No. 17-834

In the Supreme Court of the United States

STATE OF KANSAS, PETITIONER

v.

RAMIRO GARCIA, DONALDO MORALES, AND GUADALUPE OCHOA-LARA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

BRIEF OF AMICI CURIAE STATES OF MICHIGAN, ARIZONA, ARKANSAS, COLORADO, INDIANA, LOUISIANA, NEBRASKA, OHIO, SOUTH CAROLINA, AND TEXAS IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether 8 U.S.C. § 1324a expressly preempts the States from using any information entered on or appended to a federal Form I-9, including common information such as name, date of birth, and social security number, in a prosecution of any person (citizen or alien) when that same, commonly used information also appears in other documents, such as state tax forms, leases, and credit applications.

2. If 8 U.S.C. § 1324a bars the States from using all such information for any purpose, whether Congress has the constitutional power to so broadly preempt the States from exercising their traditional police powers to prosecute state-law crimes.

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INTEREST OF AMICI CURIAE[1]

This case involves two issues of significant importance to the States: federalism and identity theft. Every State has laws prohibiting identity theft, Nat'l Conference of State Legislatures, *Identity Theft*, http://www.ncsl.org/research/financial-services-and-commerce/identity-theft-state-statutes.aspx, and prosecuting identity theft falls squarely within the traditional police powers enforced by State Attorneys General. But under the Kansas Supreme Court's broad interpretation of 8 U.S.C. § 1324a, States would be prohibited from using *any information* that appears on an I-9 form, except to enforce specific provisions of federal law. The State could not use a person's name, date of birth, or Social Security number to prosecute a violation of a state identity-theft statute if that information appears on an I-9 form, *even if* the information is being used not for immigration purposes but for information's sake, and *even if* that same false information is used on a State's tax form in an attempt to defraud the State.

That interpretation, if correct, works a substantial shift in the traditional balance between state and federal authority by preventing States and their local governments from enforcing various state laws, and it therefore exceeds Congress's limited, enumerated powers. This Court should grant certiorari to protect the authority of the people to govern themselves at the state level.

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[1] Consistent with Rule 37.2(a), the *amici* States provided notice to the parties' attorneys more than ten days in advance of filing.

INTRODUCTION AND SUMMARY OF ARGUMENT

The federal I-9 is not just an obscure federal form. It is familiar to U.S. workers and employers alike because it is widely used—indeed, required—to verify the identity and employment authorization of individuals hired for employment. And while the federal-law provision at issue in this case, 8 U.S.C. § 1324a, is about immigration and nationality, this case is not, because both citizens and non-citizens alike put information on their I-9 forms that the States also use for other purposes. Rather, this case is about state sovereignty and the ability of state and local governments to exercise their police power to enforce state criminal laws, including laws aimed at curbing identity theft.

The I-9 form itself contains the most basic identity information. And because it requires employees to present their employer with acceptable documents that evidence their identity and employment authorization—and requires employers to physically examine those documents—it can also contain a host of other identifying information appended to the form, including information that appears on state-issued identification, school records, and voter registration cards.

This information is not unique to an I-9 form and can be obtained and used elsewhere. Yet an interpretation of 8 U.S.C. § 1324a that prevents States from using *any* of this broad I-9 information for *any* purpose (outside of the specific immigration and nationality context that spawned § 1342's restriction) essentially prevents this information from being used as information. Taken to its logical conclusion, a State could not use a name or address to prosecute any

crime, because a name or address is "information" contained in the form, and the State would not be using it for enforcement of the immigration and nationality chapter of the act. Particularly in the area of identity theft, where identification sources are key, States would be prohibited from using a host of documents (including their own state- or local-issued ID cards, state-issued licenses, and state tax forms) to enforce their own laws. And they would be prohibited from using this information for administrative or security purposes, child-support collection, or research.

This is overreaching because it encroaches on States' residual sovereignty. The constitutional structure recognizes States' historic police power and primarily leaves local criminal activity to the States. Congress has no source of constitutional power that would allow it to reach so far as to attempt to correct a federal problem in one area (immigration) by means that essentially strip the States of their ability to correct a completely separate state or local problem (for example, the crime of identity theft).

