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At Knoxville

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

LIBERTY LEGAL FOUNDATION;
RICHARD MACK, and
MILLARD RAMSEY

Plaintiffs,

v.

BARACK H. OBAMA, in his Official Capacity
as President of the United States;
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY;
JANET NAPOLITANO, in her Official Capacity
as Secretary of the Department of Homeland Security;
ERIC HOLDER, in his Official Capacity as
Attorney General of the United States;
DAVID PALMATIER, in his Official Capacity
as Unit Chief for the Law Enforcement Support Center;
and
the UNITED STATES,

Defendants

CASE NO: 3:10-CV-402
Judge: Phillips/Guyton

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Liberty Legal Foundation, Richard Mack, and Millard Ramsey on behalf of themselves and all others similarly situated, by and through their undersigned counsel Van Irion, bring this Complaint for declaratory and injunctive relief against the United States, its officers,

its employees, and its agents, and in support thereof allege the following upon information and belief.

JURISDICTION & VENUE

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346, and 1361. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and pursuant to the Federal Rules of Civil Procedure 57 and 65, and the general legal and equitable powers of this Court.
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and 1402.

NATURE OF THE ACTION

A. Federal Supremacy and Preemption Doctrine are Conditioned Upon Enforcement and are Waived in the Absence of Enforcement

3. The People and the States did delegate their authority to regulate immigration to the federal government. (U.S. Const. Art. 1 §8; Amd. 10). However, delegation of that authority created a responsibility and duty upon the federal government to actually enforce immigration laws.
4. In its attempt to prevent states from enforcing existing immigration law the Obama administration has argued that State enforcement of immigration law is preempted. However, the supremacy clause of Article 6, the basis of preemption doctrine, does not prevent states from passing legislation and enforcing that legislation unless and until the federal government enters a particular field of subject matter by regulating

that subject matter itself.¹ In other words, the States retain their right to regulate and enforce law in the absence of federal regulation and enforcement.

5. The supremacy clause and preemption doctrine presume active enforcement of the federal law at issue. Failure to enforce federal law results in waiver of federal supremacy and negates preemption.
6. Explicit refusal, as opposed to simple failure, by the federal government to enforce immigration law certainly results in waiver of federal supremacy related to immigration law.

B. Failure and Refusal to Enforce Existing Immigration Law

7. The federal government has not only failed to enforce immigration law, the executive branch has now explicitly refused to enforce immigration law. Failure to act has escalated to explicit refusal to act.
8. The federal government's failures and refusals to enforce existing immigration law have caused "rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns." (Or. granting U.S. mot. Prelim. Inj., p.1, *U.S. v. Arizona* (July 28, 2010)).
9. The federal government's refusal to enforce existing immigration law amounts to a violation of its duty to "protect each [State] against invasion." (U.S. Const. Art.4 §4).

C. Prevention of State Enforcement

10. In the absence of federal enforcement of existing federal law, individual states have ramped up their efforts to enforce federal immigration law. However, not being

¹ In order for federal law to preempt state law the federal law must also be "made in pursuance" of the Constitution. U.S. Const. Art. 6.

satisfied with its own refusal to enforce federal law, the federal government has now sued the State of Arizona in order to prevent individual states from enforcing federal immigration law.

D. Executive Branch Itself Violated Existing Immigration Law

11. In its lawsuit against Arizona the executive branch of the federal government is, itself, in violation of federal immigration law. 8 U.S.C. §1373(b) prohibits any person or agency from taking any action that would restrict or prevent local law enforcement from requesting immigration status information from the federal government. Yet the executive branch has now taken action to restrict local law enforcement from requesting immigration status information from the federal government.

