UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-10049

CHRISTOPHER L. CRANE, ET AL,

Plaintiffs-Appellants/Cross-Appellees

v.

JEH CHARLES JOHNSON, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, ET AL,

Defendants-Appellees/Cross-Appellants.

On Appeal from the United States District Court for the Northern District of Texas

BRIEF OF AMICUS CURIAE, IMMIGRATION REFORM LAW INSTITUTE, SUPPORTING DEFENDANTS-APPELLANTS/CROSS-APPELLEES IN THE CROSS APPEAL

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**Not admitted*

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IRLI is a nonprofit corporation. It does not have a parent corporation, no publicly held company owns any part of it, and no publicly held company has a financial interest in the outcome of this appeal.

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Pursuant to Fed. R. App. P. 29(a), an amicus curiae may "may file a brief . . . if the brief states that all parties have consented to its filing." All parties have consented to *Amicus Curiae* IRLI filing a brief. No counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

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INTEREST OF *AMICUS CURIAE*

Amicus Curiae Immigration Reform Law Institute (IRLI) is a non-profit charitable corporation. IRLI frequently litigates and submits amicus briefs in immigration related cases in both federal courts and administrative agencies. A decision by this Court which elevates Executive discretionary authority when Congress does not act could doom the immigration reforms for which IRLI advocates.

INTRODUCTION

This is a case about the separation of powers, and the authority of the President to take substantive and lasting Federal action when Congress has considered and rejected the exact actions. Both parties, and their respective *amici*, contend that technical aspects of the immigration laws apply to particular issues of law. *See, e.g.*, Brief for the Federal Appellees/Cross-Appellants (July 9, 2014) (hereinafter "DHS"), Statement of Issues Presented for Review #5, at 19-20; *Brief of Amici Curiae in Support of Respondents*, Document 512701256 (July 16, 2014) (hereafter "AILA").

But this case is really a challenge by the Executive to historic principles of separation of powers between the branches of federal government, with extraordinary power claimed by the President under the rubric of "deferred action" and "prosecutorial discretion." "The questions presented by this case touch

fundamentally upon the matter in which our Republic is to be governed." *Dames & Moore v. Regan*, 453 U.S. 654, 659 (1981). The terms used should not control this constitutional battle. Instead, the question is the source of the claimed Executive power and whether Congress could have been reasonably "expected to anticipate" the matter in which the President has acted. *Id.* at 669. The Constitution does not give the President "a grant in bulk of all conceivable executive power[.]" *Youngstown Steel & Tube Co. v. Sawyer*, 343 U.S. 579, 641 (1952). Instead, the question is where the Executive's authority falls in a "a spectrum running from explicit congressional authorization to explicit congressional prohibition." *Dames & Moore*, 453 U.S. at 669.

The purpose of this brief is to show that the Executive actions at issue in this case were not "explicit congressional authorization" or even implicit authorization. These actions were taken solely by memoranda and "Directive," not by Congressional action, or by any Executive branch administrative action subject to notice and comment. *Crane v. Napolitano*, 920 F.Supp.2d 724, 729-30 (N.D. Tex. 2014). These were not obscure and technical matters; indeed, even supporters of these policy changes recognize they were the subject of intense public debate and controversy. "The nine-page memorandum is the latest in a series of immigration policy changes made by President Barack Obama since he took office. . . . Obama's changes initially were broad and controversial." Alicia Caldwell, "Obama Utilizing

Immigration Rule Changes," *Huffington Post*, Nov. 15, 2013, http://www.huffingtonpost.com/2013/11/15/obama-immigration-_n_4284760.html (last visited September 17, 2014).

There is no secret about the Administration's stance in this matter. "White House officials are locked in an intense debate over whether President Barack Obama should announce a plan to defer deportations for millions of undocumented immigrants before Election Day — mindful that whichever choice they make could be tagged as the reason that Democrats lost the Senate." Carrie Budoff Brown, "White House strife stalls Obama immigration plans," *Politico*, Aug. 30, 2014, www.politico.com/story/2014/08/barack-obama-immigration-110470.html#ixzz3DZnevPwc (last visited September 17, 2014).

