CASE NO. CIV-07-613-GKF-FHM

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

NATIONAL COALITION OF LATINO CLERGY and CHRISTIAN LEADERS, INC., CONLAMIC - OKLAHOMA, CHURCH EFICAZ, CHURCH PIEDRA ANGULAR, MEXICO LINDO RESTAURANTS, JOHN DOE ONE, et al.,

Plaintiffs,

vs.

BRAD HENRY, GOVERNOR OF THE STATE OF OKLAHOMA and W. A. DREW EDMONDSON, ATTORNEY GENERAL OF STATE OF OKLAHOMA,

Defendants.

GOVERNOR BRAD HENRY AND ATTORNEY GENERAL W. A. DREW EDMONDSON'S MOTION TO DISMISS

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GOVERNOR BRAD HENRY AND ATTORNEY GENERAL
W.A. DREW EDMONDSON'S MOTION TO DISMISS

COMES NOW, Governor Brad Henry ("Governor") and Attorney General W.A. Drew Edmondson ("AG" or "Attorney General"), to file this Motion to Dismiss pursuant to [1] Federal Rule of Civil Procedure ("FRCP") Rule 12(b)(1) for lack of subject matter jurisdiction, [2] pursuant to FRCP 12(b)(6) for failure state grounds upon which this Court can grant relief, and [3] pursuant to FRCP 17(a). In support of this motion, Defendants would show this court the following:

GENERAL STATEMENT OF THE CASE

On May 1, 2007, the Oklahoma Legislature passed the Oklahoma Taxpayer and Citizen Protection Act of 2007 ("Act"). The Act contains fourteen sections relating to illegal

aliens. Most provisions of the act become effective November 1, 2007. Section 7 of the Act, which applies to verifying the federal employment authorization status of employees, does not become effective until July 1, 2008. (Exhibit No. 1 - House Bill No. 1804).

Plaintiffs in this case can be divided into four categories. The organizational plaintiffs are the National Coalition of Latino Clergy and Christian Leaders (CONLAMIC-USA) and CONLAMIC Oklahoma, the local organization. A second category of plaintiffs are the Church Plaintiffs, Church Eficaz and Church Piedra Angular. The third category of plaintiff identifies itself as Mexico Lindo Restaurant, and will be referred to as the Employer-Plaintiff. The final category of plaintiffs are pseudonym plaintiffs referred to as "John and Jane Does". All of the Plaintiffs have alleged the Act violates their Oklahoma and United States Constitutional rights. They have filed this lawsuit pursuant to 42 U.S.C. § 1983, § 1981, and § 1982 asking this Court to declare the Act unconstitutional. They have also asked this Court to grant them a Preliminary Injunction pending this Court's ruling on the merits of their claims.

PSEUDONYM- PLAINTIFFS ARE IMPROPER PARTIES PURSUANT TO FRCP 17(a)

The Organizational Plaintiffs, Church-Plaintiffs, and Employer-Plaintiff are joined in this lawsuit by several pseudonym plaintiffs. Allowing Plaintiffs to use pseudonyms is "an unusual procedure." *M.M. v. Zavaras*, 139 F.3d 798, 800 (10th Cir. 1998). There is no specific statute or rule supporting the practice. *Id.* The Federal Rules of Civil Procedure and Rule 17(a) specifically states that "[e]very action shall be prosecuted in the name of the real

party in interest." Fed.R.Civ.P. 17(a). Issues of res judicata and collateral estoppel could be severally hampered if a party were allowed to proceed under a pseudonym in one lawsuit, but then turn-around and challenge the same statute again in another case. *Femedeer v. Haun*, 227 F.3d 1244 (10th Cir. 2000). The Tenth Circuit has elaborated on the issue:

> Lawsuits are public events. A plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity. The risk that a plaintiff may suffer some embarrassment is not enough. *Id.* at 1246.