REGULATORY BACKGROUND

All U.S. employers—federal, state, and private—and all employees—citizens and non-citizens alike—must complete their respective sections of the form. Https://www.uscis.gov/i-9. And the act defines both "employer" and "employee" broadly. *Id.*

The I-9 form requires basic information such as name, address, date of birth, social security number, email address, and telephone number. *Id.* Employees must also designate whether they are a citizen, a

noncitizen national of the United States, a lawful permanent resident (in which case they have to indicate their Alien Registration Number or USCIS number), or an alien authorized to work in the U.S. (requiring them to list either their Alien Registration Number/USCIS Number, their Form I-94 Admission Number, or their Foreign Passport Number and country of issuance). *Id*. Employees attest to their employment authorization and present their employer with acceptable documents that evidence their identity and employment authorization. *Id*. Employers must then physically examine the appropriate verifying documents from the following list of acceptable documents (one from List A or a combination of one from List B and one from List C):

List A	List B	List C
U.S. passpt	Drivers license or State ID	SS card
Perm. res. card	Fed/state/local ID card	Birth cert.
For. passpt	School ID	Tribal doc.
Form I-766	Voter reg. card	I-197 ID card
Form I-94	U.S. military card	I-179 ID card
Form I-94a	U.S. draft record	DHS auth. doc.
FSM passpt	Coast Gd card	
RMI passpt	Native American tribal doc.	
	Canadian driver's license	
Acceptable if under 18:	School/day-care/ nursery school record or rpt card	

https://www.uscis.gov/i-9, I-9 Instructions.

ARGUMENT

I. Congress does not have the power to prohibit States from using basic identification information simply because that information appears on a federal form.

Section 1324a(b)(1)(D)(5) of the federal Immigration Reform and Control Act of 1986 states that "*any* information contained in or appended to [the federal I-9] form, may not be used for purposes other than for enforcement of this chapter and [various provisions of] Title 18." (emphasis added). Under the Kansas Supreme Court's broad interpretation of that language, States cannot use any I-9 information. Not for any purpose. But the I-9 form is no lightweight or obscure form. The breadth of the information contained in it or appended to it is matched only by the breadth of its users and the breadth of the penalties for noncompliance. And the information itself is both basic and available from sources other than the I-9 Form, including state identification and tax documents. Barring States from using this information exceeds Congress's power.

A. The Constitution limits the Federal Government's power.

"As every schoolchild learns, our Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory* v. *Ashcroft*, 501 U.S. 452, 457 (1991). The Constitution balances the power between these two sovereignties, reserving to the States or to the people all powers the Federal Compact has not delegated to the United States. U.S. Const. amend. X.

The proper balance of power between these two sovereigns is crucial. Indeed, "[s]tate sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.' " *Bond* v. *United States*, 564 U.S. 211, 221 (2011) (quoting *New York* v. *United States*, 505 U.S. 144, 181 (1992) (some internal quotations omitted)). In *Bond*, Justice Kennedy emphasized that the Constitution's federalist structure "protects the liberty of the individual from arbitrary power" and cautioned that "[w]hen government acts in excess of its lawful powers, that liberty is at stake." *Id.* at 222 (quoting *New York*, 505 U.S. at 181).

The question of how to balance state and federal powers arose early in this nation's history. Before ratification, the question evoked considerable debate, with Antifederalists concerned about preserving state sovereignty and expressing fears that the national government would wield too much power. Fred W. Friendly & Martha J.H. Elliot, *The Constitution: That Delicate Balance* 250–51 (1984). The authors of *The Federalist* certainly recognized the value of federalism in curbing abuses of governmental power. Alexander Hamilton, for example, wrote that while the general government would check the "usurpations of the state governments," the state governments "will have the same disposition towards the general government." *The Federalist* No. 28, at 179 (A. Hamilton) (J. Cooke ed. 1961). James Madison, who had a central role in the creation of the Constitution, emphasized that States retain powers that are "numerous and indefinite." *Gregory*, 501 U.S. at 457–58 (quoting *The Federalist* No. 45, at 292–93 (James Madison) (Clinton Rossiter ed. 1961)).

Justice Story likewise explained the States' retention of rights: "Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities." 3 J. Story, Commentaries on the Constitution of the United States 752 (1833). Thus, concerns about state sovereignty flow from the enumerated powers doctrine. *Printz* v. *United States*, 521 U.S. 898, 919 (1997).

