SUPREME COURT OF THE UNITED STATES

ARIZONA ET AL. *v*. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 11–182. Argued April 25, 2012—Decided June 25, 2012

Facts:

An Arizona statute known as S. B. 1070 was enacted in 2010 to address pressing issues related to the large number of unlawful aliens in the State. The United States sought to enjoin the law as preempted. The District Court issued a preliminary injunction preventing four of its provisions from taking effect. Section 3 makes failure to comply with federal alien-registration requirements a state misdemeanor; §5(C)makes it a misdemeanor for an unauthorized alien to seek or engage in work in the State; §6 authorizes state and local officers to arrest without a warrant a person "the officer has probable cause to believe . . . has committed any public offense that makes the person removable from the United States"; and §2(B) requires officers conducting a stop, detention, or arrest to make efforts, in some circumstances, to verify the person's immigration status with the Federal Government. The Ninth Circuit affirmed, agreeing that the United States had established a likelihood of success on its preemption claims.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. SCALIA, J., THOMAS, J., and ALITO, J., filed opinions concurring in part and dissenting in part. KAGAN, J., took no part in the consideration or decision of the case

JUSTICE KENNEDY delivered the opinion of the Court.

II

A

The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. See *Toll* v. *Moreno*, 458 U. S. 1, 10 (1982);see generally S. Legomsky & C. Rodríguez, Immigration and Refugee Law and Policy 115–132 (5th ed. 2009). This authority rests, in part, on the National Government's constitutional power to "establish an uniform Rule of Naturalization," U. S. Const., Art. I, §8, cl. 4, and its inherent power as sovereign to control and conduct relations with foreign nations, see *Toll*, *supra,* at 10 (citing *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 318 (1936)).

The federal power to determine immigration policy is well settled. Immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws. See, *e.g.,* Brief for Argentina et al. as *Amici Curiae;* see also *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589

(1952). Perceived mistreatment of aliens in the United States may lead to harmful reciprocal treatment of American citizens abroad. See Brief for Madeleine K. Albright et al. as *Amici Curiae* 24–30.
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Federal governance of immigration and alien status is extensive and complex. Congress has specified categories of aliens who may not be admitted to the United States. Unlawful entry and unlawful reentry into the country are federal offenses. Once here, aliens are required to register with the Federal Government and to carry proof of status on their person. Failure to do so is a federal misdemeanor. Federal law also authorizes States to deny noncitizens a range of public benefits; and it imposes sanctions on employers who hire unauthorized workers. [citations omitted]

Congress has specified which aliens may be removed from the United States and the procedures for doing so. Aliens may be removed if they were inadmissible at the time of entry, have been convicted of certain crimes, or meet other criteria set by federal law. Removal is a civil, not criminal, matter. A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all. If removal proceedings commence, aliens may seek asylum and other discretionary relief allowing them to remain in the country or at least to leave without formal removal. [citations omitted]
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B

The pervasiveness of federal regulation does not diminish the importance of immigration policy to the States. Arizona bears many of the consequences of unlawful immigration. Hundreds of thousands of deportable aliens are apprehended in Arizona each year. Unauthorized aliens who remain in the State comprise, by one estimate, almost six percent of the population. And in the State's most populous county, these aliens are reported to be responsible for a disproportionate share of serious crime. (estimating that unauthorized aliens comprise 8.9% of the population and are responsible for 21.8% of the felonies in Maricopa County, which includes Phoenix). Statistics alone do not capture the full extent of Arizona's concerns. Accounts in the record suggest there is an "epidemic of crime, safety risks, serious property damage, and environmental problems" associated with the influx of illegal migration across private land near the Mexican border. Phoenix is a major city of the United States, yet signs along an interstate highway 30 miles to the south warn the public to stay away. One reads, "DANGER—PUBLIC WARNING—TRAVEL NOT RECOMMENDED / Active Drug and Human Smuggling Area / Visitors May Encounter Armed Criminals and Smuggling Vehicles Traveling at High Rates of Speed." The problems posed to the State by illegal immigration must not be underestimated. [citations omitted]

These concerns are the background for the formal legal analysis that follows. The issue is whether, under preemption principles, federal law permits Arizona to implement the state-law provisions in dispute.

