

No. 24-1866

ORIGINAL

In the Supreme Court of the United States

LETITIA T. MORENO ET AL.,

*Petitioners,*

*v.*

THE COURT OF APPEAL OF CALIFORNIA, SECOND  
APPELLATE DISTRICT DIVISION SEVEN, ET AL.

*Respondents.*

*Petition for Writ of Certiorari to  
the California Supreme Court*

**PETITION FOR WRIT OF CERTIORARI**

Leticia T. Moreno  
Laura E. Vaca  
Agencia Privada  
de Inmigracion, Inc.

*Petitioners*

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### QUESTIONS PRESENTED

Federal law fully occupies the field of alien registration. *Arizona v. United States*, 567 U.S. 387, 401 (2012). Congress, the Attorney General, and the Secretary of Homeland Security regulate both government and private entities involved in alien registration. Information collected is strictly confidential under 8 U.S.C. §§ 1160(b), 1202(f), 1229a(c)(2)(B), 1304(b), 1361, 1429, and 1532(d). Section 1304(b) explicitly mandates that alien registration records remain confidential, reinforcing federal supremacy.

Despite this, California's Immigration Consultants Act (ICA) now empowers non-aggrieved, non-governmental entities to breach this federal confidentiality and regulate federal practitioners. Subjecting persons authorized by federal law to injunctions by a plaintiff that lacks standing.

Here, the state court has ordered the release of three decades of information protected by § 1304(b) to a non-aggrieved, non-governmental entity—solely to inspect for compliance with the ICA. Creating an untenable situation where compliance violates federal law, while noncompliance results in contempt of court.

**The questions presented are:**

1. Whether a state may create a private cause of action allowing a non-aggrieved, non-governmental entity to regulate federal practitioners.
2. Whether information collected by private entities at the request of the federal government and transmitted to it falls under the confidentiality protections afforded to federal records as intended by Public Law 93-579, Sec. 2.
3. Whether federal preemption bars California's ICA from regulating practitioners and others assisting in alien registration.

**PARTIES TO THE PROCEEDINGS BELOW**

Petitioners here are immigration attorney Leticia T. Moreno and her paralegals Laura E. Vaca and Agencia Privada de Inmigracion, Inc.

Respondent here is the California Second District Court of Appeal Division Seven—as an entity, not as individual jurists, *Mallard v. United States District Court*, 490 U.S. 296, 309-10 (1989).

Real parties in interest include a juristic person Immigrant Rights Defense Council LLC (plaintiff) and the Superior Court of Los Angeles County (intermediate court respondent)

Also, another real party, is Petitioner/Defendant Edward Lasseville, a lifelong advocate for immigration reform. See this Court's Case No. 24-817, *Lasseville v. Superior Court*, docketed Jan. 31, 2025. Distributed for conference of March 28, 2025.

Petitioner Moreno was representing Vaca and Agencia Privada de Inmigracion, Inc. whereby Lasseville was a co-defendant. Due to the order to disclose Petitioner Moreno's clients' files, a suit in intervention was required.

**CORPORATE DISCLOSURE STATEMENT**

Petitioner Agencia Privada de Inmigracion, Inc. has no parent company nor publicly held company owning 10% or more of the corporation's stock.

**STATEMENT OF RELATED PROCEEDINGS**

The following proceedings are directly related to the case in this Court within the meaning of Rule 14.1(b)(iii), all in California:

- *Lasseville v. Superior Court of Los Angeles County*, No. B338831 Second District Court of Appeal, Division Seven. Petition for Writ of Mandamus denied July 1, 2024.
- *Immigrant Rights Defense Council LLC v. Laura Vaca et al.* No. 23STCV21848, Superior Court of Los Angeles County. Motion to Quash Service of Summons denied July 12, 2024.
- *Lasseville v. Superior Court of Los Angeles County*, No. B339506 Second District Court of Appeal, Division Seven. Statutory Petition for Writ of Mandamus denied July 24, 2024.
- *Lasseville v. Superior Court of Los Angeles County*, No. S286360 California Supreme Court. Petition for Review denied October 2, 2024.
- *Immigrant Rights Defense Council LLC v. Laura Vaca et al.* No. 23STCV21848, Superior Court of Los Angeles County. Oct. 28, 29 2024 orders granting access to federally protected documents entered, denied defense motions re preemption.
- *Moreno et al., v. Superior Court of Los Angeles County*, No. B342392 Second District Court of Appeal, Division Seven. Petition for mandate and immediate stay denied December 4, 2024.
- *Moreno et al., v. Second District Court of Appeal Division Seven*, Case No. S288372 California Supreme Court. Petition for mandate, prohibition, or certiorari denied December 31, 2024.
- *Lasseville v. Superior Court of California*, Case No. 24-817 Supreme Court of the United States, distributed for conference on March 28, 2025. As of date of printing, status unknown.

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDINGS BELOW.....	ii
CORPORATE DISCLOSURE STATEMENT.....	ii
STATEMENT OF RELATED PROCEEDINGS.....	iii
TABLE OF AUTHORITIES.....	vii
PETITION FOR A WRIT OF CERTIORARI.....	1
Opinions Below.....	1
Jurisdiction.....	1
This Court's Precedent Establishes Finality and Standing for Purposes of Jurisdiction to Review.....	1
Constitutional and Statutory Provisions Involved in the Case.....	5
INTRODUCTION.....	8
STATEMENT.....	9
The Parties and Procedure in the State Court Case.....	9
RAISING FEDERAL ISSUES.....	15
REASONS FOR GRANTING REVIEW.....	16
I. Justiciability of the Questions Before this Court is Proper Under the Constitution.....	16
II. Two First Impression Issues Related to National Security.....	17
A. The Scope of Intended Privacy Protection When Information is Gathered at the Government's Request.....	17
B. Directly in-line with <i>Arizona's</i> holding, Registration Paperwork is Confidential and yet an Issue of First Impression, Almost.....	22
C. The Above Arguments in A and B Create Support for the Other, based on Precedent.....	25
D. It is the Laws When Read as a Harmonious Whole that Give Cause for this Court to Address this Matter of First	

Impression as Found in Conflict Preemption That Firmly Establishes the Privacy Rights and Professional Obligations Cannot Coexist with State Law.....	25
E. Sister States Derogating Federal Privacy.....	27
F. These First Impression Issues Relate to Established Precedent and thus Necessary to Address to Prevent Further Discrimination Against Federal Law.....	28
III. The Privacy Rights of Millions of Aliens has been Imperiled with Deep and Long-Term Consequences that will Only Widen unless this Court Stops what has Begun.....	29
IV. Both the Department of Homeland Security and the Attorney General Acknowledge and Accept the Role of the Private Sector.....	31
V. The California Courts have Addressed the Issue of Preemption.....	38
VI. The Active Abuses Occurring in California Highlight the Need to Resolve the Entrenched and Deepening Divide.....	40
VII. The ICA Itself Establishes Field Preemption, by its Own Terms.....	43
VIII. The Conflicting Sister State Laws are Now Exposed as Preempted.....	47
IX. Preemption or Nonpreemption, that is the Question.....	50
X. Summation.....	51
CONCLUSION.....	51

#### **Appendix A Decisions**

Cal. Supreme Court (Mandamus) Denial Order Dec. 31, 2024. ....	3a
Cal. Court of Appeal (Mandamus) Denial Order Dec. 4, 2024. ....	4a

Cal. Superior Court (Privilege)	
Order Granting Oct. 29, 2024.....	5a
Cal. Superior Court (Privilege)	
Order Granting Oct. 28, 2024.....	13a
Cal. Superior Court (Sanction)	
Order Granting Oct. 23, 2024.....	18a

### **Appendix B Federal**

District of Columbia .....	23a
Confidentiality Provisions.....	24a
Criminal Penalties Related to	
Document Preparation.....	29a
Permission for State Involvement.....	34a
<b>CFR Title 8,</b>	
USCIS Regulating Practitioners.....	46a
EOIR Regulating Practitioners.....	51a

### **Appendix C California**

Code of Regulations.....	64a
Business and Profession Code.....	67a
Immigration Consultants Act.....	67a
Unlawful Practice of Law .....	90a
Attorneys Providing Immigration	
Reform Act Services .....	92a
Paralegal.....	97a
Code Civil Procedure.....	102a
Government Code.....	104a
Penal Code.....	105a

### Appendix D Sister State Laws

Grouped Short Notary States.....	109a
Grouped Long Notary States.....	111a
Immigration Act States:	
1) Arizona.....	113a
2) Colorado.....	119a
3) Georgia.....	122a
4) Illinois.....	148a
5) Maine.....	157a
6) Maryland.....	163a
7) Michigan.....	166a
8) Minnesota.....	177a
9) New Jersey.....	180a
10) New Mexico.....	183a
11) New York.....	187a
12) Oregon.....	201a
13) South Carolina.....	202a
14) Tennessee.....	209a
15) Texas.....	210a
16) Utah.....	210a
17) Washington.....	222a
18) West Virginia.....	225a

### Appendix E Excerpts

Raising the Preemption Issue Below	
California Superior Court.....	226a
California Court of Appeal	
(Respondent Court).....	229a
California Supreme Court.....	232a

### Appendix F

#### Other Essential Material

Full Prompt and Answer from	
LexisNexis Protégé.....	237a
Form I-90.....	239a



## TABLE OF AUTHORITIES

## CASES

<i>Argento v. Horn</i> , 241 F.2d 258, (6th Cir. 1957).....	24
<i>Arizona v. United States</i> , 567 U.S. 387, (2012).....i, 2, 8, 22, 23, 36, 38, 39	
<i>ASARCO Inc. v. Kadish</i> 490 U.S. 605, (1989).....	4
<i>Ascencio-Guzman v. Chertoff</i> (S.D. Tex., Apr. 15, 2009, CIVIL ACTION No. B-94-215).....	24, 25
<i>Bryant v. Zimmerman</i> , 278 U.S. 63, (1928).....	15
<i>Cal. Bus. &amp; Indus. All. v. Becerra</i> , 80 Cal.App.5th 734, (Cal. Ct. App. 2022).....	13
<i>Cohen v. Beneficial Loan Corp.</i> , 337 U.S. 541, (1949).....	4
<i>Coleman v. Thompson</i> 501 U.S. 722, (1991).....	15
<i>Construction Laborers v. Curry</i> , 371 U.S. 542, (1963).....	3, 4
<i>De Canas v. Bica</i> 424 U.S. 351, (1976).....	38
<i>Doe v. Chao</i> , 540 U.S. 614, (2004).....	19
<i>Faretta v. California</i> , 422 U.S. 806, (1975).....	230a
<i>FBI v. Superior Court of Cal.</i> 507 F.Supp.2d 1082, (N.D. Cal. 2007)....	27
<i>Gamboa v. Alvarado</i> 407 Ill. App. 3d 70, (Ill. App. Ct. 2011)....	48

