



FEDERATION FOR AMERICAN IMMIGRATION REFORM

Alabama's HB 56: Questions and Answers

Q: What are sanctuary policies and why is it important to prohibit them?

A: Sanctuary policies are government policies that limit the enforcement of federal immigration laws or that restrict communication between state, local, and federal officers regarding a person's immigration status. It is important for states like Alabama to prohibit sanctuary policies because these policies encourage illegal immigration and undermine the rule of law by shielding individuals who blatantly violate U.S. immigration laws. Major cities such as Houston, Los Angeles, Minneapolis, and Chicago that have sanctuary policies in place serve as obstacles to combating illegal immigration.

Congress has expressed its intent to bar sanctuary policies through the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).¹ Section 642 of that law provides that no state, local government or official "may prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the [Department of Homeland Security] information regarding the citizenship or immigration status...of any individual."² Unfortunately, some state and local jurisdictions continue to fight this policy and search for ways to circumvent federal law. Some local jurisdictions, for example, argue that the "collection" of immigration data is not covered by Section 642 and therefore have adopted laws that prohibit police from inquiring about or collecting immigration information. This is despite the fact that the United States Supreme Court and other federal courts have already ruled that local law enforcement officers have the inherent authority to do so.³

Alabama's HB 56, however, which prohibits sanctuary policies, enhances the enforcement of federal immigration laws and helps restore the rule of law. Sections 5 and 6 prohibit state and local officials from adopting sanctuary policies by incorporating language that mirrors Section 642 of IIRAIRA. Thus, Sections 5 and 6 merely require state and local officers to comply with federal law and are wholly consistent with Congressional intent.

Q: To eliminate sanctuary practices, can a state require its officers to check immigration status under certain circumstances? Do state and local officers have authority to verify the immigration status of a person who has otherwise been lawfully stopped?

¹ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Div C, Title VI, Subtitle D, § 642, 110 Stat. 3009-707.

² *Id.* codified at 8 U.S.C. § 1373; See also 8 U.S.C. § 1644.

³ *Muehler v. Mena*, 544 U.S. 93, 101 (2005) (holding that local police officers' inquiry about defendant's immigration status did not violate the Fourth Amendment as police questioning alone does not constitute a seizure); *City of New York v. United States*, 179 F.3d 29, 31-32 (2d Cir. 1999) (upholding constitutionality of law banning sanctuary policies); *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1982) ("A state trooper has general investigatory authority to inquire into possible immigration violations."); *United States v. Santana-Garcia*, 264 F.3d 1188, 1193-94 (10th Cir. 2001) (re-affirming *Salinas-Calderon* and stating that "state and local police officers ha[ve] implicit authority within their respective jurisdictions 'to investigate and make arrests for violations of federal law, including immigration laws.'"); See also *United States v. Guijon-Ortiz*, 660 F.3d 757, 763 (4th Cir. 2012) (officer with reasonable suspicion of an alien's unlawful presence was permitted to detain the alien for purposes of verifying the validity of a lawful permanent resident card produced by the alien).

A: State and local law enforcement officials have the general power to assist in the enforcement of federal immigration statutes as long as they are authorized to do so by state law.⁴ This includes the inherent authority to inquire into immigration status of individuals who are lawfully stopped.⁵ The Supreme Court has unanimously held that during an otherwise lawful detention, an officer can inquire into the detainee's immigration status even without a prior reasonable suspicion of unlawful immigration status.⁶ Congress has not displaced this state authority.⁷

Instead, Congress has sought to foster this state authority by encouraging state and local law enforcement agencies to share immigration status information with the federal government.⁸ There are a number of ways Congress has illustrated this intent. First, federal law **requires** DHS to respond to **all** immigration status inquiries by state and local officers.⁹ Second, federal law bars federal or state laws that prohibit or in any way restrict a state or local officer's ability to send to or receive from DHS any information about a person's immigration status.¹⁰ Third, federal law authorizes state and local law enforcement officers to arrest and detain certain illegal aliens.¹¹ And fourth, programs such as 287(g) inherently envision local law enforcement participation in immigration enforcement.¹²

The Executive Branch has also expressed its intent for state and local law enforcement to enforce U.S. immigration laws. It has created numerous enforcement programs, such as Secure Communities, that provide local law enforcement with the federal resources local officers may use to identify, apprehend and detain illegal aliens.¹³

