

**CONSTITUTIONALITY OF THE ALABAMA IMMIGRATION
LAW UNDER THE BEASON-HAMMON ALABAMA
TAXPAYER AND CITIZEN PROTECTION ACT¹: THE CASE
OF *UNITED STATES V. ALABAMA*²**

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On June 2, 2011, the Alabama Legislature approved the Beason-Hammon Alabama Taxpayer and Citizen Protection Act,³ and Governor Robert Bentley signed it into law on June 9, 2011. The Alabama Legislature argued that the presence of undocumented immigrants in the state was causing a high rate of unemployment in Alabama. The goal of H.B. 56 was to reduce the number of undocumented immigrants living in Alabama in order to increase the number of jobs for Alabamans.

The majority of the provisions in H.B. 56 became effective on September 1, 2011. Seeking to permanently enjoin enforcement of certain provisions, the United States sued the State of Alabama, Governor Robert J. Bentley in his official capacity, the National Fair Housing Alliance, Inc. and the American Unity Legal Defense Fund.⁴ The United States argued, *inter alia*, that Sections 10, 11(a), 12, 13, 16, 17, 18, 27, 28, and 30 of H.B. 56 were preempted under the Supremacy Clause and by federal law, principally the comprehensive registration scheme embodied in the Immigration and Nationality Act.⁵ The objective of this article is, therefore, to delineate some of H.B. 56's sections and critically analyze them in light of the Constitution of the United States.

The Alabama statute H.B. 56 can be classified into four different categories of restriction or imposition on undocumented aliens that may be in violation of the Equal Protection Clause of the Fourteenth Amendment, the Bill of Attainder, Law Impairing the Obligations of Contracts and/or the Supremacy Clauses of the United States Constitution. The categories include: (1) requirements imposed on undocumented aliens, (2) denial of self-help

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¹ Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Ala. Laws Act 2011-535 (H.B. 56) (2011) [hereinafter Ala. Stat. H.B. 56 (2011)].

² See *United States v. Alabama*, 2011 U.S. App. LEXIS 20942 (11th Cir. 2011).

³ See Ala. Stat. H.B. 56 (2011).

⁴ *United States v. Alabama*, 2011 U.S. Dist. LEXIS 112362 (N.D. Ala. Sept. 28, 2011); (U.S.D. Ala.), D.C. Doc. No. 2:11-cv-2746-SLB. D.C. Doc. No. 5:11-cv-2484-SLB.

⁵ Immigration and Nationality Act, 8 U.S.C. § 1101 (1952) [hereinafter 8 U.S.C. § 1101].

opportunities, (3) unconstitutional denial of government benefits and classification and identification of children of alien parents, and (4) penalties for others engaging with undocumented aliens.

I. REQUIREMENTS IMPOSED ON THE UNDOCUMENTED ALIEN

There are three sections⁶ within H.B. 56 that impose certain requirements upon undocumented aliens that are not required of Alabama citizens. First, aliens must carry identification and registration documents with them at all times.⁷ This Section requires undocumented aliens to carry immigration documentation; otherwise there is a presumption of being undocumented aliens.⁸ Second, state officials may stop a person on *reasonable suspicion* to determine citizenship.⁹ Finally, an arrested person without a driver's license is presumed to be an alien.¹⁰ In all instances, the statute provides that state officials may not consider race, color, or national origin in the enforcement of these sections.

A. Aliens Must Carry Identification and Registration Documents

Section 10(a) of the Alabama law states that if person is an alien¹¹ unlawfully present in the United States¹² and is not carrying documentation, he or she is guilty of willful failure to complete or carry an alien registration document.¹³ Federal law states the same and further states that the Alien Registration Act¹⁴ makes it a criminal offense for an alien to fail to carry an

⁶ See Ala. Stat. H.B. 56 §§10(a), 12 (b) & 18(d) (2011).

⁷ See *id.* § 10(a). But the Federal Government has already preempted § 10(a) with 8 U.S.C. § 1306, stating that “[a]ny alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed \$1,000 or be imprisoned not more than six months, or both.”

⁸ See Ala. Stat. H.B. 56 § 10(a) (2011).

⁹ See *id.* § 12(a).

¹⁰ See *id.* § 18(b).

¹¹ See *id.* § 3(1). An alien is any person who is not a citizen or national of the United States as described in Immigration and Naturalization Act 8 U.S.C. § 1101 (1959).

¹² See Ala. Stat. H.B. 56 § 10(a) (2011).

¹³ *Id.*

¹⁴ Under the Aliens and Nationality Act 8 U.S.C. § 1304(e) (2009), every alien eighteen years of age and older must carry a certificate of alien registration or alien registration receipt card; failure to carry the registration card is a misdemeanor punishable by a fine not exceeding \$100, imprisonment of no more than 30 days, or both. An alien's willful failure to apply for registration and to be fingerprinted is a misdemeanor punishable by a fine not exceeding \$1,000, imprisonment of no longer than six months, or both. *Id.* at § 1306(a).

alien registration card or other immigration documents.¹⁵ But states do not have the same authority as the federal government with respect to unlawful immigrants. Furthermore, Alabama’s H.B. 56 states that an alien unlawfully present in the United States shall be guilty of a Class C Misdemeanor and subject to a fine of no more than one hundred dollars and no more than thirty days in jail.¹⁶ The statute makes clear that under any of these circumstances, state officials may not use race, color or national origin to identify undocumented aliens.¹⁷

B. State Officials May Stop Persons on Reasonable Suspicion¹⁸

Section 12 of Alabama’s H.B. 56 states that a state, county, or municipal law enforcement official who lawfully stops, detains or arrests a person and who has *reasonable suspicion*, as opposed to *probable cause*, that the person is an alien unlawfully present in the United States, may determine the citizenship and immigration status of that person.¹⁹ The Supreme Court addressed the standard of “cause” in *Terry v. Ohio*.²⁰ In that decision, Chief Justice Earl Warren ruled that a “police officer may ‘stop and frisk’ a suspect if the officer observes ‘articulable facts’ that make it ‘reasonable to assume’ that the suspect is armed and dangerous.” This standard is less demanding than the “probable cause” that is needed for a full arrest because the nature of the intrusion—a brief stop and a weapons pat-down—is less serious than an arrest. Although the majority in *Terry* did not specifically use the term “reasonable suspicion,” subsequent cases have made clear that *Terry* was applying what has come to be called the “reasonable suspicion” test.²¹

This statute basically turns state, county, and municipal law enforcement officers into federal immigration officials and usurps federal

¹⁵ See *United States v. Ritter*, 752 F.2d 435 (1985) (holding that 8 U.S.C.S. § 1304(e) (1952) was constitutional and defendant’s arrest for failing to carry immigration documents was proper).