B. There is no source of power for Congress to prohibit States from using I-9 information "as information."

Perhaps Chief Justice John Marshall was divining the question in this case two hundred years ago when he said that "the question respecting the extent of the powers actually granted [to the Federal Government], is perpetually arising, and will probably continue to arise, as long as our system shall exist." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819).

In answering this question, several things are clear. First, the enumeration of powers is also a limitation of powers, because " '[t]he enumeration presupposes something not enumerated.' " *Nat'l Fed. of Indep. Business (NFIB)* v. *Sebelius*, 567 U.S. 519, 533 (2012) (quoting *Gibbons* v. *Ogden*, 9 Wheat. 1, 195 (1824)). In other words, enumerating the powers does not determine the extent of those powers. Richard Primus, *Why Enumeration Matters*, 115 Mich. L. Rev. 1, 2–3 (2016). Second, the federal government must show that a constitutional grant of power authorizes each of its actions. *NFIB*, 567 U.S. at 519, 535 (citing *United States* v. *Comstock*, 560 U.S. 126 (2010)).

This Court's cases, especially in recent years, have illustrated structural limits on federal power. For example, in *United States* v. *Lopez*, the Court recognized limits on Congress's regulatory capacity under the Commerce Clause. 514 U.S. 549, 556–57 (1995). The Court rejected the government's argument that guns in school zones would impact the nation's economic activities specifically because that vision of congressional authority would convert the Commerce Clause to "a general police power of the sort retained by the states." *Id.* at 567–68. And this Court reiterated its warning that the scope of interstate commerce could not be extended "so as to embrace effects upon interstate commerce *so indirect and so remote* that to embrace them, in view of our complex society, would effectively obliterate the distinction between what is national and what is local . . . ." *Id.* at 557 (citing *NLRB* v. *Jones & Laughlin Steel*, 301 U.S. 1, 37 (1937) (emphasis added)).

Other cases have illustrated similar limitations on federal power. E.g., *NFIB*, 567 U.S. at 552–53; 566–67; 586–87 (holding that a statutory provision giving the Secretary of Health and Human Services the authority to penalize States that chose not to participate in the Affordable Care Act's expansion of the Medicaid program, exceeded Congress's power under the Spending Clause and that an individual mandate imposing minimum essential coverage requirement under which certain individuals would have to purchase and maintain health insurance coverage, exceeded Congress's power under the Commerce Clause); *United States* v. *Morrison*, 529 U.S. 598,613 (2000) (striking down the Violence Against Women Act as exceeding Commerce Clause power); *Alden* v. *Maine*,

527 U.S. 706, 712 (1999) (holding that the provisions of the Fair Labor Standards Act that expanded that law's protection to state employees and required States to pay overtime to their employees, could not be enforced in either state or federal court); *City of Boerne* v. *Flores*, 521 U.S. 507, 511, 536 (1997) (holding that Congress could not under section 5 expand individual rights established by the Supreme Court in interpreting the Fourteenth Amendment); *Printz*, 521 U.S. at 935 (striking down the provisions of the Brady Handgun Violence Prevention Act that required state law enforcement officials to perform background checks on handgun purchases for an interim period before a federal computer system could be established); *Reid* v. *Covert*, 354 U.S. 1, 17 (1957) (in a habeas case, explaining there may be other constitutional limitations on federal power even where Congress adopts statutes in furtherance of the treaty power); *Mayor of New Orleans* v. *United States*, 35 U.S. 662, 736 (1836) (holding that the congressional police power authority over federal territories could not be enlarged under the treaty making power).

Applying this guidance, the Kansas Supreme Court's expansive interpretation of 8 U.S.C. § 1324a is tenable only if there is an enumerated power that can be stretched far enough to prohibit state and local governments from using I-9 information as information itself. There is not. Although there are constitutional clauses that involve the use of information, none is a viable source of enumerated power for the expansive restriction here.

