

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INGRID BUQUER, <i>et al.</i> ,)	
)	Cause No. 1:11-cv-0708-SEB-MJD
Plaintiffs,)	
)	
v.)	
)	
CITY OF INDIANAPOLIS, <i>et al.</i> ,)	
)	
Defendants.)	

MOTION FOR STAY OF PROCEEDINGS

Defendants Marion County Prosecutor in his official capacity and Johnson County Prosecutor in his official capacity (hereinafter “State Defendants”), by counsel, respectfully move this Court to enter an order that stays further proceedings before this Court pending completion of appeal and ruling by the United States Supreme Court in *Arizona v. United States*, 641 F.3d 339 (9th Cir. 2011), *certiorari granted*, --- S.Ct. ---, 2011 WL 3556224 (December 12, 2011). In support of this motion, State Defendants state as follows:

1. On May 25, 2011, Plaintiffs filed a complaint seeking declaratory and injunctive relief regarding Section 20 of Senate Enrolled Act 590, which amends Indiana Code § 35-33-1-1 to add (a)(11) through (a)(13), and Section 18 of Senate Enrolled Act, which adds Indiana Code § 34-28-8.2, which were to go into effect on July 1, 2011. (DE 1).

2. Section 20 of Senate Enrolled Act 590 provides that “a law enforcement officer may arrest a person when the officer has: . . . (11) a removal order issued for the person by an immigration court; (12) a detainer or notice of action for the person issued by the United States Department of Homeland Security; or (13) probable cause to believe that the person has been indicted for or convicted of one (1) or more aggravated felonies (as defined in 8 U.S.C.

1101(a)(43)).” Plaintiffs assert that this amendment is preempted by federal law and violates the Fourth Amendment of the United States Constitution.

3. Section 18 of Senate Enrolled Act 590 makes it an infraction to use a consular identification card as a form of identification. Plaintiffs allege this provision is preempted by federal law and a violation of the Fourteenth Amendment of the United States Constitution.

4. On May 26, 2011, Plaintiffs filed a motion for preliminary injunction seeking to enjoin enforcement of the provisions listed above. (DE 14). After briefing and a hearing held on June 20, 2011, the Court granted the Plaintiffs’ motion for preliminary injunction on June 24, 2011. (DE 79).

5. Plaintiffs also moved to certify two separate classes of Plaintiffs in this matter on June 7, 2011. (DE 40). The parties agreed to class certification and filed a stipulation on July 8, 2011. (DE 82).

6. On October 11, 2011, State Defendants filed a motion for leave to amend their answer with supporting memorandum and a motion to join the United States as a necessary party with supporting memorandum. (DE 102-105).

7. On November 20, 2011, the Plaintiffs filed a motion for summary judgment with supporting memorandum. (DE 122, 123).

8. On December 15, 2011, State Defendants filed a motion and supporting memorandum pursuant to Fed. R. Civ. P. 56(d) requesting additional time to complete discovery prior to responding to the Plaintiffs’ motion for summary judgment. (DE 132, 133).

9. The case of *Arizona v. United States* presents a similar challenge as that at issue in this matter. In *U.S. v. Arizona*, the Court was presented the question of whether Arizona’s statute, giving state and federal officers the discretion to, “without a warrant, arrest a person if

the officer has probable cause to believe ... [t]he person to be arrested has committed any public offense that makes the person removable from the United States[,]” was preempted by federal law. *See United States v. Arizona*, 641 N.E.2d 339, 360-61 (9th Cir. 2011) (quoting Ariz. Rev. Stat. Ann. § 13-3883(A)(5)).

10. On December 12, 2011, the United States Supreme Court granted a writ of certiorari in *Arizona v. United States*. --- S.Ct. ---, 2011 WL 3556224 (December 12, 2011).

11. The question presented in *Arizona v. United States* “is whether the federal immigration laws preclude Arizona’s efforts at cooperative law enforcement and impliedly preempt these four provisions of S.B. 1070 on their face.” United States Supreme Court Docket 11-182 <http://www.supremecourt.gov/qp/11-00182qp.pdf> (last visited December 20, 2011).

12. The questions presented in this case regarding whether federal law preempts law enforcement officials within the State of Indiana from providing support to federal officials in immigration matters are substantially similar to the questions that will be resolved in *Arizona v. United States*.

13. This Court may and should stay proceedings because the early determination of this substantial question of law will promote a more orderly disposition of this case and the interests of judicial economy.

14. Pending resolution of this issue before the Supreme Court, Defendants remain under the preliminary injunction issued by this Court on June 24, 2011. Thus, staying proceedings in this court will not prejudice the Plaintiffs or the administration of justice.

15. State Defendants respectfully request that the Court stay proceedings in this matter pending completion of appeal and ruling by the United States Supreme Court in *Arizona v. United States*.

16. Counsel for State Defendants has spoken with Kenneth J. Falk, counsel for the Plaintiffs, regarding this request to stay these proceedings. Mr. Falk stated that Plaintiffs do object to staying these proceedings pending final resolution of the *Arizona v. United States* matter.

17. Counsel for State Defendants has also spoken with Justin Roebel, counsel for the City of Indianapolis, regarding this request to stay proceedings. Mr. Roebel stated that the City of Indianapolis does not object to staying these proceedings.

WHEREFORE, State Defendants, by counsel, respectfully request the Court enter an Order to stay proceedings in this case pending final resolution and ruling by the United States Supreme Court in *Arizona v. United States* and to grant all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was filed electronically on this 21st day of December, 2011. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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