¹⁶ See Ala. Stat. H.B. 56 § 10(f) (2011).

¹⁷ See *id.* § 11(c).

¹⁸ See *id.* § 12(a).

¹⁹ See *id.* § 12(d). Whether a person is illegally in the United States will be determined by inspecting the following documents: (1) a valid, unexpired Alabama drivers’ license; (2) a valid, unexpired Alabama non-driver identification card; (3) a valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier; (4) any valid United States federal or state government issued identification document; (5) a foreign passport with an unexpired United States Visa and a corresponding stamp, a foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay or an I-94 form.

²⁰ See *Terry v. Ohio*, 392 U.S. 1 (1968).

²¹ See Michael C. Dorf, *The New Arizona Immigration Law Raises an Old Question: What is “Reasonable Suspicion”?* FINDLAW (May 3, 2010), <http://writ.news.findlaw.com/dorf/20100503.html>.

law. Alabama attempts to legitimize the statute by declaring, “a law enforcement officer shall not attempt to independently make a *final* determination of whether an alien is lawfully present in the United States.”²² But the law enforcement officer can make an *initial* determination as to the status of the alien. By the time federal officials enter the picture,²³ the Alabama official has already made an initial determination and the detained person’s constitutional rights may have already been violated because state officials do not have the same legal authority as federal officials in the enforcement of immigration laws.

C. Arrested Person without Driver’s License Presumed to Be an Alien

All persons driving automobiles are required to be in immediate possession of a driving license.²⁴ However, if a law officer arrests a person for not being in possession of a driver’s license and is unable to determine his citizenship, the officer is required to transport the person to the nearest or most accessible magistrate²⁵ and a determination will be made as to whether the unlicensed driver is an undocumented alien.²⁶ In other words, a person without a driver’s license is presumed to be an undocumented alien and may be detained as an alien.²⁷ This Section states that a state officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.²⁸ However, by the time the arresting officer makes an arrest, he or she has already made a *preliminary* determination, whether correct or not, and has contacted the federal authorities to make a *final* determination.²⁹ The Alabama statute states that, “If the person is determined to be an alien unlawfully present in the United States, the person shall be considered a flight risk and shall be detained until prosecution or until handed over to federal immigration authorizes.”³⁰ But arresting and detaining undocumented aliens falls under the jurisdiction of

²² See Ala. Stat. H.B. 56 § 12(c) (2011).

²³ See *id.* § 12(c) (stating that if it is determined that the alien is unlawfully in the United States, the “law enforcement agency shall cooperate in the transfer of the alien to the custody of the federal government”).

²⁴ See *id.* § 18(b).

²⁵ *Id.*

²⁶ See *id.* § 18(c).

²⁷ See *id.* § 18(d).

²⁸ *Id.* § 18(c).

²⁹ Aliens and Nationality Act of 2009, 8 U.S.C. § 1373(c) (stating that “The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information”).

³⁰ See Ala. Stat. H.B. 56 § 18(d) (2011).

the federal government, not the state government. The state government cannot empower itself and usurp federal power.

D. Race, Color or National Origin

In enforcing the statute, a law enforcement official or agency of the state or a county, city, or other political subdivision is not allowed to consider race, color or national origin in the enforcement of Section 10.³¹ While the mandate of the statute is clear and obvious, its application is problematic. Let us be clear about who is the target of this legislation. The Alabama legislation is focused on Hispanics presently residing in the state who are Mexican,³² Puerto Rican,³³ Central American,³⁴ South American,³⁵ Cuban,³⁶ Dominican³⁷ as well as “other Hispanics and Latinos.”³⁸ Out of 9.6 million Alabamans, Hispanics comprise 8.8 percent of the entire state population, and approximately fifty percent of them are either born or naturalized Hispanic Americans. Therefore, the legislation focuses on approximately 4.4 percent of the entire Alabama population, but adversely impacts all Hispanics because undocumented Hispanics are practically indistinguishable from Hispanic Americans. Comprising seventy-five percent of the Hispanic population, Mexicans are the largest Hispanic group. There are approximately 137,000 undocumented Hispanics in the entire state of Alabama. It is not likely that enforcement officials are going to question whites or blacks about their immigration status. Therefore, Hispanic Americans and undocumented Hispanics who are racially identifiable are likely the only group adversely affected by H.R. 56. The question is this: How are the authorities going to enforce the law without considering race, color or national origin? More importantly, how are the authorities going to distinguish between Hispanic Americans and undocumented Hispanics without requiring Hispanic Americans to also carry citizenship documentation?

³¹ *Id.* § 10(c).

³² U.S DEPT. COM., *Bureau of Census, Stat. Abst.* (2010), <http://www.census.gov/compendia/statab/> (see Mexican population, 275,288).

³³ Puerto Rican Population, 35,532. *Id.*

³⁴ Central American population, 31,813. *Id.*

³⁵ South American population, 19,496. *Id.*

³⁶ Cuban population, 12,536. *Id.*

³⁷ Dominican population, 3,233. *Id.*

³⁸ Other Latino population, 57,329. *Id.*

II. DENIAL OF SELF-HELP OPPORTUNITIES

The second category of sections within H.B. 56 denies the documented alien any opportunity for self-help and self-subsistence. First, under Section 11 of H.R. 56, undocumented aliens are prohibited from applying for work, soliciting work in either public or private places, or working for an employer or as independent contractor.³⁹ Second, with some exceptions,⁴⁰ the Alabama statute prohibits the state courts from enforcing any contract between a party and an undocumented alien.⁴¹ Finally, the statute prohibits aliens from entering into a business transaction⁴² with the state or political subdivision.⁴³ This restriction requires every state official that enters into a business transaction with the public to become an immigration official whose duty is to determine United States citizenship.

*A. Misdemeanor Crime and Fine If Alien Applies for Work.*⁴⁴

Section 11(a) of H.B. 56 states that it is unlawful for a person who is an unauthorized alien to knowingly apply for work, solicit work in a public or private place, or perform work as an employee or independent contractor in Alabama.⁴⁵ Furthermore, a person who is in violation of this Section shall be guilty of a Class C misdemeanor and subject to a fine or no more than five hundred dollars (\$500).⁴⁶ It is a fundamental and a universal human right for a man to work to support and feed his family. This principle knows no boundaries. To deny a person the means to work and support and feed his family is fundamentally unethical, holds contrary to human decency and deprives individuals of their human dignity.⁴⁷ It is one thing to hold a man

³⁹ See Ala. Stat. H.R. 56 § 11(a).

⁴⁰ *Id.* § 27(b) (stating that the restriction does not apply to a contract for lodging for one night, a contract for the purchase of food to be consumed by the alien, a contract for medical services, or a contract for transportation of the alien to facilitate the alien in returning to his or her country of origin).

