

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

----- X
:
Georgia Latino Alliance for Human Rights, :
et al. :
:
Plaintiffs, :
:
vs. :
Governor Nathan Deal, *et al.*, :
:
Defendants. :
:
----- X

No. 1:11-cv-1804-TWT

[LODGED]
BRIEF OF THE
UNITED MEXICAN STATES
AS AMICUS CURIAE
IN SUPPORT OF
PLAINTIFFS' COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

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INTEREST OF THE *AMICUS CURIAE*

The United Mexican States (“Mexico”) herein expresses its grave concerns over The Illegal Immigration Reform and Enforcement Act of 2011, House Bill 87, 2011 Leg., Gen. Sess. (Ga. 2011) (“HB 87”), and underscores the importance of preliminarily enjoining HB 87 and of declaring it unconstitutional in its entirety.

HB 87 substantially and inappropriately burdens the consistent country to country relations between Mexico and the United States of America (“U.S.”), interfering with the strategic diplomatic interests of the two countries and encouraging an imminent threat of state-sanctioned bias or discrimination. Under Article 5(a) of the Vienna Convention on Consular Relations (“Vienna Convention”), to which both countries are parties, Mexico has a right to protect the interests of its nationals within the limits of international law.² Mexico seeks to ensure that its citizens present in the U.S. are accorded the human and civil rights granted under the U.S. Constitution, and affirms that HB 87 threatens the human and civil rights of its nationals.

The enactment of HB 87, like the enactment of Arizona Senate Bill 1070, 49th Leg., 2nd Reg. Sess. (Ariz. 2010) (“SB 1070”), Utah House Bill 497, 2011 Leg., Gen. Sess. (Utah 2011) (“HB 497”), and Indiana Senate Bill 590, 117th Leg.,

² Vienna Convention on Consular Relations art. 5, 596 U.N.T.S. 261, Apr. 24, 1963.

Reg. Sess. (Ind. 2011) (“SB 590”), was closely followed at the highest levels of the Mexican government,³ as well as by Mexicans and Americans in Georgia and the U.S. The issues raised herein are of great importance to the people of Mexico, including the millions of Mexican workers, tourists and students recently admitted to the U.S.,⁴ those already present in the U.S., the countless millions whose daily lives and jobs depend on international trade, and those who may also be affected by immigration policies. Mexico respectfully submits that, if HB 87 is allowed to take effect, it will have a significant and long-lasting adverse impact on U.S.–Mexico bilateral relations, and on Mexican citizens and other people of Latin American descent present in Georgia.

³ See, e.g., Secretaría de Relaciones Exteriores, *The Mexican Government Regrets the Enactment of HB 87 in Georgia* (May 13, 2011),

http://www.sre.gob.mx/csocal/contenido/comunicados/2011/may/cp_157a.html.

⁴ Office of Immigr. Statistics, *2009 Yearbook of Immigration Statistics*, Aug. 2010, http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf;

U.S. Dep’t of Transp., *Border Crossing/Entry Data*, June 1, 2010, http://www.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BC_Index.html.

ARGUMENT

I. **HB 87 Dangerously Contributes to a Patchwork of Laws That Impede Effective and Consistent Diplomatic Relations**

The U.S. Supreme Court has long made clear that “state actions that directly interfere[] with the operation of a federal program” are preempted.⁵ HB 87 directly interferes with federal immigration policy. As affirmed by Deputy Secretary of State James B. Steinberg, “U.S. federal immigration law incorporates foreign relations concerns by providing a comprehensive range of tools for regulating entry and enforcement.”⁶ Mexico relies upon this consideration of its concerns in conducting diplomatic relations with the U.S. on the various bilateral matters impacted by U.S. immigration law. In direct opposition to this uniform U.S. program, Georgia’s HB 87, Arizona’s SB 1070, Utah’s HB 497, Indiana’s SB 590 and the other state bills spurred by the avalanche of “copycat” legislation create a dangerous patchwork of inconsistent state immigration laws. Already, at least 24 U.S. states introduced a “copycat bill,” and while about half were not enacted in

⁵ *Chamber of Commerce v. Whiting*, No. 09-115, 2011 U.S. LEXIS 4018, at *11 (U.S. May 26, 2011). See The Federalist No. 42 (James Madison) (concerning regulation of intercourse with foreign nations) (“If we are to be one nation in any respect, it clearly ought to be in respect to other nations.”); The Federalist No. 4 (John Jay)(concerning dangers from foreign force and influence).

