communities it serves, Plaintiff FHCNA will have to divert scarce resources away from regularly planned activities. FHCNA Decl. ¶¶ 19, 21 (Ex. 6).[11] Among other things, Plaintiff FHCNA is readjusting its client intake counseling to provide information and assess the impacts of HB 56 on manufactured home residents. Id., ¶ 25(c). Personnel at FHCNA have and will continue to meet with community and civil rights groups regarding the impacts that HB 56 is having on residents of manufactured homes; are engaged in communications with HUD concerning the fair housing implications of HB 56 Section 30; and are preparing informational materials to educate the public about their rights with respect to HB 56 Section 30. Id., ¶¶ 19, 25(a) & (f). Because Plaintiff FHCNA is devoting and will continue to devote its limited resources to these activities, it has been unable to engage in regularly planned programs including testing in fields that it had planned to investigate, such as sales and insurance, and engaging in normal outreach and client intake. Id., ¶ 21.

Defendants' enforcement of HB 56 Section 30 has also frustrated and will continue to frustrate Plaintiff Center for Fair Housing, Inc. ("CFH") in pursuing its mission of promoting fair housing opportunities, and CFH is diverting scarce resources to address the effect of the law. In order to counteract the discriminatory and harmful impact of HB 56 Section 30 on the communities it serves, Plaintiff CFH has had to reach out to organizations that work with immigrant communities, and it has participated in meetings to discuss the applicability of HB 56 Section 30 to manufactured homes. CFH Decl. ¶ 18 (Ex. 7).[12] Plaintiff CFH has begun to do testing of discrimination against Latino and Hispanic individuals, and it will divert more resources for further testing in that area and has spent time researching HB 56 Section 30 and its

[11] The Declaration of Lila E. Hackett for Plaintiff FHCNA is attached hereto as Exhibit 6.
[12] The Declaration of Teresa F. Bettis for Plaintiff CFH is attached hereto as Exhibit 7.

impact on manufactured home residents and communicating with HUD. Id., ¶¶ 18, 24(a) and (d). Plaintiff CFH has also applied to realign its funding from a focus on predatory lending to a focus on outreach and enforcement regarding national origin discrimination. Id., ¶¶ 18, 24(j). These counteraction activities have prevented and delayed Plaintiff CFH from working on other planned activities such as general rental testing and routine outreach concerning other issues. Id., ¶¶ 20, 24(b)-(c).

Each of the organizational plaintiffs will have to continue diverting resources to these counteraction efforts if Defendants' enforcement of Section 30 is not enjoined. CAFHC Decl. ¶ 12; FHCNA Decl. ¶ 18; CFH Decl. ¶ 17.

[redacted]

Plaintiffs seeking a temporary restraining order or preliminary injunction must show:

> (1) a substantial likelihood of prevailing on the merits; (2) that they will suffer irreparable injury unless the injunction issues; (3) that the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the injunction would not be adverse to the public interest.

Rogers v. Windmill Pointe Vill. Club Ass'n, Inc., 967 F.2d 525, 526 (11th Cir. 1992) (citing Gresham v. Windrush Partners, Ltd., 730 F.2d 1417, 1423 (11th Cir. 1984)); see also Louis v. Meissner, 530 F. Supp. 924, 925 (S.D. Fla. 1981).

Courts apply a "balancing-type approach in reviewing a preliminary injunction or temporary restraining order application." Louis, 530 F. Supp. at 925. Thus, "none of the four prerequisites has a fixed quantitative value. Rather, a sliding scale is utilized, which takes into account the intensity of each in a given calculus." Texas v. Seatrain Int'l, S.A., 518 F.2d 175,

180 (5th Cir. 1975).[13] For example, a showing of severe prejudice to the party seeking the temporary injunction "lessens the standard likelihood of success that must be met." Louis, 530 F. Supp. at 925 (citing Canal Auth. v. Callaway, 489 F.2d 567, 572-73 (5th Cir. 1974)).

The fundamental purpose of a temporary restraining order or preliminary injunction is to maintain the status quo

3665340, at *3 (S.D. Ala. Aug. 22, 2011) ("Under the Fair Housing Act, irreparable injury is rebuttably presumed from the fact of a violation."); Hous. Rights Ctr. v. Donald Sterling Corp., 274 F. Supp. 2d 1129, 1140 (C.D. Cal. 2003) ("Irreparable injury is presumed from the fact of discrimination in violation of the Fair Housing Act."); Cousins v. Bray, 297 F. Supp. 2d 1027, 1041 (S.D. Ohio 2003) (similar).

The Eleventh Circuit has recognized that "a litany of irreparable harm . . . occurs whenever housing discrimination occurs." Gresham, 730 F.2d at 1423. In Gresham, the court explained that these irreparable harms "include the loss of safe, sanitary, decent and integrated housing; . . . the loss of housing which is accessible to jobs; and the loss of being unable to escape the never-ending and seemingly unbreakable cycle of poverty." Id. (internal citation omitted). Thus, the denial of housing resulting from enforcement of a discriminatory local law is presumed to cause irreparable harm that monetary relief cannot cure.

