NO. 11-14532
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant; Cross-Appellee,

v.

STATE OF ALABAMA & GOVERNOR OF ALABAMA,

Defendants-Appellees; Cross-Appellants.

On Appeal from the United States District Court for the
Northern District of Alabama
Case No. 5:11-cv-24814-SLB

BRIEF OF *AMICUS CURIAE* LANDMARK LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS-APPELLEES

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CERTIFICATE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

Pursuant To Fed. R. App. P. 26.1, the undersigned certifies that *Amicus Curiae* Landmark Legal Foundation is not a publicly held corporation, has no parent corporation and that no corporation directly or indirectly has 10% or more of the ownership interest in *Amicus*. In accordance with 11th Circuit Rule 26.1-1, the undersigned further certifies that the list of persons or entities that have an interest in the outcome of this case is adequately set forth in the opening briefs of the parties.

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TABLE OF CONTENTS

Certificate of Interested Parties and Corporate Disclosure Statement.. i

Table of Contents…….. ii

Table of Authorities…….. iv

Statement of Amicus Curiae Interest…… 1

Statement of the Issue…….. 1

Summary of Argument……. 3

Argument…….. 3

I. ARGUMENT…….. 3

A. Alabama's HB 56 Was Enacted In Response To The Federal Government's Failure To Enforce Existing Federal Immigration Law…….. 5

B. Alabama's HB 56 Works To Not Only Reverse The Negative Impact Of Illegal Immigration But Also To Affect Positive Results For The Citizens Of Alabama. 6

C. Alabama Retrains The Sovereign Power To Advance The Safety Of Its People…….. 7

D. The District Court Properly Held That HB 56 Sec. 28 Does Not Violate The Supreme Court Ruling In *Hines v. Davidowitz*…… 8

E. The District Court Erred In Finding That Seconds 11(a), 13, 16 and 17 Of HB 56 Are Preempted By Federal Law……. 10

1. The Federal Administration Has failed To Satisfy The Clear Standards For Federal Preemption…….. 11

2. HB 56 Is Consistent With, Rather Than Preempted By, Current Immigration Law….. 13

3. HP 56 Is Consistent With Many Other States' Immigration Enforcement Provisions……. 14

F. HB 56 Does Not Violate The Supreme Court's Holding in *Plyler v. Doe*……. 15

G. Mexico And Its Supporting Nations Come To This Court With Unclean Hands Advocating For Inappropriate Judicial Intervention In Foreign And Domestic Policy Alike……. 16

II. Conclusion…… 22

Certificate of Compliance…… 24

Certificate of Service……... 25

TABLE OF AUTHORITIES

Cases:	**Page:**
Am. Ins. Ass'n. v. Garamendi, 539 U.S. 396 (2003) …….	11
Barclays Bank PLC v. Franchise Tax Bd., 512 U.S. 298 (1994) ……..	11
De Canas v. Bica, 424 U.S. 351(1976) …….	8,13
Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1963) …….	8
Gonzales v. City of Peoria, 722 F.2d 468 (9th Cir. 1983) ……..	7,8,13
Hines v. Davidowitz, 312 U.S. 52 (1941) ……..	8,9,10,16
Ker v. California, 374 U.S. 23 (1963) ……...	7
Mayor of New York v. Miln, 36 U.S. (11 Pet.) 102 (1837) ……	7
Miller v. United States, 357 U.S. 301 (1958) ……	7
Pennsylvania v. Nelson, 350 U.S. 497 (1956) ……...	10
Plyler v. Doe, 457 U.S. 202 (1982) ……...	15,16
Rice v. Rehner, 463 U.S. 713 (1983) …….	10
Rice v. Sante Fe Elevator Corp., 331 U.S. 218 (1947) …….	8
U.S. v. DiRe, 332 U.S. 581 (1948) ……	7
Constitution and Statues:	
U.S. Const. Art I, Sec. 8 ……..	11
U.S. Const. Art VI, Cl. 2 …… .	3
8 U.S.C. 1101 …….	10

Beason-Hammon Alabama Taxpayer and Citizen Protection Act,

Ala. Laws Act 2011-535 ("HB 56") ..... passim

Mexican General Law on Population

Article 32 ……. 20

Article 116 …… 20

Article 118 …… 20

Article 127 …… 20

Mo. Rev. Stat. Sec. 28.824 ……. 14

Mo. Rev. Stat. Sec. 43.032.2 …….. 14

Mo. Rev. Stat. Sec. 208.009.1 …… 14

Mo. Rev. Stat. Sec. 208.009.3 …… 14

Mo. Rev. Stat. Sec. 302.063 …….. 14

Prince William County Police Department, “Manual of General Orders,

General Order 45.01.” …….. 14-15

Miscellaneous:

Felipe Calderon, transcript interview with Wolf Blitzer,

“The Situation Room.”