"Ordinarily, those using the courts must be prepared to accept the public scrutiny that is an inherent part of public trials." *Id*. at 1246. A civil action "is not a masquerade party nor is it a game of judicial hide-n-seek where the plaintiff may offer the defendant the added challenge of uncovering his real name." *Zocaras v. Castro*, 465 F.3d 479 (11th Cir.2006). Furthermore, Federal Rule of Civil Procedure 10 expressly requires that every complaint contain a caption setting forth a title containing "the names of all the parties." FRCP 10(a).

Plaintiffs, John and Jane Does, claim they do not want to be identified as the "real parties in interest" in this case, because they fear criminal prosecution and the public scrutiny involved in identifying themselves. However, such reasoning does not meet the Tenth Circuit's standard for allow such anonymity. Plaintiffs are asking this Court to allow them to remain anonymous as illegal aliens because they do not want to be persecuted or arrested for being illegally in this country. In other words, they want the freedoms, benefits, and rights our courts grant *citizens* but without the responsibility inherent with those rights. This

Court should dismiss all John and Jane Does from this lawsuit pursuant to Rule 17(a) as not real parties in interest.

THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE CLAIMS UPON WHICH RELIEF CAN BE GRANTED

Federal Court subject matter jurisdiction is determined by Article III of the United States Constitution. In order to have Article III jurisdiction, a plaintiff must have standing to sue. The question of standing presents a threshold jurisdictional issue, therefore a Court may raise the issue *sua sponte*. *See Rector v. City and County of Denver*, 348 F.3d 935, 942 (10th Cir.2003). "Standing" has both constitutional and prudential components. *See Id*. For a party to have constitutional standing, there must be: (1) an injury to the party's legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) a causal relationship between the injury and the challenged conduct; and (3) a likelihood that the injury will be redressed by a favorable decision. See *id*. A party has prudential standing if: (1) the party asserts its own rights, not those of third parties; (2) the party's claim is not a general grievance shared equally and generally by all or a large class of citizens; and (3) the party's injury is within the zone of interests the statute or common law claim intends to protect. *See Board of County Comm'rs v. Geringer*, 297 F.3d 1108, 1112 (10th Cir.2002).

Furthermore, a plaintiff must also state a valid claim under a remedial statute and state what constitutional or federal law has been violated. Otherwise the case should be dismissed pursuant to FRCP 12(b)(6) for failure state a claim upon which relief may be granted.

Plaintiffs have alleged sixteen claims against the Defendants and that this Court should grant them declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, § 1981, and § 1982. Each Claim will be addressed below.

Claim One - The Supremacy Clause and Federal Preemption

The Plaintiffs collectively allege that the Act violates the United States Constitution's Supremacy Clause and is further preempted by federal immigration law. No individual Plaintiff is identified under this claim and Plaintiffs have not alleged any injuries they would have as a result of the Act's application other then how it could affect "employers", in general. Since the Employer-Plaintiff ("Lindo Restaurant") is the only identified employer in the Complaint, it is assumed that only that Plaintiff is challenging the Act under Claim One. However, the Employer-Plaintiff's only alleged injuries are that "since the passage of the Act it has lost business" (Exhibit No. 2, para. 32). Such speculative injury cannot be attributed to the Act, since the Act has not even taken effect yet. That admission by the Employer-Plaintiff proves that there is no causal connection between the actual Act and the Employer-Plaintiff's alleged injury.

The Employer-Plaintiff has even admitted that it does fully comply with federal law when hiring employees (Exhibit No. 2, para. 33), and that on November 1, 2007, it will

comply with State law. (Exhibit No. 2, para. 35). Its only other possible injury is its statement under paragraph 37, that the Act will be "burdensome and time consuming" in its hiring of new employees. (Exhibit No. 2) But such compliance is no more burdensome then the paying of taxes or social security on its non-illegal alien employees, which it admits it already does. *See Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000)(Neither the mere existence of a prospective statute nor a generalized threat of prosecution satisfies the "case or controversy" requirement of Article III standing). Clearly neither, the Employer-Plaintiff (nor any other Plaintiff) has standing under Claim One to sue the Governor or the Attorney General, and this Court should dismiss Claim One pursuant to FRCP 12(b)(1) for lack of subject matter standing jurisdiction.

