# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **15th day of October, 2013**, are as follows:

**BY WEIMER, J.:**

2013-K -1271 STATE OF LOUISIANA v. ALEXIS SARRABEA (Parish of Lafayette)

For the foregoing reasons, the decision of the court of appeal is affirmed.
AFFIRMED.

VICTORY, J., dissents with reasons.
HUGHES, J., dissents with reasons.

**10/15/2013**

# SUPREME COURT OF LOUISIANA

**NO. 2013-K-1271**

**STATE OF LOUISIANA**

**VERSUS**

**ALEXIS SARRABEA**

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,*
*THIRD CIRCUIT, PARISH OF LAFAYETTE*

**WEIMER**, Justice

In response to the devastating terrorist attacks of September 11, 2001, the Louisiana legislature enacted a series of laws under the title "Prevention of Terrorism on the Highways." 2002 La. Acts, 1st Ex. Sess. 46, § 1. Among other stated aims, the purpose of the enactment was "to make operating a motor vehicle in this state when not lawfully present in the United States a crime." La. R.S. 14:100.11(B). To that end, La. R.S. 14:100.13 was passed. The statute proscribes the operation of a motor vehicle by an alien student or nonresident alien who does not possess documentation demonstrating lawful presence in the United States. La. R.S. 14:100.13(A). Violation of the statute is a felony which carries with it a fine of not more than $1,000 and/or imprisonment for not more than one year, with or without hard labor. La. R.S. 14:100.13(C).

Following a *nolo contendere* plea to the charge of violating La. R.S. 14:100.13, in which he reserved the right to appeal the claim that the statute is preempted by federal law, the defendant appealed his conviction to the Court of Appeal, Third

Circuit. Upon review, the appellate court reversed the defendant's conviction and sentence, holding that La. R.S. 14:100.13 is preempted by federal law. We granted certiorari to assess the correctness of that determination.

After review of the relevant law, both statutory and jurisprudential, and despite its laudable goal aimed at preventing acts of terrorism, we are constrained to find, based on the Supreme Court case of **Arizona v. United States**, 132 S.Ct. 2492 (2012), that La. R.S. 14:100.13 operates in the field of alien registration and is, therefore, preempted by federal law under the Supremacy Clause of the U.S. Constitution. Accordingly, we affirm the judgment of the court of appeal.

## FACTS AND PROCEDURAL HISTORY

On April 12, 2012, defendant Alexis Sarrabea was charged by bill of information with being an alien student and/or a nonresident alien who, on February 12, 2012, operated a motor vehicle in the parish of Lafayette without documentation demonstrating that he is lawfully present in the United States, a violation of La. R.S. 14:100.13. Defendant, a thirty-year-old non-English speaking male, initially pleaded not guilty. However, after spending more than three months in the parish jail, he entered a *nolo contendere* plea to the charge and, in accordance with a plea agreement with the State, was sentenced to time served. Although erroneously characterizing defendant's plea as an "**Alford** plea,"[1] defense counsel nevertheless expressly reserved the right to appeal the claim that La. R.S. 14:100.13 is preempted by federal law, that the statute violates the Equal Protection Clause, that it is over-broad and

[1] Counsel's characterization was a misnomer. Defendant clearly intended to enter a "**Crosby** plea," which is a guilty plea conditioned upon review of the denial of designated pre-plea motions. **State v. Crosby**, 338 So.2d 584, 588-89 (La. 1976). Despite the improper nomenclature, defense counsel made clear that he wished to preserve certain claims, which he expressly delineated. The State has voiced no objection to the improper designation.

vague, and that it violates the Eighth Amendment. The district court accepted the plea in accordance with the stated conditions and the defendant appealed.

On appeal, a panel of the Third Circuit reversed and set aside defendant's conviction and sentence. **State v. Sarrabea**, 12-1013 (La.App. 3 Cir. 5/1/13), ___ So.3d ___. Concluding that La. R.S. 14:100.13 is preempted by federal law, the court found the Supreme Court's decision in **Arizona**, *supra*, to be both dispositive and binding, particularly that portion of the decision rejecting the state of Arizona's attempt to punish failure to comply with federal alien registration requirements. The Third Circuit panel reasoned that, like Arizona, Louisiana has attempted to regulate in a field–alien registration–preempted by federal law where even complementary legislation is not permitted:

> We are satisfied that the decision in **Arizona** is controlling in this case. In **Arizona**, the U.S. Supreme Court clearly held where Congress occupies an entire field, as it has in the field of alien registration, even a *complementary* state regulation is impermissible. **Arizona**, 132 S.Ct. at 2503. We find La. R.S. 14:100.13 is an impermissible attempt by Louisiana to regulate matters in a field already preempted by federal law.

**Sarrabea**, 12-1013 at 9.

The court additionally found that, by enacting laws and administrative provisions in tandem with La. R.S. 14:100.13 that seek to determine what forms of documentation are acceptable proof of lawful presence, Louisiana has undermined and disregarded federal law in an area that is already extensively regulated by a complex scheme requiring the exercise of executive discretion in light of national foreign policy concerns. ***Id.*** at 10-11. Noting that La. R.S. 14:100.13 conflicts even more egregiously with federal law than its counterpart in the Arizona act, further intruding upon the federal scheme, the court explained:

> Louisiana's statute makes actions by an alien present in this country a felony offense while the same action by such an alien visitor is but a

> misdemeanor offense under federal law .... We note Section 3 of the Arizona statute, rejected by the United States Supreme Court, only made the offense a misdemeanor, but, because it imposed stricter penalties than the federal laws, it was held unconstitutional by the Supreme Court under the Supremacy Clause. Louisiana Revised Statute 14:100.13, which makes failure to carry proof of lawful presence in the United States while driving in Louisiana a felony offense, impermissibly usurps federal authority.