E. Destruction of Separation of Powers

12. In its lawsuit against Arizona the executive branch of the federal government argued that allowing state and local law enforcement agents to enforce immigration law would “redirect federal agencies away from the priorities they have established.” (Or. granting U.S. mot. Prelim. Inj., p.17, *U.S. v. Arizona* (July 28, 2010)).
13. The executive branch is not only violating federal immigration law, it is successfully arguing in federal court that it doesn’t have to follow established law. Federal agencies do not have the authority to “establish” their own “priorities” when Congress has passed laws that create mandatory duties. Such laws LEGISLATIVELY establish mandatory priorities that must be followed by executive agencies.
14. 8 U.S.C. §1373(b) is just one example of laws passed by Congress, and signed by previous Presidents, that the current President is refusing to follow. By violating 8

U.S.C. §1373(b) and “establishing” its own “priorities” the Obama administration’s agencies have destroyed the separation of powers established in the Constitution. If the executive branch is allowed to ignore established law in favor of their own priorities then the legislative branch is made powerless. If the Obama administration is allowed to ignore mandatory priorities set by Congress in existing immigration law, then he will have effectively overcome the power of Congress and set up an American dictatorship.

CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this action on behalf of themselves and a class of persons initially defined as follows:

All persons in the United States of America who object to the federal government’s failure and refusal to enforce immigration law, object to the federal government’s attempts to prevent states from enforcing existing immigration law, object to the Obama administration’s violation of existing federal law, object to the Obama administration’s attempts to destroy the separation of powers established in the U.S. Constitution, and object to the federal government’s failure to “protect each of them from invasion.” (the "Class").

16. This action has been brought and may properly be maintained on behalf of the Class proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

17. Numerosity. Members of the Class are so numerous that their individual joinder herein is impracticable. Hundreds of millions of U.S. citizens have been negatively affected by the federal government’s actions and failures to fulfill its duties, as described herein.

18. Existence and predominance of common questions. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. These common questions include the following:
- a. Does the federal government's failure and refusal to enforce immigration law result in waiver of supremacy of federal law?
 - b. Does the federal government's failure and refusal to enforce immigration law result in a violation of the federal government's duties under Article 4 of the U.S. Constitution?
 - c. Have agencies of the executive branch violated existing federal immigration law?
 - d. Has the Obama administration violated the separation of powers established in the U.S. Constitution?
19. Typicality. Plaintiffs' claims are typical of the claims of the Class, because, among other things, all Plaintiffs object to the federal government's failure and refusal to enforce immigration law, object to the federal government's attempts to prevent states from enforcing existing immigration law, object to the Obama administration's violation of existing federal law, object to the Obama administration's attempts to destroy the separation of powers established in the U.S. Constitution, and object to the federal government's failure to "protect each of them from invasion."
20. Adequacy. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the members of the Class they seek to represent. Plaintiffs have retained counsel competent in complex class action litigation, and

Plaintiffs intend to prosecute this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

21. Superiority. The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against the Defendants economically feasible. Even if Class members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing myriad actions arising from the claims described herein, individualized litigation presents a potential for inconsistent or contradictory judgments, individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

22. In the alternative, the Class may be certified because:

- a. the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for Defendants;
- b. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the

adjudications, or substantially impair or impede their ability to protect their interests; and

- c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

PLAINTIFFS

A. Liberty Legal Foundation

23. Plaintiff Liberty Legal Foundation (hereinafter “LLF”) falls under the definition of a 501(c) 3 charitable organization. Its primary goal is the defense of basic human rights. Its stated mission is to “Strategically challenge flawed court precedent to restore the Constitution and individual liberties.”

24. Plaintiff Millard Ramsey is a member of LLF.

25. Plaintiff Millard Ramsey hereby incorporates by reference all of the allegations set forth in this complaint as to the defendants’ actions and failures to act and he objects to them as a member of LLF.

26. Plaintiff LLF incorporates by reference all of the other allegations of this complaint as if fully set forth herein.

B. Arizona Citizens

27. Richard Mack is a United States citizen, is a citizen of the State of Arizona, is a former Sheriff for Graham County, Arizona, and was one of the parties that successfully challenged aspects of the Brady Bill which attempted to compel state law enforcement officers to act at the direction of the federal government. See

Printz/Mack v. United States, 521 U.S. 898 (1997). Richard Mack is also an author and lecturer on the subjects of State Sovereignty, the 10th Amendment, and the proper role of law enforcement in American government.

