No. _____

In The

Supreme Court of the United States

FRANCISCO BROCK,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner, Francisco Brock, was one of twelve undocumented workers of which eleven, including Brock, were identified as Hispanic. On July 18, 2012, they were rounded up in a raid on Waste Pro USA, Inc., in Ft. Pierce, St. Lucie County, Florida, and charged with workers' compensation fraud for using a false social security number to obtain employment in violation of Section 440.105(4)(b)9, Fla. Stat., a felony of the 3rd degree.

Brock filed a motion to dismiss contending that he did not file a claim for workers' compensation nor cause to be presented any statement in support of a claim for workers' compensation.

The State filed a Traverse and Demurrer which stated that the State agreed that Brock did not file a workers' compensation claim.

The Circuit Judge dismissed the charge because the defendant did not file, claim, or receive workers' compensation benefits.

The State appealed to the Florida Fourth District Court of Appeal which reversed the circuit court's dismissal of the charge and remanded the case for further proceedings.

The question presented is:

The decision of the Florida court that the giving of a false social security number to obtain employment by an undocumented Hispanic worker is a

QUESTION PRESENTED – Continued

felony under the Florida Workers' Compensation Law violates the Supremacy Clause of the U.S. Constitution according to *Arizona v. United States*, 567 U.S. ___, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012), which holds that the federal government has preempted the field of immigration policy and chose not to criminalize such activity; therefore, the states may not do so.

PARTIES TO THE PROCEEDINGS

Petitioner Francisco Brock was Defendant and Appellee and Petitioner below.

Respondent State of Florida was Plaintiff and Appellant and Respondent below.

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PETITION FOR A WRIT OF CERTIORARI

Francisco Brock respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida and the Florida Fourth District Court of Appeal in this matter.

OPINIONS BELOW

The decision of the Supreme Court of Florida is reported at 214 Fla. LEXIS 2892 (Sept. 29, 2014) and is reprinted in the Appendix (App.) at 1-2. The Florida Fourth District Court of Appeal's opinion is reported at 138 So. 3d 1060 (Fla. 1st DCA 2014) and is reprinted at App. 3-8.

JURISDICTION

The Supreme Court of Florida entered its judgment on September 29, 2014. The Florida Fourth District Court of Appeal entered its opinion on April 30, 2014. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The "Supremacy Clause" of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Art. VI, cl. 2, U.S. Const.

Florida Statute § 440.105(4)(b)9 provides:

> Whoever violates any provision of this subsection commits insurance fraud, punishable as provided in paragraph (f).
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> * * *
>
> It Shall be unlawful for any person:
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> * * *
>
> To knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits.

STATEMENT OF THE CASE

The petitioner, Francisco Brock, was one of twelve undocumented workers of which eleven, including Brock, were identified as Hispanic. (R. 3). They were rounded up in a raid on July 18, 2012, at Waste Pro USA, Inc., in Ft. Pierce, St. Lucie County, Florida, and charged with violating Section 440.105(4)(b)9, Fla. Stat., a felony of the third degree. (R. 3).

The handwritten portion of the "ARREST AFFIDAVIT" dated July 18, 2012, describes the charge as "W/C [workers' compensation] Fraud." (R. 1).

The typewritten portion of the "PROBABLE CAUSE AFFIDAVIT" dated July 18, 2012, describes the charge as "PRESENTING A FRAUDULENT SSN [social security number] FOR THE PURPOSE OF EMPLOYMENT AND BENEFITS (F.S. 440.105(4)(B)9) [sic], A FELONY OF THE 3RD DEGREE." (R. 2).

The probable cause affidavit relates that ReliaStar Life Insurance Company d/b/a ING, indicated a suspicion that numerous employees of Waste Pro USA, Inc., had submitted false social security numbers for the purpose of employment. The Fraud Division of the Florida Department of Financial Services conducted an inquiry of records of the Division of Unemployment and the Department of Revenue which indicated that employee wages were reported by Waste Pro USA, Inc., for Francisco Brock

using a social security number that was not issued to him. (R. 2).

The Fraud Division obtained an affidavit from Waste Pro USA, Inc., that the petitioner was hired on October 18, 2006, and that employee wages were reported to the State of Florida for the petitioner based on this social security number. Further, the petitioner completed a Homeland Security I-9 Employment Eligibility Verification form dated August 15, 2011, and again listed this social security number. (R. 2). The probable cause affidavit provided:

> Therefore, on or about 08/15/2011 FRANCISCO BROCK did knowingly present or cause to presented (sic) a false, fraudulent or misleading written statement to Waste Pro USA, Inc., as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits, in violation of Florida Statute, §440.15(4)(b)(9), a felony of the third degree. (R. 7).

