No. 11-182

In the Supreme Court of the United States

THE STATE OF ARIZONA AND JANICE K. BREWER, GOVERNOR OF THE STATE OF ARIZONA IN HER OFFICIAL CAPACITY, PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF OF *AMICI CURIAE* STATE OF MICHIGAN AND FIFTEEN OTHER STATES IN SUPPORT OF THE PETITIONERS

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QUESTION PRESENTED

In the absence of a clear, congressional statement in the statutory language, does a federal statute impliedly preempt a state's sovereign and plenary police power and thus preclude the state from adopting laws aimed at parallel enforcement of the federal scheme.

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INTEREST OF *AMICI CURIAE*

One of the chief characteristics of the American model of government is its federal system, in which the states serve two unique and indispensable roles. First, the states operate as a separate sovereign, distinct from the United States. Second, the states operate cooperatively with the United States in areas in which Congress invites the states to play a concurrent role. This case implicates both of these roles, and the *amici* states have a manifest interest in ensuring that their sovereignty is accorded proper respect.

The police powers of a state include the authority to arrest for federal crimes, a prerogative derived from the state's own sovereign authority. Consistent with the principle of dual sovereignty, the states may exercise this power to direct the police to arrest persons who violate federal immigration laws. This arrest authority should not be easily set aside, and the Ninth Circuit's decision to do so here is based on its misreading of 8 U.S.C. § 1252c.

Arizona has by statute mandated that its law enforcement officials communicate with and assist the federal government in enforcing immigration law to the full extent Congress prescribed. It is a puzzling view of federal preemption, to say the least, which would nullify a state law seeking to achieve the tasks that federal law itself asks states to perform.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Ninth Circuit interpreted federal immigration laws as preempting traditional state authority in three important areas: enforcing federal law, regulating employment matters, and communicating with federal officials regarding immigration status. This Court should reject each interpretation.

First, states have preexisting authority to make arrests based on violations of federal law. This authority is consistent with their inherent power as sovereign states. See *United States* v. *Vasquez-Alvarez*, 176 F.3d 1294, 1299–1300 (10th Cir. 1999). Because Congress under § 1252c did not expressly preempt that authority, the statute augments state power, rather than restrict it. This conclusion is consistent with the Department of Justice's own reading of the statute, as demonstrated by a 2002 memorandum by the Office of Legal Counsel.

Second, the Ninth Circuit erroneously interpreted the Immigration Reform and Control Act of 1986 as preempting states' traditional role of regulating employees. It is true that Congress limited state authority in a specific way by forbidding states from imposing civil or criminal sanctions on the *employers* of unlawful aliens. 8 U.S.C. § 1324a(h)(2). But Congress was silent on whether states were also barred from their traditional role of regulating employees, and that silence cannot be construed as an express or implied preemption. This Court's recent decision in *Chamber of Commerce of the United States* v. *Whiting*, __ U.S. __; 131 S. Ct. 1968 (2011), made the same point interpreting the very same federal statute.

Third, even when states decline to enter into a cooperative-enforcement agreement under 8 U.S.C. § 1357(g), *any* state maintains the authority to communicate with the Attorney General to ascertain the immigration status of an individual under 8 U.S.C. § 1357(g)(10)(A), and the Attorney General *must* respond to such an inquiry under 8 U.S.C. § 1373(c). The Ninth Circuit upset this cooperative scheme by re-writing § 1357(g). Under the Ninth Circuit's view, a state that wishes to engage in "routine" or "systematic" communication with federal immigration authorities must first enter into a § 1357(g) agreement. But Congress has stated just the opposite: no state need enter into an agreement to either communicate with the Attorney General or cooperate in the enforcement of federal immigration law.

In sum, congressional intent is furthered, not thwarted, when state law enforcement officers verify and communicate to the federal government their reasonable suspicion that an individual is in the country illegally. Likewise, federal law is fostered, not denigrated, when law enforcement officials arrest an individual and refer him to the federal government when they have probable cause to believe that the individual has committed a removable offense. A contrary conclusion stands the whole notion of federal preemption on its head: a state enforcing congressional directives *too* well is an obstacle to congressional intent.

