UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EMMA DOE et al.,	:	
	:	**Civil Case No. 12-1670**
Plaintiffs,	:	
	:	**Section F**
v.	:	
	:	**Judge Martin L. C. Feldman**
JAMES D. CALDWELL et al.,	:	
	:	**Mag. Judge Alma L. Chasez**
Defendants.	:	
	:	

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiffs file this Memorandum in opposition to Defendants' Motion to Dismiss and in support of Plaintiffs' Motion for Summary Judgment based on this Court's ruling in *Doe v. Jindal*, 851 F. Supp. 2d 995 (E.D. La. 2012) and the undisputed facts.[1] The only material difference between the two cases is that the current litigation is a class action, which has been filed to secure the application of the relief this Court afforded to the named plaintiffs in *Doe v. Jindal* to the identically situated named plaintiffs in the instant action and members of the plaintiff class ("plaintiffs").

There being no genuine disputes of material fact or necessity for further proceedings in order to resolve the purely legal issues presented, plaintiffs now move for summary judgment

[1] Plaintiffs have simultaneously filed a Motion for Summary Judgment containing a Statement of Facts Not In Dispute. In the interest of judicial economy, this Memorandum provides plaintiffs' legal arguments as to both why the Complaint should not be dismissed and why plaintiffs are entitled to judgment as a matter of law. For that reason, the Motion for Summary Judgment is supported by an identical Memorandum of Law.

and have simultaneously filed a Motion for Class Certification, thereby rendering the case ripe for resolution as a matter of law.

II. STANDARD OF REVIEW

On a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, courts must "accept well-pled factual allegations as true," *City of Clinton v. Pilgrim's Pride Corp.*, 632 F.3d 148, 153 (5th Cir. 2010), and "resolve any ambiguities or doubts regarding the sufficiency of the claim in favor of [the] plaintiff." *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 n. 9 (5th Cir. 1993). Courts must deny a motion to dismiss "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). These same standards apply to a motion to dismiss brought under Rule 12(b)(1) of the Federal Rules of Civil Procedure. *See*, *e.g.*, *Meredith v. Nowak*, No. CIV A 06-2384, 2006 WL 3020097, at *2 (E.D. La. Oct. 19, 2006) (Feldman, J.).

Rule 56(a) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted where the moving party "shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Once the moving party has shown that there is an absence of evidence to support the non-moving party's case, the non-movant must "set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby*, 477 U.S. 242, 256 (1986); *see also Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1285 (5th Cir. 1990). Moreover, Rule 56 "does not require that any discovery take place before summary judgment can be granted." *Washington*, 901 F.2d at 1285. Summary judgment is appropriate when discovery "is not likely to produce the facts needed . . . to withstand [the] motion for summary judgment." *Id.*; *see also Doe v. Jindal*, 851 F. Supp. 2d

995 (granting summary judgment without discovery); *Barbados Beverages v. Antilles Lloyd*, Civ. A. No. 90-3330, 1990 WL 223026, at *3 (E.D. La. Dec. 21, 1990) (Feldman, J.) (same); *Resolution Trust Corp. v. Madison St.*, Civ. A. No. 89-4212, 1990 WL 130621, at *2 (E.D. La. Aug. 31, 1990) (Feldman, J.) (granting summary judgment prior to the close of discovery).

III. ARGUMENT

This Court has already decided the constitutional issue presented by the Complaint in this case; accordingly, under well-established *stare decisis* principles, *see, e.g., Bogard v. Cook*, 586 F.2d 399, 409 (5th Cir. 1978), that ruling is controlling. In *Doe v. Jindal,* this Court ruled:

> The plaintiffs contend that they have demonstrated a violation of the Equal Protection Clause: they observe that an examination of the two statutes reflects that they treat differently identically-situated individuals, because plaintiffs are required to register as sex offenders simply because they were convicted of Crime Against Nature by Solicitation, rather than solicitation of Prostitution (conduct chargeable by and covered under either statute). Plaintiffs draw the conclusion that the statutory classification drawn between individuals convicted of Crime Against Nature by Solicitation and those convicted of Prostitution is not rationally related to achieving any legitimate state interest. The Court agrees.
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> . . .
>
> The Court finds that the plaintiffs have demonstrated entitlement to judgment as a matter of law: First, the State has created two classifications of similarly (in fact, identical) situated individuals who were treated differently (only one class is subject to mandatory sex offender registration). Second, the classification has no rational relation to any legitimate government objective: there is no legitimating rationale in the record to justify targeting only those convicted of Crime Against Nature by Solicitation for mandatory sex offender registration. The defendants' arguments fail, as the similar ones did under *Eisenstadt*. The very same public health and moral purposes apply to both statutes.

