

---

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF SOUTH ALASKA**

---

THE LATINO INTEGRATION COALITION, )  
THE HISPANIC CENTER FOR JUSTICE. )  
*Plaintiffs,* )

v. )

No. CV-11-999

STATE OF SOUTH ALASKA, )  
SARAH CHRISTIE, Governor of )  
South Alaska, in her official capacity, )  
HERMAN GINGRICH, Attorney General )  
of the State of South Alaska, )  
in his official capacity. )  
*Defendants.* )

**DOCKET**

September 7, 2011 – Plaintiffs file complaint and motion for preliminary injunction

October 7, 2011 – Defendants file motion to dismiss [omitted from record]

October 28, 2011 – Plaintiffs file response to motion to dismiss [omitted from record]

November 4, 2011 – Oral argument on Plaintiffs’ Motion for Preliminary Injunction and Defendants’ Motion to Dismiss

December 2, 2011 – Enter judgment: GRANTING Plaintiffs’ motion for preliminary injunction and DENYING Defendants’ Motion to Dismiss

December 31, 2011 – Plaintiffs file Notice of Appeal

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF SOUTH ALASKA

THE LATINO INTEGRATION COALITION,  
THE HISPANIC CENTER FOR JUSTICE,

*Plaintiffs,*

-vs.-

SARAH CHRISTIE, Governor of  
South Alaska, in her official capacity, HERMAN  
GINGRICH, Attorney General of the State of  
South Alaska, in his official capacity.

*Defendants.*

CASE NO. 11-CV-999

## **COMPLAINT AND MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, The Latino Integration Coalition and the Hispanic Center For Justice, By And Through Their Undersigned Counsel, bring this Complaint and Motion for Preliminary Injunction against the above-named Defendants, their officers, agents, servants, employees, and successors in office, and in support thereof allege the following on information and belief:

### **I.**

#### **INTRODUCTION**

Plaintiffs bring this action against South Alaska's newly enacted immigration law, "The Secure South Alaska's Borders Act," Senate Bill 1156 ("S.B. 1156"), on constitutional and statutory grounds and seek injunctive and declaratory relief to prevent serious harm that Plaintiffs will suffer if the law goes into effect. The law is currently scheduled to go into effect on March 1, 2012. Governor Sarah Christie praised S.B. 1156 as a "constitutional exercise of the state's police power to deter illegal immigration through a policy of attrition." In fact, the law trenches upon the federal government's exclusive power to regulate immigration, and is in no way a valid exercise of South Alaska's police power.

### **II.**

#### **JURISDICTION AND VENUE**

1. This action arises under the Supremacy Clause of United States Constitution, and the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 because this action seeks to redress the deprivation of the Plaintiffs' civil rights under color of state law and to secure other equitable relief for the violation of those rights. Venue is appropriate in this Court, pursuant to 28 U.S.C. § 1391(b) (2010), because Defendants are sued in their official capacity and reside within this District and this Division.

### **III.**

#### **PARTIES**

#### **PLAINTIFFS**

##### **Plaintiff Latino Integration Coalition**

2. Plaintiff, Latino Integration Coalition (“LIC”) is a nonprofit membership organization formed to facilitate the social, civic, and economic integration of Hispanics into South Alaska as well as to help South Alaskans understand the diverse Latino culture. LIC was founded in 1999 and has grown significantly since that time. Today, LIC provides a wide range of services, including court advocacy for immigrant survivors of domestic violence, a 24/7 Spanish hotline for immigrant victims of crime, immigration legal services, classes on financial literacy, English, and civics, workforce development, volunteer income tax assistance, advocacy and community education, and leadership development and training to the host community.

3. LIC has over 75 formal members and provides services to more than 15,000 constituents in any given year. LIC does not inquire into the immigration status of its members or constituents but is aware that some lack immigration status and that some are the parents of children born abroad.

4. LIC is already being harmed by S.B. 1156, and it reasonably expects this harm will worsen if the law goes into effect. Participation in its programming has declined because of S.B. 1156, and it has been forced to cancel and postpone the programming identified above in Paragraph 2 to instead address the concerns of its constituents about what S.B. 1156 will mean for them—particularly the stop-and-verify provisions of Section 2. LIC is also at risk of losing or failing to fulfill its grant obligations because of S.B. 1156. For example, it is funded to help immigrants apply for T and U visas, which are available to immigrant crime victims who assist

law enforcement officials in the prosecution of crime, but crime victims have been less willing to come forward to assist law enforcement officials since S.B. 1156 has passed. LIC has been required to expend additional resources to fulfill its objectives as it now has to have additional seminars on S.B. 1156, it has had to expend administrative costs to cancel and/or postpone its existing programming and has had to combat funding challenges—all in frustration of its mission.

#### Plaintiff Hispanic Center for Justice

5. Plaintiff Hispanic Center for Law and Justice (“HCJ”) is a non-profit public interest advocacy organization that was founded in 1999. Its mission is to identify root causes of injustice and inequality against Hispanics in South Alaska and to develop and advocate for solutions that will improve the lives of all South Alaskans. To fulfill its mission, the HCJ undertakes network/coalition organizing and development, research, education, advocacy, and policy development. The HCJ’s current Immigration Policy Project was started in 2007 and is dedicated to promoting policies that advance fundamental fairness, due process, and respect for the human rights of new arrivals to the state, and opposing anti-immigrant policies and laws.

6. S.B. 1156’s passage has already substantially diverted scarce organizational resources away from the HCJ’s immigrant policy work. For example, since the passage of S.B. 1156, the HCJ has been inundated with calls from the community about the law and its impact. In addition, since S.B. 1156’s passage, virtually any community event or training that the HCJ puts on as part of its immigrant policy or immigrant welcoming projects turns into a forum on S.B. 1156 and its impact on the community, particularly the impact that Sections 2 and Section 3 will have on the community. This takes time away from existing priorities for its work with immigrant populations in South Alaska, including investigation of working conditions in South

Alaska's salmon processing plants, and frustrates its mission. Before the passage of S.B. 1156, interviews with salmon processing workers (many of whom are immigrants) under this project were conducted in approximately 45 minutes. Since S.B. 1156 passed, however, staff members have had to spend an additional 20 to 30 minutes with each interviewee to allay concerns about S.B. 1156.

### **DEFENDANTS**

7. Defendant Sarah Christie is the Governor of South Alaska. Defendant Christie exercises “[t]he supreme executive power of” South Alaska, South Alaska. Const. art. V., §232, and is constitutionally required to “take care that the laws be faithfully executed,” South Alaska Const. art. III, § 5. As such, Defendant Christie is responsible for the enforcement of S.B. 1156 in the State of South Alaska and is an appropriate defendant in this case. Defendant Christie is sued in her official capacity.

8. Defendant Herman Gingrich is the Attorney General of South Alaska. Defendant Gingrich is the chief law enforcement officer of the state, and has supervisory authority over every district attorney in South Alaska. S. Alaska Code § 47-2.

9. The South Alaska Constitution provides that “[t]he legislature may require the [A]ttorney [G]eneral to defend any or all suits brought against the state,” South Alaska Const. art. IV, § 18, and state statute requires that the Attorney General “shall appear in the courts . . . of the United States[] in any case in which the state may be interested in the result.” S. Alaska Code § 42-7-7(2). Defendant Gingrich is responsible for the enforcement of S.B. 1156 in the State of South Alaska and is an appropriate defendant in this case. Defendant Gingrich is sued in his official capacity.

**IV.**  
**ALLEGATIONS OF FACT AND LAW**

**History and Purpose of S.B. 1156**

10. Governor Christie signed S.B. 1156 on August 30, 2011. The law is scheduled to take effect on March 12, 2012.

11. In enacting S.B. 1156, South Alaska legislated in an area committed exclusively to the federal government under the U.S. Constitution. Indeed, by passing S.B. 1156, South Alaska expressly intended not only to intrude into an area of exclusive federal control, but to supplant the federal government in key respects.