28. As a direct and proximate result of the defendant's actions and failures to act, Plaintiff Richard Mack is concretely and continuously harmed by the "rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns." (Or. granting U.S. mot. Prelim. Inj., p.1, *U.S. v. Arizona* (July 28, 2010)).
29. Richard Mack will serve as an adequate representative of the Arizona citizens of the Class because his interests do not conflict with the interests of the Arizona citizen members of the Class and the interests of the Arizona citizen members of the Class will be fairly and adequately protected by Richard Mack.
30. This Plaintiff incorporates by reference all of the other allegations of this complaint as if fully set forth herein.

C. Other United States Citizens

31. Millard Ramsey is a United States Citizen currently residing in Tennessee.
32. Millard Ramsey will serve as an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class and the interests of the members of the Class will be fairly and adequately protected by Millard Ramsey.
33. As a direct and proximate result of the defendant's actions and failures to act, Plaintiff Millard Ramsey is concretely and continuously harmed by the "rampant illegal immigration, escalating drug and human trafficking crimes, and serious public

safety concerns.” (Or. granting U.S. mot. Prelim. Inj., p.1, *U.S. v. Arizona* (July 28, 2010)).

34. This Plaintiff incorporates by reference all of the other allegations of this complaint as if fully set forth herein.

DEFENDANTS

35. Defendant Barack H. Obama is an individual currently holding the office of the President of the United States. As President Defendant Obama is responsible for ensuring the proper execution of federal law. Defendant Obama is sued in his official capacity.

36. Defendant Department of Homeland Security (hereinafter “DHS”) is an executive department of the United States. *See* Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135 (2002). DHS is responsible for the administration and enforcement of laws relating to immigration, as well as the investigation of immigration crimes and protection of the United States border against the illegal entry of aliens. *See* 8 U.S.C. § 1103.

37. Defendant Janet Napolitano is the Secretary of DHS. Defendant Napolitano is sued in her official capacity.

38. Defendant Eric Holder is the Attorney General of the United States of America. Defendant Holder heads the Department of Justice. He is the chief law enforcement officer of the federal government. As Attorney General Defendant Holder is charged with enforcing the civil and criminal laws of the United States, including 8 U.S.C. §1373. Defendant Holder is sued in his official capacity.

39. Defendant David Palmatier is a Unit Chief for the Law Enforcement Support Center (hereinafter “LESC”). The LESC is a national immigration enforcement center established by DHS and administered by Immigrations and Customs Enforcement.

40. Defendant United States of America (hereinafter “US”) is a political entity formed by and under the Constitution of the United States. Said Defendant was created for the sole purpose of serving the individual States and the people.

STANDING

41. All individual Plaintiffs have standing because they are individuals directly affected by the federal government’s refusal to enforce immigration law, resulting in “rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns.” (Or. granting U.S. mot. Prelim. Inj., p.1, *U.S. v. Arizona* (July 28, 2010)).

42. Plaintiff LLF has standing as an association representing its members. This lawsuit is in accord with LLF’s mission, described above, to defend basic human rights and challenge flawed court precedent. An association has standing to bring suit on behalf of its members when: a) its members would otherwise have standing to sue in their own right; b) the interests it seeks to protect are germane to its organization’s purpose; and c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. See *Hunt v. Washington State Apple Advertising Cmm’n*, 432 U.S. 333, 342 (1977). Plaintiff members of LLF have standing because they are directly affected by the federal government’s refusal to enforce immigration law, resulting in “rampant illegal immigration, escalating drug

and human trafficking crimes, and serious public safety concerns.” (Or. granting U.S. mot. Prelim. Inj., p.1, *U.S. v. Arizona* (July 28, 2010)). This lawsuit is germane to LLF’s purpose because protection of the separation of powers established in the Constitution is necessary for the protection of basic human rights. Participation of all LLF members is not required because LLF represents its members’ common interests in opposing federal violations of federal law and the U.S. Constitution.

