No. 24-817

In the Supreme Court of the United States

EDWARD LASSEVILLE,
Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, ET AL.
Respondent.

Petition for Writ of Certiorari to the California Second District Court of Appeal, Division Seven

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

"Give me your tired, your poor, your huddled masses yearning to breathe free," wrote Emma Lazarus. Many citizens have heeded this iconic call to assist those arriving on America's shores.

Today, alien registration relies on the dedicated efforts of individuals in the private sector. Their diligent work supports the Department of Homeland Security's mission, making all of their contributions indispensable to protecting against terrorism and ensuring national security.

The Court has unequivocally held: The full set of standards governing alien registration, designed as a harmonious whole, occupies the entire field. Complementary state regulation is impermissible even if parallel to federal standards, *Arizona v. United States*, 567 U.S. 387, 401 (2012).

California's Immigration Consultants Act (ICA) directly invades this federal field. Federal regulations authorize practitioners and others to prepare alien registration documents, which should preclude state interference. The ICA's byzantine obstacles, create perils up to $100,000 for errors, including felony prosecution. Federal law mandates that all immigration records remain confidential, 8 U.S.C. § 1304(b). The ICA allows any non-aggrieved U.S. national to inspect these sensitive documents. This is an untenable conflict with federal obligations, disrupting the uniformity critical to national security and falls squarely within the reasons for federal preemption. Twenty-nine states and the District of Columbia have similarly invaded the field.

The question presented is:

Whether federal preemption bars California's Immigration Consultants Act from regulating practitioners and others assisting in alien registration.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner here and Petitioner/Defendant below is Edward Lasseville, a lifelong advocate for immigration reform.

Respondent here is the Superior Court of Los Angeles County, California—as an entity, not as an individual jurist, *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 paralegals Laura E. Vaca and Agencia Privada de Inmigracion, Inc. (co-defendants).

CORPORATE DISCLOSURE STATEMENT

Real party 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.

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PETITION FOR A WRIT OF CERTIORARI

Edward Lasseville respectfully petitions for the writ of certiorari directed to the California Second District Court of Appeals, Division Seven.

JURISDICTION

The California Supreme Court order denying the petition for discretionary review was entered October 2, 2024. Under the California Rules of Court, rule 8.532(b)(2)(A) the denial was final upon entry—no rehearing was possible. This petition is timely received for filing if post-marked on or before Dec. 31, 2024, as the 90th 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.")

Yet, 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. Joining Petitioner as a defendant results in Petitioner suffering from actual injury-in-fact. "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)) Petitioner has exhausted state review in an effort to not be subject to process 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"[1] that should address an issue of this magnitude.

The 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

[1] U.S. const. Art. III § 1.

> 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).

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.")

At this point, Petitioner faces a moral crossroads, confronted by evidence dehors the record.

Evidence that developed after the California Supreme Court's denial constitutes a change in events, which are more fundamental to this issue than the Court could imagine and so unlikely to ever be heard by this Court that it bests pregnancy on the issue of evading review.

Either a Rule 32.3 Letter or request for judicial notice will be submitted providing more details.

There is no loss of jurisdiction, quite the contrary. Of note, Petitioner can advise that this *is* in the record though:

Requests for Admissions directed to Petitioner: "NO. 15: Admit that IRDC is entitled to a preliminary injunction in the ACTION. For purposes of these requests, the term 'IRDC' shall mean and refer to

Plaintiff IMMIGRANT RIGHTS DEFENSE COUNCIL, LLC. For purposes of these requests, the term 'ACTION' shall mean this lawsuit.
NO. 16: Admit that IRDC is entitled to a permanent injunction in the ACTION.
NO. 17: Admit that IRDC is entitled to attorneys' fees and costs in the ACTION." R.202-203

Under California Code Civ. Proc. § 2033.280 (b) ("an order that... the truth of any matters specified in the requests be deemed admitted") "is conclusively established against the party" (*id.*, § 2033.410(a)).

