



TURNING OFF THE WATER

HOW THE CONTRACTING AND TRANSACTION PROVISIONS OF
ALABAMA'S IMMIGRATION LAW MAKE LIFE HARDER FOR EVERYONE

By Joan Friedland

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The Immigration Policy Center's Special Reports are our most in-depth publication, providing detailed analyses of special topics in U.S. immigration policy.

ABOUT THE AUTHOR

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Introduction

Since passage of HB 56, Alabama’s extreme new immigration law, many are aware of the most immediate consequences of the law—rotting tomatoes, racial profiling, and frightened school children. However, two provisions of the law that have the potential to be extremely damaging to the state’s economy, rule of law, and municipal functioning have received comparatively little attention. These two provisions have been in effect since September 30, 2011, and are likely to result in an increase of exploitation of workers, erosion of fundamental legal protections, and denial of access to state and local government services and activities. In other words, these provisions will undoubtedly impact the daily lives of all Alabamians.

One provision denies unauthorized immigrants access to the courts to enforce contracts and another makes it a felony for unauthorized immigrants to even attempt to conduct business transactions with state or local governments. While this may sound like innocuous legalese, the fact is that these two provisions affect nearly every aspect of normal daily life. These provisions go well beyond Arizona’s SB1070 and attempt to further tighten the clamp on immigrant workers and their families, while also punishing Alabamians as they go about many aspects of their daily lives. Activities which had never been considered relevant to immigration law—such as having safe water, a place to live, and access to basic government functions—are made much more difficult, if not impossible, by this new law. And the impact of these extreme provisions will touch all Alabamians, not just unauthorized immigrants. There are serious implications for public health and safety, and there is a likelihood that state bureaucrats will make costly mistakes and violate the civil rights of many U.S. citizens and lawfully present immigrants.

This paper provides an analysis of Sections 27 and 30 of HB 56, which regulate contracts and business transactions. This unprecedented reach of state bureaucracy into the lives of Alabamians in the name of immigration policy must be called to attention and questioned.

Section 27—Prohibition on Enforcing Contracts

Section 27 of HB 56 would prevent a court from enforcing contracts between any party and “an alien unlawfully present in the United States, if the party had direct or constructive knowledge that the alien was unlawfully present in the United States at the time the contract was entered into.” Judge Sharon Lovelace Blackburn concluded that this provision was neither pre-empted by federal law¹ nor discriminatory.² She opined that this section “strips an unlawfully-present alien of the capacity to enter into contracts.”³

In fact, unauthorized immigrants can still enter into contracts. They just cannot enforce those contracts in Alabama courts. This places unauthorized immigrants in a more vulnerable position where unscrupulous employers can refuse to pay or otherwise refuse to honor contracts with no chance of being taken to court. At the same time, businesses could impose arbitrary and discriminatory documentation requirements affecting citizens and immigrants alike to ensure that those businesses have all available legal remedies. Furthermore, U.S. citizens cannot enforce contracts with unauthorized immigrants, which means U.S. citizens could lose if an

unauthorized immigrant refuses to pay for goods or services, or fails to adhere to the provisions of a lease.

Day laborers and domestic workers are at particular risk of exploitation because they may work without violating the law, but could not use the courts to enforce their rights. Section 11 of HB 56, which prohibits unauthorized workers from seeking or performing work as employees or independent contractors, was enjoined, but Section 27 was not. Thus, unauthorized workers can work, but under Section 27 they would be denied their day in court if the person who hired them didn't pay for their work. Unscrupulous employers would know full well that they have the power to not pay their workers or to pay them less than an agreed-upon amount.

In contrast, unscrupulous employers would actually be encouraged to cheat day laborers and domestic workers because they are protected from punishment. Section 3 (5) exempts "casual domestic employment" from the law's definition of "employer." This protects these Alabama employers from Section 15's verification requirements and penalties if they hire maids or landscapers, regardless of their legal status. Federal law likewise provides that independent contractors such as day laborers are not "employees" whose status must be verified.⁴

The result is no penalties for employers who hire day laborers or domestic workers, no prohibition on workers doing this work, but no way to have a state judge enforce an agreement to pay the workers.