***Id.*** at 12.

Finally, the court pointed to uncertainties in the Louisiana law, particularly in identifying what constitutes probable cause for an arrest under La. R.S. 14:100.13, and in the definitions of "alien student," "nonresident alien," and "lawfully present in the United States," explaining that the very existence of such uncertainties underscores the reason states cannot act in this area, which is already occupied by federal law. ***Id.*** at 14-15. "To put it plain and simple," the court succinctly concluded, "La. R.S. 14:100.13 is preempted by federal law; and the State of Louisiana lacks Constitutional authority to enforce it." ***Id.*** at 17.

From this adverse ruling, the State applied for supervisory review to this court.[2] We granted the State's application and consolidated the case for argument with two additional cases emanating from the Third Circuit in which, in unpublished writ decisions, a different panel of the court found no error in district court rulings concluding that La. R.S. 14:100.13 is not preempted by federal law, resulting in an intra-circuit split.[3] See, **State v. Marquez**, 12-1316 (La.App. 3 Cir. 1/7/13)

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[2] In addition to its application for supervisory review, the State filed a motion for appeal in the Third Circuit. However, this court has held that, for purposes of our appellate jurisdiction under La. Const. art. 5, § 5(D), a ruling that a state statute is preempted by federal law is not a declaration of unconstitutionality but a matter of statutory interpretation; therefore, review is by application for writ of certiorari rather than by appeal. **City of Baton Rouge v. Goings**, 95-2542, pp. 2-3 (La. 12/13/96), 684 So.2d 396, 397-98. Moreover, although the State does not raise it as a procedural bar in this case, because a finding that a state statute is preempted by federal law is not a declaration of unconstitutionality, the procedural requirements imposed by this court on constitutional challenges to statutes or ordinances (see e.g., **State v. Hatton**, 07-2377, p.13 (La. 7/1/08), 985 So.2d 709, 718) do not apply to challenges based on the doctrine of federal preemption.

[3] These cases are resolved in separate opinions issued contemporaneously herewith.

(unpub'd), writ granted, 13-0315 (La. 5/3/13), ___ So.3d ___; **State v. Ramirez**, 12-1245 (La.App. 3 Cir. 1/7/13) (unpub'd), writ granted, 13-0276 (La. 5/3/13), ___ So.3d ___. We granted certiorari to resolve that split and to put to rest the issue of whether La. R.S. 14:100.13 is preempted by federal law. **State v. Sarrabea**, 13-1271 (La. 6/26/13), ___ So.3d ___.

## LAW AND ANALYSIS

The statute at issue in this case, La. R.S. 14:100.13, was enacted as part of a series of laws passed by the legislature in 2002 in response to the terrorist attacks of September 11, 2001.[4] Entitled "Prevention of Terrorism on the Highways," the stated purpose of the laws is to "complement federal efforts to uncover those who seek to use the highways of this state to commit acts of terror" by creating "a comprehensive framework for punishing those who give false information in order to obtain drivers' licenses or identification cards from the office of motor vehicles ... and to make operating a motor vehicle in this state when not lawfully present in the United States a crime." La. R.S. 14:100.11(B). Enacted pursuant to this mandate, La. R.S. 14:100.13 provides:

> A. No alien student[5] or nonresident alien[6] shall operate a motor vehicle in the state without documentation demonstrating that the person is lawfully present in the United States.
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> B. Upon arrest of a person for operating a vehicle without lawful presence in the United States, law enforcement officials shall seize the driver's license and immediately surrender such license to the office of motor vehicles for cancellation and shall immediately notify the INS of the name and location of that person.

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[4] 2002 La. Acts, 1st Ex. Sess. 46 § 1.

[5] La. R.S. 14:100.12(2) defines an alien student as "any person who is attending an institution of education in the state who is not a citizen of the United States."

[6] La. R.S. 14:100.12(5) defines a nonresident alien as "any person who is not a United States citizen and who is a citizen of any country other than the United States, who is physically present in the United States and who has not acquired INS permanent resident status."

> C. Whoever commits the crime of driving without lawful presence in the United States shall be fined not more than one thousand dollars, imprisoned for not more than one year, with or without hard labor, or both.

The question presented to this court for resolution is whether this provision, which the legislature clearly intended to operate in a counter-terrorism context as a complement to federal law, is instead preempted by federal law.

While the question is one of first impression in this court, it has been the subject of examination in the appellate courts. The Fourth Circuit was the first court to directly address the issue. In **State v. Lopez**, 05-0685 (La.App. 4 Cir. 12/20/06), 948 So.2d 1121, writ denied, 07-0110 (La. 12/7/07), 969 So.2d 619, the appellate court concluded that La. R.S. 14:100.13 is preempted by federal law. Acknowledging that the "state of Louisiana is vested with the authority to regulate public roads and highways within the state under its police power, provided that the legislation does not 'prove repugnant to the provisions of the state or national constitutions,'"[7] the appellate panel determined that, while on its face La. R.S. 14:100.13 "does not appear to run afoul of any particular federal legislation," implicit in federal law is a "recognition that states can legally issue driver's licenses without a person being in a position to establish his legal presence in the United States." **Lopez**, 05-0685 at 5-6; 948 So.2d at 1124-1125. The "ultimate problem" presented by La. R.S. 14:100.13, the court reasoned, is that it "places a burden on both legal and non-legal aliens which exceeds any standard contemplated by federal immigration law." ***Id.***

Less than two years later, the First Circuit expressly declined to follow **Lopez**. In two decisions issued the same date, **State v. Gonzalez-Perez**, 07-1813 (La.App. 1 Cir. 2/27/08), 997 So.2d 1, writ denied, 09-0292 (La. 12/18/09), 23 So.3d 930, and

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[7] *Quoting* **Kaltenbach v Breaux**, 690 F.Supp 1551, 1553 (W.D. La. 1988)