The Patent and Copyright Clause, for example, allows for a property right in information in order to

"promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. art. I, § 8, cl. 8. But it does not restrict the information separate from a property right in the information. The Compact Clause, art. I, § 10, cl. 3, controls information in the sense that it allows Congress to have a say over agreements between the States and forbids any such agreement that "encroaches upon or interferes with the just supremacy of the United States." Lawrence Tribe, *American Constitutional Law* 649–51 (West Publishing Co. 2000). But it does not control the actual information contained in the agreement by forbidding its use for other purposes. Likewise, the Contract Clause, art. I, § 10, cl. 1, prohibits States from enacting laws that impair contract rights, but does not prohibit States from otherwise using the actual information contained in the contract. Too, the Impeachment Clause, art. II, § 4, although it allows for restrictions on how information can be used in a trial on formal charges against a civil officer of the government (only for removal from or disqualification from office), does not prevent the information itself from being used in a later civil or criminal trial. And although the Commerce Clause, art. I, § 8, cl. 3, encompasses regulation of economic enterprises and thus can potentially regulate e-commerce (a business or commercial transaction that involves the transfer of information across the internet), see *Granholm* v. *Heald*, 544 U.S. 460, 466 (2005), it nevertheless cannot ban use of the information itself.

Nor is there a viable source of enumerated power in the Bill of Rights, which sets out restrictions on gov-

ernment, not grants of power. Under the First Amendment, the Government can restrict or prohibit certain information only under limited circumstances—if it involves speech that is unprotected or if the interests in prohibiting it exceed its value (for example, if it is obscene, is child pornography, threatens national security, or constitutes fighting words or true threats). See *Miller* v. *California*, 413 U.S. 15, 23 (1973); *Osborne* v. *Ohio*, 495 U.S. 103, 108 (1990); *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 572 (1942); *Cohen* v. *California*, 403 U.S. 15, 20 (1971) (listing some categories of speech that may be prohibited); *Brandenburg* v. *Ohio*, 395 U.S. 444, 447 (1969). But as to protected speech, the First Amendment generally encourages the flow of information and ideas. As an example, although an employee may be restricted from delivering information pursuant to her official duties, even if on a matter of public concern, *Connick* v. *Myers*, 461 U.S. 138, 149–50 (1983), a citizen can still voice the very same information. In the same way, the Establishment Clause might prevent an employer or schoolteacher from endorsing religion in the workplace or school, but would not prohibit a preacher from using the same information to "endorse" religion from the pulpit. Indeed, in the First Amendment context this Court has recognized that it matters how much beneficial speech would be prohibited. See *Thompson* v. *Western States Med. Ctr.*, 535 U.S. 357, 377 (2002) (noting that the widespread potential harm of broad restrictions on advertising and soliciting prescription drugs was reason enough to find the restrictions unconstitutional).

Similar illustrations exist with the Fourth Amendment. That Amendment generally prohibits a

police officer from searching cell phone data without a warrant, *Riley* v. *California*, 134 S. Ct. 2473, 2485 (2014), but does not prohibit the search of the same information with a warrant, *id*. at 2495, or where a suspect voluntarily discloses it, as through third-party business records, see *United States* v. *Graham*, 824 F.3d 421, 435 (4th Cir. 2016). In the same vein, this Court has held that the use of sense-enhancing technology to gather any information in the interior of the home is a search and is presumptively unreasonable without a warrant. *Kyllo* v. *United States*, 533 U.S. 27, 40 (2001). But the Fourth Amendment does not bar use of that same information about the home's interior if it is obtained another way, such as by a search under a valid warrant or by disclosure by the homeowner himself.

These sources of enumerated power illustrate what this Court has often articulated: that scope and context matter in determining whether there is an enumerated source for federal authority. As in *Lopez*, the effects of prohibiting States from using I-9 information as information are so indirectly and remotely connected to immigration as to "effectively obliterate the distinction between what is national and what is local . . . ." 514 U.S. at 557. Barring the use of information as information also compromises "essential attributes of state sovereignty." *Comstock*, 560 U.S. at 153 (Kennedy, J., concurring in judgment) ("It is of fundamental importance to consider whether essential attributes of state sovereignty are compromised by the assertion of federal power under the Necessary and Proper Clause; if so, that is a factor suggesting that the power is not one properly within the reach of federal power.").

II. States need to use I-9 information in the exercise of their police power, including to enforce their criminal laws and curb the rise in identity-theft crimes.

States have an interest in obtaining and using basic identification information for the public good. They use identifying information for a variety of purposes: their own licenses and tax forms, government administrative purposes, and most importantly, in the enforcement of state laws—laws that protect citizens from crimes such as the identify theft that occurred in *Garcia*.