HB 56, therefore, expressly authorizes state and local law enforcement officers to use the authority they have to carry out Congressional intent. Section 12(a) requires law enforcement officers to verify the immigration status of an individual who has been lawfully stopped, detained, or arrested if the officer has reasonable suspicion that the individual is unlawfully present in the United States. Reasonable suspicion is a well-defined term within criminal jurisprudence and is a concept that state and local officers use on a daily basis as part of their jobs.¹⁴ In some cases, reasonable suspicion of unlawful status occurs when a lawfully detained person admits to being not lawfully present in the country.¹⁵ In

⁴United States v. Salinas-Caleron, 728 F.2d 1298, 1301-02 (10th Cir. 1984); United States v. Vasquez-Alvarez, 176 F.3d 1294 (10th Cir. 1999), *cert. denied* 528 U.S. 913 (1999); *see also* Gonzales v. City of Peoria, 722 F.2d 268, 476 (9th Cir. 1983), overruled on other grounds by *Hodgers-Durgin v. De la Vina*, 199 F.3d 1037, 1040 n.1 (9th Cir. 1999); *see also* *Farm Labor Organizing Committee v. Ohio State Highway Patrol*, 991 F.Supp. 895, 903 (N.D. Ohio 1997).

⁵ *Muehler v. Mena*, 544 U.S. 93, 101 (2005);

⁶ *Id.*

⁷ *Id.*

⁸ *United States v. Alabama*, 813 F. Supp. 2d 1282, 1310 (quoting *United States v. Arizona*, 641 F.3d 339, 382 (Bea, J., concurring in part and dissenting in part)); *Vasquez-Alvarez*, 176 F.3d 1294; *United States v. Santana-Garcia*, 264 F.3d 1188, 1193 (10th Cir. 2001).

⁹ *Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)* § 642, Pub. L. No. 104-208, 110 Stat. 3009-546 (codified at 8 U.S.C. § 1373(c)); *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011)..

¹⁰*Id.* and Pub. L. No. 104-193, 110 Stat. 2275 (1996) (codified at 8 U.S.C. § 1644).

¹¹ *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 110 Stat. 1276 (1996) (codified as amended at 8 U.S.C. § 1252c).

¹² *See* 8 U.S.C. § 1357(g).

¹³ Immigration and Customs Enforcement, United States Department of Homeland Security, ICE ACCESS *available at* <http://www.ice.gov/access/> (last visited April 5, 2012).

¹⁴ *Terry v. Ohio*, 392 U.S.C 1, 21 (1968); *Ornelas v. United States*, 517 U.S. 690, 695 (1996); *Illinois v. Gates*, 462 U.S. 213, 235 (1983); *United States v. Cokolow*, 490 U.S. 1, 7 (1989); *United States v. Arvizu*, 534 U.S. 266, 273 (2002); *United States v. Cortz*, 449 U.S. 411, 417-18 (1981); *United States v. Powell*, 666 F.3d 180, 185 (4th Cir. 2011);

¹⁵ *See e.g.* *United States v. Aispuro-Median*, 256 Fed. Appx. 215 (10th Cir. 2008); *United States v. Nunez-Betancourt*, 766 F. Supp. 2d 651, 658 (D. N.C. 2011).

other scenarios, actions taken by a lawfully detained person, such as evasive, nervous, or erratic behavior; and presence in an area known to contain a concentration of illegal aliens, when viewed under the “totality of the circumstances,” may lead an officer to develop reasonable suspicion of unlawful status.¹⁶ Appearance alone is not sufficient; it must be a combination of factors.¹⁷

Therefore, not only is it good public policy for state and local law enforcement officers to assist in the enforcement of U.S. immigration law, it is well supported by federal statutes and case law. Because of the sheer number of illegal aliens and the relatively few number of Immigration and Customs Enforcement agents, state and local officers are more likely to encounter illegal aliens on a day-to-day basis. Thus, their participation in the enforcement of U.S. immigration laws acts as a force multiplier in preventing illegal immigration.

Q: What is E-Verify? Why is E-Verify important? Does Alabama have the authority to mandate participation in the program?

A: The E-Verify system is a free, web-based system through which employers may verify the work authorization of new employees through existing federal records.¹⁸ Congress created E-Verify in 1996¹⁹ as a way to help employers comply with the federal ban on hiring illegal aliens.

