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The Beginning of the End: *United States v. Alabama* and the Doctrine of Self-Deportation

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I. INTRODUCTION

> "Remember, remember always that all of us, and you and I especially, are descended from immigrants and revolutionists."
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> —Franklin D. Roosevelt[1]

In *United States v. Alabama*,[2] a three-judge panel of the United States Court of Appeals for the Eleventh Circuit struck down several sections of Alabama's Hammon-Beason Alabama Taxpayer and Citizen Protection Act (H.B. 56).[3] This Act–which has been called the strictest anti-immigration law in the country–demonstrates a growing trend among states to exert more control over immigration regulation.[4] Writing for the court, Judge Wilson concluded that federal law preempted sections 10, 11(a), 13(a), 16, 17, and 27 of H.B. 56.[5] In so holding, the Eleventh Circuit gave a victory to those championing the rights of illegal immigrants while also curtailing the power of the states to regulate within their own borders.

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1. Franklin D. Roosevelt, *The Public Papers and Addresses of Franklin D. Roosevelt, 1938*, RESPECTFULLY QUOTED: A DICTIONARY OF QUOTATIONS (last visited Apr. 2, 2013), http://www.bartleby.com/73/882.html.

2. 691 F.3d 1269 (11th Cir. 2012).

3. 2011 Ala. Acts 2011-525 (H.B. 56); *Alabama*, 691 F.3d at 1301.

4. Richard Fausset, *Alabama Enacts Anti-illegal-immigration Law Described as Nation's Strictest*, L.A. TIMES, June 10, 2011, http://articles.latimes.com/print/2011/jun/10/nation/la-na-alabama-immigration-20110610.

5. *Alabama*, 691 F.3d at 1301.

II. FACTUAL BACKGROUND

A. Enactment of H.B. 56

The Alabama legislature passed H.B. 56 on June 2, 2011 based on finding that "immigration is causing economic hardship and lawlessness in [Alabama] and that illegal immigration is encouraged when public agencies within [Alabama] provide public benefits without verifying immigration status."[6] Governor Bentley signed H.B. 56 into law that same month.[7] According to Representative Hammon, a sponsor of the law, its purpose was to "attack[] every aspect of an illegal alien's life" in order to force them to "deport themselves."[8] As stated in the legislative findings, H.B. 56 was designed to "discourage illegal immigration within the state and maximize enforcement of federal immigration laws through cooperation with federal authorities."[9] Shortly thereafter, organizations such as the Immigration Reform Law Institute characterized the law as the "most advanced state" immigration law to date.[10]

Several sections of H.B. 56, some mirroring those of Arizona's S.B. 1070 recently addressed by the United States Supreme Court in *Arizona v. United States*,[11] were put forth to achieve Alabama's legislative purpose. This Note will focus on sections 10, 11(a), and 12(a), which all emulate Arizona's law, as well as section 27. First, section 10 makes the "willful failure to complete or carry registration documents in violation of 8 U.S.C. §§ 1304(e) [or] 1306(a)" a crime.[12] Under section 11, it was a crime for an unlawfully present alien to solicit, apply for, or perform work of any kind within the state of Alabama.[13] Section 12 required law enforcement officers to determine the immigration status of any individual who had been stopped or was under arrest if the officer reasonably suspected the person may be in the country illegally.[14]

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6. ALA. CODE § 31-13-2 (2011).

7. 2011 Ala. Acts 2011-525 (H.B. 56).

8. Human Rights Watch, *No Way to Live* (Dec. 14, 2011), *available at* http://www.hrw.org/node/103511/section/2.

9. *Alabama*, 691 F.3d at 1276.

10. IMMIGRATION REFORM L. INST., *Alabama Passes the Most Advanced State Immigration Law in U.S. History* (2011), *available at* http://www.irli.org/node/39.

11. 132 S. Ct. 2492 (2012).

12. *Alabama*, 691 F.3d at 1282.

13. ALA. CODE § 31-13-11(a) (2011).

14. ALA. CODE § 31-13-12 (2011) ("Upon any lawful stop, detention, or arrest made by a . . . law enforcement officer of this state . . . where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made . . . to determine the citizenship and immigration status of the person . . . .

Importantly, the determination of immigration status was to be based upon federal standards.[15] Also similar to S.B. 1070, section 12 contains provisions which aim at lightening the burden that could be caused to minority groups by the effects of the statute.[16] Additionally, this Note will look at the court's analysis of section 27, which represented a new attempt at state control over immigration by prohibiting state courts from enforcing any contract where an illegal immigrant was a party if the contract required the unlawfully present individual to remain in the country for more than twenty-four hours after its formation in order to perform the contract, and the other party "had direct or constructive knowledge" of their illegal status.[17]

B. Procedural History

The United States Department of Justice and the Obama administration brought suit against Alabama, claiming that federal law preempted the Alabama law.[18] Judge Sharon Blackburn of the United States District Court for the Northern District of Alabama ruled on the validity of the law on September 28, 2011.[19] In her opinion, Judge Blackburn upheld sections 10, 12, 18, 27, 28, and 30.[20] Two principles guided her analysis: the congressional purpose of the underlying federal statute, and whether Congress had legislated in a traditionally state-occupied

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Any alien who is arrested and booked into custody shall have his or her immigration status determined . . . .").

