

No. _____

**In the
Supreme Court of the United States**

MARMIC, LLC, ET AL.,

Petitioners,

v.

SERGIO LOPEZ,

Respondent.

**On Petition for a Writ of Certiorari to the
Supreme Court of New Jersey**

PETITION FOR A WRIT OF CERTIORARI

Joseph A. Deer
Counsel of Record
BASHWINER AND DEER, LLC
571 Bloomfield Avenue, Suite 203
Verona, NJ 07044
(973) 239-2756
jdeer@bashdeerlaw.com

June 17, 2026

Counsel for Petitioners

SUPREME COURT PRESS



(888) 958-5705



BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Whether an unauthorized alien who intentionally uses a false Social Security number to obtain employment is eligible to recover for work performed under the Immigration Reform and Control Act (“IRCA”) of 1986, and this Court’s ruling in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

PARTIES TO THE PROCEEDINGS

Petitioners and Defendants-Respondents below

- Marmic, LLC, a closely held, for-profit limited liability company
- Mike Ruane, an individual

Respondent and Plaintiff-Appellant below

- Sergio Lopez, an individual

CORPORATE DISCLOSURE STATEMENT

Petitioner, Marmic, LLC, has no parent corporation or publicly held company that owns 10% or more of its stock.

LIST OF PROCEEDINGS

Supreme Court of New Jersey

No. 089632

Sergio Lopez, *Plaintiff-Appellant* v. Marmic LLC,
and Mike Ruane, individually, *Defendants-Respondents*.

Final Opinion: March 19, 2026

Superior Court of New Jersey, Appellate Division

No. A-2391-22

Sergio Lopez, *Plaintiff-Appellant* v. Marmic LLC,
and Mike Ruane, individually, *Defendants-Respondents*.

Final Opinion: June 20, 2024

Superior Court of New Jersey,

Law Division: Essex County

No.: ESX-L-006594-19

Sergio Lopez, *Plaintiff* v. Marmic LLC, *Defendants*.

Final Order: March 7, 2023

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
CORPORATE DISCLOSURE STATEMENT	ii
LIST OF PROCEEDINGS.....	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED	1
INTRODUCTION	2
STATEMENT OF THE CASE.....	3
A. Background Facts	3
B. The Trial Court Proceedings	4
C. New Jersey Appellate Division Ruling.....	6
D. New Jersey Supreme Court Ruling.....	7
REASONS FOR GRANTING THE PETITION.....	8
I. The IRCA Mandates Review by This Court..	10
II. This Court’s Ruling in <i>Hoffman</i> Necessitates Review by This Court	13
III. This Case Is Ideal for Addressing the Important Questions Presented	18
CONCLUSION.....	20

TABLE OF CONTENTS (Cont.)

Page

APPENDIX TABLE OF CONTENTS**OPINIONS AND ORDERS**

Opinion, Supreme Court of New Jersey (March 19, 2026).....	1a
Opinion, Superior Court of New Jersey (June 20, 2024)	30a
Order, Superior Court of New Jersey (March 7, 2023).....	55a
Transcript of Decision, Superior Court of New Jersey (March 3, 2023)	57a

STATUTORY PROVISIONS

Relevant Statutory Provisions	78a
8 U.S.C. § 1324a	78a
8 U.S.C. § 1324c.....	100a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Chamber of Commerce of United States of America v. Whiting</i> , 563 U.S. 582 (2011).....	10
<i>Del Rey Tortilleria, Inc. v. NLRB</i> , 976 F.2d 1115 (CA7 1992).....	14
<i>Hoffman Plastic Compounds, Inc. v. NLRB</i> , 535 U.S. 137 (2002)	i, 3, 6, 7, 9-18
<i>INS v. National Center for Immigrants’ Rights, Inc.</i> , 502 U.S. 183 (1991)	10
<i>Kansas v. Garcia</i> , 589 U.S. (2020)	10, 11, 12
<i>Labor Board v. Seven-Up Bottling</i> , 344 U.S. 344 (1953)	16
<i>Madeira v. Affordable Hous. Found., Inc.</i> , 469 F.3d 219 (2d Cir. 2006).....	8, 12
<i>Phelps Dodge Corp., v. NLRB</i> , 313 U.S. 177 (1941)	16
<i>Sure-Tan, Inc. v. NLRB</i> , 467 U.S. 883 (1984)	14, 16
STATUTES	
8 U.S.C. § 1101 et seq. (IRCA).....	i, 2, 3, 5-19
8 U.S.C. § 1324a.....	1, 10
8 U.S.C. § 1324a(a)(1)	7, 10
8 U.S.C. § 1324a(a)(2)	7
8 U.S.C. § 1324a(b)	7
8 U.S.C. § 1324a(b)(C)(i)	10