Doe, 851 F. Supp. 2d at 1006-07 (footnotes omitted).

Viewed either as controlling precedent or as a matter of collateral estoppel, *see infra* § III. C, under this Court's previous ruling and judgment, the plaintiffs are identically situated to the plaintiffs in *Doe v. Jindal*. Plaintiffs are therefore entitled to judgment as a matter of law, the defendants' motion to dismiss must be denied, and plaintiffs' motion for summary judgment must be granted. To avoid this result, defendants make several arguments, all of which were either expressly rejected by this Court in *Doe v. Jindal* or are meritless in light of that ruling and final judgment. We address these arguments in turn.

A. The Passage of Act 402 Has No Effect on the Classification Found Unconstitutional in *Doe v. Jindal*.

Defendants first assert that, by providing a state court remedy for the plaintiffs and members of the plaintiff class, Act 402 of the 2012 Session of the Louisiana Legislature ("Act 402"), thereby eliminates the offending classification at issue in *Doe v. Jindal*. *See* Memorandum in Support of Motion to Dismiss ("Memorandum") at 5-6, 10. The legislation does no such thing, leaving intact the initial and continuing imposition of a sex offender registration requirement upon those convicted of CANS prior to August 15, 2011, but not those convicted under the solicitation provision of the Prostitution statute. The *only* thing that Act 402 accomplishes is the imposition of an additional burden on individuals who continue to suffer this unconstitutional requirement by requiring them to take additional steps and bear additional expense to obtain the immediate relief clearly mandated by this Court's decision in *Doe v. Jindal*.

Under Act 402, a person convicted of a CANS offense may petition a state court for an order removing her from the state registry and relieving her from any registration obligations. But this "remedy" is not self-executing: it requires the registrant to file an action in court and to prove entitlement to relief, and a state court to grant such relief. In other words, the state did not

provide the relief merited by this Court's prior holding and judgment in *Doe v. Jindal* for all individuals who remain on the registry and continue to bear the burden of the discriminatory classification. *See* Judgment, *Doe v. Jindal*, 11-cv-368 (E.D. La. 2012), at ¶¶ 1-2 (Docket #106) (finding the imposition of sex offender registration requirement on individuals convicted of CANS unconstitutional and ordering that "defendants must cease and desist from placing any individuals convicted of Crime Against Nature by Solicitation under La. R.S. 14:89(A)(2) or 14:89.2(A) on the SOCPR [Sex Offender and Child Predator Registry]"); *see also* Memorandum, at 10 (recognizing that "the declaratory relief [granted in *Doe v. Jindal*] did extend to all of the people falling within that category").

Defendants nevertheless maintain that Act 402 makes "substantive" changes in state law, Memorandum at 5, such that plaintiffs in this matter are no longer identically situated to individuals who were convicted under the solicitation provision of the Prostitution statute. According to defendants, the passage of Act 402 created different classifications which now have a rational basis: persons who were never required to register (i.e., persons convicted under the Prostitution statute) and persons who *no longer* have to register (i.e., persons with CANS convictions entitled to proceed under Act 402).

These semantics fail. There can be no genuine dispute that individuals convicted of CANS prior to August 15, 2011 still must register as sex offenders absent additional action on the part of a state court upon a motion brought by each affected individual. It is thus simply not true that plaintiffs "*no longer have to* register," *id.* at 5 (emphasis in original), for their CANS convictions. To the contrary, a classification remains between individuals who are required to register as sex offenders due to a CANS conviction prior to August 15, 2011 and individuals who are not required to do so pursuant to a conviction for identical conduct under the solicitation

provision of the Prostitution statute. Without intervention by this Court, as a result of their convictions, plaintiffs still have the burden of complying with registration requirements or initiating additional proceedings to obtain relief that was already mandated by this Court's holding in *Doe v. Jindal* – along with the substantial possible penalties for failure to do so. Individuals convicted under the solicitation provision of the Prostitution statute bear neither burden because no sex offender registration requirement was ever imposed.