<i>Gutierrez de Martinez v. Lamagno</i> , 515 U.S. 417, (1995).....	16
<i>Heyer v. Flaig</i> 70 Cal.2d 223, (Cal. 1969).....	13
<i>INS v. Delgado</i> 466 U.S. 210, (1984).....	23
<i>Immigrant Rights Def. Council v.</i> <i>Hudson Ins. Co.</i> 84 Cal.App.5th 305, (Cal. Ct. App. 2022).....	14, 227a
<i>Iskanian v. CSL Transportation</i> <i>Los Angeles, LLC</i> , 59 Cal.4th 348, (Cal. 2014).....	13
<i>Kansas v. Garcia</i> , 140 S. Ct. 791, (2020).....	30
<i>Kleindienst v. Mandel</i> , 408 U.S. 753, (1972).....	229a
<i>La v. Holder</i> 701 F.3d 566, (8th Cir. 2012).....	27
<i>List v. Driehaus</i> , 573 U.S. 149, (2014).....	2
<i>Live Oak Assn. v. R.R. Comm.</i> , 269 U.S. 354, (1926).....	15
<i>Loa-Herrera v. Dept. Homeland Security</i> , 239 F. App'x 875, (5th Cir. 2007).....	23
<i>Loa-Herrera v. Trominski</i> 231 F.3d 984, (5th Cir. 2000).....	24
<i>Marbury v. Madison</i> , 5 U.S. 137, (1803).....	16
<i>Mallard v. United States District Court</i> , 490 U.S. 296, (1989).....	ii
<i>Mendoza v. Ruesga</i> , 169 Cal.App.4th 270 (Cal. Ct. App. 2008).....	39

<i>Mercantile Nat. Bank v. Langdeau,</i> 371 U.S. 555, (1963) .....	3, 4
<i>Milner v. Dep't of the Navy,</i> 562 U.S. 562, (2011) .....	19
<i>Mitchell v. Forsyth,</i> 472 U.S. 511, (1985) .....	3, 4
<i>Muller v. Oregon,</i> 208 U.S. 412, (1908) .....	31
<i>Murphy v. Nat'l Collegiate Athletic Ass'n,</i> 138 S. Ct. 1461, (2018) .....	22, 233a
<i>NASA v. Nelson,</i> 562 U.S. 134, (2011) .....	19
<i>Nike, Inc. v. Kasky</i> 539 U.S. 654, (2003) .....	4
<i>NLRB v. Robbins Tire &amp; Rubber Co.,</i> 437 U.S. 214 (1978) .....	19, 20
<i>Oneok, Inc. v. Learjet, Inc.</i> 575 U.S. 373, (2015) .....	22
<i>PCI Transp., Inc. v. Fort Worth &amp; Western R. Co.,</i> 418 F.3d 535, (5th Cir.2005) .....	226a
<i>People ex rel. Becerra v. Superior Court</i> 29 Cal.App.5th 486, (Cal. Ct. App. 2018) .....	13
<i>People v. Salcido</i> (Cal. S256283 10/23/2019) .....	38
<i>People v. Salcido</i> , 42 Cal.App.5th 529, (Cal. Ct. App. 2019) .....	38, 39, 42, 227a, 229a
<i>Raley v. Ohio,</i> 360 U.S. 423, (1959) .....	15
<i>Reyes v. Snowcap Creamery, Inc.</i> 898 F. Supp. 2d 1233, (D. Colo. 2012) .....	26

<i>Sanders v. Pacific Gas Elec. Co.</i> , 53 Cal.App.3d 661, (Cal. Ct. App. 1975).....	12, 13
<i>Solus Indus. Innovations, LLC v.</i> <i>Superior Court of Orange Cnty.</i> , 4 Cal.5th 316, (Cal. 2018)).....	45
<i>Stoutenburgh v. Hennick</i> 129 U.S. 141, (1889).....	49
<i>Sturges v. Crowninshield</i> , 17 U.S. 122, (1819).....	50
<i>Taylor v. Sturgell</i> , 553 U.S. 880, (2008).....	20
<i>Taylor v. Taylor</i> , 257 So. 2d 465, (La. Ct. App. 1972).....	20
<i>Town of Atherton v. Cal. High-Speed</i> <i>Rail Auth.</i> , 228 Cal. App.4th 314, (Cal. Ct. App. 2014).....	226a
<i>Trump v. United States</i> , 603 U.S. 593, 635, 144 S. Ct. 2312 (2024) .....	3
<i>United States Dep't of Defense v.</i> <i>Federal Labor Relations Auth.</i> , 510 U.S. 487, (1994).....	18, 20
<i>United States DOJ v. Reporters Comm.</i> <i>for Freedom of Press</i> , 489 U.S. 749, (1989).....	18, 20
<i>United States DOJ v. Tax Analysts</i> , 492 U.S. 136 (1989).....	20
<i>United States v. Burnison</i> , 339 U.S. 87, (1950).....	28
<i>United States v. Texas</i> 143 S. Ct. 1964, (2023).....	4

<i>United States v. Witkovich</i>	
353 U.S. 194, (1957).....	23
<i>Viking River Cruises, Inc. v. Moriana</i> ,	
142 S. Ct. 1906, (2022).....	13
<i>Viridiana v. Holder</i> ,	
646 F.3d 1230, (9th Cir. 2011).....	37

# CONSTITUTIONS

## United States

Article III § 1.....	3
Article VI cl. 2.....	2, 16, 30
Amendment XIV.....	8

## California

Article VI § 10.....	15
----------------------	----

# STATUTES

## United States Code,

### Title 1

§ 204.....	49, 23a
------------	---------

### Title 5

§ 552.....	5, 7, 18
§ 552a.....	5, 7, 18, 23, 25, 238a

## Public Law 93-579, Sec. 2

### Title 6

§ 298.....	37
------------	----

### Title 8

§ 1101(b)(3) .....	40, 227a
§ 1103(a)(1).....	3, 9, 16
§ 1103(g)(2).....	45
§ 1160(b).....	i, 24, 237
§ 1188.....	50
§ 1201(a)(1)(A),(B).....	25, 233a
§ 1202(f).....	i, 25, 102, 237
§ 1229a(c)(2)(B).....	i, 26, 26a, 237
§ 1301.....	22, 26, 233a
§ 1304(b).....	i, 8, 22-25
§ 1324a(h)(2).....	51

§ 1324c(e).....	39, 29a
§ 1357(f)(2).....	23
§ 1361.....	i, 26, 237
§ 1367(a)(8).....	17, 27
§ 1367(c).....	17
§ 1375a.....	50
§ 1377(c).....	26
§ 1378(e).....	26
§ 1429.....	i, 27, 237
§ 1532(d).....	i, 28, 237
<b>Title 28</b>	
§ 1257.....	1, 3, 230a
§ 2101.....	1
<b>California Business and Professions Code</b>	
§ 6068.....	2, 101a
§ 6126(a).....	41, 90a
§ 6450(a).....	44, 97a
§ 6453.....	2, 101a
<b>Immigration Consultants Act</b>	
§ 22440.....	7, 10, 11, 41, 43, 44, 67a, 91a, 104a
§ 22441.....	45, 67a, 77a, 104a
§ 22441.1.....	68a, 83a, 84a
§ 22442.....	41, 69a
§ 22442.1.....	71a
§ 22442.2.....	41, 49, 72a, 87a
§ 22442.3.....	41, 74a, 87a
§ 22442.4.....	41, 75a, 87a
§ 22442.5.....	76a-79a
§ 22442.6.....	71a, 78a
§ 22443.....	81a
§ 22443.1.....	82a
§ 22443.2.....	83a
§ 22443.3.....	85a
§ 22444.....	85a
§ 22445.....	12, 41, 49, 50, 86a, 90a
§ 22446.5.....	12, 86a, 87a

§ 22447 .....	88a
§ 22448 .....	13, 89a, 228a
§ 22449 .....	7, 11, 41, 49, 89a
<b>California Code of Civil Procedure</b>	
§ 2033.280 .....	20a, 21a, 102a
§ 2033.410 .....	103a
<b>California Penal Code</b>	
§§ 653.55-653.61 .....	39, 105a
<b>REGULATIONS</b>	
<b>Code of Federal Regulations</b>	
<b>Title 6,</b>	
§ 5.30(d) .....	31
§ 5 app. C to Part 5 .....	23, 228a, 234a
<b>Title 8,</b>	
§ 208.6(a) .....	27
§ 245a.21(a) .....	26, 232a
§ 292.1 .....	38, 46, 47, 49, 37a, 164a
§ 292.4(b) .....	26, 49a
§ 1001.1(k) .....	12, 45, 59a
§ 1001.1(m) .....	44, 45, 59a
§ 1001.1(ff) .....	44, 59a, 227a
§ 1003.102 .....	45, 52a, 53a, 227a
§ 1292.1 .....	44, 54a, 58a, 233a
<b>California Code of Regulations</b>	
Title 16, § 3840 .....	41, 64a
<b>RULES OF COURT</b>	
<b>Supreme Court</b>	
Rule 14 .....	iii, 15, 226a
Rule 32.3 .....	3, 18
<b>California</b>	
Rule 8.532(b)(2)(A) .....	1
<b>CITED SISTER STATE STATUTES</b>	
(All Sister State Laws are in App. D.96a-213a)	
<b>Arizona Revised Statutes</b>	
§ 12-2702 .....	48, 115a
<b>Colorado Revised Statutes</b>	

§ 6-1-727 (3)(d)(II).....	47, 119a
Georgia Code	
§ 43-20A-2.....	48, 122a, 138a
Georgia Compiled Rules and Regulations	
546-3-.02 (1)(d).....	48, 142a
546-4-.01 .....	28, 144a
Illinois Compiled Statutes	
815 ILCS 505/2AA (a-5).....	47, 48, 148a
Maine Statutes	
Title 4	
§ 807-B(2)(B).....	47, 157a
Maryland Code	
Commercial Law, Title 14, Subtitle 33	
§ 14-3302.....	47, 164a
New Mexico Statutes	
§ 36-3-2 .....	47, 183a
§ 36-3-7 .....	27, 186a
New York Consolidated Laws	
General Business Law Article 28-C	
§ 460-A(2).....	47, 187a
Oregon Revised Statutes	
§ 9.280(3).....	47, 201a
South Carolina Code of Laws	
§ 40-83-30(C) .....	47, 204a
Utah Code	
§ 13-49-201(1)(b)(ii).....	47, 212a
§ 13-49-303(3)(b)(c).....	49, 212a, 217a
§ 13-49-402.....	27, 221a
Washington Revised Code	
§ 19.154.060(1).....	47, 222a
<b>OTHER RESOURCES</b>	
Black's Law Dictionary (8 <sup>th</sup> ed. 2004).....	13
Federal Register	
<i>Procedures for Asylum and Withholding of</i>	
<i>Removal; Credible Fear and Reasonable Fear</i>	
<i>Review</i> , 85 Fed. Reg. 80274 (Dec. 11, 2020).....	37



In the  
Supreme Court of the United States

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**PETITION FOR A WRIT OF CERTIORARI**

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Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

The order of the California Supreme Court appears at Appendix A 3a to this petition and is unpublished.

