

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, *et al.*;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et al.*;

Defendants,

and

DIANA MARTINEZ, *et al.*; COUNTY OF
SANTA CLARA, CALIFORNIA, *et al.*; and
STATE OF NEW YORK, *et al.*;

Defendant-Intervenors.

Civil Action No. 2:18-cv-00772-RDP

**MARTINEZ DEFENDANT-INTERVENORS' BRIEF REGARDING THE EFFECT
THAT THE PRESIDENT'S JULY 21, 2020, MEMORANDUM HAS
ON THE PARTIES' CLAIMS**

Defendant-Intervenors Diana Martinez, *et al.* ("Martinez Intervenors") file this brief to address the effect of the President's July 21, 2020 Memorandum ("Memo"). If the Court holds that Plaintiffs State of Alabama and Representative Morris Brooks's ("Plaintiffs") claims are moot, then Martinez Intervenors' cross-claim against Federal Defendants may proceed on its own. *See* Dkt. 119 at 29. Martinez Intervenors reserve comment on the mootness of the Alabama claims until the plaintiffs' and defendants' views are presented.

BACKGROUND

Plaintiffs allege that Federal Defendants’ practice of including undocumented immigrants in the Census “has repeatedly resulted in the unlawful distribution of additional House seats and electoral votes to states with high numbers of illegal aliens from states with low numbers of illegal aliens, depriving those states and their citizens of their rightful share of representation and political power.” Plaintiffs’ First Amended Complaint (Dkt. 112) at ¶ 37. In order to prevent this alleged harm from repetition, Plaintiffs seek an injunction regarding the Census Bureau’s Final 2020 Census Residence Criteria and Residence Situtations Rule (“Residence Rule”) that would prevent Defendants from including undocumented immigrants in the apportionment base. *See* Plaintiffs’ FAC at ¶¶ 1, 144 (“Vacating and setting aside the Residence Rule insofar as it permits or requires the Census Bureau to include illegal aliens in the apportionment base used to apportion congressional seats and Electoral College votes among the states”).

On October 1, 2019, Martinez Intervenors filed a cross-claim against Federal Defendants, seeking declaratory relief that any exclusion of undocumented immigrants from the Congressional apportionment count is unconstitutional. Martinez Intervenors’ Amended Answer and Cross-Claim at 40 (Dkt. 119).

On July 21, 2020, President Donald J. Trump issued his “Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census.” The Memo instructs Defendant Secretary of Commerce “to provide information permitting the President, to the extent practicable, to exercise the President’s discretion to carry out the policy” of using the estimate of undocumented immigrants to exclude them from the enumeration. *See* Memo § 3. The Memo further reads that “[e]xcluding these illegal aliens from the apportionment base is more

consonant with the principles of representative democracy underpinning our system of Government.” *Id.* at § 2.

ARGUMENT

I. Whether or Not Plaintiffs’ Case is Moot, Martinez Intervenors’ Cross-Claim against Federal Defendants is Unaffected

Martinez Intervenors alleged a cross-claim against Federal Defendants on October 1, 2019. *See* Martinez Intervenors’ Cross-Claim Against Defendants, Dkt. 119 at 29. This Court has jurisdiction over that cross-claim under 28 U.S.C. §§ 1331, 1343, and 1346.

In *Maseda v. Honda Motor Co., Ltd.*, the Eleventh Circuit held that where the original claim was dismissed, the court could still retain jurisdiction over the related cross-claim where there was an independent basis for federal jurisdiction. *Maseda v. Honda Motor Co., Ltd.*, 861 F.2d 1248, 1254 (11th Cir. 1988) (“In this case, since independent grounds exist to support the federal court’s jurisdiction, we need not decide whether retaining jurisdiction of the cross-claim was in the best interests of judicial economy, convenience and fairness to litigants.”); *see also Prudential Ins. Co. of Am. v. Tolbert*, 320 F. Supp. 2d 1378, 1382 (S.D. Ga. 2004) (holding that because an independent basis for federal jurisdiction for the cross-claim existed, the court need not decide whether supplemental jurisdiction was proper).

Here, Martinez Intervenors allege a claim with independent bases for federal jurisdiction, which is not affected by the continuance of the main claim or its dismissal. The cross-claim brought by Martinez Intervenors remains relevant and live after the Memo. Martinez Intervenors sued Federal Defendants for declaratory relief that the subtraction of undocumented immigrants from the Apportionment count violates the U.S. Constitution. The President announced that he will carry out the very action that Martinez Intervenors sued to prevent. Here, one basis for the

Court's jurisdiction over Martinez Intervenors' claim is the existence of a federal question.

Whether or not Plaintiffs case is moot, Martinez Intervenors' claim may proceed.

CONCLUSION

For the foregoing reasons, regardless of whether this case is moot or not, Martinez Intervenors' cross-claim remains proper.

Dated: August 3, 2020

Respectfully Submitted,

/s/ Andrea Senteno

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all CM/ECF registrants.

Date: August 3, 2020

/s/ Andrea Senteno

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