Claim Two - Violation of the First Amendment Free Exercise Clause - U.S. Constitution

This claim is asserted by the Organizations for its member Churches and by the Church-Plaintiffs. (Exhibit No. 2, para. 155-161). They claim that the Act violates their First Amendment Free Exercise rights because the Act "places substantial burdens on their beliefs and practices." (Exhibit No. 2, para. 158). However, the "transportation of illegal aliens" does not come within the protected rights enumerated in First Amendment "free exercise"clause of the U.S. Constitution. Furthermore, neither the Church-Plaintiffs nor the Organization-Plaintiffs are "persons" subject to criminal prosecution. No individual Church member or officer is named as a Plaintiff in this case. Finally, because the elements of the federal and state crimes are identical, Plaintiffs' claim that Church members intend to

continue to transport illegal aliens is essentially an admission that they plan to commit a federal felony in the future. See 8 U.S.C. § 1324(a)(1)(A)(ii). Congress has firmly established that there is a substantial interest in the effective enforcement of immigration law. *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *INS v. Miranda*, 459 U.S. 14, 19 (1982). And even though immigration is a federal matter, local and state government agencies may not turn a blind eye to any illegal activity, including violations of immigration law. *U.S. v. Ontoniel Vasquez-Alvarez*, 176 F.3d 1294 (10th Cir. 1999); *See also American Friends Service Committee Corp. v. Thornburgh*, 961 F.2d 1405(9th Cir. 1991)(Quakers had no free exercise clause claim to help illegal aliens in violation of federal law). Therefore, not only should this Court dismiss Claim Two on lack of *standing* grounds pursuant to FRCP 12(b)(1) for lack of subject matter standing jurisdiction, but also pursuant to FRCP 12(b)(6) for failure to state a claim upon which this court could grant relief since there is no "free exercise" right to transport illegal aliens.

Claim Three - Violation of Due Process -Vagueness and Overbreath - U.S. Constitution

No particular Plaintiff is identified under this Claim. The Complaint alleges that Section 3 of the Act is unconstitutionally vague and overly broad in violation of the due process clause because:

> (1) "it fails to specify the precise conduct that constitutes transporting, moving, attempting to transport an undocumented alien in furtherance of the illegal presence of the alien in the United States." (Exhibit No. 2, para. 166).

(2) "it fails to specify the precise conduct that constitutes concealing, harboring or sheltering an undocumented alien from detection." (Exhibit No. 2, para. 167).

(3) "if [SIC] fails to specify what documentation or proof on the part of the alien would suffice to prevent a person transporting, moving, attempting to transport, concealing, harboring, or sheltering the alien form doing these activities with knowledge or reckless disregard for the alien's unlawful presence."

Even assuming this allegation is referring to the Church-Plaintiffs, this Court should dismiss this claim pursuant to FRCP 12(b)(1) for lack of standing and pursuant to FRCP 12(b)(6) for failure to state a claim upon which relief can be granted because those claims are too speculative and are not grounded on the law. *U. S. v. Moreno*, 561 F.2d 1321 (9th Cir. 1977)(federal mirrored statute 8 U.S.C. § 1324 not unconstitutionally vague). Again, a Church is not a "person" subject to criminal prosecution, and no Church member has been made a party to this lawsuit. *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000)(Neither the mere existence of a prospective statute nor a generalized threat of prosecution satisfies the "case or controversy" requirement of Article III standing).

The Complaint also alleges that Section 5 of the Act (22 O.S. § 171.2) is unconstitutionally vague because:

(1) "it fails to specify what documents or proof are needed in order to determine the citizenship status or lawful immigration status of a prisoner or verify that the prisoner has been lawfully admitted to the United States". (Exhibit No. 2, para. 171).

(2) it fails to specify whether, in the event that verification of lawful status cannot be made from documents in the possession of the prisoner, the prisoner must remain incarcerated for the specified 48 hours within which verification must be made." (Exhibit No. 2, para. 172).