The order of the California Second District Court of Appeal Division Seven appears at Appendix A 4a to this petition and is unpublished.

**JURISDICTION**

The California Supreme Court order denying the petition for extraordinary writ was entered December 31, 2024. Under the California Rules of Court, rule 8.532(b)(2)(C) the denial was final upon entry—no rehearing was possible. This petition is timely received for filing if post-marked on or before March 31, 2025, as the 90<sup>th</sup> day, 28 U.S.C. § 2101(c).

This Court has jurisdiction for this petition, invoked by 28 U.S.C. § 1257(a) (“where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution,... or laws of the United States, or where any... right, privilege, or immunity is specially set up or claimed under the Constitution... or statutes of, or any... authority exercised under, the United States.”)

Just as in Case No. 24-817, this case demands a longer than usual jurisdictional statement.

**THIS COURT'S PRECEDENT ESTABLISHES FINALITY  
AND STANDING FOR PURPOSES OF  
JURISDICTION TO REVIEW**

This is an injunction case targeting the careers of those who work in the private sector of immigration. Co-petitioners are suffering from actual injury-in-fact. Petitioner Moreno is therefore suffering actual injury two-fold: as her staff is in peril by an entity without injury and California law commands protecting privilege by all three petitioners at every peril to themselves.

Cal. Business and Professions Code § 6453 "A paralegal is subject to the same duty as an attorney specified in subdivision (e) of Section 6068 to maintain inviolate the confidentiality, and at every peril to himself or herself to preserve the attorney-client privilege, of a consumer for whom the paralegal has provided any of the services described in subdivision (a) of Section 6450."

*Id.*, § 6068(e)(1) "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."

"An allegation of future injury may suffice if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." (*List v. Driehaus*, 573 U.S. 149, 158 (2014)) Petitioners have exhausted state review in an effort to not betray confidences for a matter void for lack of subject matter jurisdiction as the state law violates field, conflict, and obstacle preemption principles, *Arizona v. United States* 567 U.S. 387, 401 (2012).

Therefore, no cause of action exists by command of the Supremacy Clause which each lower court defied, notwithstanding its plain language "and the Judges in every State shall be bound thereby" (U.S. Const. Art. VI, cl.2) "any Thing in the... Laws of

any State to the Contrary notwithstanding" (*id.*) and suffering such an action *is* the injury.

The only remedy remaining is a humble petition before the "one supreme Court"<sup>1</sup> that should address an issue of this magnitude.

This petition, under these circumstances, is fully supported by precedent.

See *Construction Laborers v. Curry*, 371 U.S. 542, 546 (1963) ("the state court had no jurisdiction to issue an injunction or to adjudicate this controversy, which lay within the exclusive powers of the") "Secretary of Homeland Security *shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,*" (8 U.S.C. § 1103(a)(1)).

"Unless this judgment is reviewable now, petitioner will inevitably remain subject to the issuance of a temporary injunction at the request of the respondents and must face further proceedings in the state courts which the state courts have no power to conduct." (*Construction Laborers*, 371 U.S. at 550)

See *Trump v. United States*, 603 U.S. 593, 635, 144 S. Ct. 2312, 2343 (2024) citing *Mitchell v. Forsyth* 472 U.S. 511, 524-530, (1985) wherein at 525, fn. 8, the authority to proceed was provided:

Similarly, we have held that state-court decision rejecting a party's federal-law claim that he is not subject to suit before a particular tribunal are "final" for purposes of our certiorari jurisdiction under 28 U.S.C. § 1257. *Mercantile National Bank v. Langdeau*, 371 U.S. 555 (1963); *Construction Laborers v. Curry*, 371 U.S. 542 (1963).

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<sup>1</sup> U.S. const. Art. III § 1.

Moreover, deference to *Construction Laborers* was announced in *Mercantile Nat. Bank v. Langdeau* 371 U.S. 555, 557-58 (1963): ("*Construction Laborers v. Curry*... there the jurisdiction of any and all state courts was at issue".)

Both *Mitchell* and *Construction Laborers* relied on the same quoted text from *Cohen v. Beneficial Loan Corp.* 337 U.S. 541, 546 (1949) ("that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.")

On the issue of immigration, "This Court granted certiorari before judgment." (*United States v. Texas* 143 S. Ct. 1964, 1969 (2023))

Petitioners Vaca and Agencia are being civilly prosecuted by a plaintiff that lacks standing. Petitioner Moreno's clients are all suffering injury and not even privy to the action seeking to enjoin workers that plaintiff has never interacted with nor suffered injury at the hands of.

The "non-aggrieved" plaintiff lacks standing under federal law and is yet attempting to regulate federal laws. Justice Stevens noted on facts remarkably consistent with the instant plaintiff, that it could not petition this Court. *Nike, Inc. v. Kasky* 539 U.S. 654, 661 (2003), Stevens, J., concurring in dismissing the writ as improvidently granted.

Contrary to plaintiff's lack of standing to enforce, petitioners have standing to petition this Court. *ASARCO Inc. v. Kadish* 490 U.S. 605, 623-24 (1989)

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED IN THE CASE  
Constitution of the United States of America**

**Article VI, Clause 2**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

**Public Law 93-579**

AN ACT

December 31, 1974 [S.3418] To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes.

Privacy Act of 1974.	<i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</i> That this
5 USC 552a note.	Act may be cited as the "Privacy Act of 1974".
Congressional findings.	SEC. 2. (a) The Congress finds that—
5 USC 552a note.	

(1) the privacy of an individual is directly affected by the collection, maintenance, use and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from

any collection, maintenance use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use and dissemination of personal information by such agencies;

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate

for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.

Sec. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

**"§ 552a. Records maintained on individuals...**

## **California Business and Professions Code**

### **Chapter 19.5 Immigration Consultants Act**

#### **§ 22440**

It is unlawful for any person, for compensation, other than persons authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in the business or act in the capacity of an immigration consultant within this state except as provided by this chapter.

§§ 22440-22449 ..... App. C 67a-90a

## INTRODUCTION

States are regulating the persons and manner in which paperwork is being submitted to the Department of Homeland Security and/or the Attorney General. Those two federal entities have already written those same policies and regulations—authorizing what the states are prohibiting.

Aliens that apply for registration are promised federal confidentiality, some of those aliens are now bona fide citizens of the United States, U.S. Constitution amend. XIV. However, California is permitting unfettered access to these registration papers, directly violating 8 U.S.C. § 1304(b) (all registration papers are confidential and release may only be authorized by the Attorney General).

“[T]he Federal Government has occupied the field of alien registration” (*Arizona*, 567 U.S. at 401)

This petition raises two issues of first impression regarding the people that help the alien process that registration and the protection due that registration process.

Many descriptors are used in the Code of Federal Regulations to describe the various roles non-governmental persons play, to frame them all, these will be simply referred to as “the private sector.”

Another plain English way of posing the questions is thus:

Does “the field of alien registration” encompass the private sector that processes that registration?

Does “the field of alien registration” encompass the private sector *seeking to regulate* that registration?

Does “the field of alien registration” encompass federal confidentiality protecting that registration paperwork?



Of the myriad of problems created by the states helping with regulating the registration of aliens, one in particular is the reason for this petition. By federal law, 8 U.S.C. § 1103(a) "determination and ruling by the Attorney General with respect to all questions of law shall be controlling." (See *post* at 17) If this Court denies review, Petitioners' only recourse will be to ask the Attorney General to overrule a state court judge's order to release federally confidential registration papers.

The volume of constitutional problems that remedy involves is impressive.

**STATEMENT  
THE PARTIES AND PROCEDURE IN THE  
STATE COURT CASE**

Petitioner Laura Vaca has been deep in the alien registration trenches since 1989. (R.554, 557)

Vaca is the CEO of her paralegal service corporation, the other petitioner, Agencia Privada de Inmigracion, Inc. (API) (R.134) (translated from Spanish means Private Immigration Agency), both are not immigration consultants as a matter of law.

Both Vaca and API are paralegals working under the direction and supervision of Petitioner Leticia Moreno, an actual immigration law attorney, that also started in 1989. Thus, falling under her protective umbrella. R.222, 554, 556

To say that our files are uncountable is an understatement.

The state court and plaintiff were formally put on notice, twice, that the ICA was not applicable in this case.

Laura Vaca has been working as a paralegal under my supervision since we were young women. I am a certified immigration law instructor. [¶] I declare under penalty of perjury

that the foregoing is true and correct under the laws of the state of California. [¶] Leticia Moreno R. Vol. 4, pp. 2897 and 3278

The ICA commences with:

Cal. Bus. & Prof. Code § 22440 "It is unlawful for any person, for compensation, other than persons authorized to practice law or *authorized by federal law* to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in the business or act in the capacity of an immigration consultant within this state *except as provided by this chapter.*"

If a person is authorized by federal law, then the inquiry is complete. California dictates that additional persons are authorized, notwithstanding federal law, to represent persons before the BIA or USCIS.

A person qualifies to be regulated by the ICA if "that person gives nonlegal assistance or advice on an immigration matter." *Id.*, § 22441(a) And notably: (b) "Immigration matter" means any proceeding, filing, or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the United States Citizenship and Immigration Services, the United States Department of State, or the United States Department of Labor."

Would an immigration law attorney and her immigration law paralegals engage in immigration consultant services?

*Id.*, (d) Every person engaged in the business or acting in the capacity of an immigration consultant *shall only offer nonlegal assistance or*

*advice in an immigration matter* as defined in subdivision (a). Any act in violation of subdivision (a) is a violation of this chapter.

Naturally this begs the question why all of these Petitioners are here seeking an audience on the ICA.