12. A primary motivating factor in passing S.B. 1156 was the South Alaska legislature's disagreement with federal immigration policy. When Representative Perry introduced S.B. 1156, he explained that "much of what is in this legislation" came from the report produced by the Joint Interim Patriotic Immigration Commission ("Commission"), on which he and Senator Romney served. The Commission was created in 2007 by the legislature to address the "unprecedented influx of non-English speaking immigrants." S.J. Res. 22, Reg. Sess. 2007 (S. Alaska. 2007). In 2008 the Commission issued its report to the legislature, concluding: "We recommend illegal immigrants be discouraged from coming to South Alaska." State of S. Alaska., Commission Report (Feb. 13, 2008).

13. South Alaska held elections in 2010, and during that election cycle Representative Perry and Senator Romney campaigned on a "Secure Borders for South Alaska" pledge which, among other things, would address "illegal immigration" because "[p]oliticians in Washington refuse to act, so we must bring the fight to the home front." Dana Fleischer, *Press Release: GOP Legislative Leaders Unveil 2010 "Republican Secure Borders for South Alaska,"* May 16, 2010.

The pledge promised to push an illegal immigration bill similar to the recently approved Arizona law.

14. During the debates over S.B. 1156, legislators stated that the intent of the law was to deport undocumented immigrants and to deter them from living in South Alaska. In no uncertain terms, Representative Perry stated: “[T]he intent of this bill is to slow illegal immigration in South Alaska through attrition.”

15. S.B. 1156 allows South Alaska to take control of immigration enforcement where the federal government has not acted to its satisfaction. Representative Perry remarked when he introduced the bill, “[I]t appears that the federal government has defaulted on their responsibility of enforcing federal immigration law. And they have forfeited that right to the States.” He continued: “[T]he federal process is not working. . . . They are ignoring the problem.”

16. Senator Romney concurred: “If the federal government would enforce its laws, the states would not be required to take these measures.” After S.B. 1156 passed the House on April 5, 2011, Representative Perry explained by video, “Today we passed S.B. 1156, which is our caucus’s immigration legislation that is a part of the Secure Borders for South Alaska. . . . This immigration bill is designed to deter illegal immigration in the state of South Alaska.”

17. After signing S.B. 1156 into law, the Governor of South Alaska stated, “We have a real problem with illegal immigration in this country,” and lauded South Alaska’s “valid exercise of its police power to stem the flow of illegal immigration.” Bob Woodward, *South Alaska Governor Signs Illegal Immigration Law*, Associated Press, Aug. 31, 2011.

18. In short, the legislature enacted S.B. 1156 as a comprehensive state solution to the perceived problem of the federal government’s failure to regulate immigration to South Alaska’s

liking as well as based on an attempt to drive immigrants, particularly Latino immigrants, out of the state.

## **KEY PROVISIONS OF S.B. 1156**

### **Section 2 - Mandatory Investigation of Immigration**

#### **Status by State and Local Law Enforcement**

19. Section 2 provides:

For any lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. Any person who is arrested shall have the person's immigration status determined before the person is released. The person's immigration status shall be verified with the federal government pursuant to 8 United States Code section 1373(c). A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or South Alaska Constitution. A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

1. A valid South Alaska driver license.
2. A valid South Alaska nonoperating identification license.
3. A valid tribal enrollment card or other form of tribal identification.
4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification.

S. Alaska Code § 45-1-2.

20. S.B. 1156 fundamentally changes the primary role and day-to-day operations of state, county, and municipal law enforcement officers in South Alaska. South Alaska law currently requires these officers “to give full time to the preservation of public order and the

protection of life or property or the detection of crime in the state.” S. Alaska. Code § 44-77.

S.B. 1156 undermines these state priorities by converting routine police encounters into prolonged detention solely for the purpose of investigating immigration status and implementing South Alaska’s own immigration policies and rules.

21. Section 2 of S.B. 1156 requires every state, county, and municipal law enforcement officer in South Alaska to investigate the immigration status of any person the officer stops, arrests or detains, if the officer has “reasonable suspicion” to believe the person is unlawfully present in the United States. Under Section 2, an officer may demand that any person subject to “*any* lawful stop, detention or arrest” produce one of four state-approved identity documents. Only individuals who can produce a state approved document receive a presumption of lawful status. Individuals who cannot produce such a document—which includes many persons who are U.S. citizens or lawfully admitted non-citizens—are subject to a lengthy and intrusive immigration verification process.

22. Section 2 requires that an officer contact the federal government in the process of investigating immigration status. The federal government does not respond to immigration status queries instantaneously. Federal authorities take over 80 minutes on average to respond to immigration status queries from state and local police under the best case scenarios—when they are given sufficient biographical information and they are readily able to locate the target in the immigration databases that they search. However, the databases searched for immigration status queries often will not contain any information whatsoever. For example, there is no centralized database of U.S. citizens. In these circumstances, the federal government will report that there is “no match” for the suspect, and will have to engage in a lengthy and manual file review by

immigration officers. If a manual file review is required in response to an inquiry on an individual, this process can take over two days.

23. Section 2 will unreasonably prolong police encounters, such as traffic stops that would ordinarily result in no action or a citation that would take only minutes absent S.B. 1156's mandates. Many citable traffic violations and other minor offenses, such as jaywalking or littering, are deemed criminal violations under South Alaska law; under Section 2, officers are mandated to prolong such stops in order to investigate immigration status.

24. Immigration status queries mandated by S.B. 1156 impose a substantial burden on federal authorities, who will be required to respond to an enormous increase in the number of immigration status inquiries and will have less ability to prioritize among their tasks according to federal regulations and policies.

25. Section 2 is designed to and will have the effect of requiring everyone in South Alaska, particularly those who might be perceived as foreign, to carry identification papers reflecting their immigration status with them at all times to avoid unreasonably prolonged law enforcement encounters while their immigration status is being investigated.

26. Implementation of S.B. 1156 will have a significant negative impact on the ability of local law enforcement officers to protect immigrant communities and mixed-immigration status communities and families, *i.e.*, those that include individuals with and without lawful status. Because immigrants will avoid the police out of fear that any interaction with law enforcement could lead to immigration status inquiries, South Alaska law enforcement officers will not get the assistance they need to investigate, prosecute, and prevent crimes. For example,

Plaintiff LIC provides substantial victim assistance and courtroom advocacy services to victims of crime, and the organization anticipates that S.B. 1156 will substantially limit the willingness of victims to seek those services and protections.

### **State-Specific Alien Registration Scheme (Section 3)**

27. Section 3 of S.B. 1156 provides

“In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a), and the person is an alien unlawfully present in the United States.”

S.B.1156 § 3(a). An “alien unlawfully present in the United States” who violates Section 3 is “guilty of a Class C misdemeanor and subject to a fine of not more than one hundred dollars (\$100) and not more than 30 days in jail.” *Id.* § 3(f). For the purposes of enforcing Section 3, “an alien’s immigration status shall be determined by verification of the alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c).” H.B. 56 § 3(b). Section 3 “does not apply to a person who maintains authorization from the federal government to be present in the United States.” *Id.* § 3(d).

28. The purpose of the state registration provision is to allow the state to identify and imprison individuals it regards as “unlawfully present.”

29. This provision supplants federal alien registration laws (and the federal officers who administer and enforce those laws), federal removal procedures and priorities, and congressional judgments regarding the appropriate penalties for unlawful presence in the United States.

30. Section 3 criminalizes certain immigrants for “simply setting foot in South Alaska.” Mike Hubbard, *South Alaska Cracks Down on Illegals*, Aug. 16, 2010.

#### **State-Based Crimes for Solicitation and Performance of Work (Section 4)**

31. Section 4 of S.B. 1156 provides:

A. It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

B. It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

C. It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor in this state.

D. A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in the enforcement of this section except to the extent permitted by the United States or Arizona Constitution.

E. In the enforcement of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.

2. The United States immigration and customs enforcement or the United States customs and border protection pursuant to 8 United States Code section 1373(c).

F. A violation of this section is a class 1 misdemeanor.

32. Section 4 criminalizes the act of seeking day labor work and conflicts with the federal government's determination that criminal sanctions should not attach to the solicitation or performance of work by unlawfully present aliens.

