No.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

STATE OF CALIFORNIA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether provisions of California law that, with certain limited exceptions, prohibit state law-enforcement officials from providing federal immigration authorities with release dates and other information about individuals subject to federal immigration enforcement, and restrict the transfer of aliens in state custody to federal immigration custody, are preempted by federal law or barred by intergovernmental immunity.

RELATED PROCEEDINGS

United States District Court (E.D. Cal.):

United States v. *California*, No. 18-cv-490 (July 5, 2018) (granting in part and denying in part a motion for a preliminary injunction)

United States v. *California*, No. 18-cv-490 (July 9, 2018) (granting in part and denying in part a motion to dismiss)

United States Court of Appeals (9th Cir.):

United States v. *California*, No. 18-16496 (Apr. 18, 2019), petition for reh'g denied, June 26, 2019

PARTIES TO THE PROCEEDING

Petitioner is the United States of America.

Respondents are the State of California; Gavin Newsom, in his official capacity as Governor of California; and Xavier Becerra, in his official capacity as Attorney General of California.

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-48a) is reported at 921 F.3d 865. The order of the district court on the motion for a preliminary injunction (App., *infra*, 49a-109a) is reported at 314 F. Supp. 3d 1077. The order of the district court on the motion to dismiss (App., *infra*, 110a-116a) is not published in the Federal Supplement but is available at 2018 WL 3361055.

JURISDICTION

The judgment of the court of appeals was entered on April 18, 2019. A petition for rehearing was denied on June 26, 2019 (App., *infra*, 117a). On September 14,

2019, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including October 24, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the United States Constitution provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * 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." U.S. Const. Art. VI, Cl. 2. Pertinent federal and state statutes are reprinted in the appendix to this petition. App., *infra*, 118a-158a.

STATEMENT

In 2017, California enacted multiple statutes that have the purpose and effect of obstructing federal immigration enforcement. See App., *infra*, 2a, 34a, 39a. The United States filed suit to enjoin portions of three statutes as preempted by federal law and barred by the United States' intergovernmental immunity. *Id.* at 2a. The district court and the court of appeals held that certain provisions of two of those statutes were likely invalid. *Id.* at 16a-30a, 60a-78a. At issue in this petition for a writ of certiorari is the court of appeals' affirmance of the district court's decision not to enjoin the challenged provisions of the third statute: Senate Bill No. 54 (SB 54). *Id.* at 30a-40a.

A. Federal Law Background

"The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona* v. *United States*, 567 U.S.

387, 394 (2012). Because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," among other exclusively federal powers, "[s]uch matters are * * * exclusively entrusted to the" federal government. *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952). Indeed, the "status of" foreign nationals living in the United States is among "'the most important and delicate of all'" questions of American foreign relations. *Arizona*, 567 U.S. at 394-395 (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 64 (1941)).

Through the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and related statutes, Congress has created an "extensive and complex" framework for the "governance of immigration and alien status." *Arizona*, 567 U.S. at 395. Of particular relevance here, "Congress has specified which aliens may be removed from the United States and the procedures for doing so." *Id.* at 396. Aliens can be removed for multiple reasons, including having committed a specified crime. See 8 U.S.C. 1182(a)(2), 1227(a)(2). Federal officials in the Department of Homeland Security (DHS), principally U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), have "broad discretion" to decide whether to remove an alien. *Arizona*, 567 U.S. at 396.

When federal officials decide to seek removal, they may issue a warrant authorizing "an alien [to] be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. 1226(a); see *Arizona*, 567 U.S. at 407-408. An alien who has committed a specified crime *must* be taken into immigration custody and detained pending removal pro-

ceedings "when the alien is released" from criminal custody, including from a state prison or jail. 8 U.S.C. 1226(c); see *Nielsen* v. *Preap*, 139 S. Ct. 954, 963 (2019).

When an alien is ordered removed, federal immigration officials must remove him "within a period of 90 days." 8 U.S.C. 1231(a)(1)(A). "During the removal period," federal officials "shall detain the alien," and "[u]nder no circumstances" may release an alien convicted of a specified crime. 8 U.S.C. 1231(a)(2). When an alien who has been ordered removed is jailed or imprisoned on a criminal charge or conviction, the removal period begins on "the date [he] is released." 8 U.S.C. 1231(a)(1)(B)(iii). Federal authorities "may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment." 8 U.S.C. 1231(a)(4)(A).

As those removal and detention provisions illustrate, "[c]onsultation between federal and state officials is an important feature of the immigration system." *Arizona*, 567 U.S. at 411. Because many aliens convicted of state crimes are subject to mandatory immigration detention upon release from state custody, see 8 U.S.C. 1226(c), 1231(a)(2), Congress has directed certain forms of cooperation and information-sharing between federal and state officials. Federal immigration authorities must "make available" to state and local authorities "investigative resources * * * to determine whether individuals arrested by such authorities for aggravated felonies are aliens." 8 U.S.C. 1226(d)(1)(A). Federal officials must also "designate and train officers and employees * * * to serve as a liaison to" state and local officials "with respect to the arrest, conviction, and release of any alien charged with an aggravated felony." 8 U.S.C. 1226(d)(1)(B). In addition, federal officials

must "respond to an inquiry" by state or local officials "seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction" of those officials. 8 U.S.C. 1373(c). By the same token, state and local government officials "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration authorities] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. 1373(a); see also 8 U.S.C. 1373(b), 1644 (similar provisions); *Arizona*, 567 U.S. at 412-413.

B. Relevant State Statutes

Until recently, state and local officials in California provided federal immigration authorities with information about aliens in state and local custody, so that federal officials could comply with Congress's removal and detention directives. See C.A. E.R. 450-454. Indeed, a 2014 bulletin from the California Attorney General advised law-enforcement officials that they "may provide information to ICE, including notification of the date that an individual will be released," in part because "[f]ederal law provides that state and local governments may not be prohibited from providing information to or receiving information from ICE." App., *infra*, 43a-44a; see C.A. E.R. 88-90. In 2017, however, California abandoned its longstanding approach and "enacted three laws expressly designed to protect its residents from federal immigration enforcement"—that is, to "frustrat[e]" federal efforts to enforce immigration law. App., *infra*, 2a, 34a.

1. Assembly Bill No. 450 (AB 450) restricts cooperation by employers with federal immigration authorities. AB 450 imposes penalties on employers who "provide voluntary consent to an immigration enforcement

agent to enter any nonpublic areas of a place of labor," or "to access, review, or obtain the employer's employee records," unless the "immigration enforcement agent provides a judicial warrant" or subpoena. Cal. Gov't Code §§ 7285.1(a) and (e), 7285.2(a)(1) (West 2019).[1] AB 450 also limits employers' ability to "reverify the employment eligibility of a current employee at a time or in a manner not required by" federal law. Cal. Lab. Code § 1019.2(a) (West Supp. 2019). And AB 450 requires employers to notify employees of any inspections of federal work-authorization "forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection," and to inform employees of inspection results under certain circumstances. *Id.* § 90.2(a)(1) and (b)(2).

2. Assembly Bill No. 103 (AB 103) requires the California Attorney General to conduct reviews of in-state facilities that house immigration detainees under contract with DHS. Cal. Gov't Code § 12532(a). Among other things, the review must address "the conditions of confinement," "the standard of care and due process provided," and "the circumstances around [the] apprehension and transfer" of the detainees. *Id.* § 12532(b). The Attorney General "shall be provided all necessary access * * * including, but not limited to, access to detainees." *Id.* § 12532(c).

3. SB 54, titled "the California Values Act," is of central relevance here. Cal. Gov't Code § 7284. In SB 54, the California Legislature "finds and declares" that "[i]mmigrants are valuable and essential members of the California community," and establishes rules governing the detention and release of aliens and others in

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[1] Unless otherwise indicated, all citations to California statutes are to the 2019 version of the state statutes published by West.

California criminal custody. *Id.* § 7284.2(a); see *id.* § 7284.6. Three provisions of SB 54 are particularly pertinent to this litigation.