⁶ Declaration of James B. Steinberg ¶ 5, July 2, 2010, *United States v. Arizona*, No. 2:10-cv-01413-SRB (D. Ariz. July 6, 2010) , attached hereto as Exhibit A.

this legislative session, the attempts continue in several states.⁷ On June 2, 2011, for example, Alabama enacted another “copycat” immigration bill, House Bill 56.⁸ But while these laws are all characterized as “copycat anti-immigration laws,” their provisions differ significantly from state to state. These differences create a complex and perilous legal patchwork. Various states are also introducing immigration bills that are not entirely modeled after Arizona’s SB 1070, including aspects of Georgia’s HB 87.⁹ As a result, such legislative agendas could result in a mix of disparate laws across the U.S., creating an environment of uncertainty, making it nearly impossible for Mexican nationals to understand their rights and obligations in each U.S. state, and significantly harming the ability of the federal governments of both nations to address issues of bilateral importance and essential to the foreign policy of both nations.

The dangers inherent in a contradictory patchwork of immigration laws have intensified with the enactment of HB 87. Even though HB 87 was, at least

⁷ As of April 22, 2011, 13 states had active “copycat” bills. Seth Freed Wessler, *A Year After SB 1070, the Deportation Pipeline Still Begins in Washington*, Colorlines, Apr. 25, 2011, http://colorlines.com/archives/2011/04/a_year_after_sb_1070_the_deportation_pipeline_still_begins_in_washington.html; Hatty Lee, *Arizona SB 1070 Copycats Fall Flat in Most State Legislatures*, Colorlines, Mar. 31, 2011, http://colorlines.com/archives/2011/03/arizona_sb_1070_copycats_fall_flat_in_most_state_legislatures.html.

⁸ Alabama House Bill 56, 2011 Leg., Gen. Sess. (Ala. 2011).

⁹ *Arizona SB 1070 Copycats Fall Flat in Most State Legislatures*, *supra* note 7.

partially, inspired by Arizona’s SB 1070,¹⁰ unlike Arizona’s bill, HB 87 authorizes police officers who have “probable cause to believe that a suspect has committed a criminal violation” to verify such suspect’s immigration status based on certain documentation or “[o]ther information as to the suspect’s identity that is sufficient to allow the peace officer to independently identify the suspect.” In contrast, Arizona’s bill requires that the officer inspect the identification documents of all persons they stop, detain or arrest if they have “reasonable suspicion” to believe such persons are in the country unlawfully.¹¹ As the Ninth Circuit recognized just recently, “the threat of 50 states layering their own immigration enforcement rules on top of INA also weighs in favor of preemption.”¹² Similarly, Alabama and Utah’s bills also differ from Arizona’s SB 1070 and Georgia’s HB 87, and conflict

¹⁰ See Jeremy Redmon, *Governor signs Arizona-style immigration bill into law*, Atlanta J.-Const., May 13, 2011, <http://www.ajc.com/news/georgia-politics-elections/governor-signs-arizona-style-944703.html>.

¹¹ HB 87 § 8 (amending Chapter 5 of Title 17 of the Official Code of Georgia Annotated, by adding Article 5, including Section 17-5-100(b)); SB 1070 § 2; see also chart titled “A Comparison of Select Arizona, Georgia, and Federal Immigration Control Statutes” in *2011 Upcoming Session Issues*, Senate Research Office,

<http://www.senate.ga.gov/sro/Documents/UpcomingIssues/LegIssues11.pdf>.

¹² *United States v. Arizona*, No. 10-16645, 2011 U.S. App. LEXIS 7413, at *34 (9th Cir. Apr. 11, 2011); see also *Bonito Boats v. Thunder Craft Boats*, 489 U.S. 141, 161 (1989).

with federal law.¹³ President Obama reaffirmed the importance of avoiding this immigration patchwork. He said of Georgia’s bill: “It is a mistake for states to try to do this piecemeal. We can’t have 50 different immigration laws around the country. Arizona tried this, and a federal court already struck them down.”¹⁴

Mexico stresses that “[t]he vision promoted by this law goes against the principles of shared responsibility, trust and mutual respect under which the federal governments of Mexico and the United States have determined to work to address shared challenges in North America.”¹⁵

HB 87 undermines the U.S. government’s approach of weighing multiple competing interests and prioritizing them in an effort to develop a coherent and effective foreign policy strategy. The U.S. seeks support of foreign governments through a “delicately-navigated balance of interests across the entire range of U.S.

¹³ For example, Utah’s bill mandates all police officers to inspect the identification documents of all people they stop, detain or arrest, whereas Arizona and Alabama’s bills only require that the officer inspect the identification documents of persons if they have “reasonable suspicion” to believe such persons are in the country unlawfully; and Georgia’s bill authorizes the verification in the event police officers who have “probable cause to believe that a suspect has committed a criminal violation[.]” HB 497 §§ 3, 4; SB 1070 § 2; HB 56 § 12; HB 87 § 8.