And that's not the only kind of contract that immigrants would be unable to enforce. Section 27 applies to all contracts except "a contract for lodging for one night, a contract for the purchase of food to be consumed by the alien, a contract for medical services, or a contract for transportation of the alien that is intended to facilitate the alien's return to his or her country of origin." As if to prove a point about the provision's reach, an Alabama car dealer recently tried to use the law for the dismissal of a lawsuit filed by men identified as illegal immigrants in court documents. When the immigrants were awarded damages because they were misled about the condition of the cars they bought, the dealer argued that the contract they cited was invalid.⁵

And here's how other contract scenarios may play out as a result of Section 27:

- An unauthorized victim of domestic violence who has hired a lawyer to apply for legal status would have no recourse if the lawyer ran off with her money and did not do the work. And the lawyer would have no recourse if she did the work and the unauthorized client did not pay her.
- A landlord might be free to lease an apartment to an unauthorized person, because the judge enjoined Section 13, which would have made merely renting an apartment to an unlawfully present person the crime of harboring.⁶ But the tenant might not be able to enforce the terms of the lease, including those pertaining to health and safety, or even stay in the apartment despite payment of rent. And the landlord might not be able to compel payment of the rent.

- An unauthorized person who told a buyer he was leaving the state because of HB 56 and was trying to sell his house would have no recourse if the buyer demanded at the last minute that the seller accept less than the price that had been agreed to in writing. And the buyer would have no recourse if he paid the asking price, and the seller refused to sign the deed, and their real estate agents would not be able to compel payment of their commissions.

This provision will likely make immigrants reluctant to go to court to enforce their rights out of fear that their immigration status might be questioned.

Parties who knowingly enter into contracts with immigrants who are not lawfully present also would be unable to enforce contracts. But that also creates an incentive to avoid entering into contracts with those who look or sound foreign, or demanding extra documentation in order to avoid possible non-enforceability of contracts. And this is what has happened since the law's passage:

- A rental company at Carrousel Apartments in Hoover, Alabama, began asking for proof of lawful presence in order to renew a lease;
- Alabama Power has asked for proof of lawful presence when a family tried to get electricity service reconnected.⁷

The likelihood that this provision will lead to racial profiling and discrimination is significant. For example, a U.S.-citizen Latina business owner was asked by sub-contractors if HB 56 would negatively affect their current contracts with her—a question that could only be based on the fact that she is Latina.⁸ Businesses will likely decide whether to ask for documentation based on how someone looks or sounds, and they will make mistakes when they draw conclusions about citizenship and immigration status. That hurts citizens and immigrants alike.

Section 30 - Prohibition on Business Transactions with States or Localities

Equally troubling is Section 30, which makes it a felony for an “alien not lawfully present in the United States...[to] enter into or attempt to enter into a business transaction with the state” or a political subdivision.”⁹ As Judge Blackburn pointed out, the section defines “business transaction” to include activities not ordinarily thought of as business transactions, such as renewing a license plate. So Judge Blackburn defined a business transaction to include licensing (but not registration) activities as well as commercial activities.¹⁰ Only marriage licenses are exempted.

But the provision itself defines “business transaction” as “any transaction between a person and the state or a political subdivision of the state” [emphasis added] and by its terms creates the impression that its reach goes far beyond commercial activities and licensing. Both state and local governments have in turn applied the law to all dealings with state and local governments. On September 29, 2011, the Alabama Department of Revenue issued a notice

stating “[e]ffective September 28, 2011, taxing officials and county officials are required to obtain documentation from applicants proving either citizenship and/or lawful presence in order to conduct a business transaction with the State and/or counties.”¹¹ The Baldwin County Probate Judge’s Office includes this sweeping pronouncement on its home page.¹²

Likewise, the Montgomery County Office of the Probate Judge has issued a flyer stating that under the new immigration law “all individuals conducting business transactions with any government office will be required to provide issuing officials proof of their United States citizenship or that they are a lawfully present alien in the United States. **This applies to ALL transactions conducted in our office.**”¹³ [emphasis in original]

By the notice’s own terms, the law’s limits apply to “any government office,” not just the Office of the Probate Judge. The notice does not narrow the term “business transactions” as the judge did, and the public could reasonably conclude that any transaction with a government office will be fraught with peril. Even if the law’s restrictions were thought to apply just to the Office of the Probate Judge, that office’s own activities are far reaching and would cover:

- A woman applying to change her name after her divorce from an abusive husband.
- A woman applying for the probate of her deceased husband’s will.
- A man applying for the involuntary commitment of his suicidal U.S.-citizen child.