15. *Id.* § 31-13-12(a).

16. *Id.* § 31-13-12(c) ("A law enforcement officer may not consider race, color, or national origin in implementing the requirements of this section . . . .").

17. ALA. CODE § 31-13-26(a) (2011). Several exemptions exist from the scope of section 27. If the contract is for overnight lodging, purchase of food, medical services, or serves the purpose of returning the alien to his country of origin, the contract will be capable of being enforced. *Id.* § 31-13-26(b). Additionally, contracts that are authorized by the federal government are outside the scope of section 27. *Id.* § 31-13-26(c). While outside the scope of this paper, section 27 was not the only new attempted avenue of control over immigration law put forth by H.B. 56. Section 16 bars employers from receiving state tax deductions for wages and compensation paid to any alien unauthorized to work in the United States. *Id.* § 31-13-16(a). In similar fashion, section 17 labels it a "discriminatory practice" for an employer to fire or fail to hire an American citizen or an alien authorized to work in favor of an alien who is not authorized to work in this country. *Id.* § 31-13-17(a). Section 18 adds to a preexisting law by requiring an officer who stops an individual driving without a valid license to make a reasonable effort within the next forty-eight hours to ascertain the driver's citizenship. *Id.* § 32-6-9(c). Finally, section 29, as amended by H.B. 56, disallows illegal aliens from entering, or attempting to enter, "a public records transaction" with the state. *Id.* § 31-13-29(b), *amended by* H.B. 56 § 1.

18. United States v. Alabama, 813 F. Supp. 2d 1282, 1292 (N.D. Ala. 2011).

19. *Id.* at 1282.

20. *Id.* at 1351.

field.[21] Subsequently, Judge Blackburn issued preliminary injunctions against sections 11(a), 13, 16, and 17 based on the likelihood of successful preemption challenges.[22]

Following the district court's ruling, the United States appealed the denials of preliminary injunctions, and Alabama subsequently cross-appealed the injunctions granted by the district court. The United States sought an injunction pending appeal against the sections that were denied by the district court in order to maintain the status quo until the appeal could be heard. A panel of judges of the United States Court of Appeals for the Eleventh Circuit ultimately granted injunctions pending appeal against sections 10, 27, 28, and 30, leaving sections 12 and 18 as the only ones currently intact and enforced.[23]

III. LEGAL BACKGROUND

A. Federal Preemption

The foundation for the doctrine of preemption is provided by the Supremacy Clause, which states:

> [T]he 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.[24]

Therefore, "if a federal statute establishes a rule, and if the Constitution grants Congress the power to establish that rule, then the rule preempts whatever state law it contradicts."[25] Consequently, courts necessarily begin by establishing that Congress validly enacted the federal law in question within the limitations of its enumerated powers.[26] Courts are "guided by two cornerstones" when determining the extent to which state law is preempted by federal law.[27] First, "'the purpose of Congress is the ultimate touchstone in every pre-emption

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21. *Id.* at 1300-01.
22. *Id.* at 1351.
23. *Alabama,* 691 F.3d at 1280.
24. U.S. CONST. art. VI, § 1, cl. 2.
25. Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 264 (2000).
26. William Hochul III, *Enforcement in Kind: Reexamining the Preemption Doctrine in Arizona v. United States*, 87 NOTRE DAME L. REV. 2225, 2227 (2012).
27. *Alabama*, 691 F.3d at 1282 (quoting Wyeth v. Levine, 555 U.S. 555, 565 (2009)) (internal quotation marks omitted).

case.'"[28] Second, the preemption analysis is guided by an "'assumption that the historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress.'"[29] This has been labeled the presumption against preemption and has led to a level of deference to state and local laws within areas of traditional state concern.[30] However, when a state regulates in an area with "a history of significant federal presence," the presumption against preemption is not applied.[31]

Congress can demonstrate its intent to preempt state law "by express language in a congressional enactment [express preemption], by implication from the depth and breadth of a congressional scheme that occupies the legislative field [field preemption], or by implication because of a conflict with a congressional enactment [conflict preemption]."[32]

1. Express Preemption. Express preemption will be found when a federal law includes a clause explicitly removing specified powers from the states. Courts focus on the plain language of preemption clauses when they are included, as it "necessarily contains the best evidence of Congress' preemptive intent."[33] For example, the Immigration Reform and Control Act[34] has an express preemption clause that prohibits "any State or local law [from] imposing civil or criminal sanctions (other than through licensing and similar laws)" on employers who hire undocumented immigrants.[35]

2. Field Preemption. Field preemption will be found where "'the federal interest is so dominant'" in a federal regulatory scheme that it may be presumed that Congress intended to occupy the entire area of law, leaving no room for state action.[36] The Court has found that some

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28. *Id.* (quoting *Wyeth*, 555 U.S. at 565).

