NO. ____

In the
Supreme Court of the United States

STATE OF COLORADO,
Petitioner,
v.

BERNARDINO FUENTES-ESPINOZA,
Respondent.

On Petition for a Writ of Certiorari to the Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

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January 29, 2018

QUESTION PRESENTED

Whether, under principles of implied preemption, the federal Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et seq.*, precludes States from enacting legislation to prohibit human smuggling.

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PETITION FOR WRIT OF CERTIORARI

The State of Colorado respectfully petitions for a writ of certiorari to review the judgment of the Colorado Supreme Court.

OPINIONS BELOW

The decision of the Colorado Supreme Court (Pet. App. 1a–37a) is reported at 2017 CO 98. The decision of the Colorado Court of Appeals (Pet. App. 38a–79a) is reported at 2013 COA 1.

JURISDICTION

The Colorado Supreme Court entered judgment on October 10, 2017. On December 13, 2017, Justice Sotomayor extended the time within which to file a petition for writ of certiorari to January 29, 2018, under case number 17A638. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

COLO. REV. STAT. § 18-13-128 provides that a person commits human smuggling if:

> for the purpose of assisting another person to enter, remain in, or travel through the United States or the state of Colorado in violation of immigration laws, he or she provides or agrees to provide transportation to that person in exchange for money or any other thing of value.

Relevant subsections of the Immigration and Nationality Act, 8 U.S.C. § 1324(a)(1)(A), provide

that a person commits the federal crime of bringing in and harboring certain aliens if the person:

> (ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;
>
> (iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;
>
> (iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or
>
> (v)
>
> > (I) engages in any conspiracy to commit any of the preceding acts, or
> >
> > (II) aids or abets the commission of any of the preceding acts[.]

STATEMENT OF THE CASE

Human smuggling—providing transportation to individuals with the purpose of deliberately evading immigration laws—is a significant crime. It exposes a vulnerable population, undocumented immigrants, to the risk of fraud, abuse, and physical harm. And it threatens the safety of the general public. Kirk Mitchell, *Crashes Stir Up Broader Concern*, THE DENVER POST, March 22, 2006, at A1 (explaining that, in a two-day period in Colorado, "81 people were involved in six accidents involving suspected immigrants").

In 2006, Colorado enacted two laws to address the problem. The first, now codified at COLO. REV. STAT. § 18-13-128, defined the crime of human smuggling and classified it as a felony. 2006 Colo. Sess. Laws 1301. The law punishes only those who, with the purpose of assisting in the violation of immigration laws, "provide[ ] or agree[ ] to provide transportation … in exchange for money or any other thing of value." COLO. REV. STAT. § 18-13-128(1). It does not punish the victims of human smuggling (*i.e.*, the undocumented immigrants who receive transportation); it was instead enacted to protect those victims.

The second law created a new division within the Colorado State Patrol—now called the Smuggling and Trafficking Interdiction Unit—to assist with enforcement of Colorado's prohibition against human smuggling. 2006 Colo. Sess. Laws 1709; COLO. REV. STAT. § 24-33.5-211(1.5). The Colorado General Assembly allocated 24 full-time employees to the

division and gave it an annual budget of over $1.5 million. *Id.*

Below, a slim 4-3 majority of the Colorado Supreme Court invalidated these legislative efforts. In the majority's view, the federal Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et seq*. (the "INA"), impliedly prohibits States like Colorado from enacting prohibitions against human smuggling.

1. Factual Background and Proceedings in the Trial Court. One evening in Wheat Ridge, Colorado, Defendant Bernardino Fuentes-Espinoza pulled into a gas station to fill up his tank and fix a broken tail light. Pet. App. 4a. When he tried to pay with a counterfeit one-hundred-dollar bill, the clerk called the police. *Id.*

Arriving at the scene, a law enforcement officer saw that an unusually large number of people—at least seven passengers—were traveling in Defendant's van. Pet. App. 4a, 38a. The officer asked Defendant who the people were. *Id.* at 4a. Defendant responded that a female passenger was his cousin and the rest were his friends. *Id.* at 56a. According to Defendant, he and his passengers were all returning from Las Vegas. *Id.* But he gave inconsistent stories about where the group was headed, and the officer noticed that none of them had brought any luggage. *Id.* at 4a, 56a. The officer also saw a water bottle in the van that was filled with what appeared to be urine. *Id.* at 56a. Defendant was arrested at the scene, and the officer later requested and received help from the Colorado State Patrol's human smuggling division. *Id.* at 4–5a.