The reason for the first listed case in the statement of related proceedings, *ante* p.ii, being an appellate court, is because Plaintiff once before unsuccessfully tried to have those deemed admitted.

There has been a change in circumstances.

On the issue of immigration, "This Court granted certiorari before judgment." (*United States v. Texas* 143 S. Ct. 1964, 1969 (2023)) "But this Court has long held 'that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution.' *Linda R. S. v. Richard D.*, 410 U.S. 614, 619 (1973)." (*Id.*, at 1968)

Petitioner is being civilly prosecuted by a Plaintiff that lacks standing. Thus, the need to move to deem admitted.

Petitioner has communicated all that is ethically permissible using the existing record, fulfilling the duty to advise the Court of changes in circumstances. Logical inferences remain for the Court to draw. Acceptance of evidence dehors the record will elucidate the matter further.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

Constitution of the United Stated 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.

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 53a-76a

INTRODUCTION

To clarify the intent herein, Petitioner understood this Court held "the Federal Government has occupied the field of alien registration" (*Arizona*, 567 U.S. at 401) as focusing on the *alien* submitting paperwork and being processed by the federal government.

This petition is about the people that help the alien process that registration.

Many words in immigration law have a specific assignment. Under both state and federal law, there are a class that does not have a name, referred to as "other than", yet these other thans are what keep the massive immigration machine running as the *staff* of practitioners. But there are some others with an interest in the outcome here, who are not staff directly, yet still belong to those that administer to alien registration, often coined immigration consultants.

Finding "other than" wanting of panache, we will all be referred to simply as the private sector.

Another plain English way of posing the question is thus: Does "the field of alien registration" encompass the private sector that processes that registration?

Because if it does then those in California that process registration are in desperate need of this Court's protection.

And if it does not, then those in California that process that registration are in desperate need of this Court's clarification so that we can get out now.

Notwithstanding the deficit of over 2.4 million aliens presently unrepresented in immigration matters, the private sector in California is actively being hunted and would thus need to flee.

STATEMENT

THE PARTIES AND PROCEDURE IN THE STATE COURT CASE

Real party in interest, Laura Vaca, for lack of a better phrase is Petitioner's common-law wife, she has been deep in the alien registration trenches since 1989. (R.554, 557) Petitioner was heavily focused on the intelligence front, lobbying here in our Capitol. (R.96) To say that our files are uncountable is an understatement.

Vaca as CEO of her paralegal service corporation the other real party, 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 Leticia Moreno, an actual immigration law attorney. Thus, falling under her protective umbrella. R.222, 554, 556

Naturally this begs the question why Petitioner is 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.293

That statement means the target is every single immigration consultant, see *post* pp.28-30. Their weapon of choice is California's ICA codified at Cal. Business and Professions Code §§ 22440-22449.[2]

Operations began in Los Angeles Superior Court, when their Plaintiff Immigrant Rights Defense Council LLC began filing 90 "essentially identical

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[2] All future undesignated Code references are to the California Business and Professions Code, set out in their entirety in App. C.53a-88a

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.1008) That number has grown to over 330 "essentially identical seven-page complaints", save for the new name added to the complaint devoid of facts, alleging legal conclusions. JN.11[3]

Vaca and API received one of these complaints on Sept. 11, 2023 (R.293) and upon doing some research, learned about the wide-spread abuses engaged in by Plaintiff. R.306, see JN generally.

The complaint was later amended (R.335) but Plaintiff failed to serve Petitioner thus a motion to quash summons for lack of personal and subject matter jurisdiction based on federal law was filed. (R.86) Respondent court found that a receptionist was a person in charge of a corporation, found it had subject matter jurisdiction and denied the motion. R.74-83; App. A.5a.