No Plaintiff herein has standing to bring this claim. No Plaintiff has alleged he or she is a "prisoner" or is in jail. Therefore, this Court should dismiss this claim pursuant to FRCP 12(b)(1) for lack of standing and pursuant to FRCP 12(b)(6) for failure to state a claim upon which relief can be granted.

Finally, the Complaint alleges that the Act is unconstitutionally vague because "it fails to specify what constitutes an independent, third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in [Section 6, Subsection 1] which would insulate an employer from strict liability under Section 7." (Exhibit No. 2, para. 173). Even assuming this allegation is referring to the Employer-Plaintiff, that Plaintiff has failed to state a claim upon which relief can be granted, because it has already admitted that it will fully comply with federal and state law. (Exhibit No. 2, para. 35-37). Therefore, even the Employor-Plaintiff has not suffered any injury and lacks standing to bring this lawsuit.

Claim Four - Violation of the Oklahoma Constitution - Vagueness and Overbreath

This Court should dismiss this claim for failure to state a claim upon which this Court can grant relief pursuant to FRCP 12(b)(6) because "violation of **state law** cannot give rise to a claim under Section 1983." *Marshall v. Columbia Lea Regional Hosp.*, 345 F.3d 1157,

1164 (10th Cir. 2003). "Section 1983 does not . . . provide a basis for redressing violations of state law, but only for those violations of federal law done under color of state law." *Jones v. City and County of Denver*, 854 F.2d 1206, 1209 (10th Cir. 1988). "While it is true that state law with respect to arrest is looked to for guidance as to the validity of the arrest since the officers are subject to those local standards, it does not follow that state law governs." *Wells v. Ward*, 470 F.2d 1185, 1187 (10th Cir. 1972).

No plaintiff has standing to sue for the alleged violations claimed under Claim Four, because no Plaintiff has been identified as a prisoner and the Employer-Plaintiff has admitted that it plans to fully comply with state and federal law in its employment practices. Therefore, this Court should dismiss this Claim pursuant to FRCP 12(b)(1) for lack of subject matter Article III *standing* jurisdiction, and pursuant to FRCP 12(b)(6) for failure to state claims upon which this Court can grant relief.

Claim Five - Violation of Substantive Due Process - U.S. Constitution

This Claim does not allege which Plaintiffs' Constitutional rights will be violated by the Act. The Complaint alleges that Section 3 of the Act (21 O.S. § 446) infringes on Plaintiffs' fundamental right to associate with illegal aliens in their vehicles and on their property, and that it infringes on their right to travel because it prohibits them from transporting illegal aliens. This Claim also alleges that the Act would infringe on their right to contract with illegal aliens in the leasing of property or to purchase tickets for transportation. Plaintiffs have not stated a claim upon which this Court can grant them relief.

Substantive due process claims require "a magnitude of potential or actual harm that is truly conscience shocking." *Uhlrig v. Harder*, 64 F.3d 567, 574 (10th Cir. 1995). Oklahoma's statute is merely a mirror provision of the federal law. 8 U.S.C. § 1324(a)(1)(A)(ii). If the federal law is not unconstitutional, then neither can the state statute be a violation of substantive due process, because states cannot ignore federal immigration laws nor turn a blind eye to their enforcement. *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *INS v. Miranda*, 459 U.S. 14, 19 (1982); *U.S. v. Ontoniel Vasquez-Alvarez*, 176 F.3d 1294 (10th Cir. 1999). Therefore, this Court should dismiss this claim for failure to state a claim upon which this Court can grant relief, pursuant to FRCP 12(b)(6). Likewise, this Court should also dismiss this Claim because no Plaintiff has alleged he or she will be transporting any illegal aliens and the Church-Plaintiff is not a "person" subject to criminal prosecution under the law.

