NOS. 11-14532-CC & 11-14674-CC

UNITED STATES COURT OF APPEALS

FOR THE

ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Appellant & Cross-Appellee

VS.

STATE OF ALABAMA, *ET AL.*,
Appellees & Cross-Appellants

ON CROSS-APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
HON. SHARON LOVELACE BLACKBURN
Case No. 2:11-cv-2746-SLB

AMICUS CURIAE BRIEF OF THOMAS MORE LAW CENTER IN SUPPORT OF RESPONSE BRIEF FOR APPELLEES & PRINCIPAL BRIEF OF CROSS-APPELLANTS STATE OF ALABAMA & GOVERNOR BENTLEY

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CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney for *Amicus Curiae* Thomas More Law Center hereby certifies pursuant to 11th Cir. R. 26.1 that the following have an interest in the outcome of this case:

Abate, Michael P.;

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Alabama;

Alabama Coalition Against Domestic Violence(ACADV);

Alabama Education Association (AEA);

Alabama Legislators;

Alabama NOW;

Albin, Ramona C.;

American Immigration Lawyers Association (AILA);

American Unity Legal Defense Fund;

Anti-Defamation League;

Asian American Legal Defense and Education Fund (AALDEF);

Bar Association of the City of New York, Immigration & Nationality Law Committee;

Bentley, Robert J.;

Birmingham Peace Project;

Blackburn, The Honorable Sharon Lovelace;

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Lawyers Committee for Civil Rights Under Law;

Montgomery Improvement Association;

National Association for the Advancement of Colored People (NAACP) Alabama Conference;

National Asian-Pacific Bar Association;

National Association of Criminal Defense Lawyers (NACDL);

National Association of Latino Elected and Appointed Officials;

National Council of La Raza;

National Education Association (NEA);

National Employment Law Project;

National Fair Housing Alliance, Inc.;

National Guestworker Alliance;

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the undersigned counsel for *Amicus Curiae* Thomas More Law Center hereby discloses the following: The Thomas More Law Center is a not-for-profit corporation that does not have any parent corporation(s). The Thomas More Law Center has no stock; therefore, no publicly held corporation owns 10% or more of its stock.

THOMAS MORE LAW CENTER

/s/ Erin Chau
Erin Chau, Esq.

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CERTIFICATE OF CONSENT OF PARTIES TO FILING OF *AMICUS CURIAE* BRIEF

Pursuant to Fed. R. App. P. 29(a), I hereby certify that all parties have consented to the filing of this brief of *Amicus Curiae* Thomas More Law Center.

THOMAS MORE LAW CENTER

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STATEMENT OF IDENTITY AND INTERESTS OF *AMICUS CURIAE*

Pursuant to Fed. R. App. P. 29, *Amicus Curiae* Thomas More Law Center respectfully submits this brief in support of Appellees and Cross-Appellants State of Alabama and Governor Robert Bentley.

The Thomas More Law Center (TMLC) is a national, public interest law firm that defends and promotes America's Christian heritage and moral values, including the religious freedom of Christians, time-honored family values, and the sanctity of human life. It supports a strong national defense and an independent and sovereign United States of America. TMLC accomplishes its mission through litigation, education, and related activities.

TMLC has over 60,000 members nationwide, including members residing in Alabama. TMLC and its members support the sovereign rights and police powers of the States, specifically including the fundamental right of States to protect their citizens from rampant crime and other public concerns associated with illegal immigration. Depriving States the right to protect their citizens from illegal immigration threatens the safety and security of all American citizens.

STATEMENT OF THE CASE

To address the illegal immigration crisis, Alabama enacted the "Beason-Hammon Alabama Taxpayer and Citizen Protection Act," Ala. Laws Act 2011-535 (hereinafter "H.B. 56"). The court below affirmed the constitutionality of the majority of its challenged provisions and enjoined four others. This court then temporarily enjoined two additional provisions of the Act. The enjoined provisions of H.B. 56 authorize and direct state law enforcement officers to cooperate and communicate with federal officials regarding the enforcement of federal immigration laws and impose state law penalties for non-compliance with federal immigration requirements.

This brief addresses whether federal immigration laws preempt the challenged provisions of H.B. 56, which represent Alabama's efforts at cooperative, immigration law enforcement per Congress' intent.