This Plaintiff lacks standing. To ascertain this fact, all one needs to do is ask Plaintiff. For example, in the response to the motion to quash asserting that the Eighth Amendment precludes a $100,000 civil penalty, Plaintiff advised:

"Plaintiff, as a **non-aggrieved** person, is **not entitled to civil penalties** and, in any event, **does**

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[3] A second record was created by filing a voluminous request for judicial notice before the California Supreme Court, that request was granted. App. A.3a. That portion of the record will be cited as "JN". If need be, this petition may also be considered directed to that court to call up that record, although a copy was lodged in the intermediate court.

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.178:16-18)

"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.176:16-18) (Referencing § 22446.5(b); App.C.74a)

Both of those statements were the defensive posture to the motion to quash, under California law:

"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:

> "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)[4]

Therefore, Plaintiff disqualified itself under qui tam jurisprudence. Plus 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))

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[4] "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))

is absent from the ICA. Moreover this "non-aggrieved" plaintiff suffered no injury. According to Black's Law Dictionary (8th 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).)

"'[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)

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, allowed to be subjected 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.18-19, 39. Therefore, there is definitive need for a holding by this Court that federal preemption precludes this State interference.

RAISING FEDERAL ISSUES

A. Relevant California Procedure

Even though the above discussed case, causing the injury, is pending in the Superior Court of Los Angeles County captioned *Immigrant Rights Defence Council LLC v. Vaca et al.*, case no. 23STCV21848, that is not this case. Rather *Lasseville v. Superior Court* case no. B339506, commenced when filing a mandamus petition on July 23, 2024. (R.1) Respondent presides over the former. The latter sought preclusion from suffering the former, directly in line with this Court's precedent, see *ante* pp.2-3.

"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). By statute, after a motion to "quash service of summons on the ground of lack of jurisdiction of the court over him" (Cal. Code Civ. Proc., § 418.10(a)(1)) has been denied, one must "petition an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons or staying or

dismissing the action." (*Id.*,(c)). If not done, the issue is waived.

Plus, under California law, " [i]n any event, federal preemption can be raised for the first time on appeal. (*Town of Atherton* [*infra*].)" (*People v. Salcido*, 42 Cal.App.5th 529, 537 (Cal. Ct. App. 2019)) *Salcido* will be discussed in detail.

"'[C]omplete preemption is jurisdictional in nature....' (*PCI Transp., Inc. v. Fort Worth & Western R. Co.* (5th Cir.2005) 418 F.3d 535, 543.)" (*Town of Atherton v. Cal. High-Speed Rail Auth.*, 228 Cal. App.4th 314, 331 (Cal. Ct. App. 2014))

B. The Arguments Raised in the First Instance:

"[T]he ICA is preempted by federal law. "[O]ver no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens. *Oceanic Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909).' (*Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972))" R.66

Setting out numerous federal regulations and statutes in support and raising there was no subject matter jurisdiction because of preemption. R.66-71

"A law that is contrary to the constitutions is a void law. This Court is implored to declare what is obvious, the ICA is preempted." R.71

"In California, is jurisdiction wanting when: 1.) The Supremacy Clause and principles of preemption preclude filing an action by a non-aggrieved party when state law affords a defense under federal law and federal law prohibits disclosure of evidence establishing said defense?" R.3

The Court of Appeal afforded 24 hours of consideration then summarily denied, after having "read and considered" the lack of state authority. App. A.4a.

The appellate court's denial was considered one of the final "decrees rendered by the highest court of a

State in which a decision could be had" (28 U.S.C. § 1257(a)) on the ability to subject a person to an action violating federal preemption. See e.g., *Faretta v. California*, 422 U.S. 806, 811-12 (1975).

C. The Highest State Court was Presented the Issue of Preemption.

"Whether the Supremacy Clause and federal preemption bar a 'non-aggrieved' person from filing an action where state law provides a defense, but federal law prohibits the disclosure of evidence necessary to establish that defense." Pet. Review p.11

Under the heading "the heart of due process of law under the Fourteenth Amendment" were its two sub-headings "the ICA places defendants in an untenable situation: defend against state prison by violating federal law" and "despite being federally exempt from this action, defendants are precluded by federal law from establishing their defense, therefore the ICA is preempted".[5] That discussion spanned from Pet. Review pp.36-42.