Under questioning by law enforcement, Defendant explained that he had agreed to drive the van full of people from Phoenix to Kansas City for a fee. Pet. App. 56a. He received this assignment under suspicious circumstances—for example, the van was furnished to him by the person who paid his fee, Defendant was given a specific route to follow, and he was given a phone number to call if any of the passengers "tried to leave before [reaching the] final destination." *Id.* at 56a–57a. Defendant admitted that he believed he had been paid to transport "illegal aliens." *Id.* at 57a.

Defendant was charged under COLO. REV. STAT. § 18-13-128. After trial, a jury found him guilty of seven counts of human smuggling. Pet. App. 5a.

2. Proceedings in the Colorado Court of Appeals. On direct appeal, Defendant made two arguments that are relevant here. First, he asserted that Colorado's human smuggling statute is preempted by federal immigration law. Pet. App. 38a. Second, Defendant asserted that the evidence was insufficient to sustain his convictions, because in his view COLO. REV. STAT. § 18-13-128 required the State to prove that his passengers were, in fact, present in the United States in violation of federal immigration laws. *Id.* at 38a–39a.

In a published decision, a majority of the court of appeals affirmed Defendant's convictions. Pet. App. 38a–62a. The majority held that Defendant waived his preemption claim by failing to raise it in the trial court. *Id.* at 47a. Turning to the sufficiency of the evidence, the majority held that, under a plain reading, Colorado's human smuggling statute does

not require proof "that the defendant's passenger or intended passenger was illegally present in the United States or Colorado in violation of immigration laws." *Id.* at 53a. Instead, the statute "criminalize[s] the defendant's conduct based on his or her guilty mind, independent of the actions or intent of another person." *Id.* at. 49a–50a.

One judge dissented. Pet. App. 62a–79a. He would have reached the preemption question and reversed on the basis that federal law preempts Colorado's human smuggling statute. *Id.* at 78a.

3. The Colorado Supreme Court's Majority Opinion. The Colorado Supreme Court granted certiorari. A bare majority reversed the court of appeals, exercising its discretion to review Defendant's preemption claim. Pet. App. 2a.

The majority relied heavily on *Arizona v. United States*, 567 U.S. 387 (2012), in which this Court struck down three state laws that directly implicated federal policy regarding the registration of aliens—for example, by punishing the failure to register as a state-law misdemeanor. Deeming *Arizona* "instructive," the majority disregarded a key distinction: Colorado's statute, rather than turning on whether a person has complied with federal registration requirements, is concerned with protecting the victims of human smuggling. *See* Pet. App. 10a, 28a. The majority then surveyed various lower court decisions that struck down state statutes as preempted by federal immigration law, while citing none of the lower court decisions that conflict with those cases and support the validity of Colorado's human smuggling statute. *Id.* at 13a–17a.

Based on this analysis, the majority held that the INA impliedly preempts Colorado's human smuggling statute under both field preemption and conflict preemption principles. Pet. App. 18a. Applying field preemption, the majority held that "the INA established a comprehensive framework for penalizing the transportation, concealment, and inducement of unlawfully present aliens," leaving "no room for the states to supplement it." *Id.* at 20a. The majority ignored, however, that the INA punishes those activities to further federal policies on alien *registration and admission*. *Id.* at 29a. For example, federal law punishes "transporting" certain aliens only if the transportation is "in furtherance of [another person's] violation of [federal immigration] law." *Id.* at 31a. (quoting 8 U.S.C. § 1324(a)(1)(A)(ii)). Colorado's statute contains no such requirement; it does not require proof of an actual violation of federal immigration law.

Turning to conflict preemption, the majority acknowledged that Colorado's human smuggling prohibition "criminalizes a different range of conduct than does the INA" and does not require "a finding that the victims of smugglers are "actually violating immigration laws." Pet. App. 24a–25a. Even so, the majority held that Colorado's statute "stands as an obstacle" to the federal government's "calibration of penalties" for certain immigration violations and impedes "uniformity of [federal] enforcement" of immigration laws. *Id.* at 25a–26a. The majority came to this conclusion despite acknowledging that the purpose of Colorado's statute is to protect victims "from the dangers of human smuggling"—not to punish violations of immigration laws—and despite

concluding that "nothing in [the INA's] statutory language … indicat[es] a congressional intent to protect aliens from human smuggling." *Id.* at 26a–27a.

