No. 22-1198

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MAINE FOREST PRODUCTS COUNCIL, PEPIN LUMBER, INC., and STEPHANE AUDET,

Plaintiffs-Appellees

v.

PATTY CORMIER, in her official capacity as DIRECTOR OF THE MAINE BUREAU OF FORESTRY, and AARON FREY, in his official capacity as ATTORNEY GENERAL FOR THE STATE OF MAINE,

Defendants-Appellants

On Appeal from The United States District Court for the District of Maine

APPELLANTS' REPLY BRIEF

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INTRODUCTION

Appellees' lawsuit challenging Public Law 280[1] rests on three inaccurate characterizations of the law's nature and impact.

First, Appellees label Public Law 280 an immigration law. It isn't. Public 280 does not regulate or restrict the entry of foreign nationals into Maine. It instead penalizes employers and landowners for hiring non-residents for point-to-point forest product transportation in Maine, in essence setting a qualification for employment that incentivizes the hiring of local workers. The mere fact that Public Law 280 will likely have a downstream impact on H-2A decisions—as any number of laws could—does not render it an immigration law. Rather, it is an employment law in the realm of traditional state regulation, such that the presumption against preemption applies.

Second, Appellees suggest that states like Maine play no more than a ministerial role in H-2A decisions, such that Public Law 280 impermissibly wrests immigration authority from the federal government. This suggestion is inaccurate. The H-2A program requires states to affirmatively ensure compliance with its rules including, among other requirements, adherence to state employment laws. Public Law 280 is one such law, one that reflects the State of Maine's legitimate concern

[1] Technically, the law at issue is Chapter 280 of the Public Laws of 2021 (*see* App. 18), but this brief continues use of "Public Law 280" to avoid confusion (*see* Blue Br. 1).

about the viability of its logging industry, a central consideration in the H-2A application process. And while the Act most likely will inform both employers' and federal officials' H-2A decisions, Public Law 280 does not direct how the federal government acts, in its discretion, on those applications.

Third, Appellees assert that Public Law 280 treats "nonimmigrants" differently than residents. Not so. Because the law does not describe the initial timeframe or process of implementation as to individuals who have begun work under the H-2A program, the Attorney General has interpreted Public Law 280 to not apply to those who have already obtained H-2A status. Pursuant to this interpretation, the law indirectly affects only those who live abroad and may seek employment in point-to-point forest product transportation in Maine in the future. Public Law 280 thus mirrors the H-2A program's differential treatment of the same distinct population, as well as its concern about the impact of nonimmigrant employment on domestic labor markets, such that only rational basis review is appropriate.

Accordingly, Appellants Director Patty Cormier and Attorney General Aaron Frey (hereinafter the "State") urge this Court to vacate the preliminary injunction.

ARGUMENT

I. The Attorney General Permissibly Offered a Limiting Construction of Public Law 280

Under Maine law, statutes are "presumed to be constitutional." *Kenny v. Dep't of Human Servs.*, 1999 ME 158, ¶ 7, 740 A.2d 560; *accord Dorr v. Woodward*, 2016 ME 79, ¶ 7, 140 A.3d 467; *see also Lemon v. Kurtzman*, 411 U.S. 192, 208 (1973) (describing "one of the first principles of constitutional adjudication—the basic presumption of the constitutional validity of a duly enacted state . . . law"). "[I]f [a] statute can reasonably be read in such a way" as to be "in accord with constitutional requirements," whether state or federal, it must be so interpreted. *State v. Letalien*, 2009 ME 130 ¶ 15, 985 A.2d 4; *see also Rideout v. Riendeau*, 2000 ME 198, ¶ 14, 761 A.3d 291. Ambiguity is therefore not a strict prerequisite to employ the canon of constitutional avoidance, despite Appellees' claim to the contrary (Red Br. 30). Rather, a statute need only be "susceptible of a reasonable interpretation which would satisfy constitutional requirements." *Portland Pipe Line Corp. v. Envt'l Imp. Comm'n*, 307 A.2d 1, 15 (Me. 1973); *accord Rideout*, 2000 ME 198, ¶ 14, 761 A.3d 291.[2]