Nor is there any doubt that the President is taking unilateral action solely because Congress would not: "As the chances for legislative action diminished, Sens. Dick Durbin (D-Ill.) and Chuck Schumer (D-N.Y.) had demanded that Obama act on his own to fix the immigration system if Congress failed to pass a bill by August." *Id.* "Speaking from the White House Rose Garden, Obama said he will pursue executive actions by the end of summer to 'fix as much of our immigration system as we can. If Congress will not do their job, at least we can do ours.'" David Nakamura and Zachary A. Goldfarb, "Obama pledges to redirect immigration enforcement, conceding Congress won't act." *The Washington Post*,

June 30, 2014, www.washingtonpost.com/politics/obama-pledges-to-redirect-immigration-enforcement-conceding-defeat-on-overhaul/2014/06/30/40e69476-0083-11e4-8fd0-3a663dfa68ac_story.html (last visited September 17, 2014).

More specifically, Congress has expressly refused to pass legislation to do what the memoranda and Directive in this case would do: suspend deportation for those in selected categories. The principal legislative vehicle for the Administration on this issue was the DREAM Act, which a bipartisan group of Senators rejected in 2010, and which has not moved forward since. Alexander Bolton, "Senate Rejects DREAM Act, closing door on immigration reform," *The Hill*, Dec. 18, 2010, http://thehill.com/homenews/senate/134351-dream-act-defeated-in-senate (last visited September 17, 2014); Dan Amira, "President Obama Basically Just Passed the DREAM Act by Himself," *New York*, June 15, 2012, http://nymag.com/daily/intelligencer/2012/06/obama-basically-passed-the-dream-act-himself.html (last visited September 17, 2014).

As this news coverage shows, there is no doubt that when the President said "Congress will not do their job," Nakamura and Goldfarb, *supra*, he meant specifically restricting the enforcement activities which the Plaintiffs/Appellees immigration agents here sought to perform, and which the lower court found would be blocked by the memoranda and Directive at issue in this case. *Crane*, 920 F.Supp.2d at 738-41. "Furthermore, the alleged injury is directly traceable to the

Defendants' conduct in issuing and enforcing the Directive and Morton Memoranda, and a favorable decision by this Court would likely redress the injury." *Id.* at 741. And, when the President said "we can do ours," Nakamura and Goldfarb, *supra*, he meant issuing and enforcing the Deferred Action for Childhood Arrivals ("DACA") Directive and Morton Memoranda, even if it meant taking disciplinary action against those, such as the immigration agents here, who are actually enforcing the statute as written. *Crane*, 920 F.Supp.2d at 740 n. 5.

Thus, this case involves not just the standing of these individual agents and others like them who seek to enforce the laws as they are written, rather than as the shifting winds of political favor indicate would amuse or disappoint various voting blocs, but the fundamental relationship between the branches of government. Who gets to decide whether Congress has "do[ne] its job" on immigration, Congress or the Executive?

ARGUMENT

I. Though the Executive Has Long Attempted to Grant Non-Statutory Relief from Removal, Congress Has Consistently Rejected, Restricted or Rolled Back Those Attempts.

Since 1952 Congress has consistently restricted, rolled back, or tightly regulated non-statutory relief from removal whenever it has encountered them.

The Immigration Act of 1924 repealed statutory time limits on deportations.[1] "Prior to 1940, the Attorney General had no discretion with respect to the deportation of an alien who came within the defined category of deportable persons. The expulsion of such a person was mandatory; his only avenue of relief in a hardship case was by a private bill in Congress." *Foti v. INS*, 375 U.S. 217, 222 (1963). Nevertheless, in the 1930s the Secretary of Labor began granting administrative waivers to deportation for humanitarian ("hardship") reasons, based on the time aliens had been illegally in the country, a process known as "pre-examination." Ngai, M. M. *The Strange Career of the Illegal Alien: Immigration Restriction and Deportation Policy in the United States*, 1921-1965, 21 Law & Hist. Rev. 69, 100-102 (2003). This policy effectively "reverted" back to the pre-1924 immigration policy which had a statute of limitations for deportations. *Id.* at 100. After the Alien Registration Act of 1940, INS issued regulations to formalize the process as an adjustment of status program. 8 C.F.R. § 142 (1940), published in 6 Fed. Reg. 65 (Jan. 4, 1941), citing Attorney General Order C-27 (12-31-1940).

In 1952, the Immigration and Nationality Act ("INA") ended these informal practices. *Matter of B*, 5 I&N Dec. 542 (1953). The Senate had previously criticized the scope of pre-examination practices as excessive in providing extra-statutory relief for excludable or deportable aliens in the United States. *See* S. Rep.

[1] Act of May 26, 1924, 43 Stat. 150. sec. 14.