ARGUMENT

States ordinarily occupy two roles within our federalist system. The primary role is based on the system of "dual sovereignty" established by our constitution. *Printz* v. *United States*, 521 U.S. 898, 918 (1997). While states surrendered some powers to the federal government, they retained "a residuary and inviolable sovereignty." *Printz*, 521 U.S. at 919 (quoting THE FEDERALIST NO. 39, at 245). Perhaps the best recognized facet of this "residuary" sovereignty is the states' police powers. This Court has recognized that the states act with their greatest authority when legislating to protect "the lives, limbs, health, comfort, and quiet of all persons." *Gonzales* v. *Oregon*, 546 U.S. 243, 270 (2006) (citation omitted). Thus, in the preemption context, this Court assumes that a state's historic police powers are not superseded by a federal act unless *clearly* indicated by Congress in the statutory language itself. *PLIVA, Inc.* v. *Mensing*, __ U.S. __; 131 S. Ct. 2567, 2586 (2011).

The states also act in our system in a cooperative fashion to administer and implement federal programs. Under this "cooperative federalism," Congress invites the states to participate in a coordinated federal program. The states can choose to regulate based on federal standards, or to have their own laws preempted by federal regulation. *E.g.*, Sarah C. Rispin, Comment, *Cooperative Federalism and Constructive Waiver of State Sovereign Immunity*, 70 U. Chi. L. Rev. 1639 (2003). This "cooperative" approach applies to a broad variety of legal areas, including Medicaid, occupational safety and health, utilities, and child welfare, among other things. *Id.* 1642–43.

Perhaps the most well-known area of "cooperative federalism" is the enforcement of environmental regulations. For instance, under the Clean Water Act, state water pollution control agencies are primarily responsible for the statute's implementation. See 33 U.S.C. § 1251(b). Forty-six states operate permitting programs for the discharge of pollutants into state waters through the National Pollution Discharge Elimination System ("NPDES"). 33 U.S.C. § 1342(b). Under that program, states must regulate at least to the extent set forth by Congress under the Clean Water Act. But states are allowed to apply more stringent limitations on discharges in their NPDES permits than are set by the federal government. 33 U.S.C. § 1370.[1]

Enforcement of federal immigration law is another area in which Congress has invited state participation. For purposes of this case, Congress has provided three distinct areas where states can participate in that cooperative enforcement.

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[1] The Clean Water Act also requires that the federal government condition any federal license or permit that may result in discharges to the waters of a state on compliance with that state's water-quality standards. 33 U.S.C. § 1341(a)(2); see *Lake Carriers Assoc.* v. *EPA*, 652 F.3d 1, 3–4 (D.C. Cir. 2011). Accord also, e.g., 42 U.S.C. §§ 6926, 6929 (the Solid Waste Disposal Act authorizes state hazardous waste programs meeting minimum federal requirements, in lieu of the federal program, and expressly authorizes states to impose *more* stringent requirements than federal law); 42 U.S.C. § 7410 (the Clean Air Act establishes a program of cooperative federalism under which states enact their own regulatory programs that must satisfy minimum federal standards regarding air quality).

First, Congress has not abrogated the traditional authority of states to arrest for criminal violations within their borders. Perhaps the most quintessential of the powers retained by the states in our system of dual sovereignty are the "police powers," including the power to arrest for violations of the law. Indeed, this Court stated 85 years ago that a state's authority to impose penalties for conduct that violates federal law is "too plain to need more than a statement." *Westfall* v. *United States*, 274 U.S. 256, 258 (1927). Arizona has exercised its inherent powers in two pertinent ways. Under Section 6, Arizona law enforcement officers can conduct warrantless arrests where there is probable cause that the individual has committed a deportable offense. Under Section 3, it is a crime in Arizona to fail to carry alien registration documents. It would be exceedingly strange for Congress to set up a system allowing state participation in the enforcement of federal law, but then deny local law enforcement the power to conduct arrests. Indeed, Congress's refusal to deny state authority here demonstrates its recognition that local law enforcement is one of the agencies of government most likely to encounter unlawful aliens.

