

PUBLICATION

Alabama Judge: Immigration Law's Provision Barring the Enforcement of Contracts by Illegal Immigrants Violates Alabama's Constitution

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An Alabama state court judge, Judge J. Scott Vowell of the Circuit Court of Jefferson County, Alabama, recently entered an order indicating that a section of Alabama's new immigration law prohibiting the courts of Alabama from recognizing or enforcing contracts entered into with "an alien unlawfully present in the United States" is unenforceable because it violates Alabama's Constitution. In the case before Judge Vowell, the plaintiffs sued a car dealer for selling them salvage cars without disclosing the cars' history. The car dealers alleged that the plaintiffs were illegal aliens and moved to dismiss based on the Law's prohibition on enforcing contracts entered into with illegal aliens.

Judge Vowell denied the motion to dismiss on narrow procedural grounds but also indicated that the entire prohibition on enforcing contracts entered into with illegal aliens is unconstitutional, particularly because it violates the Alabama Constitution's prohibition on laws "impairing the obligation of contracts by destroying or impairing the remedy for their enforcement." Obviously this is the view of only one state court judge, and other courts are not obligated to follow this interpretation. Nevertheless, other courts could adopt this reasoning, and businesses in Alabama should assume that they will be bound by the terms of contracts to which they are parties regardless of whether the other contracting party turns out to be an unlawful alien.

Judge Vowell's opinion also raises an interesting question regarding the validity of Alabama's prohibition on the enforcement of contractual rights by contractors that are not licensed as such in Alabama. Courts in Alabama have long held that general contractors and subcontractors working on projects in Alabama without first obtaining a contractors' or homebuilders' license cannot recover for breach of contract or related theories stemming from this work, regardless of how harsh or inequitable this result is in certain circumstances.

It would stand to reason that, if the section of the law prohibiting the enforcement of contracts by unlawful aliens is unconstitutional, then the law prohibiting out of state contractors from enforcing contractual rights would be unconstitutional for similar reasons. It does not appear that any Alabama court has yet ruled on this issue, but out-of-state contractors may rely on Judge Vowell's opinion in an attempt to enforce their contractual rights relating to Alabama building projects. It should be noted that the two situations may be distinguishable in a number of ways, including that the prohibition on the enforcement of contracts by out-of-state contractors implicates the State of Alabama's inherent licensing powers and its great interest in public safety while the prohibition relating to unlawful aliens likely does not. Nevertheless, Judge Vowell's order could have profound implications both for the validity of this section of the Law and on the rights of out of state contractors in Alabama.