V.

**CAUSE OF ACTION**

**SUPREMACY CLAUSE**

33. The federal government has exclusive power over immigration matters. The U.S. Constitution grants the federal government the power to “establish a uniform Rule of Naturalization,” U.S. Const. art. I, § 8, cl. 4, and to “regulate Commerce with foreign Nations,” U.S. Const. art. I, § 8, cl. 3. In addition, the Supreme Court has held that the federal government’s power to control immigration is inherent in the nation’s sovereignty.

34. Congress has created a comprehensive system of federal laws, agencies, and procedures regulating immigration. *See generally* Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*

35. The extensive statutory scheme created by the INA leaves no room for supplemental state immigration laws.

36. In addition, the federal government has issued numerous regulations, policies, and procedures interpreting the provisions of the INA and has established large and complex administrative apparatuses to carry out their mandates.

37. The INA carefully calibrates the nature—criminal or civil—and the degree of penalties applicable to each possible violation of its terms. The INA contains complex and exclusive procedures for determining an individual’s immigration and citizenship status, deciding whether the civil provisions of the immigration laws have been violated, and determining whether an individual may lawfully be removed from the United States.

38. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

S.B. 1156 is void in its entirety because it is a regulation of immigration, and therefore usurps powers constitutionally vested in the federal government exclusively. It also conflicts with federal laws, regulations and policies, attempts to legislate in fields occupied by the federal government, imposes burdens and penalties on legal residents not authorized by and contrary to federal law, and unilaterally imposes burdens on the federal government's resources and processes, each in violation of the Supremacy Clause.

39. The Cause of Action is brought against Defendants Christie and Gingrich by both Plaintiffs. It is brought with respect to the entirety of HB 56: Sections 2, 3, and 4. Plaintiffs move for relief on this claim directly under the Constitution, as an action seeking redress of the deprivation of statutory rights under the color of state law, and also under 42 U.S.C. § 1983.

**VI.**  
**PRAYER FOR RELIEF**

1. Wherefore Plaintiffs respectfully pray that the Court grant them the following relief:
- A. That the Court enter a declaratory judgment in favor of Plaintiffs, declaring unconstitutional S.B. 1156.
  - B. That the Court enter a permanent injunction against the enforcement of S.B. 1156 in its entirety;
  - C. That the Court award all Plaintiffs their reasonable attorneys' fees, costs, and expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (2010), and other applicable laws; and
  - D. That the Court award all Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted this 7 day of September, 2011,

---

Marco Huckabee  
1888 Russia View Street  
Basilla, South Alaska 98634  
(123) 456-7890  
*Attorney for Plaintiffs*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF SOUTH ALASKA**

THE LATINO INTEGRATION COALITION,  
THE HISPANIC CENTER FOR JUSTICE,

*Plaintiffs,*

**-vs.-**

SARAH CHRISTIE, Governor of  
South Alaska, in her official capacity, HERMAN  
GINGRICH, Attorney General of the State of  
South Alaska, in his official capacity.

*Defendants.*

**CASE NO. 11-CV-999**

**HON. Hillary Gibbs**

**MEMORANDUM OPINION GRANTING PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION AND DENYING DEFENDANTS' MOTION TO  
DISMISS.**

This is a constitutional challenge to South Alaska's new illegal immigration law, S.B. 1156, "The Secure South Alaska's Borders Act." It is before the Court on the Plaintiffs' Motion for Preliminary Injunction and the Defendants' Motion to Dismiss. For the reasons set forth below, the Court GRANTS the Plaintiffs' Motion for Preliminary Injunction and DENIES Defendants' Motion to Dismiss.

**Background**

On August 30, 2011, Governor Sarah Christie signed the "Secure South Alaska's Borders Act," S.B. 1156. The law is scheduled to take effect on March 12, 2012 and targets

illegal immigration in the state of South Alaska. On September 7, 2011, Plaintiffs, two nonprofit organizations filed suit alleging S.B. 1156 violates the Supremacy Clause of the United States Constitution.

Although the law is much less comprehensive than laws recently enacted and challenged in other states, Plaintiffs nonetheless assert that federal law preempts S.B. 1156 in its entirety. They specifically allege that S.B. 1156 will cause them to divert resources from their traditional missions in order to educate the public on the effects of the new law.

### **Preliminary Injunction Standard**

“The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). “A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (internal quotations and citations omitted). “In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (internal quotations and citations omitted). In order to prevail on an application for a preliminary injunction, the plaintiff must clearly establish all of the following requirements: (1) . . . a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *Smith v. McCarty*, 454 F.3d 667, 670 (12th Cir. 2010).

### **Motion to Dismiss Standard**

A complaint should be dismissed under Rule 12(b)(6) only where it appears that the facts alleged fail to state a “plausible” claim for relief. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); Fed. R. Civ. P. 12(b)(6). A complaint may survive a motion to dismiss for failure to state a claim, however, even if it is “improbable” that a plaintiff would be able to prove those facts; even if the possibility of recovery is extremely “remote and unlikely.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (citations and quotations omitted). In ruling on a motion to dismiss, the court must accept factual allegations as true and construe them in the light most favorable to the plaintiff. See *Quality Foods de Centro America, S.A. v. Latin Am. Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 994-95 (13th Cir. 1983).

### **Preemption**

The Plaintiffs claim that S.B. 1156 violates the Supremacy Clause of the United States Constitution, U.S. CONST. art. VI, cl. 2., because it conflicts with federal immigration law and is therefore preempted. Federal law preempts state law in two circumstances. First, “[w]hen Congress intends federal law to occupy the field, state law in that area is preempted.” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000). Second, “even if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute.” *Id.* Conflict preemption, in turn, occurs “where it is impossible for a private party to comply with both state and federal law . . . [or] where ‘under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

There are two touchstones of a proper preemption analysis. *Wyeth v. Levine*, 555 U.S. 555 (2009). “First, ‘the purpose of Congress is the ultimate touchstone in every pre-emption case.’” *Id.* (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Second, where “Congress has ‘legislated . . . in a field which the States have traditionally occupied,’” there is a presumption against preemption without clear Congressional intent. *Id.*

In *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941), the Supreme Court declared that the federal government had the exclusive right to legislate in the general field of immigration, naturalization and deportation.

When the national government by treaty or statute has established rules and regulations touching the rights, privileges, obligations or burdens of aliens as such, the treaty or statute is the supreme law of the land. No state can add to or take from the force and effect of such treaty or statute, for Article VI of the Constitution provides that ‘This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’ The Federal Government, representing as it does the collective interests of the ... states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties. ‘For local interests the several states of the Union exist, but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power.’ Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.

*Id.* at 62-63(footnotes deleted). The *Hines* Court explained further the relationship between Congress’s authority over immigration and its responsibility for the nation’s relations with foreign powers:

One of the most important and delicate of all international relationships, recognized immemorially as a responsibility of government, has to do with the protection of the just rights of a country's own nationals when those nationals are in another country. Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government. This country, like other nations, has entered into numerous treaties of amity and commerce since its inception-treaties entered into under

express constitutional authority, and binding upon the states as well as the nation. Among those treaties have been many which not only promised and guaranteed broad rights and privileges to aliens sojourning in our own territory, but secured reciprocal promises and guarantees for our own citizens while in other lands. And apart from treaty obligations, there has grown up in the field of international relations a body of customs defining with more or less certainty the duties owing by all nations to alien residents—duties which our State Department has often successfully insisted foreign nations must recognize as to our nationals abroad. In general, both treaties and international practices have been aimed at preventing injurious discriminations against aliens. Concerning such treaties, this Court has said: ‘While treaties, in safeguarding important rights in the interest of reciprocal beneficial relations, may by their express terms afford a measure of protection to aliens which citizens of one or both of the parties may not be able to demand against their own government, the general purpose of treaties of amity and commerce is to avoid injurious discrimination in either country against the citizens of the other.’