III

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Congress has the power to preempt state law. See *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 372 (2000); *Gibbons* v. *Ogden*, 9 Wheat. 1, 210–211 (1824). There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision. See, *e.g., Chamber of Commerce of United States of America* v. *Whiting*, 563 U. S. ___, ___ (2011) (slip op., at 4).

State law must also give way to federal law in at least two other circumstances. First, the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance. See *Gade* v. *National Solid Wastes Management Assn.,* 505 U. S. 88, 115 (1992).The intent to displace state law altogether can be inferred from a framework of regulation "so pervasive . . . that Congress left no room for the States to supplement it" or where there is a "federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947); see *English* v. *General Elec. Co.*, 496 U. S. 72, 79 (1990).

Second, state laws are preempted when they conflict with federal law. *Crosby, supra,* at 372. This includes cases where "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U. S. 132, 142–143 (1963), and those instances where the challenged state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines*, 312 U. S., at 67; see also *Crosby*, *supra*, at 373 ("What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects"). In preemption analysis, courts should assume that "the historic police powers of the States" are not superseded "unless that was the clear and manifest purpose of Congress." *Rice*, *supra,* at 230; see *Wyeth* v. *Levine*, 555 U. S. 555, 565 (2009).

The four challenged provisions of the state law each must be examined under these preemption principles.

IV

A

Section 3

Section 3 of S. B. 1070 creates a new state misdemeanor. It forbids the "willful failure to complete or carry an alien registration document . . . in violation of 8 United States Code section 1304(e) or 1306(a)." Ariz. Rev. Stat. Ann. §11–1509(A) (West Supp. 2011). In effect, §3 adds a state-law penalty for conduct proscribed by federal law. The United States contends that this state enforcement mechanism intrudes on the field of alien registration, a field in which Congress has left no room for States to regulate. See Brief for United States 27, 31.

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The present regime of federal regulation is not identical to the statutory framework considered in *Hines*, but it remains comprehensive. Federal law now

includes a requirement that aliens carry proof of registration. 8 U. S. C. §1304(e). Other aspects, however, have stayed the same. Aliens who remain in the country for more than 30 days must apply for registration and be fingerprinted. Compare §1302(a) with *id.*, §452(a) (1940 ed.). Detailed information is required, and any change of address has to be reported to the Federal Government. Compare §§1304(a), 1305(a) (2006 ed.), with *id.*, §§455(a), 456 (1940 ed.). The statute continues to provide penalties for the willful failure to register. Compare §1306(a) (2006 ed.), with *id.*, §457 (1940 ed.).

The framework enacted by Congress leads to the conclusion here, as it did in *Hines*, that the Federal Government has occupied the field of alien registration. See *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 419, n. 11 (2003) (characterizing *Hines* as a field preemption case); *Pennsylvania* v. *Nelson*, 350 U. S. 497, 504 (1956) (same); see also Dinh, Reassessing the Law of Preemption, 88 Geo. L. J.2085, 2098–2099, 2107 (2000) (same). The federal statutory directives provide a full set of standards governing alien registration, including the punishment for noncompliance. It was designed as a "'harmonious whole.'" *Hines*, *supra,* at 72. Where Congress occupies an entire field, as it has in the field of alien registration, even complementary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards. See *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 249 (1984).

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Arizona contends that §3 can survive preemption because the provision has the same aim as federal law and adopts its substantive standards. This argument not only ignores the basic premise of field preemption—that States may not enter, in any respect, an area the Federal Government has reserved for itself—but also is unpersuasive on its own terms. Permitting the State to impose its own penalties for the federal offenses here would conflict with the careful framework Congress adopted. Cf. *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U. S. 341, 347–348 (2001) (States may not impose their own punishment for fraud on the Food and Drug Administration); *Wisconsin Dept., supra,* at 288 (States may not impose their own punishment for repeat violations of the National Labor Relations Act). Were §3 to come into force, the State would have the power to bring criminal charges against individuals for violating a federal law even in circumstances where federal officials in charge of the comprehensive scheme determine that prosecution would frustrate federal policies.

