No. 26-49

IN THE
Supreme Court of the United States

BRENNA BIRD, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF IOWA, *Petitioner*,

v.

IOWA MIGRANT MOVEMENT FOR JUSTICE, ET AL., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

Brief *Amicus Curiae* of Lt. General Michael Flynn (USA-ret.), America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Ed. Fund in Support of Petitioner

RICK BOYER
Lynchburg, VA

WILLIAM J. OLSON*
ROBERT J. OLSON
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
**Counsel of Record*

August 12, 2026
Attorneys for Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICI CURIAE* 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 3

ARGUMENT

I. AS A SOVEREIGN STATE, THE STATE OF IOWA HAS THE SAME POWER AS THE NATIONAL GOVERNMENT TO EXCLUDE NONCITIZENS 5

II. THE IOWA STATUTE CHALLENGED HERE IS READILY DISTINGUISHABLE FROM THE ARIZONA STATUTE IN *ARIZONA V. UNITED STATES* 8

III. THE DECISION BELOW CONFLICTS WITH THE BASIC PRINCIPLES OF FEDERALISM 12

IV. THE DECISION BELOW UNDERMINES THE RETAINED SOVEREIGNTY OF THE STATE OF IOWA 15

CONCLUSION 20

TABLE OF AUTHORITIES

Page

CONSTITUTION
Article I, Section 8 5
Article IV, Section 3 7
Article VI, Clause 2 . . . . . 2, 4, 16
Amendment X. 4, 7, 14, 15, 19
Amendment XIV, Section 1 5

FEDERAL STATUTES
8 U.S.C. § 1326(a). 9

STATE STATUTES
Arizona SB1070 . . . . . 9, 11
Iowa SF2340. . . . . 2, 8-12, 16

CASES
Ambach v. Norwick, 441 U.S. 68 (1979) 19
Arizona v. United States, 567 U.S. 387 (2012) 3, 4, 6, 8, 9, 16, 17, 19, 20
Bond v. United States, 564 U.S. 211 (2011) 15
Cabell v. Chavez-Salido, 454 U.S. 432 (1982). 19
Chisholm v. Georgia, 2 U.S. 419 (1793) 13
Coyle v. Smith, 221 U.S. 559 (1911) 7
Foley v. Connelie, 35 U.S. 291 (1978) 19
Gregory v. Ashcroft, 501 U.S. 452 (1991). 14
Kansas v. Garcia, 589 U.S. 191 (2020) 4
New York v. Miln, 36 U.S. 102 (1837) 17, 18
Trump v. CASA, Inc., 606 U.S. 831 (2025) 3

MISCELLANEOUS
William Blackstone, I Commentaries on the Laws of England 6
Emmerich de Vattel, The Law of Nations. 6

INTEREST OF THE *AMICI CURIAE*[1]

Amicus curiae Lt. Gen. Michael T. Flynn (USA-ret.) is a 33-year veteran of the U.S. Army, whose career culminated as the Director of the Defense Intelligence Agency. He served as the country's 24th National Security Advisor at the beginning of President Trump's first term, where he supported President Trump's ramped-up immigration enforcement and border control policies. He is now Chairman of the Board of Directors of America's Future. *Amici curiae* America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, which have filed scores of *amicus curiae* briefs on immigration matters in federal and state courts.

Some of these *amici* have filed *amicus* briefs in challenges to other state laws involving illegal immigration. *See Arizona v. United States*, U.S. Supreme Court, No. 11-182, Brief *Amicus Curiae* of U.S. Border Control, et al. (Sept. 12, 2011) and Brief *Amicus Curiae* of U.S. Border Control, et al. (Feb. 13, 2012); *United States v. Texas*, U.S. Court of Appeals for

---

[1] It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

the Fifth Circuit, No. 24-50149, Brief of *Amici Curiae* America's Future, et al. (Mar. 13, 2024).

STATEMENT OF THE CASE

On April 10, 2024, Iowa Governor Kim Reynolds signed into law Senate File 2340, which adds Chapter 718C to the Iowa Code, and which requires Iowa state court judges to order the deportation of certain aliens illegally present in Iowa:

> A person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state under any of the following circumstances: a. The person has been **denied admission** to or has been **excluded, deported, or removed** from the United States. b. The person has **departed** from the United States **while an order** of exclusion, deportation, or removal **is outstanding**. [Emphasis added.]