No. 81-1515, at 384 (1950).[2] In its place, Congress codified more restrictive statutory discretionary relief, notably INA §212(c)(waiver of deportability), INA §244(a)(suspension of deportation), INA §244(b)(voluntary departure), and INA §245(adjustment of status). 66 Stat. 214 (1952).[3]

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[2] The regulations were not revoked until 1958. 23 Fed. Reg. 8395 (Oct. 30, 1958); 24 Fed. Reg. 6477 (Aug. 12, 1960).

[3] One policy argument that the Administration makes for DACA is that these aliens have resided in the United States for long periods of time. *See* Memorandum from Janet Napolitano, Sec'y of Homeland Sec., to David V. Aguilar, Acting Comm'r, U.S. Customs & Border Prot., Alejandro Mayorkas, Dir., USCIS, and John Morton, Dir., ICE, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (June 15, 2012), *available at*: http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf; 17 Bender's Immigr. Bull. 1359, 1383 (App. A) (July 1, 2012). A similar justification was given for the Secretary of Labor's use of "pre-examination." Ngai, 21 Law & Hist. Rev. at 100 (extending pre-examination to include "illegal aliens who 'have lived here a long time.'"). Yet, Congress rolled back "pre-examination" in 1952. Furthermore, when Congress passed the registry statute, it decided what constituted a long enough period of time to allow an alien to remain lawfully in the United States. 8 U.S.C. § 1259. In 1986, Congress moved set that date at January 1, 1972. Immigration Reform and Control Act, P.L. 99-603, § 203 (1986). In 1996, Congress made changes to the registry statute, but did not change the date. Pub. L. 104-132, Title IV, § 413(e), 110 Stat. 1269; Pub. L. 104-208, Div. C. Title III, § 308(g)(10)(C), 110 Stat. 3009-625. Finally, Congress has repeatedly considered legislation to address the status of illegal aliens living in the United States for a period of time and has repeatedly chosen *not* to enact laws to change their status. *See e.g.* Comprehensive Immigration Reform Act of 2007, S. 1348 (2007); A Bill to Provide for Comprehensive Immigration Reform and Other Purposes, S. 1639 (2007); DREAM Act of 2010, H.R. 5281 (2010); Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744 (2013). In short, Congress has considered this policy argument and either addressed it legislatively, or decided that current policy should remain in place.

Congress knows how to create statutory discretionary relief. In 1990, for example, Congress created Temporary Protected Status (TPS). INA §244 (1990) (codified at 8 U.S.C. § 1254a, as amended). TPS created a single statutory authority for the executive to address the problem of foreign nationals whose repatriation would "pose a serious threat to their personal safety" due to "ongoing armed conflict" or a "substantial, but temporary disruption of living conditions in the area affected" due to an "environmental disaster in the state," or when "there exist extraordinary and temporary conditions in the foreign state that prevent aliens of the state from returning to the state in safety . . . ." 8 U.S.C. § 1254a(b)(1).[4] Congress mandated that TPS was the "exclusive" remedy, displacing non-statutory temporary relief on the basis of national or subnational origin. 8 U.S.C. § 1254a(g).

TPS replaced another extra-statutory practice which granted categorical relief to classes of aliens on the basis of nationality, rather than individual risks of harm. *See* Gordon & Rosenfeld, Immigration Law & Practice, Vol. 1A, §5.3e(6a)(1981) (discussing "Extended Voluntary Departure").[5] Thus, even when

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[4] INA §244A (1952) was amended by, *inter alia*, IMMACT90, P.L. 101-649 (Nov. 29, 1990) and redesignated as §244 by IIRIRA, P.L. 104-208, §308 (Sep. 30, 1996).

[5] Subsequent administrations have essentially revived the practice of Expanded Voluntary Departure under the name "Deferred Enforced Departure" ("DED"), despite Congress declaring that TPS is the "exclusive remedy" for this kind of

enacting some "Temporary" relief program, Congress took steps to avoid expanding discretionary authority beyond the statutory limits.