[2] This approach accords with how federal courts assess acts of Congress, whereby they must "first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

That said, there *is* ambiguity here. Public Law 280 is silent as to how it should initially be implemented. It describes neither when the statute's prohibitions take effect—an important issue given the seasonal nature of H-2A employment—nor whether a business or landowner who has already contracted with a non-resident to transport forest materials for the season is in violation. *See Griffin v. Griffin*, 2014 ME 70, ¶ 18, 92 A.3d 1144 (defining "ambiguous" as "reasonably susceptible to multiple interpretations" or "silent on a particular point" (internal quotation marks omitted)).

In furtherance of the canon of constitutional avoidance, given that Public Law 280 would interfere with the H-2A program if it changed the terms of seasonal employment that had already begun,[3] the Maine Attorney General offered a narrowing construction. Specifically, and as argued below (*see* Defs.' Opp'n Mem. at 4-5, 14 (ECF No. 23); *see also* Blue Br. 6), Public Law 280 should not be construed to apply to those who have already been hired for the season under the H-2A program.[4]

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[3] To be clear, the Maine Attorney General never found, as Appellees represent, that Public Law 280 is preempted and violated the Equal Protection Clause (Red Br. 16). Rather, the Attorney General raised these potential concerns (App. 117-20), and indeed attempts to address them with the above-referenced limiting construction.

[4] As noted in the State's principal brief and discussed further below, it is likely that, as a result of Public Law 280, H-2A applications will not be approved in the future for point-to-point forest product transportation in Maine (*see, e.g.,* Blue Br. 25).

This construction is consistent with the text of the statute given its silence on questions of initial implementation, and it addresses the short-term preemption problem occasioned by the fact that some H-2A workers[5] are currently employed. Further, constitutional avoidance notwithstanding, the Maine Attorney General's authoritative constructions of Maine law are entitled to deference. *See March v. Mills* 867 F.3d 46, 60 n.11 (1st Cir. 2017) (acknowledging a duty to defer to Maine Attorney General's authoritative construction of state statute); *see also Forsyth City, Ga. v. Nationalist Movement*, 505 U.S. 123, 131 (1992) ("In evaluating respondent's facial challenge, we must consider the [government's] authoritative constructions of the ordinance, including its own implementation and interpretation of it."). The limiting construction should accordingly be followed by this Court.

The Attorney General's limiting construction meaningfully affects the federal preemption and the Equal Protection Clause analysis. Nonetheless, Appellees largely refuse to engage with it, rejecting the limitation as irrelevant (*see* Red Br. 30-31). As described below, this refusal reflects a critical misapprehension of the constitutional issues at hand.

[5] Appellees take issue with the use of the word "visa," (*see* Red Br. 4 n.2), despite its use by all parties throughout the record, and its appearance in the applicable regulations (*see generally* 8 C.F.R. § 214.2). Nonetheless, in an effort to bring uniformity to the briefing and reduce confusion, the State limits use of the word "visa" here.

II. Public Law 280 Is Not in Conflict with the H-2A Program

A. Public Law 280 is an employment law, not an immigration law, such that the presumption against preemption applies.

Appellees do not argue that Public Law 280 directly regulates the travel of foreigners across the border, or their presence in this country. They likewise do not deny that employment laws are entitled to a presumption against preemption.[6] Instead, Appellees maintain that Public Law 280 is an immigration law, and not an employment law, based on its downstream impact. Specifically, they claim that the

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[6] Appellees in a footnote characterize the law as improperly protectionist, citing Supreme Court dormant commerce clause jurisprudence (Red. Br. 23 n.10 (citing *City of Phila v. N.J.*, 437 U.S. 617 (1978)); *see also id.* 45-46). They have not alleged a dormant commerce clause claim in this case, however, and the State maintains that its interest in protecting its forestry workers is legitimate, particularly given it is an interest explicitly recognized in H-2A statues and rules. *See Powers v. Harris*, 379 F.3d 1208, 1218-19 (10th Cir. 2004); *Merrifield v. Lockyer*, 547 F.3d 978, 991 n.15 (9th Cir. 2008).