**State v. Reyes**, 07-1811 (La.App. 1 Cir. 2/27/08), 989 So.2d 770, writ denied, 08-2013 (La. 12/18/09), 23 So.3d 929, the appellate panels found that La. R.S. 14:100.13 complements rather than conflicts with the federal scheme and, thus, is not preempted by federal law. In reaching its decision, the First Circuit, *citing* 8 U.S.C. § 1304(e), which requires every alien eighteen years of age or older to carry and have in his possession at all times any certificate of alien registration or alien registration receipt card, rejected the Fourth Circuit's conclusion that La. R.S. 14:100.13 places a burden on aliens that is not contemplated by federal immigration law. **Gonzalez-Perez**, 07-1813 at 9-10, 997 So.2d at 7; **Reyes**, 07-1811 at 9-10, 989 So.2d at 776-777. Instead, it determined that La. R.S. 14:100.13 simply involves a determination of who may or may not lawfully operate a vehicle in this state. ***Id.*** Because the statute is not triggered by mere presence and does not involve a state determination of who should or should not be admitted into the country or the conditions under which a legal entrant may remain, the First Circuit found that La. R.S. 14:100.13 is not an impermissible regulation of immigration. ***Id.*** Additionally, the court pointed out that there is a presumption that Congress does not intend to preempt state law unless it speaks with clarity otherwise. ***Id.*** Applying the presumption, the court found that Congress had not expressed a clear and manifest intent to effect a complete ouster of state power to regulate requirements for the legal operation of a vehicle on public roads in the state. ***Id.*** The appellate court then noted that in the absence of a conflict, dual sovereignty allows complementary state and federal laws to exist. ***Id.*** Determining that La. R.S. 14:100.13 does not conflict with any federal laws but rather complements and augments federal law, the First Circuit found no basis to rule that La. R.S. 14:100.13 is preempted by federal law. ***Id.***

In a series of decisions that followed **Gonzalez-Perez** and **Reyes**, the First Circuit continued to adhere to the conclusion that La. R.S. 14:100.13 is not preempted by federal law; rather, the statute complements and assists the federal scheme. **State v. Ramos**, 07-1448 (La.App. 1 Cir. 7/28/08), 993 So.2d 281, writ denied, 08-2103 (La. 12/18/09), 23 So.3d 929; **State v. Sanchez**, 10-0016 (La.App. 1 Cir. 6/11/10), 39 So.3d 834. The court reiterated that it simply did "not find a clear and manifest purpose of Congress to effect a complete ouster of state power to regulate requirements for legal operation of a vehicle on public roads and highways within a state." **Sanchez**, 10-0016 at 6, 39 So.3d at 839.

Such was the state of the jurisprudence in 2012: a split had developed among the circuit courts of appeal as to whether La. R.S. 14:100.13 is preempted by federal law, with the First and Fourth Circuits taking opposite sides of the debate. Then, in that year, the legal landscape against which these competing decisions operated was substantively altered when the Supreme Court chose to revisit this area of the law.

In **Arizona v. United States**, the Supreme Court considered a facial challenge to sections of Arizona's "Support Our Law Enforcement and Safe Neighborhoods Act" which had been enacted to "discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States." **Arizona**, 132 S.Ct. at 2497. Specifically, the Court granted certiorari to consider whether federal law preempts four sections of the Arizona Act:[8] Section 3 of the Act made failure to comply with federal alien registration laws a state misdemeanor; Section 5(C) made it a state misdemeanor for an unauthorized alien to seek or engage in work in the state; Section 6 authorized state officers to make the warrantless arrest of a person if an officer has probable cause to believe the person has committed any

[8] The relevant sections are presented in the order discussed in the Supreme Court's opinion.

public offense that makes him removable from the United States; and, finally, Section 2(B) required that state officers make a reasonable attempt to determine the immigration status of any person they stop, detain or arrest on another legitimate basis if reasonable suspicion exists that the person is an alien and is unlawfully present in the United States. ***Id.***, 132 S.Ct. at 2498.

The Court in **Arizona** began its analysis by reaffirming two long-standing principles which have particular resonance for this case. First, the federal government "has broad, undoubted power over the subject of immigration and the status of aliens," power that "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." ***Id.***, 132 S.Ct. at 2498. Second, by reason of the Supremacy Clause, U.S. Const., art. VI, cl. 2,[9] Congress has virtually unfettered power to preempt state law. ***Id.***, 132 S.Ct. at 2500. This preemption, the Court explained, may occur in one of three ways: (1) "Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision," [express preemption]; (2) Congress may determine that conduct in a particular field "must be regulated by its exclusive governance," a determination that may 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,'"[10] [field preemption]; or (3)

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[9] The Supremacy Clause, U.S. Const., art. VI, cl.2, provides, in relevant part:

> This Constitution, and the Laws of the United States ... made in Pursuance thereof; and all Treaties made ... under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[10] **Rice v. Santa Fe Elevator Corp.**, 331 U.S. 218, 230 (1947).

state law may conflict with federal law either because "compliance with both state and federal regulations is a physical impossibility" or because the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,"[11] [conflict preemption]. ***Id.***, 132 S.Ct. at 2500-2501 (citations omitted).

The Court then considered each of the four provisions of the Arizona act in light of these principles. Regarding Section 3, which created a state misdemeanor proscribing the willful failure to complete or carry an alien registration document, the Court found that "[t]he framework enacted by Congress leads to the conclusion ... that the Federal Government has occupied the field of alien registration." ***Id.*** 132 S.Ct. at 2502. Referencing 8 U.S.C. § 1302, 1304-1306, the Court noted:

> 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.' 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 this area, even if it is parallel to federal standards.

***Id.***, 132 S.Ct. at 2502 (citations omitted), *quoting* **Hines v. Davidowitz**, 312 U.S. 52 (1941).

In reaching its conclusion, the Court rejected Arizona's contention that Section 3 of the act was permissible because it complemented federal law. The Court found 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," because, as the Court pointed out, "[w]ere § 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

[11] **Hines v. Davidowitz**, 312 U.S. 52 (1941).

in charge of the comprehensive scheme determine that prosecution would frustrate federal policies." ***Id.***, 132 S.Ct. at 2503.