However, the probable cause affidavit did not state that the petitioner had reported an on-the-job injury nor that he ever made a workers' compensation claim. (R. 2-6).

The Information dated July 26, 2012, filed July 27, 2012, identified the petitioner Francisco Brock as being "Hispanic" under the designation "RACE." (R. 3). The Information provided:

> B. Ct. 1. WORKERS' COMPENSATION FRAUD LESS THAN $20,000-EVIDENCE OF IDENTITY (F-3)
> August 15, 2011 **Francisco Brock** did knowingly present, or cause to be presented, a false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits, and the value of the benefits sought to be obtained was less then $20,000, in violation of Florida Statute 440.105(4)(b)9; (R. 4).

The case of the petitioner, Armando Lopez-Bock, aka Francisco Brock, and the case of Hector Jordan, aka Jordan Hector, were consolidated before Circuit Judge Robert R. Makemson.[1]

The defendants filed a motion to dismiss which among other things contended:

> The defendants did not file a claim for workers' compensation nor cause to be presented any statement in support of a claim for workers' compensation. (R. 8-9).

The State filed a Traverse and Demurrer dated March 1, 2013, which stated:

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[1] The companion case of *Jordan Hector v. State of Florida*, Fla. Sup. Ct. Case No. SC14-1207 is still pending before the Florida Supreme Court.

> 4. The State agrees that the Defendants did not file a workers' compensation claim. (R. 11-12).

A hearing was conducted on the motion to dismiss on March 1, 2013. At the hearing, the Judge stated at the end:

> I'm going to find that the State is required to prove that they obtained employment for the purpose of worker compensation benefits, either filing or supporting a claim for workers' compensation benefits, they're all tied together. The state has agreed that they have not claimed nor filed for workers' compensation benefits . . . (R. 26).

The final order of dismissal was entered on March 12, 2013, granting the motion to dismiss since there was consensus that the defendants did not file, claim, or receive workers' compensation benefits. App. at 9-10.

The State appealed to the Florida Fourth District Court of Appeal which entered an opinion dated April 30, 2014, reversing the circuit court's dismissal of the charge and remanding the case to the circuit court for further proceedings.

The Florida Fourth District Court of Appeal held:

> Here, the statute is clear and unambiguous. Section 440.105(4)(b)9 makes it a crime to "present . . . any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of

> obtaining employment. . . ." The fact that this clause is followed by the word "or" is important as it indicates the statute may be violated in more than one way: by presenting false or fraudulent documents for the purpose of obtaining employment *or* providing the false or fraudulent documents to file or support a workers' compensation claim.
>
> * * *
>
> Therefore, it seems clear that the legislature specifically intended to make it a felony for a person to knowingly present any false or misleading identification for the purpose of obtaining employment, *irrespective of the existence of any workers' compensation claim*. (Emphasis added).

State of Florida v. Brock, 138 So. 3d 1060, at 1061 (Fla. 4th DCA 2014). App. at 6.

Brock filed a petition for review in the Florida Supreme Court on the ground that this decision was in express and direct conflict with *Matrix Employee Leasing v. Hernandez*, 975 So. 2d 1217 (Fla. 1st DCA 2008) and contravened the U.S. Supreme Court's decision in *Arizona v. United States*, 567 U.S. ___, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012), which interpreted the Supremacy Clause to prohibit the states from criminalizing illegal aliens' obtaining employment.

By a 4 to 1 vote, the Supreme Court of Florida declined to accept jurisdiction to review the Florida

Fourth District Court of Appeal's *Brock* decision by order dated September 29, 2014. App. at 1-2.

REASONS FOR GRANTING THE PETITION

Francisco Brock is an undocumented Hispanic worker who was rounded up with other undocumented Hispanic workers in a raid on the Florida waste removal company where he worked and he was charged with workers' compensation fraud, a 3rd degree felony punishable by up to 5 years in prison.

It was alleged that he used a false social security number to obtain employment years earlier.

The Florida statute involved is part of the Florida Workers' Compensation Law, as amended in 2003. The statute provides that anyone who uses a false identity to obtain employment or file or pursue a workers' compensation claim is guilty of workers' compensation fraud. § 440.105(4)(b)9, Fla. Stat.

Francisco Brock never made a workers' compensation claim. He committed no workers' compensation fraud.