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These specific conflicts between state and federal law simply underscore the reason for field preemption. As it did in *Hines*, the Court now concludes that, with respect to the subject of alien registration, Congress intended to preclude States from "complement[ing] the federal law, or enforc[ing] additional or auxiliary regulations." 312 U. S., at 66–67. Section 3 is preempted by federal law.

B

Section 5(C)

Unlike §3, which replicates federal statutory requirements, §5(C) enacts a state criminal prohibition where no federal counterpart exists. The provision

makes it a state misdemeanor for "an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor" in Arizona. Ariz. Rev. Stat. Ann. §13–2928(C) (West Supp. 2011).Violations can be punished by a $2,500 fine and incarceration for up to six months. See §13–2928(F); see also §§13–707(A)(1) (West 2010); 13–802(A); 13–902(A)(5). The United States contends that the provision upsets the balance struck by the Immigration Reform and Control Act of 1986 (IRCA) and must be preempted as an obstacle to the federal plan of regulation and control.

When there was no comprehensive federal program regulating the employment of unauthorized aliens, this Court found that a State had authority to pass its own laws on the subject.
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The legislative background of IRCA underscores the fact that Congress made a deliberate choice not to impose criminal penalties on aliens who seek, or engage in, unauthorized employment. ***

IRCA's express preemption provision, which in most instances bars States from imposing penalties on employers of unauthorized aliens, is silent about whether additional penalties may be imposed against the employees themselves. *** But the existence of an "express preemption provisio[n] does *not* bar the ordinary working of conflict preemption principles" or impose a "special burden" that would make it more difficult to establish the preemption of laws falling outside the clause. ***

The ordinary principles of preemption include the well settled proposition that a state law is preempted where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines*, 312 U. S., at 67. Under §5(C) of S. B. 1070, Arizona law would interfere with the careful balance struck by Congress with respect to unauthorized employment of aliens. Although §5(C) attempts to achieve one of the same goals as federal law—the deterrence of unlawful employment—it involves a conflict in the method of enforcement. *** It follows that a state law to the contrary is an obstacle to the regulatory system Congress chose. *** Section 5(C) is preempted by federal law.

C
Section 6

Section 6 of S. B. 1070 provides that a state officer ,"without a warrant, may arrest a person if the officer has probable cause to believe . . . [the person] has committed any public offense that makes [him] removable from the United States." Ariz. Rev. Stat. Ann. §13–3883(A)(5) (West Supp. 2011). The United States argues that arrests authorized by this statute would be an obstacle to the removal system Congress created.

As a general rule, it is not a crime for a removable alien to remain present in the United States. See *INS* v. *Lopez-Mendoza*, 468 U. S. 1032, 1038 (1984). If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent. When an alien is suspected of being removable, a federal official issues an administrative document called a Notice to

Appear. See 8 U. S. C. §1229(a); 8 CFR §239.1(a) (2012).The form does not authorize an arrest. Instead, it gives the alien information about the proceedings, including the time and date of the removal hearing. See 8 U. S. C. §1229(a)(1). If an alien fails to appear, an *in absentia* order may direct removal. §1229a(5)(A).
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By authorizing state officers to decide whether an alien should be detained for being removable, §6 violates the principle that the removal process is entrusted to the discretion of the Federal Government.
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Congress has put in place a system in which state officers may not make warrantless arrests of aliens based on possible removability except in specific, limited circumstances. By nonetheless authorizing state and local officers to engage in these enforcement activities as a general matter, §6 creates an obstacle to the full purposes and objectives of Congress. See *Hines*, 312 U. S., at 67. Section 6 is preempted by federal law.

D

Section 2(B)

Section 2(B) of S. B. 1070 requires state officers to make a "reasonable attempt . . . to determine the immigration status" of any person they stop, detain, or arrest on some other legitimate basis if "reasonable suspicion exists that the person is an alien and is unlawfully present in the United States." Ariz. Rev. Stat. Ann. §11–1051(B) (West 2012). The law also provides that "[a]ny person who is arrested shall have the person's immigration status determined before the person is released." *Ibid.* The accepted way to perform these status checks is to contact ICE, which maintains a database of immigration records.