Starting in 2017 an attorney with very limited immigration experience and her son, a new member of the bar as of 2012 began their mission, "to shut down illegally operated immigration consultant businesses in the State of California." (Complaint ¶ 1) R.833

That statement means the target is every single immigration consultant, see *post* p.41, and has now extended to include non-immigration consultants, i.e., federal practitioners. Their weapon of choice is California's ICA codified at Cal. Business and Professions Code §§ 22440-22449.<sup>2</sup>

Operations began in Los Angeles Superior Court, when their Plaintiff Immigrant Rights Defense Council LLC, a California based entity, began filing 90 "essentially identical seven-page complaints,... plaintiff pleads a sole cause of action for **injunctive relief** against the defendants based on plaintiff's information and belief that the defendants have violated *each and every* enumerated provision of the ICA". (Order in Los Angeles Superior Court case no. BC678747, 2/22/18, deeming all matters related, R.1631) That number has grown to over 337 "essentially identical seven-page complaints", save for the new name added to the complaint devoid of facts, alleging legal conclusions. JN.1472<sup>3</sup>

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<sup>2</sup> All future undesignated Code references are to the California Business and Professions Code, set out in their entirety in App. C.67a-89a

<sup>3</sup> In Case No. 24-817, a request for judicial notice was submitted to the California Supreme Court which was granted. R.190. And

Vaca and API received one of these complaints on Sept. 11, 2023 (R.833) and upon doing some research, learned about the wide-spread abuses engaged in by Plaintiff. JN.2689, and JN generally.

All persons that are targeted by this Plaintiff, whether immigration consultants or practitioners are authorized by federal law, 8 C.F.R. § 1001.1(k), (m) and many other provisions as discussed later.

All by a Plaintiff that lacks standing under state and federal law. To ascertain this fact, all one needs to do is ask Plaintiff.

“Plaintiff, as a **non-aggrieved** person, is **not entitled to civil penalties** and, in any event, **does not seek such penalties** in this case. Bus. & Prof. Code § 22445(a) (penalties may only be collected by law enforcement or a private plaintiff **injured** by the violations).” (R.1274:16-19)

“Plaintiff falls under subdivision (b), which provision deputizes members of the public to bring *qui tam* enforcement actions for injunctive relief on behalf of the general public against violators of the ICA.” (R.1272:16-18) (Referencing § 22446.5(b); App. C.88a)

Under California law, the fact that Plaintiff admits it is not entitled to civil penalties negatives its assertion that it can be *qui tam*.

“By definition, *qui tam* rights have never existed without statutory authorization. As a result, courts have been required to develop criteria to determine whether a given statute in fact authorizes *qui tam* enforcement.” (*Sanders v. Pacific Gas Elec. Co.*, 53 Cal.App.3d 661, 671 (Cal. Ct. App. 1975)) And then continued with:

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was included in the instant record as well, R.1462-2793. For brevity and clarity will be cited herein as “JN”.

“Traditionally, the requirements for enforcement by a citizen in a qui tam action have been (1) that the statute **exacts a penalty**; (2) that part of the penalty be **paid to the informer**; and (3) that, in some way, the informer be **authorized to bring suit to recover the penalty**.” (*Sanders* [at] 671) [Emphasis added.] *Iskanian v. CSL Transportation Los Angeles, LLC*, 59 Cal.4th 348, 382 (Cal. 2014)<sup>4</sup>

Therefore, Plaintiff disqualified itself under *qui tam* jurisprudence. Also absent is the requisite “giving the executive notice of or permitting it to exercise control over qui tam actions” (*Cal. Bus. & Indus. All. v. Becerra*, 80 Cal.App.5th 734, 747 (Cal. Ct. App. 2022)). Moreover this “non-aggrieved” plaintiff suffered no injury. According to Black’s Law Dictionary (8<sup>th</sup> ed. 2004) p. 3548: “aggrieved party. A party entitled to a remedy.” Basic logic dictates a non-aggrieved party is not entitled to a remedy; this is supported by the key statute in the ICA:

“Any civil action to enforce any cause of action pursuant to this chapter shall not... be deemed to have accrued until the discovery, by the **aggrieved** party, of the facts constituting the violation.” (§ 22448) “[A] cause of action . . . invariably accrues when there is a remedy available.” [Citation.]” (*Heyer v. Flaig* 70 Cal.2d 223, 230 (Cal. 1969).)

“Standing is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff. [Citations.]” (*People ex rel. Becerra v. Superior Court* 29 Cal.App.5th 486, 495 (Cal. Ct. App. 2018).)

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<sup>4</sup> “We hold that the FAA preempts the rule of *Iskanian* insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” (*Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 1924 (2022))

“‘[T]o obtain an injunction, a party must show injury *as to himself*’ [citation.]” (*Id.*, at 496) “There is no general ‘public interest’ exception to the requirement of standing. [Citation.]” (*Id.*, at 497) “We are unaware of any case holding that the plaintiff did, in fact, lack standing yet allowing the action to proceed based solely on the public interest.” (*Id.*, at 498) “Public interest standing, however, is available only in a mandate proceeding, not in an ordinary civil action. [Citation.]” (*Id.*, at 503)

There is a first for everything. As this plaintiff is repeatedly being permitted, by multiple dozens of California courts, to regulate a field fully occupied by federal law.

All California authority precludes this Plaintiff from continuing the action seeking an injunction without injury, especially: “The same principle holds true here and appellant—a self-described ‘watchdog association ... conceptualized by an *experienced immigration attorney*’—does not fall within the class of persons the ICA was designed to protect. (Italics added.)” (*Immigrant Rights Defense Council, LLC v. Hudson Ins. Co.* 84 Cal.App.5th 305, 317 (Cal. Ct. App. 2022).)

California courts are refusing to honor their own law, denying protection to those in the private sector of alien registration, subjecting persons authorized by federal law to injunctions by a plaintiff that lacks standing.

Precluding aliens from receiving affordable assistance during the registration process, despite DHS expressly permitting so and authorized by federal regulations, *post* pp.44-45. Therefore, there is definitive need for a holding by this Court that federal preemption precludes this State interference.

Compounding the harm was the event that catapulted Petitioners and their attorney to intervene was the order obtained that obliterated federal confidentiality to afford this non-aggrieved plaintiff unfettered access to immigration files. For the sole claimed purpose of inspecting to see if federal practitioners complied with state regulations of a field fully occupied by federal law and yet criminalizes that federally authorized conduct.

### RAISING FEDERAL ISSUES

"The Supreme Court, courts of appeal, superior courts, and their judges... have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition." (Cal. Const. art. VI § 10). The last action in state court was an original action.

Preemption was forcefully asserted at every level, repeatedly. As permitted by Rule 14.1(g)(i), the 1,800 words quoting from the record showing how preemption was raised is set out at App.E.226a-235a

The preemption issue was "definitely brought to the court's attention." (*Live Oak Assn. v. R.R. Comm.*, 269 U.S. 354, 357 (1926)) "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it" (*Raley v. Ohio*, 360 U.S. 423, 436 (1959)) and it is "not necessary that the ruling shall have been put in direct terms. If the necessary effect of the judgment has been to deny the claim, that is enough." (*Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928))

There was no "fail[ure] to meet a state procedural requirement" (*Coleman v. Thompson* 501 U.S. 722, 730 (1991)) when the highest state court judicially noticed the factors relevant to preemption, then passed on the federal preemption issue, thus it is correct for this Court to consider it.

## REASONS FOR GRANTING REVIEW

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This Court held conference in case no. 24-817 on March 28, 2025, raising preemption on the ICA. The result was unknown at the time of printing.

If the Court granted the petition in case no. 24-817 then a full discussion herein re-iterating those points will not serve the Court. If the Court denied that petition, then new or different issues are clearly warranted. However, if the denial was for a technical reason, to serve both above points, as confidentiality need attentions and since that confidentiality also ties into preemption that topic will still be raised but not as in-depth as done in case no. 24-817.

### I. JUSTICIABILITY OF THE QUESTIONS BEFORE THIS COURT IS PROPER UNDER THE CONSTITUTION

8 U.S.C. § 1103(a) “**Secretary of Homeland Security** (1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens... *Provided, however,* That determination and ruling by the Attorney General with respect to all questions of law shall be controlling.”

The several state laws and the state case addressed later usurped the Attorney General’s power. However, if preemption under Article VI cl. 2 of the federal Constitution applies to the states falls under the “emphatic... province and duty of the Judicial Department to say what the law is. ... This is of the very essence of judicial duty.” (*Marbury v. Madison*, 5 U.S. 137, 178 (1803)) See *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 423-30 (1995).



## II. TWO FIRST IMPRESSION ISSUES RELATED TO NATIONAL SECURITY

Question two will be broken into two aspects of first impression.

### A. THE SCOPE OF INTENDED PRIVACY PROTECTION WHEN INFORMATION IS GATHERED AT THE GOVERNMENT'S REQUEST

How can information solicited by the federal government and submitted to the federal government for its use and therefore falls under a number of federal protections, simply be circumvented because it is held by the private sector? This question has been pestering Petitioner ever since plaintiff argued in its Reply to obtain the orders in question:

"More importantly, however, the arguments are spurious because the discovery in this action is not geared towards disclosure by any federal agency or federal employee... See 8 USC § 1367(a)(2)... The penalty provision cited by Defendant Vaca, 8 USC § 1367(c), does not apply to any party in this case and especially does not apply to a court that compels a defendant to produce directly relevant discovery in a civil lawsuit—again, the penalty provision solely applies to immigration officials who leak documents that have been submitted to them. 8 USC § 1367(a), (c)." R.1443

Despite other aspects of the confidentiality issue being well researched, the exact language of Question Two was arrived at specifically the night before submitting this petition to the printer. Leaving not much time to conduct research.

Yet Petitioner read in a recent article about the Chief Justice's interest in the future of AI and its role in the legal profession. There is no doubt that AI is

playing catch-up on many aspects of real world functions and appears to struggle more with law than other topics. Yet still has proven to be a fantastic starting point for research. But just like any AI query, it starts with a good prompt.

Given the limited time to research, the prompt became all important and the result equally so. For better or worse, below is the entire<sup>5</sup> prompt submitted to and response generated by LexisNexis® Protégé:

### **Legal Standards/Rules**

#### **1. Privacy Act of 1974 (5 U.S.C. 552a):**

- The Privacy Act prohibits federal agencies from disclosing records contained in a system of records without the written consent of the individual to whom the record pertains, except under specific circumstances. *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749 (1989) *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487 (1994)
- The Act limits the government's ability to maintain records about individuals to those that are relevant and necessary to accomplish a lawful purpose.
- Criminal liability is imposed for willful violations of the Act's nondisclosure obligations.

#### **2. Freedom of Information Act (FOIA) (5 U.S.C. 552):**

- FOIA requires federal agencies to make records available to the public, subject to exemptions designed to protect personal privacy and other interests. *NLRB v. Robbins Tire & Rubber Co.*,

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<sup>5</sup> Word count caused the prompt and introduction to be moved to the appendix at 237a-239a. The case years have been added to the response cites as well as formatting text and paragraphs adjusted.