*Id.* at 64-65. Accordingly, the states are not permitted to pass laws regulating immigration. *De Canas v. Bica*, 424 U.S. 351, 355 (1975). But not all laws regulating illegal aliens constitute a regulation of immigration. Rather, the *De Canas* Court defined a “regulation of immigration” as one that determines “who should or should not be admitted to the country, and the conditions under which a legal entrant may remain.” *Id.* at 355.

With the foregoing principles in mind the court will address the challenges to S.B. 1156.

## ***Section 2***

Section 2 of S.B. 1156 requires state, county, and municipal law enforcement officers to attempt to verify the citizenship and immigration status of persons detained or arrested where a reasonable suspicion exists that the person is unlawfully present in the country.<sup>1</sup> Section 2(a) also

---

<sup>1</sup> Section 2 provides:

For any lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. Any person who is arrested shall have the person’s immigration status determined before the person is released. The person’s immigration status shall be verified with the federal government pursuant to 8 United States Code section 1373(c). A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or South Alaska Constitution. A person

mandates that citizenship and immigration status determinations be made by contacting the federal government pursuant to 8 U.S.C. § 1373(c) and relying upon any verification provided by the federal government. A person “is presumed not to be an alien who is unlawfully present in the United States” if the person provides to the law enforcement officer any one of four forms of identification. S. Alaska Code § 45-1-2.

The Plaintiffs argue that this provision conflicts with federal law because it interferes with federal enforcement priorities by requiring LESC authorities to shift resources to respond to the influx of inquiries that will result from Section 2 requirements.

State laws have been found to be preempted where they imposed a burden on a federal agency’s resources that impeded the agency’s function. *See Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 351 (2001) (finding a state law preempted in part because it would create an incentive for individuals to “submit a deluge of information that the [federal agency] neither wants nor needs, resulting in additional burdens on the FDA’s evaluation of an application”); *cf. Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1057 (S.D. Cal. 2006) (expressing concern in preemption analysis for preliminary injunction purposes that burden on DOJ and DHS as a result of immigration status checks could “impede the functions of those federal agencies”).

---

is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

1. A valid South Alaska driver license.
2. A valid South Alaska nonoperating identification license.
3. A valid tribal enrollment card or other form of tribal identification.
4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification.

S. Alaska Code § 45-1-2.

Pursuant to 8 U.S.C. § 1373(c), DHS is required to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status . . . for any purpose authorized by law, by providing the requested verification or status information.” Thus, an increase in the number of requests for determinations of immigration status, such as is likely to result from the mandatory requirement that South Alaska law enforcement officials and agencies check the immigration status of any person who is arrested, will divert resources from the federal government’s other responsibilities and priorities.

More importantly, Section 2 conflicts with Congress’s intent as revealed in text of 8 U.S.C. § 1357(g). In this section of the INA, titled “Performance of immigration officer functions by State officers and employees,” Congress has instructed under what conditions state officials are permitted to assist the Executive in the enforcement of immigration laws. Congress has provided that the Attorney General “may enter into a written agreement with a State . . . pursuant to which an officer or employee of the State . . . who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States . . . may carry out such function.” 8 U.S.C. § 1357(g)(1). Subsection (g)(3) provides that “[i]n performing a function under this subsection, an officer . . . of a State . . . shall be subject to the direction and supervision of the Attorney General.” 8 U.S.C. § 1357(g)(3). Subsection (g)(5) requires that the written agreement must specify “the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual.” 8 U.S.C. § 1357(g)(5).

These provisions demonstrate that Congress intended for states to be involved in the enforcement of immigration laws under the Attorney General's close supervision. Not only must the Attorney General approve of each *individual* state officer, he or she must delineate which functions each individual officer is permitted to perform, as evidenced by the disjunctive "or" in subsection (g)(1)'s list of "investigation, apprehension, or detention," and by subsection (g)(5). An officer might be permitted to help with investigation, apprehension *and* detention; or, an officer might be permitted to help only with one or two of these functions. Subsection (g)(5) also evidences Congress's intent for the Attorney General to have the discretion to make a state officer's help with a certain function permissive or mandatory. In subsection (g)(3), Congress explicitly required that in enforcing federal immigration law, state and local officers "shall" be directed by the Attorney General. This mandate forecloses any argument that state or local officers can enforce federal immigration law as directed by a mandatory state law.

Contrary to Defendants' assertions, nothing in subsection (g)(10) undercuts this conclusion. There, Congress stated:

Nothing in this subsection shall be construed to require an agreement . . . in order for any officer or employee of a State . . . (A) to communicate with the Attorney General regarding the immigration status of any individual . . . or (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present.

8 U.S.C. § 1357(g)(10). Although this language, read alone, is broad, Congress's intent in adopting subsection (g)(10) must be interpreted in light of the rest of § 1357(g). Giving subsection (g)(10) the breadth of its isolated meaning would completely nullify the rest of §1357(g), which demonstrates that Congress intended for state officers to aid in federal immigration enforcement only under particular conditions, including the Attorney General's supervision. Subsection (g)(10) does not operate as a broad alternative grant of authority for

state officers to systematically enforce the INA outside of the restrictions set forth in subsections (g)(1)-(9). The only plausible interpretation of subsection (g)(10)(B) is that when the Attorney General calls upon state and local law enforcement officers—or such officers are confronted with the necessity—to cooperate with federal immigration enforcement on an incidental and as needed basis, state and local officers are permitted to provide this cooperative help without the written agreements that are required for *systematic* and *routine* cooperation.

Similarly, subsection (g)(10)(A) means that state officers can communicate with the Attorney General about immigration status information that they obtain or need in the performance of their regular state duties. But subsection (g)(10)(A) does not permit states to adopt laws dictating how and when state and local officers *must* communicate with the Attorney General regarding the immigration status of an individual.

In sum, 8 U.S.C. § 1357(g) demonstrates that Congress intended for state officers to systematically aid in immigration enforcement *only* under the close supervision of the Attorney General—to whom Congress granted discretion in determining the precise conditions and direction of each state officer’s assistance.

Section 2 sidesteps Congress’s scheme for permitting the states to assist the federal government with immigration enforcement. Through Section 2, South Alaska has enacted a mandatory and systematic scheme that conflicts with Congress’s explicit requirement that in the “[p]erformance of immigration officer functions by State officers and employees,” such officers “shall be subject to the direction and supervision of the Attorney General.” 8 U.S.C. § 1357(g)(3). Thus, Section 2 “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” as expressed in the aforementioned INA provisions. *Hines*, 312 U.S. at 67.

### **Section 3**

Section 3 of S.B. 1156 provides: “In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a), and the person is an alien unlawfully present in the United States.” S. Alaska Code § 45-1-3. An “alien unlawfully present in the United States” who violates Section 3 is “guilty of a Class C misdemeanor and subject to a fine of not more than one hundred dollars (\$100) and not more than 30 days in jail.” *Id.* § 3(f). For the purposes of enforcing Section 3, “an alien’s immigration status shall be determined by verification of the alien’s immigration status with the federal government pursuant to 8 U.S.C. § 1373(c).” *Id.* § 3(b). Section 3 “does not apply to a person who maintains authorization from the federal government to be present in the United States.” *Id.* § 3(d).

Essentially, Section 3 imposes criminal sanctions for violating federal alien registration laws. Plaintiffs argue that the Supreme Court’s decision in *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) controls, and that Section 3 is preempted because it interferes with comprehensive federal alien registration law and seeks to criminalize unlawful presence. Defendants respond that Section 3 neither conflicts with federal law nor regulates in a federally occupied field. They argue further that *Hines* is distinguishable because South Alaska’s law tracks federal law and imposes no separate alien registration requirement.

The Court agrees with Plaintiffs that the analysis of whether Section 3 is preempted must be guided by the Supreme Court’s decision in *Hines*. “[T]he 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[;] . . . whatever power a state may have is subordinate to supreme national law.” *Hines*, 312 U.S. at 68. In *Hines*, the Supreme Court found that, where the federal government, in

the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations. 312 U.S. at 66-67. *Hines* also stated that a state statute is preempted where it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* at 67. The Supreme Court held in *Hines* that the purpose of the Federal Alien Registration Act was to “make a harmonious whole” and that the Alien Registration Act “provided a standard for alien registration in a single integrated and all-embracing system.” *Id.* at 72, 74. As a result, the *Hines* Court held that the Pennsylvania state registration scheme at issue was preempted. *Id.* at 74.