For this reason, the Circuit Judge dismissed the charges. On appeal, the Florida Fourth District Court of Appeal reversed and remanded for further proceedings.

The District Court of Appeal focused on the word "or" and concluded that a workers' compensation

claim was not a necessary element of the crime. It was enough if the employee used a false social security number to obtain employment.

The District Court of Appeal also stated that a reason a person uses a false social security number to obtain employment is to make a fraudulent workers' compensation claim aided by unethical doctors and unethical lawyers: "Many times illegal aliens are in league with unethical doctors and lawyers who bilk the workers' compensation system, these officials claim." App. at 7.

Incredible excuse for bigotry!

By a 4-1 vote, the Supreme Court of Florida declined to review this decision. App. at 1-2.

This holding is contrary to this Court's decision in *Arizona v. United States*, 567 U.S. ___, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012).

By this decision, Florida has now taken upon itself the authority to round up undocumented Hispanic workers to charge and convict them of a felony for using a fictitious social security number in order to obtain employment.

This flies in the face of *Arizona v. U.S.*, supra, which holds that the federal government has preempted the field of immigration policy and Congress has chosen not to criminalize what undocumented workers do to obtain employment. Therefore, the states may not do so.

By the *Brock* decision, Florida seeks to violate the laws of the United States so that it can imprison undocumented Hispanic workers. This must not be allowed in the United States of America.

The U.S. Constitution contains the Supremacy Clause. Art. VI, cl. 2, U.S. Const., which means that the laws of the United States are the supreme law of the land, the law of any state to the contrary notwithstanding.

In *Arizona v. United States*, 567 U.S. ___, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012), the U.S. Supreme Court held that the federal government has preempted the field of immigration policy by the Immigration Reform Control Act of 1986 (IRCA). This Court held:

> Unlike §3, which replicates federal statutory requirements, §5(C) enacts a state criminal prohibition where no federal counterpart exists. The provision makes it a state misdemeanor for 'an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an em ployee or independent contractor' in Arizona. Ariz. Rev. Stat. Ann. §13-2928(C) (West Supp. 2011). Violations can be punished by a $2,500 fine and incarceration for up to six months. See §13-2928(F); see also §§13-707(A)(1) (West 2010); 13-802(A); 13-902(A)(5). The United States contends that the provision upsets the balance struck by the Immigration Reform and Control Act of 1986 (IRCA) and must be preempted as an

obstacle to the federal plan of regulation and control.

When there was no comprehensive federal program regulating the employment of unauthorized aliens, this Court found that a State had authority to pass its own laws on the subject. In 1971, for example, California passed a law imposing civil penalties on the employment of aliens who were 'not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers.' 1971 Cal. Stats. ch. 1442, §1(a). The law was upheld against a preemption challenge in *De Canas v. Bica*, 424 U. S. 351 (1976). *De Canas* recognized that 'States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State.' *Id.*, at 356. At that point, however, the Federal Government had expressed no more than 'a peripheral concern with [the] employment of illegal entrants.' *Id*., at 360; see *Whiting*, 563 U. S. at ___ (slip op., at 3).

Current federal law is substantially different from the regime that prevailed when *De Canas* was decided. Congress enacted IRCA as a comprehensive framework for 'combating the employment of illegal aliens.' *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U. S. 137, 147 (2002). The law makes it illegal for employers to knowingly hire, recruit, refer, or continue to employ unauthorized workers. See 8 U. S. C. §§1324a(a)(1)(A), (a)(2).

It also requires every employer to verify the employment authorization status of prospective employees. See §§1324a(a)(1)(B), (b); 8 CFR §274a.2(b) (2012). These requirements are enforced through criminal penalties and an escalating series of civil penalties tied to the number of times an employer has violated the provisions. See 8 U. S. C. §§1324a(e)(4), (f); 8 CFR §274a.10.

This comprehensive framework does not impose federal criminal sanctions on the employee side (*i.e.,* penalties on aliens who seek or engage in unauthorized work). Under federal law some civil penalties are imposed instead. With certain exceptions, aliens who accept unlawful employment are not eligible to have their status adjusted to that of a lawful permanent resident. See 8 U. S. C. §§1255(c)(2), (c)(8). Aliens also may be removed from the country for having engaged in unauthorized work. See §1227(a)(1)(C)(i); 8 CFR §214.1(e). In addition to specifying these civil consequences, federal law makes it a crime for unauthorized workers to obtain employment through fraudulent means. See 18 U. S. C. §1546(b). *Congress has made clear, however, that any information employees submit to indicate their work status 'may not be used' for purposes other than prosecution under specified federal criminal statutes for fraud, perjury, and related conduct*. See 8 U. S. C. §§1324a(b)(5), (d)(2)(F)-(G).