29. *Wyeth*, 555 U.S. at 565 (quoting Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996)).

30. Jennifer R. Phillips, *Arizona's S.B. 1070 and Federal Preemption of State and Local Immigration Laws: A Case for a More Cooperative and Streamlined Approach to Judicial Review of Subnational Immigration Laws*, 85 S. CAL. L. REV. 955, 967 (2012) (discussing that areas of traditional state concern include the "health, safety, and welfare of its citizens.").

31. United States v. Locke, 529 U.S. 89, 108 (2000).

32. Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 541 (2001) (citations omitted).

33. Chamber of Commerce v. Whiting, 131 S. Ct. 1968, 1977 (2011) (quoting CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 664 (1993)) (internal quotation marks omitted).

34. Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.).

35. 8 U.S.C. § 1324a(h)(2) (2006).

36. Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 204 (1983) (quoting Fidelity Fed. Sav. & Loan Ass'n v. de la Cupsta, 458 U.S. 141, 153

federal regulatory schemes are "so pervasive" that "Congress left no room for the States to supplement it."[37] Furthermore, the "federal interest" in a field can be "so dominant" that federal law "will be assumed to preclude enforcement of state laws on the same subject."[38] A finding of field preemption results in states being either limited or excluded from the field.[39]

3. Conflict Preemption. It is well settled that a state law which "actually conflicts" with a federal statute is preempted, even if the statute contains no express preemption clause or does not impliedly occupy a field.[40] State law is conflict-preempted when it "stands as an obstacle to the accomplishment and execution of the full purposes . . . of Congress,"[41] as well as when it is a "physical impossibility" to comply with both the federal and state law.[42] Conflict preemption has been found when local immigration law "has had a deleterious effect on the United States' foreign relations."[43] Ultimately, "'a statute is preempted . . . if it conflicts with federal law making compliance with both state and federal law impossible.'"[44]

B. Arizona v. United States

The Supreme Court recently addressed self-deportation styled immigration law in *Arizona v. United States.*[45] In an opinion delivered by Justice Kennedy, the Court considered whether four provisions of Arizona's Support Our Law Enforcement and Safe Neighborhoods Act (S.B. 1070)[46] were preempted by federal immigration laws.[47] Justice

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(1982)); *see also* Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (holding that congressional purpose to supersede historic state powers can be inferred from an area in which there is a "dominant" federal interest in a federal regulatory scheme).

37. *Rice*, 331 U.S. at 230.

38. *Id.*

39. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 373 (2000).

40. English v. Gen. Elec. Co., 496 U.S. 72, 79 (1990).

41. Gade v. Nat'l Solid Waste Mgmt. Ass'n, 505 U.S. 88, 98 (1992) (quoting Hines v. Davidowtiz, 312 U.S. 52, 67 (1941)) (internal quotation marks omitted).

42. *Id.* (quoting Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963)) (internal quotation marks omitted).

43. United States v. Arizona, 641 F.3d 339, 352 (9th Cir. 2011).

44. Villas at Parkside Partners v. City of Farmers Branch, 701 F. Supp. 2d 835, 853 (N.D. Tex. 2010) (quoting Villas at Parkside Partners v. City of Farmers Branch, 577 F. Supp. 2d 858, 867 (N.D. Tex. 2008)).

45. 132 S. Ct. 2492 (2012).

46. Az. S. Bill 1070, 2d Reg. Sess. (codified in scattered sections of ARIZ. REV. STAT. ANN.).

47. *Arizona*, 132 S. Ct. at 2497.

Kennedy began by framing the court's preemption analysis based on the framework laid out above.[48]

The Court first determined the validity of section 3 of S.B. 1070, which prohibited the "willful failure to complete or carry an alien registration document . . . in violation of 8 [U.S.C. §] 1304(e) or 1306(a)."[49] Justice Kennedy concluded that, based upon the framework enacted by Congress, the federal government had "occupied the field of alien registration."[50] In response to Arizona's assertion that section 3 was valid because it had the same goal as its federal counterpart, Justice Kennedy further stated that "[w]here Congress occupies an entire field, as it has in the field of alien registration, even complementary state regulation is impermissible."[51] Therefore, Justice Kennedy concluded that section 3 was preempted by federal law because Congress intended to occupy the entire field of alien registration.[52]

Next, Justice Kennedy turned to section 5(C), which created a state misdemeanor for "an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor."[53] Such a punishment was not contemplated by the law's federal counterpart, the Immigration Reform and Control Act of 1986 (IRCA),[54] which imposes penalties on the employer rather than on the employee.[55] The Court looked to the legislative history of the IRCA, holding that Congress deliberately did not impose penalties upon unlawfully present aliens who seek employment.[56] While Arizona's law shares the same goal as the IRCA,[57] "it involves a conflict in the method of enforcement" by punishing those Congress intentionally chose not to.[58] Therefore, Justice Kennedy held that section 3 was conflict preempted by the IRCA due to "interfer[ing] with the careful

48. *Id.* at 2500-01.