⁴¹ *Id.* § 27(a).

⁴² See *id.* § 30(a). “Business Transaction” includes any transaction between a person and the state or a political subdivision of the state, including but not limited to applying for or renewing a motor vehicle license plate, applying for or renewing a drivers’ license or a business license. But the restriction does not apply to a marriage license.

⁴³ *Id.* § 30(b).

⁴⁴ See *id.* § 11(a).

⁴⁵ *Id.*

⁴⁶ See *id.* § 11(h).

⁴⁷ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). Art. 23. (1) “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an

responsible for causing direct harm to others or to society, but to deprive a man of his right to care for his family is cruel and demeans humanity. In essence, H.B. 56 first causes and then criminalizes poverty. It makes outlaws of those who only seek to work to feed their families. No state can claim legitimate legal authority to starve the children of those that seek an opportunity to give of their labor in return for food. Even a convicted felon on probation is not denied the right to work. This statute, which makes it a misdemeanor crime to apply, solicit or perform work, is therefore fundamentally morally corrupt and violates the Universal Declaration of Human Rights adopted by the United Nations, of which the United States is a signatory.⁴⁸

B. Courts Are Forbidden from Enforcing Contracts Involving Aliens

Section 27 of the Alabama Immigration Law states that no state court shall enforce the terms or consider a contract valid between a party and an undocumented alien if the party had direct or constructive knowledge that the alien was unlawfully present in the United States at the time the contract was consummated,⁴⁹ and the performance of the contract required the alien to remain unlawfully present in the United States for more than twenty-four hours after the contract was made.⁵⁰

This mandate is problematic because the statute has a chilling effect on every person, merchant, business, retail establishments and organization that makes contracts with an undocumented alien in the ordinary course of business that requires a transaction period of more than twenty-four hours. When does a person have constructive knowledge that he or she is transacting with an undocumented alien? Will merchants become quasi-enforcement officials required to ask for immigration documentation for each business transaction? Under the language of this statute, an undocumented alien cannot even contract with an attorney. The unintended consequence of the enforcement of this statute is that Hispanic Americans will also be denied the right to participate in the marketplace because merchants may not be able to distinguish between undocumented aliens and Hispanic Americans.

existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”

⁴⁸ *Id.*

⁴⁹ Ala. Stat. H.R. 56 § 27(a).

⁵⁰ *See id.* Sec. 27 contain five exceptions to the contract restrictions, they include (1) “contracts for lodging for one night,” (2) “contracts for purchase of food to be consumed by the alien” (3) “a contract for medical service” (4) a contract for transporting an alien for purposes of returning him or her to the country of origin,⁵⁰ and a contract authorized by federal law.

C. A Felony for Aliens to Contract with State Agency

Under Section 30 of the Alabama Immigration Law, it is unlawful and a Class C felony⁵¹ for an alien not lawfully present in United States to enter into, or *attempt* to enter into, a *business transaction*⁵² with the state of Alabama or its political subdivisions.⁵³ It also forbids any other third party from executing a business transaction on behalf of the alien not lawfully present in the United States.⁵⁴ This Section states that undocumented aliens may not contract with the state to obtain driver's licenses or license plates for their cars. Nor may they obtain licenses or permits to build a home or to operate a business.⁵⁵ Section 30 goes further and requires all persons, including U.S. citizens, entering or attempting to enter into a business transaction with the state or political subdivision of the state to produce documents⁵⁶ of United States citizenship.⁵⁷ In other words, this Section criminalizes any contractual transaction with the state by a person who is present in the United States without proper immigration documentation.

III. PUBLIC SCHOOLS TO IDENTIFY AND CLASSIFY UNDOCUMENTED CHILDREN

The third category within the statute is the identification, classification and reporting of school children to determine whether they are undocumented for the purpose of determining whether the education of

⁵¹ See Ala. Stat. H.R. 56 § 30(d).

⁵² *Id.* § 30(a). Business transaction includes any transaction between a person and the state or a political subdivision of the state, including applying for or renewing a motor vehicle license plate, applying for or renewing a driver's license or non-driver identification card, or applying for a business license. A marriage license is excluded.

⁵³ See *id.* § 30(b).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See *id.* § 29(k), Evidence of United States citizenship includes: (1) driver's license or non-drivers identification card issued by the division of motor vehicles. The license may have been issued by another state if the license indicates that the person has provided satisfactory proof of United States citizenship, Ala. Immigration Law, H.B. 56 § 29(k)(1); (2) applicant's birth certificate that verifies United States citizenship *to the satisfaction* of the county election officer or Secretary of State, § 29(k)(2); (3) applicants valid or expired passport, § 29(k)(3); (4) Applicant's United States Naturalization documents or the number of the certificate of naturalization, § 29(k)(4); (5) documents issued by the Federal Government pursuant to the Immigration and Nationality Act of 1952, § 29(k)(5); (6) Applicant's official United States military record of service (DD 214), showing the applicant's place of birth in the United States, § 29(k)(12).

⁵⁷ See Ala. Stat. H.R. 56 §30(c), The alien's lawful presence in the United State is demonstrated by the State or political subdivision verification through the Systematic Alien Verification for Entitlements Program operated by the Department of Homeland Security.

undocumented children burdens the education of Alabama school children. Section 30 of H.B. 56 requires public schools in Alabama to make a determination as to whether the students in school are undocumented aliens.⁵⁸ If it is determined that they are undocumented aliens, the school must report them to the local authorities. The likely intention of this requirement is to eventually remove these children from school based on the argument that they burden the state treasury.

Section 28(a)(1) requires that all public elementary and secondary schools in Alabama determine from birth certificates or certified copies⁵⁹ of same, whether the enrolling student was born outside the jurisdiction of the United States. It also requires the schools to determine whether the parent of the child is an alien not lawfully in the United States. Finally the statute requires the school to make a determination as to whether the child qualifies for assignment to English as a Second Language class or other remedial programs.⁶⁰ If the student or parents are confirmed to have been born outside the United States, the parent, guardian or legal custodian of the student must notify⁶¹ and attest⁶² to the school within thirty days from the date of enrollment of the actual citizenship or immigration status of the student.⁶³ If the parent or guardian is unable to produce such documents or declaration, the school official shall *presume* for the purpose of reporting⁶⁴ that the student is an alien unlawfully present in the United States.⁶⁵

The report by the school district to the State Department of Education requires specific information, such as, (1) the number of United States citizens, (2) the number of lawfully present aliens by immigration classification, (3) aliens *believed* to be unlawfully present in the United states enrolled in all primary and secondary schools in Alabama, and (4) the

⁵⁸ See *id.* § 28(a)(2).