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Susan Carroll, “Immigration Cases Being Tossed By The Hundreds,” *The Houston Chronicle*, October 17, 2010 (http://www.chron.com/news/article/Houston-immigration-cases-tossed-by-the-hundreds-1711874.php)..... 5

Rep. Raul Grijalva, Letter To Hillary Clinton, December 2, 2011. Available at http://grijalva.house.gov/news-and-press-releases/grijalva-joined-by-more-than-30-members-of-congress-in-calling-on-state-sec-clinton-to-raise-human-rights-concerns-with-mexico/..... 19

Laurence Iliff, “Mexico offers tips for crossing border in comic book,” *The Seattle Times*, January 7, 2005 (http://seattletimes.nwsource.com/html/nationworld/2002143941_comic07.html)……. 22

“Invisible Victims: Migrants on the Move in Mexico,” Amnesty International, April 2010 …….. 18

http://latino.foxnews.com/latino/money/2011/02/02/remittances-mexico-marginally/…… 17

“Mexican State Issues ‘How To’ on Border Jumping,” *FoxNews.com*, March 23, 2005 (http://www.foxnews.com/story/0,2933,151207,00.html)……. 22

"Mexico Sees Record Drop in Remittances," Associated Press, January 27, 2010…….. 17

Neil Munro, "Alabama's jobless rate falls amid immigration reform," The Daily Caller, December 18, 2011, (http://dailycaller.com/2011/12/18/alabama-jobless-rate-falls-amid-immigration-reform). …… 6

The New York Times, "The Lede" blog by Mike Nizza, January 31, 2008 (quoting Julia Preston, immigration reporter for the New York Times)… 17

STATEMENT OF AMICUS CURIAE INTEREST

Amicus Curiae Landmark Legal Foundation is a national public interest law firm committed to preserving the principles of limited government, separation of powers, federalism, originalist construction of the Constitution and individual rights. Specializing in constitutional history and litigation, Landmark presents herein a unique perspective concerning the legal issues and national implications of the district court's improper application of federal preemption standards and its abuse of discretion in basing its ruling on an overbroad reading of Supreme Court precedent as well as in part on misplaced deference to the arguments of the United Mexican States. The undersigned certifies that no party's counsel authored this brief in whole or in part; nor did any person, party or party's counsel contribute money for the purpose of preparing this brief. This brief is filed pending Landmark's Motion for Leave to Participate.

STATEMENT OF THE ISSUE

The issue presented in this appeal is whether the District Court properly granted the United States' request for a preliminary injunction against Sections 11(a), 13, 16, and 17 of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Ala. Laws Act 2011-535 (hereinafter "HB 56" or "the Act"), and properly denied the United States' request for a preliminary injunction against

Sections 10, 12(a), 18, 27, 28 and 30 of the Act.[1] In addition, this Court must determine whether the United States is likely to succeed on the merits of its claim; i.e., that those sections not enjoined by the District Court are preempted by federal immigration law established by the Immigration and Nationality Act (hereinafter

[1] HB 56 Sec. 11(a) makes it a misdemeanor crime for an unauthorized alien to apply for, solicit, or perform work. Sec. 13 makes it unlawful for a person to; 1) conceal, harbor or shield an alien unlawfully present in the United States, or attempt to conspire to do so; 2) encourage an unlawful alien to come to the State of Alabama; or 3) to transport (or attempt or conspire to transport) an unlawful alien. Sec. 16 forbids employers from claiming as business tax deductions any wages paid to an unauthorized alien. Sec. 17 establishes a civil cause of action against an employer who fails to hire or discharges a U.S. citizen or an alien who is authorized to work while hiring, or retaining, an unauthorized alien. Provisions not enjoined by the Court include HB 56 Sec. 10, which creates a misdemeanor criminal violation under Alabama law for willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. Sec. 1304(e) or 8 U.S.C. Sec. 1306(a) and is unlawfully present in the United States. Sec. 12(a) requires a law enforcement officer to make a reasonable attempt, when practicable, to determine the citizenship and immigration status of a person stopped, detained or arrested when reasonable suspicion exists that the person is an alien who is unlawfully present in the United States. Sec. 18 amends Ala. Code 32-6-9 to include a provision that a person is arrested for driving without a license, and the officer is unable to determine that the person has a valid driver's license, the person must be transported to the nearest magistrate; a reasonable effort shall be made to determine the citizenship of the driver, and if found to be unlawfully present in the United States the driver shall be detained until prosecution or until handed over to federal immigration authorities. Sec. 27 bars Alabama courts from enforcing certain contracts to which a party includes a person who is unlawfully present in the United States. Sec. 28 requires every public elementary and secondary school in Alabama to determine if an enrolling student was born outside the jurisdiction of the United States or is the child of an unlawfully present alien and qualifies for assignment to an English as second language class or other remedial program. Sec. 30 makes it a felony for an alien not lawfully present in the United States to enter into a "business transaction" with the State of Alabama or any political subdivision thereof.