For example, another non-statutory program that Congress rescinded was the "non-priority program," the original name for what DHS now labels "deferred action."[6] Under this program, the INS delegated to itself authority to grant administrative relief based on humanitarian reasons or simply for its own convenience. *See Reno v. American-Arab Antidiscrimination Committee*, 525 U.S. 471, 483-84 (1999).[7] In 1996, however, Congress acted to "streamline[] rules and procedures in the [INA] to make it easier to deny admission to inadmissible aliens and easier to remove deportable aliens from the United States." *Tutu v. Blackman*, 9 F. Supp. 2d 534, 536 (E.D. Pa. 1998) (*citing* H.R. Rep. 104-469 (I), 104th Cong., 2d Sess. 359, 463 (1996)); IIRIRA, § 306. Congress indisputably intended "to

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relief. *See e.g.* President Obama, Memorandum Extending Deferred Enforced Departure for Liberians (Aug. 6, 2011). The effect of DED is essentially the same as TPS. *Krua v. United States Dep't of Homeland Sec.*, 729 F. Supp. 2d 452, 453 (D. Mass. 2010). Article III standing problems prevent individual citizens from challenging this practice.

[6] After public disclosure of the program, the INS issued written guidance on "deferred action" through "Operations Instructions" ("OI"). INS Operations Instruction, § 103.1(a)(1)(ii) (1975).

[7] In 1981, the INS issued a revised deferred action Operations Instruction ("OI") in response to a Ninth Circuit opinion treating humanitarian-based deferred action requests as invoking due process rights. The new OI only granted deferred action by administrative choice. INS Operations Instructions, O.I. §103.1(a)(1)(ii) (1981); *Akhbari v. INS*, 678 F.2d 575, 576 (5th Cir. 1982). The INS rescinded the OI in 1996, following the IIRIRA.

prevent delay in the removal of illegal aliens." *Id.* at 537. Subsequently, the INS recognized that IIRIRA effectively superseded the program.[8]

The 1996 IIRIRA also restrained previous extra-statutory agency discretion under the "voluntary departure" statute. Prior to 1996, the INA contained no limitation on the period during which an alien subject to deportation orders could obtain an extension of the original voluntary departure time. 8 U.S.C. § 1252(b) (1995). Under that broad discretionary authority, "aliens with final orders of deportation remained in the United States indefinitely. The IIRIRA was specifically designed to curb 'abuses' of voluntary departure." *Tutu*, 9 F. Supp. 2d at 537 (*citing* 62 Fed. Reg. 10312, 10324 (1998)). IIRIRA restricted discretion to grant permission to depart voluntarily in lieu of or prior to the conclusion of removal proceedings to a maximum of 120 days, 8 U.S.C. § 1229c(a)(2)(A), or 60 days after the conclusion of proceedings. *Id.* at (b)(2). IIRIRA made aliens not physically present in the United States for at least one year prior to service of the NTA categorically ineligible for the exercise of discretion by the immigration judge or INS. *Id.* at (b)(1)(A). IIRIRA stripped federal agencies of their discretion to grant, for a period of 10 years, "any further relief" for any alien who has failed

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[8] Memorandum from Paul W. Virtue, Acting Executive Associate Commissioner, Immigration and Naturalization Service, INS Cancellation of Operations Instructions ("Virtue Memo") (June 27, 1997), available at 2 Bender's Immigr. Bull. 867.

to depart within the statutory time restrictions. *Id.* at (d)(2)(B). Arriving aliens, *i.e.* those aliens who would have been subject to exclusion proceedings prior to IIRIRA, are also categorically excluded from voluntary departure eligibility. *Id.* at (a)(4). Today, nowhere does the INA delegate discretion to any executive official to defer removal by extending grants of voluntary departure.

Congressional action in the area of parole authority follows the same restrictive pattern. Prior to the Refugee Act in 1980,

> The parole provisions [of the INA] were designed to authorize the Attorney General to act only in emergent, individual, and isolated situations, such as the case of an alien who requires immediate medical attention, and not for the immigration of classes or groups outside of the limit of the law."

S. Rep. No 89-748, at 17 (1965); *accord* H.R. Rep. No. 89-745, at 15-16 (1965). However, in practice the INS parlayed the absence of express statutory restrictions on categorical grants of parole to permit the entry of thousands of Cubans between 1959 and 1961. Ira Kurzban, American Immigration Council, Kurzban's Immigration Law Sourcebook 685 (14th Ed. 2013) ("Kurzban"). Amendments in the 1980 Refugee Act[9] proved ineffective, and in 1996 Congress restricted agency discretion to authorize parole to "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit," strengthening the bar against group parole. IIRIRA §602, P.L. 104-208 (1996). "By enacting this new limitation

[9] INA §212(d)(5)(B), 8 U.S.C. §1182(d)(5)(B)(1980).

on the AG's authority, Congress clearly expressed its desire to channel people through the refugee or asylum process . . . rather than permitting . . . broad discretionary authority . . ." Kurzban at 685. Congress acted out of "concern that parole under §1182(d)(5)(A) was being used by the executive to circumvent congressionally established immigration policy." *Cruz-Miguel v. Holder*, 650 F.3d 189, 198-200 (2nd Cir. 2011)(citing H.R. Rep. No. 104-169, pt.1, at 140-41 (1996)).