First, SB 54 prohibits state and local law-enforcement officials (outside the state Department of Corrections and Rehabilitation) from "[p]roviding information regarding a person's release date * * * or other information" about a person in their custody "unless that information is available to the public, or is in response to a notification request from immigration authorities" regarding a person who has been convicted of a crime specified in the state statute. Cal. Gov't Code § 7284.6(a)(1)(C); see *id.* §§ 7282.5(a), 7284.4(a).[2]

Second, SB 54 prohibits the same state and local law-enforcement officials from providing "personal information * * * about an individual * * * unless that information is available to the public." Cal. Gov't Code § 7284.6(a)(1)(D). The covered "personal information" includes "any information that is maintained by [a state] agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history." Cal. Civ. Code § 1798.3(a) (West Supp. 2019); see Cal. Gov't Code § 7284.6(a)(1)(D). It also "includes statements made by, or attributed to, the individual," Cal. Civ. Code § 1798.3(a) (West Supp. 2019), and the individual's "work address," Cal. Gov't Code § 7284.6(a)(1)(D).

Third, SB 54 provides that covered state and local law-enforcement officials "shall not * * * [t]ransfer an

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[2] SB 54 also imposes restrictions on officials in the Department of Corrections and Rehabilitation, see Cal. Gov't Code § 7284.10, but those restrictions are not at issue here.

individual" in their custody "to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or" the individual has been convicted of a crime specified in the state statute. Cal. Gov't Code § 7284.6(a)(4); see *id.* § 7282.5(a).

C. Proceedings Below

1. In March 2018, the United States sued California in federal district court, alleging that the provisions of AB 450, AB 103, and SB 54 described above violate the Supremacy Clause under conflict-preemption and intergovernmental-immunity principles. App., *infra*, 49a-50a. In light of the serious harm to law enforcement and public safety caused by the state statutes, the United States sought a preliminary injunction. See *ibid.*

a. The district court granted the United States' motion to preliminarily enjoin two key provisions of AB 450. App., *infra*, 69a-74a. The court concluded that AB 450's prohibition on voluntary employer consent to federal immigration inspections was "a clear attempt to 'meddle with federal government activities * * * by singling out for regulation those who deal with the government,'" and was accordingly barred by intergovernmental immunity. *Id.* at 73a (brackets and citation omitted). The court also enjoined AB 450's limitation on employers' ability to reverify the work authorization of their employees as an impermissible attempt to "frustrate[] the system of accountability that Congress designed." *Id.* at 78a. The court declined to enjoin the provision of AB 450 requiring employers to notify employees about immigration inspections. *Id.* at 74a-76a.

b. The district court declined to enjoin AB 103. App., *infra*, 60a-67a. The court acknowledged that AB 103 "imposes a review scheme on facilities contracting with the federal government, only," but held that AB

103 does not violate intergovernmental immunity because, in the court's view, "the burden placed upon the facilities is minimal." *Id.* at 67a. The court concluded that AB 103 was not conflict-preempted for similar reasons. *Id.* at 63a.

c. The district court also declined to enjoin SB 54. App., *infra*, 78a-105a. The court first held that the information-sharing restrictions in SB 54 are not expressly preempted by 8 U.S.C. 1373(a), which provides that States "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration officials] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." In the court's view, "Section 1373 limits its reach to information strictly pertaining to immigration status (i.e. what one's immigration status is) and does not include information like release dates and addresses." App., *infra*, 87a.

The district court next concluded that the challenged provisions of SB 54 do not create an impermissible obstacle to enforcement of federal law. App., *infra*, 90a-103a. The court recognized that SB 54 makes "enforcement more burdensome than it would be if state and local law enforcement provided immigration officers with their assistance," but stated that "refusing to help is not the same as impeding." *Id.* at 91a. In the court's view, if refusing to help were grounds for preemption, "obstacle preemption could be used to commandeer state resources and subvert Tenth Amendment principles." *Id.* at 91a-92a.

Finally, the district court concluded that intergovernmental immunity does not "extend[] to the State's regulation over the activities of its own law enforcement." App., *infra*, 104a. The court determined that SB 54 does not "uniquely burden" the federal government but instead

treats it like any member of the public. *Id.* at 105a. In any event, the court added, "[t]he State retains the power" under the Tenth Amendment to "divert its resources away from assisting immigration enforcement efforts." *Ibid.*[3]

2. The United States appealed the adverse portions of the district court's preliminary-injunction ruling. App., *infra*, 13a & n.5. California did not appeal. *Id.* at 10a n.4. The court of appeals affirmed in part and reversed in part. *Id.* at 1a-48a.

The court of appeals affirmed the district court's decision to leave in place the employee-notice provisions of AB 450, App., *infra*, 17a-21a, but it partially reversed the district court's decision not to enjoin AB 103, *id.* at 21a-30a. The court of appeals held that the district court had incorrectly created "a de minimis exception to the doctrine of intergovernmental immunity," and remanded for the district court to reconsider the United States' motion to enjoin the provision of AB 103 requiring state inspectors to "'examine the circumstances surrounding [a detainee's] apprehension and transfer to the facility.'" *Id.* at 27a-28a. That provision, the court of appeals explained, imposes "a novel requirement, apparently distinct from any other inspection requirements imposed by California law," and the "district court was therefore incorrect when it concluded that"

[3] The district court subsequently granted California's motion to dismiss the claims involving the statutory provisions that the court had not preliminarily enjoined. App., *infra*, 110a-116a. That nonfinal decision was not immediately appealable. *Id.* at 13a n.5.

the review required by that provision is "'no more burdensome than reviews required under'" other state statutes. *Id.* at 27a (citation omitted).[4]

The court of appeals also affirmed the district court's decision not to enjoin SB 54. App., *infra*, 30a-44a. The court had "no doubt that SB 54 makes the jobs of federal immigration authorities more difficult." *Id.* at 31a. Among other obstacles, the court noted that "SB 54 requires federal officers to, 'in effect, stake out a jail and seek to make a public arrest,'" when an alien is released from criminal custody, which presents "'risks to the arresting officer and the general public.'" *Id.* at 33a. But the court concluded that "this frustration does not constitute obstacle preemption," because federal law "does not require any particular action on the part of California or its political subdivisions." *Id.* at 34a, 36a. "Even if SB 54 obstructs federal immigration enforcement," the court stated, "the United States' position that such obstruction is unlawful runs directly afoul of the Tenth Amendment and the anticommandeering rule." *Id.* at 34a. In the court's view, "California has the right, pursuant to the anticommandeering rule, to refrain from assisting with federal efforts." *Id.* at 39a. The court concluded that SB 54 does not violate the United States' intergovernmental immunity for similar reasons. *Id.* at 40a.

The court of appeals also held that SB 54 is not barred by 8 U.S.C. 1373(a). App., *infra*, 40a-44a. The

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[4] The court of appeals affirmed the district court's decision not to enjoin AB 103's directive that state inspectors review the "due process provided to detainees," but only after accepting the State's narrowing construction interpreting "due process" to cover only basic access to legal materials, such as a law library and correspondence with counsel. App., *infra*, 21a, 26a-27a.

court of appeals agreed with the district court that Section 1373(a)'s prohibition of state or local restrictions on sharing "'information regarding the citizenship or immigration status, lawful or unlawful, of any individual'" refers only "to a person's legal classification under federal law." *Id.* at 41a.

3. The court of appeals denied the United States' petition for rehearing en banc. App., *infra*, 117a.

REASONS FOR GRANTING THE PETITION

The statutes adopted by California in 2017 require state and local officials to resist the enforcement of federal law. Although the courts below correctly held that key provisions in two of the three statutes were likely invalid, they left in place the centerpiece of California's scheme—SB 54, which concededly "frustrate[s]" and "obstructs" federal immigration enforcement. App., *infra*, 34a, 39a. In *Arizona* v. *United States*, 567 U.S. 387 (2012), this Court held that state laws that interfere with federal immigration enforcement are conflict-preempted even if they purportedly share "the same aim as federal law." *Id.* at 402. The conflict is even more evident here, where the state law openly seeks to undermine federal immigration enforcement. The challenged provisions of SB 54 also violate the United States' intergovernmental immunity because they discriminate against the federal government. And SB 54's information-sharing restrictions violate 8 U.S.C. 1373(a)'s prohibition of state or local laws restricting the sharing of information "regarding * * * citizenship or immigration status."