The Court also pointed to the inconsistency between Section 3 of the Arizona Act and federal law with respect to penalties, concluding that the Arizona law, which (unlike its federal counterpart) rules out probation as a possible sentence and also eliminates the possibility of a pardon, creates a conflict with the plan Congress put in place, underscoring the fundamental reason for field preemption. ***Id.***, 132 S.Ct. at 2503.

In contrast to Section 3 of the Act, Section 5(C) created a state criminal prohibition that lacked any federal counterpart: Section 5(C) made 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. Distinguishing its prior decision in **DeCanas v. Bica**, 424 U.S. 351 (1976), which found that a state had authority to pass its own laws on the subject at a time when there was no comprehensive federal program regulating the employment of unauthorized aliens, the Court noted that federal law at present contains "a comprehensive framework for 'combating the employment of illegal aliens,'"[12] which "does not impose federal criminal sanctions on the employee side," but rather imposes civil penalties. ***Id.***, 132 S.Ct. at 2504 (internal quotation marks omitted). The Court found from examining the legislative background that "Congress made a deliberate choice not to impose criminal penalties on aliens who seek, or engage in, unauthorized employment." ***Id.***, 132 S.Ct. at 2504. Acknowledging the express preemption provision in the federal law is silent as to whether additional penalties may be imposed against employees, the Court ultimately found this section of the Arizona

[12] *Quoting* **Hoffman Plastic Compounds, Inc. v. NLRB**, 535 U.S. 137, 147 (2002).

Act preempted because it "would interfere with the careful balance struck by Congress with respect to unauthorized employment of aliens" as "it involves a conflict in the method of enforcement." ***Id.***, 132 S.Ct. at 2505.

The Court then turned to Section 6 of the Arizona Act, which provided 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. The Court noted that under federal law, warrantless arrest of an unauthorized alien by federal officers is permitted only where the alien is likely to escape before a warrant can be obtained. ***Id.***, 132 S.Ct. at 2506. It found that "Section 6 attempts to provide state officers even greater authority to arrest aliens on the basis of possible removability than Congress has given trained federal immigration officers." ***Id.***, 132 S.Ct. at 2506. The Court determined that this was tantamount to Arizona "achiev[ing] its own immigration policy" which "violates the principle that the removal process is entrusted to the discretion of the Federal Government." ***Id.*** It rejected the contention that Arizona's law complemented the federal framework by allowing "cooperation" between state and federal agents: "no coherent understanding of the term [cooperation] would incorporate the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." ***Id.*** at 2507. The Court then summarized its conclusions:

> 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.

***Id.***

Finally, the Court turned its attention to Section 2(B) of the Arizona Act, which 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.'" ***Id.***[13] It also provides that any person who is arrested shall have his immigration status determined by consultation with United States Immigration and Customs Enforcement ("ICE") before he is released. ***Id.*** The Court noted that "[c]onsultation between federal and state officials is an important feature of the immigration system" and that ICE operates a 24-hour call center to answer queries from local, state and federal law enforcement agencies. ***Id.***, 132 S.Ct. at 2508. "The federal scheme thus leaves room for a policy requiring state officials to contact ICE as a routine matter." ***Id.*** Recognizing that Section 2(B) is susceptible to several interpretations, some permissible and some preempted, the court ultimately declined to determine whether Section 2(B) is preempted by federal law:

> 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.

***Id.***, 132 S.Ct. at 2510. The Supreme Court thus held three sections of the Arizona Act, but not Section 2(B), preempted by federal immigration laws.

It was against this jurisprudential backdrop, in the wake of the **Arizona** decision, that the court of appeal issued its ruling in the instant case. As that court correctly recognized, pursuant to the Supremacy Clause, as the most recent pronouncement of the Supreme Court, the **Arizona** decision is both binding on the courts of this state and controlling on the issue of federal preemption. As a result,

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[13] *Quoting* Ariz. Rev. Stat. Ann. § 11-1051(B) (West 2012).

both before the appellate court and now in this court, the parties center their arguments for and against preemption on which section of the Arizona Act La. R.S. 14:100.13 most closely resembles.

Not unexpectedly, the State insists that La. R.S. 14:100.13 is most analogous to Section 2(B) of the Arizona Act, the section of the Act the Supreme Court declined to find preempted. That section requires state officials 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 not lawfully present. The State argues that La. R.S. 14:100.13 is distinguishable from the preempted Section 3 of the Arizona Act because criminal consequences under La. R.S. 14:100.13 are triggered by *driving* without documentation rather than by mere undocumented *presence*. The State asserts that La. R.S. 14:100.13 is not an "alien registration" statute, nor does it operate in the field of alien registration, because it does not require aliens to register with the State nor does it make an effort to keep track of aliens. Unlike Section 3 of the Arizona Act, La. R.S. 14:100.13 does not merely adopt the federal standard; neither does it exactly mirror federal law, as it does not require aliens to carry registration documents at all times. According to the State, the only way to find La. R.S. 14:100.13 preempted within the field of alien registration is to disregard the element of operating a motor vehicle, which no federal immigration law attempts to regulate. Relying on the well-established presumption against preemption,[14] the State argues that the "field" in which La. R.S. 14:100.13 actually operates is the regulation of roads, a police power traditionally reserved to the

[14] **Rice**, 331 U.S. at 230 ("[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.").

States, and that in the absence of a comprehensive scheme of federal driving regulations, a finding of field preemption is unwarranted.

Quite naturally, the defendant endorses the position adopted by the court of appeal. He argues that, like Section 3 of the Arizona Act, La. R.S. 14:100.13 is field preempted because, in creating a state law penalty for the failure to carry documents proving one's lawful presence in the United States, it also invades a field pervasively occupied by the federal government–that of alien registration. Drawing from the **Arizona** decision, he points out that the field of alien registration occupied by the federal government establishes requirements for registration and for carrying proof of compliance, and sets forth penalties for violation of these requirements:

> Federal law now includes a requirement that aliens carry proof of registration. 8 U.S.C. § 1304(e). ... Aliens who remain in the country for more than 30 days must apply for registration and be fingerprinted. ... § 1302(a) ... Detailed information is required, and any change of address has to be reported to the Federal Government. ... §§ 1304(a), 1305(a) ... The statute continues to provide penalties for the willful failure to register. ... § 1306(a) ...