The legislative background of IRCA underscores the fact that Congress made a deliberate choice not to impose criminal penalties on aliens who seek, or engage in, unauthorized employment. A commission established by Congress to study immigration policy and to make recommendations concluded these penalties would be 'unnecessary and unworkable.' U.S. Immigration Policy and the National Interest: The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy with Supplemental Views by Commissioners 65-66 (1981); see Pub. L. 95-412, §4, 92 Stat. 907. *Proposals to make unauthorized work a criminal offense were debated* and discussed during the long process of drafting IRCA. See Brief for Service Employees International Union et al. as *Amici Curiae* 9-12. *But Congress rejected them*. See, *e.g.*, 119 Cong. Rec. 14184 (1973) (statement of Rep. Dennis). In the end, IRCA's framework reflects a considered judgment that making criminals out of aliens engaged in unauthorized work – aliens who already face the possibility of employer exploitation because of their removable status – would be inconsistent with federal policy and objectives. See, *e.g.*, Hearings before the Subcommittee No. 1 of the House Committee on the Judiciary, 92d Cong., 1st Sess., pt. 3, pp. 919-920 (1971) (statement of Rep. Rodino, the eventual sponsor of IRCA in the House of Representatives).

IRCA's express preemption provision, which in most instances bars States from imposing penalties on employers of unauthorized aliens, is silent about whether additional penalties may be imposed against the employees themselves. See 8 U. S. C. §1324a(h)(2); *Whiting*, *supra*, at ___-___ (slip op., at 1-2). But the existence of an 'express pre-emption provisio[n] does *not* bar the ordinary working of conflict pre-emption principles' or impose a 'special burden' that would make it more difficult to establish the preemption of laws falling outside the clause, *Geier v. American Honda Motor Co.*, 529 U. S. 861, 869-872 (2000); see *Sprietsma v. Mercury Marine*, 537 U. S. 51, 65 (2002).

The ordinary principles of preemption include the well-settled proposition that a state law is preempted where it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines*, 312 U. S., at 67. Under §5(C) of S. B. 1070, Arizona law would interfere with the careful balance struck by Congress with respect to unauthorized employment of aliens. Although §5(C) attempts to achieve one of the same goals as federal law – the deterrence of unlawful employment – it involves a conflict in the method of enforcement. The Court has recognized that a '[c]onflict in technique can be fully as disruptive to the system Congress enacted as conflict in overt policy.' *Motor Coach Employees v. Lockridge*, 403 U. S. 274, 287 (1971). The correct instruction to draw from the text, structure,

> and history of IRCA is that *Congress decided it would be inappropriate to impose criminal penalties on aliens who seek or engage in unauthorized employment. It follows that a state law to the contrary is an obstacle to the regulatory system Congress chose*. See *Puerto Rico Dept. of Consumer Affairs v. ISLA Petroleum Corp.*, 485 U. S. 495, 503 (1988) ('Where a comprehensive federal scheme intentionally leaves a portion of the regulated field without controls, *then* the pre-emptive inference can be drawn – not from federal inaction alone, but from inaction joined with action.'). *Section 5(C) is preempted by federal law*.

Arizona v. U.S., supra, at 12-15 (original emphasis).

Arizona had passed a statute making it a misdemeanor for any unauthorized alien to knowingly apply for work.

The U.S. Supreme Court held that this violated the Supremacy Clause because Congress has made it a crime for *employers* to knowingly hire undocumented workers, but Congress has not criminalized the workers' actions. Therefore, a state may not do so. Id., at 2504-2505. *Arizona v. U.S.*, supra, was quoted favorably by the Florida Supreme Court on this same point of law recently in *Florida Board of Bar Examiners Re: Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar*, 134 So. 3d 432, at 434-435 (Fla. 2014). However, in *Brock*, when it came to undocumented Hispanic workers, *Arizona v. U.S*. was ignored.