A. States have historic police power.

States have broad authority to enact legislation for the public good. *Lopez*, 514 U.S. at 552. Recently, in *NFIB* v. *Sebelius*, this Court discussed States' "general power of governing," which is called "the 'police power,' " and recognized that this power is "possessed by the States but not by the Federal Government." 567 U.S. at 536 (citing *Morrison*, 529 U.S. at 618–619). The Court explained the benefits of the constitutional design that places this power at the state level: "Because the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments closer to the government." *NFIB*, 567 U.S. at 536. "The Framers thus ensured," this Court reminded, "that powers which 'in the ordinary course of affairs, concern the lives, liberties, and properties of the people' were held by governments more local and more accountable than a distant federal bureaucracy." *Id*.

This Court reiterated the States' broad police powers recently in *Bond*, where it limited the federal government's power to use a federal law, the Implementation Act, to reach a purely local crime. 134 S. Ct. at 2083. The Court made clear that in the division of responsibility between sovereigns, "our constitutional structure leaves local criminal activity primarily to the States . . . ," *id*., and by extension, to the local governments they create. And this Court cautioned that "the global need to prevent chemical warfare does not require the Federal Government to reach into the kitchen cupboard. . . . " *Id*. at 2093.

B. The decision below intrudes on States' police power.

The Kansas Supreme Court's sweeping prohibition on the use of *any* I-9 information *as information* (not just for immigration purposes), would allow the federal government to reach into not only the cupboard but into every nook and cranny of the house, and into every piece of paper in the State. That interpretation would be a significant limitation on state police power. As one of the dissenting Justices below cautioned, it "appears to wipe numerous criminal laws off the books in Kansas—starting with, but not necessarily ending with, laws prohibiting identity theft. Pet. App. 45 (Stegall, J., dissenting). "If such a power *did* exist," the dissent continued, "the delicate federal-state balance would not merely be disturbed, it would be obliterated." Pet. App. 46 (Stegall, J., dissenting).

A State that is prosecuting its own criminal laws will assuredly need to use a name, and probably an address or telephone number as well. And if it is at-

tempting to enforce its identity-theft laws, identification sources will be a crucial component of enforcement. The State will likely need to use either a Social Security number, a state-issued identification (such as a driver's license, voter ID card, or a state tax form) or a combination of these documents.

Indeed, the Kansas Supreme Court's interpretation would allow the I-9 to be a mechanism a criminal could use to insulate her conduct from state law. If the identity thief puts a false Social Security number on a loan application for a local bank, she could be prosecuted under state law for identity theft. If she committed a second act of identity theft by putting the false Social Security number of a tax refund, in an attempt to defraud the State itself, she could be prosecuted for both crimes. But under the Kansas Supreme Court's interpretation, she could insulate herself from *both* of those criminal prosecutions by the simple expedient of committing a *third* act of identity theft, by also putting the false Social Security number on her I-9 when applying for the job. In short, this interpretation would encourage the clever identity thief to put false information on an I-9 as a get-out-of-jail-free card with respect to state criminal laws.

In the lead case below, the Respondent, Ramiro Garcia, was convicted under Kansas's identity theft law, K.S.A. 2012 Supp. 21-6107, because he used another person's Social Security number to receive employment. And significantly, he did so when he completed his federal W-4 and his state K-4 tax forms. Thus, his conduct was based not on the federal employment verification system, but instead on tax

forms that are used to calculate federal and state income-tax withholdings. Pet. App. 38–39 (Biles, J, dissenting). The W-4 and K-4 forms have a purpose wholly different from the I-9 form; their purpose is revenue collection, not immigration enforcement. Yet the Kansas Supreme Court prevented Kansas from prosecuting Garcia's identity-theft crime under its own laws.

C. Identity theft is an alarming problem.

A criminal obtains someone else's state-issued ID and provides a false identification to police officer during a traffic stop. Another steals a Social Security number and sets up bank accounts and obtains consumer loans, mortgages, and a credit card. Yet another steals medical information, causing medical histories to get changed and barring the victims from getting necessary medical treatment. These are instances of identity theft.

For at least the past decade, identity theft has been described as one of the "fastest growing crimes in the nation." Stephen F. Miller, *Someone Out There is Using Your Name: A Basic Primer on Federal Identity Theft Law*, 50 Fed. Law. 11, Jan. 2003, at 11. And the trend shows no sign of slowing. Our data-driven economy and society continue to create opportunities for identity theft.