Second, Congress has decided to permit states to retain their inherent authority to govern employees. Generally, states have been held to have plenary authority to regulate employment. Congress expressly preempted that authority, in part, by barring states from punishing employers who hire illegal aliens. But it stands to reason that if Congress preempted, through a limited, precise, and express preemption clause, only part of the states' inherent authority; it must have intended to leave other parts of that authority unchanged. In fact, allowing states to retain

that authority is consistent with Congress's overall immigration scheme creating a role for state enforcement. Pursuant to that inherent authority, Arizona enacted Section 5, which regulates *employees* who attempt to seek employment when they are in the United States illegally.

Third, Congress expressly invited the states to communicate with federal immigration authorities, without any limitations, to ascertain a person's immigration status. In enacting Section 2(b), Arizona has determined that it would assist federal authorities to the fullest extent contemplated by Congress by obligating its law enforcement officers to communicate with the federal government. While the federal government is required to respond to those requests, it ultimately retains the authority to decide what to do (or not to do) with the individuals that Arizona has assisted in identifying.

I. The Immigration and Nationalization Act does not expressly or impliedly preempt the states' sovereign authority to enforce federal law or regulate employment.

Under the Immigration and Nationalization Act ("INA"), Congress left intact states' inherent authority to make arrests for violations of federal law. Moreover, Congress has not totally preempted the traditional state authority over employment matters.

In *De Canas* v. *Bica*, 424 U.S. 351 (1976), this Court recognized the states' traditional authority to regulate employment matters, including the employment of unlawful aliens, under the police power. Congress preempted that authority, in part, by barring

states from punishing the employers of unlawful aliens. But because the statute was silent as to *employees*, states retained their traditional police-power authority over employees.

A. The states enjoy inherent authority to enforce federal law.

The source of a state's authority to arrest flows from the state's status as a sovereign government possessing all residual powers not abridged or superseded by the Constitution. See *Sturges* v. *Crowninshield*, 17 U.S. 122, 193 (1819). One of those residual powers is the police power—i.e., the state's authority to "protect the lives, health, morals, comfort, and general welfare of the people." *Manigault* v. *Springs*, 199 U.S. 473, 480 (1905). A state is free to exercise its police powers, unless it either violates the Constitution or the action to be taken has been preempted by federal law.

This Court has recognized that state law is the reservoir of power authorizing a state law-enforcement officer to make a warrantless arrest for a violation of federal law. *United States* v. *Di Re*, 332 U.S. 581, 591 (1948). Likewise, the Seventh Circuit has explained that "[state] officers have implicit authority to make federal arrests." *United States* v. *Janik*, 723 F.2d 537, 548 (7th Cir. 1983). The Tenth Circuit found specifically that this inherent authority applies equally to the investigation and arrest of violations of federal immigration law. *United States* v. *Santana-Garcia*, 264 F.3d 1188, 1194 (10th Cir. 2001).

The analysis of the Tenth Circuit is illustrative of the proper framework for reviewing the Arizona law in light of a state's inherent authority to make an arrest for a violation of federal immigration laws. See *United States* v. *Salinas-Calderon*, 728 F.2d 1298 (10th Cir. 1984). In *Salinas-Calderon*, a Kansas state trooper pulled over a driver of Mexican descent based on his suspicion the driver was intoxicated. During the stop, the trooper discovered that neither the driver nor the six adult males in the bed of his pickup truck could speak English. The Tenth Circuit held that the trooper had "general investigatory authority to inquire into possible immigration violations," and that his questions to the driver's wife about the defendant's green card was reasonable under *Terry* v. *Ohio*. *Salinas-Calderon*, 728 F.2d at 1301 n.3 (citing *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968)). When the trooper ascertained that the defendant was from Mexico and did not have identification papers or a green card, he had probable cause to make a warrantless arrest for violation of the immigration laws. *Id.* at 1301. In this way, the Tenth Circuit held that a police officer could inquire into a person's immigration status where he had reasonable suspicion that a person had violated federal immigration law. *Id.*

In contrast, the Ninth Circuit undermines the independent sovereignty of the state respected by Congress, concluding that 8 U.S.C. § 1252c preempts a state's inherent authority to arrest for a violation of federal immigration law. Under § 1252c, state law enforcement officers are authorized by Congress to arrest and detain an individual who is (1) in the United states illegally; and (2) has previously been convicted of a felony and was deported or voluntarily left the

United States, "but only after" confirmation from Immigrations and Customs Enforcement (ICE) of the immigration status of that individual. According to the Ninth Circuit, any state law that authorizes an arrest beyond what is permitted under § 1252c is preempted.