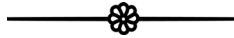
TABLE OF AUTHORITIES (Cont.)

	Page
8 U.S.C. § 1324a(b)(C)(ii).....	11
8 U.S.C. § 1324a(e)(4)(A)	11, 13
8 U.S.C. § 1324a(f)(1).....	11, 13
8 U.S.C. § 1324a(h)(3).....	10
8 U.S.C. § 1324a(h)(3)(B).....	11
8 U.S.C. § 1324c	1
8 U.S.C. § 1324c(a).....	11
8 U.S.C. § 1324c(a)(1)-(3).....	11
18 U.S.C. § 1546(b)	11
26 U.S.C. § 7205.....	11
28 U.S.C. § 1257(a)	1
35 U.S.C. § 101(a)(1).....	10
66 Stat. 163, Immigration and Nationality Act (INA).....	10



OPINIONS BELOW

The New Jersey Supreme Court's opinion is included in the appendix at App.1a. The New Jersey Appellate Davison's opinion is in the appendix at App.30a. The trial court's opinion transcript and order is in the appendix at App.57a.



JURISDICTION

The decision of the New Jersey Supreme Court was entered on March 19, 2026. App.1a. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions involved of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a and 8 U.S.C. 1324c are set forth in the appendix to this petition. App.78a.



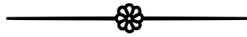
INTRODUCTION

In 1986, Congress enacted a landmark and comprehensive piece of legislation, the Immigration, Reform and Control Act (“IRCA”), which provided significant amendments to then existing immigration law, particularly in the area of the employment of aliens in the United States. The stated goal was to establish a comprehensive scheme that would prohibit the employment of illegal aliens in the United States. The IRCA also made combating employment of illegal aliens “forcefully” a central part of “the policy of immigration law.”

To that end, Congress established an extensive employment verification system, which would determine if an alien was “authorized” to work in the United States. Civil and criminal sanctions were put in place in the event that an alien used false documents in order to subvert the employment verification system and gain employment, and likewise employers who did not fire an alien upon becoming aware the alien was not authorized to work in the United States would also be subject to civil and criminal sanctions.

Sergio Lopez (“Lopez”), through the use of a false Social Security number, circumvented the employment verification system under IRCA to gain employment with Marmic, LLC. Upon learning that Lopez had provided a false Social Security number, Marmic, LLC stopped paying Lopez and the parties entered into a barter arrangement where Lopez would live rent free in one of the buildings in exchange for performing light maintenance and repairs in the buildings.

The New Jersey Supreme Court did not engage in any appropriate analysis of Lopez's conduct under the IRCA, or the seminal case on the statute, *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002). Instead, the New Jersey Supreme Court held, despite Lopez's conduct in violation of the IRCA, Lopez is eligible to recover for work performed. The Supreme Court's ruling is contrary to the explicit statute text, goals and policy considerations of the IRCA. To permit the New Jersey Supreme Court's ruling to stand would be to undermine the IRCA with respect to the prohibition of the employment of illegal aliens in the United States. Instead, the plain, and unambiguous language and purpose of the IRCA, coupled with the detailed and thorough analysis in *Hoffman*, lead to an inescapable conclusion that review and reversal is necessary by this Court.



