

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.)	

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO JOIN A NECESSARY PARTY**

Defendants Marion County Prosecutor in his official capacity and Johnson County Prosecutor in his official capacity (hereinafter "Defendants"), by counsel, Gregory F. Zoeller, Attorney General of Indiana, by Betsy M. Isenberg, Deputy Attorney General, move pursuant to Fed. R. Civ. P. 12(b)(7) to join the United States of America as a necessary party under Rule 19(a). This is an action for declaratory and injunctive relief asserting that Section 19 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, are unconstitutional and preempted by federal law. The Defendants deny the Plaintiffs are entitled to any remedy, but joinder of the United States is necessary should the Court disagree.

I. Background

The Plaintiffs filed a complaint on May 25, 2011, challenging Section 19 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). 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).

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). The Court granted the stipulation and certified the classes on July 14, 2011. (DE 84).

Class A is defined as:

All persons in Marion and Johnson Counties, Indiana, or who will be in Marion and Johnson Counties, Indiana, who are or will be subject to warrantless arrest pursuant to Section 19 of SEA 590 based on a determination that: a removal order issued against them by an immigration court; have or will have, a detainer or notice of action issued against them by the United States Department of Homeland Security; or they have been, or will be, indicted for or convicted of one (1) or more aggravated felonies, as defined in 8 U.S.C. § 1101(a)(43).

Class B is defined as:

All persons in Marion and Johnson Counties, Indiana, or who will be in Marion and Johnson Counties, Indiana, who possess, or will possess, a valid consular identification card and are using it, or will use it, for non-fraudulent identification purposes.

Under 8 U.S.C. § 1103(a)(1), Congress has charged the Secretary of Homeland Security “with the administration and enforcement of . . . laws relating to the immigration and naturalization of aliens” unless the powers have been “conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers.” As the Court stated in its Order Granting Plaintiffs' Motion for Preliminary Injunction,

In 1952, Congress enacted the Immigration and Nationality Act (“INA”), 66 Stat. 163, as amended, 8 U.S.C. § 1101 *et seq.* “That statute established a ‘comprehensive federal statutory scheme for regulation of immigration and naturalization’ and set ‘the terms and conditions of admission to the country and the subsequent treatment of aliens lawfully in the country.’” Chamber of Commerce of U.S. v. Whiting, 131 S.Ct. 1968, 1973 (2011) (quoting De Canas v. Bica, 424 U.S. 351, 353, 359 (1976)). The INA empowers the Department of Homeland Security (“DHS”), the

Department of Justice (“DOJ”), and the Department of State, among other federal agencies, to administer and enforce immigration law. Within DHS, various sub-agencies, including the United States Immigration and Customs Enforcement (“ICE”), the United States Customs and Border Protection (“CBP”), and the United States Citizenship and Immigration Services (“USCIS”), are involved in this task.

(DE 79, pp. 3-4). The Immigration and Nationality Act sets forth the various proceedings, sanctions and penalties for immigrants to the United States. *See generally* 8 U.S.C. §§ 1181, 1184, 1225, 1227-1229. The United States Attorney General has the power to issue warrants after removal proceedings have been initiated. 8 U.S.C. § 1226(a).

II. Legal Standard

“The purpose of Rule 19 is to permit joinder of all materially interested parties to a single lawsuit so as to protect interested parties and avoid waste of judicial resources.” *Askew v. Sheriff of Cook County, Illinois*, 568 F.3d 632, 634 (7th Cir. 2009) (citing *Moore v. Ashland Oil, Inc.*, 901 F.2d 1445, 1447 (7th Cir. 1990)) (internal quotations omitted). Under Rule 19, there is “a fundamental distinction between two kinds of missing parties: those whose joinder is feasible and those whose joinder is not feasible, because it would defeat subject-matter jurisdiction, or the party is beyond the personal jurisdiction of the court, or the party has and makes a valid objection to venue.” *Id.* at 634-35. “Rule 19(a) addresses ‘persons required to be joined if feasible,’ and Rule 19(b) describes what the court must do if joinder is not feasible.” *Id.* “Rule 19 requires that once a court determines that a party is a required party and it is feasible for that party to be joined, the court ‘must order that the person be made a party.’” *Id.* at 637 (citing Fed. R. Civ. P. 19(a)(2)) (internal quotations retained, emphasis removed).

Rule 19(a) of the Federal Rules of Civil Procedure provides

(1) A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

- (A) in that person's absence, the court cannot accord complete relief among existing parties; or
- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
 - (i) as a practical matter impair or impede the person's ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

“Under Rule 19(a)(1), the term ‘complete relief’ refers only to the court granting relief to the parties and not relief between a party and the absent person.” *Showtime Game Brokers, Inc., v. Blockbuster Video, Inc.*, 151 F.R.D. 641, 646 (S.D. Ind. 1993) (Barker, J.) (citing *Bourne Co. v. Hunter Country Club, Inc.*, 990 F.2d 934, 937 (7th Cir. 1993)).