On May 9, 2024, the Biden Administration and the Iowa Migrant Movement for Justice ("IMMJ") filed separate suits challenging the Iowa law in the Southern District of Iowa seeking "a declaratory judgment and preliminary and permanent injunctive relief enjoining the enforcement of Senate File 2340." *United States v. State*, 737 F. Supp. 3d 725, 738 (S.D. Iowa 2024). The district court enjoined the law, ruling that the plaintiffs were likely to succeed on their claims that Chapter 718C violates the Supremacy Clause and is preempted by federal law based on

Arizona v. United States, 567 U.S. 387 (2012). *Id.* at 751, 746.

On appeal, the Eighth Circuit affirmed, believing conflict preemption was likely to defeat the statute. *United States v. Iowa*, 126 F.4th 1334, 1344-46, 1353 (8th Cir. 2025). The circuit court also ruled that IMMJ was likely to prevail at trial.

After this Court's decision in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), largely prohibiting universal injunctions by district courts, the Eighth Circuit modified and reaffirmed the injunction in October 2025, to ensure "the injunctions are not 'broader than necessary to provide complete relief to each plaintiff with standing to sue....'" *Iowa Migrant Movement for Just. v. Bird*, 157 F.4th 904, 930 (8th Cir. 2025) ("*Bird I*"). With the change in administrations, the United States dismissed its suit against Iowa, leaving only the private plaintiffs' suit active. *Id.* at 930.

In February 2026, the Eighth Circuit denied rehearing *en banc*. *See Iowa Migrant Movement for Just. v. Bird*, 166 F.4th 688 (8th Cir. 2026).

SUMMARY OF ARGUMENT

These *amici* urge this Court to grant certiorari in this case, which involves a statute significantly different from the Arizona statute struck down in part under *Arizona v. United States*, 567 U.S. 387 (2012) which was relied on below. If required, these *amici* ask the Court to reconsider, and either distinguish, narrow, or overrule *Arizona*, a decision which

misunderstood the authority of states over their own borders, ignoring the fact that states enforced the nation's borders for 100 years. *See Arizona* at 419 (Scalia, J., concurring in part and dissenting in part).

Contrary to the view taken by the Eighth Circuit, this is not a Supremacy Clause case. It is better viewed as a Tenth Amendment case. The decisions below effectively overruled this Court's prior precedents correctly describing the "twin sovereignties" of the state and federal governments that our Constitution contemplates, and paved the way for the destruction of any "separate and independent existence" for the "indestructible States" that this Court has long recognized. Finally, it effectively overruled this Court's prior precedents holding that the Supremacy Clause does not preempt states from exercising their inherent powers where, as here, those powers were not delegated to the national government.

In his concurrence in this Court's recent case of *Kansas v. Garcia*, 589 U.S. 191 (2020), Justice Thomas renewed his call for this Court to re-examine its "purposes and objectives preemption" doctrine. This case presents a good opportunity for this Court to do so, and to properly re-evaluate and apply the history and tradition of state concurrent jurisdiction over immigration in the Founding era.

If the area of immigration is carved out as an area that the states must not touch — which appears to be the goal of the courts below — then it opens the country to the specter of some future Administration which gives low priority to, or simply declines to

enforce, federal criminal immigration laws — defending that neglect as a matter of prosecutorial discretion. On the other hand, if state criminal laws track federal law, that empowers states to bring criminal charges in such circumstances, bringing a significant degree of control over illegal immigration.

ARGUMENT

I. AS A SOVEREIGN STATE, THE STATE OF IOWA HAS THE SAME POWER AS THE NATIONAL GOVERNMENT TO EXCLUDE NONCITIZENS.

In the area of immigration law, it is essential to begin with First Principles. Contrary to popular belief, and even contrary to the view of many lawyers and judges, the authority of the United States to control its borders and to restrict immigration **does not derive from the U.S. Constitution**. Indeed, neither the word "border" nor the word "immigration" even appears in the U.S. Constitution. The only express constitutional provision addressing noncitizens is Article I, Section 8, which grants Congress the power to "establish an uniform Rule of Naturalization" — the process by which a noncitizen acquires citizenship in the United States.

