IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JANE DOE #1, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 2:13-CV-79-WKW
	)	
RICH HOBSON, *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Before the court is Plaintiffs' motion for reconsideration in which they respectfully argue that the court's requirement that they plead their status as "unlawfully present aliens" is unnecessary to support their Article III standing. (Doc. # 39.) Defendants have filed a response, (Doc. # 41), and Plaintiffs have replied, (Doc. # 42). For the reasons to follow, the motion for reconsideration is due to be granted.

I. BACKGROUND

On July 31, 2013, the court entered a memorandum opinion and order granting Defendants' motion to dismiss and denying as moot all other pending motions. (Doc. # 38.) The court identified the following impediments to Plaintiffs' standing: (1) Plaintiffs failed to allege that they are "unlawfully present

aliens" subject to the consequences prescribed by Ala. Code § 31-13-32, the state law which they challenge as unconstitutional; and (2) the Plaintiffs failed to allege that they were "unlawfully present aliens" at the crucial times identified by the law – *i.e.*, when they were detained by law enforcement and when they appeared in court for a violation of state law. (*See* Doc. # 38, at 4–5.) Without asserting they were unlawfully present aliens, the court explained, Plaintiffs could not show that they faced the threat of imminent injury. (Doc. # 38, at 4 (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc*., 528 U.S. 167, 180 (2000).) The court afforded Plaintiffs leave to amend their complaint to cure these impediments to standing. (*See* Doc. # 38, at 7.) Plaintiffs did not amend their complaint. Rather, they filed the instant motion requesting that the court reconsider and vacate its July 31, 2013 opinion and order. (Doc. # 39.)

II. STANDARD OF REVIEW

A district court has "plenary power" over its interlocutory orders, and its "power to reconsider, revise, alter[,] or amend [an] interlocutory order is not subject to the limitations of Rule 59." *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1315 (11th Cir. 2000) (internal quotation marks omitted). Thus, the court "may reconsider an interlocutory ruling for any reason it deems sufficient." *Canaday v. Household Retail Servs., Inc*., 119 F. Supp. 2d 1258, 1260 (M.D. Ala. 2000).

III. DISCUSSION

Plaintiffs reassert their contention that there is a credible threat that they will be listed as unlawfully present aliens, and thus, they have shown that there is a threat of imminent injury. Plaintiffs cite *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250, 1258 (11th Cir. 2012), and other cases for the proposition that they can show the threat of imminent injury by pleading that "there is a credible threat of application" of an unlawful statute.

The statute at issue in this case requires Defendants to report (a) unlawfully present aliens who are (b) detained by law enforcement, who (c) appear in court for any violation of state law. *See* Ala. Code § 31-13-32(a). There is no dispute that Plaintiffs pleaded that they were arrested and that they appeared in court. Plaintiffs submit that they need not further allege that they *are* unlawfully present aliens – but only that Defendants *will treat them as* unlawfully present aliens. (Doc. # 39-1, at 7.) Plaintiffs point to Jane Doe # 1's circumstances to show that there is a "'credible threat' that when State officials contact ICE to inquire about Jane Doe # 1, ICE will provide information that will, in turn, result in" the State's classification of Jane Doe # 1 as an unlawfully present alien.[1] (Doc. # 39-1, at 9.) Defendants do not respond directly to Plaintiffs' argument.[2]

[1] Jane Doe's circumstances are that she is from Mexico, she lacks documents proving that she has permission to be in the United States, she was detained in county jail for three months

Upon consideration of Plaintiffs' primary argument and the relevant law, the court is persuaded that Plaintiffs should not be required to plead that they are in fact "unlawfully present aliens." Plaintiffs' motion for reconsideration (Doc. # 39) is due to be granted.

IV. CONCLUSION

Accordingly, it is ORDERED that:

(1) Plaintiffs' motion for reconsideration (Doc. # 39) is GRANTED;

(2) The Memorandum Opinion and Order entered July 31, 2013 (Doc. # 38) is VACATED;

(3) Plaintiffs' motion for class certification (Doc. # 2), motion to proceed under pseudonyms (Doc. # 4), and motion for relief under Federal Rule of Civil Procedure 56(d) (Doc. # 32), and Defendants' motion to dismiss, or alternatively, for summary judgment (Doc. # 20), are REINSTATED as pending motions.

(4) **On or before January 20, 2014**, the parties may supplement their briefing concerning Defendants' motion to dismiss and alternative motion for

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prior to the initiation of this suit, and she was interviewed by Immigration and Customs Enforcement who determined that she lacked permission to remain in the country.

[2] Instead, Defendants counter Plaintiffs' additional arguments that "unlawfully present alien" is an undefined and impermissible state classification and that the court's re-pleading requirement could unnecessarily condition Plaintiffs' right to access the courts upon a waiver of Plaintiffs' Fifth Amendment rights against self-incrimination. (*See* Doc. # 41 (responding primarily to Plaintiffs' arguments in Doc. # 39-1, at 9–12).) The court does not base its decision to reconsider on Plaintiffs' additional arguments.

summary judgment (Doc. # 20) and Plaintiffs' Rule 56(d) motion for discovery (Doc. # 32).

DONE this 6th day of January, 2014.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

A copy of this checklist is available at the website for the USCA, 11th Circuit at www.ca11.uscourts.gov
Effective on December 1, 2013, the new fee to file an appeal will increase from $455.00 to $505.00.

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:

(a) **Appeals from final orders pursuant to 28 U.S.C. § 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C.§ 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. v. Mestre, 701 F.2d 1 365, 1 368 (11th Ci r. 1 983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. § 636(c).

(b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b). Williams v. Bishop, 732 F.2d 885, 885- 86 (11th Cir. 1984). A judg ment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S.196, 201, 108 S.Ct. 1717, 1721-22, 100 L .Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

(c) **Appeals pursuant to 28 U.S.C. § 1292(a):** Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions . . ." and from "[i]nterlocutory decrees . . . determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

(d) **Appeals pursuant to 28 U.S.C. § 1292(b) and Fed.R.App.P. 5**: The certification specified in 28 U.S.C. § 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

(e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S.Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing**: The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P. 4(a) and (c) set the following time limits:

   (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD – no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

   (b) **Fed.R.App.P. 4(a)(3):** "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

   (c) **Fed.R.App.P. 4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

   (d) **Fed.R.App.P. 4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

   (e) **Fed.R.App.P. 4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).