437 U.S. 214 (1978) *Milner v. Dep't of the Navy*,  
562 U.S. 562 (2011)

- Agencies may redact identifying details to prevent an unwarranted invasion of personal privacy.

### 3. Public Law 93-579, Sec. 2:

- This law recognizes the right to privacy as a fundamental right and emphasizes the need to regulate federal information systems to protect individual privacy.

### Analysis

The question of whether information collected by private entities at the federal government's request and transmitted to it falls under federal confidentiality protections is not directly addressed in the search results. However, the Privacy Act provides a strong basis for arguing that such information, once incorporated into a federal system of records, should be subject to the same protections as other federal records. *NASA v. Nelson*, 562 U.S. 134 (2011) *Doe v. Chao*, 540 U.S. 614 (2004)

### 1. Strengths of the Question:

- The Privacy Act explicitly prohibits the disclosure of records in a federal system without the individual's consent, suggesting that any information transmitted to the federal government becomes subject to these protections. *NASA v. Nelson*, 562 U.S. 134. *Doe v. Chao*, 540 U.S. 614
- Public Law 93-579, Sec. 2, underscores the importance of protecting individual privacy in federal information systems, which supports the argument that Congress intended broad confidentiality protections.

- The Act's criminal liability provisions for willful violations highlight the seriousness of maintaining confidentiality.

## **2. Weaknesses of the Question:**

- The search results do not reveal any Supreme Court or circuit court decisions directly addressing whether private data collected at the government's request becomes federally protected. This lack of precedent may weaken the argument's persuasiveness.
- FOIA's emphasis on public access to records, with limited exemptions, could be interpreted as limiting the scope of confidentiality protections. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487

## **3. Unresolved Questions and Circuit Disagreements:**

- The search results do not indicate any circuit court disagreements on this issue. The absence of conflicting decisions may reduce the likelihood of the Supreme Court granting certiorari.

## **4. Limits of Government-Requested Private Data Becoming Federally Protected:**

- FOIA case law suggests that federal agencies must balance transparency with privacy protections, but it does not explicitly address the status of private data collected at the government's request. *Taylor v. Sturgell*, 553 U.S. 880 (2008) *United States DOJ v. Tax Analysts*, 492 U.S. 136 (1989)

## **Conclusion**

The question of whether information collected by private entities at the federal government's request and transmitted to it falls under federal confiden-

tiality protections is a novel and unresolved issue. While the Privacy Act and Public Law 93-579, Sec. 2, provide a strong foundation for arguing that such information should be protected, the lack of directly applicable precedent and circuit court disagreements may limit the question's strength as a basis for a petition for certiorari. Nonetheless, the issue raises important questions about the scope of federal privacy protections and the limits of government-requested private data becoming federally protected, which could warrant further judicial consideration.

END AI RESPONSE

That exemplifies one of AI's most powerful contributions to the law, the ability to review all of it and search for situations that yield negative results. A task that would take a human months to conclude.

The issue has not been addressed allowing the Court to clarify the point before further decimation of federal law occurs and before disagreement between the circuits *could* form.

Now we introduce back into the equation the human legal mind aspect. Given the intentions of Congress are strong as noted, luckily, there were some precedent on hand from this Court that gives further guidance on the issues.

Noting that federal statutes "provide a full set of standards governing alien registration," we concluded that these laws "reflect[ ] a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards." *Id.*, at 401, 132 S.Ct. 2492. What this means is that the federal registration provisions not only impose federal registration obligations on aliens but also confer a federal

right to be free from any other registration requirements.

In sum, regardless of the language sometimes used by Congress and this Court, every form of preemption is based on a federal law that regulates the conduct of private actors, not the States.

*Murphy v. Nat'l Collegiate Athletic Ass'n* 138 S. Ct. 1461, 1481 (2018)

And as to the obligation to violate federal law to comply with the ICA, just after citing to *Arizona*:

In such situations, Congress has forbidden the State to take action in the *field* that the federal statute pre-empts.

By contrast, conflict pre-emption exists where “compliance with both state and federal law is impossible,” or where “the state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”

*California v. ARC America Corp.*, 490 U.S. 93, 100, 101 (1989). In either situation, federal law must prevail.

*Oneok, Inc. v. Learjet, Inc.* 575 U.S. 373, 377 (2015)

Now moving onto the other issue of first impression. Researched well in advance.

**B. DIRECTLY IN-LINE WITH ARIZONA’S HOLDING,  
REGISTRATION PAPERWORK IS CONFIDENTIAL AND  
YET AN ISSUE OF FIRST IMPRESSION, ALMOST.**

Within the United States Code, Title 8, Chapter 12 Immigration and Nationality, Subchapter II Immigration, Part VII **Registration of Aliens** §§ 1301-1306, is found:

8 U.S.C. § 1304(b) (“**Confidential nature.** All registration and fingerprint records made under the provisions of this subchapter **shall be confidential,**

and shall be made available *only* (1) pursuant to section 1357(f)(2) of this title,<sup>6</sup> and (2) to such persons or agencies as may be designated by the Attorney General.”)

In only three cases has this Court referred to 8 U.S.C. § 1304. Involving subsections (a) and (e) twice; as to (e) once in *INS v. Delgado* 466 U.S. 210, 235 (1984), Brennan and Marshall, JJ., concurring and dissenting; as to (a) once in *United States v. Witkovich* 353 U.S. 194, 204 (1957), Clark, J. dissenting; and both (a) and (e) in *Arizona*, 567 U.S. at 401. The very next paragraph held:

“Where Congress occupies an entire field, as it has in the field of alien registration, even complementary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.” (*Arizona*, 567 U.S. at 401)

As to 8 U.S.C. § 1304(b) declaring registration documents confidential, the subsection serves as a starting point for 6 C.F.R. § 5 app. C to Part 5. Which is a massive regulation, comprised of 72,355 words over 138 pages, declaring the numerous reasons why these records are exempt from FOIA requests by highlighting national security, terrorism, protecting the President, etc.

There are only two cases in the nation that have referenced it: “barred by other legal authority, such as 8 U.S.C. § 1304(b) and the Privacy Act, 5 U.S.C. § 552a(b).” (*Loa-Herrera v. Dept. Homeland Security*,

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<sup>6</sup> 8 U.S.C. § 1357(f)(2) (“Such **fingerprints and photographs** shall be made available to Federal, State, and local law enforcement agencies, upon request.”)

239 F. App'x 875, 881 (5th Cir. 2007)<sup>7</sup>; and a thorough discussion in one other.

"However, § 1304(b) limits that discretion by requiring that registration records be made confidential. 8 U.S.C. § 1304(b)." (*Ascencio-Guzman v. Chertoff* (S.D. Tex., Apr. 15, 2009, CIVIL ACTION No. B-94-215) p. 9)<sup>8</sup> The only case in the country to discuss this statute's subsection (b) at length.

Under its previous language only one case was located that discussed subsection (b).

The appellant contends that those records, and copies made from them, were improperly admitted, because Congress has expressly made them confidential, to be released only by the Attorney General. (fn.6) The appellant correctly points out that there was no showing before the Commissioner that the Attorney General had consented to the production of the records in question.

*Argento v. Horn*, 241 F.2d 258, 263 (6th Cir. 1957)

*Ibid.* fn. 6: ("All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only to such persons or agencies as may be designated by the Attorney General." 8 U.S.C.A. § 1304(b).")

The author of that discussion of 8 U.S.C. § 1304(b), in *Argento*, was sworn-in the following year to this Court, Mr. Justice Potter Stewart.

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<sup>7</sup> Unpublished per curiam opinion.

<sup>8</sup> It appears that the latter was an extension of the former, *sub nom.* Both reference a prior decision leading to the current opinion: "*Loa-Herrera v. Trominski* 231 F.3d 984 (5th Cir. 2000)" (*Loa-Herrera*, 239 F. App'x at 877) "*Loa-Herrera, et al. v. Trominski, et al.*, 231 F.3d 984, 988 (5th Cir. 2000)" (*Ascencio-Guzman* at p. 2)



**C. THE ABOVE ARGUMENTS IN A AND B CREATE  
SUPPORT FOR THE OTHER, BASED ON PRECEDENT.**

The District Court in *Ascencio-Guzman* also discussed another statute at great length. That statute also noted an aspect highly relevant to this case and links directly to the previous section. See *Records maintained on individuals* 5 U.S.C. § 552a(d)(5) ("nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.")

Addressing that statutory scheme: "Our cases provide support for the proposition that categorical decisions may be appropriate and individual circumstances disregarded when a case fits into a genus in which the balance characteristically tips in one direction." (*U.S. Dept. of Justice v. Reporters Committee*, 489 U.S. 749, 776 (1989))

**D. IT IS THE LAWS WHEN READ AS A HARMONIOUS  
WHOLE THAT GIVE CAUSE FOR THIS COURT TO  
ADDRESS THIS MATTER OF FIRST IMPRESSION AS  
FOUND IN CONFLICT PREEMPTION THAT FIRMLY  
ESTABLISHES THE PRIVACY RIGHTS AND  
PROFESSIONAL OBLIGATIONS CANNOT COEXIST  
WITH STATE LAW**

Confidentiality of alien registration paperwork, 8 U.S.C. § 1304(b), finds a universally common starting point.

Whether one is an immigrant or nonimmigrant alien, it all begins with one "who has made proper application therefor," (8 U.S.C. § 1201(a)(1)(A),(B)). The important word used was *proper* as that permits step two. "Each alien who applies for a visa shall be registered in connection with his application," (*id.*, (b)) "No visa shall be issued to any alien seeking to enter the United States until such alien has been registered

in accordance with section 1201(b) of this title.” (*Id.*, § 1301)

Numerous federal laws limit the access that California is granting. Some examples include the following, as determined by Congress:

8 U.S.C. § 1377(c) (“**Availability to public.** Copies of the data collected under subsection (a) shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.”) Nearly identical language in 8 U.S.C. § 1378(e) (“**Availability to public.**”)

8 U.S.C. § 1367 “Penalties for disclosure of information” (c) “**Penalties for violations.**

Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [8 U.S.C. 1229(e)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation.”

Congress authorized the Attorney General and Secretary of the Department of Homeland Security to declare:

8 C.F.R. § 245a.21(a) (“No person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, will be permitted to examine individual applications.”)

8 C.F.R. § 292.4(b) (“A party to a proceeding and his or her attorney or representative will be permitted to examine the record of proceeding in accordance with 6 CFR part 5.”)