"INA"), and whether they are invalid under the Supremacy Clause of the Constitution. U.S. Const. art. VI, cl. 2.

SUMMARY OF ARGUMENT

Enacted by Alabama to mirror existing federal law, HB 56 does not establish any new requirements or regulations that in any way preempt federal law or violate the Constitution. It does not conflict with enforcement priorities established by federal statute or federal regulation. When evaluated in light of Supreme Court case law on preemption, well-established principles of statutory construction, and the basic division of responsibilities established by the Constitution and the federal system of government, Sections 11(a), 13, 16, and 17 are constitutional and the District Court erred in enjoining their implementation. However, the District Court correctly refused to enjoin HB 56's remaining provisions, which should be allowed to operate in full force.

I. ARGUMENT

HB 56 is thoroughly consistent with federal immigration law, all constitutional principles and provisions, all statutes, and all relevant judicial precedents. The Act does not supplant the federal government's constitutional authority to regulate the flow of immigrants into, through and out of the country. No individual's immigration status will be changed or otherwise affected by the enforcement of Alabama's statute. HB 56 does not confer on Alabama the

authority to grant, deny, or alter anyone's legal immigrant status. Nor does the law allow Alabama to deport anyone, nor deny any child a public education. The most that can be done by Alabama state or local law enforcement officials is, after due process, incarcerate or otherwise punish an individual for violations of state statutes.

The federal government's selective application of the Supremacy Clause in immigration related matters appears to be wholly political and sends confusing signals to its citizens and those illegally in the United States. For example, while pursuing aggressive legal action against states such as Alabama, which are attempting to comply with and support existing federal immigration laws, the federal government turns a blind eye to state and local governments adopting policies promoting violations of federal immigration law, including the establishment of sanctuary cities, the issuance of state identification cards, and the provision of in-state tuition for illegal immigrants.[2]

[2] There are currently three sanctuary states and 24 additional states with sanctuary cities that defy federal law and offer protection to illegal immigrants. See, e.g., www.sanctuarycities.info. Moreover, new California laws will offer college financial aid to illegal immigrants. Connecticut and Maryland have passed laws to charge lower in-state college tuition rates to students who are illegal immigrants. Amicus Curiae Landmark Legal Foundation is not aware that the federal government has brought any action against these jurisdictions asserting preemption or Supremacy Clause.

Alabama's HB 56 is a measured and appropriate exercise of its sovereign authority where the federal government has failed and refuses to act. Full implementation should be allowed immediately.

A. Alabama's HB 56 Was Enacted In Response To The Federal Government's Failure To Enforce Existing Federal Immigration Law.

In the face of the executive branch's nonfeasance in implementing Congressional immigration statutes, HB 56 was enacted for the purpose of addressing the economic hardships and lawlessness caused by illegal immigration and exacerbated by Alabama state agencies that provide public benefits without verifying immigration status. *See* HB 56, Section 2. *See also*, Susan Carroll, "Immigration Cases Being Tossed By The Hundreds," *The Houston Chronicle*, October 17, 2010 (http://www.chron.com/news/article/Houston-immigration-cases-tossed-by-the-hundreds-1711874.php).

The federal administration seems to believe that its malfeasance and political motivations trump the considered deliberations and actions, not only of Congress, which passed the immigration laws in the first place, but the State of Alabama and any other state that does not prostrate itself to its machinations. The State of Alabama has passed a complementary law to federal law because the federal administration refuses to execute its responsibilities.