¹⁴ Jeremy Redmon, *Obama Blasts Georgia’s Bill Targeting Illegal Immigrants*, Cox Newspapers, Apr. 28, 2011, <http://timesfreepress.com/news/2011/apr/28/obama-blasts-georgia-bill-targeting-illegal-immigr/>.

¹⁵ *Mexican Government Regrets the Enactment of HB 87 in Georgia*, *supra* note 3.

national policy goals[,]” including immigration policy.¹⁶ Laws like SB 1070 and HB 87 undermine U.S. foreign policy and thereby “endanger [the] ability to negotiate international arrangements and to seek bilateral, regional or multilateral support across a range of . . . non-immigration concerns.”¹⁷ These inconsistent laws and obligations across federal and state levels negatively impact bilateral negotiations between the U.S. and Mexico on a variety of foreign policy fronts. Through its embassy, Mexico denounced this dangerous patchwork and, in connection with the enactment of Utah’s bill, “reiterate[d] the commitment of the Mexican federal government to comprehensive solutions and shared responsibility with regard to migration.”¹⁸

Mexico has a legitimate interest in preventing U.S. states from affecting bilateral relations. The roots of cooperation between the U.S. and Mexico run deep and wide. The executive and legislative branches of the two countries, every federal agency, and dozens of state and local governments collaborate directly with their counterparts across the border on issues as diverse as emergency preparedness

¹⁶ Decl. James Steinberg ¶ 12, *supra* note 6.

¹⁷ *Id.* ¶ 14.

¹⁸ Embassy of Mexico, *Press Release on the Passing of Immigration Laws in Utah*, Mar. 16, 2011, <http://embamex.sre.gob.mx/usa/index.php/home/13-press-releases-2011/507-embassy-of-mexico-press-release-on-the-passing-of-immigration-laws-in-utah>.

and free trade facilitation.¹⁹ Because the bilateral cooperation is extensive, it is essential for U.S.–Mexico bilateral relations that each sovereign be able to approach discussions with a consistent front.

II. HB 87’s Intrusion in International Affairs Impedes International Relations and Bilateral Collaboration

In order to conduct effective diplomatic negotiations with the U.S., countries such as Mexico need and depend on consistent and reliable bilateral relations. *Amicus Curiae* cannot effectively collaborate with the U.S. to address inherently international matters, such as immigration, trade and security, if U.S. political subdivisions establish their own requirements conflicting not only with each other, but also with the U.S. government’s efforts, priorities and commitments.

Through HB 87, Georgia directly interferes with the U.S. government’s ability to conduct foreign affairs and policy. As was the case with Arizona’s SB 1070,²⁰ even prior to going into effect, HB 87 is already straining U.S.–Mexico relations. On March 4 and April 15, the Consulate General of Mexico in Atlanta expressed its concern over the passage of HB 87 by the House of Representatives

¹⁹ Andrew Selee, *et al.*, *The United States and Mexico: More than Neighbors*, Woodrow Wilson Institute for Scholars at 13-14 (May 2010), available at http://wilsoncenter.org/topics/pubs/WWC_MI_More-Than-Neighbors-2010-update.pdf.

²⁰ See *Meet the Press with Secretary Clinton* [Transcript], May 2, 2010, <http://secretaryclinton.wordpress.com/2010/05/02/meet-the-press/>.

and the Senate of Georgia, respectively.²¹ “[T]he Mexican government, through the Ministry of Foreign Affairs, the Embassy of Mexico in the United States and the Consulate General in Atlanta, expressed its concerns and objections to provisions in this law[]” and stated that “all means available will be used to defend the rights and dignity of the Mexicans in Georgia.”²²

HB 87 has already strained diplomatic ties and affected bilateral collaboration, as exemplified by the recent decision of the Mexican Ministries of Health and Foreign Affairs to hold the inauguration of the Binational Health Week and Public Policy Forum in San Antonio, Texas rather than in Atlanta, Georgia, as was originally planned, as a result of the negative atmosphere created towards an open discussion of these issues by the enactment of HB 87.²³

²¹ Consulate General of Mexico in Atlanta, *The Consulate General of Mexico in Atlanta expresses its concern over the progress of certain bills in Georgia*, March 4, 2011, <http://www.consulmexatlanta.org/HB87GEORGIA/Press001.pdf>; Consulate General of Mexico in Atlanta, *The Consulate General of Mexico in Atlanta reiterates its concern over the approval of an immigration bill in Georgia*, April 15, 2011, http://portal.sre.gob.mx/atlanta/pdf/Comunicado_de_Prensa_Press_Release_02_Abr_11B.pdf.

²² *Mexican Government Regrets the Enactment of HB 87 in Georgia*, *supra* note 3.

²³ Letter from Candido Morales, Director, Instituto de los Mexicanos en el Exterior, to Consejeros de la Comisión de Salud [Public Health Counselors] (June 14, 2011), attached hereto as Exhibit B.