See e.g., *Reyes v. Snowcap Creamery, Inc.* 898 F. Supp. 2d 1233, 1235-37 (D. Colo. 2012) (Order compelling discovery of immigration file reversed in

favor of privacy) Accord, *La v. Holder* 701 F.3d 566, 573 (8th Cir. 2012) citing to "shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Secretary." (8 C.F.R. § 208.6(a))

See also, *FBI v. Superior Court of Cal.*, 507 F. Supp. 2d 1082, 1092-93 (N.D. Cal. 2007) (holding that FBI agents could not be compelled by a state subpoena to provide documents in violation of DOJ regulations precluding disclosure). Similarly, both the DOJ and Congress preclude disclosure here.

Congressional limitations include:

8 U.S.C. § 1367(a)(8) "Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the **discretion** of either such Secretary or the Attorney General for the disclosure of information **to national security officials** to be **used solely for a national security** purpose in a manner that protects the confidentiality of such information.")

Such appears to militate against any non-aggrieved U.S. national collecting these documents.

#### **E. SISTER STATES DEROGATING FEDERAL PRIVACY**

Utah Code § 13-49-402(1) inspection (c) "require the production of any books, papers, documents, merchandise, or other material relevant to the investigation." (2) "A person who violates" (b) no "more than \$5,000 for each separate violation" or (4) (a) "intentionally violates" (ii) "fined up to \$10,000." (App.D.221a)

N.M. Stat. § 36-3-7 ("Any information required to be filed by any subsection of the Immigration and Nationality Law Practice Act shall be a matter of public record and shall be disclosed by the attorney general upon written request").(App.D.186a)

Ga. Comp. R. & Regs. 546-4-.01 ("Such records shall be subject to reasonable periodic or special inspections by the Secretary of State. An inspection may be made at any time and without prior notice. The Secretary of State may copy and remove any record the Secretary of State reasonably considers necessary or appropriate to conduct the inspection.")(App.D.144a)

Thus, while this may be an issue of first impression being posed to the courts, it is one acted on by state legislatures contravening the acts of Congress.

**F. THESE FIRST IMPRESSION ISSUES RELATE TO  
ESTABLISHED PRECEDENT AND THUS NECESSARY TO  
ADDRESS TO PREVENT FURTHER DISCRIMINATION  
AGAINST FEDERAL LAW**

Based on research, it appears that both the issues relating to the processing aspect of alien registration and scope of federal privacy protection are matters of first impression for the Court.

Affording this Court the important opportunity to address this aspect of preemption before more persons are subjected to this discrimination.

When a state refuses to hear pleas based on federally created rights while it takes cognizance of those created by state law, there may be invalid discrimination because by the Supremacy Clause federal laws are made laws of the state. Therefore to allow a suit based on state law and to refuse one based on federal law could "discriminate" without any reason for the classification.

*United States v. Burnison*, 339 U.S. 87, 94 (1950)

The defense afforded by federal law is being discriminated against without any reason. And if a

reason must be attached, it is plainly for tending to alien registration.

The federal confidentiality granted to all clients is being cast aside in favor of a state law that is preempted as to its purpose and result.

Moreover, addressing this now saves state legislatures' time as there are now some 30 states that have pitched-in to help govern alien registration. Causing the Department of Homeland Security and Attorney General to have their preempted field be subject to 30 differing standards of how paperwork shall be produced and privacy protected.

**III. THE PRIVACY RIGHTS OF MILLIONS OF  
ALIENS HAS BEEN IMPERILED WITH DEEP  
AND LONG-TERM CONSEQUENCES THAT  
WILL ONLY WIDEN UNLESS THIS COURT  
STOPS WHAT HAS BEGUN**

The blueprint has now been drafted and will be replicated. With game this bountiful afoot, more wolves will descend to engage this hunt.

The Plaintiff in this matter is a fiction known as a Limited Liability Company, solely managed by its sole member, a different Limited Liability Company from Delaware. Two U.S. nationals, suing under the Immigration Consultants Act, though boasting they are non-aggrieved, also claim right to review that which Congress, the Department of Homeland Security and the Department of Justice deem jeopardize national security, intelligence, the President, as the information can relate to terrorism, national infrastructure, funding the black market, and basically everything bad we try to stop.

What is occurring here, can be replicated by anyone seeking a victim of crime, looking for patterns or just a lost comrade-in-arms. Or it could be as

innocent as hate groups looking for minorities to harass.

The Supremacy Clause provides that the Constitution, federal statutes, and treaties constitute "the supreme Law of the Land." Art. VI, cl. 2. The Clause provides "a rule of decision" for determining whether federal or state law applies in a particular situation. [Citation]. If federal law "imposes restrictions or confers rights on private actors" and "a state law confers rights or imposes restrictions that conflict with the federal law," "the federal law takes precedence and the state law is preempted." [Citation] *Kansas v. Garcia*, 140 S. Ct. 791, 801 (2020)

California is endorsing a different approach. Granting discovery demands such as:

"ALL DOCUMENTS REFERRING TO YOUR customers, including, *without limitation*, copies of **documents filed** on behalf of YOUR customers, copies of **case files**, copies of **case notes** referring to YOUR customers by YOU, etc." R.848, 910, 990, 1336, 1399

Those files are like a master key, the Department of Homeland Security opens up its books to data, lots and lots of data, that is now readily available. Can DHS fulfill its mission if they cannot trust their own system anymore?

If we assume each of these offices possess a modest 1,000 client files, then 330,000 files were surrendered to this Plaintiff. Of course, when Petitioner says files, that means human beings and all of their data. Hard working good people that abided the law, not knowing the tradeoff would be a total loss of all their intimate details.

Yet if each of the 330 possessed only 3,000 files, then we are at a million files in one U.S. national's hands. Throw in access to Petitioners and other long

timers and Plaintiff rapidly hits multiple millions. California shows no signs of reigning in access.

6 C.F.R. § 5.30(d) (*"Court of competent jurisdiction. It is the view of DHS that under the Privacy Act the Federal Government has not waived sovereign immunity, which precludes state court jurisdiction over a Federal agency or official. Therefore, DHS will not honor state court orders as a basis for disclosure, unless DHS does so under its own discretion."*)

**IV. BOTH THE DEPARTMENT OF HOMELAND SECURITY AND THE ATTORNEY GENERAL ACKNOWLEDGE AND ACCEPT THE ROLE OF THE PRIVATE SECTOR**

USCIS and DHS explicitly condone the private sector beyond recognized practitioners.

"We take judicial cognizance of all matters of general knowledge." (*Muller v. Oregon*, 208 U.S. 412, 421 (1908))

There are 103 forms listed on the website:  
<https://www.uscis.gov/forms/all-forms>

Because those forms are available to all, they extend beyond this record, while core to the controversy of state's interference with the registration process, it appears ethical and proper to direct the Court's attention to DHS recognition appearing at the end of numerous immigration forms:

***"Preparer's Statement"***

7.a. ☐ I am not an attorney or accredited representative but have prepared this application on behalf of the applicant and with the applicant's consent.

7.b. ☐ I am an attorney or accredited representative and my representation of the applicant in this case  
☐ extends ☐ does not extend beyond the preparation of this application.

**NOTE:** If you are an attorney or accredited representative whose representation extends beyond preparation of this application, you may be obliged to submit a completed Form G-28<sup>9</sup> (App.F.242a, the last page of this book.)<sup>9</sup>

In all of the following forms, the above is either not solicited at all; solicits preparer information but without clarifying as in 7.a, 7.b; solicits with the above clarification; or is for accredited representatives only.

Form	Does not solicit	Solicits without clarifying	Solicits with clarification	Rep. only
AR-11	X			
EIOR-29				X
G-28				X
G-28I				X
G-325A		X		
G-884			X	
G-1041	X			
I-90			X	
I-102		X		
I-129CW			X	
I-129CWR			X	
I-129F		X		
I-129S		X		
I-130			X	
I-131		X		
I-131A			X	

<sup>9</sup> That text is absent from Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) because by definition it would never apply to others in the private sector.



Form	Does not solicit	Solicits without clarifying	Solicits with clarification	Rep. only
I-134		X		
I-140		X		
I-191		X		
I-192		X		
I-193		X		
I-212		X		
I-290B <sup>10</sup>		X		
I-356		X		
I-360			X	
I-361			X	
I-363			X	
I-407		X		
I-485		X		
I-485 SuppA		X		
I-485 Supp J	X			
I-508		X		
I-526			X	
I-526E			X	
I-539		X		
I-566		X		
I-589			X	
I-600		X		
I-600A		X		

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<sup>10</sup> Notice of Appeal or Motion

Form	Does not solicit	Solicits without clarifying	Solicits with clarification	Rep. only
I-601		X		
I-601A			X	
I-602		X		
I-612			X	
I-687			X	
I-690		X		
I-693		X		
I-694 <sup>11</sup>			X	
I-698		X		
I-730			X	
I-751			X	
I-765			X	
I-765V			X	
I-800			X	
I-800A			X	
I-817		X		
I-821			X	
I-821D		X		
I-824		X		
I-829		X		
I-864		X		
I-864A		X		
I-864EZ		X		
I-865			X	

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<sup>11</sup> Notice of Appeal

Form	Does not solicit	Solicits without clarifying	Solicits with clarification	Rep. only
I-881		X		
I-905			X	
I-907			X	
I-910			X	
I-912			X	
I-914			X	
I-918			X	
I-929		X		
I-941		X		
I-945	X			
I-956			X	
I-956F			X	
I-956G			X	
I-956H			X	
I-956K			X	
N-300			X	
N-336			X	
N-400		X		
N-426	X			
N-470			X	
N-565			X	
N-600			X	
N-600K			X	
N-644	X			
N-648	X			

Not all 103 forms were relevant to this inquiry. Of the above listed 88 forms, two were only for accredited representatives and one for foreign attorneys, seven did not solicit any information about the preparer, 41 asked to clarify if accredited or not, 37 only asked for the preparer's information.

Those in charge of immigration registration have declared that non-accredited persons are welcome to prepare the forms to be submitted to DHS, the BIA and all aspects governed by the ICA.

Yet the ICA criminalizes those same persons if they do not comply with California's excessively burdensome requirements. Falling squarely within conflict preemption.

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When preparing the petition and gathering the 30 jurisdictions that regulate alien registration, a theme was noticed.

These laws were often enacted in the name of goodness and decency from the earnest desire to protect the aliens (that they call immigrants due to lack of knowledge about the subject). States really seem to care about these foreigners in their territory. Georgia, New York, Utah, Michigan, Illinois, South Carolina, Maine, Arizona and New Mexico really care a great deal. Like squeezing a puppy so tightly with all that love.