49. *Id.* at 2501 (internal quotation marks omitted); *see also* ARIZ. REV. STAT. ANN. § 13-1509(A) (2010) (West).

50. *Arizona*, 132 S. Ct. at 2502.

51. *Id.*

52. *Id.* at 2503.

53. *Id.* (internal quotation marks omitted); *see also* ARIZ. REV. STAT. ANN. § 13-2928(C) (2010) (West Supp. 2011).

54. Pub. L. No. 99-603, 100 Stat 3359 (codified as amended in scattered sections of 8 U.S.C.).

55. *See* 8 U.S.C. §§ 1324a(a)(1)(A), (a)(2) (2006).

56. *Arizona*, 132 S. Ct. at 2504.

57. Both aim to deter unlawful employment of those unlawfully present within the country. *Id.* at 2505.

58. *Id.*

balance struck by Congress with respect to unauthorized employment of aliens."[59]

However, the Court did not hold that federal law preempted section 2(B), which required state police officers to make a "reasonable attempt . . . to determine the immigration status" of any individual whom they have arrested, detained, or stopped, provided a "reasonable suspicion exists that the person is an alien and is unlawfully present in the United States."[60] In enacting this provision, Arizona integrated three limitations.[61] In light of the self-imposed limitations and the uncertainty surrounding how the law would be enforced, Justice Kennedy held that section 2(B) was not preempted at the time.[62] In so holding, he emphasized the importance to the immigration system of communication between federal and state officials.[63] Additionally, Justice Kennedy expressly left open the possibility of future challenges, stating, "This opinion does not foreclose other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect."[64]

Therefore, the Court held that section 3 and 5(C) were preempted by federal law.[65] Conversely, the Court held it to be improper at the time

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59. *Id.*

60. *Id.* at 2507; *see also* ARIZ. REV. STAT. ANN. § 11-1051(B) (2012). The law further provided that anyone arrested would also have their immigration status determined prior to being released. *Arizona*, 132 S. Ct. at 2507.

61. *Arizona*, 132 S. Ct. at 2507-08; *see also* ARIZ. REV. STAT. ANN. § 11-1051(B) (2012). First, there is a presumption that a detainee is not an unlawfully present alien when he or she presents a valid Arizona driver's license or similar identification. *Arizona*, 132 S. Ct. at 2507. Second, officers "may not consider race, color or national origin . . . except to the extent permitted by the United States [and] Arizona Constitution[s]." *Id.* at 2508 (alteration in original); *see also* ARIZ. REV. STAT ANN. § 11-1051(B). And third, the law must be "implemented in a manner consistent with federal law regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens." *Arizona*, 132 S. Ct. at 2508; *see also* ARIZ. REV. STAT. ANN. § 11-1051(L).

62. *Arizona*, 132 S. Ct. at 2509-10.

63. *Id.* at 2508. "Congress has made clear that no formal agreement or special training needs to be in place for state officers to 'communicate with the [Federal Government] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States.'" *Id.* (alteration in original); *see also* 8 U.S.C. § 1357(g)(10)(A).

64. *Arizona*, 132 S. Ct. at 2510.

65. *Id.* The Court additionally held section 6 preempted, which provided that a state officer "without a warrant, may arrest a person if the officer has probable cause to believe . . . [the person] has committed any public offense that makes [him] removable from the United States." *Id.* at 2505 (alterations in original); *see also* ARIZ. REV. STAT. ANN. § 13-3883(A)(5) (2010).

to enjoin section 2(B) before the law could be enforced by state officials and interpreted by state courts.[66]

IV. COURT'S RATIONALE

On August 20, 2012, a three-judge panel for the Eleventh Circuit decided whether to enjoin several sections of Alabama's H.B. 56.[67] Specifically, the issue before the court was whether H.B. 56 should be enjoined as preempted by federal law in light of the Supreme Court's ruling in *Arizona v. United States*,[68] which was the first opinion to provide the lower courts with any guidance in responding to the growing number of states pushing the boundaries of state immigration policies. The panel unanimously followed the Supreme Court's lead on the provisions mirroring the ones at issue in *Arizona*, and also held several additional provisions of Alabama's law—which went far beyond Arizona's—preempted by federal law.[69]

A. *Opinion*

Judge Wilson began the opinion by noting that in order to grant a preliminary injunction, the moving party must establish: "(1) 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."[70] However, the court noted that the focus of the issue was on whether the United States is likely to succeed on its preemption claims.[71]