Once individuals become citizens of the United States, they automatically become a citizen "of the state wherein they reside" under Section 1 of the Fourteenth Amendment. Therefore, no state has the authority to exclude from its state a citizen of the United States, but there is no such constitutional

limitation on the authority of a state to exclude noncitizens as to the United States. The Framers of the Constitution never gave exclusive authority over the nation's borders to the national government, and, according to that previously well-established authority of states, it was the states that protected the nation's borders for much of its existence.[2]

If the power to control the border and to exclude noncitizens does not come from the Constitution, then from where does it come? It should be considered settled that this power comes from the status of the United States as a sovereign state. This proposition can be sourced to such eminent authorities as Blackstone[3] and de Vattel.[4] Additionally, until *Arizona*

---

[2] *See Arizona v. United States* at 419 (Scalia, J., concurring in part and dissenting in part) ("[I]n the first 100 years of the Republic, **the States enacted numerous laws restricting** the **immigration** of certain classes of aliens....") (emphasis added).

[3] *See* William Blackstone, I Commentaries on the Laws of England at 251 ("Upon exactly the same reason stands the prerogative of granting safe-conducts, without which **by the law of nations no member of one society has a right to intrude into another**. And therefore Puffendorf very justly resolves, that it is left in **the power of all states, to take such measures about the admission of strangers**, as they think convenient; those being ever excepted who are driven on the coasts by necessity, or by any cause that deserves pity or compassion.") (Emphasis added.)

[4] Emmerich de Vattel, The Law of Nations, Book II, Chapt. VII, Sect. 94 ("**The sovereign may forbid the entrance of his territory** either to foreigners in general or in particular cases, or to certain persons or for certain particular purposes, according as he may think it advantageous to the state.") (Emphasis added.)

was decided by this Court in 2012, it had been understood that each of the 50 States in these United States is also a sovereign state, with all the authority of any sovereign state — except for those powers relinquished to the national government as set out in the U.S. Constitution. In joining the Union, no state relinquished the power to control its own border. Thus, as a sovereign state, Iowa has the very same authority that the United States does to protect its borders by banning certain illegal aliens from its state.

The power to exclude noncitizens was a right understood and exercised by the original 13 colonies, and when Iowa was admitted to the union, it came in on an "equal footing" possessing those same rights.[5] There is no indication anywhere that Iowa surrendered this power to exclude when entering the union. The area of immigration control is an excellent illustration of the reason the Tenth Amendment was placed into the Bill of Rights — to make clear that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Properly understood, there is no issue of supremacy involved in this case. Under the U.S. Constitution,

---

[5] *See Coyle v. Smith*, 221 U.S. 559 (1911); *see also* U.S. Constitution, Article IV, Section 3; *see also* An Act for the Admission of the State of Iowa into the Union as the 29th State, signed into law by President James K. Polk on December 28, 1846 ("That the State of Iowa shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever.").

both the national government and all states are "states," and both have the same power to exclude noncitizens. The only additional power given to the federal government is the right to deem certain persons citizens of the United States, who then may determine to reside in any state, and the state chosen must recognize them as citizens of both the nation and that state. This analysis is the same under federal law as it is under the U.S. Constitution. Any federal law which purports to deprive the states of the authority to protect its own borders would be unconstitutional and ineffectual. This case presents this Court with the opportunity to ensure that *Arizona* is not misread as occurred below, or if necessary, take steps to return to the long-established rule of state authority over its borders.

II. THE IOWA STATUTE CHALLENGED HERE IS READILY DISTINGUISHABLE FROM THE ARIZONA STATUTE IN *ARIZONA V. UNITED STATES*.

The current litigation involves a very different circumstance than the *Arizona* litigation. First, in the *Arizona* case, it was the federal government which brought the challenge to the state law; but here, the federal government supports Iowa's law. *See* Petition for Certiorari ("Petition") at 2.