Three limits are built into the state provision. First, a detainee is presumed not to be an alien unlawfully present in the United States if he or she provides a valid Arizona driver's license or similar identification. Second, officers "may not consider race, color or national origin . . . except to the extent permitted by the United States [and] Arizona Constitution[s]." *Ibid.* Third, the provisions must be "implemented in a manner consistent with federal law regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens." §11–1051(L) (West 2012).

1

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Congress has done nothing to suggest it is in appropriate to communicate with ICE in these situations, however. Indeed, it has encouraged the sharing of information about possible immigration violations. See 8 U. S. C. §1357(g)(10)(A). A federal statute regulating the public benefits provided to qualified aliens in fact instructs that "no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from [ICE]information regarding the immigration status, lawful or unlawful, of an alien in the United States." §1644. The federal scheme thus leaves room for a policy requiring state officials to contact ICE as a routine matter. Cf. *Whiting*, 563 U. S., at ___–___ (slip op., at 23–24) (rejecting argument that federal law preempted Arizona's requirement that employers determine whether employees were eligible

to work through the federal E-Verify system where the Federal Government had encouraged its use).

2

***

Detaining individuals solely to verify their immigration status would raise constitutional concerns. *** And it would disrupt the federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without federal direction and supervision. *** The program put in place by Congress does not allow state or local officers to adopt this enforcement mechanism.

But §2(B) could be read to avoid these concerns. To take one example, a person might be stopped for jaywalking in Tucson and be unable to produce identification. The first sentence of §2(B) instructs officers to make a "reasonable" attempt to verify his immigration status with ICE if there is reasonable suspicion that his presence in the United States is unlawful. The state courts may conclude that, unless the person continues to be suspected of some crime for which he may be detained by state officers, it would not be reasonable to prolong the stop for the immigration inquiry. See Reply Brief for Petitioners 12, n. 4 ("[Section2(B)] does not require the verification be completed during the stop or detention if that is not reasonable or practicable"); cf. *Muehler* v. *Mena*, 544 U. S. 93, 101 (2005) (finding no Fourth Amendment violation where questioning about immigration status did not prolong a stop).

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The nature and timing of this case counsel caution in evaluating the validity of §2(B). The Federal Government has brought suit against a sovereign State to challenge the provision even before the law has gone into effect. There is a basic uncertainty about what the law means and how it will be enforced. At this stage, without the benefit of a definitive interpretation from the state courts, it would be inappropriate to assume §2(B) will be construed in a way that creates a conflict with federal law. Cf. *Fox* v. *Washington*, 236 U. S. 273, 277 (1915) ("So far as statutes fairly may be construed in such a way as to avoid doubtful constitutional questions they should be so construed; and it is to be presumed that state laws will be construed in that way by the state courts" (citation omitted)). As a result, the United States cannot prevail in its current challenge. See *Huron Portland Cement Co.* v. *Detroit*, 362 U. S. 440, 446 (1960) ("To hold otherwise would be to ignore the teaching of this Court's decisions which enjoin seeking out conflicts between state and federal regulation where none clearly exists"). This opinion does not foreclose other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect.

* * *

The United States has established that §§3, 5(C), and 6of S. B. 1070 are preempted. It was improper, however, to enjoin §2(B) before the state courts had an opportunity to construe it and without some showing that enforcement of the provision in fact conflicts with federal immigration law and its objectives. The judgment of the Court of Appeals for the Ninth

Circuit is affirmed in part and reversed in part. The case is remanded for further proceedings consistent with this opinion.
It is so ordered.

JUSTICE SCALIA, concurring in part and dissenting in part.

The United States is an indivisible "Union of sovereign States." *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U. S. 92, 104 (1938). Today's opinion, approving virtually all of the Ninth Circuit's injunction against enforcement of the four challenged provisions of Arizona's law, deprives States of what most would consider the defining characteristic of sovereignty: the power to exclude from the sovereign's territory people who have no right to be there. Neither the Constitution itself nor even any law passed by Congress supports this result. I dissent.