STATEMENT OF THE CASE

A. Background Facts

In June 2015, Marmic, LLC was the owner of certain property that had four residential units and four commercial units in Newark, New Jersey. App.58a. An adjoining property contained five commercial units and seven residential units. App.58a. Mike Ruane ("Ruane"), the owner of Marmic, was seeking to hire a superintendent for both buildings to perform minor repairs and maintenance of the buildings. App.59a.

At the initial meeting, Lopez represented to Ruane that he had a valid Social Security number. App.59a. Lopez was advised he was going to be paid

\$1,600 per month, with \$800 rent due on the apartment provided. App.59a. At a second meeting, Lopez presented a form of identification to Ruane, and Ruane presented a W-4 form to Lopez to fill out and sign. App.59a-60a. Lopez, in filling out the W-4 form, intentionally wrote in an invalid Social Security number knowing that he did not have a valid Social Security number. App.60a. Lopez understood that he was signing the W-4 form under the penalties of perjury. App.60a.

After paying Lopez his initial paycheck, Ruane discovered that the Social Security number provided by Lopez was invalid. Ruane advised Lopez that Marmic could not legally pay Lopez because the Social Security number was invalid. App.60a. Ruane offered Lopez a barter arrangement where the apartment provided would be rent free in exchange for Lopez performing the maintenance and minor repair work in the buildings. App.61a. Lopez had no set schedule or minimum hours to work, and he set his own schedule. App.62a. There was no lease agreement with respect to the apartment, or employment agreement with respect to the work, and Lopez could leave the apartment at any time and stop performing his services without penalty. App.61a. Lopez was also free to, and he did, perform work for residences and businesses outside of the Marmic building for which he was paid in cash. App.63a.

B. The Trial Court Proceedings

After Ruane terminated by barter arrangement, Lopez commenced this matter by the filing of a Complaint, dated September 9, 2019, seeking payment of wages under New Jersey's Wage and Hour Law. App.30a.

A bench trial took place in this matter on August 18, 2023. The trial judge specifically excluded any evidence regarding Lopez’s immigration status at trial. App.28a. Instead, the testimony from Lopez at trial was that he knowingly provided a false Social Security number on the W-4 form that he submitted to gain employment with Marmic. App.23a.

Following the close of the evidence, and after post-trial submissions by the parties of proposed findings of facts and conclusions of law, the trial court made both findings of fact and conclusions of law. App.57a. The trial court stated that “the Court is required to rely upon the veracity of the plaintiff to – to make out the initial claim in this particular case. And I don’t find the – that the plaintiff in this case to be credible or believable.” App.38a. Furthermore, the trial court found that “the testimony of the employee has to be credible. And I don’t find in any way, shape, or form that the plaintiff’s testimony in this case is credible.”¹ App.38a.

In terms of the trial court’s conclusions of law, the trial judge also found that Lopez knowingly lied in filling out the W-4 form. App.60a. In analyzing this issue, the trial judge held that the Immigration Reform and Control Act of 1986 (“IRCA”), 8 U.S.C. § 1101, et seq., as a matter of federal law, statutorily barred Lopez. from recovery here. App.45a. More specifically, the trial court reasoned that the IRCA made it illegal to employ an unauthorized alien, and it is also a violation of the IRCA to falsify the necessary verification documents. App.45a.

¹ The trial court also held that Lopez’s complete lack of credibility was also a basis to dismiss his wage claims. App.75a.

The trial court also relied upon the United States Supreme Court’s ruling in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) in construing the IRCA. App.67a. The trial court also held that, pursuant to *Hoffman*, Lopez was not entitled to back pay because that “would have unduly entranced upon the explicit statutory provisions critical to federal immigration policy expressed in the IRCA.” App.68a. Therefore, the trial court ruled that Lopez was statutorily barred by federal law from recovering in this matter. App.75a. Accordingly, by order dated March 7, 2023, the trial judge dismissed Lopez’s Complaint with prejudice.² App.55a.