Further, in a separate footnote, Appellees question the State's reliance on *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987); *Met. Life Ins. Co. v. Mass.*, 471 U.S. 724 (1985), and *R.I. Hosp. Assoc. v. City of Providence*, 667 F.3d 17 (1st Cir. 2011) (Red Br. 23 n.9). The State cites these cases not for their analysis of preemption in the context of the National Labor Relations Act, but rather for the general proposition that employment law is an area of traditional state police power. *See, e.g., Coyne*, 482 U.S. at 21 ("[T]he establishment of labor standards falls within the traditional police power of the State."); *Met. Life Ins.*, 471 U.S. at 756 ("[S]tates possess broad authority under their police powers to regulate the employment relationship to protect workers within the State."); *R.I. Hosp.*, 667 F.3d at 33 (same).

On this point, Appellees misapprehend a footnote in *Rhode Island Hospitality* as identifying a "crucial" distinction between "laws of general applicability" and "targeted efforts to undermine federal policy" (Red Br. 23 n.9). The footnote makes no such distinction. It indicates only that the case at bar did not involve a labor standard like that which that the Seventh Circuit found inconsistent with the NLRA. *See* 667 F.3d at 33 n.15.

law's "unavoidable effect" is to bar individuals from crossing the border to work in point-to-point forest product transportation in Maine, such that it is an immigration law not protected by the presumption (Red Br. 24). This argument is flawed for a number of reasons.

First, Public Law 280 does not bar anyone from entering the country, directly or indirectly (*see* (Red Br. 24). The law does not even regulate potential H-2A employees, but rather employers and landowners. Further, Public Law 280 would likely result in (a) employers not seeking H-2A workers for point-to-point forest product transportation in Maine, and/or (b) federal officials, pursuant to H-2A program rules pertaining to state employment law and labor conditions, choosing not to grant any such applications. As to those already granted H-2A status, pursuant to the Attorney General's limiting construction, Public Law 280 would not bar their employment in Maine, never mind their presence in the country.

Second, far from "empty semantics" or "creative statutory interpretation" (Red Br. 22), Public Law 280 is on its face an employment law. By penalizing employers and landowners for hiring nonresidents, it in essence creates a qualification for employment in point-to-point forest product transportation in Maine that incentivizes the employment of local workers. *See De Canas v. Bica*, 424 U.S. 351, 356-57 (1976) (regulation of employment of "illegal aliens" to prevent "deleterious effects on [a state's] economy" is "within the mainstream" of a state's

"police powers"); *accord Capron v. Off. of Att'y Gen. of Mass.*, 944 F.3d 9, 22 (1st Cir. 2019); *see also Buck .v. People of State of Cal.*, 343 U.S. 99, 102 (1952) (setting of employment qualifications is an exercise of state police power). The mere existence of a downstream effect on immigration decisions does not suggest otherwise. *De Canas*, 424 U.S. at 355 ("[T]he fact that aliens are the subject of a state statute does not render it a regulation of immigration . . . ."); *Capron*, 944 F.3d at 24 ("[T]he mere fact that a state law implicates the interests of persons who are the subject of federal regulation, even with respect to immigration, does not alone provide a basis for inferring that the federal regulatory scheme was intended to preempt . . . state law, at least when it comes to a matter of such quintessentially local concern as employment.").