4. The Dissenting Opinion. Justice Eid wrote for the three dissenting justices. Pet. App 28a–37a. "After today," she wrote, "the State of Colorado can no longer protect the victims of human smuggling." *Id.* at 28a. In her view, "[t]he majority … misse[d] the point of Colorado's human smuggling statute, which is to protect, not punish, the passengers of human smuggling operations." *Id.* Because Colorado law focuses on the protection of victims, while federal law "focuses on … the passenger's violation of federal immigration laws," Colorado's statute is not preempted under either field or obstacle preemption. *Id.*

On the field preemption issue, the dissent read Arizona more narrowly than the majority. Nothing in Arizona suggested to the dissent that "Congress has fully occupied all fields in any way connected to aliens or immigration." Pet. App 29a. Instead, the dissenters interpreted Arizona as a "careful" opinion that "limited its field preemption analysis to the specific field of alien registration." Id. at 30a. And "[b]ecause Colorado's human smuggling statute in no way involves alien registration, Arizona simply offers no support for the majority's conclusion that the Colorado human smuggling statute is field preempted." Id.

The dissent also would have upheld Colorado's statute under a conflict preemption analysis. "[T]he federal and state laws take aim at different conduct,"

the dissent explained, and thus "there can be no conflict between them." Pet. App. 33a. Reviewing the lower court decisions the majority had relied upon, the dissent explained that those decisions struck down state laws that "represented broad attempts to regulate immigration." *Id.* at 34a. But unlike those state laws, Colorado's human smuggling statute "does not mirror federal immigration law and then attempt to supplement it." *Id.* at 36a. Instead, the statute is "a permissible attempt to address the dangers that human smuggling poses to passengers." *Id.*

REASONS FOR GRANTING THE PETITION

The Colorado Supreme Court answered a question of nationwide significance that this Court has never addressed: whether the INA implicitly precludes the States from enacting legislation to combat human smuggling. Lower courts have disagreed on the answer to that question, adopting dramatically different conceptions of the preemptive scope of the INA.

This Court should grant certiorari to resolve the conflict. Over the last sixty years, the Court has held that Congress silently occupied only one field relating to immigration—the field of alien registration. *See Arizona,* 567 U.S. at 400–401 (explaining that the "Federal Government has occupied the field of alien registration"); *see also Hines v. Davidowitz*, 312 U.S. 52, 73–74 (1941). The Court has been careful to acknowledge that States retain authority to exercise their police powers even when regulating conduct having to do with immigration issues. *E.g.*, *De Canas v. Bica*, 424 U.S.

351, 355 (1976). "In preemption analysis, courts should assume that 'the historic police powers of the States' are not superseded unless that was the clear and manifest purpose of Congress." *Arizona*, 567 U.S. at 400 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Some state laws certainly can impinge on federal immigration prerogatives. *See id.* at 400–15. But even where immigration is concerned, "a high threshold must be met if a state law is to be preempted." *Chamber of Commerce v. Whiting*, 563 U.S. 582, 607 (2011) (quoting *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 110 (1992) (Kennedy, J., concurring in part and concurring in judgment)).

Whether the INA has met that "high threshold" when it comes to human smuggling is important to States across the country. Human smuggling is dangerous to the public and victimizes a vulnerable population. On this subject and others, States like Colorado have enacted various laws to protect undocumented immigrants as well as to promote public safety. This Court should grant review to explain whether those laws are in fact off limits to state policymakers.

I. Certiorari is warranted to resolve a jurisdictional split regarding the preemptive reach of the INA.

The decision below expands and deepens a jurisdictional conflict on the validity of state human smuggling laws. *See* Eric M. Larsson, Annotation, *Preemption of State Statute, Law, Ordinance, or Policy with Respect to Law Enforcement or Criminal Prosecution as to Aliens*, 75 A.L.R. 6th 541, §§ 6–7

(noting the conflict among jurisdictions regarding "state provisions penalizing the transport … of aliens"). The Third, Fourth, Ninth, and Eleventh Circuits have held that the INA impliedly preempts these laws, relying on a broad reading of *Arizona* and suggesting that States have no room to legislate on a wide range of subjects addressed by the INA. These courts have rested their holdings on both field and conflict preemption.