1. Section 10. Writing for the court, Judge Wilson analyzed each section individually, beginning with section 10, which made an illegal alien's "'willful failure to complete or carry an alien registration documents' in violation of 8 U.S.C. §§ 1304(e) [or] 1306(a)" a state crime.[72] Acknowledging that a very similar provision was held to be preempted in *Arizona*, the court reversed the district court's decision and

66. *Arizona*, 132 S. Ct. at 2510.
67. *Alabama*, 691 F.3d at 1280-81; Ala. H.B. 56, 2011 Ala. Acts 2011-525.
68. 132 S. Ct. 2492 (2012).
69. *Alabama*, 691 F.3d at 1280-81.
70. *Id.* at 1281 (quoting McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998)).
71. *Id.*
72. *Id.* at 1282 (quoting *Arizona*, 132 S. Ct. at 2501); *see also* H.B. 56 § 10.

held that federal law preempted section 10.[73] Relying on the Supreme Court's determination that the federal government has occupied the entire field of alien registration, the court concluded that "even complementary state regulation is impermissible."[74] Even if the goal of the state is shared by the federal government, the law would still be preempted in order to prevent any dilution of federal control over the desired field.[75]

2. Section 11(a). Likewise, the court relied on *Arizona* to hold section 11(a), which cannot be distinguished from section 5(C) of Arizona's S.B. 1070 by making it a crime for an unlawfully present individual to apply for work, expressly preempted by federal law.[76] In that case, the Supreme Court determined that the federal government enacted the IRCA with the intention of establishing a "comprehensive framework" to deal with individuals who employ illegal aliens.[77] Furthermore, the fact that Congress chose not to impose consequences on illegal aliens who accept employment, but only those employers who chose to hire said unauthorized aliens, was determinative in the Court's analysis.[78] Therefore, Judge Wilson held section 11(a) was expressly preempted by federal law based on the decision by Congress that "'it would be inappropriate to impose criminal penalties on aliens who seek or engage in unauthorized employment.'"[79]

3. Section 12(a). Judge Wilson, in examining section 12(a), which created an obligation on law enforcement officers to check the immigration status of any stopped individual whom the officer has a reasonable suspicion is in the country illegally, relied on another immigration case that he authored earlier the same day— *Georgia Latino Alliance for Human Rights (GLAHR) v. Deal*,[80]— where the Eleventh Circuit

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73. *Alabama*, 691 F.3d at 1282.

74. *Id.* (quoting *Arizona*, 132 S. Ct. at 2502) (internal quotation marks omitted).

75. *Id.*

76. *Id.* at 1283.

77. *Id.* (quoting *Arizona*, 132 S. Ct. at 2504) (internal quotation marks omitted).

78. *Id.*

79. *Id.* (quoting *Arizona*, 132 S. Ct. at 2505).

80. 691 F.3d 1250 (11th Cir. 2012). In *GLAHR*, several organizations challenged the validity of section 7 and 8 of Georgia's Illegal Immigration Reform and Enforcement Act of 2011 (H.B. 87). *Id.* at 1256-57. Section 7 created crimes for three different interactions with an "illegal alien." *Id.* at 1256. First, it made the "transporting or moving of an illegal alien" a crime, if the individual transporting the alien is doing so intentionally and with the knowledge that the person is in the country illegally. *Id.*; *see also* O.C.G.A. § 16-11-200(b) (2011). Secondly, in similar fashion, section 7 also created a crime for "concealing or harboring an illegal alien." *GLAHR*, 691 F.3d at 1256; *see also* O.C.G.A. § 16-11-201(b).

further applied *Arizona*.[81] Based on the Supreme Court's rejection of a pre-enforcement challenge to the identical Arizona law, the court likewise concluded that section 12(a) is not preempted by federal law.[82] In so holding, Judge Wilson relied on the notion clarified by the Supreme Court that "'[c]onsultation between federal and state officials is an important feature of the immigration system,'" giving state officers permission to communicate with federal officials regarding the immigration status of any individual.[83] However, just as in *Arizona*, Judge Wilson expressly left open the possibility of future challenges if the scope of the law conflicts with federal law once put into practice.[84]

4. Section 27. Judge Wilson then considered section 27, which prohibited the recognition of contracts between an unlawfully present alien and a party who was aware—constructively or explicitly—that the alien's presence was unlawful.[85] Contracts were permitted in the foregoing situation only when the contract could reasonably be completed within twenty-four hours, as well as contracts for overnight lodging, food, medical services, and transportation "that is intended to facilitate