A. HB 87 Will Severely Hinder Mexico-U.S. Trade and Tourism

Mexico is greatly concerned about the possible repercussions of HB 87 on trade and commercial relations with the U.S. and Georgia. Growth in U.S.–Latin-American trade has historically outpaced all other regions.²⁴ Mexico is the second largest buyer of U.S. exports.²⁵ The interaction of labor markets, tourism, business travel and student migration is of great importance to both economies.²⁶

To enhance economic trade and collaboration, the governments of the U.S. and Mexico have pursued trade liberalization through collaborative multilateral, regional and bilateral negotiations, resulting in advantageous multifaceted

²⁴ J. F. Hornbeck, *U.S.-Latin America Trade: Recent Trends and Policy Issues*, Congressional Research Service at 1 (Sept. 3, 2009), available at <http://www.fas.org/sgp/crs/row/98-840.pdf>.

²⁵ *Id.* at 5; M. Angeles Villarreal, *U.S.-Mexico Economic Relations: Trends, Issues, and Implications*, Congressional Research Service at 16-18 (Feb. 24, 2011), available at <http://www.fas.org/sgp/crs/row/RL32934.pdf>.

²⁶ White House, Press Release *Remarks by President Obama and President Calderón of Mexico at Joint Press Availability*, May 19, 2010, available at <http://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-calder-n-mexico-joint-press-availability>. A Federal Reserve Bank of San Francisco study estimates that immigration from 1990 to 2007 into the U.S. increased U.S. economic efficiency and productivity resulting in a 6.6% to 9.9% increase in real income per U.S. worker. Giovanni Peri, *The Effect of Immigrants on U.S. Employment and Productivity*, Economic Letter, Federal Reserve Bank of San Francisco at 10 (Aug. 30, 2010), available at <http://www.frbsf.org/publications/economics/letter/2010/el2010-26.html>. See also Tamar Jacoby, *Immigration Nation*, 85 *Foreign Affairs* 50, 54-58 (2006).

economic relationships.²⁷ Diplomacy is crucial to such efforts. Mexico’s Ministry of Foreign Affairs asserts that “[t]he legislators who voted for the law and the Governor of Georgia overlooked the many contributions made by the immigrant community to the state’s economy and society, as well as Mexico’s importance as its third largest export market.”²⁸ By ignoring crucial bilateral concerns, the harms caused by HB 87 stretch beyond immigration and negatively impact the rich economic ties of both countries.

Like Arizona’s SB 1070, HB 87 impedes collaboration; together, the bills push “nations that work together and trade” to “mutual recrimination, which has been so useless and so damaging in previous times.”²⁹ Strained diplomatic relations substantially impede the ability of the U.S. and Mexico to collaboratively develop, enhance and maintain commercial exchange critical to both of their economies.

²⁷ Hornbeck, *supra* note 24 at 5; Villarreal, *supra* note 25 at 16-18.

²⁸ *Mexican Government Regrets the Enactment of HB 87 in Georgia*, *supra* note 3.

²⁹ Press Release, White House, *Remarks by President Calderón of Mexico at Official Arrival Ceremony*, May 19, 2010, available at <http://www.whitehouse.gov/the-press-office/remarks-president-calder-n-mexico-official-arrival-ceremony>. See also *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004) (removing blockade to cross-border trucking); and Villarreal, *supra* note 25 at 20-24 (discussing Mexico-U.S. trade issues).

B. HB 87 Derails Efforts Towards a Uniform Legal Framework that Ensures the Secure, Orderly and Legal Movement of People

With over 11 million nationals residing in the U.S.³⁰ and millions more admitted to the U.S. as tourists and travelers each year,³¹ Mexico has a significant interest in ensuring the secure, orderly and legal movement of its nationals in and through the U.S. The Obama Administration recognizes the need for collaboration with Mexico as one of its five guiding immigration principles.³² Safe and orderly migration conditions can only be achieved through comprehensive, nationwide U.S. immigration policy. As the Supreme Court affirmed, “[w]e recognize . . . the Nation’s need to ‘speak with one voice’ in immigration matters.”³³

The effects of U.S.–Mexico migration on labor markets, tourism, business travel, and education is of great importance to both countries.³⁴ It is due to the

³⁰ Pew Hispanic Center, *Statistical Portrait of the Foreign-Born Population in the United States, 2009*, Feb. 17, 2011, <http://pewhispanic.org/files/factsheets/foreignborn2009/Table%205.pdf>.

³¹ During 2009, the U.S. admitted over 6 million Mexican citizens under non-immigrant visas and approximately 58 million people admitted across the U.S.–Mexico border. *2009 Yearbook of Immigration Statistics*, *supra* note 4; Transp. Dep’t, *Border Crossing/Entry Data*, June 1, 2010, http://www.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BC_Ind ex.html.