B. Alabama's HB 56 Works To Not Only Reverse The Negative Impact Of Illegal Immigration But Also To Affect Positive Results For The Citizens Of Alabama.

Even with the federal government working to frustrate implementation of HB 56, the immediate economic reaction to its passing in August 2011 was for unemployment in Alabama to drop from 9.8 percent in September to 9.3 percent in October and 8.7 percent in November as the state's employers opened up jobs to Americans and lawful aliens.[3] Thus, even in the short run, the State of Alabama's actions can be credited, at least in part, for improving the economic conditions of its citizens and lawful immigrants -- which is a perfectly legitimate function of state government.

The federal administration's failure to put law above politics and to enforce federal immigration statutes and Congressional intent has, ironically, spurred states to fill the void.[4]

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[3] Neil Munro, "Alabama's jobless rate falls amid immigration reform," The Daily Caller, December 18, 2011, available at (http://dailycaller.com/2011/12/18/alabama-jobless-rate-falls-amid-immigration-reform).

[4] The federal administration has a constitutional duty as one of only three branches of the federal government to faithfully carry out the statutory requirements and policies of Congress. While it may claim in this litigation and in other lawsuits involving other states to accurately represent the whole of the federal government respecting the interpretation and application of immigration law, the fact is that this administration speaks only for itself in its politically motivated interpretations and applications of federal immigration law.

C. Alabama Retains The Sovereign Power To Advance The Safety Of Its People.

More than 50 years after the Constitution's ratification, the Supreme Court declared in *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102 (1837) that states not only retain their sovereignty, but maintain solemn responsibilities to their citizens:

> [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. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation, which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a state is complete, unqualified, and exclusive. *Miln*, 36 U.S. at 139.

Subsequent courts applying the Constitution to state police powers have established firmly the sovereign power of states to protect the public, noting the police power extends to protecting the public from individuals who are in violation of federal statutes. *See, e.g., Ker v. California*, 374 U.S. 23 (1963); *Miller v. United States*, 357 U.S. 301 (1958); *U.S. v DiRe*, 332 U.S. 581, 591 (1948). Moreover, this power extends to the enforcement of federal immigration statutes despite the Constitution's grant of exclusive federal authority to establish immigration standards and regulations. *See Gonzales v. City of Peoria*, 722 F.2d

468, 474 (9th Cir. 1983) (alien's arrest for federal immigration criminal violation permitted if arrest is authorized under state law).

"[W]here state enforcement activities do not impair federal regulatory interests, concurrent enforcement activity is authorized." *Id*. at 474. The Supreme Court has held that "we will not presume that Congress, in enacting the INA, intended to oust state authority to regulate . . . in a manner consistent with pertinent federal laws. Only a demonstration that complete ouster of state power -- including state power to promulgate laws not in conflict with federal laws – was 'the clear and manifest purpose of Congress' would justify that conclusion." *De Canas v. Bica*, 424 U.S. 351, 357 (1976) (citing *Florida Lime & Avocado Growers v. Paul*, 373S. 132, 146 (1963) (quoting *Rice v. Santa Fe Elevator Corp*, 331 U.S. 218, 230 (1947))).

It is not the State of Alabama that seeks to subvert federal immigration laws, it is the federal administration's refusal to enforce federal immigration laws that compels state action that complements federal law.

D. The District Court Properly Held That HB 56 Sec. 28 Does Not Violate The Supreme Court Ruling In *Hines v. Davidowitz*.

Section 28 is an appropriate tool to address the problems set forth in Section I above. It is constitutional as it applies to all individuals found in the State of Alabama.

Section 28 is consistent with the Supreme Court's ruling in *Hines v. Davidowitz*, 312 U.S. 52 (1941). In *Hines*, Pennsylvania required *legal aliens* to file an annual state registration form, carry at all times and produce on demand an alien registration card, pay an annual registration fee, and submit to an annual open-ended "interview" with state officials covering any and all topics at the interviewer's discretion. *Hines*, 312 U.S. at 59. None of this is done in HB 56. Moreover, HB 56 deals only with illegal aliens. Hence, *Hines* has no application whatsoever to the case at hand. But the federal administration raises it in hopes of muddying the issues.

Section 28 requires all children enrolling in public elementary or secondary school to provide their birth certificate to a school official. H.B. 56 Sec. 28 (a)(1)-(2). Information about the immigration status of a parent is not reflected on Alabama birth certificates. Nothing in Section 28 compels school officials to determine the immigration status of either a parent or student.