Additionally, Iowa's SF2340 is a materially different law than the Arizona law this Court overturned 14 years ago. This Court's primary rationale in *Arizona* was that its statute conflicted with the "purposes and objectives" of federal law.

Arizona at 410. That rationale does not apply here, because SF2340 is triggered only by violations of federal law.

Arizona's SB1070 § 6, the main section overturned by this Court, and the section somewhat analogous to Iowa's law, authorized warrantless state arrest of persons believed to have committed deportable offenses. This Court found that:

> Congress has put in place a system in which state officers may not make warrantless arrests of aliens based on possible removability except in specific, limited circumstances. By nonetheless authorizing state and local officers to engage in these enforcement activities as a general matter, § 6 creates an obstacle to the full purposes and objectives of Congress. [*Arizona* at 410.]

The key was the state law's entrustment of removability decisions to state officers. "By authorizing state officers to decide whether an alien should be detained for being removable, § 6 violates the principle that the removal process is entrusted to the discretion of the Federal Government." *Id.* at 409.

In contrast, Iowa's SF2340 is directly tied to, and its enforcement action triggered by, violations of 8 U.S.C. § 1326(a). The federal law provides that "any alien who ... has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter ... enters,

attempts to enter, or is at any time found in, the United States," has committed a federal crime by re-entering. SF2340 simply makes the same conduct a state criminal offense as well.

The Eighth Circuit conceded that the Iowa statute is directly tied to and triggered by violation of federal law. "In effect, Section 2 of the Act adds a state-law penalty for conduct proscribed by federal law." *Bird I* at 920 (internal quotation omitted). There is a longstanding historical tradition of concurrent federal and state criminalization in numerous contexts, including those contexts where the Constitution places enforcement power in the national government.

The Iowa law provides that:

> [a] person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state under any of the following circumstances: a. The person has been denied admission to or has been excluded, deported, or removed from the United States. b. The person has departed from the United States while an order of exclusion, deportation, or removal is outstanding. [*Bird I* at 920.]

The Eighth Circuit conceded that the Iowa law "defin[es] 'alien' by reference to federal immigration law." *Bird I* at 912. Thus, unlike Arizona, which tried to empower state officials to make determinations of removability, culpability attaches only if federal officials have already made that determination. The Eighth Circuit contended that:

> [u]nder federal law, the U.S. Attorney General may expressly consent to an alien's reapplying for admission, or the alien may establish "that he was not required to obtain such advance consent." 8 U.S.C. § 1326(a)(2). Section 2 likely conflicts with federal law because it applies to aliens whom federal law, and federal officials acting under federal law, may exempt from the federal crime of illegal reentry. [*Id.* at 921.]

If the courts below are correct, whenever the Attorney General has prosecutorial discretion and can decide not to prosecute conduct that is criminal under federal law, states have no authority to prosecute violations of the same conduct under state law. This Court has never suggested that if an Assistant U.S. Attorney declines to prosecute a drug smuggler for taking drugs across state lines, the state loses its authority to prosecute him for importing drugs into the state, as somehow an obstacle to the "purposes and objectives" of the federal drug statute.

Likewise, the *Arizona* Court struck down § 5(C) of SB 1070, which punished illegal aliens for working in the state while present illegally. Again, in contrast to Iowa's law here, Congress had chosen not to criminalize aliens for working while present illegally, instead imposing sanctions on employers. Unlike Arizona's law, the Iowa statute imposes criminal punishment only for conduct independently defined by Congress.

In the current circumstance where the Iowa law has been supported by the federal government through *amicus* briefs (*see* Petition at 3), risk of conflict is both speculative and negligible.

III. THE DECISION BELOW CONFLICTS WITH THE BASIC PRINCIPLES OF FEDERALISM.

Even if the longstanding principles set out in Section I, *supra*, were disregarded, Iowa's law should still be upheld. As shown in Section II, *supra*, Iowa's SF2340 was designed to work in concert, not conflict, with U.S. immigration law. Principles of Federalism support this type of state law. It was designed as a "parallel criminal illegal reentry law." Petition at 14.