Georgia's regulations and statutes take up 24 pages in the appendix, compared to 13, 11, 10, 8, 6, 6, 5 and 4 respectively. Yet it is California's 30 pages in the appendix that show the most "protection."

The thought did also occur, that maybe too much love is precluding aliens from being able to obtain help they can afford. Which could foreseeably result in removal or lost rights.

"It is always with the best intentions that the worst work is done."

— Oscar Wilde, The Plays of Oscar Wilde (1895)

Commenters' concerns about problems that may arise between an alien and his or her representative are speculative. Regardless of the rulemaking, such concerns are not without redress: an alien could file an ineffective assistance of counsel claim, *see, e.g., Sow*, 949 F.3d at 1318-19, or an alien could claim that immigration consultant fraud (or the like) is an extraordinary circumstances, *see Viridiana*, 646 F.3d at 1238-39.

*Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 Fed. Reg. 80274, 80360 (Dec. 11, 2020) Authored by: "Department of Homeland Security; Executive Office for Immigration Review, Department of Justice." (*Id.*, at 80274)

"The Departments are publishing this final rule pursuant to their respective authorities under the Immigration and Nationality Act ('INA') as amended by the Homeland Security Act of 2002 ('HAS'), Public Law 107-296, 116 Stat. 2135." (*Id.*)

The entities that are charged with knowing the most about alien registration acknowledge the private sector, embrace them and even admit that mistakes happen but there are workarounds.

If there was a problem, the Secretary would know about it, and required to act on it:

6 U.S.C. § 298 ("(a) Annual report (2) Matter included The report shall address the following with respect to the period covered by the report: (E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those griev-

ances were resolved. (F) Plans to address grievances and improve immigration services.”)

### V. THE CALIFORNIA COURTS HAVE ADDRESSED THE ISSUE OF PREEMPTION

The state court of last resort passed on the issue of preemption.

According to Plaintiff, “Binding uncontroverted precedent has held that the ICA is *not* preempted by federal law. *People v. Salcido* (2019) 42 Cal.App.5th 529, 533 (“[W]e will hold that federal law does not preempt the application of the [ICA]....”).” R.1075

The above was the second opinion on the case after the review was granted and sent back down in *People v. Salcido* (Cal. S256283 10/23/2019), on another issue, passing on the preemption.

*People v. Salcido*, 42 Cal.App.5th 529, (Cal. Ct. App. 2019) never once discussed or even acknowledged *Arizona*, the true uncontroverted and binding precedent here. Rather *Salcido* cited a case relying on “*De Canas v. Bica* (1976) 424 U.S. 351, 354-355,” (*Salcido*, 42 Cal.App.5th at 538) “Current federal law is substantially different from the regime that prevailed when *De Canas* was decided.” (*Arizona*, 567 U.S. at 404)

“Accordingly, the presumption against preemption applies fully here. [¶] **B. Relevant Federal Law.**” (*Salcido*, 42 Cal.App.5th at 538-39) After discussing numerous federal laws, the discussion turned to the ICA, as a “longstanding subject of state regulation in the first instance” (*id.*). *Salcido* addressed at length 8 C.F.R. § 292.1 which notes (b) “1952,...practice before the Board...”)

“The Legislature enacted the ICA in 1986 (Stats. 1986, ch. 248, § 11, p. 1213) in response to the federal Immigration Reform and Control Act of

1986," (*Mendoza v. Ruesga*, 169 Cal.App.4th 270, 281 (Cal. Ct. App. 2008))<sup>12</sup>

The ICA fails longstanding and first instance.

3. *Field preemption.*

...The federal regulation is not so comprehensive as to leave no room for state regulation; while it specifies who may (and may not) provide representation before the USCIS, it **offers only an incomplete enforcement mechanism**. Moreover, there are ample indicia of a federal intent to allow for state regulation.

*Salcido*, 42 Cal.App.5th at 544-45

The discussion ended at that point.

See *Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 503 (1988) ("Where a comprehensive federal scheme intentionally leaves a portion of the regulated field without controls, *then* the preemptive inference can be drawn—not from federal inaction alone, but from inaction joined with action"). Section 5(C) is preempted by federal law.

*Arizona*, 567 U.S. at 406-07

Congress focused on the enforcement that is applicable to everyone. Last amended in 1994:

8 U.S.C. § 1324c(e) ("Criminal penalties for failure to disclose role as document preparer  
(1) Whoever, in any matter within the

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<sup>12</sup> Respectfully, the ICA was enacted in 1983, see Cal. Stats. 1983 Ch. 1149 creating Ch. 20 the Immigration Consultants Act, repealed and reenacted as Ch. 19.5 Stats. 1986, Ch. 248. Yet the ICA was actually enacted by Stats. 1974, Ch.999 creating Cal. Penal Code, §§ 653.55-653.61. App. C.105a Regulating the traditional topic of false statements on an immigration form.

jurisdiction of the Service,<sup>13</sup> knowingly and willfully fails to disclose, conceals, or covers up the fact that they have, on behalf of any person and for a fee or other remuneration, prepared or assisted in preparing an application which was falsely made (as defined in subsection (f)) for immigration benefits, shall be fined in accordance with title 18, imprisoned for not more than 5 years, or both, and prohibited from preparing or assisting in preparing, whether or not for a fee or other remuneration, any other such application.”

It can be fairly said that the one thing that DHS does not need, is to be undermined and compromised by state laws allowing anyone access to hundreds of thousands up to multiple millions of files.

**VI. THE ACTIVE ABUSES OCCURRING IN  
CALIFORNIA HIGHLIGHT THE NEED TO  
RESOLVE THE ENTRENCHED AND  
DEEPENING DIVIDE**

Executive Office for Immigration Review  
Adjudication Statistics<sup>14</sup>

2024

Universe	Unrepresented	Represented	Total
Overall	2,416,196	1,137,320	3,553,516
Pending			

The above is a 32% representation rate, regarding persons that by definition do not know our culture, our language, and most assuredly do not know the very nuanced immigration laws.

<sup>13</sup> 8 U.S.C. § 1101 (“(34) The term ‘Service’ means the Immigration and Naturalization Service of the Department of Justice.”)

<sup>14</sup> <https://www.justice.gov/eoir/media/1344931/dl?inline>

“Data Generated: October 10, 2024”

Last Visited December 19, 2024



At a time when all hands are needed on deck, those that administer are subject to a rigged game.

The injunction lawsuits all have the added bonus of guaranteed loss because of the state law commanding use of contracts, "the contents of which shall be prescribed by the Department of Consumer Affairs in regulations." (§ 22442(a))

Cal. Code Regs., title 16, § 3840 Immigration Consultants Standard Contract:

"(a) Every immigration consultant as defined in Section 22451 of the Business and Professions Code *shall* complete the standard form contract as *specified* in subsection (b) of this section." "filed 1-25-85"

First, "as defined in Section 22451" has, since 1986, been defined in Sections 22440-22449.

The 40-year outdated contract does not comply with §§ 22442(b),(1),(2),(3),(4),(5),(6), (c)(2), & (f).

That statute mandates use of a contract that does not conform to its own mandatory aspects.

Plaintiff's Request for Production of Documents:

"1. ALL written contracts between YOU and YOUR customers for immigration consultant services." R.847, 909, 989, 1335, 1398.

Sec. 22445 (c) "A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison."

Normally California uses language like, "Upon a second or subsequent *conviction*," (§ 6126). Sec. 22442(a) commands use of a contract that violates eight of its own provisions, qualifying as "[a] second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison." (§ 22445(c)) and "shall be subject to a

civil penalty not to exceed one hundred thousand dollars (\$100,000) for each violation" (*id.*, (a)) and "a fine of not less than two thousand dollars (\$2,000) or more than ten thousand dollars (\$10,000)" (*id.*, (b)).

The relevance undermines the core justification for *Salcido's* holding re "who may provide immigration-related services, while undoubtedly a matter of federal interest and a proper subject of federal regulation," was deemed overcome by the "states' historic police powers include the regulation of consumer protection" (*Salcido*, 42 Cal. App.5th at 538) The Department of Consumer Protection that drafted the mandatory contract has not been interested in the issue for 40 years.

Remember, Plaintiff's stated purpose is "to shut down illegally operated immigration consultant businesses in the State of California." (Complaint ¶ 1) Which means all of them, since state law commands they violate state law. Resultingly, Plaintiff has taken over \$2,200,000 exclusively from minorities working in the alien registration field. (R.316) Stemming from the ICA that is void under obstacle, conflict, and field preemption.

"As conceded by Defendants, Plaintiff has *never* transacted *any business* with the Defendants, instead Plaintiff is suing the Defendants as a qui tam enforcer of the ICA in connection with Defendants' activities that *expressly do not involve any* transactions with the Plaintiff." "As concede by Defendants, Plaintiff's *sole purpose* is to bring actions under the ICA to *shut down violating* immigration consultants in the State of California. In other words, Plaintiff's only activity in the State of California is the bringing of lawsuits" R.805:10-22; R.818:10-22

Plaintiff does so because immigration consultants "charge less than prevailing rates for attorneys,

thus diverting business from skilled practitioners”  
R.456, 477, 493, 782.

“Nothing strengthens authority so much as silence.”  
—Leonardo da Vinci

#### VII. THE ICA ITSELF ESTABLISHES FIELD PREEMPTION, BY ITS OWN TERMS

Petitioners are exempt from the ICA yet are not before this Court because the exemption was honored.

The first exemption is because of the paralegals work under an immigration attorney. But the second reason for exemption is because of the ICA itself.

See § 22440 “It is unlawful for any person, for compensation, *other than persons* authorized to practice law or *authorized by federal law* to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in the business or act in the capacity of an immigration consultant within this state except as provided by this chapter.”

California just authorized itself to determine who else could perform immigration related services, “*before* the Board”. If someone is federally authorized then the conversation is over.

By definition of law, paralegals cannot be an immigration consultants.

Sec. 22441(a) “A person engages in the business or acts in the capacity of an immigration consultant when that person gives **nonlegal assistance or advice** on an immigration matter. That assistance or advice includes, but is not limited to, the following:

- (1) Completing a form...
- (2) Translating a person's answers...
- (3) Securing... supporting documents,...

(4) Submitting completed forms on a person's behalf and at their request to the United States Citizenship and Immigration Services.

(5) Making referrals..."

Whereas a paralegal "performs substantial legal work" "and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation." (§ 6450(a))

Here is the interesting part: The ICA exempts immigration consultants as they are "*authorized by federal law* to represent persons before the Board" (§ 22440) then the Chapter cannot apply to them.

8 C.F.R. § 1001.1(m) "The term ***representation before the Board and the Service*** includes practice and preparation as defined in paragraphs (i) and **(k)** of this section."