To use E-Verify, the employer takes a new employee's completed I-9 form and enters the employee's name and social security number into the E-Verify system. The employer will quickly receive either a confirmation that the employee is work authorized or a “tentative non-confirmation.” In the latter case — usually the result of a name change — the employee has an opportunity to contact the Social Security Administration or the Department of Homeland Security and correct his or her records.²⁰ If the employee fails to contest the E-Verify result, the non-confirmation is considered final. If an employer receives a final non-confirmation, the employer may terminate the employee without civil or criminal liability. However, if the employer continues to employ the individual, he must report this through the E-Verify system.²¹

Under federal law, the use of E-Verify is mandatory only for certain federal contractors,²² the program is voluntary for all private employers. However, the United States Supreme Court in *Chamber of*

¹⁶ United States v. Mejia-Chicas, 287 Fed. Appx. 830, 831-32 (11th Cir. 2008) (citing United States v. Tapia, 912 F.2d 1367, 1370 (11th Cir. 1990); United States v. Galindo-Gonzales, 142 F.3d 1217, 1225 (10th Cir. 1998); United States v. Soto-Cervantes, 138 F.3d 1319, 1324 (10th Cir. 1998); United States v. Fuentes, 2010 U.S. Dist. LEXIS 16489, **11-12 (D. Tex. 2010); United States v. Larios-Montes, 500 F.2d 941 (9th Cir. 1974); Duprez v. United States, 435 F.2d 1276 (9th Cir. 1970).

¹⁷ United States v. Brignoni-Ponce, 422 U.S. 873, 886 (1975) (Mexican ancestry alone did not justify a reasonable belief that vehicles occupants were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the county).

¹⁸ Department of Homeland Security, United States Citizenship and Immigration Services, E-Verify User Manual (May 2011), available at http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf (last visited April 2, 2012).

¹⁹ Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 §§ 401-05; Pub. L. No. 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655; Department of Homeland Security, United States Citizenship and Immigration Services, E-Verify User Manual (May 2011), available at http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf (last visited April 2, 2012).

²⁰ Id.

²¹ Id.

²² 73 C.F.R. 67651 (Nov. 14, 2008).

Commerce of the U.S. v. Whiting has upheld Arizona legislation²³ that requires all employers, public and private, to use E-Verify.²⁴ In that 2011 decision, the Supreme Court explained that the mandate to use E-Verify was consistent with Congressional intent.²⁵

HB 56 follows Arizona's lead in requiring that all employers, public and private, use E-Verify. Section 9 extends that requirement to state contractors; Section 15 requires private employers to use E-Verify. Moreover, Section 15 of HB 56, like Arizona's law, closely tracks federal law by also prohibiting the employment and hiring of unauthorized aliens and provides penalties through state licensing laws. HB 56 authorizes the suspension or revocation of an employer's business license if the employer knowingly or intentionally employs an unauthorized alien.²⁶ This keeps the new law well within the parameters of the Supreme Court's ruling in *Whiting*.

Mandating its use at the state level is good public policy. E-Verify provides a fast, free and effective way for an employer to verify that all new hires are authorized to work in the United States. It fights illegal immigration by eliminating the attraction for illegal aliens to come to Alabama to find jobs, while protecting those jobs for legal residents and U.S citizens. It helps prevent the downward spiral of wages that results from illegal aliens willing to work for sub-standard wages. It also helps ensure that all employers can compete on a level playing field by preventing the use of cheap illegal labor.

Q: How is HB 56's prohibition on the smuggling of illegal aliens consistent with federal law? How does it further Congressional intent?

A: There are multiple areas of law which are criminalized at both the state and federal levels.²⁷ Individuals who violate these laws may be charged separately by the state and federal government.²⁸ The Supremacy Clause of the United States Constitution, however, provides that state law cannot exceed the boundaries of federal law; this is commonly referred to as the doctrine of preemption.²⁹

Federal law prohibits individuals from smuggling and harboring illegal aliens in the United States. Section 1324 of Title 8 expressly prohibits individuals from bringing illegal aliens to the United States³⁰

²³ Ariz. Rev. Stat. Ann. § 23-214(A).

²⁴ Chamber of Commerce of the United States v. Whiting, 131 S. Ct. 1968 (2011).

²⁵ Id. at 1985; Also, compare IIRIRA § 402(b)(1) with Ariz. Rev. Stat. Ann. § 23-212(I).