⁵⁹ *Id.*

⁶⁰ See Ala. Stat. H.R. 56 § 28(a)(1).

⁶¹ See *id.* § 28(a)(4)a (stating that the notification must be made to a designated school official of the school district where the child is enrolled. Official documents or certified copies are required to be presented establishing citizenship and in case of an alien, the immigration status of the student).

⁶² See *id.* § 28(a)(4)b (“Attestation ... by the parent, guardian, or legal custodian, under penalty of perjury, that the document states the true identity of the child. If the documents are unavailable attesting to the fact that he or she is either a United States citizen or an alien lawfully present in the unites States, the guardian or legal representative may sign a declaration so stating under penalty of perjury.”).

⁶³ *Id.* § 28(a)(3).

⁶⁴ See *id.* § 28(a)(5)(b) (requiring each school district in Alabama to collect and compile data for the purpose of § 28; the school district is required to submit to the State Board of Education an annual report listing all data; § 28(a)(5)(c) stating that the State Board of Education is also required to complete and submit an annual public report to the Legislature, § 28(a)(5)(d)(1)).

⁶⁵ *Id.* § 28(a)(5).

number of students participating in English as a Second Language programs in each school.⁶⁶ The statute also places the burden on the schools to analyze the data and show how the present and future presence of students not lawfully in the United States is burdening the educational process. The report requires analysis and identification of the effects on the standards or quality of education provided to students who are citizens of the United States as a consequence of the enrollment and presence of students unlawfully present in the United States.⁶⁷ In other words, the report must show the adverse effect of undocumented students in schools in Alabama. Section 28 concludes with the requirement that this Section will be enforced without regard to race, religion, gender, ethnicity or national origin.⁶⁸ It is difficult to connect this policy with the states' governmental interest to increase the state employment rate by passing H.B. 56, which will adversely affect children of undocumented aliens.

IV. PENALTIES FOR THIRD PARTIES DEALING WITH UNDOCUMENTED ALIENS

Within the statute, the fourth category of sections penalizes third parties for interacting with undocumented aliens. The purpose of the statute is to isolate aliens from the social, environment and marketplace aspects of society. They include: (1) criminalizing behavior for harboring, shielding or attempting to conceal undocumented aliens;⁶⁹ (2) prohibiting the transportation of aliens within the state;⁷⁰ (3) prohibiting picking up any alien on a motor vehicle;⁷¹ (4) prohibiting landlords from renting to alien;⁷² (5) prohibiting hiring aliens instead of U.S. citizens,⁷³ and (6) prohibiting tax deductions for payment to aliens.⁷⁴

A. Harboring, Shielding or Attempting to Conceal Undocumented Aliens

With one exception,⁷⁵ the Alabama Immigration Law makes it unlawful for a person to “conceal, harbor, or shield or attempt to conceal, harbor, or

⁶⁶ Ala. Stat. H.B. 56 § 28(a)(5)(d)(2) (2011).

⁶⁷ *Id.* § 28(a)(5)(d)(3).

⁶⁸ *See id.* § 28(a)(5)(h).

⁶⁹ *Id.* § 13(a).

⁷⁰ *See id.* § 13(a)(3).

⁷¹ *See id.* § 11(f), (g).

⁷² *See id.* § 13(a)(4).

⁷³ *Id.* § 17(a).

⁷⁴ *Id.* § 16(a).

⁷⁵ *See id.* § 13(e). First responder or protective services provider may harbor, shelter, move, or transport an alien.

shield or conspire to conceal, harbor, or shield an alien from detection in any place in the state, including any building or any means of transportation.”⁷⁶ This Section places an unbearable burden on families whose sons and daughters are born in the United States, and are United States citizens, but whose parents are undocumented aliens. It is not likely that the children will reveal the undocumented status of their parents. Harboring also means entering into rental agreements with an alien unlawfully present in the United States,⁷⁷ thereby forbidding landlords from entering into contracts to provide accommodations to them. This Section of the statute has the effect of imposing on all landlords the obligation of checking the citizenship documents of every potential renter to determine whether the applicant is or is not an undocumented person in the United States. Section 13 of the Alabama statute states that “[t]he person is also in violation of the statutes if he or she ‘knows or recklessly disregards the facts that the alien has come to, has entered, or remains in the United States in violation of federal law.’”⁷⁸

Section 13 creates an environment whereby every citizen in the state becomes a quasi-state official who must inspect immigration papers to make a determination as to the other person’s immigration status before contracting with them, before inviting them into any building, or providing any means of transportation to them.⁷⁹ If the citizen does not attempt to make a determination as to the citizenship status of the other person, the citizen may be unlawfully harboring or shielding or conspiring to conceal an undocumented person.⁸⁰

On February 21, 2012, U.S. Federal District Court Judge Laurie Smith Camp ruled in a summary judgment concerning the City of Fremont, Nebraska, which legislated a similar statute, and declared void a provision prohibiting the harboring of illegal aliens, providing for the revocation of occupancy licenses and providing for certain penalties which followed the revocation of occupancy licenses.⁸¹ She ruled that these provisions were preempted by the Immigration and Nationality Act and violated the Fair Housing Act.⁸²

⁷⁶ *Id.* § 13(a)(1).

⁷⁷ Ala. Stat. H.B. 56 § 13(a)(4).

⁷⁸ *Id.*

⁷⁹ *Id.* § 13(a)(3).

⁸⁰ *Id.* § 15(a)(4).

⁸¹ See *Keller v. City of Fremont*, 2012 WL 537527 at 13 (Neb., U.S. Dist. Ct. 2012) (stating “[i]t is unlawful for any person or business entity that owns a dwelling unit in the city to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law”).

⁸² See *id.* at 9.

B. Prohibits Transporting Aliens Within The State

It is also illegal under the Alabama statute to transport, attempt to transport, or conspire to transport an alien.⁸³ This means that bus drivers, airlines, train conductors and taxi cab drivers may have to check a passenger's immigration status before providing transportation services. Otherwise, they may be in violation of the statute for illegally transporting undocumented persons. Suppose the potential passenger is a Hispanic American without documents. What are these bus drivers, train conductors and taxi drivers to do? Moreover, it seems that under the Alabama statute, busses that travel intrastate, like Greyhound, must inspect a passenger's immigration papers because it is unlawful to "encourage or induce an alien to come to or reside in this state if the person knows or recklessly disregards the fact... that such entering is illegal."⁸⁴ Furthermore, any vehicle, vessel or aircraft that has been or is being used in the commission of a Section 13 violation is subject to civil forfeiture.⁸⁵ Under these circumstances, the state is likely to become the beneficiary of a considerable number of Greyhound buses, airplanes, taxis, and apartment rentals. In addition, a person in violation of Section 13 is guilty of a Class A misdemeanor for each violation involving the facilitation or attempted facilitation of the presence of aliens in Alabama.⁸⁶ Furthermore, a person in violation of Section 13 involving ten or more aliens is guilty of a Class C felony.⁸⁷ The obvious objective here is to deny undocumented aliens from traveling within the state in any type of motor vehicle and has very little to do with increasing employment for citizens within the state.