> Like SF2340, Congress criminalized illegal reentry with mandatory language. 8 U.S.C. § 1326 (person in violation "shall" be punished). Unlike the [law considered in] *Arizona*, SF2340 does not punish conduct not already federally criminalized. And only a federal determination that an alien was not properly admitted to the country triggers SF2340. *See* Iowa Code § 718C.2(1). [*Id.* at 30.]

Indeed, on petition for rehearing *en banc*, the United States "told the Eighth Circuit that SF2340 'further[s] the purposes of federal immigration law.'" *Id.* at 12 (quoting Brief for the United States as *Amicus Curiae* in Support of Reh'g en banc (8th Cir. Nov. 26, 2025)).

Moreover, the Iowa statute challenged here, and others like it in other states, become exceedingly useful, if not essential, should an administration come to power which would instruct the U.S. Department of Justice not to enforce some or all federal immigration laws. It can be predicted that such an administration would use as an excuse for its nonfeasance that it has either de-prioritized enforcement of certain federal immigration offenses, or that it exercising its prosecutorial discretion to allow violations to occur without consequence. Thus, the fact that the federal government has prosecutorial discretion to enforce a criminal law simply cannot provide the basis to find a state law which substantially mirrors federal law to conflict with that federal law.

This case merits this Court's attention because the decisions below are irreconcilable with the basic tenets of Federalism. In *Chisholm v. Georgia*, 2 U.S. 419 (1793), Justice Iredell observed that:

> Each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them: Of course the part not surrenderred [sic] must remain as it did before. [*Id.* at 435.]

In 1991, this Court confirmed this historic legacy of "dual sovereigns":

> "[T]he people of each State compose a State, having its own government, and endowed with

> all the functions essential to separate and independent existence, ... [w]ithout the States in union, there could be no such political body as the United States." Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States. [*Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991) (emphasis added) (internal quotations omitted).]

At the heart of this case is whether one of these "indestructible States," Iowa, retains the power of self-preservation, a function essential to its separate and independent existence, or whether Iowa and Iowans are deprived of such "reserved" powers, secured by the Tenth Amendment, rendering them wholly dependent upon a non-responsive, often antagonistic, national government to protect them from, even, an actual and massive invasion of illegal immigrants.

At risk in this case is whether the nation's federalist system — in which independent and sovereign States have played a vital part from the very beginning of America's settlement and colonial history — is to be degraded in favor of an exalted centralized

civil power, the tentacles of which are increasingly threatening to strangle American self-government and liberty. As this Court has put it, "[f]ederalism ... allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power." *Bond v. United States*, 564 U.S. 211, 221 (2011).

IV. THE DECISION BELOW UNDERMINES THE RETAINED SOVEREIGNTY OF THE STATE OF IOWA.

In *Bond*, this Court unanimously affirmed that the constitutional "allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States" and that "[t]he federal balance ... ensure[s] that States function as political entities in their own right." *Bond* at 221.

Iowa's policy is to enforce cooperatively a national policy of immigration and naturalization as a means of protecting her "integrity, dignity, and residual sovereignty," one of the central features of America's federal system. *Id.* It is an inherent power of the State, secured by the Tenth Amendment, to protect and preserve her sovereign status as a separate and independent political community. The court below cavalierly dismissed that sovereignty, stating repeatedly that "immigration is not a traditional subject of state regulation." *Bird I* at 919, 922.

The court also erred in elevating "broad discretion exercised by immigration officials" to Supremacy Clause status. Because federal officials possess discretion not to send a removable alien home, and SF 2340 allows Iowa officials to do so anyway, the court found Iowa's law to conflict with the "purposes and objectives" of the federal law, even without contradicting its text. *Id.* at 927.

Not surprisingly, the Eighth Circuit leaned heavily on *Arizona* as a foundation for its opinion. The court noted that *Arizona* "describ[es] 'broad discretion exercised by immigration officials' as a 'principal feature of the removal system'" of federal law. *Bird I* at 921. It argued that "[d]iscretion in the enforcement of federal immigration law is vital for accomplishing the purposes of federal immigration law" because it "'embraces immediate human concerns.'" *Id.* at 921 (quoting *Arizona* at 396).

Justice Scalia undertook a deep and extensive historical analysis, unrebutted by the majority, that objectively dispelled any notion that states may not regulate immigration, despite the Naturalization Clause.