I

As a sovereign, Arizona has the inherent power to exclude persons from its territory, subject only to those limitations expressed in the Constitution or constitutionally imposed by Congress. That power to exclude has long been recognized as inherent in sovereignty. Emer de Vattel's seminal 1758 treatise on the Law of Nations stated:

> "The sovereign may forbid the entrance of his territory either to foreigners in general, or in particular cases, or to certain persons, or for certain particular purposes, according as he may think it advantageous to the state. There is nothing in all this, that does not flow from the rights of domain and sovereignty: every one is obliged to pay respect to the prohibition; and whoever dares violate it, incurs the penalty decreed to render it effectual." The Law of Nations, bk. II, ch. VII, §94, p. 309 (B. Kapossy & R. Whatmore eds. 2008).

See also I R. Phillimore, Commentaries upon International Law, pt. III, ch. X, p. 233 (1854) ("It is a received maxim of International Law that, the Government of a State may prohibit the entrance of strangers into the country").[1]

There is no doubt that "before the adoption of the constitution of the United States" each State had the authority to "prevent [itself] from being burdened by an influx of persons." *Mayor of New York* v. *Miln*, 11 Pet. 102, 132–133 (1837). And the Constitution did not strip the States of that authority. To the contrary, two of the Constitution's provisions were designed to enable the States to prevent "the intrusion of obnoxious aliens through other States." Letter from James Madison to Edmund Randolph(Aug. 27, 1782), in 1 The Writings of James Madison 226 (1900); accord, The Federalist No. 42, pp. 269–271 (C.Rossiter ed. 1961) (J. Madison). The Articles of Confederation had provided that "the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States." Articles of Confederation, Art. IV. This meant that an unwelcome alien could obtain all the rights of a citizen of one State simply by first becoming

an *inhabitant* of another. To remedy this, the Constitution's Privileges and Immunities Clause provided that "[t]he *Citizens* of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Art. IV, §2, cl. 1 (emphasis added). But if one State had particularly lax citizenship standards, it might still serve as a gateway for the entry of "obnoxious aliens" into other States. This problem was solved "by authorizing the general government to establish a uniform rule of naturalization throughout the United States." The Federalist No. 42, *supra,* at 271; see Art. I, §8, cl. 4. In other words, the naturalization power was given to Congress not to abrogate States' power to exclude those they did not want, but to vindicate it.
***

A later portion of [Art. I, §10] provides that "[n]o State shall, without the Consent of Congress, . . . engage in War, *unless actually invaded, or in such imminent Danger as will not admit of delay*." Art. I, §10, cl. 3 (emphasis added). This limits the States' sovereignty (in a way not relevant here) but leaves intact their inherent power to protect their territory. ***
***

Notwithstanding "[t]he myth of an era of unrestricted immigration" in the first 100 years of the Republic, the States enacted numerous laws restricting the immigration of certain classes of aliens, including convicted criminals, indigents, persons with contagious diseases, and (in Southern States) freed blacks. Neuman, The Lost Century of American Immigration (1776–1875), 93 Colum. L. Rev.1833, 1835, 1841–1880 (1993). State laws not only provided for the removal of unwanted immigrants but also imposed penalties on unlawfully present aliens and those who aided their immigration. *Id.,* at 1883.
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In *Mayor of New York* v. *Miln*, this Court considered a New York statute that required the commander of any ship arriving in New York from abroad to disclose "the name, place of birth, and last legal settlement, age and occupation . . . of all passengers . . . with the intention of proceeding to the said city." 11 Pet., at 130–131. After discussing the sovereign authority to regulate the entrance of foreigners described by De Vattel, the Court said:

> "The power . . . of New York to pass this law having undeniably existed at the formation of the constitution, the simply inquiry is, whether by that instrument it was taken from the states, and granted to congress; for if it were not, it yet remains with them." *Id.,* at 132.

And the Court held that it remains. *Id.,* at 139.

II

One would conclude from the foregoing that after the adoption of the Constitution there was some doubt about the power of the Federal Government to control immigration, but no doubt about the power of the States to do so.
***

I accept that as a valid exercise of federal power—not because of the Naturalization Clause (it has no necessary connection to citizenship) but because it is an inherent attribute of sovereignty no less for the United States than for the States. As this Court has said, it is an "'accepted maxim of international law, that

every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions.'" *Fong Yue Ting* v. *United States*, 149 U. S. 698, 705 (1893) (quoting *Ekiu* v. *United States*, 142 U. S. 651, 659 (1892)).