SUMMARY OF ARGUMENT

The purpose of this brief is to address two related issues that challenge an underlying assumption of the decisions that enjoined certain provisions of H.B. 56—a law that was duly enacted by the Alabama Legislature pursuant to its police powers. The district court upheld the majority of the law as Constitutional, and struck down the remaining balance under the reasoning that the Supremacy Clause grants the federal government the overriding, if not exclusive, authority for

enacting and enforcing immigration laws. This court followed that reasoning by temporarily enjoining two additional provisions of the Act. However, this underlying supposition is contrary to the fundamental principles of federalism, our Nation's history, its laws, and sound public policy.

While the Constitution grants Congress the authority "[t]o establish an uniform Rule of Naturalization," this authority does not deprive the States of their right to exercise their police powers to protect their citizens from threats arising from within and without their physical borders. Moreover, these police powers were expressly reserved for the States by our Founding Fathers through the Tenth Amendment. Indeed, our Republic was designed as a federal system with a limited national government. As James Madison explained in the Federalist Papers: "In the first place it is to be remembered, that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects . . . ." *The Federalist* No. 14, at 65 (James Madison) (Carey & McClellan eds., 1990). Thus, far from depriving States of their independent rights as sovereigns, the Constitution expressly preserves those rights in the States vis-à-vis the powers of the federal government. In fact, the States, and not the federal government, have the paramount right to exercise their police powers to provide for the physical protection and safety of persons within their respective borders. As the U.S. Supreme Court previously stated, "[W]e can think

of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." *United States v. Morrison*, 529 U.S. 598, 618 (2000) (citations omitted). H.B. 56 was validly enacted pursuant to this authority.

In sum, the two related issues addressed in this brief are as follows. First, whether a State, as a sovereign, has an independent right pursuant to its police powers as reserved through the Tenth Amendment to enact and enforce laws regarding immigration that do not directly conflict with the authority of Congress to enact a uniform rule for naturalization. Second, whether a validly enacted state law that does not substantively conflict with federal law and is in fact consistent with congressional intent can otherwise be preempted by an *executive policy* of non-enforcement of federal law that outright disregards congressional intent.

In the final analysis, the State of Alabama retains the independent and paramount authority to enact and enforce laws, including laws related to illegal immigration, for the purpose of protecting its citizens and other persons within its borders, and the Executive Branch has no authority to tie the hands of Alabama officials and prevent them from exercising this sovereign power by adopting a *policy* of non-enforcement of federal law and thereby denying Alabama the ability to secure its own State borders.

ARGUMENT

I. FEDERAL AUTHORITY TO ENACT IMMIGRATION LAWS DOES NOT VITIATE CONCURRENT, SOVEREIGN STATE AUTHORITY, WHICH HAS NOT BEEN DELEGRATED TO THE FEDERAL GOVERNMENT, TO ENACT AND ENFORCE IMMIGRATION LAWS PURSUANT TO THE STATE'S POLICE POWERS.

A. Alabama Is a Sovereign with Independent Police Powers to Protect Its Citizens and Other Persons within Its Borders.

As the U.S. Supreme Court acknowledged long ago in *House v. Mayes*, 219 U.S. 270, 281-82 (1910):

> There are certain fundamental principles . . . which are not open to dispute. . . . Briefly stated, those principles are: That the Government created by the Federal Constitution is one of enumerated powers, and cannot, by any of its agencies, exercise an authority not granted by that instrument, either in express words or by necessary implication; that a power may by implied when necessary to give effect to a power expressly granted; that while the Constitution of the United States and the laws enacted in pursuance thereof, together with any treaties made under the authority of the United States, constitute the Supreme Law of the Land, a State of the Union may exercise all such governmental authority as is consistent with its own constitution, and not in conflict with the Federal Constitution; *that such a power in the State, generally referred to as its police power, is not granted by or derived from the Federal Constitution but exists independently of it, by reason of its never having been surrendered by the State to the General Government*; that among the powers of the State, not surrendered—which power therefore remains with the State—*is the power to so regulate the relative rights and duties of all within its jurisdiction so as to guard the public morals, the public safety and the public health, as well as to promote the public convenience and the common good*; and that it is with the State to devise the means to be employed to such ends, taking care always that the means devised do not go beyond the necessities of the case, have some real or substantial relation to the objects to be accomplished, and are not inconsistent with its own constitution or the Constitution of the United States. The

> cases which sanction these principles are numerous, are well known to the profession, and need not be here cited.