> [I]n the first 100 years of the Republic, the States enacted numerous laws restricting the immigration of certain classes of aliens, including convicted criminals, indigents, [and] persons with contagious diseases.... Neuman, The Lost Century of American Immigration Law (1776-1875), 93 Colum. L. Rev. 1833, 1835, 1841-1880 (1993). State laws not only

> provided for the removal of unwanted immigrants but also imposed penalties on unlawfully present aliens and those who aided their immigration. [*Arizona* at 419 (Scalia, J., concurring in part and dissenting in part).]

In fact, as he noted, "the controversy surrounding the Alien and Sedition Acts involved a debate over whether, under the Constitution, the States had exclusive authority to enact such immigration laws." *Id.* at 420.

> The Kentucky and Virginia Resolutions, written [by Jefferson and Madison] in denunciation of these Acts, insisted that the power to exclude unwanted aliens rested solely in the States.... Notably, moreover, the Federalist proponents of the Act defended it primarily on the ground that "[t]he removal of aliens is the usual preliminary of hostility" and could therefore be justified in exercise of the Federal Government's war powers. [*Arizona* at 419 (Scalia, J., concurring in part and dissenting in part).]

Missing entirely is any suggestion from these members of the Founding generation that restricting immigration is strictly a federal prerogative.

In his *Arizona* dissent, Justice Scalia cites *New York v. Miln*, 36 U.S. 102 (1837), for the proposition that, before the adoption of the Constitution, the states had the right to exclude aliens. The case certainly stands for that proposition. But it goes a great deal

further. It proves that in the generation following the Founding, this Court understood the states to indeed retain the power to exclude foreigners pursuant to the police power. This Court ruled that:

> the object of the legislature was, to prevent New York from being burdened by an influx of persons brought thither in ships ... from foreign countries ... and for that purpose a report was required of the names, places of birth, &c. of all passengers, that the necessary steps might be taken by the city authorities, to prevent them from becoming chargeable as paupers. Now, we hold that both the end and the means here used, are **within the competency of the states**, since a portion of their powers were surrendered to the federal government. [*Id.* at 133 (emphasis added).]

In approving the New York law, this Court ruled, "a state has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation; where that jurisdiction is not surrendered or restrained by the constitution of the United States." *Id.* at 139. The Court added, "[w]e think it as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts; as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported...." *Id.* at 142-43.

Thus, this Court has already held, as Justice Scalia argues, that "the Constitution did not strip the States of that authority" to exclude aliens. *Arizona* at 418 (Scalia, J., concurring in part and dissenting in part).

State inquiries into immigration status are within the ambit of those powers reserved to the States by the Tenth Amendment. For example, this Court has ruled that a State may condition employment as a public school teacher or as a police officer on a person's immigrant status. *See Ambach v. Norwick*, 441 U.S. 68 (1979) (public school teacher) and *Foley v. Connelie*, 35 U.S. 291 (1978) (state police officer). As this Court has explained:

> The exclusion of aliens from basic governmental Processes is not a deficiency in the democratic system but a necessary consequence of the community's process of political self-definition. **Self-government ... begins by defining the scope of the community of the governed**.... Aliens are by definition those outside of this community. [*Cabell v. Chavez-Salido*, 454 U.S. 432, 439-40 (1982) (emphasis added).]

Accordingly, this Court has affirmed "'a State's historical power to exclude aliens from participation in its democratic political institutions' ... as part of the sovereign's obligation 'to preserve **the basic conception of a political community**.'" *Foley* at 295-96 (emphasis added).

In his *Arizona* dissent, Justice Scalia noted that the decision "deprives States of what most would consider the defining characteristic of sovereignty: the power to exclude from the sovereign's territory people who have no right to be there. Neither the Constitution itself nor even any law passed by Congress supports this result." *Arizona* at 417 (Scalia, J., concurring in part and dissenting in part)

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

RICK BOYER
INTEGRITY LAW FIRM
P.O. Box 10953
Lynchburg, VA 24506

WILLIAM J. OLSON*
ROBERT J. OLSON
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
Attorneys for Amici Curiae
**Counsel of Record*

August 12, 2026