**Arizona**, 132 S.Ct. at 2502. He asserts that, as illustrated, Louisiana's requirement that proof of lawful presence be carried is one component of the federally occupied field of alien registration.

Moreover, the defendant points out that every document Louisiana accepts as proof of lawful presence is a federally issued alien registration document.[15] The

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[15] La. R.S. 14:100.12(3) defines documentation demonstrating lawful presence in the United States as a document "determined by the Department of Public Safety and Corrections pursuant to R.S. 32:409.1(A)(2)(d)(vi)." In turn, La. R.S. 32:409.1(A)(2)(d)(vi) permits an alien residing in Louisiana, who lacks a social security number, to obtain a driver's license after providing, *inter alia*, "a document demonstrating lawful presence in the United States." This statute further provides that "[t]he list of acceptable documents demonstrating lawful presence shall be determined by the department." ***Id.*** Finally, at the time the statute was passed, the administrative code defined a "proof of lawful presence document" as "a verifiable document used to establish the identity and lawful presence of an individual who does not have and is ineligible to obtain a Social Security number." La. Admin. Code tit. 55, § 147(E)(2007).

The administrative code also provided the following list of "lawful presence documents":

> a.i. Arrival-Departure Record (I-94) (Class A-1, A-2, A-3, B-1, B-2, C-1, C-2, C-3,

defendant discounts the argument that Louisiana's law is distinguishable from Arizona's because Arizona criminalized *presence* without documentation while Louisiana criminalizes *driving* without documentation. He notes that Arizona's law is actually broader than Louisiana's and argues that if the *broader* regulation is preempted, then the *narrower* regulation acting within the same field is equally violative of federal preemption principles.

In the final analysis, in this post-**Arizona** era, the debate over whether La. R.S. 14:100.13 is preempted centers on whether the fact that Louisiana's statute only criminalizes the failure to carry documents proving lawful presence in the United States *while driving* is sufficient to distinguish it from Section 3 of the Arizona Act that made it a state misdemeanor for failure to carry alien registration documents *generally*.[16]

In an effort to escape principles of field preemption, the State argues that, because criminal liability only arises if a person operates a vehicle, La. R.S. 14:100.13

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> E-1, E-2, F-1, F-2, G-1, G-2, G-3, G-4, G-5, H-4, I, J-2, K-2, L-2, M-1, M-2, NATO 1-7, O-3, P-4, R-2, S-5, S-6, S-7, TC, TD, Cuban/Haitian Entrant, Parolee;
> ii. the form I-94 cannot state "Employment Authorized;"
> iii. if a foreign passport and Form I-94 have been presented as primary or secondary document, that Form I-94 is also an acceptable §147.B document, but only if it fits the §147.B description;
> b. Visa Waiver Arrival-Departure Record (I-94W) (Class WB, WT);
> c. Crewman's Landing Permit (I-95A);
> d. Alien Crewman Landing Permit and Identification Card (I-184);
> e. Nonresident Alien Canadian Border Crossing Card (I-185);
> f. Nonresident Alien Mexican Border Crossing Card (I-186);
> g. Nonresident Alien Border Crossing Card (I-586);
> h. B-1/B-2 Visa/BCC (DSP-150).

La. Admin. Code tit. 55, § 147(B)(1)(2007).

[16] We find the State's argument that La. R.S. 14:100.13 is most analogous to Section 2(B) of the Arizona Act unconvincing. According to the Supreme Court, Section 2(B), which requires state officers to make a reasonable attempt to determine the immigration status of any person they stop, detain or arrest on another legitimate basis if reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, could likely survive a preemption challenge if interpreted by Arizona courts to "only require[] state officers to conduct a status check during the course of an authorized, lawful detention or after a detainee has been released." **Arizona**, 132 S.Ct. at 2509. Louisiana's statute goes far beyond this limited communication and sharing of information with ICE, and creates a state felony offense.

is merely an effort by the state to regulate driving on its roads and does not operate within the field of alien registration.[17] However, the State's argument ignores the fact that the statute only applies to aliens, it requires the carrying of documentation–documentation which is neither directed at nor establishes competency to operate motor vehicles on the roads of this state and which consists, moreover, of documents defined by a state agency as consisting entirely of federal alien registration documents (see, e.g., La. Admin. Code tit. 55 § 147(E)(2007)–and it punishes the failure to carry such documentation as a felony.

Federal law mandates that, once in the United States, aliens are required to register with the federal government and carry proof of status on their persons *at all times* (which necessarily includes while driving). See 8 U.S.C. §§ 1301-1306. Failure to do so is a federal misdemeanor. 8 U.S.C. §§ 1304(e), 1306(a). The Supreme Court ruled in **Arizona** that the comprehensive framework in which these provisions appear leads to the conclusion that the federal government has occupied the field of alien registration and that "[w]here Congress occupies an entire field, as it has in the field of alien registration, even complementary state regulation is impermissible." **Arizona**, 132 S.Ct. at 2502. **Arizona** thus instructs that states may not criminalize

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[17] In an effort to bolster its argument that La. R.S. 14:100.13 does not operate in the field of alien registration, the State argues that La. R.S. 14:100.13 does not legislate upon illegal immigration because it does not require an alien to be in the United States illegally to face prosecution under the statute. The State insists the law applies to any alien, whether lawfully present or not, who fails to carry proof of lawful presence while driving. Thus, according to the State, the alien student or nonresident alien who inadvertently forgets to carry the designated documents while driving is subject to felony prosecution.