This Claim also alleges that Section 4 of the Act (21 O.S. § 1550.42) infringes on Plaintiffs' fundamental rights to obtain drivers licenses, and that it "is not reasonably related to any legitimate state objective." However, the driving of an automobile is not a right, it is a privilege subject to a state's police powers. *Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90 (1971)(possession of a driver's license is an entitlement which may be revoked by the State). Plaintiffs who are denied a drivers license or denied a renewal because of the Act, are entitled to due process under Oklahoma law pursuant to 47 O.S. § 6-103(B) eff. November 1, 2007 (Any applicant who is denied a license under the provisions

of subsection A of this section shall have the right to an appeal as provided in Section 6-211 of this title). Therefore, Plaintiffs are mistaken as to the effect of the Act on their due process rights because they are entitled to an appeal of the denial of a drivers license, and this Court should dismiss this Claim pursuant to FRCP 12(b)(1) for lack of subject matter Article III standing jurisdiction and pursuant to FRCP 12(b)(6) for failure to state claims upon which this Court can grant relief.

Plaintiffs also allege under this Claim that Section 5 of the Act (22 O.S. § 171.2) infringes on Plaintiffs' fundamental right to liberty because it "mandates incarceration of a person for up to 48 hours simply because he or she is unable to verify lawful status." (Exhibit No. 2, para. 190). But no Plaintiff has alleged to be a prisoner, and therefore, this Court should dismiss this Claim pursuant to FRCP 12(b)(1) for lack of subject matter Article III standing jurisdiction and pursuant to FRCP 12(b)(6) for failure to state claims upon which this Court can grant relief.

Plaintiffs also Claim that Section 7 of the Act (25 O.S. § 1313) "infringes on Plaintiffs fundamental rights to travel, to property, to contract, to pursue a livelihood and to work for a living." (Exhibit No. 2, para. 191). Yet, no Plaintiff has alleged to have been discharged from employment of due to this Act's actual application, and the Employer-Plaintiff has admitted that he does and will fully comply with both federal and state law in its employment of individuals. (Exhibit No. 2, para. 33-37).

Under this Claim Plaintiffs also allege that Section 8 of the Act (56 O.S. § 71) "infringes on Plaintiffs fundamental right to life because it impedes the access of undocumented aliens to health care." (Exhibit No. 2, para. 192). Plaintiffs admit the Act will not restrict illegal aliens right to public benefits for "emergency medical conditions", but that it would restrict them from receiving organ donations. Congress has stated that the national policy of the United States is that aliens within the United States shall not depend on public resources to meet their needs, and "[i]t is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits." 8 U.S.C. § 1601(6). The Oklahoma Statute merely reflects that national policy and no Plaintiff has claimed the need for an organ donation. This Court should dismiss this Claim pursuant to FRCP 12(b)(1) for lack of subject matter Article III standing jurisdiction and pursuant to FRCP 12(b)(6) for failure to state claims upon which this Court can grant relief, because no Plaintiff has alleged he or she needs an "organ donation".

The remaining claims under Claim Five all deal with the denial of a drivers license under the Act, and Plaintiffs claim it violates their fundamental rights to travel. But once again, there is no constitutional right to a drivers license, such a privilege not a right, and a state may enact reasonable restrictions on who may and may not obtain a drivers license. *Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90 (1971). This Claim should also be dismissed pursuant to FRCP 12(b)(6) for failure to state claims upon which this court can grant relief, and pursuant to FRCP 12(b)(1) for lack of standing.

Claim Six - Violation of Substantive - Oklahoma Constitution

This Court should dismiss this claim for failure to state a claim upon which this Court can grant relief pursuant to FRCP 12(b)(6) because "violation of **state law** cannot give rise to a claim under Section 1983." *Marshall v. Columbia Lea Regional Hosp*., 345 F.3d 1157, 1164 (10th Cir. 2003). "Section 1983 does not . . . provide a basis for redressing violations of state law, but only for those violations of federal law done under color of state law." *Jones v. City and County of Denver*, 854 F.2d 1206, 1209 (10th Cir. 1988).