The court of appeals' decision upholding SB 54 is fundamentally flawed. The court acknowledged that SB 54 "makes the jobs of federal immigration authorities

more difficult," and "discriminate[s] against federal immigration authorities." App., *infra*, 31a, 40a. The court nevertheless held that California "retains the right" to obstruct federal law and discriminate against the United States because of the "anticommandeering rule" of the Tenth Amendment. *Id.* at 37a. That constitutional holding is wrong. California has no more right to obstruct federal law by adopting policies governing the regulation of aliens in one way than Arizona had to obstruct federal law by adopting policies governing the regulation of aliens in another way. That is especially clear because California's ability to hold aliens in its criminal system derives from the federal government's decision to let it do so. Aliens are present and may remain in the United States only as provided for under the auspices of federal immigration law. It therefore is the United States, not California, that "retains the right" to set the conditions under which aliens in this country may be detained, released, and removed. *Ibid.*

The court of appeals' error has significant real-world consequences. The court acknowledged that "SB 54 requires federal officers to, 'in effect, stake out a jail and seek to make a public arrest,'" which presents "'risks to the arresting officer and the general public.'" App., *infra*, 33a. When officers are unable to arrest aliens—often criminal aliens—who are in removal proceedings or have been ordered removed from the United States, those aliens instead return to the community, where criminal aliens are disproportionately likely to commit crimes. That result undermines public safety, immigration enforcement, and the rule of law. In light of the Ninth Circuit's erroneous and damaging holding, this Court should again grant "certiorari to resolve important questions concerning the interaction of state

and federal power with respect to the law of immigration and alien status." *Arizona*, 567 U.S. at 394.

A. The Court Of Appeals Erred In Concluding That The Challenged Provisions Of SB 54 Are Neither Preempted Nor Barred By The United States' Intergovernmental Immunity

The challenged provisions of SB 54 are invalid under federal law for at least three separate reasons. First, all the challenged provisions are conflict-preempted. Second, all the challenged provisions are barred by the United States' intergovernmental immunity. Third, the information-sharing restrictions are expressly preempted by 8 U.S.C. 1373(a). Contrary to the decision below, the anti-commandeering principle of the Tenth Amendment confers no "right" on California to "obstruct[]" federal law or "discriminate against federal" officials in the manner the court of appeals acknowledged that SB 54 does. App., *infra*, 34a, 39a, 40a.

1. All the challenged provisions of SB 54 are conflict-preempted

The challenged provisions of SB 54 are conflict-preempted because they "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in determining when and how aliens may be removed from the United States. *Arizona*, 567 U.S. at 399 (citation omitted).

a. The federal government has plenary and exclusive "power over immigration, naturalization and deportation." *Hines* v. *Davidowitz*, 312 U.S. 52, 62 (1941). The "supremacy of the national power" in this area "is made clear by the Constitution, was pointed out by the authors of The Federalist in 1787, and has * * * been

given continuous recognition by this Court." *Ibid.* (citation and footnote omitted). Indeed, the Court has explained that "*any policy* toward aliens" is "exclusively entrusted to the" federal government in light of its inevitable connection to "the conduct of foreign relations" and related federal powers. *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952) (emphasis added). "No state can add to or take from the force and effect of" federal law in this field. *Hines*, 312 U.S. at 62-63.

Of particular relevance here, "Congress [has] the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain," and likewise "has undoubtedly the right * * * to take all proper means to carry out the system which it provides." *Fong Yue Ting* v. *United States*, 149 U.S. 698, 714 (1893); see, *e.g.*, *Galvan* v. *Press*, 347 U.S. 522, 530 (1954) ("The power of Congress over the admission of aliens and their right to remain is necessarily very broad, touching as it does basic aspects of national sovereignty, more particularly our foreign relations and the national security.").

In exercising its power over immigration, Congress has specified an "extensive and complex" framework to govern aliens' entry, apprehension, detention, and removal. *Arizona*, 567 U.S. at 395. Congress has, for example, determined that aliens who have been convicted of specified crimes—including state crimes—"may be removed from the United States." *Id.* at 396; see 8 U.S.C. 1182(a)(2), 1227(a)(2). And Congress has prescribed particular "procedures for doing so." *Arizona*, 567 U.S. at 396. When such aliens are in criminal custody—including state criminal custody—but have not been ordered removed, they must be taken into immigration custody and detained pending removal pro-

ceedings "when * * * released" from state confinement. 8 U.S.C. 1226(c). Such detention can occur on a warrant issued by administrative officials. 8 U.S.C. 1226(a); see *Arizona*, 567 U.S. at 407. When convicted aliens are in criminal custody—again, including state criminal custody—and *have* been ordered removed, they may not be removed "until * * * released from imprisonment," 8 U.S.C. 1231(a)(4)(A), and then must be removed within 90 days, 8 U.S.C. 1231(a)(1)(A). ICE may take such aliens into custody pending removal, and it must do so and detain them if they have been convicted of certain crimes. 8 U.S.C. 1226(c), 1231(a)(2).

b. SB 54 is expressly designed to frustrate that framework. See App., *infra*, 34a, 39a. SB 54 establishes procedures to govern the detention and release of aliens in state custody—custody the State may assume only because Congress has allowed it, see 8 U.S.C. 1231(a)(4)(A)—that intentionally thwart the directives enacted by Congress. Rather than allowing state and local law-enforcement officials to provide for the safe and orderly transfer of aliens in state custody to federal immigration authorities, who can then follow the federal detention and removal directives explained above, SB 54 establishes detention and release procedures that create a serious obstacle to enforcement of the federal scheme "at every turn." *National Meat Ass'n* v. *Harris*, 565 U.S. 452, 460 (2012).

Specifically, SB 54 limits the categories of aliens that state or local officials can voluntarily transfer to federal immigration custody (*i.e.*, only aliens convicted of a crime specified by state law) where Congress did not. Cal. Gov't Code § 7284.6(a)(4). SB 54 allows other aliens to be transferred to federal immigration custody only on a judicial warrant, rather than on an administrative

warrant, as Congress provided. *Ibid.*; see 8 U.S.C. 1226(a). And SB withholds rather than provides the information federal officials need to meet the custody, detention, and removal directives imposed by federal law. Cal. Gov't Code § 7284.6(a)(1)(C)-(D). "In essence, California's statute substitutes a new regulatory scheme for the one" Congress designed. *National Meat Ass'n*, 565 U.S. at 460.

The upshot of California's competing regulatory scheme is that "SB 54 requires federal officers to, 'in effect, stake out a jail and seek to make a public arrest,'" which "'generally require[s] five officers and present[s] risks to the arresting officer and the general public.'" App., *infra*, 33a. The practical consequences of California's obstruction are not theoretical; as a result of SB 54, criminal aliens have evaded the detention and removal that Congress prescribed, and have instead returned to the civilian population, where they are disproportionately likely to commit additional crimes. See C.A. E.R. 461-466, 493-494, 509-510; see also *Demore* v. *Kim*, 538 U.S. 510, 518-519 (2003).

Under any plausible understanding of conflict preemption, SB 54's conceded purpose to obstruct—and effect of obstructing—federal law through its own regulatory scheme makes the state law unenforceable. This Court has explained that "any state legislation that frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause," even if "the state legislature in passing its law had some purpose in mind other than one of frustration." *Perez* v. *Campbell*, 402 U.S. 637, 651-652 (1971). The preemption analysis is straightforward here, because the court of appeals acknowledged the "frustration" of federal law both

caused and intended by California in enacting SB 54. App., *infra*, 34a, 39a.

c. Conflict preemption is especially evident in light of this Court's decision in *Arizona*. There, the United States sued to enjoin a state statute that purported to supplement federal immigration enforcement by (as relevant here) creating state penalties for violations of the federal alien registration statute, criminalizing employment without federal authorization, and authorizing state officials to arrest and detain individuals they believed to be removable aliens. *Arizona*, 567 U.S. at 393-394. The government contended that the Arizona statute was preempted because it "discard[ed] cooperation and embrace[d] confrontation" by obstructing the government's "exercise" of its "plenary authority over alien registration, employment, apprehension, detention, and removal." U.S. Br. at 22-23, *Arizona*, *supra* (No. 11-182). In essence, Arizona sought "to replace federal policy with one of its own." *Id.* at 23.

