FILED
2018 Dec-13 PM 04:48
U.S. DISTRICT COURT
N.D. OF ALABAMA

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

STATE OF ALABAMA, et al.,	}	
	}	
Plaintiffs,	}	
	}	
v.	}	**Case No.: 2:18-CV-772-RDP**
	}	
UNITED STATES DEPARTMENT OF COMMERCE, et al.,	}	
	}	
	}	
Defendants.	}	

ORDER

This case is before the court on Defendants' Motion to Dismiss for Lack of Jurisdiction. (Doc. # 45). The court believes further briefing on certain issues will aid it in determining whether it has jurisdiction over Plaintiffs' claims in this lawsuit.

Though the court always takes seriously its "independent obligation to determine whether subject-matter jurisdiction exists," *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006), it is all the more mindful of observing the limits Article III places on federal jurisdiction in a case like this one where there is a challenge to the policy decisions of a coequal branch of government. In recent decades, there has been a growing trend of forum shopping among plaintiffs challenging the policies of the federal Executive. *See* Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 457-61 (2017) (describing this trend). For example, major presidential policies of the George W. Bush Administration were enjoined by federal courts in California. *Id.* at 459. In the Obama Administration, federal courts in Texas did the same thing. *Id.* at 459-60. And the same phenomenon has again manifested itself -- if not exponentially increased -- in the first part of the Trump Administration. *Id.* at 460; *see Washington v. Trump*, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017) (district court granted national preliminary injunction against President Trump's executive order restricting entry into the United States from seven countries); *see also Hawaii v. Trump*, 2017 WL 4639560, at *14 (D. Haw. Oct. 17, 2017)

(same); *see also County of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 539 (N.D. Cal. 2017) (district court granted national preliminary injunction against the Administration's policies regarding "sanctuary cities"). The prevalence of forum shopping in litigation challenging Executive Branch policies, in conjunction with an appropriate regard for the doctrine of separation of powers, should counsel district courts to pay careful attention to Article III limits on federal jurisdiction in cases challenging the policies of the elected branches of government. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (explaining that a federal court's standing inquiry should be "especially rigorous when reaching the merits of the dispute would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional").

On or before **January 4, 2019**, Defendants, the Martinez Intervenors, and the Local Government Intervenors **SHALL** each file an additional brief, not to exceed 10 pages, addressing the following issues:

1. Whether Plaintiffs' claimed representational injury is "likely to be redressed by the requested relief" in light of *Franklin v. Massachusetts*, 505 U.S. 788, 801-804, 824-29 (1992).

2. Whether Plaintiffs have Article III standing based on their claimed financial injury.

Plaintiffs **SHALL** respond to the supplemental briefs on or before **January 25, 2019**, and Defendants and the Intervenors **MAY** reply on or before **February 1, 2019**.

DONE and **ORDERED** this December 13, 2018.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE