No. 17-834

IN THE
Supreme Court of the United States

KANSAS,

Petitioner,

v.

RAMIRO GARCIA, DONALDO MORALES,
AND GUADALUPE OCHOA-LARA,

Respondents.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF KANSAS

BRIEF OF THE NATIONAL IMMIGRATION LAW CENTER, THE SOUTHERN POVERTY LAW CENTER AND 28 ADDITIONAL ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Matthew J. Piers
Caryn C. Lederer
Counsel of Record
Chirag G. Badlani
HUGHES SOCOL PIERS
RESNICK & DYM, LTD.
70 West Madison St.,
Suite 4000
Chicago, IL 60602
clederer@hsplegal.com
(312) 580-0100

Kristi L. Graunke
Julia Solórzano
Meredith B. Stewart
SOUTHERN POVERTY LAW
CENTER
P.O. Box 1287
Decatur, GA, 30031
kristi.graunke@splcenter.org
(404) 521-6700

Nicholas Espíritu
NATIONAL IMMIGRATION LAW CENTER
3450 Wilshire Blvd., Suite 108-62
Los Angeles, CA 90010
espiritu@nilc.org
(213) 639-3900

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INTEREST OF *AMICI CURIAE*

Amici are worker membership and advocacy groups committed to the rights of individuals in the workplace and who oppose workplace exploitation of all workers, including non-citizens.[1] This case presents an important question concerning the express preemption provision in the Immigration Reform and Control Act of 1986 ("IRCA"), and whether IRCA preempts states from prosecuting individuals for using another's information to establish employment eligibility. *Amici* have a strong interest in ensuring that there is full enforcement of laws protecting the rights of workers.

The National Immigration Law Center ("NILC") is the primary national organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Over the past 35 years, NILC has won landmark legal decisions protecting fundamental rights, and advanced policies that reinforce our nation's values of equality, opportunity, and justice. NILC's interest in the outcome of this case arises from its firsthand experience with the ways that immigration-based retaliation against workers chills them from

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[1] Pursuant to Rule 37.3, the parties have consented to this filing of this brief. Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and no person other than *amici* and their counsel made a monetary contribution to its preparation or submission.

asserting their workplace rights, which, in turn, erodes workplace standards for all workers.

The Southern Poverty Law Center ("SPLC") is a nonprofit organization founded in 1971 that throughout its history has worked to make the nation's constitutional ideals a reality for everyone. The SPLC's legal department fights all forms of discrimination and works to support society's most vulnerable members in defending their rights. The SPLC's Immigrant Justice Project addresses the unique legal needs of migrant workers and has represented thousands of low-wage immigrant workers throughout the South in civil rights matters related to their employment.

Other *amici* are listed in Appendix A of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress has sought to ensure a system of immigration-related employment law that remains "uniform[]" across the nation. Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, § 115, 100 Stat. 3359, 3384 (1986). The federal scheme evidences a careful effort to balance workplace enforcement with worker protections. Permitting *states* to prosecute individual employees for crimes related to establishing employment-eligible immigration status undermines the ability of the federal government to balance its interest in protecting all workers from exploitation. And such state prosecutions enable the competitive unfairness

that arises when unscrupulous employers drive down working conditions by threatening complaining workers with potential prosecution.

This Court has recognized that non-citizen workers face threats of immigration enforcement in response to asserting workplace rights, *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 895-96 (1984), and recent studies show that immigrant workers are vulnerable to exploitation. For example, between 40% and 80% of immigrants have reported being victims of wage theft.[2] If left unaddressed, retaliation against and exploitation of immigrant workers who exercise labor and employment rights erode workplace standards for *all* workers and create an unequal playing field among employers. If employers can threaten employees with state criminal prosecution outside the federal statutory and regulatory scheme governing employment verification, many employers may find it economically advantageous to hire and underpay undocumented immigrant workers.

IRCA's legislative history shows that Congress deliberately focused on *employer* conduct by reducing incentives to hire unauthorized workers and imposing sanctions for the knowing employment of unauthorized workers. In passing IRCA, Congress also rejected proposals to criminalize unauthorized work. *See Arizona v. United States*, 567 U.S. 387,

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[2] Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011).

404-405 (2012). IRCA's inclusion of a specific criminal sanction for the use of a false document or attestation, 18 U.S.C. § 1546, ensures that *federal* prosecutions for immigration-related crimes are consistent with federal priorities and do not "interfere with the careful balance struck by Congress with respect to unauthorized employment of aliens." *Arizona*, 567 U.S at 406. Further, IRCA coexists with (and does not weaken) other federal laws that ensure basic protections for workers, including the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (2017), Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2017), the National Labor Relations Act, 29 U.S.C. §§ 151-169 (2012), and the post-IRCA Trafficking Victim Protection Act (TVPA), 18 U.S.C. §§ 1589-1590, 1593-1595 (2012), all of which prohibit employers from using workers' immigration status as a means to retaliate against individual or coerce an individual to work.

Finally, permitting a state role in the enforcement of employment eligibility would diminish trust between local law enforcement actors and immigrant workers, hindering community law enforcement efforts as well as prosecutions of serious crimes such as human trafficking. Allowing states to engage in such prosecutions will chill workplace rights, and erode workplace standards for all workers.

ARGUMENT

I. Permitting State Prosecutions Related to Employment Eligibility Would Enable Worker Exploitation.

1. This Court has long acknowledged that uniform enforcement is necessary to secure federally-guaranteed workplace protections for all. *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 895-96 (1984) (holding that employer committed an unfair labor practice under § 158(a)(3) of the National Labor Relations Act, 29 U.S.C. §§ 151-159 (2012), by reporting its undocumented employees to the Immigration and Naturalization Service ("INS") in retaliation for participating in union activities). Among other things, this Court has recognized the competitive unfairness created when unscrupulous employers drive down wages and working conditions (and thus their cost of doing business) by using some workers' vulnerable immigration status as a cudgel. *Sure-Tan*, 467 U.S. at 896; *see also De Canas v. Bica*, 424 U.S. 351, 356-357 (1976) (employing workers "on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens.").

Such concerns have not abated: non-citizen workers continue to face threats of immigration enforcement in response to asserting rights under wage and hour laws or other employment-related

protections.[3] As the National Employment Law Project ("NELP") has concluded: "Employers and their agents have far too frequently shown that they will use immigration status as a tool against labor organizing campaigns and worker claims."[4] NELP found that "in many cases, employers have improperly conducted I-9[5] self-audits just after

[3] *See* Andrew Khouri, *More Workers Say Their Bosses Are Threatening to Have Them Deported*, L.A. TIMES, Jan. 3, 2018, http://www.latimes.com/business/la-fi-immigrationretaliation-20180102-story.html ("Complaints over immigration-related retaliation threats surged last year in California, according to the Labor Commissioner's Office. Through Dec. 22, workers had filed 94 immigration-related retaliation claims with the office, up from 20 in all of 2016 and only seven a year earlier."); Rebecca Smith et al., *Iced Out: How Immigration Enforcement Has Interfered With Workers' Rights*, at 7 (2009), http://digitalcommons.ilr.cornell.edu/laborunions/29/ ("[E]mployers commonly threaten to turn workers into immigration authorities to gain the upper hand in a labor dispute . . . ."); Amy Traub, et al., Principles for an Immigration Policy to Strengthen & Expand the American Middle Class at 1, DRUM MAJOR INST. FOR PUB. POL'Y. (2009), http://www.dec17.org/DMI_immigration.pdf ("Technically, minimum wage and overtime laws and health and safety regulations extend to every worker in the U.S., regardless of immigration status. But in practice, undocumented immigrants face the threat of deportation if they try to exercise any of these rights.").

[4] Eunice Hyunhye Cho & Rebecca Smith, *Workers' Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights | California Report* (Feb. 2013), at 1, NATIONAL EMPLOYMENT LAW PROJECT, https://www.nelp.org/wp-content/uploads/2015/03/Workers-Rights-on-ICERetaliation-Report-California.pdf.

[5] Under federal law, employers must use I-9 forms to verify their employees' work eligibility. 8 C.F.R. § 274a.2.

employees have filed workplace-based complaints, or in the midst of labor disputes or collective bargaining, creating a climate of fear."[6]

This phenomenon also plays out in the "deportation threat dynamic," in which "(1) an unauthorized migrant seeks, and finds, employment; (2) a person, such as an employer or criminal, identifies the migrant as unauthorized; (3) that person commits a crime against the migrant, such as wage theft, another workplace violation, or robbery; and (4) the migrant does not report the crime . . . ."[7] The dynamic is widespread in the American workplace. In a number of studies, between 40% and 80% of immigrants have reported being victims of wage theft.[8] In addition, many respondents disclosed other types of worksite abuse such as failure to pay overtime or denial of breaks.[9] Similarly, in a survey of low-wage workers in New York City, Chicago, and

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[6] Cho & Smith, *supra* note 4, at 4.

[7] Fussell, *supra* note 2, at 610.

[8] *See id.* (finding that 2 of 5 respondents reported wage theft since arriving in New Orleans, and citing Nik Theodore, Abel Velendez, Jr. & Edwin Meléndez, *La Esquina (The Corner): Day Laborers on the Margins of New York's Formal Economy*, 9 WORKING USA: J. LABOR & SOC. 407 (2006), finding a wage theft rate of approximately 50% in New York); Southern Poverty Law Ctr., *Under Siege: Life for Low-Income Latinos in the South,* at 6 (Apr. 2009), http://www.splcenter.org/sites/default/files/downloads/UnderSiege.pdf (finding that 41% of those surveyed across the South and 805 of those surveyed in New Orleans had experienced wage theft).

[9] Fussell, *supra* note 2, at 604.

Los Angeles, nearly 85% of undocumented workers reported that they were not paid legally required overtime, as compared to 68% of citizens and 67% of work-authorized immigrant workers.[10] Nearly a third of respondents in one study said they had suffered on-the-job injuries, and 63% of those who had experienced such injuries said they were either fired, not paid lost wages, or denied medical care by their employers.[11] Nearly two-thirds of undocumented migrant workers participating in a study in Memphis, Tennessee reported being the victim of at least one crime, with the most common being theft and robbery.[12]

2. The rates of threatened retaliation are similarly higher for undocumented workers, who are particularly vulnerable to employer threats of immigration enforcement to chill complaints about workplace violations. Research has shown that undocumented workers "rarely step up and file employment complaints against their employers, out of fear that engaging with the government—even in a nonimmigration-related context"—will put them at

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[10] *See* Annette Bernhardt, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2009) at 42, https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf.

[11] Southern Poverty Law Center, *supra* note 8, at 6.

[12] Jacob Bucher, et al., *Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers*, 7 SW. J. CRIM. JUST. 159, 164 (2010).

risk for deportation.[13] This fear is exacerbated by threats of employer retaliation, which studies have shown acutely impact immigrant workers. In one study, 43% of workers who had complained about a workplace issue or who had attempted to form a union had experienced employer retaliation as a result; in nearly half of those cases, the employer had threatened to fire workers or to call immigration authorities.[14]

Courts frequently grapple with retaliation based on exploitation of employee immigration status. As the Fifth Circuit has recognized,

> Considerable evidence suggests that immigrants are disproportionately vulnerable to workplace abuse and, not coincidentally, highly reluctant to report it for fear of discovery and retaliation. And threats of deportation are among the most familiar and dreaded means by which unscrupulous employers retaliate against immigrant employees.

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[13] Adriana Kugler & Patrick Oakford, *Comprehensive Immigration Reform Will Benefit American Workers*, CENTER FOR AMERICAN PROGRESS, at 6 (Sept. 12, 2013), https://www.americanprogress.org/wp-content/uploads/2013/09/KuglerEmploymentBrief-1.pdf. *See also* Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 LAW & SOC. INQUIRY 561 (2010).

[14] *See* Bernhardt, *supra* note 10, at 25.

Cazorla v. Koch Foods of Mississippi, L.L.C., 838 F.3d 540, 563 (5th Cir. 2016). *See also Arias v. Raimondo*, 860 F.3d 1185, 1187 (9th Cir. 2017), *cert. denied,* 138 S. Ct. 673 (2018) (detailing how employers had allegedly "wielded [federal immigration law] as a weapon to confine [an employee] in their employ," and holding that the anti-retaliation provisions of the FLSA applied where the employers' attorney attempted to have a complaining employee arrested by immigration authorities at his deposition); *Muchira v. Al-Rawaf*, 850 F.3d 605, 623 (4th Cir. 2017), *as amended* (Mar. 3, 2017), *cert. denied,* 138 S. Ct. 448 (2017) (observing that "threats of arrest are common threats of legal process resorted to by traffickers and others who seek to instill fear in persons and force them to labor against their will"); *United States v. Bradley*, 390 F.3d 145, 149 (1st Cir. 2004), *cert. granted, judgment vacated on other grounds,* 545 U.S. 1101 (2005) (employers forced Jamaican workers to continue working by, *inter alia*, threatening to call the police and immigration authorities); *Rivera v. NIBCO*, 364 F.3d 1057, 1065 (9th Cir. 2004) (finding that even documented workers "might choose to forego civil rights litigation" out of "fear that their immigration status would be changed, or that their status would reveal the immigration problems of their family or friends" or "of having their [own] immigration history examined in a public proceeding"); *Aponte v. Modern Furniture Manufacturing Co.*, LLC, No. 14-CV-4813, 2016 WL 5372799, at *18 (E.D.N.Y. Sept. 26, 2016) (ruling that threatening to report workers to immigration would dissuade a reasonable employee from participating in a lawsuit to enforce wage and

hour laws); *Bartolon-Perez v. Island Granite & Stone, Inc.*, 108 F. Supp. 3d 1335, 1340 (S.D. Fla. 2015) (denying employer's motion for summary judgment on retaliation claim and noting that the "Court cannot underestimate the willingness of others to exploit [an undocumented worker's] fears to their own advantage."); *E.E.O.C. v. City of Joliet*, 239 F.R.D. 490, 493 (N.D. Ill. 2006) (noting that "most undocumented workers will withdraw their complaints[]" when faced with deportation or criminal prosecution); *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F. Supp. 2d 1056, 1057 (N.D. Cal. 2002) (denying motion to dismiss where defendant contacted INS and provided agency with information of plaintiff's status in an act of retaliation for assertion of wage claim).

If left unaddressed, such retaliation erodes workplace standards for all workers and creates an unequal playing field among employers. Enabling employer threats of state criminal prosecution would provide employers a powerful ratchet for worker exploitation. The retaliatory threat of state prosecution feeds an employer race to the bottom that would undermine worker protections for all workers. *Cf. Sure-Tan*, 467 U.S. at 892 (uneven application of labor laws would lead to "a subclass of workers without a comparable stake in the collective goals of their legally resident co-workers, thereby eroding the unity of all the employees and impeding effective collective bargaining."); *Patel v. Quality Inn South*, 846 F.2d 700, 704 (11th Cir. 1988) ("If the FLSA did not cover undocumented aliens, employers would have an *incentive* to hire them. Employers might find it economically advantageous to hire and

underpay undocumented workers and run the risk of sanctions under the IRCA.")

II. Congress' Purpose in Enacting IRCA Was to Carefully Calibrate A Range of Interests, Including Labor and Other Workplace Protections.

1. Federal law seeks to balance a range of federal interests—including labor and employment, interstate commerce, humanitarian, and law enforcement interests—when it engages in enforcement of federal employment eligibility verification requirements. Allowing state law enforcement officers to prosecute workers based on information contained in a Form I-9 deprives federal officials of the discretion necessary to balance the various federal concerns implicated in the enforcement of federal employment verification requirements, and further renders immigrant workers more vulnerable to exploitation and retaliation.

The statutory structure and legislative history of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (1986), demonstrates that Congress' purpose in enacting the statute was to create a comprehensive framework for the regulation of non-citizen employment, which includes a graduated series of penalties for employers who violate its employment eligibility verification requirements and sanctions for fraud. These penalties, and their methods of implementation, have been carefully calibrated to allow the federal government to balance enforcement with consideration of various interests at the

national level, including labor and employment protections. Allowing parallel state prosecutions for fraud in the employment verification process undermines the federal control necessary to execute this careful balancing of enforcement priorities, which has been reflected in various federal interagency agreements, agency guidance, and agency memoranda.

2. In passing IRCA, Congress created "a comprehensive framework for 'combating the employment of illegal aliens.'" *Arizona v. United States*, 567 U.S. 387, 404 (2012) (quoting *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002)). Believing that "[e]mployment is the magnet that attracts aliens here illegally," H.R. Rep. No. 99-682(I), at 46 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5649, 5649–50, Congress deliberately focused on *employer*, rather than employee, conduct—attempting to reduce incentives to hire unauthorized workers through a verification system, 8 U.S.C. § 1324a(b), and by subjecting employers to graduated sanctions if they knowingly employ unauthorized workers. *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 589 (2011). "[T]he statute explicitly and clearly placed the onus on employers to ensure that unauthorized hiring ceased."[15]

When enacting this scheme, Congress considered proposals to criminally sanction

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[15] Leticia M. Saucedo, *The Making of the "Wrongfully" Documented Worker*, 93 N.C. L. Rev. 1505, 1513 (2015)

unlawfully present immigrants for merely seeking or performing work, but ultimately rejected such proposals. *See Arizona*, 567 U.S. at 405 (citing 119 Cong. Rec. 14,184 (1973) (statement of Rep. Dennis). Rather, IRCA specifically amended 18 U.S.C. § 1546 to make it a felony offense to use a false identification document, or misuse a real one, for the purpose of satisfying the employer's verification requirements under 8 U.S.C. § 1324a(b).[16] IRCA's inclusion of a specific criminal sanction for the use of a false identification document or attestation, along with its employer-focused framework, highlights the need for uniformity in enforcement among its provisions, which would be thwarted by permitting the state prosecution at issue. The immigration-related crimes created and defined by IRCA are exclusively charged by federal prosecutors under the supervision of the Attorney General and are enforced in federal courts. This ensures that prosecutions are consistent with federal priorities and do not "interfere with the careful balance struck by Congress with respect to unauthorized employment of aliens." *Arizona*, 567 U.S. at 406 (striking down Arizona provision criminalizing unauthorized employment).

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[16] *See Arizona*, 567 U.S. at 405. The provision imposes a fine or imprisonment to anyone who uses "(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor, (2) an identification document knowing (or having reason to know) that the document is false, or (3) a false attestation" to verify employment authorization. IRCA § 103, 18 U.S.C. § 1546(b).

Permitting state criminal sanctions like the one at issue would severely undermine the comprehensive federal scheme for deciding whether and when to criminally prosecute individuals who violate immigration laws in the course of obtaining employment.

3. Congress sought to balance the employer sanctions regime with concerns that those employer sanctions would result in increased discrimination against workers based on their perceived national origin or citizenship status. The House Report accompanying IRCA cited the testimony of numerous witnesses who "expressed their deep concern that the imposition of employer sanctions will cause extensive employment discrimination against Hispanic-Americans and other minority group members. These witnesses are genuinely concerned that employers, faced with the possibility of civil and criminal penalties, will be extremely reluctant to hire persons because of their linguistic or physical characteristics." H.R. Rep. No. 99-682(I), at 68 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5649, 5672; *see also* H.R. Rep. No. 99-682(II), at 12 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5649, 5761 ("It is the committee's view that if there is to be sanctions enforcement and liability, there must be an equally strong and readily available remedy if resulting discrimination occurs."); H.R. Rep. No. 99-1000, at 87 (1986) (Conf. Rep.), *as reprinted in* 1986 U.S.C.C.A.N. 5840, 5842 ("The antidiscrimination provisions of this bill are a complement to the sanctions provisions"). Congress specifically sought to reduce the danger of racial and national origin

discrimination that any employer-side sanctions would create by balancing the ban on knowingly hiring unauthorized workers with a corresponding prohibition on discrimination against employees on the basis of national origin or citizenship status. *See* 8 U.S.C. § 1324b(a)(1).

4. Further, in passing IRCA, Congress did not intend to weaken existing labor protections. H.R. Rep. No. 99-682 (I), at 58 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5649, 5662 ("It is not the intention of the Committee that the employer sanctions provisions of the bill be used to undermine or diminish in any way labor protections in existing law, or to limit the powers of federal or state labor relations boards, labor standards agencies, or labor arbitrators to remedy unfair practices committed against undocumented employees for exercising their rights before such agencies or for engaging in activities protected by existing law."); *see also* H.R. Rep. No. 99-682 (II), at 8 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5757, 5758 (expressing same understanding by the House Committee on Education and Labor). In passing IRCA, Congress thus emphatically sought to safeguard "labor protections in existing law" in order to prevent a race to the bottom by unscrupulous employers who would exploit the immigration status of undocumented workers for their benefit. H.R. Rep. No. 99-682(I), at 58 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5649, 5662.

There is a strong and longstanding federal interest in protecting workers from employer use of sanctions to chill enforcement of workplace rights,

including the threat of criminal sanctions. The Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219, Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e - 2000e-17, the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151-169, and the Trafficking Victim Protection Act (TVPA) all prohibit employers from using workers' immigration status as a means of retaliating against them for asserting their rights under these laws.

Moreover, post-IRCA Congressional and Executive action reflects a federal determination that immigration enforcement be balanced with, and sometimes limited by, the need to protect basic labor and human rights for all workers. The TVPA, which has been repeatedly reauthorized and expanded by Congress since its initial enactment in 2000,[17] explicitly criminalizes and otherwise penalizes "abuse or threatened abuse of the law or legal process," including employer threats of immigration or criminal consequences to coerce individuals to work. 18 U.S.C. §§ 1589-1590, 1593-1595. *See also Rosas v. Sarbanand Farms, LLC*, 329 F.R.D. 671, 690 (W.D. Wash. 2018) ("Threats of deportation may constitute an abuse of the legal process[.]")*; Camayo*

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[17] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006); Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013).

v. John Peroulis & Sons Sheep, Inc., Nos. 10-CV-00772-MSK-MJW, 11-cv-01132-MSK-MJW, 2012 WL 4359086, at *4 (D. Colo. Sept. 24, 2012), *adhered to on reconsideration*, Nos. 10-CV-00772-MSK-MJW, 11-cv-01132-MSK-MJW, 2013 WL 3927677 (D. Colo. July 30, 2013) ("Several cases have found the 'abuse of the legal process' prong to be satisfied by conduct in which the employer threatens to involve law enforcement or immigration authorities in order to persuade the employee to remain faithful or continue working."); *cf. United States v. Kozminski*, 487 U.S. 931, 948 (1988) (noting, pre-TVPA, that "threatening an immigrant with deportation could constitute the threat of legal coercion that induces involuntary servitude").

In the TVPA, Congress recognized that non-citizen workers are particularly vulnerable to immigration-related retaliation and sought to reduce incentives for such retaliation. Among other things, the TVPA establishes immigration relief for undocumented victims of labor trafficking and other employment-related crimes who cooperate with law enforcement. *See* 8 U.S.C. § 1101(a)(15)(T) (2014); 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.11(b) (2017); 8 C.F.R. § 214.14(b) (2013).

The TVPA expresses a national economic and humanitarian interest in combatting trafficking, including the statement that "[v]ictims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, *such as using false documents*, entering the country without documentation, or working

without documentation." 22 U.S.C. § 7101(b)(19) (2000) (emphasis added); *see also id.* § 7101(b)(12) (finding that "[t]rafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market."). The TVPA thus demonstrates a policy that the strong federal interest in combatting labor trafficking and other serious crimes will often take precedence over enforcement of immigration laws against individual undocumented persons. *Id.* § 7101(b)(17) ("Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves"); *see also id.* § 7101(b)(14) (finding that "[n]o comprehensive law exists in the United States" addressing trafficking crimes).

Reflecting strong worker protection policies, federal agencies that enforce labor and employment laws have long sought to balance worksite immigration enforcement with preventing retaliation against workers.[18] In their Memorandum of

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[18] *See* U.S. Dep't of Labor and U.S. Dep't of Homeland Sec., Revised Memorandum of Understanding ("MOU") Between the Department of Homeland Security and Department of Labor Concerning Enforcement Activities at Worksites (Dec. 7, 2011), https://www.dol.gov/asp/media/reports/DHS-DOL-MOU.pdf (outlining the agencies' shared commitment to protecting workers against retaliation and intimidation by employers and other parties who use threats of immigration enforcement); *see also* Addendum to Revised MOU (May 5, 2016), (continued…)

Understanding (MOU), the Departments of Homeland Security and Labor acknowledge that "[e]ffective enforcement of labor law is essential to ensure proper wages and working conditions for *all* covered workers regardless of immigration status."[19] These policies reflect federal commitment to ensuring that worksite immigration enforcement actions do not undermine enforcement of labor and employment laws, and to protect immigrant workers from employers who would invoke immigration-related laws to chill workers from asserting their workplace rights, including filing claims with the DOL or participating in DOL investigations.

5. The various "facets of immigration law enforcement reflect complex, highly discretionary choices. It matters who allocates resources and picks enforcement targets and who balances enforcement goals against competing concerns."[20] Discretionary enforcement choices are an integral part of the exclusive federal scheme that governs these matters, including the discretion to balance employer-side

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https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4684/dol-ice_mou-addendum_w.nlrb_osha.pdf; *see also* U.S. Dep't of Labor and U.S. Immigr. and Naturalization Serv., Memorandum of Understanding Between the Immigration and Naturalization Service, Department of Justice, and the Employment Standards Administration, Department of Labor (Nov. 23, 1998) (on file with the authors).

[19] MOU, supra note 18, at 1 (emphasis added).

[20] Hiroshi Motomura, *The Rights of Others: Legal Claims and Immigration Outside the Law*, 59 DUKE L. J. 1723, 1742-43 (2010) (case citations omitted).

obligations with enforcement against an individual employer or worker for violations of immigration or criminal law. The threat of a *state* prosecution arising from an individual's provision of information to establish employment eligibility would upend this scheme and render workers further vulnerable to exploitation.

First, permitting *state* prosecutions against employees for the use of a Social Security number to establish employment eligibility circumvents congressional intent to sanction employers—and not employees—and to mandate uniform enforcement of laws related to unauthorized work.[21] A shift to state-led worker-focused enforcement would embolden employers to retaliate against workers who speak up about violations of federal labor and employment laws by threatening state prosecution. *Cf. Arizona*, 567 U.S. at 405 ("IRCA's framework reflects a considered judgment that making criminals out of aliens engaged in unauthorized work—aliens who already face the possibility of employer exploitation because of their removable status—would be inconsistent with federal policy and objectives."). These existing labor protections, balanced with federal prerogatives about whether and when to prosecute individuals for immigration-related crimes, would be rendered a nullity if all 50 states were permitted to make different choices about whether to prosecute undocumented workers for their use of false immigration-related information to obtain work.

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[21] Saucedo, *supra* note 15, at 1543.

Second, permitting a state role in the enforcement of employment eligibility would diminish trust between individual immigrant workers and local law enforcement actors seen as "immigration agents," further encouraging exploitation, including human trafficking. Immigrant communities in general, and undocumented immigrants in particular, are less likely to trust and cooperate with local police and prosecutors. One survey of Latinos in four major cities found that 70% of undocumented immigrants and 44% of all Latinos would be less likely to contact law enforcement authorities if they were victims of a crime for fear that the police would ask them or people they know about their immigration status, and 67% of undocumented immigrants and 45% of all Latinos would be less likely to offer information voluntarily about, or report, crimes because of the same fear.[22] These studies (among others) highlight that fears of immigration enforcement and the resulting damage to law enforcement cooperation affect not just undocumented community members but also individuals with citizenship or lawful status, particularly in "mixed-status" households.[23] Such

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[22] Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5–6 (May 2013), https://perma.cc/XEE8-P42V; *see also id.* at 1 ("Survey results indicate that the increased involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.").

[23] An estimated 85% of immigrants live in mixed-status families. *See* Anita Khashu, *The Role Of Local Police: Striking a*
(continued…)

fears would be exacerbated if local law enforcement officers could investigate and prosecute the crime at issue here, as has been shown when local law enforcement have played a role in immigration enforcement in other capacities.

This problematic atmosphere of mistrust is felt by police as well. In one study, two-thirds of the law enforcement officers polled expressed the view that recent immigrants reported crimes less frequently than others.[24] According to a recent national survey, law enforcement officers have seen an across-the-board decline in immigrant communities' willingness to cooperate with law enforcement.[25] As the president of the Major Cities

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Balance Between Immigration Enforcement and Civil Liberties, Police Found., 24 (Apr. 2009); *see also* Jill Theresa Messing et al., *Latinas' Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System*, 30 J. Women & Soc. Work 328, 334 (2015) ("The results indicate that for each 1-point increase in fear of deportation [e.g., from 'not much' to 'some' worry, or from 'some' to 'a lot'], Latina participants were 15% less willing to report being victim of a violent crime to police.").

[24] Robert C. Davis, Edna Erez, & Nancy Avitabile, *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 Crim. Just. Pol'y Rev. 183, 187 (2001).

[25] National Immigrant Women's Advocacy Project, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, Am. Univ. Wash. Coll. Of Law (May 3, 2018), (NIWAP Report), at 101, http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf.

Chiefs Association has explained to Congress, "[c]ooperation is not forthcoming from persons who see their police as immigration agents."[26] And, as cautioned by one official, "immigrants will never help their local police to fight crime once they fear we have become immigration officers."[27]

Fear of immigration enforcement also hinders prosecution of serious federal crimes, including human trafficking. According to the U.S. Department of Health and Human Services, "[v]ictims of human trafficking are hesitant to come forward because of their fear of being deported."[28] A survey conducted by the American University Washington College of Law's National Immigrant Women's Advocacy Project made similar findings. The survey collected data from 232 law enforcement officers in 24 states; 103 judges, 3 court staff, and 2 court administrators in 25 states; 50 prosecutors in 19 states; and 389

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[26] Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims: Hearing Before the S. Comm. on the Judiciary, at 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep't & President, Major Cities Chiefs Ass'n), http://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf.

[27] *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement*, Nat'l Immigration Law Ctr., at 2 (Aug. 2013) (statement of Chief Acevedo), https://perma.cc/Z63G-YUPS.

[28] U.S. Dep't of Health & Human Services, *Resources: The Mindset of a Human Trafficking Victim*, https://www.acf.hhs.gov/sites/default/files/orr/understanding_the_mindset_of_a_trafficking_victim_1.pdf (last visited Aug. 07, 2019)

survivor advocates and legal service providers spread across 50 states.[29] 94% of judges reported that they are concerned or very concerned about the effect immigration enforcement has on the willingness of immigrant and limited English proficiency litigants and victims to participate in human trafficking cases.[30] Law enforcement officials reported that "fears, threats, and concerns that victim cooperation will trigger the victim's deportation are important factors in victim's non-cooperation decisions."[31] Because human trafficking often has a nexus with labor, workplace immigration enforcement on the state level poses a particularly grave problem for the prosecution of this crime.

The chilling effect of permitting states to prosecute individual employees for crimes related to establishing employment-eligible immigration status undermines the ability of the federal government to balance careful federal interests and enforce federal labor and employment laws. Permitting states to act in this federal arena, without the attendant balance of employment, immigration, and anti-trafficking interests, will have the effect of eroding workplace standards for all workers.

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[29] NIWAP Report, *supra* note 25, at 18, 79, 101.

[30] *Id*. at 18.

[31] *Id*.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Respondents' brief, the decision of the Supreme Court of the State of Kansas should be affirmed.

Respectfully submitted,

Matthew J. Piers
Caryn C. Lederer
Counsel of Record
Chirag G. Badlani
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
70 West Madison St., Suite 4000
Chicago, IL 60602
clederer@hsplegal.com
(312) 580-0100

Kristi L. Graunke
Julia Solórzano
Meredith B. Stewart
SOUTHERN POVERTY LAW CENTER
P.O. Box 1287
Decatur, GA, 30031
kristi.graunke@splcenter.org
(404) 521-6700

Nicholas Espíritu
NATIONAL IMMIGRATION LAW CENTER
3450 Wilshire Boulevard, Suite 108-62
Los Angeles, CA 90010
espiritu@nilc.org
(213) 639-3900

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APPENDIX

APPENDIX A: ADDITIONAL *AMICUS CURIAE*

Additional *amici curiae* include:

Advocates for Basic Legal Equality, Inc. (ABLE) is a non-profit law firm with offices in Toledo, Dayton, and Defiance, Ohio. ABLE attorneys and advocates represent agricultural workers—most of whom are non-citizens—in employment, employment discrimination, immigration, and civil rights cases throughout Ohio. ABLE's mission is to provide high-quality legal assistance in civil matters to help eligible low-income individuals and groups achieve self-reliance, and equal justice and economic opportunity. The organization thus has a strong interest in ensuring that noncitizen workers are protected against employer retaliation that could prevent them from asserting their rights in the workplace and ultimately harm all low-wage workers.

Arise Chicago partners with workers and faith communities to fight workplace injustice through education and organizing and advocating for public policy changes. This work includes operating the Arise Chicago Worker Center, a membership-based community resource for both immigrant and native-born workers to improve workplace conditions, including wage theft and worker exploitation. Arise Chicago, through its partnerships between religious leaders and workers, aims to bring a moral voice to workplace struggles with the goal of finding just solutions to workplace issues to benefit the common good of society.

ASISTA Immigration Assistance (ASISTA) worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes, which were incorporated in the 1994 Violence Against Women Act (VAWA) and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security (DHS) personnel charged with implementing these laws, most notably Citizenship and Immigration Services (CIS), Immigration and Customs Enforcement (ICE), and DHS's Office for Civil Rights and Civil Liberties. ASISTA also trains and provides technical support to local law enforcement officials, civil and criminal court judges, domestic violence and sexual assault advocates, and legal services, non-profit, pro bono, and private attorneys working with immigrant crime survivors. ASISTA has previously filed amicus briefs to the Supreme Court and to the Second, Seventh, Eighth, and Ninth Circuits. *See United States v. Castleman*, 134 S. Ct. 1405 (2014); *State of Washington v. Trump*, No. 17-35105 (9th Cir., Mar. 17, 2017); *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014); *Torres-Tristan v. Holder*, 656 F.3d 653 (7th Cir. 2011); *Lopez-Birrueta v. Holder*, 633 F.3d 1211 (9th Cir. 2011); *Rosario v. Holder*, 627 F.3d 58 (2d Cir. 2010); *Sanchez v. Keisler*, 505 F.3d 641 (7th Cir. 2007).

Bet Tzedek was founded in 1974 by a small group of lawyers, rabbis, and community activists who sought to act upon a central tenet of Jewish law and tradition: "Tzedek, tzedek tirdof – Justice, justice you shall pursue." This doctrine establishes an obligation to advocate the just causes of the poor and

helpless. Consistent with this mandate, Bet Tzedek provides assistance to all eligible needy residents throughout Los Angeles County, regardless of their racial, religious, or ethnic background. Bet Tzedek's Employment Rights Project assists low-wage workers through a combination of individual representation before the Labor Commissioner, litigation, legislative advocacy, and community education. Bet Tzedek's interest in this case stems from over 15 years of advocating for the workplace rights of undocumented workers, who are often particularly vulnerable to retaliation and exploitation by employers.