Local governments have already decided that the law limits their provision of public services. The town of Allgood, Alabama, has interpreted HB 56 to require all water customers to provide an Alabama driver’s license or Alabama picture ID in order to keep current water service.¹⁴ Jefferson County is interpreting the law to require proof of lawful presence for registering a mobile home, including for obtaining the decal proof of payment of property tax.¹⁵

Section 30 is particularly devastating because it punishes a mere attempt to conduct a prohibited business transaction as seriously as actually doing so. So an immigrant would be justified in fearing that he was at risk of committing a felony for even trying to get safe drinking water from his local government.

The inevitable outcome of confusion or misinterpretation about what constitutes a business transaction with state or local governments, and the possibility of punishment for even attempting transactions with the government, is that the safest course is to avoid contacts with government for basic protections and services. This terrible result affects everyone, not just immigrants, and should be a community concern since access to basic services and the functions of government protect health and safety of all. U.S. citizens and legal immigrants could also suffer from discrimination or mistakes – state or local government workers could ask people who look or sound like they might be “foreign” for additional documents, or may believe their documents are not “good enough.” State government agencies may incorrectly deny benefits or services to someone because they do not understand the documentation presented.

Conclusion

The provisions of HB 56 dealing with contracts and business transactions with government represent an expansion of the scope of anti-immigrant legislation and a departure from the strategy of enacting state laws that mirror federal law. Instead of using immigration laws to drive immigrants away, these provisions target basic services and human needs to force immigrants out of the state by denying them necessities like housing, utilities, and their day in court. The sheer audacity of the legislation and the unvarnished consequences of its provisions is a reminder of the danger such laws pose not only to immigrants but to the country as a whole.

Endnotes

¹ United States of America. v. State of Alabama [hereafter U.S. v. Alabama], Case No. 2:11-CV-2746-SLB (U.S. D.Ct., N. Dist. AL, NE Div.), Memorandum Opinion, Sept. 28, 2011, p. 102.

² Hispanic Interest Coalition of Alabama v. Bentley [hereafter HICA v. Bentley], Case No. 5:11-CV-2484-SLB (U.S. D.Ct., N. Dist. AL, NE Div.), Memorandum Opinion, Sept. 28, 2011, p. 68.

³ U.S. v. Alabama, *supra*, at 101.

⁴ 8 USC sec. 1324a; 8 CFR sec. 274a.1(f); HICA v. Bentley, *supra* at 67-68.

⁵ "Judge: Ala. immigration law can't nix car contract," *Montgomery Advertiser*, October 25, 2011, available at <http://www.montgomeryadvertiser.com/article/20111025/NEWS02/110250313/Judge-Ala-immigration-law-can-t-nix-car-contract>.

⁶ U.S. v. Alabama, *supra* at 82-84.

⁷ Affidavit of Evangeline Limon, Exhibit in Support of Notice of Supplemental Evidence Regarding Emergency Motion to Enjoin Portions of HB 56 Pending Appeal. HICA v. Bentley, available at http://www.nilc.org/immlawpolicy/LocalLaw/index.htm#fed_lit.

⁸ *Id.*

⁹ U.S. v. Alabama, *supra* at 114; HICA v. Bentley, *supra* at 106.

¹⁰ U.S. v. Alabama, *supra* at 112-114.

¹¹ Notice issued by the Alabama Department of Revenue, September 29, 2011, available at http://www.co.baldwin.al.us/uploads/Act_2011-535_%28Immigration_Act%29_Injunction.pdf.

¹² Home page of the Baldwin County Probate Judge's Office, available at http://www.co.baldwin.al.us/PageView.asp?PageType=R&edit_id=3.

¹³ Notice issued by the Montgomery County Office of the Probate Judge, available at <http://www.mc-ala.org/ElectedOfficials/ProbateJudge/Documents/Immigration%20Flyer.pdf>.

¹⁴ Affidavit of Dominique D. Nong, Exhibit in Support of Notice of Supplemental Evidence Regarding Emergency Motion to Enjoin Portions of HB 56 Pending Appeal. HICA v. Bentley, available at http://www.nilc.org/immlawpolicy/LocalLaw/index.htm#fed_lit.

¹⁵ Thomas Spencer, "Alabama Law Shakes Up Mobile Homes Parks," *The Birmingham News*, October 15, 2011, available at http://blog.al.com/spotnews/2011/10/alabama_immigration_law_shakes.html.