C. Picking up Aliens in Motor Vehicles for Hiring Purposes Prohibited

H.B. 56 makes it unlawful for the occupant of a motor vehicle⁸⁸ or for a person to enter a motor vehicle⁸⁹ that is stopped on a street, roadway or highway in order to hire or be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle *blocks* or *impedes* the normal movement of traffic.⁹⁰ The objective here is to prevent citizens from picking up and hiring undocumented aliens on the side of the

⁸³ See Ala. Stat. H.B. 56 § 13(a)(3).

⁸⁴ See *id.* § 13(a)(2).

⁸⁵ See *id.* § 13(f), (stating that such violations "shall be subject to civil forfeiture under the procedures of Sec. 20-2-03 of the code of Alabama 1975").

⁸⁶ *Id.* § 13(b).

⁸⁷ See *id.* § 13(c).

⁸⁸ See *id.* § 11(f).

⁸⁹ *Id.* § 11(g).

⁹⁰ *Id.*

street. This is an interesting prohibition because both the driver of the vehicle who is doing the hiring and the person entering the vehicle who is being hired may be culpable under this Section. But these two subsections of the statute are silent with respect to whether both, only one, or none of the parties is required to be undocumented. Moreover, if the vehicle does not block or impede the normal movement of traffic when it is stopped, there is no violation of the statute. For example, stopping or parking in an empty lot away from traffic to load passengers would prevent a violation of the statute. Violation of this Section is a Class C Misdemeanor and subject to a fine of no more than five hundred dollars (\$500).⁹¹

D. Landlords Prohibited from Renting to Aliens

If a landlord knows or recklessly disregards the fact that an alien is unlawfully present in the United States, and the landlord enters into a rental agreement with him/her to provide accommodations, the landlord will be guilty of harboring an alien unlawfully present in the United States.⁹² The violation of Section 13(a)(4) is a Class A misdemeanor for each unlawfully present alien the landlord is attempting to house.⁹³ If the accommodation or facilitation is for more than ten undocumented aliens, then the landlord is guilty of a Class C felony.⁹⁴ In other words, the statute forbids undocumented aliens from living in the state of Alabama by denying them a place to buy or rent. However, in *Keller v. the City of Fremont*⁹⁵ Justice Smith declared void a similar ordinance in Nebraska which prohibited the harboring of illegal aliens, provided for the revocation of a landlord's rental license, and handed down penalties after the license revocation.

E. Prohibits Hiring Aliens Instead of U.S. Citizens

Section 17 further states that an employer will be in violation of federal discrimination statutes⁹⁶ if the employer fails to hire a job applicant or discharges an employee⁹⁷ who is a U.S. citizen while retaining or hiring an employee who the employer knows, or *reasonably should have known*, is an

⁹¹ See *id.* § 11(h).

⁹² See *id.* § 13(a)(4)

⁹³ See *id.* § 13(b).

⁹⁴ *Id.* § 12(c).

⁹⁵ See *Keller v. City of Fremont*, 2012 WL 537527 at 13, (C.D. Ala.); 8:10CV270, 4:10CV3140 (Neb.) (Feb. 20, 2012).

⁹⁶ Aliens and Nationality Act, 8 U.S.C. § 1324a(h)(3) (2009).

⁹⁷ See Ala. Stat. H.R. 56 § 17(a), "any person directed, allowed, or permitted to perform labor or service of any kind by an employer."

unauthorized alien.⁹⁸ Any recovery of violation of Section 17 is limited to compensatory relief and does not include any civil or criminal sanctions against the employer.⁹⁹

F. Prohibits Tax Deduction for Payment to Aliens

The Alabama legislature attempts to strengthen the enforcement of the statute by providing financial penalties for employers who may hire undocumented aliens. Therefore, to prohibit employers¹⁰⁰ from hiring undocumented persons, the Alabama statute states that “[n]o wage, compensation ... or remuneration of any kind for the performance of services paid to an unauthorized alien shall be allowed as a deductible business expense....”¹⁰¹ The penalty for such violation is ten times the business expense deduction claimed as a deduction.¹⁰²

V. FOURTEENTH AMENDMENT PROTECTION

The statute’s governmental policy is directed at undocumented immigrants and states that the reason for the legislation is to reduce the high rate of unemployment in Alabama. Therefore the objective of the law is an attempt to reduce the number of undocumented immigrants living in Alabama in order to increase the number of jobs for Alabamians. While attempting to increase the number of jobs for Alabamians is a sound governmental objective, the methods¹⁰³ used in H.B. 56 to achieve this goal are not tailored to serve a governmental interest and do not provide a rational basis for achieving its objective, i.e. jobs for Alabamians. While it is true that aliens who have once crossed over the political boundaries of the country, even illegally, may be expelled, this should only happen after proceedings conforming to traditional standards of fairness encompassed in the due process of law.¹⁰⁴

⁹⁸ See *id.*

⁹⁹ *Id.* § 17(b).

¹⁰⁰ See *id.* § (5), Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer.

¹⁰¹ See *id.* § 16(a).

¹⁰² See *id.* § 16(b).

¹⁰³ Those legislative mandates and methods use are: (1) certain requirements imposed on the undocumented alien, (2) denial of self-help opportunities, (3) identification and denial of school benefits, and (4) penalties for third parties dealing with undocumented aliens.