The current federal alien registration requirements create an integrated and comprehensive system of registration. *See id.* (finding that the Alien Registration Act, the precursor to the current alien registration scheme, created a “single integrated and all-embracing system” of registration); 8 U.S.C. §§ 1201, 1301-06 (providing federal registration requirements and penalties). While the Supreme Court rejected the possibility that the INA is so comprehensive that it leaves no room for state action that impacts aliens, *De Canas*, 424 U.S. at 358, the Court has also evaluated the impact of the comprehensive federal alien registration scheme and determined that the complete scheme of registration precludes states from complementing the federal law. *Hines*, 312 U.S. at 66-67.

Section 3 attempts to supplement or complement the uniform, national registration scheme by making it a state crime to violate the federal alien registration requirements, which a state may not do “inconsistently with the purpose of Congress.” *Hines*, 312 U.S. at 66-67. While Defendants are correct that Section 3 does not create additional registration requirements, the law

imposes additional state penalties and authorizes state prosecutions for violation of the federal law. Although the alien registration requirements remain uniform, Section 3 adds to the penalties established by Congress under the federal registration scheme. Section 3 stands as an obstacle to the uniform, federal registration scheme and is therefore an impermissible attempt by South Alaska to regulate alien registration. *See Hines*, 312 U.S. at 67. As a result, the Court finds that Plaintiffs are likely to succeed on their claim that Section 3 is preempted by federal law.

#### ***Section 4***

Section 4 of S.B. 1156 provides: “It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor in this state.” S. Alaska Code §45-1-4. A violation of Section 4 constitutes a misdemeanor. *Id.*

Plaintiffs argue that Section 4 is preempted by Congress’s comprehensive scheme, set forth in the IRCA for regulating the employment of aliens. They assert further that the IRCA reflects Congress’s deliberate choice *not* to criminally penalize unlawfully present aliens for soliciting or performing work.

Defendants counter that Congress could have, but chose not to, expressly preempt state and local laws that impose civil or criminal sanctions upon employees. They also maintain that, in an area of traditional state sovereignty such as employment, the presumption against presumption operates most vigorously. *See De Canas*, 424 U.S. at 356.

“In all pre-emption cases, and particularly in those in which Congress has legislated . . . in a field which the States have traditionally occupied, . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress” *Wyeth v. Levine*, 129 S. Ct. 1187, 1194-95 (2009)

(internal quotations and citation omitted)). The *De Canas* Court established that “[s]tates possess broad authority under their police powers to regulate the employment relationship to protect workers within the [s]tate.” Interpreting *De Canas* and considering a state law sanctioning employers who hire unauthorized workers, the Ninth Circuit Court of Appeals held that, “because the power to regulate the employment of unauthorized aliens remains within the states’ historic police powers, an assumption of non-preemption appli[ed].” *Chicanos Por La Causa Inc v. Napolitano*, 544 F.3d 975, 984 (9th Cir. 2008).

Section 4 regulates the employment of unauthorized aliens in South Alaska, and, thus, a presumption against preemption applies in the context of this provision. However, while deliberate federal inaction does not always imply preemption, “[w]here a comprehensive federal scheme intentionally leaves a portion of the regulated field without controls, *then* the preemptive inference can be drawn, not from federal inaction alone but from inaction joined with action.” *P.R. Dep’t of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 503 (1988). The Supreme Court explained in *Puerto Rico Dep’t of Consumer Affairs* that with some action by Congress, there can arise “an inference of pre-emption in an unregulated segment of an otherwise regulated field.” *Id.* at 504; *see also Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 869 (2000) (concluding that neither an express pre-emption provision nor a saving clause “bar[s] the ordinary working of conflict preemption principles”)

The IRCA provides penalties for employers who knowingly hire or continue to employ an alien without work authorization. 8 U.S.C. § 1324a(a)(1)-(2), (e)(4). IRCA also prohibits employers from recruiting or referring for a fee unauthorized workers. *Id.* § 1324a(a)(1). IRCA makes it unlawful to use contractors or subcontractors to hire unauthorized alien workers. *Id.* § 1324a(a)(4). Under IRCA, employers are required to comply with an “employment verification

system” set up by the statute. *Id.* § 1324a(b). IRCA also instituted a compliance scheme and a series of escalating sanctions for violations, entailing increasing monetary fines for each subsequent violation and the possibility of injunctive sanctions. *Id.* § 1324a(e)(4); 8 C.F.R. § 274a.10 (outlining civil and criminal penalties for violations of 8 U.S.C. § 1324a(a)(1)(A) or (a)(2)).

While it is readily apparent that Congress’s central focus in IRCA was employer sanctions, there are also targeted sanctions directed at employees. *See* 8 U.S.C. § 1324c (making it a civil violation to make or use a false document or to use a document belonging to another person, in the context of unlawful employment of an unauthorized alien). As the Ninth Circuit Court of Appeals observed, “While Congress initially discussed the merits of fining, detaining or adopting criminal sanctions against the *employee*, it ultimately rejected all such proposals.” *Nat’l Ctr. for Immigrants’ Rights, Inc. v. INS*, 913 F.2d 1350, 1368 (9th Cir. 1990) (examining IRCA’s legislative history), *rev’d on other grounds*, 502 U.S. 183 (1991). The court in *National Center for Immigrants’ Rights* found that the determination to reduce or deter employment of unauthorized workers by sanctioning employers, rather than employees, was “a congressional policy choice clearly elaborated in IRCA.” *Id.* at 1370.

IRCA also requires that an individual seeking employment “attest, under penalty of perjury . . . that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized . . . to be hired, recruited, or referred for such employment.” 8 U.S.C. § 1324a(b)(2). This attestation is to be made on a form “designated or established by the Attorney General,” and IRCA states that the form “and any information contained in or appended to such form[] may not be used for purposes other than for

enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of Title 18” of the federal criminal code. *Id.* § 1324a(b)(5).

The provision limiting the use of attestation forms and the civil penalties outlined for document fraud in Title 8 and the robust sanctions for employers who hire, continue to employ, or refer unauthorized workers convince the Court that Congress has comprehensively regulated in the field of employment of unauthorized aliens. These laws, in combination with an absence of regulation for the particular violation of working without authorization, lead to the conclusion that Congress intended not to penalize this action, other than the specific sanctions outlined above. *See P.R. Dep't of Consumer Affairs*, 485 U.S. at 503-04. Thus, the Court finds that Section 4's provision prohibiting unauthorized aliens from seeking employment are preempted. To allow Section 4 take effect would be to allow a law of South Alaska to be supreme over federal law; this is an irreparable constitutional injury.

### **CONCLUSION**

For the reasons given above, Plaintiffs' Motion for Preliminary Injunction is GRANTED and Defendants' Motion to Dismiss is DENIED.

**Dated: December 2, 2011**

**S/Hillary Gibbs**  
**HILLARY GIBBS**  
**UNITED STATES DISTRICT JUDGE**

### **CERTIFICATE OF SERVICE**

**Copies of this Order were served upon attorneys of record on  
December 2, 2011, by electronic and/or ordinary mail.**

**S/Tanya Kerrigan**  
**Deputy Clerk**

---

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF SOUTH ALASKA**

---

THE LATINO INTEGRATION COALITION, )  
THE HISPANIC CENTER FOR )  
JUSTICE, )

*Plaintiffs,* )

v. )

No. CV-11-999

SARAH CHRISTIE, Governor of )  
South Alaska, in her official capacity, )  
HERMAN GINGRICH, Attorney General )  
of the State of South Alaska, )  
in his official capacity. )

*Defendants.* )

**JUDGMENT IN A CIVIL ACTION**

The Court Grants Plaintiffs' Motion for preliminary Injunction and Denies Defendants' Motion to Dismiss.