Yet the United States argues that Section 28 creates a registration scheme for children similar to the one the Supreme Court invalidated in *Hines*. (Doc. 2 at 57-58) As the District Court properly noted in its analysis, "Unlike the Pennsylvania Act in *Hines*, Section 28 does not create an independent, state-specific registration scheme, attempt to register anyone, or create registration requirements in addition to those established by Congress in the INA." Memorandum Opinion, p. 108.

Unlike in *Hines*, there is no scheme in Section 28 to register aliens – either legally or illegally within the United States. No requirement is made to provide documents that are not required to be produced by any other child, including those who are United States citizens and those who are already known to school administrators. Section 28 is neither an obstacle to nor inconsistent with the requirements established by Congress in the INA, specifically the inspection, apprehension, examination, exclusion, and removal of illegal aliens, the registration of aliens, and general penalty provisions. *See* 8 U.S.C. 1101. Consequently, *Hines* has nothing to do with HB 56 and the District Court properly held that Section 28 of HB 56 is not preempted by federal law.

E. The District Court Erred In Finding That Sections 11(a), 13, 16 And 17 Of HB 56 Are Preempted By Federal Law.

"The goal of any pre-emption inquiry is 'to determine the congressional plan'" by examining federal statutes in their full context. *Rice v. Rehner*, 463 U.S. 713, 718 (1983) (quoting *Pennsylvania v. Nelson*, 350 U.S. 497, 504 (1956). The District Court was correct in finding the United States has not met requirements for a preliminary injunction of Sections 10, 12(a), 18, 27, 28 and 30 of HB 56. The District Court's preemption analysis regarding the remaining sections of HB 56, however, was misplaced and should be overruled by this Court.

1. The Federal Administration Has Failed To Satisfy The Clear Standards For Preemption.

In finding the United States had not established a likelihood of success on its claim that HB 56 Sect. 10 is preempted by federal law, the District Court properly cited *Barclays Bank PLC v. Franchise Tax Bd.*, 512 U.S. 298, 327-28 (1994) in which the court held, "Statements from executive branch officials or other evidence of foreign discontent or threats of reprisal are insufficient to establish the national position." There was no evidence provided by the federal administration of any national policy, foreign policy, Congressional intent, treaty or international agreement establishing a national position that would preempt HB 56. The District Court properly found the statements provided by the federal administration are insufficient evidence of Congressional intent to prohibit the kinds of provisions enacted by Alabama. Citing *Am. Ins. Ass'n. v. Garamendi*, 539 U.S. 396, 421 (2003), the District Court concluded that the federal administration failed to show specifically that HB 56 runs afoul of any foreign policy "addressed in executive branch diplomacy and formalized in treaties and executive agreements." Memorandum Opinion, p. 108. The same analysis applies to Sections 11(a), 13, 16, and 17, however, and those sections should not have been enjoined by the District Court.

U.S. Const. Art. I, Sec. 8's reservation of the naturalization of aliens to the federal government is in no way diminished by HB 56. The Act imposes no new

or unreasonable burdens on federal immigration officials and is otherwise consistent with federal immigration law. In fact, HB 56 merely requires state officials to cooperate fully with the national government's priorities as declared by Congress. HB 56 is complimentary of, not conflicting with, federal law. The administration's complaint that HB 56 will unduly tax federal resources, even if established (which it has not been), is a quarrel with Congress, which enacted the Immigration and Nationality Act ("INA"), and set priorities for the national government. The federal administration's quarrel is not with Alabama, which merely seeks to comply with the INA's mandates.

The truth is that without the cooperation of states like Alabama, the federal government's financial and resource burden would increase immeasurably because it is state and local law enforcement authorities that the federal government must rely on to do most of the law enforcement work related to the INA once aliens have illegally entered the country.

HB 56 does not impose any new or additional responsibilities on the federal government. It does not establish any new or inconsistent obligations for aliens legally or illegally residing in or otherwise present in Alabama. There are no new standards for naturalization in Alabama, no new forms to carry or fill out, and no other new or unique standards exclusive to aliens present in Alabama. Moreover, the law does not in any way apply to citizens or to visitors legally present in

Alabama, who are protected in exactly the same manner as they are in all other circumstances.