¹⁰⁴ *But see* *Shaughnessy v. Mezie*, 345 U.S. 206, 212 (1953) (stating that Respondent alien was born abroad and had previously lived in the United States for more than 25 years. Respondent left the United States and spent 19 months in Hungary. Upon his return, he was

The Fourteenth Amendment provides that, “[n]o State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹⁰⁵ The state of Alabama might argue that aliens illegally present within the state are not “person” for the purpose of protection under the Fourteenth Amendment because they are in the state illegally. Whatever an alien’s status under the Federal immigration laws might be, *Plyler v. Doe*¹⁰⁶ instructs us that an alien is a “person” in any ordinary sense of that term. The Fifth and Fourteenth Amendments have long recognized aliens, even aliens whose presence in this country is unlawful, as “persons” guaranteed due process of law.¹⁰⁷

The state might argue further that persons who have entered the United States illegally are not *within the jurisdiction* of the state. But “[n]either our cases nor the logic of the Fourteenth Amendment support that constricting construction of the phrase *within its jurisdiction*.”¹⁰⁸ To permit a state to employ the phrase “within its jurisdiction” in order to create *subclasses of persons* whom it would define as beyond its jurisdiction, thereby refusing to apply laws equally to those persons, would undermine the principal purpose for which the Equal Protection Clause was incorporated in the Fourteenth

permanently excluded from the United States on national security grounds, pursuant to 8 C.F.R. § 175.57. Respondent was stranded on Ellis Island, as no other country would grant him entry. The Court held that respondent’s continued exclusion without a hearing, lasting more than twenty-one months, did not constitute an unlawful detention and that the lower court erred in granting him temporary entry on bond). *Cf. Yamataya v. Fisher*, 189 U.S. 86, 100-101 (1903). The court affirmed, holding that Congress had the authority to define the terms under which aliens could be admitted; that decisions of the administrative and executive officers under their delegated authority were not subject to judicial review; and that since appellant had been afforded an opportunity to be heard and since she did not appeal to the Secretary of the Treasury from the inspector’s decision, that decision was final and conclusive. *See Wong Yang Sung v. McGrath*, 339 U.S. 33, 49-50 (1950). The Court reversed the judgment dismissing petitioner prisoner’s petition for a writ of habeas corpus and directed the release of the prisoner, holding that deportation proceedings must conform to the requirements of the Administrative Procedure Act if resulting orders are to have validity. *Accord Kwong Hai Chew v. Colding*, 344 U.S. 590, 598 (1953). The Court reversed the judgment and held that petitioner, as a legal resident alien, was protected by the Fifth Amendment and could not be detained without being informed of the charges against him and given a hearing sufficient to satisfy due process requirements.

¹⁰⁵ U.S. CONST. amend. XIV, § 2.

¹⁰⁶ *Plyler v. Doe*, 457 U.S. 202, 212 (1982). In *Plyler* the court ruled on a Texas statute that forbids the public school attendance of illegal alien children. The Supreme Court ruled the statute unconstitutional in violation of the 14th Amendment of the U.S. Constitution.

¹⁰⁷ *See also* *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

¹⁰⁸ *See, e.g., United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1896). Justice Gray *stating* that “[e]very citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.”

Amendment. The Equal Protection Clause was intended to abolish of all *caste-based and invidious class-based legislation*.¹⁰⁹ What the Alabama Legislature has created in H.B. 56 is a subclass of persons by requiring (1) identification of aliens by local officials followed by arrest, (2) denial of self-help opportunities for undocumented aliens by forbidding contracts with them, (3) immigration identification and reporting of undocumented school children, and (4) asserting penalties to third parties for dealing with aliens. This creates a caste-based and invidious class-based legislation to isolate the aliens from the social fabric of society and the marketplace and refuses them the equal protection of the law as required by the Fourteenth Amendment. The court stated in *Hines v. Davidowitz* that the “[s]tates enjoy no power with respect to the classification of aliens. This power is committed to the political branches of the Federal Government.”¹¹⁰ The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: “Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” *These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the protection of the laws is a pledge of the protection of equal laws.*¹¹¹ Even the Fifth Amendment protects aliens whose presence in the United States is unlawful from invidious discrimination by the government.¹¹²

VI. APPLICATION OF FOURTEENTH AMENDMENT TO THE ALABAMA STATUTE

A. Unequal Treatment and Violation of 14th Amendment

There are three categories¹¹³ of sections within the statute that force *certain requirements upon the undocumented alien* that are not required of Alabama citizens and are, therefore, a manifestation of unequal treatment and in violation of the Fourteenth Amendment. The first category requires undocumented aliens to carry immigration documentation; otherwise there is a presumption of being undocumented aliens. First, aliens must carry identification and registration documents with them at all times. Those who fail to do so are found guilty of a Class C Misdemeanor and are subject to a

¹⁰⁹ See Plyler, *supra* note 106, at 213.

¹¹⁰ *Hine v. Davidowitz*, 312 U.S. 52, 62 (1941).

¹¹¹ *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

¹¹² See *Mathews v. Diaz*, 426 U.S. 67, 77 (1890).

¹¹³ See Ala. Stat. H.R. 56 §§ 10(a), 12(b), 18(d).

fine of 100 dollars and no more than thirty days in jail. The problem here is that while federal law¹¹⁴ may impose penalties on aliens with respect to immigration issues, under the Supremacy Clause¹¹⁵ of the United States Constitution, states do not have the same authority. Second, any alien charged with a crime must verify his citizenship.¹¹⁶ There is probably no great sympathy for the criminal; nevertheless, United States criminal citizens are not required to verify their citizenship. Third, when an officer arrests a person and is unable to determine his citizenship because that person does not have a valid driver's license, he is presumed to be an undocumented alien and may be detained as an alien.¹¹⁷ The citizens of the state of Alabama are not burdened with the same presumption, thereby making Section 18(d) unconstitutional; Section 18(d) requires unequal treatment, discrimination and violation of the Equal Protection Clause of the Fourteenth Amendment, which states that no person may be deprived of life, liberty or property without due process.

B. Violation of the 14th Amendment, Bill of Attainder and Freedom of Contract

The second category of sections within the state statute denies the undocumented alien any *opportunity for self-help and self-subsistence*. Under Section 11 of H.B. 56, it is a Class C misdemeanor for undocumented aliens to apply for work, solicit work in either public or private places or work for an employer or as independent contractor.¹¹⁸ Denying a person "within its jurisdiction,"¹¹⁹ whether present in the United States legally or not, the *liberty* to work is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. Denying undocumented workers the right of basic subsistence by forbidding them from working within the state, restricting their ability to freely contract in the marketplace, and the freedom to enter into business transactions with the state creates an unconstitutional subclass of persons. These restrictions will not stand because the rights of undocumented workers are "protected under the Equal Protection Clause,

¹¹⁴ Aliens and Nationality Act, 8 U.S.C. §§ 1304(e), §1306(a) (2009).

¹¹⁵ U.S. CONST. art. VI, cl.2.

¹¹⁶ See Ala. Stat. H.R. 56 § 12(b).

¹¹⁷ See *id.* § 18(d).

¹¹⁸ *Id.* § 11(a).