Consider, for example, if Maine had developed a subsidy program for Maine agricultural workers, offering discount housing and tax breaks, to increase the number of local workers available for positions that traditionally have been filled by H-2A workers.[7] That law very well could result in employers not filing H-2A applications, or federal authorities not granting those applications, because of the availability of ample local employees. *See*, *e.g.*, 8 U.S.C. § 1188(a)(1)(A). Even so,

[7] This is not merely hypothetical. Maine does, for example, already require its Department of Labor to promote the hiring of Maine workers in the forest products industry, and to provide education and training opportunities. *See* 26 M.R.S. § 873(4-A) (Westlaw).

despite its impact on the H-2A program, such a law would straightforwardly not be an immigration law. *Cf. Rogers v. Larson*, 563 F.2d 617, 626 (3d Cir. 1977) ("[P]rograms to improve the quality of the local labor market . . . in no way conflict with . . . immigration procedures . . . .").

The same is true here. Because "the text of the law[]" regulates employment, Public Law 280's "effects in the area of immigration" do not place it beyond the presumption against preemption. *Puente Arizona v. Arpaio*, 821 F.3d 1098, 1102, 1104 (9th Cir. 2016); *see also Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009) (applying presumption even where challenged provision touched on area of historic federal regulation); *cf. Rogers*, 563 F.2d at 622 ("[T]he subject matter of employment of aliens is not one that permits no other conclusion but that Congress has pre-empted state regulation.").

This Court's summary of the Supreme Court's *De Canas* decision in *Capron*, 944 F.3d 9—a case in which the Court did not need to decide whether to apply the presumption against preemption—confirms this understanding. The *Capron* Court observed that in *De Canas*, the Supreme Court applied the presumption against preemption because the California law at issue did not govern "who should or should not be admitted into the country and the conditions under which a legal entrant may remain"—the sole portion of the case quoted by Appellees (Red. Br. 24)—but rather "merely concerned the power to employ undocumented aliens already in the

country." *Capron*, 944 F.3d at 22. Public Law 280 likewise does not dictate who may enter the country or under what circumstances they may remain, but rather merely concerns the employment of nonresidents in particular position.

The district court therefore erred in not applying the presumption against preemption. And, as made clear below, Appellees have not demonstrated that Congress rebutted that presumption by a "clear and manifest purpose." *Wyeth*, 555 U.S. at 565; *accord Pub. Int. Legal Found., Inc. v. Bellows*, No. 1:20-CV-00061-GZS, 2022 WL 656762, at *5 (D. Me. Mar. 4, 2022).

B. Public Law 280 does not conflict with, and therefore is not preempted by, the H-2A program.

"The field of alien employment tolerates harmonious state regulation." *LeClerc v. Webb*, 419 F.3d 405, 424 (5th Cir. 2005). But the H-2A program goes a step further than merely *tolerating* state regulation; it anticipates it. While the ultimate decision of whether to grant an H-2A application falls with federal authorities, that decision depends on both state law and the participation of state governments in ways far greater than the "ministerial role" that Appellees describe (Red Br. 6). Appellees have therefore not established that Public Law 280 meets "the high threshold required for conflict preemption." *Cultural Care, Inc. v. Off. of the Att'y Gen. of Mass.*, No. 16-CV-11777-IT, 2017 WL 3272011, at *8 (D. Mass. Aug. 1, 2017), *aff'd sub nom. Capron*, 944 F.3d 9.

As described in the State's principal brief, the regulations governing H-2A entrust local government—in the form of State Workforce Agencies ("SWAs")—with significant responsibilities (*see, e.g.,* Blue Br. 8-10). It is SWAs, for example, that facilitate the recruitment of local residents for positions that employers seek H-2A workers, and review employer job orders to ensure compliance with H-2A program rules and state law. *See* 20 C.F.R. §§ 653.501(c), 655.121(a)(1) & (b)(1). This role is hardly "ministerial." *See, e.g., Garcia v. Stewart*, 531 F. Supp. 3d 194 (D.D.C. 2021) (describing SWA process for conducting prevailing wage surveys as providing SWAs with "considerable discretion"); Add. 27 n.12 (nothing that SWA must "determine[] that the job order is compliant"). Indeed, absent approval of the SWA, the only way an employer can proceed with its application is via an application to federal authorities to resolve the dispute. 20 C.F.R. § 655.121(b)(2).