The **Center for Popular Democracy (CPD)** is a high-impact, national organization dedicated to creating equity, opportunity and democracy in partnership with base-building organizations. CPD builds the power of communities to ensure a pro-worker, pro-immigrant, racial and economic justice agenda. CPD is developing and driving to win innovative policy solutions to prevent wage theft and address barriers that low-wage workers face in fighting workplace exploitation. CPD works closely with affiliates and allies rooted in immigrant communities to support their advocacy for strong worker protection policies for documented and undocumented workers.

Centro de los Derechos del Migrante, Inc. (CDM, or the Center for Migrant Rights) is a U.S. section 501(c)(3) migrant workers' rights organization with offices in Baltimore, Maryland; Mexico City; and Oaxaca, Mexico. CDM seeks to improve the working conditions of low-wage workers

throughout the U.S. and to remove the U.S.-Mexico border as a barrier to access to justice. The worker communities CDM serves frequently suffer human trafficking, wage theft, unsafe workplaces and other employment violations. CDM therefore has a direct interest in ensuring that migrant workers can vindicate their rights without fear of immigration-related retaliation.

Founded in 1969, **Centro Legal de la Raza** is a legal services agency protecting and advancing the rights of low-income, immigrant, and Latino communities through bilingual legal representation, education, and advocacy. By combining quality legal services with know-your-rights education and youth development, Centro Legal ensures access to justice for thousands of individuals throughout Northern and Central California.

Columbia Legal Services (CLS) is a nonprofit legal advocacy organization in Washington State that advocates for laws that advance social, economic, and racial equity for people living in poverty. Using a systemic approach, CLS supports communities and movements through impact litigation and policy reform that is grounded in, and strongly guided by, an understanding of race equity. CLS has extensive experience advocating for the rights of immigrants to workplace protections, as well as to access the legal system free of intimidation and fear of reprisal. CLS has represented thousands of immigrant workers in class actions challenging employers' use of retaliatory practices under federal and state laws, including wage and hour, labor, and anti-trafficking laws. Further, CLS has advocated for

state court rules, including rules of professional conduct and an evidence rule, to protect immigrants from improper use of immigration status in litigation.

The **Equal Justice Center** (EJC) is a non-profit legal aid program with offices in Austin, Houston, San Antonio, and Dallas, Texas. The EJC provides legal representation and counsel to low-wage workers—regardless of immigration status—on discrimination, wage-hour, and other employment-related matters throughout Texas and across the United States. The EJC has a vital interest in protecting low-income individuals' access to the justice system and ability to enforce their basic workplace rights without fear of retaliation or reprisal.

Equal Rights Advocates (ERA) is a national, non-profit civil rights organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since its founding in 1974, ERA has litigated numerous class action and individual civil rights cases on behalf of low-wage workers challenging workplace rights violations. Through litigation and other advocacy efforts, ERA has helped to secure workplace protections for low-wage and immigrant workers. ERA has also participated as amicus curiae in scores of cases involving the interpretation and application of laws affecting workers' rights and access to justice, including *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993); *Faragher v. Boca Raton*, 522 U.S. 1105 (1998); *Burlington Industries v.*

Ellerth, 524 U.S. 742 (1998); *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264; *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, *Miller v. California Department of Corrections* (2005) 36 Cal.4th 446; *State Dept. of Health Services v. Superior Court* (McGinnis) (2003) 31 Cal.4th 1026; and *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074. ERA has a strong interest in ensuring that all workers are able assert their workplace rights, without fear of retaliation related to immigration status.

The **Farm Labor Organizing Committee** (FLOC) is a democratic trade union representing over 10,000 agricultural workers, many of whom are immigrants working in the Southern and Mid-Western United States. FLOC members have over 50 years of experience advocating for improved wages and working conditions in the agricultural industry through workplace organizing, litigation, and supply chain organizing.

Farmworker Justice is a national non-profit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice. Farmworker Justice accomplishes these aims through policy advocacy, litigation, training and technical assistance, coalition-building, public education and support for union organizations.

Greater Boston Legal Services (GBLS) is a non-profit legal services organization in Boston, Massachusetts. The GBLS Employment Law Unit

provides legal assistance and support to the organizational members of the Immigrant Worker Center Collaborative as well as legal representation to low-wage immigrant workers, both as individuals and in groups, in cases involving enforcement of workplace rights.

The **Immigrant Worker Center Collaborative (IWCC)** is an umbrella organization of eight worker centers in Massachusetts that together advocate for and organize low-wage immigrant workers. The organizational members of IWCC are: Brazilian Worker Center, Brazilian Women's Group, Centro Comunitario de Trabajadores, Chelsea Collaborative, Chinese Progressive Association, Lynn Worker Center, Massachusetts Coalition for Occupational Safety and Health, and the MetroWest Worker Center/Casa del Trabajador. Each worker center has a community-based membership of low-wage immigrant workers and engages in education and outreach about workplace rights, helps workers find legal counsel when appropriate, and advocates for workplace policies that will protect all workers from exploitation, abuse, discrimination, and retaliation.

Justice in Motion is a non-profit organization with the mission of protecting migrant rights across borders. Through legal action, capacity building, and policy programs Justice in Motion provides advocates throughout the U.S., Canada, Mexico and Central America with the necessary skills, knowledge, and connections to ensure migrants are treated fairly and have access to justice wherever and whenever they need it.

As a statewide nonprofit law firm and advocacy organization working specifically in the areas of immigration and workers' rights, the **Kentucky Equal Justice Center** (KEJC) has a strong interest in the outcome of this case. One of the core services KEJC provides to Kentuckians is the immigration advocacy and assistance we provide to people at the Maxwell Street Legal Clinic. There, our attorneys and staff open and close five hundred immigration cases of all kinds each year, including Violence Against Women Act (VAWA) petitions, U visas for victims of crime, T visas for victims of trafficking, Special Immigrant Juvenile (SIJ) status, Deferred Action for Childhood Arrivals (DACA) requests, Temporary Protected Status applications, family petitions, and naturalization applications. Additionally, KEJC maintains a workers' rights practice, which includes regular outreach, litigation, and legislative advocacy in Frankfort.

