

# Congress of the United States

Washington, DC 20515

June 15, 2010

The Honorable Eric Holder  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Dear General Holder,

We are in the midst of hard economic times for American workers. They are worried about whether they will be able to provide for their families. With more than 15 million workers unemployed and the unemployment rate at close to 10% for the first time in a generation, jobs have become threatened and scarce. We therefore formed the Reclaim American Jobs Caucus, which is a U.S. House of Representatives caucus dedicated to the promotion of policies that will help citizens and legal immigrants reclaim the nearly eight million jobs that illegal immigrants have stolen.

As members of the caucus, we were disturbed to learn that the Acting Solicitor General had filed a brief amicus curiae with the Supreme Court supporting a writ of certiorari in the case of Chamber of Commerce v. Candelaria (No. 09-115). In the brief, the Administration argues that Arizona's law revoking the business licenses of businesses that knowingly employ illegal immigrants is unconstitutional.<sup>1</sup> We find it outrageous that you would seek to undermine Arizona's efforts to protect legal workers and ask that you withdraw the ill-considered brief.

The brief's contention that the Arizona law is unconstitutional is baseless. The 1986 federal statute that created penalties for employers that knowingly employ illegal immigrants or fail to properly check the work authorization and identify documents of new hires specifically and explicitly addresses the question at issue in the litigation. The relevant section of the law states that "[t]he provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ . . . unauthorized aliens."<sup>2</sup> With this savings clause, Congress explicitly authorized states to revoke

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<sup>1</sup> See Brief for the United States as Amicus Curiae at 10.

<sup>2</sup> Section 274A(h)(2) of the Immigration and Nationality Act (emphasis added).

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the business licenses of employers that intentionally hire illegal immigrants. As the Ninth Circuit held in upholding the constitutionality of the Arizona law, “[t]he [Arizona] statute’s broad definition of ‘license’ is in line with the terms traditionally used and falls within the savings clause. The language of the savings clause therefore exempts such state licensing regulation from express preemption [by federal law].”<sup>3</sup>

Your action is especially troubling given the Obama Administration’s weak record on enforcing federal immigration laws against employers that employ illegal immigrants. Compared to fiscal year 2008, the number of administrative arrests by U.S. Immigration and Customs Enforcement (“ICE”) in employer-sanctions cases has fallen by 80%, the number of criminal arrests has fallen by 68%, the number of indictments has fallen by 74%, and the number of criminal convictions has fallen by 75%. When ICE does engage in worksite enforcement actions, it allows the illegal workers uncovered simply to walk down the street to the next employer to seek employment. If the federal government is abdicating its responsibility to enforce the employer-sanctions law and protect American workers, how can the Administration protest when individual states seek to fill the vacuum in a manner explicitly condoned by Congress in federal law?

In addition, while the government’s brief does not support a grant of certiorari as to the claim that the Arizona law requiring employers in the state to participate in E-Verify is unconstitutional, it does make the bogus argument that “[t]here is substantial reason to doubt whether the Ninth Circuit was correct in holding that, under current law, States may mandate participation in the federal E-Verify program.”<sup>4</sup> As you know, E-Verify is the highly successful federal program through which employers can verify the work eligibility of new hires through access to Social Security Administration and Department of Homeland Security databases. The amicus brief claims that “[a]bsent congressional authorization nowhere present in th[e] statute” creating E-Verify, a state may not require that employers within the state participate.<sup>5</sup> The brief totally ignores, however, the fact that Congress reauthorized E-Verify after the enactment of the Arizona law and, being fully aware of the Arizona law, in no way indicated any disapproval of it.<sup>6</sup>

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<sup>3</sup> Chicanos Por La Causa v. Napolitano, No. 07-17272, slip op. at 13,074 (9<sup>th</sup> Cir. 2008).

<sup>4</sup> Brief for the United States as Amicus Curiae at 15.

<sup>5</sup> Id. at 18 (footnote omitted).

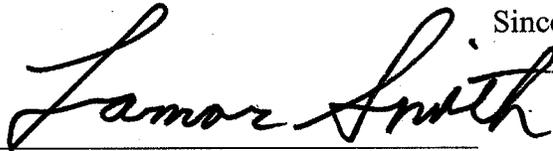
<sup>6</sup> See section 547 of Pub. L. No. 111-83 (signed into law on October 28, 2009).

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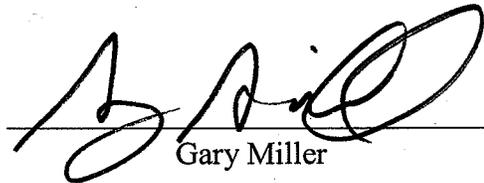
In addition, the brief has a hard time with the fact that President Bush had issued an Executive Order requiring all federal contractors to use E-Verify and that in subsequent litigation regarding the Executive Order, the federal government argued that “the State of Arizona has required all public and private employers in that State to use E-Verify to verify the employment status of their workers. This is permissible . . . .”<sup>7</sup>

We urge you in the strongest possible terms to withdraw the brief amicus curiae. Struggling American workers deserve more from the Administration – as does the state of Arizona. The Obama Administration should work to protect Americans’ jobs, not undermine them.

Sincerely,



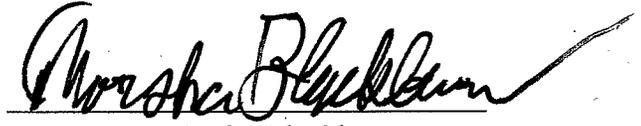
Lamar Smith



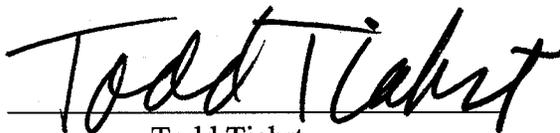
Gary Miller



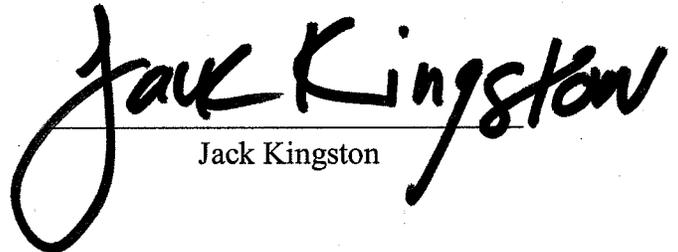
Sue Myrick



Marsha Blackburn



Todd Tiahrt



Jack Kingston

cc: The Hon. John Conyers, Jr.

<sup>7</sup> Defs’ Reply Mem. In Supp. of their Mot. For Summ. J. at 7, Chamber of Commerce v. Napolitano, 648 F. Supp. 2d 726 (D. Md. 2009).