³² White House, *Immigration* (last visited June 10, 2010), <http://www.whitehouse.gov/issues/immigration>.

³³ *Zadvydas v. Davis*, 533 U.S. 678, 700 (2001).

³⁴ *Id.*; *see also* Jacoby, *supra* note 26 at 54-58 (noting that foreign labor has complemented, not competed with, the U.S. labor force).

benefits of international collaboration in these areas, that the U.S. and Mexico recognize the importance of having a national immigration framework that ensures the secure, orderly and legal movement of people into and across the U.S.³⁵ HB 87 creates an independent state immigration enforcement system that not only derails bilateral economic, social and security efforts, but also imperils efforts at a comprehensive solution for immigration policy. Mexico cannot effectively cooperate with the U.S. when Georgia interferes with the countries' efforts.

C. HB 87 § 19 Improperly Encumbers Bilateral Trade and Security Collaboration

HB 87's ban on agencies and political subdivisions of Georgia from accepting consular identification cards ("CIDs")³⁶ adds a heavy and impermissible burden to U.S.–Mexico trade, commerce, and security collaboration. The Vienna Convention permits consulates of foreign nations to "issu[e] passports and travel documents to nationals of the sending State[.]"³⁷ Mexico and other signatories of the Vienna Convention exercise this right by issuing CIDs to their citizens, including those present in the U.S.³⁸ CIDs are a great aid in the bilateral efforts to

³⁵ See *Remarks by Presidents Obama and Calderón*, *supra* note 26.

³⁶ HB 87 § 19.

³⁷ Vienna Convention, art. 5(d); United Nations, *Vienna Convention on Consular Relations*, Apr. 24 1963, <http://www.unhcr.org/refworld/docid/3ae6b3648.html>.

³⁸ Andorra Bruno & K. Larry Storrs, *Consular Identification Cards: Domestic and Foreign Policy Implications, the Mexican Case, and Related Legislation* at 1,

enhance international commerce and security collaboration.³⁹ By enacting Section 19 of HB 87, Georgia improperly encumbers the bilateral trade and security efforts of the U.S. and Mexico.

Section 19 of HB 87 imposes a hefty obstacle to U.S.–Mexico commerce.

The U.S. Constitution gives Congress the power “[t]o regulate commerce with

Congressional Research Service, May 26, 2005,
<http://www.fas.org/sgp/crs/misc/RL32094.pdf>.

In addition to *Amicus Curiae*, some examples of governments that currently issue CIDs in the U.S. are Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Mali, Nigeria and Pakistan. Consulado General y Centro de Promoción de la República Argentina en los Angeles, <http://www.consuladoargentino-losangeles.org/matricula.asp>; Consulados de Bolivia en Estados Unidos, http://www.bolivia-usa.org/consulares/consulares_CRC.htm; Consulate General of Brazil in Los Angeles, http://www.brazilian-consulate.org/consular/Instrucoes_CMC.pdf; Portal del Estado Colombiano, <http://www.gobiernoenlinea.gov.co/tramite.aspx?traID=6635>; Consulado General de Ecuador en Nueva York, http://www.consuladoecuadornewyork.com/index.php?option=com_content&task=view&id=29&Itemid=45; Consulados Generales de Guatemala en USA, http://consulguatesf.org/?page_id=44; Ambassade du Mali, <http://www.ambamalicanada.org/carteconsul.html>; Consulado General de México, <http://portal.sre.gob.mx/denver/index.php?option=displaypage&Itemid=130&op=page&SubMenu=>; Consulate General of Nigeria, New York, [http://www.nigeriahouse.com/forms/Registration%20Form%20\(Citizen\).pdf](http://www.nigeriahouse.com/forms/Registration%20Form%20(Citizen).pdf); Ministry of Interior, Government of Pakistan, http://www.pakconsulatela.org/download_forms/nicop.pdf (last visited June 9, 2011).

³⁹ *CIDs: Domestic and Foreign Policy Implications*, *supra* note 38 at 5-6, 11 (discussing the public safety benefits and quoting the findings of a proposed bill: “[a]ccepting matricula consular as a form of identification allows Mexican immigrants to enter the financial mainstream and provides banks and other financial institutions with a new, fast-growing market.”). *See also* Embajada de México, *Cuadro MCAS 2011* (on file with authors) (showing that the Mexican CID is accepted as valid identification in numerous commercial transactions as well as by over a thousand police departments).

foreign nations, and among the several States, and with the Indian tribes.”⁴⁰

Congress has exercised its power over foreign trade with the promulgation of copious laws, regulations and policies, including regarding import tariffs, antitrust, and anti-money laundering.⁴¹ Among these policies, the U.S. permits and “has tacitly encouraged” CIDs to be used for a variety of commercial transactions.⁴²

This has lead CIDs (which include the bearers’ current verified U.S. address, an important feature that is not included in Mexico’s passports)⁴³ to be accepted as a valid form of identification at various financial institutions, energy and utility companies, airlines, telecommunications companies, insurance companies, hospitals, health providers, retail entities, clubs and organizations, and by the Internal Revenue Service to request an Individual Taxpayer Identification Number in order to pay taxes.⁴⁴ In fact, when describing the Department of Treasury’s

⁴⁰ U.S. Const. art. 1, § 8, cl. 3.