Meanwhile, the Eighth Circuit, the California Supreme Court, and the Arizona Court of Appeals—like the dissent below—have taken a different approach. Those jurisdictions recognize that the federal government has exclusive power to regulate the admission and registration of aliens and to control the nation's borders. But they also recognize that States retain their police powers to legislate on issues of public concern, even when the regulated activities involve undocumented immigrants. Again, these courts applied both field and conflict preemption principles, but they arrived at conclusions contrary to those reached by courts on the other side of the jurisdictional split.

1. Four Jurisdictions Have Invalidated State Human Smuggling Laws. In *Georgia Latino Alliance for Human Rights v. Governor of Georgia* ("*GLAHR*"), 691 F.3d 1250 (11th Cir. 2012), the Eleventh Circuit examined a slate of Georgia laws enacted in 2011, some of which were similar in purpose and scope to those at issue in *Arizona*. The laws attempted to broadly "address the problem of illegal immigration" and they "tackle[d] numerous issues" on the subject. *GLAHR*, 691 F.3d at 1256. For example, the laws directly implicated federal alien

admissions policies by prohibiting individuals from "inducing an illegal alien to enter into [Georgia]." *Id.* But among those provisions was also a prohibition against human smuggling similar to Colorado's targeted legislation. That prohibition defined human smuggling as "knowingly and intentionally transport[ing] or mov[ing] an illegal alien in a motor vehicle for the purpose of furthering the illegal presence of the alien." *Id.* (quoting GA. CODE ANN. § 16-11-200(b)).

The Eleventh Circuit upheld an injunction against Georgia's human smuggling provision (as well as an injunction against two of the other state law provisions under challenge). *Id.* at 1263. On the question of field preemption, the court understood *Arizona* expansively. Despite appearing to recognize that Congress "has occupied the field of alien *registration*"—but has not occupied other regulatory fields—the Eleventh Circuit applied *Arizona* to conclude that States may not "intrude" into matters involving "the unlawful transport and movement of aliens." *GLAHR*, 691 F.3d at 1264 (quoting *Arizona*, 567 U.S. at 400) (emphasis added). In the Eleventh Circuit's view, "[t]he INA comprehensively addresses criminal penalties for these actions undertaken within the borders of the United States," leaving no room for state legislation. *Id.* Turning to conflict preemption, the Eleventh Circuit concluded that States cannot "intrude into this area of dominant federal concern." *Id.* at 1266; *see also United States v. Alabama*, 691 F.3d 1269, 1285–88 (11th Cir. 2012) (applying *GLAHR*).

The Fourth Circuit embraced the same reasoning in a similar case, *United States v. South Carolina*,

720 F.3d 518 (4th Cir. 2013). Reviewing a challenge to "a package of immigration laws," the court upheld a preliminary injunction against a law prohibiting "transport[ing], mov[ing] or attempt[ing] to transport" a person "with intent to further that person's unlawful entry into the United States." *Id.* at 522, 530. Citing *GLAHR*, the Fourth Circuit held that "[t]he federal government has clearly occupied the field of regulating the concealing, harboring, and transporting of unlawfully present aliens," leaving no room for state enactments. *South Carolina*, 720 F.3d at 531. With little additional analysis, the court also held that the human smuggling ban was conflict preempted, while quoting language from *Arizona* setting forth field preemption principles. *South Carolina*, 720 F.3d at 531 (quoting *Arizona*, 567 U.S. at 399).

Two other circuits—the Third and Ninth—have adopted the reasoning of *GLAHR* and *South Carolina* in striking down other state human smuggling bans as impliedly preempted by the INA. *Lozano v. City of Hazelton*, 724 F.3d 297, 316 (3d Cir. 2013) ("We agree with the Eleventh Circuit and other courts ...."); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1025–26 (9th Cir. 2013) ("The Third, Fourth, and Eleventh Circuits, in cases addressing similar statutes, all recently concluded that the federal scheme on harboring is comprehensive and field preemptive. ... We also agree." (footnote omitted)).

2. Three Jurisdictions Have Held that the Criminal Prohibitions in the INA Are Not Preemptive. The reasoning in the above cases cannot be reconciled with the Eighth Circuit's decision in *Keller v. City of Fremont,* 719 F.3d 931

(8th Cir. 2013), *cert. denied*, 134 S. Ct. 2140 (2014). *Keller* examined a municipal ordinance that established requirements for the rental of dwelling units, including a requirement to verify a renter's immigration status. *Id.* at 943. The Eighth Circuit rejected arguments that the ordinance was preempted by the INA.