The reasoning of the Tenth Circuit here is persuasive. As it explained, in § 1252c, Congress did not "limit or displace the *preexisting* general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws." *United States* v. *Vasquez-Alvarez*, 176 F.3d 1294, 1295 (10th Cir. 1999) (emphasis added). Instead § 1252c created an additional reservoir of power from which a state could draw arrest authority. *Id*. A 2002 memorandum by the Department of Justice's Office of Legal Counsel reaches the exact same conclusion: states have "inherent power" to make arrests for violations of federal law, and 8 U.S.C. § 1252c does not preempt state authority to arrest for federal violations.[2]

The Ninth Circuit has limited the states' authority to exercise their police powers, despite the fact that Congress has not expressly created such a limitation.

The fundamental flaw of the Ninth Circuit's reasoning is that it is not consistent with our Constitution's system of dual sovereignty. The source of a state's authority to arrest flows from the state's

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[2] *See* Dep't of Justice, Office of Legal Counsel, *Non-preemption of the authority of state and local law enforcement officials to arrest aliens for immigration violations*, (April 3, 2002) available at http://www.aclu.org/FilesPDFs/ACF27DA.pdf (accessed on February 3, 2012).

status as a sovereign government possessing all residual powers not abridged or superseded by the Constitution. See *Sturges* v. *Crowninshield*, 17 U.S. 122, 193 (1819). One of those residual powers is the police power—i.e., the state's authority to protect the "general welfare of the people." *Manigault* v. *Springs*, 199 U.S. 473, 480 (1905). The most basic "police power" is the authority to arrest a person who has violated the law. But under the Ninth Circuit's reasoning, a state is forbidden to make such arrests, unless specifically authorized by Congress.

In other words, the Ninth Circuit has turned the idea of dual sovereignty on its head. In contrast, the Tenth Circuit's reasoning is consistent with constitutional first principles because it recognizes that a state retains the power to make arrests unless that authority is specifically preempted by Congress. See *PLIVA*, *Inv*. v. *Mensing*, 131 S. Ct. at 2586.

Moreover, the Tenth Circuit's reasoning is consistent with the scheme of cooperative enforcement of federal immigration law. The entity most likely to encounter an unlawful alien within the United States is local law enforcement. To provide for the most effective possible enforcement of federal immigration law, it is logical to allow local law enforcement to retain its inherent power to make arrests for violations of the law. This principle comports with Congress's decision to allow states to communicate freely with the federal government to ascertain a person's immigration status, while ultimately leaving it to the federal government to decide what to do with unlawful aliens that are identified with the states' assistance.

Because the Ninth Circuit's decision is fundamentally inconsistent with the scheme of cooperative enforcement Congress envisioned, it must be reversed. This Court should instead adopt the reasoning of the Tenth Circuit, which vindicates the fundamental principles of dual sovereignty set forth by our Constitution.

B. The states also have inherent authority to regulate employment.

This Court has long recognized that states have "broad authority under their police powers to regulate the employment relationship to protect workers within the State." *De Canas* v. *Bica*, 424 U.S. 351, 356, 359 (1976). Under this authority, states are largely free to implement laws to restrict the employment of unlawful aliens within their borders. *De Canas*, 424 U.S. at 356.

Under the Immigration Reform and Control Act of 1986 ("IRCA"), Congress limited traditional state authority over employment matters in one respect by forbidding states from imposing civil or criminal sanctions on the *employers* of unlawful aliens. 8 U.S.C. § 1324a(h)(2). But Congress was silent on whether states were also barred from their traditional role of regulating employees. The Ninth Circuit below interpreted Congress's silence on the issue of employee sanctions as an implied preemption. Specifically, the Ninth Circuit noted that Congress had considered several proposals to adopt criminal sanctions against the employee, but ultimately rejected them. *Nat'l Center for Immigrants' Rights, Inc.* v. *I.N.S.*, 913 F.2d 1350, 1367–68 (9th Cir. 1990), *rev'd on other grounds*, 502 U.S. 183 (1991). The Ninth Circuit reasoned that

the decision to allow sanctions against employers, rather than employees, represented a "careful balance" stuck by Congress between enforcing immigration laws and respecting the rights of unlawful alien workers. *Id.* at 1368–69. It concluded that allowing state sanctions of employees would upset that "balance" and, therefore, section 5(C) was preempted.