Twelve States, including California, filed a brief in support of the United States. The States explained that "[t]he removal of undocumented immigrants is [an] exclusively federal function." New York et al. Amici Br. at 3, *Arizona*, *supra* (No. 11-182). The federal government, they contended, exclusively determines "not only *who* may be removed from the United States, but *how* such individuals should be identified, apprehended, and detained." *Ibid.* Because Arizona's statute effectively established its "own removal policy, in conflict with this" exclusively "federal scheme," the States contended that it was preempted. *Ibid.*

This Court agreed in relevant part. It reaffirmed the federal government's "broad, undoubted power over the

subject of immigration and the status of aliens," including power to "specif[y] which aliens may be removed from the United States and the procedures for doing so." *Arizona*, 567 U.S. at 394, 396. By "put[ting] in place a system" reflecting different judgments on those exclusively federal issues, the Court concluded, Arizona impermissibly "create[d] an obstacle to the full purposes and objectives of Congress." *Id.* at 410. That was true even though the Arizona statute purported to pursue "the same aim as federal law." *Id.* at 402.[5]

By enacting its own scheme regulating the detention and transfer of aliens, SB 54 likewise "conflict[s] with the careful framework Congress adopted," and "violates the principle that the removal process is entrusted to the discretion of the Federal Government." *Arizona*, 567 U.S. at 402, 409. The conflict is all the more evident here because SB 54 does not purport to pursue "the same aim as federal law," *id.* at 402, but instead is concededly aimed at obstructing federal immigration enforcement, see App., *infra*, 10a, 31a, 34a, 39a. It cannot be that conflict preemption bars a State from adopting its own policies regulating the presence and detention of aliens that are designed to *enhance* federal immigration enforcement, yet permits a State to adopt its own policies on such matters that are designed to *obstruct* federal enforcement.

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[5] The Court separately concluded that a preliminary injunction was not warranted with respect to a section of the Arizona statute directing that state officers who "conduct a stop, detention, or arrest must in some circumstances make efforts to verify the person's immigration status with the [f]ederal [g]overnment." *Arizona*, 567 U.S. at 394; see *id.* at 411-415.

2. All the challenged provisions of SB 54 are barred by principles of intergovernmental immunity

Apart from conflict preemption, the challenged provisions of SB 54 are invalid under the intergovernmental-immunity principles embodied in the Supremacy Clause. See *North Dakota* v. *United States*, 495 U.S. 423, 434 (1990) (plurality opinion) (citing *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 425-437 (1819)); see also *Dawson* v. *Steager*, 139 S. Ct. 698, 703 (2019).

A state law violates the United States' intergovernmental immunity if it "discriminates against the Federal Government or those with whom it deals." *North Dakota*, 495 U.S. at 435 (plurality opinion). That is precisely what SB 54 does. The statute restricts state and local law-enforcement officials from sharing release dates and other information about individuals in their custody with federal "immigration authorities," and *only* federal immigration authorities. Cal. Gov't Code § 7284.6(a)(1)(C)-(D). Likewise, SB 54 restricts transfers from state custody to federal "immigration authorities," and *only* federal immigration authorities. *Id.* § 7284.6(a)(4). State and local law-enforcement officers in California remain free to share information with and facilitate transfers to other law-enforcement officials, such as state and federal criminal law-enforcement officers. SB 54 thus "singles out" federal immigration authorities for disfavored treatment—exactly what intergovernmental-immunity principles forbid. *Dawson*, 139 S. Ct. at 705.

The court of appeals had no answer to this straightforward application of intergovernmental-immunity principles. Indeed, the court appeared to acknowledge that SB 54 reflects California's "cho[ic]e to discriminate

against federal immigration authorities by refusing to assist their enforcement efforts." App., *infra*, 40a.

3. The information-sharing provisions of SB 54 are expressly preempted by 8 U.S.C. 1373(a)

In addition to being conflict-preempted and barred by intergovernmental immunity, the provisions of SB 54 restricting state and local officials from sharing the release dates and personal information of individuals in their custody, see Cal. Gov't Code § 7284.6(a)(1)(C)-(D), are expressly preempted by 8 U.S.C. 1373(a).

Section 1373(a) provides that a "[s]tate * * * or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration officials] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. 1373(a). There is no dispute that SB 54 is an effort by a "[s]tate * * * entity" to "restrict [a] government entity or official from sending to" federal immigration authorities certain "information." *Ibid.* The court of appeals concluded, however, that the information SB 54 prevents state officials from sharing is not "information regarding the citizenship or immigration status * * * of any individual." *Ibid.* In the court's view, that phrase refers narrowly to "a person's legal classification under federal law." App., *infra*, 41a.

The court of appeals' reading is inconsistent with the text, structure, and purpose of Section 1373. Section 1373(a) does not bar restrictions only on sharing an individual's "citizenship or immigration status"; it bars restrictions on sharing "*information regarding* [an individual's] citizenship or immigration status." 8 U.S.C. 1373(a) (emphasis added). As this Court has explained, statutory terms like "'regarding'" or "'related to'" have

"a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." *Lamar, Archer & Cofrin, LLP* v. *Appling*, 138 S. Ct. 1752, 1759-1760 (2018) (citing authorities). Reading the term "'regarding'" to have such a "broadening effect," *ibid.*, is especially appropriate in this statutory context, because 8 U.S.C. 1373(c)—unlike Section 1373(a)—refers simply to "the citizenship or immigration status of any individual." Congress's inclusion of "regarding" in Section 1373(a), juxtaposed with its omission of such a term in an otherwise-parallel provision of the same statute, indicates that "Congress intended a difference in meaning." *Loughrin* v. *United States*, 573 U.S. 351, 358 (2014).

The legislative history confirms that structural inference. Congress enacted Section 1373(a) to ensure that state and local officials can "communicate with [federal immigration authorities] regarding *the presence, whereabouts, or activities of illegal aliens*," not merely their legal classification. H.R. Rep. No. 725, 104th Cong., 2d. Sess. 383 (1996) (emphasis added). The lower courts' interpretation of "information regarding [a person's] citizenship or immigration status," 8 U.S.C. 1373(a), to mean only "a person's legal classification," App., *infra*, 41a, thus contradicts the statutory text, structure, and purpose—and would effectively read "regarding" out of Section 1373.

Under a proper reading of Section 1373(a), SB 54's restrictions on sharing an individual's "release date" or "personal information," Cal. Gov't Code § 7284.6(a)(1)(C)-(D), are restrictions on sharing "information regarding * * * citizenship or immigration status," 8 U.S.C. 1373(a). An individual's release date is closely related to immigration status. For example, the INA provides

that a convicted alien in state criminal custody who is subject to a final removal order may not be removed until he "is released from imprisonment," 8 U.S.C. 1231(a)(4)(A), but then must be removed "within a period of 90 days," 8 U.S.C. 1231(a)(1)(A). The release date thus dictates when such an alien must be detained and removed from the United States—a matter directly related to (and thus "regarding") "immigration status." 8 U.S.C. 1373(a); see *Appling*, 138 S. Ct. at 1759-1760.

The "personal information" that SB 54 bars state officials from sharing, Cal. Gov't Code § 7284.6(a)(1)(D), is also related to "citizenship or immigration status," 8 U.S.C. 1373(a). Personal information such as a "social security number, physical description, [and] home address" may be critical in confirming whether an individual is removable or has been ordered removed. Cal. Civ. Code § 1798.3(a) (West Supp. 2019). An alien's "work address," Cal. Gov't Code § 7284.6(a)(1)(D), and "employment history," Cal. Civ. Code § 1798.3(a) (West Supp. 2019), are also closely related to many immigration-status issues. For example, an alien's eligibility for cancellation of removal depends, in part, on the length of time an alien has resided in the United States. See 8 U.S.C. 1229b. And an alien who has a work address or employment history yet is unauthorized to work in the United States has likely "accept[ed] unlawful employment," which renders him removable and "not eligible to have [his] status adjusted to that of a lawful permanent resident." *Arizona*, 567 U.S. at 404-405; see 8 U.S.C. 1227(a)(1)(C)(i), 1255(c)(2) and (8); 8 C.F.R. 214.1. Such consequences are undeniably related to "citizenship or immigration status." 8 U.S.C. 1373(a).