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In light of the predominance of federal immigration restrictions in modern times, it is easy to lose sight of the States' traditional role in regulating immigration—and to overlook their sovereign prerogative to do so. I accept as a given that State regulation is excluded by the Constitution when (1) it has been prohibited by a valid federal law, or (2) it conflicts with federal regulation—when, for example, it admits those whom federal regulation would exclude, or excludes those whom federal regulation would admit.

Possibility (1) need not be considered here: there is no federal law prohibiting the States' sovereign power to exclude (assuming federal authority to enact such a law). The mere existence of federal action in the immigration area—and the so-called field preemption arising from that action, upon which the Court's opinion so heavily relies, *ante,* at 9–11—cannot be regarded as such a prohibition. We are not talking here about a federal law prohibiting the States from regulating bubble-gum advertising, or even the construction of nuclear plants. We are talking about a federal law going to the *core* of state sovereignty: the power to exclude. Like elimination of the States' other inherent sovereign power, immunity from suit, elimination of the States' sovereign power to exclude requires that "Congress . . . unequivocally expres[s] its intent to abrogate," *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 55 (1996) (internal quotation marks and citation omitted).Implicit "field preemption" will not do.

Nor can federal power over illegal immigration be deemed exclusive because of what the Court's opinion solicitously calls "foreign countries[']concern[s] about the status, safety, and security of their nationals in the United States," *ante*, at 3.

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What this case comes down to, then, is whether the Arizona law conflicts with federal immigration law—whether it excludes those whom federal law would admit, or admits those whom federal law would exclude. It does not purport to do so. It applies only to aliens who neither possess a privilege to be present under federal law nor have been removed pursuant to the Federal Government's inherent authority.

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But that is not the most important point. The most important point is that, as we have discussed, Arizona is *entitled* to have "its own immigration policy"—including a more rigorous enforcement policy—so long as that does not conflict with federal law. The Court says, as though the point is utterly dispositive, that "it is not a crime for a removable alien to remain present in the United States," *ante,* at 15. It is not a federal crime, to be sure. But there is no reason Arizona cannot make it a state crime for a removable alien (or any illegal alien, for that matter) to remain present in Arizona.

***

It is beyond question that a State may make violation of federal law a violation of state law as well. We have held that to be so even when the interest protected is a distinctively federal interest, such as protection of the dignity of the national flag, see *Halter* v. *Nebraska*, 205 U. S. 34 (1907), or protection of the Federal Government's ability to recruit soldiers, *Gilbert* v. *Minnesota*, 254 U. S. 325 (1920). *** And we have said that explicitly with regard to illegal immigration: "Despite the exclusive federal control of this Nation's borders, we cannot conclude that the States are without any power to deter the influx of persons entering the United States against federal law, and whose numbers might have a discernible impact on traditional state concerns." *Plyler* v. *Doe*, 457 U. S. 202, 228, n. 23 (1982).

The Court's opinion relies upon *Hines* v. *Davidowitz*, *supra. Ante*, at 9–10. But that case did not, as the Court believes, establish a "field preemption" that implicitly eliminates the States' sovereign power to exclude those whom federal law excludes. It held that the States are not permitted to establish "additional or auxiliary" registration requirements for aliens. 312 U. S., at 66–67. But §3 does not establish additional or auxiliary registration requirements. It merely makes a violation of state law the *very same* failure to register and failure to carry evidence of registration that are violations of federal law.

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In some areas of uniquely federal concern—*e.g.,* fraud in a federal administrative process (*Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U. S. 341 (2001)) or perjury in violation of a federally required oath (*In re Loney*, 134 U. S. 372 (1890))—this Court has held that a State has no legitimate interest in enforcing a federal scheme. But the federal alien registration system is certainly not of uniquely federal interest.

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*** "[T]here is no conflict in terms, and no possibility of such conflict, [if] the state statute makes federal law its own," *California* v. *Zook*, 336 U. S. 725, 735 (1949).