But the Ninth Circuit's decision is no longer tenable in light of this Court's recent decision in *Chamber of Commerce* v. *Whiting*, __ U.S. __; 131 S. Ct. 1968 (2011). At issue in *Whiting* was whether § 1324a(h)(2) preempted an Arizona statute suspending or revoking the licenses of businesses that knowingly employed unlawful aliens. This Court noted that while the IRCA preempts states from imposing "civil or criminal sanctions" on employers, it allows states to impose sanctions through licensing laws. *Id.* at 1977. While Arizona's definition of a "license" was broad, this Court found that it was consistent both with the plain meaning of the term and with the definition of a "license" as set forth in the Administrative Procedure Act. *Id.* at 1978 (citing 5 U.S.C. § 551(8)). This Court concluded that the IRCA "expressly preempts some state powers dealing with the employment of unauthorized aliens and it expressly preserves others." *Id.* at 1981. Because Arizona's licensing scheme did not fall within the statute's preemptive scope, Arizona retained its authority to regulate. *Id.*

Accepting the reasoning of *Whiting*, the congressional objectives here in controlling illegal-alien entry and presence, as well as removing those aliens who have committed certain crimes, are not impeded

by the states identifying those very individuals and providing pertinent information to the federal government. There is nothing in the federal statutory scheme that would suggest an express or conflict preemption of the states' traditional role in regulating employment. And in the absence of such preemption, it must be assumed that state sovereign power authorizes such local regulation.

II. The Immigration and Nationalization Act expressly authorizes states to communicate freely with federal officials to determine the immigration status of a person in state custody.

States can participate in the concurrent enforcement of federal immigration law in two ways. First, a state can participate as a full partner with the federal government and act as a federal agent by entering into an agreement under 8 U.S.C. § 1357(g). If a state chooses not to become federal agents, a state still maintains its ability to participate by either "communicating" with the federal government to ascertain the immigration status of a person in its custody, or by "cooperating" with the detection and removal of an unlawful alien within the state.

In the case of these "communications," Congress has mandated that the executive branch "shall respond." 8 U.S.C. § 1373(c). Congress's use of "shall" indicates a mandatory duty to answer any inquiry by a state or local governmental agency seeking to verify the immigration status of a person within its jurisdiction. Moreover, there is nothing in the language of the statute that indicates states are, in any way,

limited in the number of times they can communicate with the executive to determine a person's immigration status.

Sections (1)-(8) of § 1357(g) set forth the conditions under which the Attorney General of the United States may enter into an agreement with a state or political subdivision of a state to perform the function of an immigration officer. Under a § 1357(g) agreement, local police officers function as immigration officers acting under the color of federal law. Such officers are permitted to utilize federal facilities—consistent with the terms of the agreement and under the direction of the federal government.

Section (9) makes clear that such agreements are voluntary in nature. But a state's choice not to enter into such an agreement does not remove that state from the cooperative immigration-enforcement scheme. Rather, § 1357(g)(10) provides for state cooperation even when there is *no* formal agreement:

> (10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—
>
> > (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
> >
> > (B) otherwise to cooperate with the Attorney General in the

> identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

Congress has provided that the executive branch has no discretion regarding whether to answer the "communications" cited in § (9). Under 8 U.S.C. § 1373(c), federal immigration authorities "shall respond" to an inquiry from a state agency seeking to verify the citizenship or immigration status of any individual within that state's jurisdiction. Congress's use of the word "shall" indicates a mandatory, rather than discretionary, duty on part of the executive branch to assist state law enforcement in carrying out the state's prerogative under § (9).

Nor does the statute limit in any way the number of inquiries a state might make. To the extent that the United States argues that requiring state law enforcement to routinely verify immigration status interferes with the allocation of federal resources, that claim plainly lacks merit. Indeed, this Court rejected a similar argument just last term. In *Whiting*, the question before the Court was whether Arizona's requirement that employers participate in E-Verify was preempted. This Court looked to the plain language of the statute and noted that there was "no language circumscribing state action." *Whiting*, 131 S. Ct. at 1985. Simply put, Arizona could make participation in E-Verify mandatory because there was nothing in the statute that indicates Congress intended to prevent states from doing so. The same reasoning applies here: nothing in the language of federal immigration law indicates that Congress sought to place an "outer limit" on the scope of a state's participation.