The State's interpretation of the sweep of La. R.S. 14:100.13 is dubious. The penalty provisions of the statute, La. R.S. 14:100.13(B) and (C), clearly indicate that the only persons who could be punished for violating Section (A) are those "without lawful presence." Furthermore, La. R.S. 14:100.11(B) plainly declares the purpose of the legislation: "to make operating a motor vehicle in this state when not lawfully present in the United States a crime."

However, whether the statute's penalty provisions extend to lawfully present aliens who fail to carry the required documentation while driving or only to those alien students and nonresident aliens "without lawful presence," Section (A) of the statute nonetheless seeks to regulate the circumstances under which non-citizens carry documentation proving lawful presence, placing it directly within the field of alien registration.

federal registration violations such as the failure to carry proof of alien registration. ***Id.***[18]

In requiring aliens to carry documentation of their lawful presence while driving, La. R.S. 14:100.13 regulates squarely in the field of alien registration.[19] Although no jurisdiction has considered whether a law like La. R.S. 14:100.13 is preempted,[20] the conclusion is inescapable that if a state cannot criminalize the failure to carry registration generally, neither may it criminalize the failure to carry registration while operating a vehicle.[21] The broader prohibition necessarily includes the narrower one.

Additionally, following the rationale of **Arizona**, it is clear that the harsh penalty provisions of La. R.S. 14:100.13 impermissibly intrude upon the federal scheme. Under federal law, the failure to carry registration papers is a misdemeanor, punishable by fine, imprisonment, or a term of probation. See 8 U.S.C. § 1304(e); 18

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[18] The State's argument that La. R.S. 14:100.13 does not criminalize violation of federal laws because La. R.S. 14:100.13 and its federal counterpart, 8 U.S.C. § 1304(e), are not identical and, further, that 8 U.S.C. § 1304(e) is not implicated because it applies only to aliens who have registered with the federal government and defendant has not done so, is misplaced. Like the preempted Section 3 of the Arizona Act, La. R.S. 14:100.13 attempts to criminalize activity proscribed by 8 U.S.C. §§ 1304(e) and 1306(a) in that it either punishes an individual for failure to carry documents he was issued (§ 1304(e)) or it punishes an individual for failure to register and obtain the necessary documents to carry (§ 1306(a)). In either event, the statute operates in the preempted field of alien registration described in **Arizona**.

[19] It is no obstacle to this conclusion that the legislature intended the Louisiana statute to "complement federal efforts to uncover those who seek to use the highways of this state to commit acts of terror," La. R.S. 14:100.11(B), as courts must look to the actual impact of a law rather than its stated purpose in defining the field in which it operates. **Gade v. National Solid Waste Management Ass'n.**, 505 U.S. 88 (1992), *quoting* **Napier v Atlantic Coast Line R. Co.**, 272 U.S. 605 (1926) (Preemption analysis turns, not on whether federal and state laws "are aimed at distinct and different evils," but whether they "operate upon the same object.").

Moreover, it is noteworthy, as the State concedes in brief to this court, that application of the statute has yet to yield the apprehension of anyone identified as a terrorist operating on the roadways of this State.

[20] Our independent research confirms that no other state has such a law.

[21] Louisiana requires proof of lawful presence before issuing a driver's license. However, the Supremacy Clause apparently presents no obstacle to Louisiana requiring proof of lawful presence before issuing a driver's license, see, e.g., **Arizona Dream Act Coalition v. Brewer**, ___ F.Supp.2d ___ (D. Ariz. 5/16/13), 2013 WL 2128315, *7-8. La. R.S. 32:409.1(A)(2)(d)(vi).

U.S.C. § 3561. Louisiana R.S. 14:100.13, by contrast, punishes the failure to carry documentation as a felony with the possibility of a hard labor sentence of up to one year. We conclude, consonant with the Supreme Court in **Arizona**: "This state framework of sanctions creates a conflict with the plan Congress put in place," and "underscore[s] the reason for field preemption." **Arizona**, 132 S.Ct. at 2503.

Whereas, previously it may have been a closer question whether La. R.S. 14:100.13 is preempted (thus accounting for the intra-circuit split among the courts of appeal), after **Arizona**, it is clear that the federal government has occupied the field of alien registration and that, as a result, even complementary legislation by the states operating in that field is pre-empted.[22] Because La. R.S. 14:100.13 operates in the field of alien registration as interpreted by the Supreme Court in **Arizona**, by regulating the circumstances under which non-citizens carry documentation establishing proof of lawful status, the statute is preempted under the Supremacy Clause of the U.S. Constitution, as interpreted by controlling federal jurisprudence.

**DECREE**

For the foregoing reasons, the decision of the court of appeal is affirmed.

**AFFIRMED.**

[22] Insofar as the requirement that aliens carry documents demonstrating proof of lawful status is concerned, the presumption against preemption on which the State, and earlier decisions of the First Circuit, relied to find no "clear and manifest purpose of Congress to effect a complete ouster of state power to regulate requirements for legal operation of a vehicle on public roads and highways within a state" (see, e.g., **State v. Sanchez**, 10-0016 at 6, 39 So.3d at 839), has been overcome by the ruling in **Arizona**; therefore, the presumption is unavailing to the State here.

10/15/2013

# SUPREME COURT OF LOUISIANA

**NO. 13-K-1271**

***STATE OF LOUISIANA***

***VERSUS***

***ALEXIS SARRABEA***

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, PARISH OF LAFAYETTE**

**VICTORY, J., dissents.**

I dissent from the majority opinion because in my view, La. R.S. 14:100.13 is not preempted by federal law. Preemption only occurs under ***Arizona*** (1) where Congress "withdraws specified powers from the states by enacting a statute containing an express preemption provision"; (2) where the states attempt to regulate "conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance"; or (3) where compliance with both federal and state regulations is a physical impossibility. ***Arizona v. United States***, 132 S.Ct. 2492, 2500-01, 183 L.Ed.2d 351 (2012). While it is certain that the first and third preemption doctrines do not apply here, the majority finds the statute at issue preempted because Congress has occupied the field of "alien registration." However, the driving requirements at issue here have nothing to do with alien "registration," and I disagree with the broad assumption that anything having to do with alien registration documents is preempted. Further, I disagree with the majority's interpretation of the statute.