Claim Seven - Violation of Procedural Due Process - U.S. Constitution

Under this Claim, Plaintiffs are alleging that the denial of a drivers license is a violation of their Procedural Due Process rights of the United States Constitution. Again, the driving of an automobile is not a right, it is a privilege subject to a state's police powers. *Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90 (1971)(possession of a driver's license is an entitlement which may be revoked by the State). For those individuals who are denied a drivers license or denied a renewal because of the Act, they are entitled to due process under Oklahoma law pursuant to 47 O.S. § 6-103(B) eff. November 1, 2007 (Any applicant who is denied a license under the provisions of subsection A of this section shall have the right to an appeal as provided in Section 6-211 of this title). Therefore, Plaintiffs are mistaken as to the effect of the Act on their due process rights because they are entitled to an appeal of the denial of a drivers license, and this Court should dismiss this

Claim pursuant to FRCP 12(b)(1) for lack of subject matter Article III standing jurisdiction and pursuant to FRCP 12(b)(6) for failure to state claims upon which this Court can grant relief.

Claim Eight - Procedural Due Process - Oklahoma Constitution

This Court should dismiss this claim for failure to state a claim upon which this Court can grant relief pursuant to FRCP 12(b)(6) because "violation of **state law** cannot give rise to a claim under Section 1983." *Marshall v. Columbia Lea Regional Hosp*., 345 F.3d 1157, 1164 (10th Cir. 2003). "Section 1983 does not . . . provide a basis for redressing violations of state law, but only for those violations of federal law done under color of state law." *Jones v. City and County of Denver*, 854 F.2d 1206, 1209 (10th Cir. 1988).

Claim Nine - Violation of the Equal Protection Clause - U.S. Constitution

Plaintiffs claim that the Act creates a classification based on alienage, and that such classification is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (Exhibit No. 2, para. 221-246). However, no plaintiff has standing to sue for this Claim and Plaintiffs have failed to state a claim upon which this court can grant them relief. The Act does not create a suspect classification that would entitle them to heighten scrutiny under the Fourteenth Amendment. *Plyler v. Doe*, 457 U.S. 202, 212 (1982). Therefore, any classification would only need to meet a states legitimate governmental goal of protecting the general welfare and public in order to pass Constitutional muster. Here the only classifications that are in mentioned in the Act are those

individuals who are violating federal law and are illegal aliens. There is no question that a state can regulate its highways under its police powers as long as those regulations are reasonable. The conditioning of the privilege to drive on the legal status of an alien is not a violation of the equal protection clause. Therefore, this Court should dismiss this Claim for failure to state a claim upon which this Court can grant relief pursuant to FRCP 12(b)(6).

Claim Ten - Violation of the Fifth Amendment - U.S. Constitution

Plaintiffs claim that Section 8 of the Act (56 O.S. § 71) violates the Fifth Amendment of the United States Constitution because it would cause Plaintiffs to self-incriminate themselves in their application for public benefits. The Ninth Circuit Court of Appeals considered a similar claim in *Alcaraz v. Block*, 746 F.2d 593, 603 (9th Cir. 1984). In that case, a section of California's Omnibus Budget Reconciliation Act of 1981 requires an applicant to put his social security number on the application to obtain admission for the school food program for his children. The alien argued that the failure to put the social security number on the application would alert the Department of Education to investigate why there was a no number and result in them turning information over to the INS. The argument was that this could ultimately result in deportation or criminal proceedings. The circuit court made short shrift of the alien's argument, finding that the crucial step in the analysis is whether the testimony was "compelled" within the meaning of the Fifth Amendment. *Id*. The court noted that compulsion for constitutional purposes means legal compulsion to incriminate oneself. The court found that the alien was under no legal

compulsion to either divulge his social security number or apply for school meal eligibility. *Id*. at 604.