4. The anti-commandeering doctrine does not authorize the challenged provisions of SB 54

The court of appeals ultimately grounded its decision on the premise that SB 54 would be lawful "[e]ven if [it] obstructs federal immigration enforcement" in violation of preemption principles or "discriminate[s] against federal immigration authorities," because "California has the right * * * to refrain from assisting with federal efforts." App., *infra*, 34a, 39a-40a. That holding is misguided for multiple reasons.

a. First, and most fundamentally, the court of appeals misperceived the relationship between the federal and state laws at issue. The court asserted that, under this Court's commandeering precedents, the federal government "cannot issue direct orders to state legislatures," App., *infra*, 37a (quoting *Murphy* v. *NCAA*, 138 S. Ct. 1461, 1478 (2018)), or "compel the States to implement * * * federal regulatory programs," *id.* at 35a (quoting *Printz* v. *United States*, 521 U.S. 898, 925 (1997)). But even assuming that reflects a correct understanding of *Printz* and *Murphy* as applied in the immigration context, the fatal flaw in the court's reasoning is that it failed to identify any federal law that transgresses those limitations—*i.e.*, that orders California to adopt or implement (or refrain from adopting or implementing) a regulatory program. Cf. *Murphy*, 138 S. Ct. at 1478 (invalidating a federal statute that made it "unlawful for * * * a [state] governmental entity to * * * authorize" sports gambling, 28 U.S.C. 3702); *Printz*, 521 U.S. at 903 (invalidating a federal statute that required state officials to conduct background checks for firearms purchasers).

The court of appeals instead reasoned that the United States' preemption claim could not succeed unless the federal government had authority to compel the State's cooperation in enforcing immigration law. App., *infra*, 35a-37a. But the government has not suggested that it could compel California's active participation in immigration enforcement. To the contrary, SB 54 restricts the sharing of information with, and transferring of aliens to, federal authorities so that *they* may enforce the immigration laws. SB 54 is preempted because it adopts a scheme that regulates such matters affecting aliens in a way that conflicts with the system of detention and removal Congress adopted. The court of appeals acknowledged that a state statute would be preempted if it "affirmatively instituted a regulatory scheme that conflicted with federal law." *Id.* at 36a. That is precisely what SB 54 does.

This Court's decision in *Murphy* highlights the flaw in the court of appeals' reasoning. *Murphy* explained that commandeering occurs when a federal law attempts to regulate States, while preemption occurs when "Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence." 138 S. Ct. at 1480-1481. That understanding of preemption describes the laws at issue in this case. Congress has enacted immigration laws that "impose[] restrictions or confer[] rights on private actors"—specifically, laws defining the procedures by which aliens are detained and removed. *Ibid.* California "confers rights or imposes restrictions" on the same private actors by subjecting them to the State's criminal-justice system and

then adopting different—and conflicting—procedures for their detention and release. *Ibid.*

The challenged provisions of SB 54 are thus preempted because they regulate aliens' interaction with the state criminal-justice system in a way that conflicts with the federal scheme—and indeed facilitates *evasion* of federal enforcement. See pp. 14-19, *supra*. The Tenth Amendment provides no right for States to enact such provisions. See *Murphy*, 138 S. Ct. at 1481; *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 289-290 (1981) (explaining that it "is incorrect" to "assume that the Tenth Amendment limits congressional power to pre-empt or displace state regulation of private activities"). Indeed, it is unimaginable that the anti-commandeering doctrine would allow a State to adopt measures to shield from federal law enforcement individuals who have violated federal statutes prohibiting environmental degradation, labor violations, international drug trafficking, terrorism, espionage, or any other area of particular federal concern. There is no immigration exception to that principle.

Although California attempts to portray SB 54 as simply withholding its own resources, the statute expressly seeks to affect private parties—*i.e.*, "to protect its residents from federal immigration enforcement," App., *infra*, 2a—and does so by establishing rules governing their detention and release, see Cal. Gov't Code §§ 7284.2, 7284.6. In any event, States may not escape preemption "just by framing" a preempted law in an artful way. *National Meat Ass'n*, 565 U.S. at 464; see *Engine Mfrs. Ass'n* v. *South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 255 (2004). Of particular relevance here, this Court has repeatedly found state laws to be

preempted even when they involve only a State's decision not to allocate the State's own resources in a particular way. For example, in *Wisconsin Department of Industry, Labor & Human Relations* v. *Gould Inc.*, 475 U.S. 282 (1986), this Court held that a state law that prohibited state procurement agents from using state funds to purchase products from businesses that had repeatedly violated federal labor laws was preempted. *Id.* at 283-284. "To uphold the Wisconsin penalty simply because it operates through state purchasing decisions," the Court explained, "would make little sense," because "'[i]t is the conduct being regulated, not the formal description of governing legal standards, that is the proper focus of concern.'" *Id.* at 289 (citation omitted); see also *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 367-374 (2000) (concluding that a state law barring state entities from buying goods or services from entities doing business with Burma was conflict-preempted because it interfered with federal law imposing tailored sanctions on Burma).

Indeed, the only other court of appeals to consider a commandeering claim analogous to California's rejected it. See *City of New York* v. *United States*, 179 F.3d 29, 33-35 (2d Cir. 1999), cert. denied, 528 U.S. 1115 (2000). There, a New York ordinance restricted any "officer or employee from transmitting information regarding the immigration status of any individual to federal immigration authorities." *Id.* at 31. Congress expressly preempted the ordinance in Section 1373(a), and the city alleged that Section 1373(a) violates the anti-commandeering doctrine. *Id.* at 33. The Second Circuit rejected that claim, explaining that "the Tenth Amendment's shield against the federal government's

using state and local governments to enact and administer federal programs" cannot be converted "into a sword allowing states and localities to * * * frustrate[] federal programs." *Id.* at 35. That principle applies with even greater force here, where SB 54 regulates not just the information about individuals that can be shared, but also whether those individuals can be transferred to federal authorities enforcing federal law.

b. The court of appeals' commandeering analysis is incorrect for a further reason. This Court has repeatedly held that Congress may require particular forms of state participation as a condition of the State's voluntary choice to participate in a federal program. See *Murphy*, 138 S. Ct. at 1479 (describing precedents upholding such "cooperative federalism" programs) (citation omitted). For example, this Court has held that Congress could lawfully present States with a choice between (1) adopting state surface-mining regulations that follow federally mandated standards, or (2) leaving regulation of surface mining in the State to the federal government. *Hodel*, 452 U.S. at 288-289.

The federal immigration framework at issue here fits within that well-accepted model. As explained above, the federal government has exclusive authority over the presence of aliens in the United States, including "which aliens may be removed from the United States and the procedures for doing so." *Arizona*, 567 U.S. at 396. Congress could have concluded that any removable alien convicted or even arrested by a State should be removed immediately by federal authorities while their location is known. But Congress instead decided to allow States to subject aliens to their criminal-justice systems. See 8 U.S.C. 1231(a)(4)(A) (providing that federal authorities "may not remove an alien who is sentenced

to imprisonment until the alien is released from imprisonment"). In allowing States to do so, Congress imposed certain conditions, including that States not use their criminal-justice systems to obstruct federal immigration enforcement. To be sure, some of those conditions were implicit rather than express. But they remain valid. See *Crosby*, 530 U.S. at 387-388 ("A failure to provide for preemption expressly may reflect nothing more than the settled character of implied preemption doctrine that courts will dependably apply.").

In sum, Congress presented States with a choice: (1) subject aliens to their criminal-justice systems in a way that does not obstruct federal immigration enforcement, or (2) do not subject aliens to their criminal-justice system at all. Cf. *Hodel*, 452 U.S. at 288-289. Rather than choosing one of those two options, California has tried to have it both ways: subjecting aliens to its criminal-justice system while simultaneously obstructing federal immigration enforcement. See App., *infra*, 31a, 34a, 39a. The Constitution does not confer a right on California to make that choice. Once California has made the decision to take aliens into its criminal-justice system rather than leaving them subject to exclusive federal regulation, the State does not have a Tenth Amendment "choice" to adopt a law that "makes the jobs of federal immigration authorities more difficult"—thereby imposing "'risks to the arresting officer and the general public'"—when it relinquishes custody of such aliens. *Id.* at 31a, 33a, 36a.

c. Finally, at a minimum, the court of appeals erred in concluding that the anti-commandeering doctrine requires upholding SB 54's information-sharing restrictions. See App., *infra*, 38a-39a. In *Printz*, this

Court expressly distinguished between "the forced participation of the States' executive in the actual administration of a federal program," which it held constitutes impermissible commandeering, and "the provision of information to the Federal Government." 521 U.S. at 918. Justice O'Connor agreed with the Court's decision not to hold that "purely ministerial reporting requirements," such as a federal requirement that state and local law-enforcement agencies report cases of missing children to the Department of Justice, constitute impermissible commandeering. *Id.* at 936 (citing 42 U.S.C. 5779(a) (1994)).