It is axiomatic that the State is vested with the authority to regulate public roads and highways under its police power. Regulations pertaining to the issuance of motor vehicle drivers' licenses constitute an exercise of the police power to

regulate the use of the highways in the interest of the public safety and welfare. Majorie Shields, The Validity of State Statutes, Regulations, or other Identification Requirements Restricting or Denying Driver's Licenses to Illegal Aliens, 16 A.L.R.6th 131 (2006). This power to license carries with it the power to prescribe reasonable conditions precedent to the issuance of such licenses and to classify drivers for special regulation, provided such classifications are not unreasonable or arbitrary. ***Id.*** La. R.S. 14:100.13 is part of a group of statutes requiring alien students and nonresident aliens to have documentation demonstrating lawful presence in the United States in order to obtain a Louisiana driver's license and to be lawfully present in the United States in order to operate a motor vehicle. For instance, while one of the requirements for obtaining a license is a social security number, La. R.S. 32:409.1(A)(2)(d)(vi) provides that an alien residing in Louisiana who is ineligible to obtain a social security number can instead "present a document demonstrating lawful presence in the United States in a status in which the alien individual may be ineligible to obtain a social security number." As the majority opinion recognizes, "the Supremacy Clause apparently presents no obstacle to Louisiana requiring proof of lawful presence before issuing a driver's license." Slip Op. at 19, n. 22 (citing ***Arizona Dream Act Coalition v. Brewer***, ___ F. Supp. 2d ___, (D. Ariz. 5/16/13), 2013 WL 2128315).[1] Likewise, there are

[1]In fact, "[t]hrough the REAL ID Act of 2005, Pub.L. No. 109-13, § 202(c)(2)(B), 119 Stat. 231, 313 (codified as note to 49 U.S.C. § 30301), Congress encouraged individual states to require evidence of lawful status as a prerequisite to issuing a driver's license or identification card to an applicant." ***U.S. v. Alabama***, 691 F.3d 1269, 1298 (11th Cir. (Ala.) 8/20/12), *cert. denied*, 133 S.Ct. 2002, 185 L.Ed.2d 905 (2013).

The REAL ID Act provides that a federal agency may not accept, for any official purpose, a driver's license or ID card issued by a state to any person unless the state is meeting the requirements of the Act. Section 202(c)((1) of the Act lists the types of identification information that must be provided before a state may issue a driver's license or identification card, and Section 202(c)(2) requires verification by valid documentary evidence of an applicant's citizenship or immigration status. However, while a driver's license from a non-complying state may not be accepted by a federal agency for federal purposes, the Act does not mandate implementation by individual states. In other words, states may issue driver's licenses and identification cards without complying with the Act.

penalties for providing false information to obtain a driver's license in Louisiana. Generally, the individual's license or pending application for a license shall be suspended, revoked, or cancelled. La. R.S. 32:409.1(E). Further, "whoever commits the crime of falsifying information required for the purpose of obtaining a driver's license shall be fined not more than five hundred dollars, imprisoned for not less than six months, or both." La. R.S. 14:100.14(C). In ***U.S. v. Alabama***, 691 F.3d 1269, 1298-99 (11th Cir. (Ala.) 8/20/12), *cert. denied*, 133 S.Ct. 2022, 185 L.Ed.2d 905 (2013), the court held that an Alabama statute making it a felony for an unlawfully present alien to attempt to get a driver's license by providing fraudulent information was not preempted by federal immigration law.[2] La. R.S. 14:100.14(C) criminalizes the same type of behavior criminalized in Alabama which the 11th Circuit found was not preempted. In addition, La. R.S. 14:100.14(C) apparently applies to anyone, not just aliens.[3]

Regarding the particular statute at issue, La. R.S. 14:100.13, the majority reasons that because federal law mandates that aliens are required to carry proof of status on their person at all times (8 U.S.C. 1301-1306), and the failure to do so is a misdemeanor, a state statute which criminalizes failure to carry such proof in a

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[2]The court reasoned as follows:

> The REAL ID Act thus does not purport to comprehensively regulate driver's licenses, . . . Rather, it leaves the field essentially open, giving room for the states to adopt different policies concerning this subject. *See* H.R. Rep. No. 109-72, at 177 (2005) (Conf. Rep.), *reprinted in* 2005 U.S.C.C.A.N. 240, 302 (noting that the REAL ID Act "does not directly impose federal standards" and that "states need not comply with the listed standards"). Given the limited scope of the REAL ID Act, we do not see have it forecloses Alabama's decision to make it a crime for an unlawfully present alien to attempt to get a driver's license or identification card once it has decided that such aliens are ineligible for these documents.

691 F.3d at 1299.

[3]While this provision is in the same part of the revised statutes as the statute at issue, "Prevention of Terrorism on the Highways," and is entitled "Giving false information regarding lawful presence in the United States in order to obtain a driver's license," the penalty provision apparently applies to anyone who gives false information to get a driver's license.

more particularized circumstance, even one related to the state's police power, is preempted. If that were true, then the above statutes are also preempted, even the one that requires presenting proof of lawful presence to obtain a driver's license, because the alien would have to be "carrying" proof of lawful presence in order to obtain the license. Further, the statute at issue does not appear to criminalize the failure to carry a document proving lawful presence on his person while driving. While La. R.S. 14:100.13(A) provides that "no alien student or nonresident alien shall operate a motor vehicle in the state without documentation demonstrating that the person is lawfully present in the United States," that is basically just a restatement that documentation demonstrating lawful presence is required to get a driver's license under La. R.S. 32:409.1(A)(2)(d)(vi). The penalty provision, La. R.S. 14:100.13(C), provides that "whoever commits the crime of driving without lawful presence in the United States shall be fined not more than one thousand dollars, imprisoned for not more than one year, with or without hard labor, or both." Thus, La. R.S. 14:100.13(C), the penalty provision, punishes only "driving without lawful presence," not driving without carrying documentation proving lawful presence.[4] As the statute does not appear to punish failure to carry registration while operating a vehicle, the majority's conclusion that "the broader provision," i.e., "failure to carry registration generally" under ***Arizona***, "necessarily includes the narrower one," i.e., "failure to carry registration while operating a vehicle," is incorrect. Slip Op. at 18-19.