¹¹⁹ See *Plyler v. Doe*, 457 U.S. 202, 210 (1982); see also *Wong Wing v. United States*, 163 U.S. 228 (1896). The Court applied the rule of the Fourteenth Amendment to the Fifth and Sixth Amendments, stating that the provisions were universal in their application to all persons within the territorial jurisdiction, and that all persons within the territory of the United States were entitled to the protection guaranteed by the amendments.

which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.”¹²⁰

Moreover, the statute, which makes it a Class C Misdemeanor for undocumented aliens to solicit or apply for work in Alabama, is forbidden as an act of attainder¹²¹ under the U.S. Constitution.¹²² The Bill of Attainder Clause is not to be given a narrow historical reading, but is instead to be read in light of the evil the framers of the Constitution sought to bar: legislative punishment, of any form or severity, of specifically designated persons or groups. Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are Bills of Attainder prohibited by the U.S. Constitution.¹²³

Second, with some exceptions,¹²⁴ the Alabama statute prohibits the state courts from enforcing any contract between an Alabama citizen and an undocumented alien.¹²⁵ And third, the statute prohibits aliens from entering into a business transaction¹²⁶ with the state or political subdivision.¹²⁷ These restrictions obviously require every state official that enters into a business transaction with the public to become a quasi-immigration official who is obligated to determine whether or not they are transacting with a United States citizen or with an undocumented alien. But the United States Constitution states that “[n]o state shall...pass...any Law impairing the

¹²⁰ See *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

¹²¹ *Kenneth Lynce v. Hamilton Mathis*, 519 U.S. 433 (1997) (stating that the prohibitions on “bills of attainder” in Art. I, §§ 9-10 prohibit legislatures from singling out disfavored persons and meting out summary punishment for past conduct).

¹²² U.S. CONST. art. I, § 10. An Act of Attainder is an act of a legislature declaring a person or group of persons guilty of some crime and punishing them without benefit of a judicial trial. A Bill of Attainder was a legislative act that singled out one or more persons and imposed punishment on them, without benefit of trial. Such actions were regarded as odious by the framers of the Constitution because it was the traditional role of a court, judging an individual case, to impose punishment.

¹²³ *United States v. Brown*, 381 U.S. 437, 491 (1965).

¹²⁴ *Cf.* Ala. Stat. H.B. 56 § 27(b) (stating that the restriction does not apply to a contract for lodging for one night, a contract for the purchase of food to be consumed by the alien, a contract for medical services, or a contract for transportation of the alien to facilitate the alien in returning to his or her country of origin).

¹²⁵ *See id.* § 27(a).

¹²⁶ *Id.* § 30(a). “Business Transaction” includes any transaction between a person and the state or a political subdivision of the state, including but not limited to applying for or renewing a motor vehicle license plate, applying for or renewing a drivers’ license or a business license. But the restriction does not apply to marriage licenses.

¹²⁷ *See id.* § 30(b).

Obligations of Contract”¹²⁸ and, therefore, these sections of the Statute are unconstitutional.¹²⁹

C. Unconstitutional Denial of Government Benefits

The third category of sections within the statute restricts and denies governmental benefits to undocumented persons in Alabama. First, aliens are forbidden to contract or receive governmental benefits of any type.¹³⁰ Second, public schools in Alabama are required to make a determination as to whether the students in school are undocumented aliens, and if it is determined that they are, the school must report them to the local authorities.¹³¹ The obvious intention is to remove these children from school based on the argument that they burden the state treasury. But in *Plyler v. Doe*,¹³² where the state authorized local school districts to deny enrollment in public schools to children not legally admitted to the country, the court said that the protection of the Fourteenth Amendment extended to anyone, citizen or stranger, who was subject to the laws of a state. Furthermore, denial of an education to plaintiffs posed an affront to one of the goals of the Equal Protection Clause, which was the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit.¹³³

Third and finally, the state would deny any state or personal activity with aliens that would require increased expenditure of public funds. The court ruled in *Plyler v. Doe*¹³⁴ that “neither the undocumented status of these children ... nor the state’s asserted interest in the preservation of its limited resources for the education of its lawful residents furthering some substantial

¹²⁸ U.S. CONST. art. I, § 10.

¹²⁹ See *New Orleans Gas Co. v. La. Light Co.* 115 U.S. 650, 673 (1885) (stating that a state can no more impair the obligation of a contract by her organic law than by legislative enactment; for, her constitution is a law within the meaning of the contract clause of the national **constitution. And the obligation of her contracts** is as fully protected by that instrument against impairment by legislation as are contracts between individuals exclusively).

¹³⁰ See Ala. Stat. H.B. 56 § 30(c).

¹³¹ See *id.* § 28(2).

¹³² See *Plyler v. Doe*, 457 U.S. 202, 224 (1982); See also *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 420 (1948) (stating that the state could not, consistent with the United States Constitution, use federally created racial ineligibility for citizenship as a basis for barring petitioner from earning his living as a commercial fisherman in the ocean water off the state coast. The refusal to issue petitioner a commercial fishing license violated U.S. Const. amend. XIV).

¹³³ *Plyler v. Doe*, 457 U.S. 202, 222 (1982).

¹³⁴ *Id.* at 227.

goal of the state ... establishes a sufficient rational basis for the discrimination contained in the statute.”¹³⁵

VII. THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION

The Supremacy Clause states, “This Constitution, and the Laws of the United States ... shall be the supreme Law of the Land, and the Judges in every state shall be bound thereby...the United States Constitution.”¹³⁶ The question is not whether state and local law enforcement officials can apply the statute in a constitutional way. There can be no constitutional application of a state statute that, on its face, conflicts with congressional intent [concerning immigration], and therefore is preempted by the **Supremacy Clause**.¹³⁷ When the national government by treaty or statute has established rules and regulations touching the rights, privileges, obligations, or burdens of aliens as such, the treaty or statute is the supreme law of the land. No state can add to or take from the force and effect of such treaty or statute.¹³⁸ Consequently, the regulation of aliens is so intimately blended and intertwined with responsibilities of the national government that when the national government and the state act on the same subject, “the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.”¹³⁹ In the exercise of its superior authority in this field, when the federal government has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.¹⁴⁰

In *United States v. Arizona*,¹⁴¹ the Court held that the State’s power to legislate in the area of foreign relations was subordinate to the federal government’s power to do so under the Supremacy Clause of the United

¹³⁵ *Id.*

¹³⁶ U.S. Const. art. VI, cl. 2.

¹³⁷ U.S. Const. art. VI, cl. 2. *See also* *United States v. Ariz.*, 641 U.S. 339, 346 (2011).

¹³⁸ *See Hines v. Davidowitz*, 312 U.S. 52, 63 (1941).

¹³⁹ *See Gibbons v. Ogden*, 22 U.S. (9 Wheat) (1824); *see also* *Charleston & W. Carolina Ry. v. Varnville Furniture*, 237 U.S. 597 (1915); *See also accord*, *People v. Compagnie Generale Transatlantique*, 107 U.S. 59, 63 (1882) (where the Court, speaking of a state law and a federal law dealing with the same type of control over aliens, said that the federal law “covers the same ground as the [state] statute, and they cannot co-exist”).