Legal Aid at Work (LAAW) is a nonprofit legal organization based in California whose mission is to protect and expand the employment and civil rights of low-wage workers and community members. LAAW does this by engaging in impact litigation, direct legal services, legislative initiatives and community education. Through its National Origin and Immigrants' Rights Program, LAAW advocates on behalf of immigrant workers, including undocumented workers, who face discrimination and exploitation because of their national origin. LAAW has appeared regularly in federal and state appellate courts on issues of immigration-related retaliation, remedies available to undocumented workers under

state and federal employment laws, and employment discrimination more generally.

Legal Aid Justice Center (LAJC) is a non-profit organization located in Virginia committed to battling poverty and injustice through individual legal representation, as well as group and class action litigation and non-litigation advocacy. Among other efforts, LAJC works to protect the rights of low-wage immigrant workers by challenging wage-theft, retaliation, discrimination, and trafficking.

The **Legal Aid Society** is the oldest and largest provider of legal assistance to low-income families and individuals in the United States. The Society's Civil Practice operates trial offices in all five boroughs of New York City, providing comprehensive legal assistance in housing, public assistance, and other civil areas of primary concern to low-income clients. The Society's Employment Law Unit represents low-wage workers in employment-related matters such as claims for unpaid wages and claims of discrimination. The Unit conducts litigation, outreach and advocacy efforts on behalf of clients designed to assist the most vulnerable workers in New York City, among them immigrant workers whose wages are stolen by unscrupulous employers.

The **Maurice & Jane Sugar Law Center for Economic & Social Justice** (Sugar Law Center) is a leading national nonprofit law center based in Detroit, Michigan in the United States of America. The Sugar Law Center's central mission includes the promotion of economic and social rights as human rights and civil rights within the legal system. The

Sugar Law Center provides legal support to workers and labor organizations on projects to ensure workers' rights to a fair and decent place to work free of discrimination, to protect workers from wage theft, to improve benefits to displaced workers, to ensure their right to organize, and on other projects towards a fuller realization of the economic and social rights of working people. Among the populations we serve are immigrant workers in Michigan.

The **Michigan Immigrant Rights Center** (MIRC) has extensive expertise and interest in the issues pending before the Court in this case. MIRC is a Michigan based state-wide legal resource center for immigrant communities, whose mission is to build a thriving Michigan where immigrant communities experience equity and belonging. MIRC's work includes education and training about immigration and employment law and the complex relationship between immigration status and immigrants' rights and worker's rights. Each year, MIRC responds to thousands of calls through its immigration and employment hotlines and represents hundreds of immigrant workers on wage cases in courts and administrative agencies across Michigan.

The **Mississippi Workers' Center for Human Rights** (the Center), is a non-profit 501(c)(3) organization, located in Greenville, in the heart of the Mississippi Delta region. Often called the most impoverished region in the state, the Delta is where 43% of the residents live in abject poverty. Since 1996, the Center has been advocating for the dignity and safety of all workers, with a particular focus on the plight of lower wage black and brown workers.

The **National Employment Law Project** (NELP) is a non-profit legal organization with 50 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of labor standards laws, and that employers are not rewarded for skirting those basic rights. NELP's areas of expertise include the workplace rights of nonstandard and immigrant workers, including guestworkers, under state and federal employment and labor laws with an emphasis on wage and hour rights.

The **National Immigrant Justice Center** (NIJC), a program of the Heartland Alliance for Human Needs and Human Rights, is a Chicago-based not-for-profit organization that provides legal representation and consultation to immigrants, refugees and asylum-seekers of low-income backgrounds. Through its legal staff and network of nearly 1,500 pro bono attorneys, NIJC represents hundreds of individuals before the immigration courts, Board of Immigration Appeals, Federal Courts of Appeals, and the Supreme Court of the United States each year. One of NIJC's focus areas is representing immigrant victims of crime and survivors of human trafficking.

New Haven Legal Assistance Association, Inc. (LAA) is a nonprofit organization that was incorporated to "secure justice for and to protect the rights of those residents of New Haven County unable to engage legal counsel." LAA provides high-

quality legal services to individuals and groups unable to obtain legal services because of limited income, age, disability, discrimination and other barriers, including thousands of low-wage and immigrant workers.

The **Public Justice Center** (PJC), a non-profit civil rights and anti-poverty legal services organization, has a longstanding commitment to protecting the rights of low-wage workers. Toward that end, the PJC has represented thousands of employees seeking to recover unpaid wages from their employers through collective and/or class actions under state wage and hour laws and the FLSA. *See, e.g.*, *Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125 (2017); *In re Tyson Foods, Inc., Fair Labor Standards Act Litig.*, MDL Docket No. 1854 (M.D. Ga.). In addition, the PJC has filed *amicus curiae* briefs in numerous cases involving the ability of such workers to vindicate their rights to collect unpaid wages and work under lawful conditions under the Fair Labor Standards Act (FLSA) and Maryland law. *See, e.g.*, *Ocean City, Md., Chamber of Commerce, Inc. v. Barufaldi*, 434 Md. 381 (2013); *Perez v. Mountaire Farms, Inc.*, 650 F.3d 350 (4th Cir. 2011).

Towards Justice is a non-profit law firm based in Denver, Colorado and launched in 2014. Towards Justice provides direct legal services for low-wage, mainly immigrant victims of wage theft and other exploitative practices that nickel and dime workers and suppress worker bargaining power. Towards Justice's work includes cutting-edge cases on behalf of large groups of low-wage workers, including shepherds, exotic dancers, fast-food restaurant

managers, childcare workers, and agricultural workers.

Worker Justice Center of New York, Inc. (WJCNY) is a non-profit 501(c)(3) legal services organization whose mission is to pursue justice for those denied human rights with a focus on agricultural and other low-wage workers, through legal representation, community empowerment and advocacy for institutional change. WJCNY's goal is to stand beside New York's most vulnerable workers and empower them to challenge exploitive and unlawful employment practices. For over 40 years, WJCNY and its predecessor entity have served the needs of farmworkers and individuals working in the United States regardless of their immigration status. WJCNY has recovered millions of dollars on behalf of low wage immigrant workers whose rights have been violated.