⁴¹ *See, e.g.*, the Bank Secrecy Act of 1970, 31 U.S.C. §§ 5311-5332 (2006); the Foreign Trade Regulations, 15 C.F.R. Part 30 (2008); the Sherman Antitrust Act, 15 U.S.C. §§ 1-7 (2006); the Wilson Tariff Act, 15 U.S.C. §§ 8-11 (2006); the International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. §§ 6201-6212 (2006); and the Helms–Burton Act, 22 U.S.C. §§ 6021-6091 (2006).

⁴² *Issuance, Acceptance and Reliability Hearing Before the H. Subcomm. on Immigr., Border Sec., and Claims of the H. Comm. on the Judiciary*, 108th Congr. 30 (2004) (statement of Marti Dinerstein).

⁴³ Consulate of Mexico, *Consular ID Card* [brochure form] (on file with authors).

⁴⁴ According to a report provided by the Mexican Embassy, the MCAS is accepted as valid identification in 166 financial institutions, as well as energy and utility companies, airlines, telecommunications companies, insurance companies,

Proposed Customer Identification and Verification Rules in connection with the USA PATRIOT ACT, the federal government explicitly stated that “the proposed regulations do not discourage bank acceptance of the ‘matricula consular’ identity card that is being issued by the Mexican government to immigrants[,]”⁴⁵ which decision was reconsidered and reaffirmed “after reviewing over 34,000 comments[.]”⁴⁶ This benefits the U.S. by, among other things, permitting banking institutions to better track whether accounts are used for illegal activity,⁴⁷ for example, under federal anti-money laundering laws. Nonetheless, Georgia attempts to impermissibly burden U.S. foreign policy regarding commerce with foreign nations, including *Amicus Curiae*, by refusing to accept CIDs as forms of

hospitals, health providers, retail entities, clubs and organizations, museums, libraries, school districts, universities, jails, 538 counties and 1,022 police departments in the U.S. *Cuadro MCAS 2011*, *supra* note 39; *see also CIDs: Domestic and Foreign Policy Implications*, *supra* note 38 at 2. I.R.S., *Revised Application Standards for ITINs* (last visited June 9, 2011), <http://www.irs.gov/individuals/article/0,,id=222373,00.html>.

⁴⁵ Treas. Dep’t, *A Report to Congress in Accordance with §326(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT)* at 16 n.17, Oct. 21, 2002, http://www.knowledgemosaic.com/gateway/treasury/news/reports_sec326breport.final.pdf.

⁴⁶ Treas. Dep’t, Press Release, *Results of the Notice of Inquiry on Final Regulations Implementing Customer Identity Verification Requirements under Section 326 of the USA PATRIOT Act*, Sept. 18, 2003, <http://www.treasury.gov/press-center/press-releases/Pages/js743.aspx>.

⁴⁷ *See Issuance, Acceptance and Reliability Hearing*, *supra* note 42 at 5 (statement of Jackson Lee, 18th Congressional District Representative).

identification for official purposes.⁴⁸ This refusal to accept CIDs constitutes an intrusion in the bilateral economic and commercial relations of the U.S. and Mexico, and is contrary to the spirit of the Vienna Convention, which provides signatory nations several remedies against noncompliant countries, including the right to reciprocate the treatment.⁴⁹ By coercing sovereigns to engage in such retaliatory actions, Georgia clearly and substantially interferes with the advantageous multifaceted economic relationships developed by the U.S. and Mexico.

Section 19 of HB 87 severely hinders U.S.–Mexico security collaboration. Following the terrorist attacks of September 11, 2001, the security and acceptance of CIDs as identification forms was thoroughly debated at the U.S. federal

⁴⁸ HB 87 § 19 (adding new Section 50-36-2).