¹⁴⁰ *See Asakura v. Seattle*, 265 U.S. 332 (1924); *see also* *Int’l Shoe Co. v. Pinkus*, 278 U.S. 261, 265 (1929); *see also* *Savage v. Jones*, 225 U.S. 501, 539 (1912) (asserting the same proposition).

¹⁴¹ *United States v. Ariz.*, 641 F.3d 339, 346 (2011).

States Constitution because the federal government had already enacted “a comprehensive scheme, [and therefore] the state statute [will be] ... preempted.”¹⁴²

The Arizona statute¹⁴³ required verification of the immigration status of all arrestees, regardless of whether reasonable suspicion existed that the arrestee was an undocumented immigrant. Therefore, the challenged statutory provisions established immigration-related state offenses and defined the immigration enforcement authority of state and local law enforcement officers. The court of appeals held that the injunction against its enforcement was appropriate because Ariz. Rev. Stat. Ann. § 11-1051(B)¹⁴⁴ conflicted with the U.S. Attorney General’s discretion under 8 U.S.C.S. § 1357(g)¹⁴⁵ to direct and supervise state enforcement of immigration laws. Similarly, in the Alabama statute, Sections 10(a), 12(b) and 18(d) require: (1) verification of the immigration status; (2) that state officials stop persons on *reasonable suspicion* to determine their citizenship; and (3) the presumption that arrested persons without a driver’s license *are* illegal aliens conflicts with the United States Attorney General discretion under 8 U.S.C.S. 1375(g) and are, therefore, appropriate sections of the statute for an injunction based on the Supremacy Clause.

Moreover, Ariz. Rev. Stat. Ann. § 13-1509(A) (2010), which made it a state crime for unauthorized immigrants to violate federal registration laws, conflicted with the comprehensive federal registration scheme. Similarly, Ariz. Rev. Stat. Ann. § 13-2928(C) (2010), which criminalized unauthorized work, was likely preempted because 8 U.S.C.S. § 1324(a) demonstrated that Congress did not intend to permit the criminalization of work. And finally, Ariz. Rev. Stat. Ann. § 13-3883(A)(5) (2010), which authorized warrantless arrests based on probable cause of removability, conflicted with 8 U.S.C.S. § 1252c.¹⁴⁶ In comparison, Section 10(a) of the Alabama statute makes an undocumented alien’s illegal presence in the United States a crime resulting in a Class C Misdemeanor, a fine of 100 dollars, and thirty days in jail. Section 11(a) makes it unlawful for a person who is an unauthorized alien to apply for work, solicit work or perform work in Alabama. And Section 12(d) states that an official may lawfully stop, detain or arrest a person without an arrest warrant, based on *reasonable suspicion* that the person is illegally present in the United States. These sections would likewise be in violation of

¹⁴² *Id.*

¹⁴³ Ariz. Rev. Stat. Ann. § 11-105(B) (2010).

¹⁴⁴ *Id.* The statute required verification of the immigration status of all arrestees, regardless of whether reasonable suspicion existed that the arrestee was an undocumented immigrant.

¹⁴⁵ 8 U.S.C.S. §1357, (states that the “Powers of immigration officers and employees and § 1357(g) outlines the “Performance of immigration officer functions”).

¹⁴⁶ *See* United States v. Ariz. 641 F.3d 339, 360 (2011).

the Supremacy Clause of the United States.¹⁴⁷ The court stated in *Hines v. Davidowitz*¹⁴⁸ that “[s]tates enjoy no power with respect to the classification of aliens. This power is committed to the political branches of the Federal Government.”¹⁴⁹

In *Reno v. Flores*,¹⁵⁰ the court stated that:

[T]he federal government, representing as it does the collective interests of the [United States]..., is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties. For local interests the several states of the Union exist, but for national purposes, embracing relations with foreign nations, [these states] are but one People, one nation, one power. The U.S. system of government is such that the interest of the cities, counties and states, no less than the interest of the People of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.¹⁵¹

VIII. CONCLUSION

Alabama’s governmental interest in passing H.B. 56 is to increase its employment rates by decreasing the number of undocumented aliens within the states. It is important to note that undocumented aliens are not professionals such as doctors or lawyers. They are not white-collar administrators. They are mostly Latino laborers who either work in the fields, private households, factories or the construction industry. They perform difficult tasks and work in places that most Alabama citizens find undesirable and may not wish to work. In other words, there is no rational basis between the state’s interest to create jobs for Alabamians and H.B. 56.

What the State of Alabama has created through its legislation is a caste-based and invidious class-based legislation for the purpose of creating a subclass of persons to be identified and legally separated from the rest of society. But the Constitution of the United States rejects these classifications and provides oversight through the Fourteenth Amendment and recognizes that illegal aliens are persons, and the state cannot deny them the equal protection of the law.

¹⁴⁷ *Id.* at 362.

¹⁴⁸ See *Hines v. Davidowitz*, 312 U.S. 52 (1941).

¹⁴⁹ *Id.*

¹⁵⁰ See *Reno v. Flores*, 507 U.S. 292, 306 (1993).

¹⁵¹ *Id.*; see also *Hines v. Davidowitz*, 312 U.S. 52, 61, 64 (1941).

On the other hand, some of its legislation seems to be appropriate. For example, it seems apt to penalize third parties for dealing with undocumented aliens, such as prohibiting employers from claiming tax deductions for payments to undocumented workers. The penalty for such violation is ten times the business expense deduction claimed as a deduction.¹⁵² Under the statute, employers are also held responsible for violations of federal discrimination statutes¹⁵³ if the employer fails to hire a job applicant or discharges an employee¹⁵⁴ who is a U.S. citizen while retaining or hiring an employee who the employer knows, or *reasonably should have known*, is an unauthorized alien.¹⁵⁵ The population of undocumented workers would certainly diminish if no one would hire them. In other words, the problem is not the supply of aliens, but the demand for their services in the fields, in the private households, factories, restaurants and construction sites.

As noted above, the rest of the statute, including (1) requirements imposed on the undocumented alien; (2) denial of self-help opportunities; (3) identification and classification of undocumented children in public schools; and (4) holding *certain* sections of third parties accountable in their relations with undocumented aliens may be in violation of the Fourteenth Amendment, the Bill of Attainder, Freedom of Contract and the Supremacy Clauses of the United States Constitution.

¹⁵² See Ala. Stat. H.B. 56 § 16(b) (2011).

¹⁵³ Unlawful Employment of Alien 8 U.S.C. § 1324a(h)(3).

¹⁵⁴ See Ala. Stat. H.B. 56 § 3(4) (2011) (“any person directed, allowed, or permitted to perform labor or service of any kind by an employer”).

¹⁵⁵ *Id.* § 17(a).