C. New Jersey Appellate Division Ruling

Lopez filed an appeal to the New Jersey Appellate Division, and on June 20, 2024, the Appellate Division issued a written opinion per curiam, affirming the trial court’s findings and rulings. The New Jersey Appellate Division recognized that the trial judge appropriately that it found that it was the fact that Lopez knowingly lied in completing the W-4 form to gain employment that represented the lack of credibility to dismiss Lopez’s claims.³ App.45a.

² The trial court also ruled that the Lopez and Marmic, LLC entered into a legally valid barter arrangement where Lopez was provided a free apartment in exchange for providing maintenance and minor repair services at the subject building, with there being no lease or employment agreement to compel Lopez to perform any services. App.61a.

³ The New Jersey Appellate Division also affirmed the trial court’s finding that a legally valid barter arrangement was entered into between Lopez and Marmic, LLC. App.52a.

The New Jersey Appellate Division also held that under the IRCA, Lopez was also statutorily barred from recovery, pursuant to *Hoffman*. (App.44a). In analyzing this issue, the New Jersey Appellate Division recognized that under the IRCA, and this Court's ruling in *Hoffman*, it is unlawful to hire or employ an unauthorized alien. 8 U.S.C. § 1324a(a)(1) and (2). App.43a. Additionally, the New Jersey Appellate Division also recognized that the IRCA contains a verification process that must be completed to ensure hires are authorized to work. 8 U.S.C. § 1324a(b). App.43a. The New Jersey Appellate Division affirmed the trial court's analysis that Lopez, as an undocumented alien, falls expressly within the purview of the IRCA. App.44a. The New Jersey Appellate Division affirmed the trial court's determination that Lopez lied when completing the W-4 form, which in turn made him not eligible to work for Marmic under the IRCA and, therefore, precluded recovery. App.45a.

D. New Jersey Supreme Court Ruling

After granting Lopez's Petition for Certification, on March 19, 2026, the New Jersey Supreme Court issued its opinion reversing the New Jersey Appellate Division's decision. App.1a-2a. In its analysis, the New Jersey Supreme Court ruled that *Hoffman* did not apply here because the Court in *Hoffman* did not focus on an award of damages for work that had already been performed, as is Lopez's claim here. App.15a-16a. Therefore, the New Jersey Supreme Court ruled that *Hoffman* does not preclude Lopez's claim for unpaid wages. The Court also held that the IRCA does not expressly bar a claim for work performed. App.10a.

The New Jersey Supreme Court also held that the IRCA does not preempt state workers' compensation and labor laws, citing *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 249 (2d Cir. 2006) (citations omitted). App.13a. Therefore, the New Jersey Supreme Court held that despite Lopez intentionally lying on the W-4 form, the IRCA did not prohibit Lopez's eligibility to recover on his wage claims for work performed and remanded the case for at trial on the issue of damages only.⁴ App.3a. It should be noted that the Court also suggested that there should be a credit applied regarding the value of the apartment provided as part of the barter arrangement at the damages trial.⁵ App.23a. Thus, the New Jersey Supreme Court made a final determination on the inapplicability of the IRCA to Lopez's claims and remanding the case for a trial on damages only.



REASONS FOR GRANTING THE PETITION

There are several reasons why this Court should grant the petition for a writ of certiorari. First, the New Jersey Supreme Court's decision directly contradicts the plain, and unambiguous, statutory language contained in the IRCA, and the analysis of the

⁴ The New Jersey Supreme Court held that the issue of Lopez lying about his Social Security number was part of the "narrative" of this case, but his lack of credibility on that issue could not be the sole reason for his wage claims to fail. App.25a.

⁵ The New Jersey Supreme Court also held that the barter arrangement could not be a substitute for any requirement under New Jersey's Wage and Hour Law. App.28a.

requirements under the IRCA's comprehensive employment verification provisions. The New Jersey Supreme Court did not engage in an appropriate analysis of Lopez's conduct under the IRCA. Instead, the New Jersey Supreme Court focused on the issue of Lopez's alleged damages being for "work performed," which the Court merely stated was not "expressly" barred by the IRCA. Thus, the New Jersey Supreme Court's analysis of Lopez's conduct under the IRCA is flawed.