(similar). Courts have presumed that irreparable harm results from the enforcement of a state or local law that violates the Supremacy Clause. See, e.g., Morales v. Trans World Airlines, 504 U.S. 374, 381 (1992); Arizona, 641 F. 3d at 366; GLAHR, 2011 WL 2520752 at *18.

The threat of criminal prosecutions that Plaintiff Doe #1, Plaintiff Doe #2, and the proposed Class will face if Defendants are allowed to continue enforcing HB 56 Section 30 also constitutes irreparable harm. See Boyajian v. City of Atlanta, CIVA1:09-CV-3006-RWS, 2009

F.3d 170, 220 (3d Cir. 2010), vacated and remanded on other grounds, 131 S. Ct. 2958 (2011);[14] Villas at Parkside Partners v. City of Farmers Branch, 701 F. Supp. 2d 835, 855 (N.D. Tex

355. The exclusive federal power to regulate immigration is preemptive of state law regardless of whether or not it has been exercised by the federal government. Id. at 355-56.

The combination of Section 30 of HB 56 and Section 40-12-255 of the Alabama Code makes it virtually impossible for the named Plaintiffs and class members to continue living in the homes they have legally purchased in Alabama. Plaintiffs and class members are subject to criminal prosecution for simply attempting to renew their decals, as well as for failing to renew their decals. The reality is that this regulation is designed to accomplish the ouster of individuals from the state, based strictly on immigration status—a point that becomes even clearer when other provisions in HB 56 like Section 13(a)(4) prohibiting renting, and Section 27 prohibiting certain contracts makes clear. See supra at 7. While the State enjoys the prerogative to regulate housing concerns, such as health and safety concerns, there is no colorable argument that Section 30's application to the pre-existing state manufactured home registration scheme focuses on habitability or concerns going to housing conditions. This is a regulation of residence of immigrants pure and simple, and an attempt by the state to determine who should or should not be permitted to remain in Alabama.[15] DeCanas, 424 U.S. at 355; Hazleton, 620 F.3d at 220 ("we cannot bury our heads in the sand ostrich-like ignoring the reality of what these ordinances accomplish. Through its housing provisions, Hazleton attempts to regulate residence based solely on immigration status."). But "deciding which aliens may live in the United States has always been the prerogative of the federal government." Id. Because it intrudes on an "area of 'significant federal presence,'" it is preempted as an impermissible regulation of immigration.

[15] The district court for the Northern District of Alabama did not reach the question of whether Section 30 is facially preempted as an impermissible state regulation of immigration in the cases

status of individuals attempting to register their manufactured homes, these officials are attempting to make these complex status determinations on their own—amounting to an impermissible regulation of immigration. State and local officials will inevitably make mistakes in determining whether an individual is lawfully present in the United States or even a non-citizen in the first place.[17] This, in turn, will lead to discriminatory burdens on "the entrance or residence" of non-citizens in Alabama, in direct contravention of Supreme Court precedent. DeCanas, 424 U.S. at 358 (finding preempted "[s]tate laws

admission to our Nation and status within our borde

inconsistent with the INA." *Lozano*, 620 F.3d at 221. As Justice Blackburn observed in *Plyler*, immigration status is not static—"the structure of the immigration statutes makes it impossible for the state to determine which aliens are entitled to residence, and which eventually will be deported." 457 U.S. at 236 (Blackburn, J., concurring). Furthermore, the decision of whether to initiate removal proceedings, and even whether to remove someone who has a final order, is discretionary and not absolute. *See Lozano*, 620 F.3d at 222. Certain removable aliens, such as victims of domestic violence or victims of crime, are eligible for a path to lawful status, *see* 8

1 [illegible] a

The Fair Housing Act was enacted to promote a broad national policy "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. The Supreme Court has repeatedly held that Congress "considered [this policy] to be of the highest priority." Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 211 (1972); see also City of Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995); Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982); Schwarz v. City of Treasure Island, 544 F.3d 1201, 1216 (11th Cir. 2008). In furtherance of these goals, the Fair Housing Act prohibits housing practices that discriminate based on race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a) through (f).

As Latinos, Plaintiffs Doe #1 and Doe #2 and the Subclass are members of race and national origin groups that are protected under the Fair Housing Act and other civil rights laws that prohibit race and national origin discrimination.[18] See, e.g., Salas v. Wisconsin Dept. of Corr., 493 F.3d 913, 923 (7th Cir. 2007) (citing 29 C.F.R. § 1606.1);[19]

government's provision of housing-related municipal services and facilities. See, e.g., Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 711-13 (9th Cir. 2009)

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A plaintiff claiming discrimination pursuant to § 3604 may prevail by showing that the defendant's challenged conduct is intentionally discriminatory, has a disproportionate adverse effect on members of a protected group, or perpetuates residential segregation. See, e.g.