As noted above, along with it was an extensive motion requesting judicial notice of the vast discovery abuses and manipulation Immigrant Rights Defense Council was engaged in to deny due process of law and gain access to federally protected documents. The State's highest court gave it a fair read, after accepting the filing on August 12, 2024, ultimately granted the motion for judicial notice while denying review on Oct. 2, 2024. (App. A.3a) The due consideration was, of course, appreciated but left the injury outstanding.

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[5] Some capitalization omitted.

D. The Highest State Court Acknowledged the Preemption Issue was Raised, and Passed on it

As permitted by Rule 14.1(g)(i), the lengthy passages from the request for judicial notice raising federal preemption are at App.E.215a-216a

In response, the California Supreme Court ruling was:

"The request for judicial notice is granted.
The petition for review is denied." (App. A.3a.)

The typical rule in California is to deny "judicial notice... requests [that] are unnecessary to resolve the issues before us. (See *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 (*Mangini*) ["Matters otherwise subject to judicial notice must be relevant to an issue in the action."].)" (*Sweeney v. Cal. Reg'l Water Quality Control Bd.*, 61 Cal.App.5th 1093, 1118 n.3 (Cal. Ct. App. 2021))

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

I. FIRST IMPRESSION ISSUE RELATED TO ESTABLISHED PRECEDENT AND THUS PRECLUDING FURTHER DISCRIMINATION AGAINST FEDERAL LAW

Based on research, it appears that this issue of the processing aspect of alien registration is a matter 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 immigration registration.

See also App.E.214a re additional argument raised below relevant to raising federal issue and federal discrimination.

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.

II. JUSTICIABILITY OF THE QUESTION BEFORE THIS COURT IS PROPER UNDER THE CONSTITUTION

A quick injection to clarify that this issue is proper for this Court to decide.

> 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, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *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 to be discussed later have usurped the Attorney General's power. However, it does not appear proper for the Attorney General to resolve this issue pertaining to the application of Article VI cl. 2 of the federal Constitution to the states.

"The judicial Power of the United States, shall be vested in one supreme Court," (U.S. Const. art. III, § 1) "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Con-stitution, the Laws of the United States," (*id.*, § 2)

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;... 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. U.S. Const. art. VI, cl.2

"The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land." (Cal. Const. art. III, § 1)

On a closer issue than this, the Court determined it was proper to determine the controversy notwithstanding the Congressional decree in *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 423-30 (1995).

Therefore, Chief Justice Marshall instructs: "It is emphatically the 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))

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

After Katzap received NYCRC's communication regarding its willingness to honor sub-agency agreements, he emailed his staff...:

> [w]e must rush to sign agreements with as many Immigration Consultants ("IC") as possible. Apparently, a couple of them on our short list have been identified by others as well. NYCRC (George Olsen just called me) may not be able to protect us w/o written agreements...

NYCRC is a participant in a United States government approved program known as the EB-5 Program, which is overseen by the United States Citizen and Immigration Service (USCIS), a division of the Department of Homeland Security....

Under the EB-5 Program, companies, such as NYCRC, receive approval from USCIS, ... are permitted to seek foreign investments from

> individuals who are willing to invest a minimum of $500,000 in projects that will create at least 10 permanent jobs for U.S. workers. In return, the approved foreign investor is granted permanent residency in the United States.