Second, the New Jersey Supreme Court disregarded this Court's seminal case on the IRCA, *Hoffman Plastic Compounds, Inc. v. NLRB*. In doing so, the New Jersey Supreme Court also used the issue of Lopez's damages being for "work performed" in stating that rendered the analysis in *Hoffman* inapplicable here. However, the focus of the *Hoffman* Court was not on the remedy being sought, but rather the conduct of the unauthorized alien in subverting the employment verification system under the IRCA. Therefore, the analysis of the New Jersey Supreme Court of the decision in *Hoffman* is in error.

Finally, from a policy standpoint, the New Jersey Supreme Court held that Lopez being eligible to recover for work performed, despite circumventing the employment verification system, advances the policy and goals of the IRCA because it provides less of an incentive for employers going forward to hire unauthorized aliens. That reasoning is also flawed because holding that Lopez, despite subverting the IRCA's employment verification system, is eligible to recover for work performed is merely going to result in more IRCA violations by unauthorized aliens because there is no risk of enforcement of the statute. Accordingly, review is necessary by this Court.

I. The IRCA Mandates Review by This Court

This Court has recognized that the “foundation of our laws on immigration and naturalization is the Immigration and Nationality Act (INA), 66 Stat. 163, as amended, 8 U.S.C. § 1101, et seq., which sets out the ‘terms and conditions of admission to the country and the subsequent treatment of aliens lawfully in the country.’” *Kansas v. Garcia*, 589 U.S. ____ (2020) (quoting *Chamber of Commerce of United States of America v. Whiting*, 563 U.S. 582, 587 (2011)).

In 1986, Congress enacted the IRCA, which is “a comprehensive scheme prohibiting the employment of illegal aliens in the United States.” *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002), § 101(a)(1), 100 Stat. 3360, 8 U.S.C. § 1324a. The “IRCA ‘forcefully’ made combating the employment of illegal aliens central to ‘[t]he policy of immigration law.’” *Id.* (quoting *INS v. National Center for Immigrants’ Rights, Inc.*, 502 U.S. 183, 194, and n. 8 (1991)). The IRCA also established “‘an extensive ‘employment verification system,’ § 1324a(a)(1), designed to deny employment to aliens who (a) are not lawfully present in the United States, or (b) are not lawfully authorized to work in the United States, § 1324a(h)(3).” *Hoffman*, 535 U.S. at 147. This Court has recognized that the employment verification system is a critical component to the IRCA. *Id.* at 147-148.

In order for an alien to be “authorized” to work in the United States, an alien must have “a valid social security account number card.” 8 U.S.C. § 1324a(b)(C)(i). Alternatively, an alien may use “other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.” 8 U.S.C.

§ 1324a(b)(C)(ii). An “unauthorized alien” is any alien “[n]ot authorized to be so employed by this chapter or the Attorney General.” 8 U.S.C. § 1324a(h)(3)(B).

The IRCA exposes employers who violate its provisions subject to civil fines under 8 U.S.C. § 1324a(e)(4)(A), and potentially criminal prosecution pursuant to 8 U.S.C. § 1324a(f)(1). *Hoffman*, 535 U.S. at 148. It should also be noted that the “IRCA also makes it a crime for an unauthorized alien to subvert the employer verification system by tendering fraudulent documents.” *Id.* (quoting 8 U.S.C. § 1324c(a)). Accordingly, an alien is not permitted to use or attempt to use “any forged, counterfeit, altered, or falsely made document” to obtain employment in the United States. *Id.* 8 U.S.C. § 1324c(a)(1)-(3). It should also be noted that an alien who uses any of the aforementioned documents to gain employment is subject to civil fines and criminal prosecution. 18 U.S.C. § 1546(b).