(hereinafter "Arlington I")); see also United States v. City of Birmingham, Mich., 727 F.2d 560, 566 (6th Cir. 1984) (articulating same test). Courts consider these factors as a whole in determining whether discrimination was a motivating factor for the complained-of conduct, and it is not necessary to establish each factor to prevail on a disparate treatment claim. See, e.g.

sponsor of a similar bill in the Alabama Senate, Senator Beason, expressed a similar intention to drive immigrants from the State, stating just before the legislative session commenced in February 2011 that two communities with a high concentration of Latinos, and no other significant immigrant population, had been "destroy[ed]" by "illegal immigration." Ex. D to

(holding that plaintiffs stated cognizable claim of intentional housing discrimination by alleging that city's enforcement of facially neutral housing policy targeted African Americans); see also, e.g, Ramirez v. Sloss, 615 F.2d 163, 168 (5th Cir. 1980) (cautioning courts to not allow rigid conceptions of discrimination to "blind them to the real issue of whether the defendant illegally discriminated against the plaintiff").

complying with the comprehensive registration scheme established in Alabama Code Section 40-12-255, leading to widespread violations and creating unnecessary burdens on enforcement agencies. Defendants' conduct will furthermore lead to an increase in homelessness and abandoned property as households are forced to leave their manufactured homes in order to avoid becoming status criminals in the eyes of the law. These burdens will fall especially heavily on children of undocumented immigrants, the overwhelming majority of whom are U.S. citizens, *see* Ex. H to Brooke Decl., and who will suffer homelessness and interruption of education if they are no longer able to demonstrate or maintain residency within their school district. Doe #1 Decl., ¶¶ 9, 11; Doe #2 Decl., ¶¶ 9, 17.

Whereas one of the stated legislative goals of HB 56 is to preserve State resources by discouraging unlawful immigration, *see* HB 56 § 2, there is no evidence that spaces for manufactured homes or manufactured homes themselves are scarce resources, and thus no reasonable basis for a claim that allowing individuals who lack proof of U.S. citizenship or lawful immigration status to register their manufactured homes would have any detrimental effect on U.S. citizens or legal permanent residents who live or want to live in manufactured homes in Alabama.

Plaintiffs' evidence of HB 56 Section 30's significant discriminatory effect on Latinos, the legislative history of anti-Latino animus, and departures from substantive criteria lead to the undeniable conclusion that Defendants' challenged actions are intentionally discriminatory.

b a

In determining whether challenged conduct has an unlawful adverse impact on members of a protected group, courts in this Circuit apply the factors articulated in Metropolitan Housing Development Corporation v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977)

("Arlington II"). The relevant factors are: (1) the strength of the showing of discriminatory effect; (2) any evidence of discriminatory intent (the least important factor that need not rise to the level required to prove a discriminatory intent case); (3) the interest of the defendant in taking the action with the discriminatory impact; and (4) whether the plaintiff seeks to compel the affirmative provision of housing by defendants. See, e.g.

where majority of persons affected by challenged policy were African-American); Arlington II, 558 F.2d at 1288 (similar); Smith v. Town of Clarkton, 682 F.2d 1055, 1060-61 (4th Cir. 1982) (disparate impact shown where 69.2% of black families would be affected by challenged policy, compared to 26% of whites).

i [illegible] y

[illegible]

This factor of the disparate impact analysis considers whether there is "some evidence" intentional discrimination, even if that evidence would not by itself support a finding of discriminatory intent. Arlington II, 558 F.2d at 1292. As shown above in Part II.B.4.a.ii of the Argument, this case provides substantial evidence of legislative intent to discriminate against Latinos—indeed, more than sufficient to establish discriminatory intent—by purposefully making it impossible for them to occupy housing anywhere in Alabama. Thus, this factor weighs heavily in favor of finding discriminatory impact.

i [illegible] [illegible]

[illegible]

Defendants lack a legitimate justification for their enforcement of Section 30 of HB 56 that could outweigh the significant discriminatory effect on Plaintiffs Doe #1 and Doe #2 and the Subclass. As shown above in Part II.B.4.a.iii, Defendants' decision to enforce of Section 30 by refusing to accept registration payments from and denying manufactured home identification decals and moving permits to undocumented immigrants will deprive the State and its Counties of revenue and result in an increased inventory of unregistered manufactured homes, without achieving any countervailing goal of preserving scares State resources. At the same time, Defendants' conduct will promote violations of Alabama Code Section 40-12-255 by chilling a

1272 (holding that the public interest is not served by allowing an unconstitutional law that hinders the exercise of individual rights to be enforced).

Courts have likewise recognized that where civil rights are at stake, an injunction serves the public interest "by protecting those rights to which [the public] too is entitled." Nat'l

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