Lion's Prop. Dev. Grp. LLC v. N.Y.C. Reg'l Ctr., LLC, 2013 N.Y. Slip Op. 33374, pp. 4-5, 1 (N.Y. Sup. Ct. 2013) (pages cited in paragraph order presented)

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

Even though the subsequent events that will be the subject of a Rule 32.3 Letter or request for judicial notice are subjective to this case, that issue is fundamentally different than the following information. "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" (App.F.234a, the last page of this book.)[6]

The afore noted distinction (7.a., 7.b.) is found at the end of Forms, e.g.:

- I-90 (Application to Replace Permanent Resident Card)
- I-485 (Application to Register Permanent Residence or Adjust Status)
- I-130 (Petition for Alien Relative)
- I-918 (Petition for U Nonimmigrant Status)
- I-131A (Application for Carrier Documentation)
- I-134 (Declaration of Financial Support) worded slightly differently but otherwise the same

Then there are forms that solicit preparer information without distinction if the preparer falls under either status as noted in 7.a. or 7.b.:

- I-102 (Application for Replacement/Initial Nonimmigrant Arrival-Departure Document)
- I-129 (Petition for a Nonimmigrant Worker)
- I-131 (Application for Travel Documents, Parole Documents, and Arrival/Departure Records)
- I-140 (Immigrant Petition for Alien Workers)
- I-191 (Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA))
- I-212 (Application for Permission to Reapply for Admission into the United States After Deportation or Removal)

Some other forms of interest include Form AR-11 (Alien's Change of Address Card) which solicits no information about who prepared the form.

Nor present on Form EOIR-29 (Notice of Appeal to the Board of Immigration Appeals from a

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[6] 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.

Decision of a DHS Officer) but does note "Signature of Appellant/Petitioner *(or Attorney or Representative)*".

This is by no means an exhaustive list, merely demonstrative, as there are 103 forms.

As a means of showing the vast breadth of the issues involved here, a search of all jurisdictions for the phrase "immigration consultant" results in 179 cases; 76 statutes; and 10 regulations. The majority of that authority will advise the Court that immigration consultants are the cause for the world's general demise.

When personal accountability just will not do, blame the immigration consultant.

Incidentally, searching all jurisdictions for "ineffective assistance" and "immigration" returns 13,699 cases. Just "ineffective assistance" results in 194,753 state court cases and 152,240 federal case, total 346,993.[7]

13,699 vs. 179

In full candor, Petitioner will confess that there are bad immigration consultants out there. In fact, there are bad apples in every profession, "the bottle left by the milk-man caused her to fall." (*Lombardi v. J. A. Bergren Dairy Farms, Inc.*, 153 Conn. 19, 24 (Conn. 1965)) "On one occasion, when Mr. Shaw left the Taylor residence, they saw Mrs. Taylor, clothed only in a brassiere and panties, standing in the front door with her arms around the milk man." (*Taylor v. Taylor*, 257 So. 2d 465, 466 (La. Ct. App. 1972))

Clearly, the milk man is the real problem.

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[7] A second system reported approximately 13,900 for the first search and 333,000 for the second.

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)

> In its "desire to offer simple protection to extremely vulnerable people, largely unable or unwilling as a practical matter to defend themselves, from being preyed on," the General Assembly has enacted the *Maryland Immigration Consultant Act* (MICA), which is codified in §§ 14–3301 to –3306 of the Commercial Law Article. The legislative history of this statute makes it clear that MICA was enacted to curtail some of the "egregious practices that ... immigration consultants [had engaged in]."

Attorney Grievance Comm'n of Maryland v. Brisbon, 422 Md. 625, 642-43 (Md. 2011), brackets in original.

Of course, that opinion is about a suspended attorney engaged in the unauthorized practice of law.

> 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.")

IV. ON THE ISSUE OF ALIEN REGISTRATION THE LEGAL LANDSCAPE SUFFERS FROM THE DEEPENING INTRACTABLE DIVIDE BETWEEN THIS COURT AND CALIFORNIA AND OTHER STATES AND THE CIRCUITS LEADING LITIGANTS IN A VARIETY OF DIRECTIONS

A. The Issue was Once Noted by this Court but Subsequently Addressed by the Departments

"[T]he Fourth Circuit's decision 'allow[s] *no recourse* for a particular alien against dishonest or corrupt immigration practitioners.' Pet. for Cert. 11 (emphasis added)." (*Machado v. Holder*, 559 U.S. 966 (2010) Roberts, C.J., joined by Scalia, Thomas, Alito, JJ., dissenting from grant of GVR.)