Act 402 thus does not eliminate the offending classification. If Act 402 affirmatively removed all registration requirements for individuals convicted of CANS and required no further action required on their part, it would be accurate to say they no longer have to register. But that is not what Act 402 provides. To the contrary, it has maintained the classification at issue – individuals convicted of CANS, but not Prostitution, prior to August 15, 2011 continue to be subject to an automatic and mandatory sex offender registration requirement. Act 402 simply imposed an *additional* requirement that members of the plaintiff class who are identically situated to the plaintiffs in *Doe v. Jindal* now suffer the additional burden and expense of seeking removal from the registry by availing themselves of the procedure provided by Act 402. Therefore, there can be no dispute that under the Equal Protection Clause, as interpreted in *Doe v. Jindal*, the unconstitutional classification is still in effect.

Further, defendants' claim that plaintiffs may not seek relief under § 1983 due to the availability of a state remedy under Act 402, *id*. at 10, in effect imposes an exhaustion of state law requirement. As has long been established under § 1983 practice, however, such requirements may not be used to preclude a plaintiff from seeking enforcement of federal rights. *Monroe v. Pape*, 365 U.S. 167, 183 (1961) ("It is no answer that the state has a law which if enforced would give relief. The federal remedy is supplementary, and the latter need not be first

sought and refused before the federal one is invoked"); *Patsy v. Board of Regents*, 457 U.S. 496, 501 (1982) ("Exhaustion is not a prerequisite to an action under § 1983"). Given the ruling in *Doe v. Jindal*, under the Fourteenth Amendment and the Supremacy Clause, plaintiffs are entitled as a matter of law to relief from registration requirements without further state court or administrative proceedings. Constitutional rights and remedies cannot be subject to state imposed conditions or legislative interpretations that impose burdens not compatible with the exercise of that right. *See Doe*, 851 F. Supp. 2d at 1008 n.27.

B. There Is Still No Rational Basis for this Classification.

Defendants argue that Act 402 creates a rational basis for treating the two classes identified in *Doe v. Jindal* and in the Complaint in this lawsuit differently. *See* Memorandum at 6-9. Once again, the argument is far wide of the constitutional mark. Initially, because defendants misidentify the classification at issue as described above, any justification they provide for the distinction between classes cannot be credited.

Moreover, the purported justification proffered by defendants – the fact that Act 402 does not apply to persons convicted of CANS offenses involving minors – is quite irrelevant. As this Court made clear in *Doe v. Jindal*, the State of Louisiana is free to distinguish registration requirements based on the age of the person solicited, provided it does so on an equal basis for individuals convicted of CANS and individuals convicted of identical conduct under the Prostitution statute. That is not what Act 402 does. Rather, it requires individuals convicted of CANS, but not those convicted of identical conduct under the Prostitution statute, to prove that the person solicited was not a minor in order to obtain relief from an unconstitutional registration requirement. This distinction has no greater rational basis than the one at issue in *Doe v. Jindal*.

Plaintiffs were convicted under the solicitation provision of the CANS statute that required registration as sex offenders without regard to the age of the person solicited while those convicted of identical crimes under the solicitation provision of the Prostitution statute (which also makes no reference to the age of the person solicited) were not required to register. Indeed, exactly like the plaintiffs who secured relief in *Doe v. Jindal*, plaintiffs and members of plaintiff class in this case are expressly defined as those who were convicted under La. Rev. Stat. § 14:89(A)(2) or § 14:89.2(A), and *not* any provisions where the age of the person solicited would be relevant, La. Rev. Stat § 14:89.2(B)(3) and (C) or § 14:89.1. As the statutes under which the members of the plaintiff class were convicted contain no provision and make no distinction with respect to sex offender registration regarding the age of the person solicited, age is not a material fact.