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Finally, section 7 made it a crime to "induce[] an illegal alien to enter into [Georgia]." *GLAHR*, 691 F.3d at 1256 (second alteration in original); *see also* O.C.G.A. § 16-11-202(b). The court found section 7 to be preempted by federal law, both due to the comprehensive nature of the Immigration and Nationality Act, and because it directly conflicted with federal law by creating new crimes unparalleled by the federal government. *GLAHR*, 691 F.3d at 1263-67. Section 8 gave Georgia law enforcement officers the right to determine the immigration status of an individual which the officer has probable cause to believe had committed another crime, and the individual could not produce a piece of identification listed in the statute. *Id.*; *see also* O.C.G.A. § 15-5-100(b) (2011). This section contained similar prohibitions as Alabama's law, prohibiting consideration of "race, color, or national origin." *GLAHR*, 691 F.3d at 1267; *see also* O.C.G.A. § 17-5-100(b). The court, relying on *Arizona,* held section 8 not to be preempted. *GLAHR*, 691 F.3d at 1268. Compared to Arizona's law, the court believed Georgia's to be facially less problematic, in that it only authorized but did not require officers to look into an individual's background. *Id.* Also, it contained the same inherent limitations as the Arizona law. *Id.* The court, just as the Supreme Court did in *Arizona*, left open the possibility of future challenges based on the law's application. *Id.* at 1268 n.12.

81. *Alabama*, 691 F.3d at 1283-84.

82. *Id.* at 1284.

83. *Id.* (alteration in original) (quoting *Arizona*, 132 S. Ct. at 2508). The Court in *Arizona* furthermore looked to the fact that Congress has provided a system by which state officers can contact federal officials, and has ordered that Immigration and Customs Enforcement respond to state inquiries relating to the immigration status of an individual. *Arizona*, 132 S. Ct. at 2508.

84. *Alabama*, 691 F.3d at 1285.

85. *Id.* at 1292-93; *see also* ALA. CODE § 31-13-26(a) (2011).

the alien's return to his or her country of origin."[86] Judge Wilson, stating that to call section 27 "extraordinary and unprecedented would be an understatement," believed that the sole purpose of the law was to make the lives of those unlawfully within the state of Alabama so miserable that they no longer have "the ability to maintain even a minimal existence."[87]

Ultimately, the court looked to the exclusive power granted to the federal government to expel aliens.[88] Quoting *Hines v. Davidowitz*,[89] Judge Wilson determined this power "'is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties,' which includes the field of immigration."[90] Therefore, in light of the fact that any state which imposes "distinct, unusual[,] and extraordinary burdens and obligations upon aliens" could be trespassing into a field of federal regulation, the court found that this "blanket prohibition" most certainly qualified as an extraordinary burden.[91] Ultimately, Judge Wilson held section 27 as field-preempted "by the inherent power of the federal government to regulate immigration."[92]

B. Equitable Factors

The court held that the equities favor enjoining the provisions found to be preempted by federal law, further stating that the United States suffers harm when invalid state regulations destabilize valid federal law.[93] Additionally, the court noted no harm to the public for the non-enforcement of invalid state regulation.[94] Therefore, it held that the

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86. *Alabama*, 691 F.3d at 1293 (internal quotation marks omitted); *see also* ALA. CODE § 31-13-26(b).

87. *Alabama*, 691 F.3d at 1293. The court further stated that the ability to contract is not merely something granted by the legislature out of goodwill; it is something that "in practical application, is essential for an individual to live and conduct daily affairs." *Id.*

88. *Id.* at 1293-94. *See* Fok Young Yo v. United States, 185 U.S. 296, 302 (1902); Fong Yue Ting v. United States, 149 U.S. 698, 706-07 (1893).

89. 312 U.S. 52 (1941).

90. *Alabama*, 691 F.3d at 1293 (quoting *Hines*, 312 U.S. at 62-63).

91. *Id.* (quoting *Hines*, 312 U.S. at 65) (internal quotation marks omitted).

92. *Id.* at 1294. Alabama argued that section 27 was protected because the field of contract law is "typically within the province of the states and therefore entitled to the presumption against preemption." *Id.* at 1295. Following the Supreme Court's instruction that preemption analysis must also consider the practical effect of the state law, not just the means by which the state attempts to achieve their purpose, the court rejected this argument. *Id.* at 1296. While contracts are an area of typical state concern, Alabama could not enforce section 27 without intruding into an area of federal law. *Id.*

93. *Id.* at 1301.

94. *Id.*

equities were in favor of enjoining enforcement of sections 10, 11(a), 13(a), 16, 17, and 27.[95]

C. Conclusion

In conclusion, the court held that the United States was likely to succeed on the merits on their challenges to sections 10, 11(a), 13(a), 16, 17, and 27.[96] While acknowledging that Alabama, just like Arizona, is "'understandabl[y] frustat[ed] with the problems caused by illegal immigration,'" he stressed that states must "'not pursue policies that undermine federal law.'"[97]

V. IMPLICATIONS

The Eleventh Circuit's opinion in *Alabama* represents the first determination on self-deportation anti-immigration law by an appeals court since the Supreme Court's ruling on Arizona's immigration law. While the court did not invalidate all of Alabama's law, enough pieces were struck down to defeat the self-deportation ideology behind it.[98] Therefore, the decision overall represents a setback for states seeking to circumvent federal authority in order to oust unlawfully present residents.

