

## **GUEST COLUMN: 'Victory'? It's a blow for HB 87**

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### **Body**

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The Supreme Court's decision in Arizona v. United States is a resounding defeat for state anti-immigration movements, particularly in Georgia. The court's decision puts an end to state efforts to enforce federal immigration law and create mini-state immigration systems.

As Justice Anthony Kennedy noted in his opinion: "[T]he 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." Georgia legislators ignored warnings of this last year when considering **HB 87** and chose to take the political rather than the legal path.

The pending challenges to the two stayed provisions of **HB 87** will now move forward. U.S. District Court Judge Thomas Thrash found two key parts of **HB 87**, Sections 7 (the harboring, inducing, transporting provision) and Section 8 (the "show-me-your-papers" provision) were preempted, and barred those two provisions from taking effect. The Court of Appeals will now rule, in light of the Supreme Court's decision, whether these two sections of **HB 87** will remain invalidated.

The Supreme Court threw out three provisions of the Arizona law that, if implemented, would have conflicted with the federal plan. As a result, laws requiring the arrest by state officials of people they "reasonably believed" to be illegal, of those who did not carry proof of immigration status (as if that could be determined with simple documents), and making it a crime to work in Arizona without work authorization (currently not against any federal law), cannot be implemented.

Section 7 of **HB 87** is much like a federal statute and attempts to replicate and enhance federal penalties. It is preempted in that it directly affects the federal government's efforts to enforce existing immigration laws. Section 7 will never be allowed to take effect.

State politicians who supported **HB 87**'s passage have made dubious claims of "**victory**" regarding the court's decision. Did they actually read the opinion? While the Supreme Court allowed the "show-me-your-papers" provision to stand, it offered a caveat. The federal government only challenged the statute on federal pre-emption grounds, not on civil rights, due process or equal protection grounds. If the "show-me-your-papers" provision only requires state officers to conduct a status check during the course of an authorized, lawful detention or after a

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detainee has been released, the provision likely would survive preemption. But Kennedy added: "Detaining individuals solely to verify their immigration status would raise constitutional concerns." That's an open door to further challenges.

In Georgia, anyone who is arrested (including those driving without a license) and brought to any jail already has their fingerprints run through the federal immigration database. If a "hit" occurs, Immigration and Customs Enforcement issues a detainer asking for a 48-hour hold to give ICE time to pick up the person. Section 8 is not necessary for this to happen. To remain constitutionally valid, the police would have to conduct its "immigration check" on the side of a busy road without extending the stop. In practicality, this is virtually impossible and unnecessary. Such stops also would have to be "color blind" as there is no legitimate way to determine a person's immigration status simply by looking at him or her.

The federal government never joined the Georgia **HB 87** litigation, and the current lawsuit focuses on the civil rights, due process and equal protection violations that already have occurred to Georgia immigrants and citizens as a result of **HB 87**. This does not bode well for the future enforcement of Section 8.

Perhaps we can move on and work together to demand that Congress fix our broken immigration system.

Charles Kuck, an Atlanta immigration attorney, serves on the executive board of the Georgia Association of Latino Elected Officials.

## Graphic

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Photo: Charles Kuck, an Atlanta immigration attorney, serves on the executive board of the Georgia Association of Latino Elected Officials. /ImageData\*

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