Id. at 281-82 (emphasis added).

Thus, States, as sovereigns, did not surrender their authority to "guard . . . the public safety" to the federal government.[1] Since that authority has never been delegated, it is, therefore, retained.[2] States need not look to the federal government—and certainly not to the Executive Branch of the federal government—for permission to enact laws that protect the safety of their citizens and other persons within their borders, even if the laws relate to illegal immigration, such as H.B. 56.[3] Indeed, there is no—nor should there be—federal

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[1] In *United States v. Cruikshank*, 92 U.S. 542, 549 (1876), Chief Justice Waite, writing for the Court, made the following relevant and timeless observation:

> We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect.

[2] Similarly and more recently, in *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court acknowledged the following:

> We start with first principles. The Constitution creates a Federal Government of enumerated powers . . . This constitutionally mandated division of authority was adopted by the Framers to ensure protection of our fundamental liberties. Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, *a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.*

Id. at 552 (internal citations and quotations omitted) (emphasis added).

[3] The Tenth Amendment, which states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the

supremacy over immigration enforcement within a State's borders, particularly when enforcement has nothing to do with establishing a "uniform Rule of Naturalization," but everything to do with public safety. That is particularly true where, as here, the Alabama law at issue is entirely consistent with federal law.

Moreover, history shows that the power to enact laws affecting immigration is not the sole province of the federal government. For example, in 1837, the Supreme Court upheld a state law that allowed the City of New York to expel arriving aliens it "deemed" likely to become a public burden. As Justice Philip Barbour explained, the State properly passed a law with a view to prevent her citizens from being oppressed by the support of multitudes of poor persons, who come from foreign countries without possessing the means of supporting themselves.

> *There can be no mode in which the power to regulate internal police could be more appropriately exercised.* New York, from her particular situation, is, perhaps more than any other city in the Union, exposed to the evil of thousands of foreign emigrants arriving there, and the consequent danger of her citizens being subjected to a heavy charge in the maintenance of those who are poor. *It is the duty of the state to protect its citizens from this evil*; they have endeavoured to do so, by passing, amongst other things, the section of the law in question. *We should, upon principle, say that it had a right to do so.*

New York v. Miln, 36 U.S. 102, 141 (1837).

Here, Appellants incorrectly assert that "the Constitution leaves no room for

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States respectively, or to the people," *restrains* the federal government from interfering with the police powers of the States. U.S. Const. amend. X.

such a state immigration-enforcement scheme" and "contemplates regulation of immigration by federal officials responsive to the concerns of the Nation as a whole, including to the issues of foreign policy that are intimately connected to immigration regulation." (U.S. Br. at 18). However, policing local immigration issues as in this case more directly relates to domestic problems—such as unemployment, the use of government services, the regulations of serious crime such as drug and human trafficking, and serious public safety concerns—than it does to foreign relations, as Appellants assert. (*See* Ala. Br. at 6, 8, 21). Consequently, through the lawful exercise of its police powers, Alabama sought to address this "public safety" concern by enacting H.B. 56. And it was within its authority to do so.

B. H.B. 56 Does Not Conflict with Congress' Enumerated Authority to Enact Uniform Rules for Naturalization and Its Attendant Authority in the Areas of Immigration and Foreign Affairs.

The U.S. Constitution grants Congress the authority to establish requirements for the admission of aliens into this country. Art. I, sec. 8, cl. 4 ("To establish an uniform Rule of Naturalization . . . ."). That is a national issue that requires uniformity at the national level. Thus, "the power to restrict, limit, regulate, and register aliens as a distinct group is not an equal and continuously existing concurrent power of state and nation, but that whatever power a state may have is subordinate to supreme national law." *Hines v. Davidowitz*, 312 U.S. 52,

68 (1941) (striking down the Alien Registration Act adopted by Pennsylvania). Indeed, having such uniformity at the national level is not only consistent with the U.S. Constitution; it makes sense from a policy perspective as well. When addressing matters that affect foreign relations (such as naturalization), it is important to speak with one voice—"we are but one people, one nation, one power." *See id.* at 63-65.