Alabama's new law continues the collaborative tradition between federal and state law enforcement respecting immigration and most other criminal laws in the country. Beat cops, cops in cruisers, local detectives, etc. – the federal government relies on infinite local and state decisions, actions, and untold resources to enforce immigration law. HB 56 is a legitimate, measured and responsible exercise of Alabama's long-standing authority and duty to provide for the safety and welfare of its people. This is why states exist.

2. HB 56 is consistent with, rather than preempted by, current immigration law.

"Although the regulation of immigration is unquestionably an exclusive federal power, it is clear that the power does not preempt every state activity affecting aliens." *De Canas v. Bica*, 424 U.S. 351, 354-55. Accordingly, before a court may reject a duly enacted state statute as preempted by federal immigration law, it must "define precisely the challenged state enforcement activity to determine if 'the nature of the regulated subject matter permits no other conclusion.'" *Gonzales v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983) (quoting *De Canas*, 424 U.S. at 354-355).

HB 56 addresses public safety and economic concerns and serves all individuals who are legally in Alabama. Moreover, the enactment codifies existing federal immigration priorities as declared by Congress.

3. HB 56 is consistent with many other states' immigration enforcement provisions.

Many, if not most, states require individuals incident to lawful stops and questioning to establish who they are and where they are from. This includes citizens and non-citizens. While Alabama's HB 56 has attracted the federal administration's ire, several other state and local jurisdictions have enacted immigration-related enforcement laws that have not been challenged. For example, Missouri law prohibits municipal sanctuary policies and prohibits unlawfully present aliens from receiving state or local benefits. Public employees are also required to participate in a federal work authorization program. A driver's license may not be issued to illegal aliens and law enforcement officers must inquire as to the citizenship and/or immigration status of any individual under arrest. *See* Mo. Rev. Stat. § 43.032.2, 208.009.1, 208.009.3, 302.063 and 28.824 (2010).

Since 2007, Prince William County, Virginia ("PWC") police officers must inquire into the immigration status of all persons who are under physical custodial arrest. PWC officers may also question an individual's immigration status prior to a physical arrest if, during the course of a stop, the officer develops "reasonable articulable suspicion" that such an individual may be in violation of federal

immigration laws. Prince William County Police Department, "Manual of General Orders, General Order 45.01."

F. HB 56 Does Not Violate The Supreme Court's Holding In *Plyler v. Doe*.

In their *Amicus Curiae* brief, the National Education Association, The Alabama Education Association, and the National School Boards Association (hereinafter referred to collectively as the "Group") claim HB 56 conflicts with the Supreme Court's holding in *Plyler v. Doe* and violates the Equal Protection Clause. Group *Amicus Curiae* Brief at 10. Yet in their brief, the Group fails to quote any specific language or provision of HB 56 that conflicts with the Supreme Court's holding in *Plyler* or that violates the Equal Protection Clause. Instead, the Group relies on self-serving anecdotal hyperbole in an attempt to change the focus of the issue at hand and mislead the Court.

In *Plyler,* the Supreme Court held a Texas Education Code provision permitting local school districts to deny undocumented children enrollment in public schools violated the Equal Protection Clause of the Fourteenth Amendment. *Plyler v.Doe,*457 U.S. 202 (1982).

As the District Court properly concluded, *Plyler* does not apply as HB 56 Section 28, "…does not create an independent, state-specific registration scheme, attempt to register anyone, or create registration requirements in addition to those established by Congress in the INA. The standard for registration provided by

Congress remains uniform." Memorandum Opinion, p. 108. The Group does not and cannot point to a single provision in Section 28 that in any way denies access to public schools for undocumented children.

As with its conclusion that HB 56 did not run afoul of *Hines*, the District Court properly applied *Plyler* to conclude that the law does not deny children a public education based on their immigration status, race, color or national origin.[5]

G. Mexico And Its Supporting Nations Come To This Court With Unclean Hands Advocating For Inappropriate Judicial Intervention In Foreign and Domestic Policy Alike.

The United Mexican States' ("Mexico") *Amicus Curiae* brief in support of the U.S. federal administration -- joined by a number of other Central and South American nations -- presents an inappropriate and offensive intrusion into internal national and state matters and is a stunning breach of diplomatic protocol. It is a thinly veiled effort to influence U.S. domestic policy for Mexico's own economic interests and against the interests of the citizens and legal aliens who reside in the United States. It should be rejected outright.