The H-2A regulations also explicitly require that H-2A "working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws." 20 C.F.R. § 653.501(c)(3)(iii); *cf.* 8 C.F.R. §§ 214.2(h)(5)(i) & (v) (requiring employer to establish that beneficiary of H-2A status meets the minimum requirements for employment). This reference—and deference—to state law demonstrates the weakness of Appellees' preemption position. *See Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166-167 (1989) (case for preemption

is "particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to . . . tolerate whatever tension there is between them" (internal quotation marks omitted)); *cf. Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 241 (2d Cir. 2006) ("mere fact of 'tension' between federal and state law is generally not enough to establish" preemption, "particularly when the state law involves the exercise of a traditional police power").

The fact that H-2A status may only be granted in compliance with state law also underscores the program's broader tolerance for change.[8] As state employment laws and labor conditions vary over time, they will in turn affect when and how H-2A workers may be used. But far from impermissibly interfering with federal administration of the program—or undermining a rigid judgment about the labor market (*see* Red Br. 29 n.11)—these changes, inputs on which H-2A decisions are based, are contemplated, and indeed part of, the H-2A regulatory design. The "patchwork" Appellees fear is a feature of a program explicitly designed to respond to local factors (Red Br. 44).

Public Law 280 is one such change, one that is consistent with the purposes of the program. H-2A status is available to "bring nonimmigrant workers to the

[8] The regulations also contemplate changes in circumstances that warrant revocation of H-2A status. 8 C.F.R. § 214.2(h)(11)(iii)(A).

U.S.," but only where doing so "will not adversely affect the wages and working conditions of U.S. workers similarly employed." 20 C.F.R. § 655.103(1); *see also* 8 U.S.C. § 1188(a)(1)(A)-(B). Public Law 280 reflects Maine's concern about this precise issue in one particular position in one of the state's most important industries, and therefore it is not in conflict with federal law. *Cf. Capron*, 944 F.3d at 32 (finding no preemption given state law and goals of federal program did not conflict).

That said, as noted above, Public Law 280 does not direct a particular outcome for any given H-2A application, never mind "impose [its] own judgment" on federal officials (Red Br. 32). Just like the aforementioned hypothetical state subsidy program for agricultural workers, while Public Law 280 likely will lead to federal officials denying H-2A status—or dissuade employers from filing those applications in the first instance—the decision of whether to grant labor certifications and, ultimately, H-2A applications remains firmly with federal officials. There is thus no conflict between Public Law 280 and the H-2A program.

The most applicable precedent is thus, for the reasons described in the State's principal brief, this Court's decision in *Capron* (*see* Blue Br. 22-23). Appellees principally respond to *Capron* by citing the Second Circuit's decision in *Dandamudi*

v. Tisch, 686 F.3d 66 (2d Cir. 2012) (Red Br. 34-35).[9] But, as argued in the State's principal brief (Blue Br. 25), that decision is materially distinct. At issue in *Dandamudi* was a New York law that barred the plaintiffs in that case, who had already been admitted under the H-1B program and were accordingly practicing as pharmacists, from renewing their licenses. 686 F.3d at 69, 71 n.5. New York argued that a licensure requirement in the applicable regulations nonetheless permitted the restriction. *Id.* at 80. Here, by contrast, and by virtue of the Attorney General's limiting construction, Public Law 280 does not bar current H-2A workers from completing their terms of employment. Further, the H-2A regulations explicitly require compliance with state "employment-related laws," 20 C.F.R. § 653.501(c)(3)(iii), and they contemplate the same sensitivity to local conditions that animate Public Law 280.