The same, however, cannot be said about enforcing laws related to immigration (which apply uniform standards in the process) that promote the *public safety* and *general welfare* of the citizens of a State. Such laws, and the need to enact such laws, involve significant local concerns. For example, the impact of illegal immigration affects central States such as Nebraska less than a state with a larger population of illegal immigrants located closer to an international border such as Alabama, or those on an international border, such as Arizona. As the undisputed record in this case demonstrates, Alabama has a real, palpable, and compelling interest in protecting its citizens and other persons within its borders (including legal aliens, among others) from the serious public safety issues that result from the non-enforcement of immigration laws.[4] Unlike the

[4] The non-regulation of illegal immigration substantially impacts Alabama. "In 2010, Alabama, a state without an international border, had between 75,000 and 160,000 [illegal immigrants]." (Ala. Br. at 6). The large population of illegal immigrants directly affects Alabama's employment rate, revenue from the collection of state taxes, and the enforcement of criminal law. *Id.* Due to the large

Pennsylvania law struck down in *Hines*, H.B. 56 does not establish any independent registration requirements for aliens. Rather, through H.B. 56, Alabama seeks to exercise its police powers to enforce those "uniform" requirements already established by Congress. And the passage and enforcement of H.B. 56 not only falls within Alabama's lawful exercise of its police powers, the laws integrally cohere to *congressional* intent in the area of immigration.[5] *See, e.g.*, 8 U.S.C. § 1644; 8 U.S.C. § 1357(g); 8 U.S.C. § 1373(c).

C. There Is No Direct Conflict Between H.B. 56 and Federal Law.

When the federal government seeks to prevent a State from exercising its inherent police power to protect its citizens and other persons within its borders from public danger through the Supremacy Clause, the application of preemption principles should be sharply circumscribed. As noted previously, States are not precluded from enacting and enforcing laws related to immigration, particularly when it is necessary to solve local problems arising from illegal immigration. For example, in *De Canas v. Bica*, 424 U.S. 351 (1976), the Supreme Court upheld

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population of illegal immigrants in Alabama, the State legislature "declared 'that it is a compelling public interest to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration law.'" *Id.* at 7, *quoting* ALA. Code § 31-13-2.

[5] As discussed in further detail in this brief, *see* Section II, *infra*, the preemption question addresses whether state law conflicts with the full purposes and objectives of *Congress*, not whether it might conflict with an *executive policy* that lacks the force of law.

California's labor code banning the knowing employment of illegal aliens when such employment harms lawful resident workers. Writing for a unanimous court, Justice Brennan stated,

> Employment of illegal aliens in times of high unemployment deprives citizens and legally admitted aliens of jobs; acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens; and employment of illegal aliens under such conditions can diminish the effectiveness of labor unions. *These local problems are particularly acute in California in light of the significant influx into that State of illegal aliens from neighboring Mexico.*

Id. at 356-57. The California law was upheld because the State was exercising its "police power" over employment relations within its jurisdiction. *See id.* at 356 (noting that the challenged law was "certainly within the mainstream of such police power regulation"). Similar to Alabama here, California did not enact a "regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain," even though "aliens are the subject of [the] state statute." *Id.* at 355. Thus, the California law was validly enacted pursuant to the State's police powers.

Consequently, principles of field preemption, which would essentially foreclose State involvement in the enforcement of immigration laws (or laws in which "aliens are the subject"), do not and should not apply. Indeed, doing so

would not only harm the interests of the individual States, it would dramatically weaken our national security. This holds particularly true today in light of the terrorist threats our Nation faces and in light of the uncertain, dynamic nature of inimical supranational relations. Moreover, because the interests of a State are at their zenith when, as in this case, it is seeking to enact and enforce laws for the physical protection of its citizens and other persons within its borders (laws that are also consistent with congressional intent), conflict preemption principles should be very narrowly applied.

It is generally understood that

> Even where Congress has not entirely displaced state regulation in a specific area, state law is preempted to the extent that it actually conflicts with federal law. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Pacific Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm'n, 461 U.S. 190, 204 (1982) (internal quotations omitted).