In addition to misinterpreting the statute, the majority simply reads ***Arizona*** too broadly. As the Supreme Court previously held in ***De Canas v. Bica***, 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 43 (1976):

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[4]It is well established that criminal statutes are subject to strict scrutiny under the rule of lenity. ***State v. Oliphant***, 12-1176 (La. 3/19/13), 113 So. 3d 165, 168; ***State v. Carr***, 99-2209 (La. 5/26/00), 761 So. 2d 1271, 1274.

> Power to regulate immigration is unquestionably exclusively a federal power. But the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by this constitutional power whether latent or exercised . . . [T]he fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.

This principle is not altered by the holding in ***Arizona***. This was exemplified by an Eighth Circuit case which considered whether a city ordinance, which limited hiring and providing rental housing to "illegal aliens" and "unauthorized aliens," was preempted by federal immigration law in light of ***Arizona***. ***Keller v. City of Fremont***, 719 F.3d 931 (8th Cir. (Nev.) 6/28/13).[5] The rental provisions of the ordinance made it unlawful for any person or business entity to rent to, or permit occupancy by, an "illegal alien." To implement this restriction, prospective renters were required to obtain an occupancy license, which required proof of citizenship or, if an alien, immigration status. After issuance of the occupancy license, the city police department was required to ask the federal government to verify the immigration status, and if the renter was "unlawfully present," the occupancy license was revoked and violators were fined $100 per day. Relying on ***De Canas***, the Court rejected the argument that the rental provisions intruded on a federally protected "field," alien removal, finding that the rental provisions "neither determine 'who should or should not be admitted into the country,' nor do they more than marginally affect 'the conditions under which a legal entrant may remain.'" 719 F.3d at 941. Further, the court rejection the notion that the

[5]One portion of the ordinance required every business to participate in the "E-Verify Program," a federal database that allows employers to verify the work-authorization status of prospective employees, and provided that violators could lose their business licenses, permits, contracts, grants or loans from the City. The parties did not appeal the district court ruling that this portion of the ordinance was not preempted because "it was 'essentially a licensing or similar law' and thus falls within the savings clause" in the federal immigration law under ***Chamber of Commerce v. Whiting***, ___ U.S. ___, 131 S.Ct. 1968, 179 L.Ed.2d 1031 (2011). 719 F.3d at 938.

ordinance intruded on the federally protected field of alien registration. The court distinguished the ordinance from the law invalidated in ***Arizona***, which imposed state criminal sanctions for an alien's willful violation of federal alien registration laws, reasoning as follows:

> The occupancy license scheme is nothing like the state registration laws invalidated in . . . ***Arizona***. The Ordinance requires *all* renters, including U.S. citizens and nationals, to obtain an occupancy license before renting a dwelling unit in the City. It does not apply to all aliens–it excludes non-renters. Although prospective tenants must disclose some of the same information that aliens must disclose in complying with federal alien registration laws, that does not turn a local property licensing program into a preempted alien registration regime. To hold otherwise would mean that any time a State collects basic information from its residents, including aliens–such as before issuing driver's licenses–it impermissibly intrudes into the field of alien registration and must be preempted. It defies common sense to think that Congress intended such a result.

***Id.*** at 943.

I agree with the reasoning of ***Keller*** and would apply it in this case. Just as the ordinance in ***Keller***, the statute here is distinguishable from the broad statute in ***Arizona***. The licensing and driving provisions require all drivers, including U.S. citizens, to obtain a license from the state in order to drive on state highways. Further, the statute at issue does not apply to all aliens, only drivers. The fact that a prospective driver must disclose some of the same information that aliens must disclose in order to comply with federal alien registration laws does not turn a statewide driver's license program into a preempted alien registration requirement. It "defies common sense" to think that any time a state collects basic information from aliens before issuing a driver's license or allowing them to drive on state roads that the state has impermissibly intruded into the field of alien registration.

The court in ***Alabama*** also rejected the argument that the anti-harboring provisions in the ordinance were preempted by the federal immigration anti-harboring provisions, even though the ordinance defined "harboring" more

expansively and imposed penalties not imposed by the federal statute. The court found that "[p]laintiffs made no showing that Congress intended to preempt States and local governments from imposing different penalties for the violation of different state or local prohibitions simply because the prohibited conduct is labeled 'harboring.'" ***Id.*** at 944. Likewise, there is nothing to show that Congress intended to preempt states from punishing an alien who drives without lawful presence, especially given that proof of lawful presence is a requirement for obtaining a driver's license.

In my view, a state is simply not prevented from asking an alien to provide proof of lawful presence in order to obtain a license, and should certainly not be prevented from punishing an alien with criminal penalties for obtaining a license with fraudulent proof of lawful presence or for driving when they are not lawfully present. The federal government simply has no interest in a state's requirements for driving within that state. For all of the above reasons, I respectfully dissent.

10/15/2013

SUPREME COURT OF LOUISIANA

NO. 2013-K-1271

STATE OF LOUISIANA

VERSUS

ALEXIS SARRABEA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF LAFAYETTE

Hughes, J., dissenting.

I respectfully dissent. Louisiana has passed a law that prohibits non-citizen aliens from driving in Louisiana without documentation showing they are legally present in the United States. The documentation is already required of non-citizen aliens by the federal government. I fail to see how Louisiana's statute interferes with federal immigration law or involves the status of aliens. Rather, I view it as a legitimate measure to protect the citizens of Louisiana, much the same as requiring drivers to carry liability insurance.