The Third Circuit's decision in *Rogers v. Larson* is equally inapplicable here. The Virgin Islands law in that case required employers to terminate the employment of H-2A workers when local workers became available or the public interest otherwise demanded it. 563 F.2d at 618-19, 625-26. In other words, *after* the federal

[9] Appellees also claim that *Capron* is inapposite because Public Law 280 "applies specifically and by design only to H-2A recipients." (Red Br. 35). While the significance of that distinction is unclear insofar as preemption is concerned, Appellees' claim is also plainly inaccurate. Public Law 280 applies to all who seek employment in point-to-point forest product transportation in Maine and, as noted above, it does not apply to current H-2A workers.

government determined that a given H-2A worker would not adversely affect the domestic labor market, the Virgin Islands law permitted its government to make a contrary determination, undoing the decision of federal officials. *Id.* at 626. Here, by contrast, and again by virtue of the Attorney General's limiting construction, Public Law 280 does not target current H-2A status employees at all; does not prevent the granting of H-2A applications; and on its face does not even require the termination of any individual's employment. It rather only penalizes nonresident employment in a single position. *Cf. id.* at 97 (recognizing that "local and federal law can coexist in this area without duplication or conflict").

This Court's decision in *National Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999), on which Appellees heavily rely (Red Br. 32-33, 36), is even farther afield. In that case, Massachusetts stepped directly into foreign policy, prohibiting state agencies from contracting with entities that did business with Burma, running afoul of a "carefully balanced" approach to foreign relations with Burma that "Congress ha[d] constructed." *Id.* at 45, 76. Appellees' focus on single words or phrases in *Natsios* in an attempt to analogize it to *this* case thus falls flat (Red Br. 32). Public Law 280 straightforwardly does not place Maine in the position of making foreign policy decisions. *See Fac. Senate of Fla. Int'l Univ. v. Winn*, 477 F. Supp. 2d 1198, 1206 (S.D. Fla. 2007) (distinguishing *Natsios* as concerning state law that had more than an incidental or indirect effect on foreign countries, and

which "diverged substantially" from federal law regarding the same subject matter). Nor, for that matter, does it permit Maine to make *immigration* decisions. Rather, as explained above, Public Law 280 is consistent with the applicable regulations, and it preserves federal government discretion in deciding H-2A applications.

III. Public Law 280 Does Not Violate the Equal Protection Clause Because It Affects Nonresidents Abroad in a Manner Consistent with Federal Law

Appellees misperceive the Equal Protection analysis in this case. The "alienage-based classification" at issue is not that of nonimmigrants authorized to work in the United States (Red. Br. 38-40). While the series of cases that Appellees cite do describe "aliens" as a suspect class, in each such case, the class of individuals in question were already lawfully resident in this country (*see* Red Br. 39-40). *See also Dandamudi*, 686 F.3d at 69 (involving a "statutory scheme that seeks to prohibit *some legally admitted aliens*" from acting as pharmacists (emphasis added)).

Here, in part due to the Attorney General's limiting construction, and as set forth in the State's principal brief (Blue Br. 29-31), the class of individuals at issue is nonresidents who, though residing abroad, may be interested in obtaining authorization to work in the United States on a temporary basis through the H-2A program. Consistent with the very existence of that program, these individuals have no constitutionally protected right to work in, or even enter, the United States, *see Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) ("unadmitted and nonresident

alien" has "no constitutional right of entry to this country as a nonimmigrant or otherwise"), and instead must satisfy a litany of criteria—compliance with state employment law, approval by the SWA (except in limited circumstances), and a lack of adverse impact on the domestic labor market—to gain the privilege of H-2A employment (Blue Br. 30-31). In other words, while the Equal Protection Clause requires that similarly situated individuals be treated alike, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *Tapalian v. Tusino*, 377 F.3d 1, 5 (1st Cir. 2004), the prospective employees indirectly affected by Public Law 280 are meaningfully dissimilar, *cf. Graham v. Richardson*, 403 U.S. 365, 371 (1971) (nothing that "person" denotes lawfully admitted resident "aliens" and citizens of the United States, such that both noncitizens and citizens are entitled to "equal protection of the laws of the State *in which they reside*" (emphasis added)).