Defendants argue that even if plaintiffs were convicted under § 14:89(A)(2), they have failed to demonstrate that they did not solicit sex from a minor. *See* Memorandum at 12. Plaintiffs' convictions date from before August 2011, when the CANS statute was recodified. During the relevant time period, Aggravated Crime Against Nature (which, *inter alia*, criminalizes crime against nature that involves a minor) was punished under a separate and distinct provision, La. Rev. Stat. § 14:89.1, and individuals convicted under this provision were and continue to be listed on the Sex Offender and Child Predator Registry as such. The recodified CANS statute, adopted in August 2011, includes a provision that specifically addresses solicitation of a minor. *See* La. Rev. Stat. § 14.89.2(B)(3) and (C).[2] Importantly, however, no plaintiff or member of the plaintiff class is required to register as a sex offender

[2] Similarly, individuals convicted of La. Rev. Stat § 14:82.1 (Prostitution – persons under 17), are required to register as sex offenders. *See* La. Rev. Stat. §§ 15:541 and 15:542 (A)(1)(b).

because of a conviction under either § 14:89.1 or § 14.89.2(B)(3) and (C). These provisions are therefore entirely irrelevant here.

Further, as this Court has ruled in *Doe v Jindal*, 851 F. Supp. 2d at 1004 n. 21, 1008, the underlying circumstances of plaintiffs' convictions are irrelevant to the operation of the statutes at issue, the question of standing, and the equal protection analysis. The existence of a CANS conviction is the only fact that triggers the challenged registration requirement, regardless of the circumstances which gave rise to the conviction. When imposing a mandatory registration requirement on all individuals convicted of enumerated offenses, the challenged provisions of the Registry Law do not contemplate consideration of anything beyond the mere fact of a conviction. *See* La. Rev. Stat. § 15:542(A)(creating a registration requirement for "[a]ny adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld[,] for the perpetration or attempted perpetration of . . . a sex offense as defined in R.A. 15:541"); La. Rev. Stat. § 15:541(24) (enumerating CANS as an offense requiring registration).[3]

Defendants' further arguments on this issue, as well as their challenge to plaintiffs' standing on this basis, Memorandum at 9-11, simply repeat those already made with respect to the state's interest in protecting minors as a justification for the Act 402 procedures. Again, given that none of the plaintiffs were convicted and sentenced under either § 14:89.2(B)(3) and (C) or § 14:89.1, this argument is meritless.[4]

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[3] The Court's Judgment states that "this Judgment and Order does not apply to La. Rev. § 14:89.2(C)." Judgment, *Doe v. Jindal*, 11-cv-368 (E.D. La. 2012), at ¶ 3 (Docket #106). Of course, this must be so since that statute (dealing with minors) was enacted *after* the time period in which the plaintiffs there and in the current litigation were convicted. Plaintiffs and members of the plaintiff class were all convicted under § 14:89(A)(2) and § 14:89.2(A).

[4] In any event, these interests, along with others raised and defeated in *Doe v. Jindal*, apply with equal force to individuals convicted of identical conduct under the solicitation provision of the

C. Collateral Estoppel Applies in this Case.

Defendants argue, as they did in *Doe v. Jindal*, that under any circumstances there is no Equal Protection violation. *See id*. at 11-12. The argument was rejected there and should be here as well, not only because of the precedential effect of the prior judgment, but as a matter of collateral estoppel. In *Doe v. Jindal*, the defendants did not appeal the ruling of this Court, *see* Plaintiffs' Statement of Material Facts Not in Dispute, at ¶ 16, thus making that judgment final and binding. In the present case, the defendants are identical to the defendants in *Doe v. Jindal*, either by name or by reason of their official capacities, the issue presented is precisely the same, and this Court's prior judgment is final. *See* Restatement (Second) Judgments, § 29 (1982). Therefore, the defendants are bound by the prior ruling of this Court.

The United States Supreme Court recognized the applicability of the non-mutual offensive collateral estoppel doctrine in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979). There, the Court ruled that a previous court judgment upholding an SEC enforcement action against a corporate defendant was binding in a subsequent class action brought by a different class of plaintiffs against the same corporate defendant. In rejecting the argument that estoppel should not apply in a matter involving different parties, the Court stated that as a general proposition, there was no need to "afford a litigant more than one full and fair opportunity for judicial resolution of the same issue." *Id*. at 328 (quoting *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328 (1971)). The Court ruled that a federal district court has a wide degree of discretion in deciding whether to invoke the doctrine.

Prostitution statute, for whom no registration requirement attaches under any circumstances. Accordingly, there can be no genuine dispute that there is no rational basis for the continuing classification at issue here.