“If the absent party has a legally protected interest *in* the subject matter of the action-i.e., he is a party to a contract at issue-he falls squarely within the terms of Rule 19(a)(2).” *Burger King Corp. v. American National Bank and Trust Co. of Chicago*, 119 F.R.D. 672, 675 (N.D. Ill. 1988) (emphasis in original). However, when the party's interest is not as clear, “the analysis should focus on the part of the Rule that states that a party must ‘have an interest *relating* to the *subject matter* of the action,’ not necessarily *in* the action itself.” *Showtime*, 151 F.R.D. at 646 (quoting *Burger King*, 119 F.R.D. at 676). (Emphasis in original).

III. Argument

The United States of America is a necessary party to this action. The Defendant does not assert that the Court cannot afford “complete relief” to the parties without the joinder of the United States. However, the United States is a necessary party because they have an interest in the subject matter, a decision enjoining the Defendants may result in inconsistent obligations or results based upon the United States' position on immigration law.

As explained above, the United States clearly has an interest and responsibility in the subject matter of this case, i.e. immigration. The Immigration and Nationality Act has provided various proceedings and penalties that involve various agencies of the United States government. Moreover, as the Court has set forth extensively in its Order Granting Plaintiffs' Motion for Preliminary Injunction, there are a number of provisions regarding removal proceedings, detainers, applications for visas, and other immigration-related issues that involve the United States government. (DE 79, pp. 5-7). Without the joinder of the United States as a party, the Plaintiffs are permitted to put forth their interpretation of federal law regarding immigration without hearing from the United States government itself. The United States should be joined as a party in order to provide an authoritative interpretation of federal immigration laws on which this Court can rely in interpreting and applying those laws to this case. Moreover, the decisions regarding the enforcement of immigration laws are inherently discretionary. This inherent discretion lies with the United States. Therefore, the United States clearly has an interest in this matter and should be joined as a necessary party.

There is a substantial risk of inconsistent or multiple obligations for the State of Indiana because there is the potential for subsequent litigation by the United States involving the same statutory amendments. The additional or subsequent litigation by the United States may result in a different outcome from this litigation, which would create an inconsistency that the State would be required to determine which decision to follow at the peril of ignoring the other decision. This risk is not merely speculative in light of the recent litigation filed by the United States against the State of Alabama. In *United States v. Alabama, et al.*, United States District Court for the Northern District of Alabama, Cause Number 2:11-cv-02746 SLB, filed August 1, 2011, the United States is seeking a preliminary injunction against the State of Alabama to

prevent the enforcement of various state statutes that concern immigration. In the press release issued by the Department of Justice, the Attorney General Eric Holder stated, “The department is committed to evaluating each state immigration law and making decisions based on the facts and the law. To the extent we find state laws that interfere with the federal government’s enforcement of immigration law, we are prepared to bring suit, as we did in Arizona.” (Department of Justice Press Release, dated August 1, 2011, <http://www.justice.gov/opa/pr/2011/August/11-ag-993.html>, last visited October 11, 2011). In addition, the United States filed a lawsuit regarding the statutory enactments of the State of Arizona concerning immigration. *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011). As this Court noted there is similar legislation in Utah, Georgia, and South Carolina. (DE 79, p. 2). Most recently, the U.S. Justice Department spokeswoman Xochitl Hinojosa reiterated Attorney General Holder’s August 1, 2011, statement to the Indianapolis Star. *See* “Feds Considering Lawsuits Against Indiana, Other States Over Immigration Laws”, Indianapolis Star, September 30, 2011 found at <http://www.indystar.com/apps/pbcs.dll/article?AID=2011309300001> (last visited October 4, 2011).

The risk of a subsequent lawsuit by the United States against the State of Indiana regarding statutes that may touch upon immigration is substantial. As stated above, Attorney General Holder explained in his press release that the United States is prepared to bring suit against any State that it believes is necessary. There is no guarantee that the outcome of the litigation would be identical. The State of Indiana may be faced with inconsistent obligations based upon the results of competing litigation. This is an unnecessary risk that can be avoided by joining the United States as a party in this action.

It is clear that the United States can and should be joined as a party in this action. The joinder of the United States would not destroy subject matter jurisdiction in this action. Moreover, the United States is not beyond the power and authority of this Court.

IV. Conclusion

For the foregoing reasons, State Defendants' motion to join the United States of America as a necessary party should be granted.

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 11th day of October, 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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