The court of appeals acknowledged that this Court "has implied the existence of a Tenth Amendment exception for reporting requirements," and that SB 54's information-sharing provisions "only concern the exchange of information." App., *infra*, 38a. By that logic, the exception should have applied. The court of appeals responded only by stating that SB 54 does not regulate both state and private actors, and thus cannot be upheld under *Reno* v. *Condon*, 528 U.S. 141 (2000), which held that the anti-commandeering doctrine does not apply to such evenhanded regulation. *Id.* at 151; see App., *infra*, 38a-39a. But the inapplicability of that decision is irrelevant to the applicability of the exemption discussed in *Printz* for information-reporting measures, which can and do apply solely to state and local governments. See 521 U.S. at 936 (O'Connor, J., concurring) (citing a reporting requirement that applies only to state and local law-enforcement agencies). At a minimum, the two

challenged provisions of SB 54 that pertain only to information-sharing, Cal. Gov't Code § 7284.6(a)(1)(C)-(D), are not shielded by the Tenth Amendment.[6]

B. The Question Presented Warrants This Court's Review

The court of appeals erroneously decided an exceptionally important question of federal law that has significant practical consequences. This Court granted review on a similar question in a similar posture in *Arizona*, and certiorari is equally warranted here.

1. The decision below addressed legal issues that are "central to the constitutional design"—the scope of the federal government's power to preempt state laws, and the extent of the States' power to resist. *Arizona*, 567 U.S. at 398; see *Murphy*, 138 S. Ct. at 1475. At bottom, the court of appeals upheld a state law that concededly and purposefully obstructs federal enforcement in a field over which the "[g]overnment of the United States has broad, undoubted power" under both the Constitution and "its inherent power as sovereign to control and conduct relations with foreign nations." *Arizona*, 567 U.S. at 394-395. That holding has profound implications for the United States and the States, as well as individuals involved in the immigration system. For the reasons described above, the court's decision is wrong. At a minimum, it should not be allowed to stand without this Court's review.

2. The practical consequences of the decision below are significant. SB 54 is the statewide rule for a jurisdiction in which (DHS has informed this Office) ICE issued nearly 58,000 immigration detainers—requests

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[6] Likewise, 8 U.S.C. 1373(a)—which involves only information sharing—does not violate the anti-commandeering doctrine. See *City of New York*, 179 F.3d at 34.

that state or local law-enforcement officers notify ICE before a removable alien is released from criminal custody and, in some cases, detain the alien briefly to allow ICE to assume custody, see ICE, DHS, *Detainers*, https://www.ice.gov/detainers (last updated July 14, 2019)—and conducted more than 14,000 administrative arrests of aliens during fiscal year 2019. ICE and CBP have both reported that SB 54 creates serious real-world harms. See C.A. E.R. 450-462, 493-496, 502-512 (declarations from ICE and two CBP components—the U.S. Border Patrol and Office of Field Operations—submitted shortly after SB 54 took effect). By restricting the circumstances under which state and local law-enforcement officials can share information with and transfer aliens to federal immigration authorities, SB 54 makes it more difficult for federal officers to identify, apprehend, detain, and remove aliens under the procedures specified by Congress. The result is that more removable aliens—often with criminal records—are released into the community, see *id.* at 461-466, 493-494, 509-510, and federal officials have sometimes declined to transfer aliens to state law enforcement, even when they are wanted on serious state criminal charges, see *id.* at 494-495, 508-509. Those developments undermine both public safety and the rule of law, and they warrant this Court's immediate intervention.

3. There is clear precedent for granting review under circumstances like these. In *Arizona*, "[t]his Court granted certiorari to resolve important questions concerning the interaction of state and federal power with respect to the law of immigration and alien status." 567 U.S. at 394. Like this case, *Arizona* came to this Court after the lower courts had addressed significant legal issues in a preliminary-injunction motion filed by

the United States and without a square conflict in circuit authority. See *ibid.* This Court granted review even though it ultimately affirmed the Ninth Circuit's decision in substantial part. See *id.* at 416; see also *Crosby*, 530 U.S. at 372 (granting certiorari "to resolve * * * important questions" of federal preemption in the absence of a circuit conflict).

Certiorari is even more appropriate in this case. Unlike in *Arizona*, the court of appeals here *rejected* a claim asserted by the United States under the Supremacy Clause, and it did so based largely on another significant constitutional holding—that the anti-commandeering doctrine gives the State the right to frustrate and discriminate against federal law enforcement. See App., *infra*, 37a. This Court has granted certiorari to review "important constitutional question[s]" under the anti-commandeering doctrine even in the absence of a circuit conflict, *Murphy*, 138 S. Ct. at 1473, and the combination of the preemption and commandeering questions makes certiorari especially warranted here, see *id.* at 1479-1481.

Moreover, the Second Circuit has *rejected* a similar commandeering challenge. *City of New York*, 179 F.3d at 31-35. Although that decision involved the constitutionality of Section 1373(a), which the court of appeals here did not resolve, see App., *infra*, 44a n.19, the Second Circuit's holding that "states do not retain under the Tenth Amendment an untrammeled right to forbid all voluntary cooperation by state or local officials with particular federal programs," 179 F.3d at 35, is difficult to reconcile with the decision below, see App., *infra*, 37a ("the choice of a state to refrain from participation cannot be invalid under the doctrine of obstacle preemption

where, as here, it retains the right of refusal"). The inconsistency between those circuits' understanding of the anti-commandeering doctrine further underscores the need for this Court's review.

4. Finally, the legal issues underlying this case have broader significance in light of the enactment by other cities and States of laws that restrict information-sharing and cooperation with federal immigration officials. See, *e.g.*, Congressional Research Serv., *"Sanctuary" Jurisdictions: Federal, State, and Local Policies and Related Litigation* 3-4, 19-38, https://crsreports.congress.gov/product/pdf/R/R44795 (last updated May 3, 2019). Review by this Court would therefore resolve a significant legal and practical question that affects the federal government's interaction with other state and local jurisdictions. See, *e.g.*, *Crosby*, 530 U.S. at 371 n.5 (noting that the Court granted review in part because "[a]t least nineteen municipal governments have enacted analogous laws") (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-16496
D.C. No. 2:18-cv-00490-JAM-KJN

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

STATE OF CALIFORNIA; GAVIN NEWSOM, GOVERNOR OF CALIFORNIA; XAVIER BECERRA, ATTORNEY GENERAL OF CALIFORNIA, DEFENDANTS-APPELLEES

Argued and Submitted: Mar. 13, 2019
San Francisco, California
Filed: Apr. 18, 2019

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

OPINION

Before: MILAN D. SMITH, JR., PAUL J. WATFORD, and ANDREW D. HURWITZ, Circuit Judges.

Opinion by Judge MILAN D. SMITH, JR.

M. SMITH, Circuit Judge:

Defendant-Appellee State of California (California) enacted three laws expressly designed to protect its residents from federal immigration enforcement: AB 450, which requires employers to alert employees before federal immigration inspections; AB 103, which imposes inspection requirements on facilities that house civil immigration detainees; and SB 54, which limits the cooperation between state and local law enforcement and federal immigration authorities. Plaintiff-Appellant United States of America (the United States) challenged these enactments under the Supremacy Clause and moved to enjoin their enforcement. The district court concluded that the United States was unlikely to succeed on the merits of many of its claims, and so denied in large part the motion for a preliminary injunction.