There is a lengthy passage at 85 Fed. Reg. 80274, 80359 noting in part the remedies:

> *See, e.g., Sow* v. *U.S. Att'y Gen.*, 949 F.3d 1312, 1318-19 (11th Cir. 2020) (ineffective assistance of counsel); *see also Viridiana* v. *Holder,* 646 F.3d 1230, 1238-39 (9th Cir. 2011) (distinguishing between an ineffective assistance of counsel claim and immigration consultant fraud and explaining that fraud by an immigration consultant may constitute an extraordinary circumstance).

At 80359 footnote 67, noting the EOIR website page that focuses on both practitioners and non-practitioners.

> The Program also supports investigations into fraud and unauthorized practice, prosecutions, and disciplinary proceedings ***initiated*** **by local, state**, and Federal *law enforcement* and *disciplinary* **authorities**. *Id.* From the efforts of this

> Program, and others, the Departments seek to ensure that aliens in proceedings before them are not victims to unscrupulous behavior by their representatives.

The reference to state and local was initiation by authorities, not a ceding of power to enact laws. The final sentence was aimed at fraud, not an ouster of non-practitioners.

Numerous cases have followed *Viridiana*, granting relief. Yet the issue of relief and circuit divide is not before this Court. But even if it were, the threshold question would be: Can immigration consultants even be here? Then the natural follow-up question would be: Who can regulate them? Thus this case lays an important foundation for a different conflict in the circuits.

B. A Sample of the Variety of Directions Taken by Lower Courts Establishes that the Division and Confusion by State and Circuit Courts is Vast

Late presented allegations that errors were due to immigration consultant were discredited by courts in: *Cabrera v. Mukasey*, 283 F. App'x 584, 585 n.2 (9th Cir. 2008); *Mewengkang v. Gonzales*, 486 F.3d 737, 740 (1st Cir. 2007); *Shiufang Ouyoung v. Mukasey*, 305 F. App'x 769, 771 (2d Cir. 2009); *Xiaodan Huang v. Holder*, 548 F. App'x 702, 3-4 (2d Cir. 2013); *Stephenson v. Comm'r of Corr.*, 305 A.3d 266, 288-89 (Conn. App. Ct. 2023); *Jakupi v. Lynch*, 636 F. App'x 402, 4 (9th Cir. 2016), Kleinfeld, Senior Circuit Judge, dissenting (record did not support claim); *Tejada-Palacios v. U.S. Attorney Gen.*, No. 21-11717, at *2-3 (11th Cir. Jan. 19, 2022).

Deferring or declining to address if immigration consultant fraud can be basis for relief: *Omar v. Mukasey*, 517 F.3d 647, 650 (2d Cir. 2008);

Thiodoris v. Attorney General of the U.S., 280 F. App'x 231, 233 (3d Cir. 2008); *Cifuentes v. Attorney Gen. of the United States*, 619 F. App'x 59, 5 n.2 (3d Cir. 2015).

Concluding as a matter of federal law immigration consultants cannot perform services: *Rogers v. Ciprian*, 26 A.D.3d 1, 5 (N.Y. App. Div. 2005); *State ex Rel. Indiana State Bar v. Diaz*, 838 N.E.2d 433, 446 (Ind. 2005)

Conflicting results *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 107 n.13 (Md. Ct. Spec. App. 2013) (applies to legal services in immigration matters) compare *Attorney Grievance Comm'n of Maryland v. Brisbon*, 422 Md. 625, 643 (Md. 2011) (only applies to nonlegal matters).

Iowa is one of the states that understands the importance of the federal objective. "Federal discretion in the enforcement of immigration law is essential to its implementation as a harmonious whole." (*State v. Martinez*, 896 N.W.2d 737, 756 (Iowa 2017)) "[R]esult in a patchwork of inconsistent enforcement that would undermine the harmonious whole of national immigration law." (*Id.*)

That list of cases is not exhaustive.

