

No. 11-182

IN THE
Supreme Court of the United States

ARIZONA, *et al.*,

Petitioners,

v.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF *AMICI CURIAE* MINUTEMAN
CIVIL DEFENSE CORPS, A PROJECT OF
DECLARATION ALLIANCE, AND LORI
KLEIN, ARIZONA STATE SENATOR,
IN SUPPORT OF PETITIONERS**

GARY G. KREEP

Counsel of Record

UNITED STATES JUSTICE FOUNDATION

932 D Street, Suite 3

Ramona, California 92065

(760) 788-6624

usjf@usjf.net

Attorney for Amici Curiae

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**BRIEF OF *AMICI CURIAE* IN SUPPORT
OF PETITIONER ARIZONA¹**

INTEREST OF *AMICI CURIAE*

Minuteman Civil Defense Corps, a Project of Declaration Alliance, has a long-standing civic interest in the issues discussed in this brief. The Project, since 2005, has had an active and energetic advocacy interest in Federal government enforcement of immigration and border security laws, particularly along the Arizona frontier with Mexico. The Federal government's failure to protect the sovereignty, safety, security, and prosperity of the citizens of the United States of America, and its aggressive actions attempting to prohibit the several States, including Arizona, from providing such enforcement to protect the public welfare of their citizenry in the face of Federal dereliction, compel our interest in this brief.

Lori Klein is the State Senator for Arizona State Senate District 6, wherein she represents approximately 220,000 constituents. As a State Senator, Ms. Klein has an interest in protecting the health, safety, and welfare of the citizens of Arizona, through the enforcement of laws passed by the Arizona State Legislature. In addition, the United States' failure to enforce federal immigration

1. It is hereby certified that all parties have consented to the filing of this brief; no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; and, no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

laws, and its aggressive attempts to prevent Arizona from enforcing its state laws concerning illegal immigration, compels Ms. Klein's interest in this brief.

STATEMENT OF THE CASE

In April, 2010, in response to a serious problem of unauthorized immigration along the Arizona-Mexico border, the State of Arizona enacted its own immigration law enforcement policy. Support Our Law Enforcement and Safe Neighborhoods Act, as amended by H.B. 2162 ("S.B. 1070"), "make[s] attrition through enforcement the public policy of all state and local government agencies in Arizona." S.B. 1070 § 1. The provisions of S.B. 1070 are distinct from federal immigration laws. To achieve this policy of attrition, S.B. 1070 establishes a variety of immigration-related state offenses, and it defines the immigration-enforcement authority of Arizona's state and local law enforcement officers.

Before Arizona's new immigration law went into effect, the United States brought an action against the State of Arizona in federal district court, alleging that S.B. 1070 violated the Supremacy Clause, on the grounds that it was preempted by the Immigration and Nationality Act ("INA"), and that it violated the Commerce Clause. Along with its complaint, the United States filed a motion for injunctive relief, seeking to enjoin implementation of S.B. 1070 in its entirety until a final decision was made about its constitutionality. Although the United States requested that the law be enjoined in its entirety, it specifically argued facial challenges to only six select provisions of the law. *United States v. Arizona*, 703 F.Supp.2d 980, 992 (D.Ariz. 2010).

The District Court granted the United States' motion for a preliminary injunction, in part, enjoining enforcement of S.B. 1070 Sections 2(B), 3, 5(C), and 6, on the basis that federal law likely preempts these provisions. *United States v. Arizona*, 703 F.Supp.2d 980, 1008. Arizona appealed the grant of injunctive relief, arguing that these four sections are not likely preempted; the United States did not cross-appeal the partial denial of injunctive relief. Thus, the United States' likelihood of success on its federal preemption argument against these four sections is the central issue that this appeal presents.

The 9th Circuit Court of Appeals affirmed the District Court's preliminary injunction, enjoining those certain provisions of S.B. 1070, holding that the District Court did not abuse its discretion by enjoining S.B. 1070 Sections 2(B), 3, 5(C), and 6.

SUMMARY OF ARGUMENT

The United States cannot constitutionally declare an area of law to be preempted by Federal statute while, at the same time, refusing to enforce said statute.