²⁶ Ariz. Rev. Stat. Ann. §§ 23-212(A) & (F), 23-212.01 (A) & (F).

²⁷ Computer crimes; drug crimes; mail theft; and identity theft are a few examples of crimes that are punishable at the state as well as the federal levels.

²⁸ See, e.g. Heath v. Alabama, 474 U.S. 82 (1985)(citing United States v. Lanza, 260 U.S. 377 (1922)); United States v. Wheeler, 435 U.S. 313, 316-17 (1978); Abbate v. United States, 359 U.S. 187, 194-95 (1959).

²⁹ There are three main types of preemption: per se, express, and implied. There are also two subtypes of implied preemption: conflict and field. The United States Supreme Court has held that a state law related to immigration will be per se preempted if it is a regulation of immigration. De Canas v. Bica, 424 U.S. 351, 354-355 (1976). Express preemption occurs when federal law specifically provides for the preemption of state legislation in a particular area (for example, 8 U.S.C. § 1324a(h)(2)). Chamber of Commerce v. Whiting, 131 S. Ct. 1968 (2011). The two major types of implied preemption are (1) field preemption and (2) conflict preemption. Fla. Lime & Avocado Growers, Inc., 373 U.S. 132, 142-143 (1963). Conflict preemption occurs either when (1) "compliance with both federal and state regulations is a physical impossibility" or (2) "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Field preemption occurs where the "depth and breadth of a congressional scheme occupies the legislative field." Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153 (1982). In other words, Congress has legislated so comprehensively that federal law occupies an entire field of regulation and leaves no room for state law. Pac. Capital Bank, N.A. v. Connecticut, 542 F.3d 341, 351 (2d Cir. 2008).

³⁰ Immigration and Nationality Act § 274, Pub.L. No. 82-414, 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. § 1324(a)(1)(A)(i)(1952)).

and transporting or moving them within the country.³¹ It also prohibits concealing, harboring, or shielding illegal aliens from detection by law enforcement officers³² as well as encouraging or inducing illegal aliens to come to, enter or reside within the United States.³³ Violations of the federal law result in heavy fines and/or imprisonment based on the number of illegal aliens involved as well as the results.³⁴ A person that brings to the U.S., transports, moves, conceals, harbors or shields an illegal alien resulting in the death of any person may be punished by death or life imprisonment.³⁵

Although the federal government enforces the laws against alien smuggling, Congress clearly intended for state and local governments to enforce them too. Congress specifically authorized state and local officers to enforce the ban on alien smuggling through the passage of 8 U.S.C. §1324(c).³⁶ That section expressly grants arrest authority for aliens smuggling to all officers “whose duty it is to enforce criminal laws.”³⁷

Based on this authority, HB 56 simply mirrors federal law by making alien smuggling a state crime. And where “[f]ederal and local enforcement have identical purposes,” preemption does not occur.³⁸ Section 13 prohibits individuals from unlawfully concealing, harboring, shielding or transporting illegal aliens in Alabama. By closely tracking existing federal law, Section 13 not only furthers Congressional intent, but ensures that there is already clear guidance, through federal case law, as to how it should be enforced.³⁹

Q: What is the 287(g) program and why should Alabama participate?

A: Congress created the 287(g) program in 1996 through the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).⁴⁰ The program is named after the section where it is found in the Immigration and Nationality Act (INA)—namely Section 287(g).

The 287(g) program essentially allows ICE to “deputize,” or cross-designate, state and local law enforcement officers to act as immigration agents within their jurisdictions.⁴¹ Participation is formalized when both ICE and the local law enforcement agency enter into Memorandum of Agreement that spells out each party’s duties and responsibilities.

³¹ Id. at (a)(1)(A)(ii).

³² Id. at (a)(1)(A)(iii).

³³ Id. at (a)(1)(A)(iv).

³⁴ 8 U.S.C. § 1324(a)(1)(B).

³⁵ 8 U.S.C. § 1324(a)(1)(B)(iv).

³⁶ H.R. 1505, 82nd Cong., 2d Sess, *reprinted in* 1952 U.S.C.C.A.N. 1358,1360-61.

³⁷ 8 U.S.C. § 1324(c).

³⁸ *Florida Avocado Growers v. Paul*, 373 U.S.132, 142 (1963).

³⁹ This provision was enjoined in Alabama District Court as being “conflict preempted,” *United States v. Alabama*, 813 F. Supp. 2d 1282, 1334 (D. Ala. 2011), However the 11th Circuit Court of Appeals has not yet ruled on this issue.