The lower federal courts have invoked the non-mutual offensive collateral estoppel doctrine in a range of cases. In *Robb v. Hungerbeeler*, 370 F.3d 735 (8th Cir. 2004), the court ruled that state officials were precluded from re-litigating First Amendment issues they had lost in previous litigation with different plaintiffs. The issue in *Robb* was the legality of a state regulation that required participants in the Adopt-A-Highway program to agree to refrain from racial discrimination. In a previous case the court had found that the regulation violated the First Amendment. *Id*. at 738. There, in a second case brought by different plaintiffs, but against the same defendants, the court applied non-mutual affirmative collateral estoppel principles to rule in favor of the plaintiffs. *Id*. at 739-40. The Court should do the same here.

In *Brown v. Colegio De Abogados De P.R.*, 613 F.3d 44 (1st Cir. 2010), the court, in a case procedurally identical to the matter before this Court, approved the district court's ruling that an earlier judgment for an individual plaintiff that certain procedures of the integrated bar association program of Puerto Rico were unconstitutional was binding on collateral estoppel grounds against the original defendants in a subsequent class action lawsuit. As the court explained, the doctrine of non-mutual offensive collateral estoppel (or "issue preclusion") is a part of the *res judicata* doctrine and prevents re-litigation of issues decided against the defendants even where the plaintiff asserting preclusion was not a party to the previous case. *Id.* at 48 n.2. *See also*, *Fuchsberg & Fuchsberg v. Galizia*, 300 F.3d 105 (2d Cir. 2002) (estoppel doctrine applied against defendant insurance companies on issue decided adversely to them in prior litigation brought by different plaintiffs); *Fireman's Fund Ins. Co. v. Stites*, 258 F.3d 1016 (9th Cir. 2001) (civil RICO plaintiff can invoke affirmative collateral estoppel against defendant who had been convicted on federal RICO charges); *Williams v. Bennett*, 689 F.2d 1370, 1382 (11th Cir. 1982) (prior determination as to unconstitutional conditions in state prison given

preclusive effect to new plaintiff's claim for damages arising from the same conditions of confinement); *Bogard*, 586 F.2d at 409 (*stare decisis* or collateral estoppel permits court to apply prior findings of unconstitutional conditions).[5]

There are some limited exceptions to the application of the doctrine of non-mutual offensive collateral estoppel, but they are not relevant to this case. In *Parklane Hosiery Co.*, 439 U.S. at 330-332, the Court stated that the doctrine might be inappropriate, for example, where the defendant had little or diminished incentive to defend the first actions due to the limited or nominal damages that were at stake or where the second suit presented procedural defenses to the merits that were not available in the first case. None of these factors is present here. The defendants had every incentive to fully and vigorously litigate this serious constitutional issue and they did so in this Court. The defendants affirmatively waived their right to appeal, *see* Judgment, *Doe v. Jindal*, 11-cv-368 (E.D. La. 2012), at ¶ 9 (Docket #106), and when they failed to apply the judgment to all persons identically situated, the necessity for the current litigation arose.

In *Parklane Hosiery,* the Court also noted that a trial court could take into account as one of several discretionary factors whether all of the new plaintiffs could have joined the first action. Here, such joinder would not have been possible given the fact that the plaintiff class includes nearly 500 persons, many of whom would have had neither knowledge of the case nor the resources to intervene. The plaintiffs in the first action were not obligated to pursue class-wide relief and the current plaintiffs did not seek some kind of tactical advantage by not joining

[5] Estoppel is not appropriate where the issues are not identical, not essential to the judgment, or not previously appealable. *Society of Separationists, Inc. v. Herman*, 939 F.2d 1207, 1214 (5th Cir. 1991); *Copeland v. Merrill Lynch & Co., Inc.*, 47 F.3d 1415, 1416 (5th Cir. 1995). But where these factors do not exist, estoppel plays an important role in judicial economy in not revisiting past judgments.

the first case. Indeed, given defendants' failure to do so, the new plaintiffs seek only to enforce for all those similarly situated the law as announced by this Court. In such circumstances, estoppel is plainly appropriate to extend the identical equitable relief obtained in the first action to a broader group of persons. *See*, *e.g.*, *Brown*, 613 F.3d at 48 n.2.