⁴⁹ Vienna Convention, art. 72(2); “[I]t is traditional practice for many institutions in one country to accept the official documents of another country for a variety of transactions, such as accepting a U.S. driver’s license for driving automobiles in Mexico. . . . Should a foreign country decide to limit acceptance of such documentation or other traditional documentation such as state-issued identifications or driver’s licenses, . . . the actions of American citizens abroad could be seriously restricted.” *CIDs: Domestic and Foreign Policy Implications*, *supra* note 38 at 9 (citing Roberta Jacobson, the Acting Deputy Assistant Secretary of State for Western Hemisphere Affairs) (internal quotations omitted); *see also* Jennifer K. Elsea & Michael John Garcia, *Implications of the Vienna Convention on Consular Relations upon the Regulation of Consular Identification Cards*, Congressional Research Report, May 23, 2005, <http://www.fas.org/sgp/crs/misc/RS21627.pdf>.

government.⁵⁰ Among other factors, the federal government considered the impact that the acceptance of Mexico's CID would have on cooperation between the U.S. and Mexico,⁵¹ and the security enhancements made by Mexico to its CID.⁵² The U.S. federal government decided to continue accepting Mexico's security-enhanced CID, the "matrícula consular de alta seguridad" or "MCAS."⁵³ The U.S. and Mexico continue to strengthen their collaboration with regard to the CID and its impact on bilateral commerce.⁵⁴ Georgia's actions effectively invalidate the result of the federal government's carefully deliberated foreign policy and diplomatic efforts, and therefore directly interferes with the "operation of a federal

⁵⁰ See, e.g., *Issuance, Acceptance and Reliability Hearing*, *supra* note 42; *CIDs: Domestic and Foreign Policy Implications*, *supra* note 38.

⁵¹ A report to the U.S. Congress discussed that the U.S.'s continued acceptance of the CID has impacted many areas of the bilateral relation, including trade, drug control, and foreign policy, and has resulted in "improved bilateral cooperation in many areas, most notably in enhanced Mexican efforts to control drug trafficking activities, to cooperate on border control plans, . . ." *CIDs: Domestic and Foreign Policy Implications*, *supra* note 38 at 7-8.

⁵² *Id.* at 1-2 (describing the security enhancements to the cards, as well as the creation of a centralized database to prevent the issuance of duplicates following the June 2003 criticism of Steve McCraw, F.B.I., before the Subcommittee on Immigration, Border Security and Claims of the House Judiciary Committee).

⁵³ See, e.g., Treas. Dep't, *Results of the Notice of Inquiry*, *supra* note 46.

⁵⁴ See, e.g., Burton Bollag, *Programs, Banks Working to Bring Hispanics into Financial System*, Hispanic Trending, Sept. 26, 2008, <http://juantornoe.blogspot.com/hispanictrending/2008/09/programs-banks.html> (describing the collaboration between the "Treasury Department and several other government agencies and community organizations . . . with a number of U.S. and Mexican banks and the Mexican Consulate" to accept CIDs to open "special account[s] that can be accessed by a relative in Mexico using a debit card in an ATM.").

program[,]” the “one voice” of the U.S. government,⁵⁵ and the U.S.–Mexico diplomatic relations. Georgia’s heavy and impermissible burden substantially impedes Mexico’s ability to effectively engage in collaborative bilateral security and trade negotiations with the U.S.

III. HB 87 Poses a Risk of Harassment by Law Enforcement to Mexican Citizens

Discriminatory enforcement of the law has adverse legal, social, economic and political implications. Mexico has a legitimate interest in ensuring that its citizens are not deprived of international and constitutional protections or subjected to hostile attitudes or action by U.S. state actors or the society at large.

Although HB 87 has been enacted with race-neutral language that “[a] peace officer shall not consider race, color, or national origin in implementing the requirements of this Code section except to the extent permitted by the Constitutions of Georgia and of the United States[,]”⁵⁶ Mexico is deeply concerned that the application of HB 87 by local law enforcement and Georgia’s officers who will have the power to verify the immigration status of a person if the officer has “probable cause” to believe that such person has committed a “criminal

⁵⁵ See *Zadvydas*, 533 U.S. at 700; *Whiting*, 2011 U.S. LEXIS at *11.

⁵⁶ HB 87 § 8 (amending Chapter 5 of Title 17 of the Official Code of Georgia Annotated, by adding Article 5, including Section 17-5-100(d)).

violation,”⁵⁷ could lead to harassment of Mexican citizens and individuals of Hispanic appearance alike. In light of the continuous growth of the Hispanic and Mexican–American population in the U.S.,⁵⁸ Mexico is concerned and simply unsure how HB 87 can be applied in a race-neutral manner.

The Ninth Circuit has noted that the “use of race and ethnicity for such purposes [as a criterion in government decision-making] has been severely limited.”⁵⁹ The court acknowledged that “[t]he Hispanic population of the nation and of the Southwest and Far West in particular, has grown enormously — at least five-fold in the four [border] states referred to in the Supreme Court’s decision [Arizona, California, New Mexico and Texas].”⁶⁰ Even at border check stops, the Ninth Circuit explained that

at this point in our nation’s history, and given the continuing changes in our ethnic and racial composition, Hispanic appearance is, in general, of such little probative value that it may not be considered as a relevant factor where particularized or individualized suspicion is required . . . in determining which particular individuals among the vast Hispanic

⁵⁷ *Id.*

⁵⁸ See Pew Hispanic Center, *Census 2010: 50 Million Latinos: Hispanics Account for More Than Half of Nation’s Growth in Past Decade*, Mar. 24, 2011, <http://pewhispanic.org/files/reports/140.pdf>.