Mexico's opposition to HB 56 purports to arise from concerns about "Mexico-U.S. trade and tourism, security concerns, and the secure, orderly and legal

[5] As with *Hines*, Landmark notes a troubling pattern with the federal administration and its litigation partners. *Plyler*, like *Hines*, has absolutely nothing to do with Alabama's legislation or the facts before this Court. Among other things, this should demonstrate the cracked foundation on which the federal administration seeks to build its case.

movement of people across the Mexico-U.S. border" as claimed by Mexico. Brief of Amicus Curiae United Mexican States, at 3. In reality, Mexico's interest is to maintain a status quo of the unabated illegal immigration of its citizens into the United States so as to maintain the financial exploitation of her citizens illegally living and working in the United States.

Mexico received a total of $21.27 billion in remittances in 2010, and it is estimated that remittances would grow by 5.77% in 2011 to $22.5 billion.[6] Remittances constitute the second largest source of foreign currency for Mexico after oil sales.[7] Remittances from the United States to Mexico have grown rapidly from $9 billion in 2001[8] and have a great positive impact on the Mexican economy. "The funds go directly from immigrants to their spouses, parents and children. The money is often used to refurbish homes, streets and schools; to sustain the elderly; to beautify village squares and start small businesses. They have lifted many Mexicans out of abject poverty and into the consumer market, helping to stabilize Mexico's economy…."[9]

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[6] http://latino.foxnews.com/latino/money/2011/02/02/remittances-mexico-marginally/.
[7] Id.
[8] "Mexico Sees Record Drop in Remittances," Associated Press, January 27, 2010.
[9] *The New York Times*, "The Lede" blog by Mike Nizza, January 31, 2008 (quoting Julia Preston, immigration reporter for the New York Times).

While Mexico expresses fear of "harassment of Mexican citizens and individuals of Hispanic appearance alike,"[10] the record demonstrates overwhelmingly that it is Mexico that owns an abhorrent history of human rights abuses and tolerates ongoing brutal treatment of aliens present within Mexico's borders. Moreover, if such "harassment" were to occur in the United States, allegedly aggrieved individuals would have access to our judicial system.

Amnesty International recently completed a report entitled "*Invisible Victims: Migrants On The Move In Mexico,"* documenting repeated instances where Mexican officials engaged in excessive force and extortion of illegal immigrants, particularly those from Central America countries such as Guatemala, Honduras and El Salvador. Amnesty International recounts various stories where "irregular migrants" (illegal immigrants) were brutalized by Mexican federal and state authorities. For example, in one reported incident, three federal police vehicles stopped a freight train and forced the illegal immigrants "to get off the train and lie face down and stole their belongings." Amnesty International, *"Invisible Victims: Migrants On The Move In Mexico."* Amnesty International Publications, 2010. Another recorded incident involved Mexican state police opening fire "on a truck carrying around 45 'irregular migrants' from El Salvador, Guatemala, Honduras, Ecuador and China." Id.

[10] Brief of Amicus Curiae United Mexican States, at 3, 14.

While Mexico has regularly fought for special treatment of its citizens who live illegally in the United States, the institutional abuse of illegal immigrants passing through or living in Mexico by the Mexican government has caused outrage and demands for action by not only international human rights organizations, but also from members of the United States Congress. In a December 2, 2011, letter to Secretary of State Hillary Clinton, Representative Raul Grijalva, Arizona Democrat and co-chairman of the Congressional Progressive Caucus, joined by more than 30 lawmakers, including Foreign Affairs Committee ranking Democrat Howard L. Berman, accused Mexican authorities of everything from "kidnapping and robbery to extortion of migrants crossing Mexico on their way to the U.S."[11] Representative Grijalva continued, "The current levels of abuse against migrants in transit in Mexico represent a humanitarian crisis that has been recognized by international human rights organizations across the globe."[12] "The daily abuses suffered by migrants en route to the United States [through Mexico] directly impact American lives, and American policymakers need to make stopping them a priority."[13]

[11] Rep. Raul Grijalva, Letter To Hillary Clinton, December 2, 2011. Available at http://grijalva.house.gov/news-and-press-releases/grijalva-joined-by-more-than-30-members-of-congress-in-calling-on-state-sec-clinton-to-raise-human-rights-concerns-with-mexico/
[12] Id.
[13] Id.