When the interests of the State are compelling, as here, and the statute at issue involves the exercise of the paramount police power of the State (*i.e.*, to promote "public safety"), as here, preemption should only arise—if at all—when compliance with both federal and state laws amounts to a *physical* impossibility. *See generally Hines*, 312 U.S. at 67-68 (noting that the question of whether a state law is preempted by federal law is not to be determined by "any rigid formula or

rule," but depends upon the circumstances). Such is not the case with H.B. 56. Indeed, under circumstances in which a State enacts a law touching upon immigration that does not involve "a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain," *see De Canas*, 424 U.S. at 355, but rather is directly related to the State's right to provide for the security of its citizens and other persons within its borders, as in this case, the law should be upheld.

In sum, Alabama, as a sovereign with independent police powers, has the paramount right to provide for the "public safety" and the concomitant power to enact and enforce laws regarding illegal immigration that do not sharply or directly conflict with federal law, such as H.B. 56. Therefore, this court should uphold this validly-enacted state law in its entirety.

II. STATE LAW EXPRESSLY DRAWING UPON THE STATE'S POLICE POWER TO PROTECT ITS CITIZENS FROM ILLEGAL BEHAVIOR CANNOT BE PREEMPTED BY AN EXECUTIVE AGENCY'S DECISION NOT TO ENFORCE CONGRESSIONAL STATUTES.

Pursuant to its police powers, the Alabama Legislature duly enacted the provisions of H.B. 56 at issue here. However, certain provisions have been enjoined and rendered unenforceable by this court's preliminary ruling and the ruling of the lower court. The analysis of the lower court for the enjoined provisions, when juxtaposed against the actual provisions of H.B. 56 and the

federal legislation purportedly preempting the state law, reveals a legal proposition that finds no refuge in the Constitution or in any Supreme Court rulings. This new statement of federal preemption envisions a federalism where an Executive Branch agency's decision not to enforce federal law trumps a State's exercise of its police powers even when the state law is patently in accord with and compatible to the federal legislation purportedly at the heart of the preemption. The lower court correctly upheld most of the challenged provisions of H.B. 56., but erred by enjoining four of the Act's provisions, therefore stretching the existing preemption doctrine beyond any reasonable constitutional parameters.

In its opinion upholding most of the challenged provisions of H.B. 56, the lower court properly recognized the interplay of *Congress'* intentions and its dispositive effect in pre-emption cases. *See United States v. Alabama*, Case No. 2:11–CV–2746–SLB, 2011 WL 4469941 *26-27 (N. D. Ala., Sept. 28, 2011); *see also United States v. Arizona*, 641 F.3d 339, 345, cert. granted, 2011 WL 3556224 (U.S. Dec. 12, 2011) (quoting *Wyeth v. Levine*, 129 S. Ct. 1187, 1194-95 (2009) (stating "the purpose of Congress is the ultimate touchstone in every pre-emption case"). Consequently, in deciding whether Alabama is precluded from any involvement in the enforcement of immigration law, it is *Congress'* intent that matters, not the intent of the Executive Branch.

Upon close review of the relevant statutory scheme, it is evident that

Congress did not expressly preempt States from enacting laws such as H.B. 56. Indeed, the contrary is true in that Congress has passed a host of federal statutes that require the federal government to *accommodate* and *coordinate* with *state* law enforcement efforts to enforce federal immigration requirements. *See, e.g.,* 8 U.S.C. § 1644 ("Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from [ICE] information regarding the immigration status, lawful or unlawful, of an alien in the United States."); 8 U.S.C. § 1357(g) (authorizing the Attorney General to enter into agreements with States and their political subdivisions for the purpose of qualifying state and local law enforcement officers to essentially function as immigration officers); 8 U.S.C. § 1373(c) (requiring ICE to "respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information."). If there is any expression of Congress' intent manifest in the federal legislation it is that Congress fully expects the federal agencies to partner with the States in protecting their citizens from the malignant effects of an immigration and border protection system that President Obama described as a "system [that] is broken" and "everybody knows it." *See United States v. Arizona*, 641 F.3d 339 (9th Cir.

2011), *cert. granted* 2011 WL 3556224 (U.S. Dec. 12, 2011).