**(k)** "The term *preparation* means the act or acts consisting solely of **filling in** blank spaces on **printed forms** with information **provided by the applicant** or petitioner that are **to be filed with or submitted to EOIR**, where such acts do **not include** the exercise of professional judgment to provide legal advice or legal services. When this act is **performed by someone other than a practitioner**,<sup>15</sup> the fee for filling in blank spaces on printed forms, if any, must be nominal, and the individual may not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure."

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<sup>15</sup> 8 C.F.R. § 1001.1(ff) "The term *practitioner* means an attorney ...or a representative as defined in paragraph (j)" (j) "The term *representative* refers to a person who is entitled to represent others as provided in §§ 1292.1 (a)...(b)"

Therefore, “*representation* before the Board” as defined above, is the same as defined: § 22441 (a) (“acts in the capacity of an immigration consultant when that person gives nonlegal assistance or advice on an immigration matter.” Which includes “(1) Completing a form” (2) “Translating a person’s answers” (4) “Submitting completed forms on a person’s behalf and at their request to the United States Citizenship and Immigration Services.” (c) “‘Compensation’ means money”)

As setout *ante* pp.44-45, the USCIS authorizes non-practitioners to submit these very forms. See App. F.242a (last page of this book.)

Not only does the ICA preclude its application to consultants as they are authorized by federal law but by its own terms cancels itself out. See § 22441(a)’s definition of nonlegal assistance or advice includes completing and submitting forms. “The **practice of law** before EOIR means engaging in *practice* or *preparation* as those terms are defined in §§ 1001.1(i) and (k)” (8 C.F.R. § 1003.102) As defined by the Attorney General of the United States, 8 U.S.C. § 1103(g)(2) “**Powers.** The Attorney General shall establish such regulations...” and therefore approved by Congress. “Similarly, federal agencies, acting pursuant to authorization from Congress, can issue regulations that override state requirements.” (*Solus Indus. Innovations, LLC v. Superior Court of Orange Cnty.*, 4 Cal.5th 316, 331 (Cal. 2018))

The allegations made by a plaintiff without any experience whatsoever before the immigration courts, as related to the above federal law, was in part:

First Amended Complaint: “These immigration applications and petitions include, without limitation, petitions for green cards, adjustment of status, DACA, applications for asylum, applications for citizenship,

and other immigration applications and petitions that *only authorized professionals* are lawfully allowed to prepare. In preparing these applications and petitions, Defendants are engaged in the unauthorized practice of law under California and federal law. ... It is unlawful for a person to provide immigration legal services unless they are a licensed attorney or fall under one of the categories set forth at 8 CFR § 292.1. Defendants do not fall under any of those categories.

"Not practicing in conformity with the ICA and operating an unlawful immigration legal services enterprise.

"Preparing immigration petitions and applications, which constitutes the unauthorized practice of law.

"Defendants' unauthorized practice of law in unlawfully preparing immigration petitions and applications for benefits, such as petitions for family-based green cards and the related adjustment of status. R.970, 972.

All of those claims are expressly authorized by federal law. Yet this plaintiff is pitching to state court judges without any knowledge or experience in these matters.

All of the above squarely falls under field preemption and because of the extensive requirements in California, e.g., a bond, advertising rules, speech regulations, criminal sanctions, \$100,000 civil penalties, specific contracts, background checks, etc. this poses an obstacle to engage in a profession that if one lived in another state would not have to engage in.

Well, somewhat not have to engage in. Because 30 states regulate it differently.

### VIII. THE CONFLICTING SISTER STATE LAWS ARE NOW EXPOSED AS PREEMPTED

That analysis, expressly authorizing persons other than practitioners, just wiped out the state laws of Colorado, Michigan, New York, Oregon, Utah and Washington. (Colo. Rev. Stat. § 6-1-727 (3)(d)(II) (App. D.119a); Me. Stat. tit. 4 § 807-B(2)(B) (App. D.157a); N.Y. Gen. Bus. Law art. 28-C § 460-A(2) (App.D.187a); ORS § 9.280(3) (App.D.201a); Utah Code § 13-49-201(1)(b)(ii) (App.D.212a); Wash. Rev. Code § 19.154.060(1) (App.D.222a))

New Mexico almost produced language that survives, "who are outside pertinent federal regulations regulating the practice of immigration law." (N.M. Stat. § 36-3-2)(App.D.183a) But then continues by explicitly authorizing what federal law already does, defining acts permitted by federal law and permits aspects forbidden by federal law.

Maryland tried along a similar vein by authorizing 8 C.F.R. § 292.1 through Md. Code, Com. § 14-3302 (App.D.164a) but by failing to otherwise exempt they now forbid what federal law authorizes. Same for Michigan, Mich. Comp. Laws § 338.3455. (App.D.168a)

South Carolina does not exempt the non-attorneys that are registered with the Board, instead it declares S.C. Code § 40-83-30(C) "This chapter does not regulate any business to the extent that such regulation is prohibited or preempted by federal law." (App.D.204a) Yet defines the conduct like California.

Illinois added an interesting twist in 815 ILCS 505/2AA (a-5) (App.D.148a) "The following persons are exempt from this Section, provided they prove the exemption by a preponderance of the evidence:" meaning they must be subjected to a full lawsuit. And under *id.*(4) using the South Carolina trick, "Nothing

in this Section shall regulate any business to the extent that such regulation is prohibited or preempted by State or federal law.” (App.D.148a) No matter how they try to evade, “section 2AA of the Consumer Fraud Act (815 ILCS 505/2AA (West 2008)), which governs private providers of immigration assistance services.” (*Gamboa v. Alvarado* 407 Ill. App. 3d 70, 73 (Ill. App. Ct. 2011)) The states cannot escape field preemption.

Likewise, Georgia had an interesting contribution in Ga. Comp. R. & Regs. 546-3-.02 (1)(d) if a person desired to hire an alien, then was exempt provided no money was charged for providing the service. (App.D.142a) Which conflicts with the Regulations allowing for service and does not otherwise exempt them and describes the same work as the Regulations.

But that said, Georgia was the only one to use correct terminology, e.g., Ga. Code § 43-20A-2 (6) “Immigrant’ means every alien with the exception of an alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).” (App. D138a) They did their homework... too well. Covering everything, encroaching at every level.

Finally, we arrive at Arizona, that have overstepped again, Ariz. Rev. Stat. § 12-2702 (A) (“A person desiring immigration and nationality services may be represented by any of the following:”) listing practitioners with additional aspects and *no* general authorization along with (B). “Except as otherwise provided in this section, no other person or persons may represent others in any case, prepare applications or forms or give any legal advice relating to any immigration or naturalization matter.” (App.D.115a)

There are a number of states that interfere more subtly, creating an obstacle through capitalism.



Twenty-two states and the District of Columbia<sup>16</sup> participate in what appears to be a uniform notary code, tailored to each. They prohibit notaries from acting as an immigration consultant or charging money to provide notary services for immigration matters.(App.D.109a-113a) People do not work for free, that cut-off services to aliens based on national origin.

See e.g., Form G-1566 (Request for a Certificate of Non-Existence) requires a notary.

Beyond the technical preemptive aspects, there are the direct aspects, "a person engaging in the business or acting in the capacity of an immigration consultant who is *not* licensed as an attorney in any state or territory of the United States, *but is authorized* by federal law to represent persons before the Board" and "a person who is *not* an active member of the State Bar of California, *but is* an attorney licensed in another state or territory of the United States and is admitted to practice before the Board" compelling speech regarding how they may advertise (§ 22442.2(c),(2),(3)) Utah does the same, Utah Code § 13-49-303(3)(b)(c) (App.D.217a)

That statute is listed as one of those spared from felony prosecution for a second violation but does command those expressly authorized by federal law per 8 C.F.R. §§ 292.1, 1292.1 to comply with California law or face an up to \$100,000 civil penalty for each violation, and a year in county jail per § 22445(c).

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<sup>16</sup> Not affecting the preemption analysis "as the repository of the legislative power of the United States, Congress in creating the District of Columbia 'a body corporate for municipal purposes' could only authorize it to exercise municipal powers, and this is all that Congress attempted to do." (*Stoutenburgh v. Hennick* 129 U.S. 141, 144 (1889)) See 1 U.S.C. § 204(b). App.B.23a.

Plus, all attorneys are subject to § 22449(c) (1) "In addition to the civil and criminal penalties described in Section 22445, a violation of this section by an attorney shall be cause for discipline by the State Bar pursuant to Chapter 4 (commencing with Section 6000) of Division 3."

These states are all eager to help a job that the federal government has been doing just fine for some time now. As Chief Justice Marshall noted: "Whenever the terms in which a power is granted to congress, or the nature of the power, require that it should be exercised exclusively by congress, the subject is as completely taken from the state legislatures, as if they had been expressly forbidden to act on it." (*Sturges v. Crowninshield*, 17 U.S. 122, 193 (1819))

#### IX. PREEMPTION OR NONPREEMPTION, THAT IS THE QUESTION

In truth, there are some aspects that give reason for confusion. If a law declares *one* aspect is not preempted, then the implication is all other laws are preempted.

##### 8 U.S.C. § 1375a (d)(7) "Nonpreemption."

Nothing in this subsection shall preempt- (A) any State law that provides additional protections for aliens who are utilizing the services of an international marriage broker; or (B) any other or further right or remedy available under law to any party utilizing the services of an international marriage broker.")

But if a law declares this topic *is* preempted, then by implication it is declaring all other laws are *not* preempted.

*Admission of nonimmigrants* 8 U.S.C. § 1188 (h)(2) ("The provisions of subsections (a) [Admissions] and (c) [Petition of importing employer] of section 1184 of this title and the provisions of this section

[Admission of temporary H-2A workers] **preempt** any State or local law regulating admissibility of nonimmigrant workers.”)

*Unlawful employment of aliens* 8 U.S.C. § 1324a (h)(2) (“**Preemption** The provisions of this section **preempt** any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.”)

### X. SUMMATION

The Court is presented two issues of first impression. Not addressing the issue of those that administer to registration has caused the need for the second issue whether the data collected is protected and if a private plaintiff may do the state’s bidding with disregard for federal supremacy.

The contempt for federal authority is palpable, see order sanctioning co-Petitioner Lasseville by the respondent before this Court because he sought review before this Court. App.A.18a

### CONCLUSION

If the petition in 24-817 was granted then this case falls directly in-line for the same reasons. Also raising different confidentiality issues that should be addressed.

This Court should grant the petition and resolve the matter by per curiam order or full review.

Respectfully submitted,  
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*PETITIONERS*

## APPENDICES