Here, Lopez violated the IRCA in order to gain employment by way of intentionally entering an invalid Social Security number on the W-4 form. App.60a. Lopez also knew he did have a valid Social Security number when filing out the W-4 form in order to gain employment with Marmic.⁶ Finally, Lopez also fully understood that the W-4 form required him to be truthful in filling out and signing the form. App.60a. A plain reading of the IRCA analyzed against Lopez’s actions indicates that Lopez violated the express and unambiguous provisions of the IRCA. In analyzing the relevant provisions of the IRCA, the New Jersey

⁶ It should also be noted that it is a federal crime to use fraudulent information on a W-4 form. *Kansas v. Garcia*, 589 U.S.____ (2020), 26 U.S.C. § 7205.

Supreme Court only stated that “[t]he statute, however, does not expressly bar paying wages for undocumented workers for work they have already performed.” App.10a. The payment of wages, however, is not the focus of the IRCA. Instead, as a threshold issue, the IRCA’s focus is the critical issue of whether an alien is “authorized” to work in the United States through the IRCA’s employment verification system. *See Hoffman*, 535 U.S. at 147, *Kansas v. Garcia*, 589 U.S. ____ (2020) (“[t]he sole function of [employee verification] system is to establish that an employee is not barred from working in this country due to alienage.”). To accept the New Jersey Supreme Court’s rationale for Lopez’s conduct would render the employment verification system contained in the IRCA meaningless, as well as frustrate the express intent of Congress.

Instead of focusing on the clear intent of the IRCA as it applies to Lopez’s conduct, the New Jersey Supreme Court went on to hold that “the IRCA does not preempt state workers’ compensation and labor laws.” App.13a. In support of this conclusion, the New Jersey Supreme Court cites *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219 (2d Cir. 2006). However, it should be noted that the *Madeira* Court, in analyzing this issued stated that IRCA preemption did not apply to plaintiff’s claims because in relevant part “(1) the wrong being compensated, personal injury, is not authorized by the IRCA; and (2) it was the employer, rather than the worker who knowingly violated the IRCA in arranging for the employment.” *Madeira*, 469 F.3d at 249. The facts that led to the conclusion in *Madeira* are not present in this case.

The New Jersey Supreme Court also attempts to further its preemption holding by stating that permitting

unauthorized aliens to recover for “work performed” from employers by allowing state wage and hour law to preempt the IRCA furthers the goals of the IRCA because that would leave “virtually no incentives” for an employer to hire an unauthorized alien. App.14a. That position is misplaced. As set forth in by the Court in *Hoffman*, the IRCA contains provisions that are specifically designed to discourage employers from hiring unauthorized aliens. *Hoffman*, 535 U.S. at 148 (“[e]mployers who violate IRCA are punishable by civil fines, § 1324a(e)(4)(A), and may be subject to criminal prosecution, § 1324a(f)(1)”). Furthermore, enforcement of the IRCA’s requirements provides the most comprehensive and effective deterrents for both employers and unauthorized aliens.

To permit the New Jersey Supreme Court’s analysis of the IRCA to stand would render the statute, the intention of Congress, and the strong policy considerations that form the foundation of the IRCA meaningless. Therefore, review by this Court is necessary.

II. This Court’s Ruling in *Hoffman* Necessitates Review by This Court

In *Hoffman*, as in this case, the unauthorized alien, Castro, used false documents in order to gain employment with Hoffman Plastic Compounds, Inc. in 1988. *Hoffman*, 535 U.S. at 140-141. In 1989, Hoffman Plastic Compounds, Inc. chose four employees, including Castro, for layoff due to their alleged union activities. *Id.* at 140. In 1992, the NLRB found that Hoffman Plastic Compounds, Inc. unlawfully laid off Castro and the other three employees, and, among other remedies, ordered reinstatement and backpay to the four affected employees, including Castro. *Id.*

At the administrative law hearing, Castro admitted to intentionally using a driver's license and a Social Security card, fraudulently obtained using a friend's birth certificate, in order to gain employment with Hoffman Plastic Compounds, Inc.. Castro also testified that he was born in Mexico and had never been legally admitted or authorized to work in the United States. *Id.* at 141. Based on Castro's testimony, the Administrative Law Judge denied the NLRB from awarding Castro backpay, or reinstatement, holding that relief was precluded by this Court's holding in *Sure-Tan, Inc. v. NLRB*, and which would also be in conflict with the IRCA. *Id.*

In 1998, the NLRB reversed the Administrative Law Judge's decision with respect to Castro not being awarded backpay. In its decision, the NLRB held that "the most effective way to accommodate and further the immigration policies embodied in [IRCA] is to provide the protections and remedies of the [NLRA] to undocumented workers in the same manner as other employees." *Hoffman*, 535 U.S. at 141.