The district court did not abuse its discretion when it concluded that AB 450's employee-notice provisions neither burden the federal government nor conflict with federal activities, and that any obstruction caused by SB 54 is consistent with California's prerogatives under the Tenth Amendment and the anticommandeering rule. We therefore affirm the district court's denial of a preliminary injunction as to these laws. We also affirm the denial of a preliminary injunction as to those provisions of AB 103 that duplicate inspection requirements otherwise mandated under California law. But we conclude that one subsection of AB 103—codified at California Government Code section 12532(b)(1)(C)—discriminates against and impermissibly burdens the federal government, and so is unlawful under the doctrine of intergovernmental immunity. Because the district court relied on incorrect law in analyzing this provision, we reverse its preliminary injunction order in part.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

We first review the relevant federal statutory framework before describing the three California laws at issue in this case.

A. Federal Statutory Framework

i. The INA

"The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States* (*Arizona II*), 567 U.S. 387, 394 (2012); *see also* U.S. Const. art. I, § 8, cl. 4 (granting Congress the power to "establish an uniform Rule of Naturalization"); *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 315-18 (1936) (exploring the federal government's inherent sovereign powers in the realm of foreign affairs). Congress exercises its authority to regulate the entry, presence, and removal of noncitizens through the Immigration and Nationality Act (INA) and other related laws, and "has specified which aliens may be removed from the United States and the procedures for doing so." *Arizona II*, 567 U.S. at 396. "A principal feature of the removal system is the broad discretion exercised by immigration officials." *Id.* For example, "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States," and until that decision, federal officials generally may either detain her or release her on bond. 8 U.S.C. § 1226(a). Detention is mandatory, however, for certain categories of noncitizens, including those who are inadmissible or removable due to criminal convictions. *Id.* § 1226(c).

"The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal," which might include the "purchase or lease of [an] existing prison, jail, detention center, or other comparable facility suitable for such use." *Id.* § 1231(g); *see also id.* § 1103(a)(11) (permitting agreements with states and localities "for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention"). The United States notes that the Department of Homeland Security (DHS) "regularly uses nine facilities in California to house civil immigration detainees," which collectively have a capacity of approximately 5,700 detainees. The interplay between federal and state authorities also manifests itself when noncitizens subject to removal are also the targets of state or local criminal enforcement. The INA requires that DHS remove an alien who is subject to a final removal order "within a period of 90 days" from "the date the alien is released from [state or local] detention or confinement"; however, it "may *not* remove an alien who is sentenced to imprisonment until the alien is released from imprisonment." *Id.* § 1231(a)(1), (4) (emphasis added). After release, federal authorities "shall detain the alien," and "[u]nder no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible . . . or deportable." *Id.* § 1231(a)(2).

The United States asserts that "Congress contemplated cooperation between federal and state officials" when it allowed noncitizens to complete state criminal custody before removal, and points to "other provisions of the INA [that] likewise reflect that expectation of collaboration." For example, the federal government is

required to make information available to state and local authorities indicating "whether individuals arrested . . . for aggravated felonies are aliens," and to provide liaisons and computer resources in connection with aliens charged with aggravated felonies. *Id.* § 1226(d)(1). Additionally, DHS must respond to inquiries from state or local officials "seeking to verify or ascertain the citizenship or immigration status of any individual." *Id.* § 1373(c). In turn, "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." *Id.* § 1373(a). Additionally, "[f]ederal law specifies limited circumstances in which state officers may perform the functions of an immigration officer," such as "when the Attorney General has granted that authority to specific officers in a formal agreement with a state or local government." *Arizona II*, 567 U.S. at 408 (citing 8 U.S.C. §§ 1103(a)(10), 1252c, 1324(c), 1357(g)(1)). "State officials can also assist the Federal Government by responding to requests for information about when an alien will be released from their custody." *Id.* at 410.

ii. The IRCA

Congress enacted the Immigration Reform and Control Act of 1986 (IRCA) "as a comprehensive framework for 'combating the employment of illegal aliens.'" *Arizona II*, 567 U.S. at 404 (quoting *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002)). Under the IRCA, employers may not knowingly hire or employ aliens without proper work authorization. 8 U.S.C. § 1324a(a)(1)-(2). Employers in violation of

the IRCA are subject to civil and, in cases of "a pattern or practice of violations," criminal penalties. *Id.* § 1324a(e)-(f). Although the IRCA

> does not impose federal criminal sanctions on the employee side . . . . 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. Aliens also may be removed from the country for having engaged in unauthorized work. In addition to specifying these civil consequences, federal law makes it a crime for unauthorized workers to obtain employment through fraudulent means.

Arizona II, 567 U.S. at 404-05 (citations omitted).

To ensure compliance with the IRCA, employers must verify the authorization statuses of prospective employees. 8 U.S.C. § 1324a(a)(1)(B), (b). Verification is facilitated through a uniform inspection process; employers are required to retain documentary evidence of authorized employment, to which "immigration officers and administrative law judges [] have reasonable access." *Id.* § 1324a(b), (e)(2)(A). The information and documentation associated with the verification process may only be used to enforce the IRCA and INA, as well as for prosecution under certain criminal statutes. *Id.* § 1324a(b)(5), (d)(2)(F)-(G).

B. California's Statutes

This case centers on three laws enacted by the California legislature with the express goal "of protecting immigrants from an expected increase in federal immi-

gration enforcement actions." *Hearing on AB 450 Before the Assemb. Comm. on Judiciary*, 2017-18 Sess. 1 (Cal. 2017) (synopsis).

i. Immigrant Worker Protection Act (AB 450)

AB 450 prohibits "public and private employers" from "provid[ing] voluntary consent to an immigration enforcement agent to enter any nonpublic areas of a place of labor," unless "the immigration enforcement agent provides a judicial warrant." Cal. Gov't Code § 7285.1(a), (e). It similarly prohibits employers from "provid[ing] voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant." *Id.* § 7285.2(a)(1). It also limits employers' ability to "reverify the employment eligibility of a current employee at a time or in a manner not required by" the IRCA. Cal. Lab. Code § 1019.2(a).

In addition, AB 450 requires employers to "provide a notice to each current employee, by posting in the language the employer normally uses to communicate employment-related information to the employee, of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection." *Id.* § 90.2(a)(1).[1] If an employer receives "the written immigration agency notice that provides the results of the inspection," then she must pro-

[1] AB 450 "does not require a penalty to be imposed upon an employer or person who fails to provide notice to an employee at the express and specific direction or request of the federal government." Cal. Lab. Code § 90.2(c).

vide a copy to each "employee identified by the immigration agency inspection results to be an employee who may lack work authorization" and each "employee whose work authorization documents have been identified by the immigration agency inspection to have deficiencies." *Id.* § 90.2(b)(1)-(2).

ii. Inspection and Review of Facilities Housing Federal Detainees (AB 103)

AB 103 requires the California Attorney General to conduct "reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California." Cal. Gov't Code § 12532(a).[2] This includes "any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained on behalf of, or pursuant to a contract with, the federal Office of Refugee Resettlement or the United States Immigration and Customs Enforcement." *Id.* It requires the California Attorney General to review "the conditions of confinement," "the standard of care and due process provided," and "the circumstances around [the] apprehension" of civil immigration detainees, and then prepare "a comprehensive report outlining the findings of the review." *Id.* § 12532(b). To facilitate this review, the California Attorney General "shall be provided all necessary access for the observations necessary to effectuate reviews re-

[2] California law generally requires biennial inspections of "local detention facilities," focusing on health and safety, fire suppression, security, and rehabilitation efforts. Cal. Penal Code § 6031.1(a).

quired pursuant to this section, including, but not limited to, access to detainees, officials, personnel, and records." *Id.* § 12532(c).

iii. California Values Act (SB 54)

SB 54 limits law enforcement's "discretion to cooperate with immigration authorities." *Id.* § 7282.5(a). Among other things, it prohibits state and local law enforcement agencies from "[i]nquiring into an individual's immigration status"; "[d]etaining an individual on the basis of a hold request"; "[p]roviding information regarding a person's release date or" other "personal information," such as "the individual's home address or work address"; and "[a]ssisting immigration authorities" in certain activities. *Id.* § 7284.6(a)(1). SB 54 contains some exceptions to these prohibitions. For example, although agencies generally cannot "[t]ransfer an individual to immigration authorities," such an undertaking is permissible if "authorized by a judicial warrant or judicial probable cause determination," or if the individual has been convicted of certain enumerated crimes. *Id.* §§ 7282.5(a), 7284.6(a)(4). Similarly, the restrictions on sharing personal information are also relaxed if the individual has been convicted of an enumerated crime, or if the information is available to the public. *Id.* §§ 7282.5(a), 7284.6(a)(1)(C)-(D).[3]

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[3] California asserts that SB 54 was motivated by its "recogni[tion] that victims and witnesses of crime are less likely to come forward if they fear that an interaction with law enforcement will lead to their removal or the removal of a family member," and that the law built upon prior legislative efforts. *See* Cal. Penal Code § 422.93 ("Whenever an individual who is a victim of or witness to a hate crime . . . is not charged with or convicted of committing any crime under state law, a peace officer may not detain the individual exclusively for any

II. Procedural Background

On March 6, 2018, the United States filed this action against California, alleging that AB 450, AB 103, and SB 54 are preempted and violate the Supremacy Clause. The United States moved to preliminarily enjoin the three laws.