***

The only relevant change [since *De Canas*] is that Congress has since enacted its own restrictions on employers who hire illegal aliens, 8 U. S. C. §1324a, in legislation that also includes some civil (but no criminal) penalties on illegal aliens who accept unlawful employment. The Court concludes from this (reasonably enough) "that Congress made a deliberate choice not to impose criminal penalties on aliens who seek, or engage in, unauthorized employment," *ante*, at 13. But that is not the same as a deliberate choice to prohibit the States from imposing criminal penalties. Congress's intent with regard to exclusion of state law need not be guessed at, but is found in the law's express preemption provision, which excludes "any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon *those who employ, or recruit or refer for a fee for employment,* unauthorized aliens," §1324a(h)(2) (emphasis added). Common sense, reflected in the canon *expressio unius est exclusio alterius*, suggests that the specification of preemption for laws punishing

"those who employ" implies the lack of pre-emption for other laws, including laws punishing "those who seek or accept employment."
***

The President said at a news conference that the new program [exempting from immigration enforcement some 1.4 million illegal immigrants under the age of 30] is "the right thing to do" in light of Congress's failure to pass the Administration's proposed revision of the Immigration Act. Perhaps it is, though Arizona may not think so. But to say, as the Court does, that Arizona *contradicts federal law* by enforcing applications of the Immigration Act that the President declines to enforce boggles the mind.
***

A Federal Government that does not want to enforce the immigration laws as written, and leaves the States' borders unprotected against immigrants whom those laws would exclude. So the issue is a stark one. Are the sovereign States at the mercy of the Federal Executive's refusal to enforce the Nation's immigration laws?

A good way of answering that question is to ask: Would the States conceivably have entered into the Union if the Constitution itself contained the Court's holding? Today's judgment surely fails that test.
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Arizona has moved to protect its sovereignty—not in contradiction of federal law, but in complete compliance with it. The laws under challenge here do not extend or revise federal immigration restrictions, but merely enforce those restrictions more effectively. If securing its territory in this fashion is not within the power of Arizona, we should cease referring to it as a sovereign State. I dissent.

JUSTICE THOMAS, concurring in part and dissenting in part.

I agree with JUSTICE SCALIA that federal immigration law does not pre-empt any of the challenged provisions of S. B. 1070. I reach that conclusion, however, for the simple reason that there is no conflict between the "ordinary meanin[g]" of the relevant federal laws and that of the four provisions of Arizona law at issue here. *Wyeth* v. *Levine*, 555 U. S. 555, 588 (2009) (THOMAS, J., concurring in judgment) ("Preemption analysis should not be a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives, but an inquiry into whether the ordinary meanings of state and federal law conflict" (brackets; internal quotation marks omitted)).
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I have explained that the "purposes and objectives" theory of implied pre-emption is inconsistent with the Constitution because it invites courts to engage in freewheeling speculation about congressional purpose that roams well beyond statutory text. See *Wyeth*, 555 U. S., at 604 (opinion concurring in judgment); see also *Williamson* v. *Mazda Motor of America, Inc.*, 562 U. S. ___, ___–___ (2011)

(opinion concurring in judgment) (slip op., at 2–3); *Haywood* v. *Drown*, 556 U. S. 729, 767 (2009) (dissenting opinion). Under the Supremacy Clause, preemptive effect is to be given to congressionally enacted laws, not to judicially divined legislative purposes. See *Wyeth*, *supra*, at 604 (THOMAS, J., concurring in judgment). Thus, even assuming the existence of some tension between Arizona's law and the supposed "purposes and objectives" of Congress, I would not hold that any of the provisions of the Arizona law at issue here are pre-empted on that basis.

JUSTICE ALITO, concurring in part and dissenting in part.

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While I agree with the Court on §2(B) and §3, I part ways on §5(C) and §6. The Court's holding on §5(C) is inconsistent with *De Canas* v. *Bica*, 424 U. S. 351 (1976), which held that employment regulation, even of aliens unlawfully present in the country, is an area of traditional state concern. Because state police powers are implicated here, our precedents require us to presume that federal law does not displace state law unless Congress' intent to do so is clear and manifest. I do not believe Congress has spoken with the requisite clarity to justify invalidation of§5(C). Nor do I believe that §6 is invalid. Like §2(B), §6 adds virtually nothing to the authority that Arizona law enforcement officers already exercise. And whatever little authority they have gained is consistent with federal law.