"Congress did not place the decision as to which applicants for admission are placed in removal proceedings into the discretion of the Attorney General, *but created mandatory criteria*." *Succar v. Ashcroft*, 394 F.3d 8, 10 (1st Cir. 2005) (*citing* 8 U.S.C. §§ 1225(b)(1), (b)(2)) (emphasis added). Not until the illegal alien has received a removal order and exhausted any appeals thereto has Congress delegated significant discretion to DHS. IIRIRA returned authority over aliens with final orders to DHS, establishing a default removal period, and in some instances mandating detention pending physical removal. 8 U.S.C. § 1231(a)(1)(A), (a)(2).[10] During the removal period Congress has restricted DHS discretion to two actions: (a) Release certain aliens detained beyond the statutory removal period under an order of supervision, *see* 8 U.S.C. § 1231(a)(6), or (b) for

[10] The moment when an alien becomes subject to detention under 8 U.S.C. § 1231 rather than 8 U.S.C. § 1226 is defined by § 1231, which provides that the removal period begins on the latest of three dates. 8 U.S.C. § 1231(a)(1)(B).

an alien detained upon arrival at a port of entry, to stay the removal order if immediate removal is "not practical." 8 U.S.C. § 1231(c)(2); 8 C.F.R. § 241.6.

Only in this penultimate phase, where DHS must physically effectuate the final removal order, has Congress actually authorized a limited exercise of discretion based on resource constraints. DHS may administratively select the combination of fines, prison sentences, and suspension of such sentences that will most efficiently effect the removal or voluntary departure of such aliens. *See e.g.* 8 U.S.C. §§ 1253(a) (Penalty for failure to depart), 1253(b) (Willful failure to comply with terms of release under supervision), 1229c (Voluntary departure).

II. The 2011 Morton Memoranda and the 2012 Napolitano DACA Directive are Purely Extra-Statutory Statements of Policy Which Rely on an Extra-Statutory 2000 Policy Memorandum Which Ignores Congress's Restrictions on Discretion

After the 1996 amendments, any claims of post-IIRIRA discretion should be limited. Yet the 2011 Morton memoranda and 2012 Napolitano DACA Directive at issue in this case assert a vastly expanded view of agency "discretion," relying primarily upon a 2000 agency memorandum regarding "prosecutorial discretion" written by former INS Commissioner Doris Meissner ("Meissner Memo").[11]

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[11] Memorandum from Doris Meissner, Commissioner of Immigration and Naturalization Service, on Exercising Prosecutorial Discretion (Nov. 17, 2000), *available at* http://www.legalactioncenter.org/sites/default/files/docs/lac/Meissner-2000-memo.pdf (last visited September 17, 2014)

The Meissner Memo argued that agency prosecutorial discretion was inherent in civil as well as criminal law, allowing immigration officials to exercise discretion on a categorical basis in a broad range of immigration actions, including deferred action. Meissner Memo, at 1. Meissner acknowledged the "1996 amendments to the INA which limited the authority of immigration judges to provide relief from removal in many cases" as the impetus for "increased attention to the scope and exercise of the Immigration and Nationality Service's prosecutorial discretion." *Id.* However, Meissner ignores that the Constitution delegates nearly all immigration-related powers to Congress, *Harisiades v. Shaugnessy*, 342 U.S. 580, 596-97 (1952) (Frankfurter, J., concurring). Thus, the President and federal agencies may not ignore statutory mandates or prohibitions merely because of a policy disagreement with Congress over resource allocations. *See Lincoln v. Vigil*, 508 U.S. 182, 193 (1993). The President may disregard a statutory mandate on the Executive only on constitutional grounds. *In re Aiken County*, 725 F.3d 255, 266 (D.C. Cir. 2013).

Meissner created a novel legal standard for prosecutorial discretion where the INS had general authority to act unless Congress expressly stated otherwise: "As a law enforcement agency, the INS generally has prosecutorial discretion within its area of law enforcement *unless that discretion has been clearly limited by statute in a way that goes beyond standard terminology*." *Id.* (emphasis added).