Date: December 2, 2011

*CLERK OF COURT*

/s/  
\_\_\_\_\_  
Tanya Kerrigan  
Deputy Clerk

---

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF SOUTH ALASKA**

---

THE LATINO INTEGRATION COALITION, )  
THE HISPANIC CENTER FOR )  
JUSTICE, )

*Plaintiffs,*

v. )

No. CV-11-999

SARAH CHRISTIE, Governor of )  
South Alaska, in her official capacity, )  
HERMAN GINGRICH, Attorney General )  
of the State of South Alaska, )  
in his official capacity. )

*Defendants.*

**NOTICE OF APPEAL**

Defendants, Sarah Christie, Governor of South Alaska and Herman Gingrich, Attorney General of the State of South Alaska hereby give notice of their appeal to the United States Court of Appeals for the Twelfth Circuit from the judgment entered in this action on December 2, 2011.

Dated: December 29, 2011

---

Michele Biden  
1000 Ice Pick Pass  
Rome, South Alaska 98629  
(123) 234-5678  
*Attorney for Defendants*

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TWELFTH CIRCUIT

SARAH CHRISTIE, Governor of )  
South Alaska, in her official capacity, )  
HERMAN GINGRICH, Attorney General )  
of the State of South Alaska, )  
in his official capacity. )  
*Appellants-Defendants* )  
v. )  
Civ. App. No. 11-1789 )  
THE LATINO INTEGRATION COALITION, )  
THE HISPANIC CENTER FOR )  
JUSTICE, )  
*Appellees-Plaintiffs.* )

**On Appeal from the United States District Court for the Northern District of South Alaska  
Judge Hillary Gibbs, presiding (No. 11-CV-999), December 2, 2011.**

**Before: Reid, Pelosi, Wasserman-Schultz, Circuit Judges**

**Pelosi, Circuit Judge:**

In August 2011, in response to a perceived threat of illegal immigration, the State of South Alaska enacted its own immigration law enforcement policy, the “Secure South Alaska’s Borders Act,” S.B. 1156, to be codified at S. Alaska Code § 45-1-2 through -5. We note at the outset that the provisions of S.B. 1156 track closely the provisions of federal immigration law and reflect South Alaska’s effort to enforce federal standards regulating illegal aliens. S.B. 1156 establishes three immigration-related state offenses and defines the immigration-enforcement authority of South Alaska’s state and local law enforcement officers.

On September 7, 2011, Plaintiffs filed a Complaint against Governor Sarah Christie and Attorney General Herman Gingrich seeking declaratory and injunctive relief contending that S.B. 1156 is preempted by federal law, and, therefore, violates the Supremacy Clause of the United States Constitution.

The district court granted Plaintiffs' motion for a preliminary injunction and enjoined S.B. 1156 in its entirety on the basis that federal law likely preempts these provisions. South Alaska appealed the grant of injunctive relief, arguing that S.B. 1156 is not preempted and that the District Court erred in denying its Motion to Dismiss.

We hold that the district court's preemption analysis was wrong, and it therefore abused its discretion by enjoining S.B. 1156. Therefore, we reverse the district court's preliminary injunction order and order the district court to dismiss the Plaintiffs' claims with prejudice.

### **Standard of Review**

“Preliminary injunctions of legislative enactments—because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits—must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.” *Ne. Fla. Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990). “A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (internal quotations and citations omitted). “In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (internal quotations and citations omitted). To prevail on an application for a preliminary

injunction, the plaintiff must clearly establish all of the following requirements: (1) . . . a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *Winter*, 555 U.S. at 565.

We review the district court’s grant of a preliminary injunction for abuse of discretion. *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (12th Cir. 2003) (en banc). A preliminary injunction “should be reversed if the district court based its decision on an erroneous legal standard or on clearly erroneous findings of fact.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1119 (9th Cir. 2009). A determination regarding preemption is a conclusion of law, and we therefore review it de novo. *Island Park, LLC v. CSX Transp.*, 559 F.3d 96, 100 (2d Cir. 2009).

### **Preemption Claims**

The Supremacy Clause of the U.S. Constitution provides that the Constitution, federal laws, and treaties are “the Supreme Law of the Land.” U.S. CONST., art. VI, cl. 2. In certain instances, the Constitution – in its own right – can preempt state action in a field exclusively reserved for the federal government. The Supremacy Clause also “vests Congress with the power to preempt state law.” *Gibbons v. Ogden*, 22 U.S. 1, 211 (1824). Congress has plenary power to regulate immigration. *INS v. Chadha*, 462 U.S. 919, 940 (1983) (“The plenary authority of Congress over aliens . . . is not open to question”); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

This court’s analysis of preemption claims must be guided by the two pillars of the Supreme Court’s preemption jurisprudence. First, Congress’s purpose is the ultimate touchstone in every preemption case. Second, in all preemption cases, and particularly where

federal law regulates in a field which the States have traditionally occupied, we must begin with the assumption that the historic police powers of the States are not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

Preemption may be express or implied, *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (O'Connor, J., plurality opinion), and "is compelled whether Congress's command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Express preemption occurs when the text of a federal law is explicit about its preemptive effects. *Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1167 (11th Cir. 2008) ("Express preemption occurs when Congress manifests its intent to displace a state law using the text of a federal statute.").

Implied preemption falls into two categories: field preemption and conflict preemption. *Gade*, 505 U.S. at 98; *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) ("Even without an express provision for preemption, we have found that state law must yield to a congressional Act in at least two circumstances."); see *Browning*, 522 F.3d at 1167 ("Field and conflict preemption in turn have been considered under the umbrella term 'implied preemption.'").

Field preemption exists when

Congress's intent to supersede state law altogether may be found from a scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room to supplement it, because the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject, or because the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose.

*Pac. Gas and Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 203-04 (1983) (internal quotations omitted). “Conflict preemption” occurs when “compliance with both federal and state regulations is a physical impossibility,” *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132,142-43 (1963), or where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). These “categories of preemption are not rigidly distinct,” however, as “field preemption may be understood as a species of conflict preemption.” *English v. Gen. Elec. Co.*, 496 U.S. 72, 79-80 n.5 (1990).

Thus, this court is tasked with determining whether Congress intended to fence off the states from any involvement in the enforcement of federal immigration law. It is *Congress’s* intent we must value and apply. Moreover, it is the *enforcement* of immigration laws that this case is about, not whether a state can decree who can come into the country, what an alien may do while here, or how long an alien can stay in this country.

The district court erred in failing to recognize that Congress has passed numerous acts illustrating the clear and manifest intent to welcome state involvement in immigration control. Congress has expressed its intent not to preempt state cooperation by (1) expressly reserving inherent state authority in immigration law enforcement (8 U.S.C. § 1357(g)(10) (2006)), (2) banning sanctuary policies that interfere with exercising that authority (8 U.S.C. §§ 1373(a)-(b), 1644 (2006)), (3) requiring federal officials to respond to state inquiries (8 U.S.C. § 1373(c)), (4) simplifying the process for making such inquiries (Law Enforcement Support Center (“LESC”)), (5) deputizing state and local officers as immigration agents (8 U.S.C. § 1357(g)(1) (2006)), and (6) compensating states that assist (8 U.S.C. § 1103(a)(11) (2006)).

In encouraging cooperative immigration law enforcement, Congress did not displace State and local enforcement activity. *See Gonzales v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983); *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1984) (State and local officers have “general investigatory authority to inquire into possible immigration violations.”). Congress enacted 8 U.S.C. § 1252c (2006) to clarify that federal law does not preempt state and local officers from arresting an illegally present alien convicted of a felony and ordered deported. Section 1252c also does not preempt states from assisting in enforcement outside of those preconditions; instead Section 1252c “displace[s] a perceived federal limitation on the ability of state and local officers to arrest aliens . . . in violation of Federal immigration laws.” *See United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1298 (10th Cir. 1999) (quoting 142 CONG. REC. 4,619 (1996) (comment of Rep. Doolittle)).