ARGUMENT

The United States initially filed suit against the State of Arizona on the grounds that any state legislation passed concerning illegal immigrants is preempted by Federal law. Contrary to the United States' claim, however, the Federal government routinely acts in a manner that is inconsistent with this claim, given that the Federal agencies responsible for enforcement of immigration law frequently train state and local law enforcement on how to

enforce federal immigration law. Not only are state and local law enforcement officials trained on how to enforce federal immigration law, but, under 8 USCS § 1252c, the Federal government expressly authorizes state and local law enforcement to arrest illegal aliens with prior felony convictions, and who had previously been deported. (“Purpose of 8 USCS § 1252c was to displace perceived federal limitations on ability of state and local officers to arrest aliens in United States in violation of federal immigration laws.” *United States v. Vasquez-Alvarez*, 176 F3d 1294 (CA10 Okla. 1999)). Since Federal law already provides for, and authorizes, cooperation between all levels of law enforcement officers in the enforcement of Federal immigration law, Arizona’s effort to give guidance to its state and local law officials, with regards to this enforcement, should be welcomed, rather than enjoined, by the Federal government.

The United States argued in the courts below that the Federal agencies which have the duty of enforcing Federal immigration law have full discretion to determine what law to enforce, and that neither Petitioners, nor the court, may compel the United States to take any particular action, or to enforce any particular law. The United States cannot simultaneously hold both positions, particularly when 8 USCS § 1252c authorizes local enforcement of immigration law already. If the court were to accept both of the United States’ arguments, then Petitioners will be left with no reasonable options in defending the health, safety, and welfare of the citizens of the State of Arizona. If the duty to enforce any law even remotely connected to immigration is exclusively the jurisdiction of the Federal government, as the United States has suggested in this action against Arizona, then Arizona should be permitted

to bring an action to compel the appropriate Federal agencies to enforce the immigration laws, if the Federal agencies fail to do so, because, as the United States' argues, the State must rely on the Federal government to enforce that area of law and may not take any action to the contrary.

The general rule with regard to the preemption doctrine is that no act of Congress is presumed to preempt State law, unless Congress has made such an intention "clear and manifest."

“ “[B]ecause the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action.” *Medtronic*, 518 U.S., at 485, 135 L. Ed. 2d 700, 116 S. Ct. 2240. In areas of traditional state regulation, we assume that a federal statute has not supplanted state law unless Congress has made such an intention “clear and manifest.” *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655, 131 L. Ed. 2d 695, 115 S. Ct. 1671 (1995) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146 (1947)); see also *Medtronic*, 518 U.S., at 485, 135 L. Ed. 2d 700, 116 S. Ct. 2240. “

Bates v. Dow Agrosciences L.L.C., 544 U.S. 431 (2005).

The United States has alleged, in broad terms, with regard to enforcement of immigration laws, that Congress has intended for Federal immigration laws to

preempt State laws, and that any attempt by Arizona, or any other State, to find a means to deal with the growing and continuing problem of illegal immigration would be an interference with the Federal government's plan of enforcement. While referencing a number of Federal statutes governing immigration, the United States did not point to a single statute on immigration in which Congress made a "clear and manifest" intention to supplant state law. On the contrary, statutes such as 8 USCS § 1252c presumes that the intent of Congress was, and is, to enlist assistance from the various States in the enforcement of Federal immigration law. For this reason, the Court should reverse the District Court's decision herein.

Finally, Petitioners have demonstrated in their briefs herein, at the 9th Circuit Court of Appeals, and at the trial court, that the Federal agencies responsible for enforcement of Federal immigration laws have neglected to so enforce immigration laws in Arizona, which has caused the State of Arizona to attempt to control the after effects of this non-enforcement of immigration laws at great expense to the State. In addition, as discussed above, Federal law already authorizes cooperation between local and Federal law enforcement in dealing with immigration violations. Given this fact, the United States cannot simultaneously claim that Federal law both preempts all State laws concerning enforcement of immigration violations and grants the Federal government the discretion to determine whether to enforce these same laws at all, because such a result would, in effect, deprive the State of Arizona the right to exercise its police powers on behalf of its citizens. Congress has limited powers granted to it by the United States Constitution (*Marbury v. Madison*, 5 U.S. 137, 176 (1803).), and may only legislate

into specific areas of law (*Id.*). If this court were to accept the United States' claim that all immigration law enforcement is reserved to the Federal government, then the court should also find that the State of Arizona is entitled to compel the Federal government's immigration enforcement agencies to enforce immigration law to protect the health, safety, and welfare of the citizens of the State of Arizona.

CONCLUSION

For these reasons, *Amici* respectfully requests that this Court reverse the Court of Appeal's decision herein.

Respectfully submitted this
13th day of February, 2012.

GARY G. KREPP
Counsel of Record
UNITED STATES JUSTICE FOUNDATION
932 D Street, Suite 3
Ramona, California 92065
(760) 788-6624
usjf@usjf.net

Attorney for Amici Curiae

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