It is in this context that *Bruns v. Mayhew*, 750 F.3d 61 (1st Cir. 2014), is instructive (*see* Blue Br. 30). In *Bruns*, because the disparate treatment of nonresidents was attributable to federal law—federal medical benefits were contingent on a durational residency requirement—this Court concluded that the appellants were not "similarly situated" to those who received benefits. *See id.* at 71. Maine's refusal to provide certain state medical benefits to the same class of "legal aliens" was therefore only subject to rational basis review. *See id.* at 63, 72.

Here, disparate treatment is also evident on the face of federal law—employment is contingent on compliance with the aforementioned regulatory criteria—such that the class of individuals who may seek H-2A employment are not similarly situated to the domestic workforce (Blue Br. 30-31). Because Public Law 280 distinguishes the same class of individuals in the same context, only rational basis scrutiny is appropriate. *See Chiayu Chang v. U.S. Citizenship & Immigr. Servs.*, 254 F. Supp. 3d 160, 162 (D.D.C. 2017) (denial of visas did not implicate suspect class, such that only rational basis review was required).[10]

Appellees' contention that the uniform rule doctrine is inapplicable here also rests on a false premise (Red Br. 42-43). *Plyler v. Doe*, 457 U.S. 202 (1982), does not stand for the proposition that states may act *only* pursuant to "federal direction" (Red Br. 43), or that state law must exactly replicate federal law to trigger rational basis scrutiny (Red Br. 42-43). The *Plyler* court recognized that states "have some authority to act with respect to illegal aliens," and that state laws need only "mirror[] federal objectives and further[] a legitimate state goal." *Plyler*, 457 U.S. at 225.

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[10] Notably, while "alien[s]" are "accorded a generous and ascending scale of rights as [they] increase [their] identity with our society," *Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950), as described above, Public Law 280 indirectly affects individuals who have no such identity, *see United States v. Verdugo-Urquidez*, 494 U.S. 259, 269 (1990) (recognizing that "aliens" have no Fifth Amendment rights outside the territory of the United States); *see also Ibrahim v. Dep't of Homeland Sec.*, No. C 07-00545 WHA, 2009 WL 2246194, at *7 (N.D. Cal. July 27, 2009) ("The Constitution . . . does not apply extraterritorially to protect non-resident aliens outside our country.").

Public Law 280 does so. It does not engage in a classification of "aliens" itself, but rather is an employment law that mirrors distinctions evident in the H-2A program rules. It is the type of law contemplated by, and consistent with, H-2A regulations and the state's role pursuant to them. *Cf. Bruns*, 750 F.3d at 71 n.3 (suggesting state's exercise of discretion contemplated by federal law consistent with uniform rule). Moreover, it is animated by one of the central concerns of the of the program: protecting the domestic labor market. *See Soskin v. Reinertson*, 353 F.3d 1242 (10th Cir. 2004) (state law entitled to rational basis of review where state law "effectuate[s] national policy"). Therefore, only rational basis scrutiny is warranted.

CONCLUSION

For the reasons discussed above, and those identified in its principal brief, the State respectfully requests that the Court vacate the district court's order enjoining enforcement of Public Law 280 and remand for further proceedings.

Dated: July 13, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6). I further certify that all text in this brief is in proportionally spaced Times New Roman Font and is 14 points in size. I further certify that, according to the word count function of the word-processing software used to prepare this opposition brief (Microsoft Word 365), this brief contains 4,705 words.

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CERTIFICATE OF SERVICE

I, Jason Anton, hereby certify that on July 13, 2022, I electronically filed the Appellants' Reply Brief with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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