⁴⁰ IIRIRA, Pub. L. No. 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (1996).

⁴¹ Immigration and Nationality Act (INA), § 287(g) (codified at 8 U .S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Pub. L. No.107-296).

The first 287(g) agreement was executed by the Florida Department of Law Enforcement⁴² after the September 11th terror attacks. Since then, the program has dramatically grown in popularity. As of April 2012, 68 local law enforcement agencies in 24 states are participating in the 287(g) program.⁴³ In Alabama, the Alabama Department of Public Safety⁴⁴ and the Etowah County Sheriff's Office⁴⁵ signed agreements with ICE in 2003 and 2008 respectively.

While it is well-established that local law enforcement officers may assist in the enforcement of federal immigration laws,⁴⁶ the 287(g) program provides a formal structure that provides benefits to both Immigration and Customs Enforcement and local law enforcement agencies. Among other powers associated with the enforcement of immigration laws, it gives state and local officers the express powers to arrest and transfer illegal aliens, investigate immigration violations, collect evidence and assemble an immigration case for prosecution or removal, and accept custody of aliens on behalf of the federal government.⁴⁷ All officers are trained by the Immigration and Customs Enforcement agency through a four-week program at the Federal Law Enforcement Training Center.⁴⁸ State and local officers participating in the program are also considered to be acting under the color of federal law for purposes of liability and immunity from suit in any civil actions brought under federal or state law.⁴⁹ Under the program, state and local officers perform these immigration enforcement activities under the supervision of federal ICE agents.

Immigration and Customs Enforcement also benefits from local law enforcement agencies participating in 287(g). Most importantly, the participation of local law enforcement officers serves as a force multiplier for the Department of Homeland Security. The U.S. has approximately 12 million illegal aliens living within the country. Even if ICE were to continue to remove the illegal alien population at its current pace (a little under 400,000 annually)⁵⁰ it would still take 30 years to accomplish this task, and that assumes that there will be no new illegal entrants during those 30 years. Thus, to truly make a

⁴² Florida Department of Law Enforcement, 287(g) Memorandum of Agreement, *available at* http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r_287gfloridadeptoflawenforcement101609.pdf (July 2, 2002), (last visited April 3, 2012).

⁴³ Immigration and Customs Enforcement, United States Department of Homeland Security, Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, *available at* <http://www.ice.gov/news/library/factsheets/287g.htm#signed-moa> (last visited April 3, 2012).

⁴⁴ Alabama Department of Public Safety, 287(g) Memorandum of Agreement, *available at* http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r_287galabamadepartmentofpublicsafety101609.pdf (Sept. 10, 2003), (last visited April 3, 2012).

⁴⁵ Alabama Etowah County Sheriff's Office, 287(g) Memorandum of Agreement, *available at* http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r_287galabamadepartmentofpublicsafety101609.pdf (July. 8, 2008), (last visited April 3, 2012).

⁴⁶ *United States v. Arizona*, 641 F.3d 339, 350 n.8 (9th Cir. 2010); *Contreras-Diaz*, 575 F.2d 740, 743-745 (9th Cir. 1978); *Gonzales v. City of Peoria*, 722 F.2d 468, 476 (9th Cir. 1983); *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1984); *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295-96 (10th Cir. 1999); *Lynch v. Cannatella*, 810 F.2d 1363, 1367 (5th Cir. 1987); *United States v. Rodriguez-Arreola*, 270 F.3d 611, 617, 619 (8th Cir. 2001); see also Memorandum, Non-Preemption of the Authority of State and Local Law Enforcement Officials to Arrest Aliens for Immigration Violations, from Jay S. Bybee, Ass't Att'y Gen., Office of Legal Counsel, U.S. Dep't of Justice, to U.S. Att'y Gen. 13 (Apr. 3, 2022).

⁴⁷ Kris W. Kobach, Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration, 22 *Geo. Immigr. L.J.* 459, 478 (2008).

⁴⁸ Immigration and Customs Enforcement, United States Department of Homeland Security, Fact Sheet: Updated Facts on ICE's 187(g) Program, *available at* <http://www.ice.gov/news/library/factsheets/287g-reform.htm> (last visited April 5, 2012).

⁴⁹ INA § 287(g)(7)-(8), 8 U.S.C. § 1357(g)(7)-(8).