Congress was also concerned that municipal sanctuary policies were prohibiting officers from contacting the then-INS about possible immigration violations. In response, Congress passed two statutes in 1996 to ban sanctuary policies. 8 U.S.C. § 1644 forbids state or local official actions that “prohibit[], or in any way restrict[]” a state or local government entity’s ability to “send[] to or receiv[e] . . . information regarding the immigration status, lawful or unlawful, of an alien in the United States.” 8 U.S.C. § 1373(a)-(b) expands preemption of sanctuary policies to those that prohibit or restrict government entities or officials from sending or receiving information regarding “citizenship or immigration status” and also preempts laws that prohibit or restrict immigration status information sharing. *See, e.g., City of New York v. United States*, 179 F.3d 29, 31-32 (2d Cir. 1999) (upholding constitutionality of law banning sanctuary policies).

To ensure cooperation by federal officials, Congress *required* immigration authorities to respond to state and local inquiries seeking to “verify or ascertain the citizenship or immigration status of any individual . . . .” 8 U.S.C. § 1373(c). Congress had already begun allocating funds to create the LESC, which is now the primary point of contact between state officers and federal immigration agents for verifying immigration status.

In 1996, Congress also enacted 8 U.S.C. § 1357(g)(1), which allows state and local officers to be deputized as immigration agents. This congressionally-delegated authority is distinct from an officer’s inherent authority to inquire into immigration status and arrest for immigration violations. Kris W. Kobach, *Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration*, 22 *Geo. Immigr. L.J.* 459, 478 (2008); *see also Vasquez-Alvarez*, 176 F.3d 1294; *Contreras-Diaz*, 575 F.2d at 743-745. But Congress reaffirmed the states’ inherent authority to enforce the law. 8 U.S.C. § 1357(g)(10).

Congress has also used its spending power, U.S. Const. art. I, §8, cl. 1, to support cooperative immigration enforcement by appropriating federal funds for state and local governments that assist in enforcing immigration laws. 8 U.S.C. § 1103(a)(11).

Finally, the Executive Branch itself has encouraged concurrent immigration enforcement. In 1996, the Justice Department’s Office of Legal Counsel (“OLC”) supported state and local enforcement of criminal INA provisions and also concluded that state and local officers could detain aliens for registration law violations. 20 *Op. O.L.C.* 26, 29, 37 (1996) (Exhibit A).<sup>2</sup> Since 2001, the Justice Department has entered warrants (“detainers”) for civil immigration violations into the National Crime Information Center database (“NCIC”), available nationally to state and local officers. Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of*

---

<sup>2</sup> Courts also recognize state and local authority to arrest aliens for violating alien registration laws. *See, e.g., Estrada v. Rhode Island*, 594 F.3d 56, 65 (1st Cir. 2010).

*Local Police to Make Immigration Arrests*, 69 Alb. L. Rev. 179, 191 (2005). In 2002, a revised OLC memo dropped the “criminal law enforcement only” limitation and analyzed the statutes and cases expressing and recognizing Congress’s intent to allow broad concurrent enforcement. Mem. from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, for the Attorney General, *Re: Non-preemption of the authority of state and local law enforcement officials to arrest aliens for immigration violations*, 5-8 (Apr. 3, 2002).

Because S.B. 1156 integrates this body of federal law, it promotes Congress’s purposes and objectives. The district court erred in ruling that S.B. 1156, section 2 conflicts with federal priorities, and diverts resources from the federal government’s other responsibilities. Assuming that the LESC was created to serve the Executive’s enforcement priorities, the court ignored Congress’s purpose for establishing the LESC. The LESC exists to *foster* state and local police cooperation in the “apprehension, detention, or removal of [illegal] aliens.” 8 U.S.C. 1357(g)(10). Congress intended the LESC’s primary users to be “state and local law enforcement officers in the field who need information about foreign nationals they encounter in the course of their daily duties.” U.S. Immigration and Customs Enforcement, Programs, Law Enforcement Support Center, [http://www.ice.gov/partners/lesc/lesc\\_factsheet.htm](http://www.ice.gov/partners/lesc/lesc_factsheet.htm) (last visited September 1, 2010).

Congress did not establish a hierarchy of priorities that allowed the LESC discretion over which inquiries it chooses to answer. Instead, 8 U.S.C. § 1373(c) requires LESC staff to answer all inquiries about immigration status. No valid basis exists for the court’s conclusion that because Section 2 requires South Alaska police to make greater use of the LESC, Section 2 unconstitutionally threatens federal enforcement priorities. The Executive’s power to enforce federal immigration law does not confer the power to preempt state immigration enforcement by

choosing to selectively enforce the laws. Only Congress's "clear and manifest purpose" preempts state laws. *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2009).

The district court also failed to consider congressional objectives when it enjoined Section 3, which mirrors the federal alien registration laws by incorporating federal requirements and procedures. *See* 8 U.S.C. §§ 1304(e), 1306(a). Relying exclusively upon a Supreme Court case, *Hines v. Davidowitz*, 312 U.S. 52 (1941), which predated the current federal alien registration scheme, the court held Section 3 preempted without identifying how it conflicted with Congress's purposes.

Section 3 does not stand as an obstacle to Congress's objectives; in fact Section 3 furthers Congress's purpose for the alien registration law. When Congress passed the 1952 law making an alien's failure to carry his registration document a crime, it stated, "the provisions have been modified . . . to require . . . the registration and fingerprinting of all aliens in the country and to assist in the enforcement of those provisions." *H.R. REP. NO. 82-1365 (1952), reprinted in 1952 U.S.C.C.A.N. 1723.*

Section 1304(e) of the federal alien registration law provides:

Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d). Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$ 100 or be imprisoned not more than thirty days, or both.

Section 1306(a) provides:

Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed \$ 1,000 or be imprisoned not more than six months, or both.

Opponents and proponents both recognized that the legislation made it a crime for aliens not to carry their registration documents with them. *See* 98 CONG. REC. 4,432-33 (1952) (statement of Rep. Chudoff) (“Alien registration cards are not new in the law, yet this is the first time where it becomes a necessity for an alien to carry the card with him and, if he does not, it becomes a crime.”). The Supreme Court has recognized that Congress sought to restrict aliens in the United States to those persons with demonstrated eligibility for classification in some valid immigration status. In *United States v. Campos-Serrano*, 404 U.S. 293, 299-300 (1971), the Court noted that the purpose of alien registration is to identify aliens and govern their activity and presence in this country. *See also United States v. Ritter*, 752 F.2d 435, 438 (9th Cir. 1985) (requiring lawfully present aliens to comply with alien registration laws is an entirely foreseeable and permissible inconvenience).<sup>3</sup>

Section 3 furthers Congress’s goal of ensuring that all aliens are properly registered with the federal government. The South Alaska law merely codifies federal requirements and requires state officers to rely entirely on the federal government’s determination of an alien’s immigration status. Moreover, Section 3 does nothing to alter the penalties established by Congress. While Section 3 imposes state penalties, that alone does not mean that the law frustrates Congress’s objectives. States can enact laws that impose state penalties for conduct that federal law also sanctions. *See Bartkus v. Illinois*, 359 U.S. 121, 131-132 (1959); *Moore v. Illinois*, 55 U.S. 13, 21-22 (1852); *CPLC v. Napolitano*, 558 F.3d 856, 869 (9th Cir. 2009) (rejecting preemption arguments against Arizona state law prohibiting hiring illegal aliens). In fact, the Supreme Court has held in the immigration context that states can enact laws that sanction a defendant, even

---

<sup>3</sup> The information displayed on an alien registration document is not confidential. *Ascencio-Guzman v. Chertoff*, 2009 U.S. Dist. LEXIS 32203 (S.D. Tex. 2009).

though the federal law lacks a corresponding sanction, so long as the state law does not conflict with Congress's purposes. *See De Canas*, 424 U.S. at 358, 360.

There can be no principled basis for holding that state and local officers may arrest an alien for violating the alien registration laws, but a state law *codifying* that authority frustrates Congress's purposes. SB 1156 Section 3 has an "identical purpose" to federal law—"the prevention of the misdemeanor" of failing to carry or register for one's alien registration documents.