There is nothing in Section 440.105(4)(b)9, Fla. Stat., to suggest that the Florida Legislature intended to affect immigration policy in any way. The decision of the Florida Fourth District Court of Appeal in *Brock*, however, does make the statute affect immigration policy. According to *Brock*, any and all undocumented workers can be charged and convicted of workers' compensation fraud, a felony, for using any false identity to obtain employment, even though there is no workers' compensation connection. The similarity of the Florida statute as interpreted by *Brock* to the invalid Arizona statute is quite striking. The Florida Fourth District Court of Appeal's interpretation of the Florida workers' compensation statute impermissibly affects federal immigration policy, just as much as the invalid Arizona statute did.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

FRANCISCO BROCK Petitioner(s)
v.
STATE OF FLORIDA Respondent(s)
CASE NO.: SC14-1208
Supreme Court of Florida
SEPTEMBER 29, 2014

Lower Tribunal No(s).: 4D13-962; 562012CF002158B

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

LABARGA, C.J., and PARIENTE, LEWIS, and POLSTON, JJ., concur. PERRY, J., would grant without oral argument.

A True Copy
Test:

/s/
John A. Tomasino
Clerk, Supreme Court

sh
Served:

RICHARD ANTHONY SICKING
VINCENT JAMES BENINCASA
CHARLES EDWARD JARRELL
DON M. ROGERS

CONSIGLIA TERENZIO
HON. JOSEPH E. SMITH, CLERK
HON. LONN WEISSBLUM, CLERK
HON. ROBERT RUSSELL MAKEMSON, JUDGE

STATE OF FLORIDA, Appellant,
v.
FRANCISCO BROCK, Appellee.
No. 4D13-962
DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT
January Term 2014
April 30, 2014

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Robert R. Makemson, Judge; L.T. Case No. 562012CF 002158B.

Pamela Jo Bondi, Attorney General, Tallahassee, and Don M. Rogers, Assistant Attorney General, West Palm Beach, for appellant.

V.J. (Jimmy) Benincasa, Vero Beach, for appellee.

KLINGENSMITH, J.

Defendant, Francisco Brock, was charged with one count of fraud under section 440.105(4)(b)9, Florida Statutes (2012). This charge arose after a wage query to the Florida Department of Revenue, Division of Unemployment Compensation database revealed that the social security number Defendant used when he was hired by Waste Pro USA was not issued to him. An investigation also revealed that Defendant was an illegal alien who had completed a "Homeland Security, I-9, Employment Eligibility Verification form" that improperly listed this same social security number. For the reasons, stated herein, we reverse the trial court's pretrial order dismissing this charge.

Section 440.105 delineates the prohibited activities, reports, penalties, and limitations of the Workers' Compensation Law. The portion of the section under which Defendant was charged states that it is unlawful for any person:

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> To knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits.

§ 440.105(4)(b)9, Fla. Stat. (2006) (emphasis added).

In his motion to dismiss, Defendant argued that: 1) Waste Pro hired Defendant knowing that the identity documents he used were either fake or false, and therefore they were not defrauded or misled by the use of the documents; and 2) Defendant had not filed a workers' compensation claim or presented any statement in support of such a claim. Under Defendant's theory, merely presenting false documents to gain employment, without more, does not trigger a violation under the statute.[1]

The trial court granted the motion to dismiss, stating that it appeared the purpose of the statute

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[1] The State had agreed that there was no evidence that the Defendant specifically aimed for, nor did he claim or file for, workers' compensation benefits.

related to insurance coverage and insurance claims, and that section 440.105(4)(b)9 required that the obtaining of employment or filing or supporting a claim had to be connected to workers' compensation benefits. The court ruled that to sustain a violation under section 440.105(4)(b)9, the State was required to plead and prove not only that Defendant obtained employment by a false, fraudulent, or misleading oral or written statement as evidence of identity, but that he did so with the intent to secure worker compensation benefits. This was error.

The interpretation of a statute is a purely legal matter and subject to review *de novo. Kasischke v. State,* 991 So. 2d 803, 807 (Fla. 2008). Courts strive to construe statutes to effectuate the Legislature's intent. *See, e.g., id.* at 807. In order to determine the intent, this court must first look to the statutes plain language. *Id.* "Florida case law contains a plethora of rules and extrinsic aids to guide courts in their efforts to discern legislative intent from ambiguously worded statutes." *Holly v. Auld,* 450 So. 2d 217, 219 (Fla. 1984). However, "when the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Borden v. E.-European Ins. Co.,* 921 So. 2d 587, 595 (Fla. 2006) (quoting *Daniels v. Fla. Dep't of Health,* 898 So. 2d 61, 64 (Fla. 2005)). A departure from the letter of the statute, however, "is sanctioned by the courts only when there are cogent reasons for believing that the letter [of

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the law] does not accurately disclose the [legislative] intent." *State ex rel. Hanbury v. Tunnicliffe,* 98 Fla. 731, 735, 124 So. 279, 281 (Fla. 1929).