Mexico's response to international outrage at its treatment of illegal aliens within her borders has been to craft an immigration law that provides harsh penalties for foreigners who enter the country illegally. Under Mexico's "General Law on Population," foreigners are admitted only "according to their possibilities of contributing to national progress." (Article 32.) Mexico maintains a national catalog of foreigners that assigns each admitted alien a unique tracking number. Aliens who are in possession of false immigration papers can be fined or imprisoned. (Article 116.) An alien who has been deported and attempts to re-enter the country without authorization (Article 118.) If an individual enters Mexico illegally the individual can serve up to two years in prison and pay a fine of three hundred to five thousand pesos. Finally, Mexican law provides that if a Mexican national marries a foreigner with the sole objective of aiding the foreigner to live in Mexico, that Mexican national can be imprisoned for up to five years. (Article 127).

The fact is that illegal aliens in the State of Alabama or any state in the United States are treated more humanely and with more legal protections than illegal aliens who have the misfortune of being in Mexico. And nothing the State of Alabama has done has changed that fact.

Mexican President Felipe Calderon confirmed the hypocrisy of Mexico's own immigration laws with that of the United States during an interview with Wolf

Blitzer. Responding to a question as to whether aliens from countries such as Guatemala, Honduras, El Salvador or Nicaragua could just "walk in [to] Mexico", Mexican president Felipe Calderon said:

> *No. They need to fulfill a form. They need to establish their right name. We analyze if they have a criminal precedent. And they coming into Mexico. Actual…*

The interview continued. When asked whether Mexican police go around asking for papers of people they suspect are illegal immigrants, mr. Calderon replied,

> *Of course. Of course, in the border, we are asking the people, who are you?*

When asked about the deportation policies of Mexico, President Calderon responded,

> *"If – if somebody [enters the country] without permission, we send back – we send back them [sic]."* [14]

While vigorously defending itself from illegal immigration, in ways that we all can agree are repugnant, Mexico encourages its citizens to enter the United States illegally by providing information to its population on how to break U.S. immigration laws and live in the United States illegally. Mexico has produced and distributes a free 32-page booklet that it advertises at bus stations and government offices. The booklet's main focus is to instruct people on how to cross the border

[14] Felipe Calderon, transcript interview with Wolf Blitzer, "The Situation Room." (http://transcripts.cnn.com/TRANSCRIPTS/1005/19/sitroom.01.html).

safely and gives advice on how to live in the United States. This advice includes "not to beat their wives" or "go to loud parties" as either action may attract the attention of the police. Nowhere in the booklet is information provided on the process to legally immigrate to the United States.[15] In 2005, the Mexican state of Yucatan published an 80-plus page guide (with an accompanying DVD) providing instructions for safely entering the United States illegally. While containing a section on how to obtain a legal visa, most of the guide is "filled with instructions about how to safely sneak into the United States, then blend in."[16]

Mexico's argument that Alabama's law creates a patchwork of inconsistent American immigration standards is not only incorrect, but is a transparent attempt to influence internal United States policies that maintain the financial benefits Mexico now reaps from the exploitation of its citizens who have escaped to the United States. This Court should disregard Mexico's intermeddling altogether.

II. CONCLUSION

For the reasons set forth herein, *Amicus Curiae* Landmark Legal Foundation respectfully requests the Court to uphold the District Court's finding that the federal administration has not met the requirements for a preliminary injunction on

[15] Laurence Iliff, "Mexico offers tips for crossing border in comic book," *The Seattle Times*, January 7, 2005 (http://seattletimes.nwsource.com/html/nationworld/2002143941_comic07.html).
[16] "Mexican State Issues 'How To' on Border Jumping," *FoxNews.com*, March 23, 2005 (http://www.foxnews.com/story/0,2933,151207,00.html).

its claim that Sections 10, 12(a), 18, 27, 28 and 30 of HB 56 are preempted by federal law, and reverse the District Court's finding that there is a substantial likelihood that the federal administration will succeed on the merits of its claim that Sections 11(a), 13, 16, and 17 of HB 56 are preempted by federal law.

Dated January 3, 2012

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that the foregoing *Brief of Amicus Curiae Landmark Legal Foundation* complies with the type-volume limitations in the Fed. R. App. P. 32(a)(7)(B). The brief has been prepared in a proportionally spaced typeface using 14 point-Times New Roman font and contains 5,298 words, as counted by Microsoft Word, exclusive of the matters that may be omitted under Rule 32(a)(7)(B)(iii).

Dated January 3, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2012 I electronically transmitted the foregoing document to the Clerk's Office System for filing and transmittal of a Notice of Electronic Filing to the participants in this appeal, all of whom are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

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