IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 11-14532-CC and No. 11-14674-CC

UNITED STATES,
Plaintiff-Appellant,
v.
STATE OF ALABAMA, ET AL.,
Defendants-Appellees.

Nos. 11-14535-CC and 11-14675-CC

HISPANIC INTEREST COALITION OF ALABAMA, ET AL.
Plaintiff-Appellant,
v.
ROBERT BENTLEY, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Alabama
Case Nos. 5:11-cv-02484-SLB & 2:11-cv-2746-SLB

OPPOSED MOTION TO PARTIALLY VACATE INJUNCTION PENDING APPEAL

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Certificate of Interested Persons in *HICA v. Bentley*,
Nos. 11-14535-CC & 11-14675-CC

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Alabama Education Association (AEA), *Amicus Curiae*

Alabama Fair Housing Center, et al., *Amicus Curiae*

Alabama New South Coalition, *Amicus Curiae*

Alabama NOW, *Amicus Curiae*

Alabama State Conference of the National Association for the Advancement of Colored People (NAACP), *Amicus Curiae*

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The National Asian-Pacific American Bar Association, *Amicus Curiae*

The National Association of Latino Elected Appointed Officials, *Amicus Curiae*

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The National Immigration Law Project of the National Lawyers Guild, *Amicus Curiae*

The New Orleans Workers' Center for Racial Justice, *Amicus Curiae*

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Certificate of Interested Persons in *United States v. Alabama*, Nos. 11-14532-CC & 11-14674-CC

Pursuant to 11th Cir. Rule 26.1-1, counsel for Appellees/Cross-Appellants certify that the following have an interest in the outcome of this appeal:

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Anti-Defamation League

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Birmingham Peace Project

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Colfax, Reed N.

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Colyer, Jennifer L.

Conyers, Jr., Congressman John

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Equality Alabama

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NAACP Alabama Conference

Napolitano, Congresswoman Grace

National Asian-Pacific Bar Association

National Association of Criminal Defense Lawyers

National Association of Latino Elected and Appointed Officials

National Council of La Raza

National Education Association

National Employment Law Project

National Fair Housing Alliance, Inc.

National Guestworker Alliance

National Immigration Law Project of the National Lawyers Guild

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OPPOSED MOTION TO PARTIALLY VACATE THE INJUNCTION PENDING APPEAL

Appellees/Cross-Appellants State of Alabama, Governor Bentley, Attorney General Strange, Superintendent Bice, Interim Chancellor Price, and District Attorney Broussard (the "Appellees") respectfully ask this Court to partially vacate the injunction pending appeal entered by the Court on March 8, 2012, as it applies to ALA. CODE §31-13-29 (HB56 §30). *See* FED. R. APP. P. 8, 27. The injunction pending appeal was in an order that listed both the docket number in *HICA v. Bentley*, No. 11-14535, and the docket number in *United States v. State of Alabama, et al.*, No. 11-14532. Appellees therefore have filed this motion in both cases.

1. On October 14, 2011, this Court enjoined pending appeal certain provisions of the Alabama Code addressing the problems caused by illegal immigration. On March 8, 2012, following oral argument, this Court modified its injunction pending appeal to enjoin two additional provisions: ALA. CODE §31-13-29 (HB56 §30) and §31-13-26 (HB56 §27).

2. At the time of the modified injunction, §31-13-29 prohibited state and local governments from entering into "business transactions" with persons the federal government determines to be unlawfully present, and made it a crime for those persons and persons acting on their behalf to enter into those transactions.

3. Although the Court did not provide the reasons for modifying the injunction, the Appellants had urged the Court to enjoin §31-13-29 because, among other arguments, they believed it was "deceptively broad" and applied to transactions beyond license transactions. *See HICA* Blue Br. 42-43; *HICA* Yellow Br. 23; *see also U.S.* Blue Br. 40-42. For instance, the HICA Appellants asserted that "Section 30 reaches into every aspect of everyday life for immigrants in Alabama, including, *inter alia*: water and sewage services; sanitation, garbage, and recycling services; housing and building occupancy licenses; obtaining a house number; recording a document or engaging in any activity in a probate office; obtaining an animal license; or any sort of business license or car tag, among other publicly provided services." *HICA* Blue Br. 42-43 (citations and footnotes omitted). According to the HICA Appellants, Section 30 went so far as to prohibit persons from "obtaining essential services from public utilities (like water or power)." *Id.* at 43.

4. Conversely, the District Court and Alabama Attorney General both had interpreted the provision as limited to licensing transactions, such as applying for or renewing a driver's license or motor vehicle license plate, and the Appellees advanced this position before this Court. *See HICA* Red Br. 31-32; *U.S.* Red Br. 41-43. Appellants reiterated their broader interpretation at oral argument, and the

Court asked several questions about the validity of the District Court's and Alabama Attorney General's more limited interpretation.

5. The Alabama Legislature recently amended §31-13-29 to clarify that it reaches only license transactions. *See* HB 658/Act No. 2012-491 (signed by Governor Bentley on May 18, 2012), attached as Exh. A. Section 31-13-29 now eschews the "business transaction" language and specifies that it prohibits persons the federal government determines to be unlawfully present and persons acting on their behalf from entering into "public records transactions" with state and local governments. "Public records transactions" are limited to applying for or renewing: a driver's license or nondriver identification card, a motor vehicle license plate, a business license, a commercial license, and a professional license. The current law specifically excludes marriage licenses, "any transaction relating to housing . . . or the ownership of real property," tax payments, and "any other transaction."

6. As the Appellees explained in their briefs, federal law does not preempt state laws that withhold these sorts of licenses from unlawfully present aliens and make it a crime for persons to evade that prohibition. *See U.S.* Red Br. 43-46; *HICA* Red Br. 32-34. Because §31-13-29 now clearly applies to only license transactions, Appellants now have no likelihood of success on the merits of their preemption claim. *See Touchston v. McDermott*, 234 F.3d 1130, 1132 (11th Cir. 2000) ("For this Court to grant the extraordinary remedy of an injunction

pending appeal, the petitioners must show . . . a substantial likelihood that they will prevail on the merits of the appeal . . . ."). Absent such a showing, the injunction pending appeal is due to be vacated as to §31-13-29.

7. The balance of the equities also favors vacating the injunction against §31-13-29. The State has a strong interest in enforcing this validly-enacted statute. Such statutes "should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the Constitution." *Atkin v. Kansas*, 191 U.S. 207, 223, 24 S. Ct. 124, 128 (1903). Indeed, "the public interests imperatively demand" this result. *Id.* For this reason, the harm which would result from a continued injunction barring enforcement of §31-13-29 tips in favor of the State Defendants and the public, both of whom have an interest in noninterference by a federal court in a State's legislative enactments.

8. The Appellees have conferred with Appellants in both appeals about this motion. The Appellants oppose the motion and plan to file written oppositions.

The Appellees therefore respectfully ask this Court to partially vacate the injunction pending appeal as to ALA. CODE §31-13-29.

Respectfully submitted,

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I hereby certify that on May 24, 2012, I electronically filed the above and foregoing with the Clerk of the Court using the PACER/CM/ECF system, and served the following attorneys by electronic mail:

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