The circuit court relied on the Supreme Court's decision in *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. 841, 104 S.Ct. 3348, 82 L.Ed.2d 632 (1984). In that case, the question was whether a section of the Department of Defense authorization Act of 1983 compelled self-incrimination. Under the section, federal educational entitlements were denied to those disobeying the draft registration law. The section was attacked as violating the fifth amendment's protection against self-incrimination because it required all male college students who had failed to register "to acknowledge that they have failed to register timely when confronted with certifying to their schools that they have complied with the registration law." *Id.*

The Court, relying on the principle of legal compulsion, rejected the claim because "a person who has not registered clearly is under no compulsion to seek federal financial aid; if he has not registered, he is simply ineligible for aid." *Id*. The same is true here. No undocumented alien is under any compulsion to seek federal aid. Even though the statute contains certain exceptions for which aid my be applied regardless of status of lawful presence, persons are nonetheless not legally required to seek aid. Therefore, there is no legal compulsion and no Fifth Amendment violation in requiring verification of lawful presence for state benefits. *See also Ciccone v. Secretary of the Dept. of Health and Human Services*, 861 F.2d 14, 17 (2nd 1988) (applying for social security benefits is a voluntary

action and is in no way compelled by the government). Those cases illustrate the overall policy considerations that Congress has intended to apply in its dealings with illegal aliens. 8 U.S.C. § 1601(6).

Despite Plaintiffs' allegations under this Claim, it is clear that there is violation of the Fifth Amendment and no right to public benefits possessed by illegal aliens. Therefore, this Court should dismiss this claim for failure to state a claim upon which this Court can grant Plaintiffs' relief pursuant to FRCP 12(b)(5).

Claim Eleven - Self-Incrimination - Oklahoma Constitution

This Court should dismiss this claim for failure to state a claim upon which this Court can grant relief pursuant to FRCP 12(b)(6) because "violation of **state law** cannot give rise to a claim under Section 1983." *Marshall v. Columbia Lea Regional Hosp*., 345 F.3d 1157, 1164 (10th Cir. 2003). "Section 1983 does not . . . provide a basis for redressing violations of state law, but only for those violations of federal law done under color of state law." *Jones v. City and County of Denver*, 854 F.2d 1206, 1209 (10th Cir. 1988).

Claim Twelve - Separation of Powers - Oklahoma Constitution

This Court should dismiss this claim for failure to state a claim upon which this Court can grant relief pursuant to FRCP 12(b)(6) because "violation of **state law** cannot give rise to a claim under Section 1983." *Marshall v. Columbia Lea Regional Hosp*., 345 F.3d 1157, 1164 (10th Cir. 2003). "Section 1983 does not . . . provide a basis for redressing violations

of state law, but only for those violations of federal law done under color of state law." *Jones v. City and County of Denver*, 854 F.2d 1206, 1209 (10th Cir. 1988).

Claim Thirteen - Right to Bail - Oklahoma Constitution

This Court should dismiss this claim for failure to state a claim upon which this Court can grant relief pursuant to FRCP 12(b)(6) because "violation of **state law** cannot give rise to a claim under Section 1983." *Marshall v. Columbia Lea Regional Hosp*., 345 F.3d 1157, 1164 (10th Cir. 2003). "Section 1983 does not . . . provide a basis for redressing violations of state law, but only for those violations of federal law done under color of state law." *Jones v. City and County of Denver*, 854 F.2d 1206, 1209 (10th Cir. 1988).

Claim Fourteen - Violation of 42 U.S.C. § 1981

Title 42 U.S.C. § 1981 provides:

> (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
>
> (b) "Make and enforce contracts" defined
>
> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

In a § 1981 action, plaintiffs must show intentional discrimination on account of ***race.*** *Evans v. McKay*, 869 F.2d 1341, 1344 (9th Cir.1989). In order to establish a prima facie case under

§ 1981, plaintiffs must prove: (1) that they are members of a ***racial minority***; (2) that the defendants had an intent to discriminate on the ***basis of race***; and (3) that the discrimination concerned one or more activities enumerated in the statute. *Morris v. Office Max, Inc*., 89 F.3d 411, 413-14 (7th Cir.1996); *Green v. State Bar of Texas*, 27 F.3d 1083, 1086 (5th Cir.1994). The element of intentional discrimination in a § 1981 claim is identical to the element of intentional discrimination in a § 1983 claim. *Hispanic Taco Vendors of Washington v. City of Pasco*, 790 F.Supp. 1023, 1031 (E.D.Wash.1991), affirmed, *Hispanic Taco Vendors of Washington v. City of Pasco*, 994 F.2d 676, 679 n. 3 (9th Cir.1993).