That ignores the principle that "an agency literally has no power to act . . . unless and until Congress confers power upon it." *Luminant Generation Co., LLC v. United States EPA*, 675 F.3d 917, 932 (5th Cir. 2012) (*quoting Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)).

Meissner also asserted a radically expansive interpretation of the limiting language, in which "shall" might not really mean "shall":

> For example, a statute directing that the INS "shall" remove removable aliens would not be construed by itself to limit prosecutorial discretion, but the specific limitation on releasing certain criminal aliens in section 236(c)(2) of the INA evidences a specific congressional intention to limit discretion not to detain certain criminal aliens in removal proceedings that would otherwise exist.

Id. at 3. The Supreme Court has rejected this theory, *see Lopez v. Davis*, 531 U.S. 230, 241 (2001) (noting Congress' "use of a mandatory 'shall' . . . *to impose discretionless obligations*"), which is also an argument DHS presents to this Court. Brief for the Federal Appellees/Cross-Appellants at 84-85.

Repeatedly, Meissner baldly asserted that federal agencies, and the immigration service in particular, possess absolute discretion over enforcement:

> Even when an immigration officer has reason to believe that an alien is removable and that there is sufficient evidence to obtain a final order of removal, it may be appropriate to decline to proceed with that case. This is true even when an alien is removable based on his or her criminal history and when the alien–if served with an NTA–would be subject to mandatory detention. The INS may exercise its discretion *throughout the enforcement process*.

Id. at 6 (emphasis added). This paragraph, in particular, gives the Plaintiff/Appellant/Cross-Appellee immigration agents cause to believe that their employer will punish them if they do what the statute requires.

CONCLUSION

"[T]he courts are the final authorities on issues of statutory construction. They must reject administrative constructions of the statute . . . that are inconsistent with the statutory mandate or that frustrate the [policies] that Congress sought to implement." *Federal Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 31-32 (1982). Amicus respectfully requests that the Court grant the relief sought by Appellants/Cross-Appellees in this cross-appeal.

DATE: September 17, 2014

Respectfully Submitted,

Amicus Curiae

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Dated: __September 17, 2014_____

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I hereby certify that on September 17, 2014, I electronically filed a copy of the foregoing Brief *Amici Curiae* using the ECF System for the Court of Appeals for the Ninth Circuit, which will send notification of that filing to all counsel of record in this litigation.

Dated: September 17, 2014

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No. 14-10049 Christopher Crane, et al v. Jeh Johnson, et al
USDC No. 3:12-CV-3247

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Plaintiffs - Appellants Cross-Appellees

v.

JEH CHARLES JOHNSON, SECRETARY, DEPARTMENT OF HOMELAND SECURITY; JOHN SANDWEG, in His Official Capacity as Director of Immigration and Customs Enforcement; LORI SCIALABBA, in Her Official Capacity as Acting Director of United States Citizenship and Immigration Services,

Defendants - Appellees Cross-Appellants

United States Court of Appeals

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You must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see FED R. APP. P. 12(b) and 5TH CIR. R. 12 & 46.3. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov. If you fail to electronically file the form, the brief will be stricken and returned unfiled.

Once you have prepared your sufficient brief, you must email it to: Shawn_Henderson@ca5.uscourts.gov for review. If the brief is in compliance, you will receive a notice of docket activity advising you that the sufficient brief has been filed.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Shawn D. Henderson, Deputy Clerk
504-310-7668

cc:
Mr. Nicolas Chavez
Mr. Jeffrey A. Clair
Mr. David G. Hinojosa
Mr. Lawrence John Joseph
Mr. Peter Michael Jung
Mr. Adam David Kirschner
Dr. Kris William Kobach
Mr. Charles Roth
Mr. Michael Jay Singer
Ms. Beth Werlin

Caption to Use:

CHRISTOPHER L. CRANE; DAVID A. ENGLE; ANASTASIA MARIE CARROLL; RICARDO DIAZ; LORENZO GARZA; FELIX LUCIANO; TRE REBSTOCK; FERNANDO SILVA; SAMUEL MARTIN; JAMES D. DOEBLER; STATE OF MISSISSIPPI, by and through Governor Phil Bryant,

Plaintiffs - Appellants Cross-Appellees

v.

JEH CHARLES JOHNSON, SECRETARY, DEPARTMENT OF HOMELAND SECURITY; JOHN SANDWEG, in His Official Capacity as Director of Immigration and Customs Enforcement; LORI SCIALABBA, in Her Official Capacity as Acting Director of United States Citizenship and Immigration Services,

Defendants - Appellees Cross-Appellants