STATEMENT OF FACTS

43. Article IV §4 of the United States Constitution states in relevant part: “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion.
44. Currently the States are experiencing “rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns” caused by illegal immigration. *See* Or. Granting Pl.s’ Mot. Prelim. Inj. at 1 (July 28, 2010).
45. The States’ delegation of authority to the United States to regulate immigration created an implied condition that the United States would enforce such regulations sufficient to prevent “rampant illegal immigration.” *See also* U.S. Const. Amd. X.
46. No part of the U.S. Constitution waives the States’ sovereign right to protect their citizens against “rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns” caused by illegal immigration.
47. Where the US has refused to enforce immigration regulations sufficient to prevent “rampant illegal immigration,” the US has waived its right to exercise authority delegated to it by the States regarding immigration.

48. Where the US has refused to enforce immigration regulations sufficient to prevent “rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns” caused by illegal immigration, the US has waived its right to prevent the sovereign States from protecting their citizens by any means necessary.
49. 8 U.S.C. §1373(b) states in relevant part “Notwithstanding any other provision of Federal, State, or local law, ...no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) ...requesting or receiving such information from, the Immigration and Naturalization Service.”
50. The US has requested that an AZ Court invalidate an Arizona law that would require Arizona law enforcement to request information referred to in 8 U.S.C. §1373(b).
51. The current President of the United States, through the DHS, is violating 8 U.S.C. §1373(b) and is attempting to invalidate Arizona law because both the Arizona law and existing federal immigration law, signed by a previous President, interfere with priorities the current President and his administrative department have established.
52. By ignoring existing federal immigration law, including 8 U.S.C. §1373, DHS and the current President of the United States have asserted authority that was explicitly granted to Congress, not to the Executive branch, by the U.S. Constitution.

FIRST CAUSE OF ACTION

(Abuse of Authority/Breach of Separation of Powers)

53. The actions of Defendants United States, DHS, Obama, Holder, Napolitano, and Palmatier, as set forth in paragraphs 1-52 above, which are fully incorporated herein, are not within the scope of authority granted to the Executive branch of the United States through the U.S. Constitution.
54. As a direct result of Defendants United States, DHS, Obama, Holder, Napolitano, and Palmatier's abuse of authority, the Plaintiffs have suffered direct and immediate violations of their Constitutional rights and are therefore entitled to injunctive and declaratory relief pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201; to redress and remedy of the violations, and to prevent irreparable harm and future violations of their rights and the rights of others.

SECOND CAUSE OF ACTION

(Violation of 8 U.S.C §1357)

55. The actions of the Defendants United States, DHS, Obama, Holder, Napolitano, and Palmatier, as set forth in paragraphs 1-52 above, which are fully incorporated herein, violate the explicit mandates placed upon said Defendants by 8 U.S.C §1357.
56. As a direct result of Defendants United States, DHS, Obama, Holder, Napolitano, and Palmatier's actions, the Plaintiffs have suffered direct and immediate violations of their Constitutional rights and are therefore entitled to injunctive and declaratory relief, pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201;

and to redress and remedy of the violations, and to prevent irreparable harm and future violations of their rights and the rights of others.

THIRD CAUSE OF ACTION

(Violation of Article IV §4)

57. The actions of Defendants United States, DHS, Obama, Holder, Napolitano, and Palmatier, as set forth in paragraphs 1-52 above, which are fully incorporated herein, represent a violation of Article IV §4 the U.S. Constitution because the US has failed to protect the States against invasion and has instead materially hampered the sovereign States' attempts to protect its citizens from "rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns" caused by illegal immigration.

58. As a direct result of Defendants United States, DHS, Obama, Holder, Napolitano, and Palmatier's actions, the Plaintiffs have suffered direct and immediate violations of their constitutional rights and are therefore entitled to injunctive and declaratory relief pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201; and to redress and remedy of the violations, and to prevent irreparable harm and future violations of their rights and the rights of others.

RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request that this Court,

1) declare that the actions of the Defendants violated 8 U.S.C §1357;

- 2) declare that the actions of the Defendants were in contravention of Plaintiffs' Constitutional rights;
- 3) issue an order granting permanent injunctive relief;
- 4) retain jurisdiction of this action to ensure compliance with this Court's decrees; and
- 5) grant such other relief as this Court deems equitable, just, and proper.

Dated: 9/16/10



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