A. Unintended Consequences of H.B. 56

1. Social Impact. The impact of H.B. 56 was felt swiftly in predictable and unexpected ways, not only for illegal immigrants, but legal residents as well. Immediately after the law's enactment the Hispanic Interest Coalition of Alabama (H.I.C.A.) established a hotline for anyone living in Alabama to call and report infringements on civil rights resulting from the law.[99] The National Immigration Law Center, a member of H.I.C.A., published its findings based on over 6,000 calls to the hotline.[100] Based on its report, "[s]cores of Latinos called to report

95. *Id.*

96. *Id.*

97. *Id.* (quoting *Arizona*, 132 S. Ct. at 2510).

98. Republican Governor Robert Bentley believes that the "essence" of the law is still intact. Jay Reeves, *Alabama Court Delivers Split Decision on Immigration Law*, WASH. TIMES, Aug. 20, 2012, http://www.washingtontimes.com/news/2012/aug/20/ala-court-delivers-split-decision-immigration-law/.

99. HISPANIC INTEREST COALITION OF ALABAMA, http://www.hispanicinterest.org (last visited Mar. 4, 2013).

100. NATIONAL IMMIGRATION LAW CENTER, RACIAL PROFILING AFTER HB 56: STORIES FROM THE ALABAMA HOTLINE (Aug. 2012), *available at* www.nilc.org/document.html?id=800.

that they suspected they had been stopped by police, after the [H.B.] 56 provisions became enforceable, mainly because they look Latino—so that officers could question them about their immigration status."[101] The law even led to the arrest of a Mercedes-Benz executive, who could only produce his German identification card and not his passport during a traffic stop.[102]

However, the law's effects were not limited to interactions with government officials. Both illegal and legal Latino residents faced increased hostility from the general public, resulting in taunts, insults, and the inevitable question of the individual's legality within the country. The individual accounts included: harassment in Wal-Mart, withheld work payment, demands by cashiers at gas stations and movie theaters for proof of immigration status, and even denials of medical services that were rendered prior to the enactment of H.B. 56.[103] Thus, H.B. 56 emboldened citizens of Alabama "enough to deputize themselves to enforce [H.B.] 56 and . . . feel free to ask or demand that people they suspect, based usually on appearance, of being undocumented provide proof of their immigration status."[104]

2. Economic Impact. The law has also resulted in devastating hits to several key areas of the economy, significantly contributing to Alabama becomming "the worst economy in the Southeast," and the fourth worst in the country.[105] While one of the goals behind H.B. 56 was to force unlawfully present immigrants out of Alabama in order to open jobs for Alabama residents, such has not been the result in practice. State Senator Scott Beason praised H.B. 56 for the recent drop in the unemployment rate, going from 8.8 percent to 8.5 percent.[106] However, according to the U.S. Bureau of Labor Statistics this drop occurred due to an overall shrink in the labor force,[107] likely caused by the mass exodus of Hispanics fleeing the state.

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101. *Id.* at 2.

102. Amanda Beadle, *German Mercedez-Benz Executive Arrested Under Alabama's Immigration Law*, THINK PROGRESS (Nov. 21, 2011), http://thinkprogress.org/justice/2011/11/21/373334/german-mercedes-benz-executive-arrested-under-alabamas-immigration-law/?mobile=nc.

103. NATIONAL IMMIGRATION LAW CENTER, *supra* note 100, at 5-8.

104. *Id.* at 8.

105. Joey Kennedy, *Alabama Has the Worst Economy in the Southeast. Wonder Why?*, AL.COM (Oct. 25, 2012, 11:30 AM), http://blog.al.com/jkennedy/2012/10/alabama_has_the_worst_economy.html.

106. Margaret Newkirk, *Africans Relocate to Alabama to Fill Jobs After Immigration Law*, BLOOMBERG, Oct. 11, 2012, http://www.bloomberg.com/news/2012-09-24/africans-relocate-to-alabama-to-fill-jobs-after-immigration-law.html.

107. *Id.*

Indeed, an Alabama poultry company spent five million dollars replacing and training new employees after losing many of their Hispanic workers.[108] And while the company would gladly fill any empty jobs with residents of Alabama, oftentimes it must turn elsewhere to find people willing to work. Accordingly, in the weeks following the passing of the law, there has been an influx of African and Haitian refugees and Puerto Ricans to fill those jobs left empty by those who have fled the state.[109]

The agricultural industry was hit equally as hard. Farmers who rely on seasonal labor watched crops go unpicked as Latinos fled.[110] One tomato farmer estimated his losses from rotten produce to be as much as $300,000 due to a lack of labor.[111] While programs were initiated in some cities such as in Birmingham to attempt to recruit unemployed citizens to replace those who left, they "did almost nothing to curb the losses felt by farmers, who watched much of their fall harvest spoil in the fields."[112]