⁵⁰ Immigration and Customs Enforcement, United States Department of Homeland Security, News Releases, FY: 2011: ICE announces year-end removal numbers, highlights focus on key priorities including threats to public safety and national security, *available at* <http://www.ice.gov/news/releases/1110/111018washingtondc.htm> (last visited April 6, 2012).

difference and reduce illegal immigration, local law enforcement must be a part of the solution. Since 2006, over 1,500 trained local law enforcement officers have helped remove approximately 280,000 illegal aliens through the 287(g) program.⁵¹

ICE agrees that the federal-local partnership fostered by 287(g) provides significant benefits. According to the executive director of ICE State and Local Coordination, 287(g) “[p]rogram participants reported to [the Government Accountability Office] a reduction in crime, the removal of repeat offenders and other safety benefits” as well as an undoubtedly positive impact on many communities.⁵² By working together, ICE states, local and federal officers can better identify and remove criminal aliens — a tremendous benefit to public safety.⁵³

Because the 287(g) program helps fight illegal immigration, promote public safety, and improve national security, mandating its use is good public policy. State and local jurisdictions reduce crime in their neighborhoods and the fiscal burden that illegal immigration places on their communities. Immigration and Customs Enforcement receives a critical force multiplier that helps the agency advance its mission of enforcing U.S. immigration laws. Overall, the American people benefit the most from the smart, effective use of both local and federal resources to curb illegal immigration and the problems associated with it.

Q: What are alien registration documents and why does Alabama’s HB 56 punish the failure to carry them?

A: Since August 1940,⁵⁴ federal law has required aliens to register with the federal government. And, since 1952, Congress has required **every alien**, lawful or unlawful, age 18 years and over, to carry his or her registration on his or her person.⁵⁵ The willful failure to register under federal law is a misdemeanor and carries a fine up to \$1,000 and/or sentence of imprisonment up to six months.⁵⁶ An

⁵¹ Immigration and Customs Enforcement, United States Department of Homeland Security, Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, available at <http://www.ice.gov/news/library/factsheets/287g.htm> (last visited April 4, 2012).

⁵² William F. Riley, acting Executive Director, State and Local Coordination, United States Immigration and Customs Enforcement, speaking before the House Committee on Appropriations-Subcommittee on Homeland Security regarding, Examining 287(g): the Role of State and Local Law Enforcement in Immigration Law, (March 4, 2009), available at http://www.ice.gov/doclib/news/library/speeches/final_riley_testimony_030409_house_hsc.pdf (last visited April 3, 2012).

⁵³ Immigration and Customs Enforcement, United States Department of Homeland Security, Fact Sheet: Updated Facts on ICE’s 187(g) Program, available at <http://www.ice.gov/news/library/factsheets/287g-reform.htm> (last visited April 5, 2012).

⁵⁴ Alien Registration Act of 1940, 76th Cong., 3rd Sess., 670-676, 54 Stat. 670; 8 U.S.C. § 1302(a)-(b).

⁵⁵ Immigration and Nationality Act, § 262, Pub. L. No. 82-414, 66 Stat. 224 as amended by Pub. L. No. 99-653, § 9, 100 Stat. 3657; Pub. L. No. 100-525, § 8(h), 102 Stat. 261; Pub. L. No. 103-416, Title II, § 219(n), 108 Stat. 4317 (codified as amended at 8 U.S.C. § 1302); INA § 266, as amended by Pub. L. No. 104-208, Div C, Title III, Subtitle A, § 308(e)(2)(G), (g)(9)(A), 110 Stat. 3009-620, 3009-624 (codified as amended at 8 U.S.C. § 1306(a)); See also *United States v. Franklin*, 188 F.2d 182, (7th Cir. 1951)(failure of alien to register was continuing violation; therefore, statute of limitations was not bar to prosecution); INA § 264(e) as amended by Pub. L. No. 99-653, § 10, 100 Stat. 3657; Pub. L. No. 99-653, § 10, 100 Stat. 3657; Pub. L. No. 100-525, § 8(i), 102 Stat. 2517; Pub. L. No. 101-649, Title V, Subtitle A, § 503(b)(2), 104 Stat. 5049; Pub. L. No. 104-208, Div C, Title IV, Subtitle B, § 415, 110 Stat. 3009-669 (codified as amended at 8 U.S.C. § 1304(e)); See also *United States v. Mova-Matute*, 559 F.Supp.2d 1189 (D. N.M. 2008)(defendant told immigration agents he was from Honduras and did not have his immigration papers on his person which was probable cause for arrest under 8 U.S.C. § 1304(e)); *Farm Labor Org. Comm. v. Ohio State Highway Patrol*, 308 F.3d 523, 546 (6th Cir. 2002)(citing 8 U.S.C. § 1304(e)) (“Failure to carry one’s green card on his or her person can subject a legal resident alien to criminal sanctions.”); *Etuk v. Slattery*, 936 F.2d 1433, 1444 (2d Cir. 1991) (“The INA mandates that the Attorney General provide [lawful permanent residents] who register with proof of their legal status.” (citing 8 U.S.C. § 1304(d)).

