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SCOTUS Opinion: No Pre-emption for States to Use Federal Immigration Information to Enforce State Identity Theft Law

3 Mar 2020

Under federal law, employers must verify, through an I-9 form, that they have "verified" that each new employee "is not an unauthorized alien." In *Kansas v. Garcia*, three persons who were living in the United States illegally used the same false Social Security number on their I-9 forms, as well as their tax withholding forms, and were prosecuted under Kansas law that made it a crime to commit "identity theft." The Kansas Supreme Court vacated the convictions, holding that federal law precluded the state from using any information on the I-9 form for such prosecution. The Court, in a 5-4 decision by Justice Alito, reversed and remanded. First, the Court held that federal law did not expressly pre-empt state law, as the law itself only applied to penalties against employers for failing to provide the forms. Second, the Court held that information on an I-9 could be used if that same information was also on other forms, like the tax withholding forms that were used to prosecute the defendants. Finally, the Court did not find any implied pre-emption since the use of false information on those forms implicated issues not solely related to immigration. Justice Thomas, joined by Justice Gorsuch, filed a concurrence to argue that the Court should abandon "purposes and objectives" pre-emption altogether as mere "judicial guesswork." Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, concurred that federal law did not expressly preempt the prosecutions, but argued that they should be preempted anyway since federal law occupied the field of addressing fraud in work authorization.

A link to the opinion is here.

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TAGGED: scotus, Immigration, SCOTUS opinion, Pre-emption, Identity Theft, Kansas v. Garcia, tax withholding forms, I-9 form