⁵⁹ *United States v. Montero-Camargo*, 208 F.3d 1122, 1134 (9th Cir. 2000) (citing *Adarand Constructors v. Peña*, 515 U.S. 200 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)).

⁶⁰ *Montero-Camargo*, 208 F.3d at 1133-34 n.22. The court instructed that race “may be considered when the suspected perpetrator of a specific offense has been identified as having such an appearance.”

populace should be stopped by law enforcement officials on the lookout for illegal aliens.⁶¹

In fact, recent preliminary demographic information establishes that minorities represent more than 50% of the population in Hawaii, New Mexico, California and Texas.⁶² According to the U.S. Census Bureau, the Hispanic population in Georgia grew 96.1%, from 435,227 people in 2000 to 853,689 in 2010.⁶³ Being Latino has as much to do today with being a U.S. citizen, as it does with being an immigrant. Nonetheless, “the speed demanded by [cross-deputization immigration] policing could lead to an increase in stereotyping and heuristic processing[,]” and thus, “[t]he association between Latino and undocumented immigration has the potential to become an automatic linkage.”⁶⁴ Mexico is rightly concerned about the latent discriminatory effect of HB 87 on its citizens. Given the growing numbers of the Hispanic population, it is imperative that immigration enforcement be carried out in a way that is fair to all individuals regardless of their ethnic origin. Furthermore, Mexico is concerned about the impact this discriminatory cross-deputization

⁶¹ *Id.* at 1134-35.

⁶² Hope Yen, *Minority Population Growing, Census Says*, Associated Press, June 11, 2010, available at http://www.boston.com/news/nation/washington/articles/2010/06/11/minority_population_growing_census_says/.

⁶³ U.S. Census Bureau, *The Hispanic Population: 2010* at 6, May 2011, <http://census.gov/prod/cen2010/briefs/c2010br-04.pdf>.

⁶⁴ Liana Maris Epstein & Phillip Atiba Goff, *Safety or Liberty?: The Bogus Trade-Off of Cross-Deputization Policy*, 10 *Analyses of Soc. Issues & Pub. Pol’y* 1, 5 (2011).

regime could have on the safety of its citizens. Research suggests that “requiring the police to act as immigration officers has a detrimental effect on police legitimacy[,]” and leads to chilling effects on crime reporting by both Whites and Latinos.⁶⁵ This “allows criminal activity to transpire unchecked[,]”⁶⁶ greatly obstructing the international fight against transnational organized crime. Mexico has a strong interest in ensuring that its citizens are protected from discrimination and crime, and that its efforts and collaboration with the U.S. regarding transnational organized crime are not encumbered by the actions of individual states; herein Georgia.

“[T]he interest of the cities, counties and states, no less than the interests 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.”⁶⁷ HB 87 poses an imminent threat to U.S.–Mexico bilateral relations. *Amicus Curiae* has a

⁶⁵ *Id.* at 6; see also Phillip Atiba Goff, *et al.*, *Deputizing Discrimination?*, Consortium for Police Leadership in Equity, May 3, 2010 (on file with authors); Chris Burbank, *et al.*, *Policing Immigration: A Job We Do Not Want*, Huffington Post, June 7, 2010, http://www.huffingtonpost.com/chief-chris-burbank/policing-immigration-a-jo_b_602439.html.

⁶⁶ Epstein, *supra* note 64 at 8-9, noting also that “non-White officers,” who play crucial liaison roles within their own racial and ethnic communities, would be more likely to quit their jobs if such cross-deputation immigration laws are enacted.

⁶⁷ *United States v. Arizona*, 2011 U.S. App. LEXIS 7413, at *34 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941)); see also The Federalist No. 42 and The Federalist No. 4.

compelling interest in consistent relations among sovereigns, and in the Court preliminarily enjoining HB 87 and declaring it unconstitutional in its entirety.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests that this Court preliminarily enjoin HB 87, and declare it unconstitutional in its entirety.

Respectfully submitted, this 15th day of June 2011, by counsel for *Amicus Curiae*,

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**CERTIFICATE OF COMPLIANCE
WITH LOCAL RULE 5.1**

Pursuant to LR 5.1 and 7.1D, I hereby certify that the attached *Amicus Curiae* brief complies with the typeface and the type style requirements of LR 5.1.

This brief was prepared in Times New Roman 14-point font

/s/ *Emmet J. Bondurant*

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