Refusing to adopt an "expansive notion" of field preemption, the court focused on "decisions of the Supreme Court expressly recognizing that a State may enact an otherwise valid law … notwithstanding the federal government's exclusive power in controlling the nation's borders." *Id.* at 941 (footnote omitted). The court observed that "[t]he rental provisions [of the ordinance] do not remove aliens from the country … nor do they create a parallel local process to determine an alien's removability." *Id.* at 942. Thus, "they do not regulate immigration generally or conduct in the 'field' of alien removal." *Id.* The Eighth Circuit also rejected a conflict preemption argument, holding that the ordinance was valid because it did not interfere with the federal government's "complete discretion to decide whether and when to pursue removal proceedings." *Id.* at 944.

As the Ninth Circuit has recognized, the reasoning of *Keller* is incompatible with the analysis adopted in other jurisdictions. *Valle del Sol Inc.*, 732 F.3d at 1026 n.18 ("For the all the reasons discussed above, we, along with the Third, Fourth, and Eleventh Circuits, disagree with *Keller*'s analysis"). Yet two state courts have issued rulings consistent with *Keller* and contrary to the decisions from those other federal circuits.

In one case, the California Supreme Court considered whether state juvenile proceedings can adjudicate human smuggling charges. *In re Jose C.*, 198 P.3d 1087 (Cal. 2009). Rejecting a field preemption argument, the court "discern[ed] no intent by Congress … to occupy the field of immigration law generally or alien smuggling in particular." *Id.* at 551. "The federal criminal regulation of immigration," the court explained, "is not so complex or comprehensive that it may be inferred Congress intended to occupy the field." *Id.* at 553. To the contrary, the court said, through the INA Congress had "embraced a role for the states in the area of criminal immigration law." *Id.* at 553.[1]

The Arizona Court of Appeals echoed this reasoning in upholding Arizona's human smuggling statute. *State v. Flores*, 188 P.3d 706 (Ariz. Ct. App. 2008). "Admittedly," the court observed, the power to regulate immigration is exclusively a federal power." *Id.* at 412. But Arizona's statute "does not regulate immigration, because it does not regulate 'who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.'" *Id.* (quoting *De Canas*, 424 U.S. at 355). Nor, the court held, was the statute preempted under a conflict theory. As is true in many areas, "[t]he same act may offend the laws of both the state and

[1] Although the California Supreme Court also addressed a conflict preemption argument, that analysis was informed by separate federal statutes, outside the immigration context, concerning federal deference to state juvenile delinquency adjudications. *In re Jose C.*, 198 P.3d at 553–55.

the federal government and may be prosecuted and punished by each." *Id.* at 413; *accord State v. Barrigan-Sierra*, 196 P.3d 879, 889–91 (Ariz. Ct. App. 2008) (again upholding Arizona's human smuggling statute against preemption challenges).

A federal district court later invalidated Arizona's human smuggling statute without mentioning *Flores* or *Barrigan-Sierra*. The federal court's holding was based on the Ninth Circuit's decision in *Valle Del Sol*—the same case that had previously recognized a split among the federal circuits on the preemptive scope of the INA. *United States v. Arizona*, 119 F. Supp. 3d 955, 959 (D. Ariz. 2014) ("The Ninth Circuit Court of Appeal's holding in *Valle del Sol Inc.* … compels the conclusion that federal law preempts [Arizona's human smuggling statute] under the principles of field and conflict preemption."). This conflict between the state and federal courts in Arizona over the validity of state human smuggling laws demonstrates just how intractable the jurisdictional divide has become.

II. The question presented is important to States that, like Colorado, have enacted various laws to protect undocumented immigrants and promote public safety.

As this Court has recognized, "the problems posed to the State[s] by illegal immigration must not be understated." *Arizona*, 567 U.S. at 398. Human smuggling is among those problems, and Colorado has experienced firsthand the harms associated with it.