In its analysis, the *Hoffman* Court noted that the case to which the lower courts focused much of their analysis, *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984), contained an "express limitation of backpay to aliens 'lawfully entitled to be present and employed in the United States.'" *Hoffman*, 535 U.S. at 147 (quoting *Del Rey Tortilleria, Inc. v. NLRB*, 976 F.2d 1115, 1118-1121 (CA7 1992)). However, the *Hoffman* court noted that "we think the question presented here better analyzed through a wider lens, focused as it must be on a legal landscape now significantly changed" with the adoption of the IRCA. *Hoffman*, 535 U.S. at 147.

In its analysis of the NLRB's position on behalf of Castro, the *Hoffman* Court noted that "[u]nder the IRCA regime, it is impossible for an undocumented alien to obtain employment in the United States without some party contravening explicit congressional policies [as] [e]ither the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA's enforcement mechanism, or the employer knowingly hires an undocumented alien in direct contradiction of its IRCA obligations." *Id.* at 148. In arguing for an award of backpay for Castro, the NLRB asked the Court to overlook those issues "and allow it to award backpay to an illegal alien for years of work not performed, for wages that could not lawfully been earned, and for a job obtained in the first instance by a criminal fraud." *Id.* at 148-149. The NLRB also argued that a limited award of backpay to Castro "reasonably accommodates" the IRCA, because, in the Boards view, such an award is not 'inconsistent' with the IRCA." *Id.* at 149. Finally, the Board argued that "while IRCA criminalized the misuse of documents, 'it did not make violators ineligible for back pay awards or other compensation flowing from employment secured by the misuse of such documents.'" *Id.*

In response, the *Hoffman* Court first stated that "[w]e find however, that awarding backpay to illegal aliens runs counter to policies underlying the IRCA." *Hoffman*, 535 U.S. at 149. Significantly, the Court held that

[w]hat matters here, and what sinks both of the Board's claims, is that Congress has expressly made it criminally punishable for an alien to obtain employment with false documents. There is no reason to think that

Congress nonetheless intended to permit backpay where but for an employer's unfair labor practices, an alien-employee would have remained in the United States illegally, all the while successfully evading apprehension by immigration authorities (footnote omitted). Far from "accommodating" IRCA, the Board's position, recognizing employer misconduct but discounting the misconduct of illegal aliens, subverts it.⁷

Hoffman, 535 U.S. at 149-150.

Ultimately, the Court held with respect to the NLRB's position on behalf of Castro "that allowing the Board to award backpay to illegal aliens would unduly trench upon explicit statutory provisions critical to federal immigration policy, as expressed in IRCA. It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of immigration laws, and encourage future violations." *Id.* at 151. Further, the Court held that "awarding backpay in a case like this . . . trivializes the immigration laws." *Id.* at 150.

In this case, as in *Hoffman*, Lopez intentionally used false documents in order to gain employment with Marmic. After the first pay period, Marmic became aware that the Social Security number provided by

⁷ It should also be noted that the *Hoffman* Court also stated that "[s]imilarly, Castro cannot mitigate damages, a duty our cases require, see *Sure-Tan*, 467 U.S. at 901 (citing *Seven-Up Bottling*, 344 U.S., at 346; *Phelps Dodge Corp., v. NLRB*, 313 U.S. 177, 198 (1941)), without triggering new IRCA violations, either by tendering false documents to employers or by finding employers willing to ignore IRCA and hire illegal workers." *Hoffman*, 535 U.S. at 150-151.