Finally, defendants may not avoid the application of collateral estopped in this case under *United States v. Mendoza*, 464 U.S. 154 (1984), where the Court ruled that the offensive collateral estoppel doctrine is not applicable against the United States. The Court recognized that the federal government is involved in a very large volume of litigation and that public policy would not be served by requiring to the government to appeal every adverse judgment to avoid "freezing" the law as announced by a single lower federal court. Thus, a law or policy that had nationwide impact should not be subject to a definitive constitutional construction by a single district or circuit court, among hundreds across the nation. This is particularly true where different Administrations may adopt different statutory or policy interpretations. Further, as the Court noted, this result would conflict with the Supreme Court's own practice of deferring review of certain issues until several circuit courts have had the opportunity to rule on the issue and to grant review only where a circuit-split has developed.

Mendoza has no application here. This Court's ruling in *Doe v. Jindal* was determinative of a state issue, and has no controlling effect for any other jurisdiction. Indeed, if conflicting decisions were made in other federal courts on other state laws, the Supreme Court could resolve the conflict. The defendants, all of whom were sued in their official capacities, had the full and fair opportunity to appeal that judgment, yet they deliberately permitted that judgment to stand knowing that such a decision would leave this Court's ruling binding as a matter of collateral estoppel. This current action was made necessary only because the defendants are not in

compliance with this Court's mandate to treat all those similarly situated in an equal fashion and to cease and desist from placing any individuals convicted of Crime Against Nature by Solicitation under La. R.S. 14:89(A)(2) or 14:89.2(A) on the SOCPR.

Further, there are no public policy or prudential reasons why the defendant state officials should be relieved of the estoppel consequences of the earlier judgment where they had a full and fair opportunity to litigate the issue, including an appeal of this Court's judgment. The Supreme Court has made clear that the "full and fair" opportunity to litigate is the most significant factor in the discretionary calculus for applying non-mutual offensive collateral estoppel, and here it should be controlling. In such circumstances there is no unfairness to the defendants and, as the lower federal courts have ruled, there is simply no reason why the relief provided by the judgment in *Doe v. Jindal* should not extend to all persons who are similarly situated. *See, e.g., Robb*, 370 F.3d at 739-40; *Brown*, 613 F.3d 48 n.2; *Williams*, 689 F.2d at1382.

D. The Remainder of Defendants' Arguments Are Meritless.

In an argument that largely tracks the earlier argument regarding the age of the person solicited, defendants argue that plaintiffs lack standing for their failure to allege that they were not convicted of CANS offenses involving minors. And the same response applies: by their pleadings and class action motion plaintiffs allege that they were convicted only of violations of § 14:89(A)(2) or § 14:89.2(A), neither of which has any provision that implicates the age of the person solicited.

Finally, defendants argue that the sovereign immunity bars this lawsuit as the relief sought is not "prospective." Memorandum at 13. This argument is frivolous in light of plaintiffs' well-pled allegations of an ongoing equal protection violation, and in light of the fact that the Fifth Circuit and other District Courts – including this Court in *Doe v. Jindal*, 851 F.

Supp. 2d at 995 – have required state officials to take exactly the type of action sought here. *See*, *e.g.*, *Meza v. Livingston*, 607 F.3d 392, 412 (5th Cir. 2010) (enjoining the imposition of sex offender status by state officials); *Coleman v. Dretke*, 409 F.3d 665, 668 (5th Cir. 2005) (removal of plaintiff from sex offender registry did not moot claim for relief and officials can be enjoined from requiring non-sex offender from attending sex offender therapy); *Nelson v. University of Texas*, 535 F.3d 318, 322 (5th Cir. 2008) (no Eleventh Amendment bar to relief reinstating state employee to previous job position); *Doe v. Jindal*, 2012 U.S. Dist. LEXIS 19841 (M.D. La. Aug. 19, 2011) (enjoining state officials from enforcement of another provision of Louisiana's sex offender registration statute).

There can be no genuine dispute that defendants' continuing failure to remedy the equal protection violation found in *Doe v. Jindal* presents an ongoing violation of federal law. There can also be no genuine dispute that such relief is prospective, not retrospective. Accordingly, defendants' efforts to shield themselves from their clear obligation to comply with this Court's holding and judgment in *Doe v. Jindal* by invoking the doctrine of sovereign immunity is without foundation.

IV. CONCLUSION

For all of the foregoing reasons, Defendants' Motion to Dismiss should be denied and Plaintiffs' Motion for Summary Judgment should be granted.

Dated: September 18, 2012

Respectfully submitted,

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