C. A California Court Purportedly Resolved the Preemption Issue

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.865 The quoted segment ended with "to defendant." The defendant stipulated she was an immigration consultant, (*id.*, at 536, 542 n.4) "'[i]t is axiomatic that an unnecessarily broad holding is 'informed and limited by the fact[s]' of the case in which it is

articulated.'" (*Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal.5th 1130, 1153 (Cal. 2020))

Salcido 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))[8]

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.**

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[8] 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.93a Regulating the traditional topic of false statements on an immigration form.

> 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 jurisdiction of the Service,[9] 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

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[9] 8 U.S.C. § 1101 ("(34) The term 'Service' means the Immigration and Naturalization Service of the Department of Justice.")

by state laws allowing anyone access to hundreds of thousands up to multiple millions of files.

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

Executive Office for Immigration Review
Adjudication Statistics[10]
2024

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

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.

At a time when all hands are needed on deck, those that administer are being hunted. Made to pay this private law firm a tax for doing business. The tax is generous though, if one wishes to simply leave the profession of their calling and never return the price for a permanent injunction is $8,500. If one wishes to remain working, the price is $12,500 for "an 'obey the law' injunction" JN.13.[11] If one wishes to enjoy due process of law, the price is around $70,000 to $90,000 for sitting at the table, with the added bonus of guaranteed loss.

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[10] https://www.justice.gov/eoir/media/1344931/dl?inline
"Data Generated: October 10, 2024"
Last Visited December 19, 2024

[11] Plaintiff "was not entitled to an injunction compelling defendants to follow the law. [¶] Where there is no justiciable controversy the proper remedy is not to render judgment for one side or the other, but to dismiss." (*Connerly v. Schwarzenegger*, 146 Cal.App.4th 739, 752 (Cal. Ct. App. 2007)) JN.12

State law commands 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.434

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). State law commands use of a contract per § 22442(a) that violates its (b),(1),(2),(3),(4),(5),(6), (c)(2), & (f). Which certainly qualifies 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.965) 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

VI. 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.435

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, there are others, only DHS knows who they are. But any number of those files could and do include crime victims, as well as potential terrorists, money launderers, and drug traffickers, amongst others that our government has a special interest in.

Overseeing all of those files is DHS.

6 U.S.C. § 111

"**(a) Establishment**

There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5.

(b) Mission

(1) In general

The primary mission of the Department is to-

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;
(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;
(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;
(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;
(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland;
(G) ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland; and
(H) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking."

The access granted will cause the mission to fail.

Petitioner understands that citing to a voluminous law requires placing it in the appendix, but when it comes to immigration laws, this is somewhat difficult. For example, *if* say petitioner were to cite to 6 C.F.R. § 5 app. C to Part 5, then that just invoked 72,145 words set out over 139 normal pages single-spaced or 303 pages formatted for this Court, governing all of the reasons why the Depart-

ment of Homeland Security does not release these records.

Or as another example, *if* say petitioner were to demonstrate for this Court how an example was given to the state courts when we asked them if they knew the difference between an alien, an immigrant and a nonimmigrant.

Which of course this Court knows was a trick question. The answer provided to the state courts was:

For a state court to know the difference between nonimmigrant and immigrant, one only needs to review 8 C.F.R. § 214.2 to ascertain the classification out of the 100,196 words of that regulation that spans 150 pages, single-spaced (or about 324 pages formatted for this Court).

The point being made was that by definition a state court judge does not have experience with immigration laws. Yet some regulations are not so lengthy and can be cited on a *non-hypothetical* basis:

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.")

The regulations focus on DHS as the main keeper, with little to no attention given to the army of civilians that keep the machine running. Likely the thought was that access to one or two at a time would not be a threat or that the Congressional decree in 8 U.S.C. § 1304(b) would be abided.

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 a gold mine like Petitioner and other long timers and Plaintiff rapidly hits

multiple millions. California shows no signs of reigning in access.