The law is also impacting foreign trade, as illustrated by the embarrassing incident with the Mercedes-Benz executive.[113] Other states will certainly seize the opportunity if Alabama is willing to give future foreign investors hesitation when considering where to expand their operations. Following the executive's arrest, the *St. Louis Post-Dispatch* sent a later-published letter to Mercedes-Benz proclaiming, "You should move your SUV plant to Missouri where we are the Show-Me State, not the 'Show me your papers State.'"[114] All of this resulted from the desire to force out a population of undocumented immigrations

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108. *Id.*

109. *Id.*

110. TOM BAXTER, CENTER FOR AMERICAN PROGRESS, *Alabama's Immigration Disaster: The Harshest Law in the Land Harms the State's Economy and Society*, 7 (Feb. 2012), *available at* http://www.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/alabama_immigration_disaster.pdf.

111. *Id.* at 8

112. *Id.* at 10.

113. *Id.* at 13. Mercedes-Benz was the flagship of Alabama's automotive industry, being the first to build an assembly plant in the state in 1993. *Id.* Honda, Hyundai, and Toyota followed. *Id.*

114. *Id.* at 14; *see also* Editorial, *Hey Mercedes, Time to Move to a More Welcoming State*, ST. LOUIS POST-DISPATCH, Nov. 22, 2011, http://www.stltoday.com/news/opinion/columns/the-platform/editorial-hey-mercedes-time-to-move-to-a-more-welcoming/article_b5cc5237-d199-570c-8735-caa81e247249.html#ixzz1ejBQ4GD8. There is speculation regarding the loss of other foreign business as a result of H.B. 56 as well. BBVA Compass, who owns the Spanish bank BBVA Group, backed out of plans to build an $80 million tower in Birmingham, Alabama. BAXTER, *supra* note 110, at 15.

that amounted to only 2.5 percent of the state—a group that also paid $130 million to the state in taxes in 2010.[115]

Experts such as Sam Addy, an economist and Director of the Center for Business and Economic Research at the University of Alabama, predict dire consequences if Alabama does not put an end to the exodus of Latinos fleeing from the state–ultimately facing the "loss of up to about 140,000 direct and indirect jobs and $5.8 billion in earnings, $10.8 billion in Alabama's gross domestic product, and more than $300 million in income and sales tax revenue."[116] Money speaks volumes in every language, and it does not take a translator to understand that H.B. 56 has already proven to be bad business for the State of Alabama.

B. Impending Challenge to Section 12

While the Eleventh Circuit allowed section 12(a)–the show-me-your-papers–provision—to go into effect, it expressly left open the possibility of future challenges based on the law's application.[117] With events such as those previously mentioned occurring more frequently, a challenge to section 12(a) seems imminent.[118] On top of the effects already discussed, section 12(a) is failing to be applied uniformly across the state. In Huntsville the police chief has refused to enforce the law immediately, stating he will wait until the courts and lawyers sort it out.[119] Additionally, the police chief of Clanton also believes the law cannot be enforced in part "because state lawmakers this year repealed a provision authorizing police to arrest motorists for driving without a license."[120] In contrast, the law is being enforced by police in Montgomery and Tuscaloosa.[121]

With dissent in the ranks of their law enforcement, how can citizens of Alabama expect the law to be applied uniformly across the state? There is too much discretion granted to individual officers who have received no training and, at most, minimal guidance regarding a law they do not fully understand, which in turn creates too great an avenue for discrimination to occur. As critics have noticed, the uneven

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115. BAXTER, *supra* note 110, at 1.

116. Jeremy Redmon, *Alabama's Show-me-your-papers Law: A Cautionary Tale for Georgia*, ATLANTA J.-CONST., Sept. 16, 2012, http://www.ajc.com/news/news/alabamas-show-me-your-papers-law-a-cautionary-tale/nSCXw/.

117. *Alabama*, 691 F.3d at 1285.

118. *See supra* notes 101-104.

119. Lee Roop, *Huntsville Police Chief: Immigration Ruling Unclear, Law Won't be Enforced Yet*, AL.COM (Oct. 11, 2012, 11:18 PM), http://blog.al.com/breaking/2011/09/huntsville_police_chief_immigr.html.

120. Redmon, *supra* note 116.

121. *Id.*

application of the law only furthers the opportunity for racial profiling, all on top of the aforementioned impact to the state's economy.[122] As such, it seems only a matter of time before the misapplication of the law results in another challenge to its validity.

VI. CONCLUSION

In *United States v. Alabama*,[123] the Eleventh Circuit held that several sections of Alabama's H.B. 56 were preempted by federal law.[124] As a result of this decision, the scope of state authority to regulate immigration within their borders is narrowing. While the decision is certainly a victory for proponents of those unlawfully present within Alabama, states will undoubtedly continue to test the boundaries of immigration policy within their own sovereign territory.

BENJAMIN D. GALLOWAY

122. *Id.*
123. 691 F.3d 1269 (11th Cir. 2012).
124. *Id.* at 1301.

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