*Hines v. Davidowitz* does not support the district court's conclusion that Section 3 is preempted. The lower court apparently read *Hines* as a field preemption, or possibly "regulation of immigration" preemption case. *Hines*, however, is strictly a conflict preemption case. The *Hines* Court sustained a conflict-preemption challenge to Pennsylvania's alien registration law, acknowledging at the outset that the Court's "primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to . . . the full purposes and objectives of Congress." *Hines*, 312 U.S. at 67. The Court expressly declined to consider "the argument that the federal power in this field, whether exercised or unexercised, is exclusive." *Id.* at 62.

In *Hines*, a clear conflict existed between the Pennsylvania law and the federal scheme. First, the Pennsylvania law established a separate, state-specific alien registration scheme that required all aliens to register with the state and required the state to collect and maintain its own registration records. The Court, however, determined that Congress intended an integrated national registration system maintained by the federal government. *Id.* at 60-61, 74. Second, the Pennsylvania law required aliens to carry their registration with them at all times. *Id.* at 60-61. But Congress had explicitly rejected such a provision in the 1940 Federal Act. *Id.* at 72.

By contrast, no such conflict exists between Section 3 and 8 U.S.C. §§ 1304(e) and 1306(a). Section 3 does not create a South Alaska-specific registration system nor does it improperly “complement” the federal scheme, but instead directly relies on the federal alien registration scheme. Also, Congress amended the alien registration laws in 1952 to require aliens to carry their registration documents on their persons. As a result, Section 3 does not suffer the same conflict preemption problem that the 1939 Pennsylvania statute did when Congress excluded a “carry” requirement in the 1940 Federal Act. The conduct Section 3 prohibits is *identical* to the conduct federal law prohibits. South Alaska expressly provides for and defers to federal control of prosecutions by: (1) requiring prior federal verification of immigration status, and (2) exempting from state prosecution “any person who maintains authorization from the federal government to remain in the United States.” *Hines* does not support the district court’s conclusion that 8 U.S.C. §§ 1304(e) and 1306(a) preempt Section 3.

Finally, the district court erred in holding that federal immigration law preempts Section 4. The district court held that because federal law only punishes the employer of an unauthorized alien with civil fines and criminal prosecution, and because federal law is silent on whether the unauthorized alien should face a penalty, Section 5 is preempted.

We find no provision of federal law suggests that Congress intended to preempt a State from penalizing an unauthorized alien who violates federal law by working in the United States. Second, the Immigration Reform and Control Act’s (IRCA’s) express preemption clause is expressly limited to preempting certain State “civil and criminal sanctions” against employers. 8 U.S.C. § 1324a(h)(2). Congress knew how to preempt State laws that criminalized the acceptance or solicitation of unauthorized employment. Congress could have easily included other items in this list of preempted actions concerning the employment of unauthorized aliens,

but it chose not to do so. Instead, Congress only preempted State or local “civil and criminal sanctions” on employers who hire unauthorized workers. 8 U.S.C. §1324a(h)(2). If any implication is drawn from Congressional action, it must be that Congress did not intend to preempt State laws that criminalized the solicitation and acceptance of work by unauthorized workers.

The district court’s analysis is an attempt to revive the discredited theory of “preemption by omission,” namely that the State statute is conflict preempted because Congress chose to penalize employers for employing unauthorized aliens but did not also criminalize unauthorized workers for performing work. Therefore, the argument goes, since Congress omitted any penalty for the unauthorized alien worker, the states are somehow preempted from imposing such a penalty.

First, it should be noted that Supreme Court precedent “establish[es] that a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act.” *Whiting*, 131 S. Ct. at 1985 (quoting *Gade*, 505 U.S. at 110 (Kennedy, J., concurring in part and concurring in the judgment)). And when reviewing an implied preemption challenge, a court should avoid a “free-wheeling judicial inquiry into whether a state statute is in tension with federal objectives” because “such an endeavor ‘would undercut the principle that it is Congress rather than the courts that preempts state law.’” *Whiting*, 131 S. Ct. at 1985 (quoting *Gade*, 505 U.S. at 111 (Kennedy, J., concurring in part and concurring in the judgment)). Plaintiffs’ preemption by omission theory cannot overcome this hurdle. In *Whiting*, the plaintiffs made a similar “preemption by omission” argument in claiming that an Arizona law which required the use of E-Verify was conflict preempted by federal law. 131 S. Ct. at 1986. E-Verify is a program that Congress created to allow employers to verify the work authorization of their employees. *Id.*

Under federal law, the program is currently voluntary for employers, and the Secretary of Homeland Security is prohibited from making it mandatory. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub.L. 104-208 § 402(a), 110 Stat. 3009-656. Despite the program’s voluntary nature at the federal level and the prohibition on the Secretary of Homeland Security from making it mandatory, the State of Arizona made its use mandatory for all Arizona employers. The Supreme Court noted that the statutory text “contains no language circumscribing state action,” but instead only language that “constrain[s] federal action.” *Whiting*, 131 S. Ct. at 1985. Because the text only circumscribed federal action, the Court refused to read into the statute a limit on state action. *Id.*

Additionally, in *De Canas*, 424 U.S. 351, a “preemption by omission” argument was likewise rejected. In *De Canas*, the plaintiffs argued that the “Texas proviso,” a since-repealed exemption from the federal harboring law that excluded the employment of illegal aliens as a violation of the statute, preempted a California State law criminalizing the employment of illegal aliens. *See De Canas*, 424 U.S. at 360. Instead of agreeing that preemption occurred because Congress exempted mere employment of illegal aliens as a crime, and that this omission had preemptive effect, the Supreme Court upheld the State statute. *Id.* at 361. Thus, the Supreme Court has twice rejected in the immigration preemption context—that because Congress has prohibited one action while declining to address other actions, State laws concerning actions not prohibited by Congress should therefore be preempted.

The district court relied on 8 U.S.C. § 1324a as evidence of preemption. The §1324a(h)(2) preemption clause only preempts State laws that penalize employers of unauthorized aliens by imposing fines and criminal penalties. The Supreme Court has recently analyzed this very section of federal law and has declined to infer additional congressional intent

beyond the plain meaning of the words. “When a federal law contains an express preemption clause, we ‘focus on the plain wording of the clause, which necessarily contains the best evidence of Congress’ preemptive intent.’” *Whiting*, 131 S. Ct. at 1977 (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)). Neither IRCA’s preemption clause of 8 U.S.C. § 1324a(h)(2), nor anything else in IRCA’s text, indicates that Congress intended to preempt States from penalizing employees for seeking and performing unauthorized work in a State. A “preemption by omission” theory turns preemption analysis upside-down. It must be remembered that the “assumption [against preemption] applies with particular force when Congress has legislated in a field traditionally occupied by the States.” *Altria Group, Inc. v. Good*, 555 U.S. at 77. Section 8 U.S.C. § 1324a regulates in the field of employment, an area in which States enjoy “broad authority under their police powers.” *De Canas*, 351 U.S. at 356.

For all of these reasons, Plaintiffs’ Section 4 preemption challenge is not likely to succeed.

REVERSED and DISMISSED.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TWELFTH CIRCUIT

SARAH CHRISTIE, Governor of )  
South Alaska, in her official capacity, )  
HERMAN GINGRICH, Attorney General )  
of the State of South Alaska, )  
in his official capacity. )  
*Appellants-Defendants* )  
v. )  
Civ. App. No. 11-1789 )  
THE LATINO INTEGRATION COALITION, )  
THE HISPANIC CENTER FOR )  
JUSTICE, )  
*Appellees-Plaintiffs.* )

**ORDER**  
February 15, 2012

A majority of the circuit judges in regular active service have voted to rehear this case *en banc*. The Court orders that the parties submit briefs limited to the following issue:

1. Whether Sections 2, 3, and 4 of South Alaska’s immigration law, S.B. 1156, are preempted by federal law?

/s/ \_\_\_\_\_  
Harry Reid  
Chief Judge