Here, the statute is clear and unambiguous. Section 440.105(4)(b)9 makes it a crime to "present . . . any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment. . . . " The fact that this clause is followed by the word "or" is important as it indicates the statute may be violated in more than one way: by presenting false or fraudulent documents for the purpose of obtaining employment or providing the false or fraudulent documents to file or support a workers' compensation claim.

Although reference to legislative intent was unnecessary to reach this interpretation of the statute, our analysis confirms the legislature intended to prohibit illegal aliens from using false identification information to obtain employment, and by doing so, specifically intended to close their gateway into the Florida worker's compensation system. After considering the newly-enacted section 440.105(4)(b)9,[2] the Florida Senate Interim Project Report 2004-110 (December 2003) stated:

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[2] In 2003, section 440.105(4)(b) was amended to add subparagraph nine. Workers' Compensation, 2003 Fla. Sess. Law Serv. Ch. 2003-412 (S.B. 50-A) (WEST).

> As amended by Senate Bill 50A, the law now provides that it is a felony and insurance fraud for a person to knowingly present any false or misleading oral or written statement as evidence of identity for the purpose of obtaining employment. Therefore, if an illegal alien obtained his employment by misrepresenting his identity in order to get a job, then that person could be found to have committed insurance fraud and thus denied benefits if injured on the job.

Id. at 6. Further, the Report noted:

> Representatives with the Division of Insurance Fraud within the Department of Financial Services state that the purpose of this amendment was to facilitate the arrest and prosecution of illegal aliens who have lied about their identity in order to obtain employment and then falsified their on-the-job injury. These officials state that it is often easier to prove that the illegal alien lied about his identity in order to obtain work than it is to prove the job related injury was fabricated. Many times illegal aliens are in league with unethical doctors and lawyers

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> who bilk the workers' compensation system, these officials claim. Proponents of the amendment also argue that undocumented workers should not be entitled to benefits because they are not legally working and are, therefore, not lawful employees.

Id. at 6-7. Therefore, it seems clear that the legislature specifically intended to make it a felony for a person to knowingly present any false or misleading identification for the purpose of obtaining employment, irrespective of the existence of any worker's compensation claim.

Both Defendant and the State cite to *Matrix Employee Leasing & FCIC/First Commercial Claim Services v. Hernandez,* 975 So. 2d 1217 (Fla. 1st DCA 2008), in support of their respective positions. In that case, the parties did not dispute the supposed violation but did argue whether this violation was cause for forfeiture of compensation benefits. The First District analyzed section 440.105(4)(b)9 only as it applied to the denial of coverage under section 440.09(4)(a). To the extent that *Matrix* has any application to this case, it shows that a violation under 440.105(4)(b)9 should be considered distinctly separate from whether the violation was done for the purpose of obtaining benefits.

We reverse the dismissal of the information and remand the cause to the trial court for further proceedings.

Reversed and Remanded.

DAMOORGIAN, C.J., and GROSS, J., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR ST. LUCIE COUNTY, FLORIDA

STATE OF FLORIDA Plaintiff, vs. ARMANDO LOPEZ-BOCK, [aka Francisco Brock], (B) and HECTOR JORDAN, [aka Jordan Hector], (D) Defendants. /	Case No.: 56-2012-CF-002158(B) Case No.: 56-2012-CF-002158(D) Judge: Robert R. Makemson

ORDER GRANTING DEFENDANTS' AMENDED RULE 3.190(c)(4) MOTION TO DISMISS

The Court, after hearing argument of counsels and considering the defendants' Amended and Sworn 3.190(c)(4) Motion to Dismiss along with the State's Traverse and Demurrer, which included consensus that the defendants did not file, claim, or receive workers' compensation benefits, finds Defendants' Motion to Dismiss well taken and appropriate for granting.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the charges against Armando Lopez-Bock, aka Francisco Brock (B), and Hector Jordan, aka Jordan Hector (D), contained in the Information for a violation of F.S. 440.105(4)(b)9 be dismissed.

SO ORDERED this the 12 day of March, 2013, at Fort Pierce, Florida.

/s/ Robert R. Makemson
ROBERT R. MAKEMSON
Circuit Judge

c: V. J. (Jimmy) Benincasa
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Copies Provided
MAR 12 2013
By M Bradford, JA