Not one of the statutes enumerated under the Act discusses or classifies the rights of individuals as based on race. The only classifications are based on illegal alienage. The Act applies equally to white and non-white illegal aliens. Therefore, this federal remedial statute does not apply to any of Plaintiffs' claims in its Complaint. Therefore, this Court should dismiss Plaintiffs' Complaint for failure to state a claim upon which this Court can grant relief pursuant to FRCP 12(b)(6).

Claim Fifteen - Violation of the Fair Housing Act

Plaintiffs further allege Section 3 is unconstitutional as the harboring provisions violate the Fair Housing Act. The Fair Housing Act makes it unlawful "to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604. As with other claims,

Plaintiffs mistakenly assert they fall within the protections of the Fair Housing Act due to their national origin. Complaint at ¶ 296. The Act applies to illegal aliens; not members of any particular national origin or race. Illegal aliens are not among the classes of persons protected by the Fair Housing Act. *See Espinoza v. Hillwood Square Mutual Ass'n*, 522 F.Supp. 559, 567-568 (E.D. Va. 1981) *citing Espinoza v. Farah Manufacutring Co.*, 414 U.S. 86 (1973)(the term "national origin" refers to a person's ancestry and not his citizenship). Under these authorities, Plaintiffs cannot demonstrate they come within the parameters of the Fair Housing Act, and therefore, this Court should dismiss Plaintiffs' Complaint for failure to state claims upon which this Court can grant relief pursuant to FRCP 12(b)(6).

Claim Sixteen - Violation of 42 U.S.C. § 1982

Plaintiffs claim that defendants violated their rights under 42 U.S.C. § 1982 to full and equal use, enjoyment and ownership of their property, and their right to equal utilization of public services. 42 U.S.C. § 1982 provides that "[a]ll ***citizens*** of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." The prima facie elements of a 42 U.S.C. § 1982 claim parallel Section 1981 and require that the plaintiffs establish (1) membership in a protected class; (2) discriminatory intent on the part of the defendant; and (3) interference with the rights or benefits connected with the ownership of property. *Daniels v. Dillards, Inc.*, 373 F.3d 885, 887 (8th Cir.2004).

This federal remedial statute does not apply to Plaintiffs in this case, because they are not "citizens" within the meaning of the statute. *Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan*, S.D.Tex.1981, 518 F.Supp. 993(Plaintiffs, seeking declaratory and injunctive relief against interference by defendants with rights of Vietnamese fishermen in Galveston Bay prior to and during shrimping season, failed to state a cause of action under this section which was available only to citizens of the United States). Furthermore, nothing under the Act creates a classification based on race. Therefore, again, this Court should dismiss Plaintiff's Complaint for failure to state claims upon which this Court can grant relief pursuant to FRCP 12(b)(6).

CONCLUSION

Judge Payne in previously dismissing Plaintiffs' lawsuit informed Plaintiffs that they needed to sharpen their claims before refiling their Complaint again. It is clear that they have failed to do so. Neither the Organizational-Plaintiffs, the Church-Plaintiffs, nor the Employer-Plaintiff has standing to file this lawsuit. The John and Jane Doe Plaintiffs do not have standing and those that seem to allege valid injuries are speculative at best. Plaintiffs' Claims are without merit and should be dismissed for the additional ground of failure to state claims upon which the Court can grant relief. ***THEREFORE***, Defendants respectfully requests this Court to dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6).

Respectfully submitted,

s/ Kevin L. McClure

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant:

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I further certify that on October 29, 2007, I served the foregoing document by U.S. Mail, postage prepaid, on the following person who is not a registered participant of the ECF System:

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