The Ninth Circuit attempted to create such an "outer limit" by rewriting § 1357(g) to bar state participation in immigration enforcement without a formal agreement unless (1) called upon to do so by the Attorney General, or (2) the action is necessary and not "systematic and routine." *United States* v. *Ariz.*, 641 F.3d 339 (2011). The court based its rewrite on the presence of the word "removal" in subsection (g)(10)(B). *Id.* at 349. Since a state lacks the authority to "remove" a person from the United States, the majority reasoned that a state acting under subsection (g)(10)(B) must be under the same restrictions as a state acting under the direction of the Attorney General in a § 1357(g) agreement. *Id.* at 349.

As a result, the Ninth Circuit concluded that subsection (g)(10)(B) only applies when the state cooperates with the Attorney General on an "incidental and as needed basis." *United States* v. *Ariz.*, 641 F.3d 339, 349 (2011). An agreement under § 1357(g) is required for "*systemic* and *routine* cooperation." *Id.* at 349. The Ninth Circuit applied the same reasoning to communications with federal official under subsection (g)(10)(A). *Id.* at 349–50. Because § 2(B) of S.B. 1070 mandates verification of a person's immigration status, the Ninth Circuit held that the law went beyond the "incidental" communication authorized by subsection (g)(10)(A) and was preempted. *Id.* at 352–53.

But the Ninth Circuit's new rule cannot be reconciled with the statutory language. First, the statute indicates that no state is required to enter into such an agreement. 8 U.S.C. § 1357(g)(9). Congress recognized that even non-agreeing states could still provide valuable assistance in the cooperative

enforcement of federal immigration law. The most basic way for a state to participate is to communicate with the INS regarding the immigration status of persons within the state. And to communicate that information, a state law-enforcement officer must have the authority to inquire as to an individual's immigration status. That is precisely what Congress has done by mandating that ICE respond to any inquiry from a state regarding an individual's immigration status. The Ninth Circuit's decision does not advance but defeats this congressional scheme. According to the Ninth Circuit, states that decline to participate in a § 1357(g) agreement are limited to passively or incidentally learning about a violation of federal law and then passing that information along.

Second, the Ninth Circuit's view restricts state sovereignty in an area where Congress did not clearly indicate its intent to do so. Congress presumably desires that its immigration policies be enforced. Yet the Ninth Circuit refuses to allow Arizona to do just that.

The essence of the Ninth Circuit decision is that a state must participate in a § 1357(g) agreement if it "routinely" communicates with the INS regarding an individual's immigration status. There is no statutory foundation for this requirement. Indeed, as the dissent notes, the key phrases of the majority opinion—"calls upon," "necessity," "routine," or "systematic"—do not appear *anywhere* in the INA, let alone the portion of that Act the majority is examining.

Rather, the Ninth Circuit appears to have arrived at this language based on its reading of subsection (g)(10)(B). Under that provision any state—including

one not participating in a § 1357(g) agreement—may "cooperate with the Attorney General in the . . . removal of aliens not present in the United States." The court seized on the word "removal," noting that only the federal government may remove a foreign national. But this misses the point. Subsection (g)(10)(B) does not authorize a state to act on its own to remove a foreign national. Instead, the state is authorized to "cooperate" with the Attorney General, who most assuredly does have the authority to remove someone from the United States. The fact that a state does not have the independent authority to remove a person is of no moment. Indeed, the language of the statute indicates that any state is authorized to work together with the Attorney General in the removal of a foreign national. The Ninth Circuit's redrafting of the statute cannot survive textual scrutiny.

The immigration statute's language sets forth a scheme where state governments can freely communicate with federal authorities in order to ascertain the immigration status of an individual and the executive branch is required to answer that communication. This Court should, as it did in *Whiting*, simply apply the language of the statute as written and should decline to accept the Ninth Circuit's invitation to re-write the statute more to the liking of the executive branch and thereby ignore congressional intent as prescribed by the plain language of the statutes at issue. The Congress authorized a cooperative endeavor between the federal government and the states, and this scheme should be respected.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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