VII. CONFLICT PREEMPTION FIRMLY ESTABLISHES THAT THE PRIVACY RIGHTS AND PROFESSIONAL OBLIGATIONS CANNOT COEXIST WITH STATE LAW

Within Title 8 of the United States Code is Part VII Registration of Aliens, of Subchapter II Immigration and therein is a decree:

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, and (2) to such persons or agencies as may be designated by the Attorney General.")[12]

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

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[12] 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.")

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.

A. 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.209a)

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.174a)

> 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.132a)

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

Petitioner and real party defendants are exempt from the ICA, yet Petitioner is not before this Court because the exemption was honored.

The first exemption is because of working 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**,[13] 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."

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)

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[13] 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)"

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.18-19, the USCIS authorizes non-practitioners to submit these very forms. See App. F.234a (last page of this book.)

Not only does the ICA preclude its application to consultants, but it also authorizes them to practice law in California. "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) Thus the ICA authorizes the practice of law, "otherwise authorized pursuant to statute... *to practice law*" (§ 6126(a)) 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.

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.

IX. 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.110a); Me. Stat. tit. 4 § 807-B(2)(B) (App. D.146a); N.Y. Gen. Bus. Law art. 28-C § 460-A(2) (App.D.175a); ORS § 9.280(3) (App.D.189a); Utah Code § 13-49-201(1)(b)(ii) (App.D.200a); Wash. Rev. Code § 19.154.060(1) (App.D.210a))

The proverbial hat must be tipped towards New Mexico as almost coming up with language that survives, "who are outside pertinent federal regulations regulating the practice of immigration law." (N.M. Stat. § 36-3-2)(App.D.171a) 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.152a) but by failing to otherwise exempt they now forbid what federal law authorizes. Same for Michigan, Mich. Comp. Laws § 338.3455. (App.D.156a)

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.190a) Yet defines the conduct like California.

Illinois added an interesting twist in 815 ILCS 505/2AA (a-5) (App.D.137a) "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.138a) 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.130a) 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.D111a) 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.103a)

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

Twenty-two states and the District of Columbia[14] 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.98a-101a) 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.205a)

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).

Plus, all attorneys are subject to § 22449(c)(1) "In addition to the civil and criminal penalties

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[14] 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.15a.

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 Marshal 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))

X. 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.")

The latter law appears to have abrogated *De Canas*, the basis of *Salcido's* authority.

XI. CONFLICT BETWEEN THE OFFICE OF THE GENERAL COUNSEL AND THE U.S. ATTORNEY GENERAL

Salcido cited to a 1992 opinion of the Office of the General Counsel regarding the practice of law in support of its holding but also noted the practice of law is not governed by the ICA. A great deal has changed since 1992 (set out in its entirety in App. F.218a). The regulations in effect now undermine that opinion's continued force. Yet states are relying on it all the same.

XII. SUMMATION

There is a major difference between traditional state fields of professional regulation, like attorneys.

Fly-by-night consultants do not follow laws, they do not show-up when sued, they do nothing but take, just like any other criminal.

Those that *do* show-up are trying to follow the federal laws but have needless state obstacles to traverse; precluding the poor from accessing basic and affordable assistance.

Congress gave the Secretary and the Attorney General blank checks of power. If they wanted to preclude consultants from assisting, they certainly would have by now. They do not need any help from the states.

If the Departments wanted the only qualification to be that one must be able to say "no" in Spanish, then that is their prerogative. By command of this Court, they should not have to wait to see when 30 state legislatures get around to catching up. Because the next day, the Departments may also decide that only those that can do quantum calculous in Spanish can assist.

When those in-the-know decide to pivot, it must be implemented then. There is a significant need for this Court to clarify that alien registration includes registering the aliens. And that *field,* meant *all* of it.

"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)

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

For every right, there is a remedy, which in this case must inherently include the right to access affordable assistance.

The turbulent legal landscape is jeopardizing aliens and homeland security alike.

CONCLUSION

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

Respectfully submitted,
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PETITIONER PRO SE