According to recent Department of Justice statistics, an estimated 17.6 million persons, or 7% of all U.S. residents age 16 or older, were victims of one or more incidents of identity theft in 2014. Https://www.bjs.gov/content/pub/pdf/vit14.pdf. About 14% of them experienced at least some out-of-pocket

expenses, 36% reported moderate or severe emotional distress as a result of the incident, and 32% spent a month or more resolving the problems. *Id.*

Sometimes the fallout is particularly acute: citizens have had bank accounts wiped out, credit histories ruined, jobs and valuable possessions taken away, and in some cases, been arrested for crimes they did not commit. Https://ojp.gov/programs/identitytheft.htm. The U.S. Department of Justice characterizes the financial toll of identity theft as "crippling," and the emotional trauma "as devastating as many of the most violent offenses." *Id.*

D. Every State has laws aimed at curbing identity theft, and each will need the I-9 information to enforce them.

States, too, have recognized that they must tackle the problem of identity theft. The Colorado general assembly, for example, "recognize[d] the significant consequences of identity theft and financial fraud crimes on Colorado citizens and businesses . . . ." Colo. Rev. Stat. Ann. § 24-33.5-1702(1). The Georgia General Assembly found and declared that "[t]he privacy and financial security of individuals is increasingly at risk due to the ever more widespread collection of personal information by both the private and public sectors." Ga. Code Ann. § 90-1-910. And the New Jersey Legislature found that identity theft has become "one of the major law enforcement challenges of the new economy." N.J. Stat. Ann. § 56:11-45. These States are not alone. Every State has a law regarding identity theft or impersonation. The National Conference of State Legislatures lists these various statutes and their

criminal penalties. See http://www.ncsl.org/research/financial-services-and-commerce/identity-theft-state-statutes.aspx.

States also have specific restitution provisions to address identity theft. *Id*. Some states have forfeiture provisions for identity-theft crimes (Iowa, Kansas, Kentucky, Michigan, and Tennessee are examples). And a number of states (Arkansas, Delaware, Iowa, Maryland, Mississippi, Montana, Nevada, New Mexico, Ohio, Oklahoma, and Virginia among them) have created identity-theft passport programs to help victims combat continuing identity theft. *Id*. The New York State Office of the Attorney General offers victims of identity theft an Identity Theft Victim Kit—an all-in-one-resource that provides victims with specific instructions for filing a police report and beginning to clear their names. Https://ag.ny.gov/sites/default/files/id_theft_kit.pdf.

Attorneys General are an integral part of these preventative and restorative efforts. Utah law creates within the Office of Attorney General a database and internet website that allow individuals to submit reports of identity theft, assist victims of identity theft, and provide a central, secure location for storage of information related to identity theft. Utah Code Ann. 1953 § 67-5-22. And Kentucky law creates a Financial Integrity Enforcement Division that coordinates with the Office of the Attorney General and federal entities to "prepare and disseminate information" in the prevention of identity theft. Ky. Rev. Stat. Ann. § 15.113. Maryland law authorizes the Attorney General to issue a card or certificate that verifies the identity of victim of identity fraud, to prevent arrest or detention

and aid creditors or investigation of fraudulent accounts and charges. Md. Code Ann., Criminal Law § 8-305. In Mississippi the Attorney General can issue and serve subpoenas for the production of documents in conducting identity theft investigations. Miss. Code Ann. § 97-45-2.

It is difficult to imagine how States can effectively engage in these efforts if they are unable to use any of the basic identifying information in or attached to the I-9 form, especially since identity information is integral to the crime of identity theft. Imagine a scenario where someone steals another person's Social Security number and takes out a bank loan or applies for a tax refund in Michigan. Merely because a name and Social Security number appears on the I-9 form and a copy of the card is attached to the form, Michigan would be powerless to prosecute that local crime—a crime wholly independent of the federal employment verification system. Likewise, how would California, Florida, or Louisiana provide victims with information related to an application or account opened by means of identity theft without "using" I-9 information? See Cal. Penal Code § 530.8 & Cal. Civ. Code § 1748.95 (allowing identity-theft victim to receive information related to an application or account entered in his or her name); Fla. Stat. Ann. § 817.032(2) (allowing identity-theft victim to obtain a copy of an application and business transaction records); La. Stat. Ann. § 9:3568 (requiring creditors to make application and transactional information available to identity-theft victim).

CONCLUSION

For these reasons, the Court should reverse the decision below.

Respectfully submitted,

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