

U.S. Supreme Court to Decide If Immigration Law Preempts State Law Prosecution

Article By:

Amy L. Peck

Michael H. Neifach

Collin O'Connor Udell

Does the Immigration Reform and Control Act (IRCA) preempt states from using information in Form I-9 to prosecute a person under state law? The U.S. Supreme Court has agreed to review a case involving prosecution for identity theft under Kansas law based on information in the Form I-9 Employment Eligibility Verification. *Kansas v. Garcia* (No. 17-834).

Background

Ramiro Garcia, Donaldo Morales, and Guadalupe Ochoa-Lara did not have social security cards. They were all convicted of identity theft in Kansas for using other people's social security numbers to gain employment in various restaurants. In September 2017, the Kansas Supreme Court reversed those convictions on the grounds that the state was prohibited from using information found on the defendants' I-9 forms to prove its case because such prosecution was preempted by the IRCA. *State v. Garcia*, 401 P.3d 588 (Kan. 2017).

Questions Presented

The State of Kansas petitioned the U.S. Supreme Court for review and, on March 18, 2019, the Court agreed to review the case. The Court will decide the following:

- Whether IRCA expressly preempts the states from using any information entered on or appended to a federal Form I-9, including common information such as name, date of birth, and social security number, in a prosecution of any person (citizen or alien) when that same, commonly used information also appears in non-IRCA documents, such as state tax forms, leases, and credit applications; and
- Whether IRCA impliedly preempts Kansas' prosecution of the defendants.

Kansas Supreme Court Opinion

IRCA expressly limits the use of information on or attached to I-9 forms. The Kansas Supreme Court held that the state may not use such information even if the information could be found elsewhere. In this case, the defendants' "fake" social security numbers also had been entered on their tax withholding forms. The Kansas Supreme Court's opinion would prevent all prosecutions by states based on false employment verification data supplied to employers on I-9 forms. Indeed, the broad effect of this was pointed out by Kansas Supreme Court Justice Daniel Biles in his dissent. Justice Biles noted that the decision would "wipe numerous criminal laws off the books" and that Congress "did not intend to immunize [defendants] from traditional state prosecutions for identity theft" by enacting IRCA.

The State of Kansas echoed the argument that the Kansas Supreme Court's opinion would prohibit the use of all sorts of identifying data in state criminal prosecutions that happened to also be found on I-9 forms.

Oral arguments in *Kansas v. Garcia* will take place during the U.S. Supreme Court's term starting in October 2019.

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