For example, human smugglers—sometimes called "coyotes"—"cram people into vans without

enough seat belts," sometimes "strip[ping their vehicles] of seating to carry more people." Kirk Mitchell, *Crashes Stir Up Broader Concern*, THE DENVER POST, March 22, 2006, at A1. And they often drive in an unsafe manner, causing accidents and exposing their passengers to injuries. *Id.* (explaining that, in a single morning, "four sport utility vehicles or vans loaded with 42 suspected illegal immigrants were involved in separate accidents on highways in eastern Colorado"); *see also* Ashley Dickson, *Human-Smuggling Cases Cropping Up Where I-70 Runs Through Colorado*, THE ASPEN TIMES, March 10, 2008, http://bit.ly/2E8IDqD (explaining that charges were filed in Glenwood Springs, Colorado, "after a van loaded with people crashed on I-70").

These dangers are unsurprising, though tragic, given that human smuggling "affects the world's most vulnerable communities." INTERPOL, *Fact Sheet: People Smuggling*, available at http://bit.ly/2kawQQF (last visited Jan. 29, 2018). Smugglers "often have links to other crimes such as human trafficking, identity-related crimes, corruption and money laundering," and "[t]housands of irregular migrants die each year in transit to their destinations." *Id.* This past summer, ten undocumented immigrants died while being smuggled through San Antonio, Texas. Holly Yan and Jason Morris, *San Antonio Driver Says He Didn't Know Immigrants Were in Truck*, CNN.COM, July 25, 2017, http://cnn.it/2Dydj3o (last visited Jan. 29, 2018). Crowded inside a semi-truck with dozens of others, the victims took turns trying to breathe through a hole in the trailer. *Id.* They banged on the walls, but the truck kept driving. *Id.* Ten people died,

while dozens more were severely injured, some suffering irreversible brain damage. *Id.*

Under the majority opinion in this case—and in the jurisdictions that agree with the preemption analysis in that opinion—States can no longer directly protect victims of human smuggling from these abuses. The Colorado Supreme Court's decision, by endorsing the broadest possible preemption analysis, compounds uncertainty about the preemptive scope of the INA. The clear implication is that the States are prohibited from enacting even those laws that *benefit* undocumented immigrants. In the majority's view, "nothing in [the INA's] statutory language … indicat[es] a congressional intent to protect aliens from human smuggling," and States may not pursue policies contrary to that absent intent with laws of their own. Pet. App. 27a.

Even more troubling, the majority opinion below held that the INA "has left no room" for States to legislate on any matters involving "the transportation, concealment, and inducement of unlawfully present aliens." Pet. App. 20a. That could include a broad range of matters. For example, human trafficking often involves transporting victims who are in the country illegally for the purpose of forced labor or sexual exploitation. *See, e.g.*, COLO. REV. STAT. §§ 18-3-503, 18-3-504. The breadth of the majority's preemption theory could also sweep in the many state laws allowing undocumented immigrants to obtain driver's licenses. *See* CAL. VEH. CODE § 12801.9; COLO. REV. STAT. § 42-2-505; CONN. GEN. STAT. § 14-36m; DEL. CODE Tit. 21, § 2711; D.C. CODE § 50-1401.05; HAW.

REV. STAT. § 286-104.5; ILL. COMP. STAT. 5/6-105.1; MD. CODE TRANSP. § 16-106; NEV. REV. STAT. § 483.291; UTAH CODE § 53-3-207; VT. STAT. tit. 23 § 603; WASH. REV. CODE § 46.20.117; *see* Kate M. Manuel & Michael John Garcia, *Unlawfully Present Aliens, Driver's Licenses, and Other State-Issued ID: Select Legal Issues*, CONGRESSIONAL RESEARCH SERVICE 16 (March 28, 2014) ("Several commentators and at least one court (in non-binding dicta) have suggested that state measures granting driver's licenses to unlawfully present aliens are per se preempted because such measures regulate immigration by legitimizing the presence of aliens whom the federal government has not authorized to be present in the United States.").

The dissent below recognized that States run afoul of federal preemption principles when they engage in "broad attempts to regulate immigration." Pet. App. 34a–35a. That was the problem with the laws at issue in *Arizona*. *Id*. at 29a–30a. But "the same circumstances are not present here." *Id*. at 36a. The question in this case—which this Court has not yet answered—is whether a law targeted only at human smuggling, and designed to address legitimate public safety concerns as well as concerns for undocumented immigrants themselves, is something a State has no power to enact and enforce. This Court should grant certiorari to answer that question and resolve the jurisdictional split.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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