Lopez was invalid, confirming that Lopez intentionally attempted to subvert the employment verification system by using false documents. As stated in *Hoffman*, “what matters here . . . is that Congress has made it criminally punishable for an alien to obtain employment with false documents.” *Hoffman*, 535 U.S. at 149. Further, permitting Lopez to recover for “work performed,” based on his conduct in obtaining employment would still “unduly trench upon explicit statutory provisions critical to federal immigration policy, as expressed in the IRCA.” *Hoffman*, 535 U.S. at 151.

Further, the *Hoffman* Court strongly stated that there “was no reason to think Congress would permit an award of backpay where but for an employer’s unfair labor practices, an alien-employee would have remained in the United States illegally, all the while successfully evading apprehension by immigration authorities.” *Id.* There is nothing in the Court’s opinion in *Hoffman* that would in any way suggest that its analysis would change if the NLRB was seeking to award Castro for “work performed” as opposed for an award for backpay. The analysis would remain the same. The issue of “work performed” would not change the analysis that Castro would have still obtained employment using false documents and subverted the IRCA’s employment verification system. The issue of “work performed” would also not outweigh the “explicit statutory provisions critical to federal immigration policy, as expressed in IRCA.” Furthermore, an award for work performed would still “encourage the successful evasion of apprehension by immigration authorities, condone prior violations of immigration laws, and encourage future violations.”

It should also be noted that in its lengthy analysis, the Court did not mention the prospect of “work performed” as a remedy that would change the application and/or analysis of IRCA in any way. However, the Court did discuss the concept of “traditional remedies” the NLRB could impose that are “sufficient to effectuate national labor policy regardless of whether the ‘spur and catalyst’ of backpay accompanies them.” *Hoffman*, 535 U.S. at 152. More specifically, in context, the Court stated that “lack of authority to award backpay does not mean the employer gets off scot-free.” *Id.* The Court noted that *Hoffman* was subject to action by the NLRB in the form of “cease and desist” orders, being required to post a notice to its employees of their rights, as well as being subject to a contempt proceeding. *Id.* Noticeably absent in this section of the Court’s opinion is any discussion, or even mention, of an award based on “work performed.” In sum, in this case, the analysis of Lopez’s conduct is controlled by *Hoffman*, thus requiring review by this Court.

III. This Case Is Ideal for Addressing the Important Questions Presented

The facts in this case are not in dispute. Thus, this case raises pure questions of federal law, coupled with significant national public policy implications. The ruling by the New Jersey Supreme Court does not properly analyze Lopez’s conduct as it applies to the IRCA. Instead, the New Jersey Supreme Court discounted Lopez’s intentional circumventing of the IRCA’s employment verification system, as well as the explicit purpose and goals of the IRCA, in holding that Lopez is eligible to recover on his wage claims for “work performed.” From a legal standpoint, the New Jersey Supreme Court’s ruling has the practical effect

of rendering the employment verification system of the IRCA moot with respect to the authorization of illegal aliens for employment in the United States, and potentially trivialize immigration law generally. Pursuant to the New Jersey Supreme Court's ruling, an illegal alien could use false documents in order to gain employment in the United States and have that conduct of circumventing the IRCA's employment verification system be no bar to recovery on a claim for wages.

From a policy standpoint, if the New Jersey Supreme Court ruling is left to stand, it would only encourage and condone future violations of the IRCA. The New Jersey Supreme Court's ruling strips the IRCA of any enforcement of the employment verification system and potentially "opens the floodgates" to violations of the IRCA by unauthorized aliens with respect to employment in the United States. Therefore, the Court should use this case as a vehicle to bring clarity to the IRCA's employment verification system, and the enforcement of the IRCA in accordance with the explicit goals and policies set forth by Congress. Therefore, review is necessary by this Court.



CONCLUSION

Based upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari be granted.

Respectfully submitted,

Joseph A. Deer

Counsel of Record

BASHWINER AND DEER, LLC

571 Bloomfield Avenue, Suite 203

Verona, NJ 07044

(973) 239-2756

jdeer@bashdeerlaw.com

Counsel for Petitioner

June 17, 2026