By fencing off the States from any involvement in the enforcement of federal immigration law, the courts effectively grant the Executive Branch—whose constitutional responsibility it is to enforce the law—*carte blanche* to ignore the myriad immigration laws which demand federal agency cooperation with state law enforcement agencies. Congress required this partnership with state law enforcement officials because it is not only the President who understands that the "system is broken." Indeed, "everybody knows it," including Congress. *See id.*

Moreover, Congress has clearly recognized that the nexus between illegal immigration—a national security threat at epidemic levels—and rampant violent crime is not theoretical for States with large populations of illegal immigrants such as Alabama.[6] The State's inherent police powers to deal with serious crime such as illicit drug trafficking, human trafficking, kidnapping, and other violent crimes leaves little doubt that the federal government cannot merely assert an implied preemption. Such a claim is either based upon a gross misreading of federal law or is based upon a nebulous claim of administrative headache. Either reasoning offers no more than a naked assertion that federal agencies should not have to do exactly what Congress has expressly ordered them to do—cooperate with state law

[6] It is undisputed that Alabama passed H.B. 56 as a direct result of rampant illegal immigration, escalating drug and human trafficking crimes, serious public safety concerns, the exacerbation of the State's problems regarding unemployment rate, and the negative effect on state and local governments. (Ala. Br. at 6).

enforcement authorities in identifying aliens who should not be here—and that State's thereby must not carry out their own police powers because of it.

In essence, it cannot be that preemption applies to decisions by the Executive Branch not to actively enforce the immigration laws passed by Congress resulting in a "system [that] is broken." Federal agencies do not occupy such an elevated and lofty perch that they can bootstrap a federal preemption doctrine based on congressional authority into a nullification of a State's concern and responsibility for the physical safety of its citizens. Thus, in *Wyeth v. Levine*, 129 U.S. 1187 (2009), the United States Supreme Court set the benchmark for such claims:

> In such cases, the Court performed its own conflict determination, relying on the substance of state and federal law and not on agency proclamations of pre-emption. We are faced with no such regulation in this case, but rather with an agency's mere assertion that state law is an obstacle to achieving its statutory objectives. Because Congress has not authorized the FDA to pre-empt state law directly . . . , the question is what weight we should accord the FDA's opinion.
>
> In prior cases, we have given "some weight" to an agency's views about the impact of tort law on federal objectives when "the subject matter is technica[l] and the relevant history and background are complex and extensive." Even in such cases, however, we have not deferred to an agency's conclusion that state law is pre-empted.
>
> Rather, we have attended to an agency's explanation of how state law affects the regulatory scheme. While agencies have no special authority to pronounce on pre-emption absent delegation by Congress, they do have a unique understanding of the statutes they administer and an attendant ability to make informed determinations about how state requirements may pose an "obstacle to the accomplishment and

> execution of the full purposes and objectives of Congress." The weight we accord the agency's explanation of state law's impact on the federal scheme depends on its thoroughness, consistency, and persuasiveness.

Id. at 1200-01.

There is nothing technical or complex about the regulatory failure of our immigration system. And beyond the Appellant's asserted misunderstanding of a sovereign State's abilities to regulate its own police powers under H.B. 56 and of the mechanics of federalism in which federal and state law must coexist to form our jurisprudence, the Appellant's argument utterly fails to explain with any precision how the specific provisions of the state law actually "pose an 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress,'" particularly when existing law expressly contemplates such cooperation between federal and state law enforcement in the area of immigration. This is all the more evident since "everybody knows" that "the system is broken."

In sum, an Executive Branch policy of non-enforcement of federal law should not be a legitimate basis for preempting a validly enacted state law that is, at the end of the day, in accord with *Congress'* purposes and objectives.

CONCLUSION

For the foregoing reasons and for those stated so forcefully in Alabama's response brief, the challenged provision of H.B. 56 should be upheld as constitutional and all applicable injunctions reversed.

Respectfully submitted,

THOMAS MORE LAW CENTER

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 29, Fed. R. App. P. 32(a)(7), and Circuit Rule 32-4, the foregoing Brief is proportionally spaced, has a typeface of 14 point Times New Roman, and contains 4,493 words, excluding those sections identified in Fed. R. App. P. 32(a)(7)(B)(iii).

THOMAS MORE LAW CENTER

s/ Erin Chau
Erin Chau

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2012, I sent an original, six copies, and an electronic copy on CD in Adobe Acrobat format pursuant to 11th Cir. R. 31-5 of the foregoing brief to the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit via Federal Express, overnight delivery, to:

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