⁵⁶ 8 U.S.C. § 1306(a).

alien's failure to carry his or her certificate of alien registration or alien registration receipt card is punishable by a fine of either or both \$100 and thirty day imprisonment.⁵⁷

HB 56 simply provides that a violation of the federal registration laws is also a violation of state law. Section 10 provides that it is a misdemeanor under Alabama law for the "willful failure to complete or carry an alien registration document if the person is in violation of [federal alien registration laws] and the person is an alien unlawfully present in the United States."⁵⁸ Section 10 **does not** create its own independent state alien registration system, but instead relies solely on alien registration by the federal government.⁵⁹

In the course of their everyday duties, state and local law enforcement officers routinely encounter illegal aliens. State and local officers have the authority to arrest individuals for violations of the federal alien registration laws.⁶⁰ Thus, Section 10 allows the state to prosecute those illegal aliens that are arrested for violation of federal laws at the state level.

The Obama administration challenged Section 10 in its lawsuit against the state of Alabama.⁶¹ The federal district judge upheld it as consistent with the purposes of Congress. The Court found that HB 56, § 10 "complement" the federal registration provisions by: (1) requiring an alien's immigration status to be determined by the federal government; (2) exempting persons who maintain federal authorization to be present in the U.S.; and (3) providing penalties that closely track federal law. However, the 11th Circuit has issued an injunction of Section 10 pending appeal but has offered no explanation for the injunction.⁶²

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⁵⁷ 8 U.S.C. § 1304(e).

⁵⁸ 2011 Al. ALS 535, §10, available at <http://alisondb.legislature.state.al.us/acas/ACTIONViewFrame.asp?TYPE=Instrument&INST=HB56&DOCPATH=searchableinstruments/2011RS/Printfiles/&PHYDOCPATH=/alisondb/acas/searchableinstruments/2011RS/PrintFiles/&DOCNAMES=HB56-int.pdf,HB56-eng.pdf,HB56-enr.pdf> (last visited April 3, 2012).

⁵⁹ HB 56, Section 10 is distinguishable from the Supreme Court's decision in *Hines v. Davidowitz*, 312 U.S. 52 (1941) which found a Pennsylvania, state-specific alien registration law conflict preempted. The problem in *Hines* were that (1) the state created its own, independent alien registration system whereas Congress wanted one centralized database, and (2) Pennsylvania required all aliens to carry their registration whereas Congress chose not to require aliens to do so. HB 56, Section 10 is different because (1) it merely criminalizes individuals for not complying with the federal system, and (2) Congress now requires all aliens to carry their registration documents, which was not the case at the time of *Hines*.

⁶⁰ *Estrada v. Rhode Island*, 594 F.3d 56, 68-69 (1st Cir. 2009)(J. Lynch concurring); *Ortega-Melendres v. Arpaio*, 2011 U.S. Dist. LEXIS 148223 (D. Ariz. Dec. 23, 2011) ("Non-287(g) officers may detain those whom they have reasonable suspicion to believe have . . . fraudulently filed an immigration application under § 1306, failed to carry documentation of their immigration status under § 1304(e), or committed other criminal immigration violations."); See also *United States v. Adoni-Pena*, 2009 U.S. Dist. LEXIS 102125, *11 (D. Vt. Oct. 23, 2009) (holding that a state officer may arrest alien upon probable cause that the alien had a forged or counterfeit alien registration number).

⁶¹ *United States v. Alabama*, *United States v. Alabama*, 813 F. Supp. 2d 1282, 1334 (D. Ala. 2011)

⁶² *United States v. Alabama*, 443 Fed. Appx. 411 (11th Cir. 2011).