The district court granted the motion for a preliminary injunction in part and denied it in part. *United States v. California* (*California I*), 314 F. Supp. 3d 1077, 1112 (E.D. Cal. 2018). It agreed that the United States was likely to succeed on the merits as to two provisions of AB 450—specifically, the restriction on employers' voluntary consent to immigration enforcement officers, which the court concluded "impermissibly discriminates against those who choose to deal with the Federal Government," and AB 450's reverification provision, which it determined was likely preempted. *Id.* at 1096, 1098.[4] However, the court found "no merit to [the United States'] Supremacy Clause claim as to" AB 450's employee-notice provisions, reasoning, "Given IRCA's focus on employers, the Court finds no indication—express or implied—that Congress intended for employees to be kept in the dark." *Id.* at 1097. The notice

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actual or suspected immigration violation or report or turn the individual over to federal immigration authorities."); *see also* Cal. Gov't Code § 7284.2 (outlining the legislative findings undergirding SB 54 and reporting that "immigrant community members fear approaching police" and "[e]ntangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments").

[4] California does not appeal the partial grant of the United States' motion.

provisions did not "violate the intergovernmental immunity doctrine," the district court continued, because "[a]n employer is not punished for its choice to work with the Federal Government, but for its failure to communicate with its employees." *Id.*

As to AB 103, the district court found "no indication in the cited portions of the INA that Congress intended for States to have no oversight over detention facilities operating within their borders," noting that

> AB 103's review process does not purport to give California a role in determining whether an immigrant should be detained or removed from the country. The directive contemplates increased transparency and a report that may serve as a baseline for future state or local action. At this point, what that future action might be is subject to speculation and conjecture.

Id. at 1091. It further concluded that AB 103 was not invalid under the doctrine of intergovernmental immunity because "the burden placed upon the facilities is minimal," and "even if AB 103 treats federal contractors differently than the State treats other detention facilities," the United States had not demonstrated that California "treats other facilities better than those contractors." *Id.* at 1093.

The district court also refused to enjoin the challenged provisions of SB 54, finding that California's "decision not to assist federal immigration enforcement in its endeavors is not an 'obstacle' to that enforcement effort" because "refusing to help is not the same as impeding," and thus the doctrine of obstacle preemption did not render the provisions unlawful. *Id.* at 1104-05. It

also found that "Tenth Amendment and anticommandeering principles counsel against preemption," and that 8 U.S.C. § 1373, which governs the exchange of "information regarding [] immigration status," did not change this conclusion because the "plain meaning of Section 1373 limits its reach to information strictly pertaining to immigration status (i.e. what one's immigration status is) and does not include information like release dates and addresses." *Id.* at 1102, 1107. The district court determined that "a Congressional mandate prohibiting states from restricting their law enforcement agencies' involvement in immigration enforcement activities—apart from, perhaps, a narrowly drawn information sharing provision—would likely violate the Tenth Amendment." *Id.* at 1109-10.

Subsequently, the district court ruled on California's motion to dismiss, issuing an order consistent with its conclusions as to the preliminary injunction. *United States v. California* (*California II*), No. 2:18-cv-490-JAM-KJN, 2018 WL 3361055, at *1 (E.D. Cal. July 9, 2018). This timely appeal followed.

STANDARD OF REVIEW AND JURISDICTION

We review a district court's denial of a preliminary injunction for abuse of discretion. *Epona v. County of Ventura*, 876 F.3d 1214, 1219 (9th Cir. 2017). "Our review is limited and deferential. The district court's interpretation of the underlying legal principles, however, is subject to de novo review and a district court abuses its discretion when it makes an error of law." *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc) (per curiam). We will therefore reverse a denial of a preliminary injunction if the district court "based [its decision] on an erroneous

legal standard or a clearly erroneous finding of fact." *Associated Press v. Otter*, 682 F.3d 821, 824 (9th Cir. 2012) (quoting *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012)).

We have jurisdiction over the United States' appeal of the denial of its motion for a preliminary injunction pursuant to 28 U.S.C. § 1292.[5]

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[5] The United States' notice of appeal is directed to both the district court's preliminary injunction order *and* its order granting in part and denying in part California's motion to dismiss. Although we have appellate jurisdiction over appeal of the preliminary injunction order pursuant to 28 U.S.C. § 1292(a)(1) (conferring jurisdiction over "[i]nterlocutory orders of the district courts . . . granting, continuing, modifying, refusing or dissolving injunctions"), we do *not* have jurisdiction over an appeal of the dismissal order. Since the district court did not grant California's motion to dismiss in its entirety, that order was not a "full adjudication of the issues" and did not "clearly evidence[] the judge's intention that it be the court's final act in the matter," *Nat'l Distrib. Agency v. Nationwide Mut. Ins. Co.*, 117 F.3d 432, 433 (9th Cir. 1997) (quoting *In re Slimick*, 928 F.2d 304, 307 (9th Cir. 1990)), and therefore was not final pursuant to 28 U.S.C. § 1291. *See Prellwitz v. Sisto*, 657 F.3d 1035, 1038 (9th Cir. 2011) ("[T]he district court's order was not final because it did not dispose of the action as to *all* claims between the parties."). Indeed, it is quite clear that the order was not the court's final act in the matter, since it subsequently granted the United States' motion to stay further proceedings pending the outcome of this appeal. *See United States v. California*, No. 2:18-cv-00490-JAM-KJN, 2018 WL 5310675, at *1 (E.D. Cal. Oct. 19, 2018).

The district court did not certify the non-final dismissal order pursuant to Federal Rule of Civil Procedure 54(b) or 28 U.S.C. § 1292(b), and no other apparent exceptions to the finality rule exist here. We therefore **DISMISS** the appeal of the district court's dismissal order for want of appellate jurisdiction.

ANALYSIS

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, as the United States observes, the district court's "sole basis for denying injunctive relief against the California laws at issue in this appeal was the court's assessment of the merits," which, it further argues, "was erroneous because the district court adopted an unduly narrow view of two related doctrines, intergovernmental immunity and conflict preemption."

The doctrine of intergovernmental immunity is derived from the Supremacy Clause, U.S. Const., art. VI, which mandates that "the activities of the Federal Government are free from regulation by any state." *Boeing Co. v. Movassaghi*, 768 F.3d 832, 839 (9th Cir. 2014) (quoting *Mayo v. United States*, 319 U.S. 441, 445 (1943)). "Accordingly, state laws are invalid if they 'regulate[] the United States directly or discriminate[] against the Federal Government or those with whom it deals.'" *Id.* (alterations in original) (quoting *North Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality opinion)).

Under the doctrine of conflict preemption, "state laws are preempted when they conflict with federal law. This includes cases where 'compliance with both federal and state regulations is a physical impossibility,' and those instances where the challenged state law 'stands as an obstacle to the accomplishment and execution of

the full purposes and objectives of Congress.'" *Arizona II*, 567 U.S. at 399 (citations omitted) (first quoting *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963); and then quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). The latter instances constitute so-called "obstacle preemption," and "[t]o determine whether obstacle preemption exists, the Supreme Court has instructed that we employ our 'judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.'" *United States v. Arizona* (*Arizona I*), 641 F.3d 339, 345 (9th Cir. 2011) (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000)), *aff'd in part, rev'd in part*, 567 U.S. 387 (2012). The Court has emphasized that "[i]mplied preemption analysis does not justify a 'freewheeling judicial inquiry into whether a state statute is in tension with federal objectives'; such an endeavor 'would undercut the principle that it is Congress rather than the courts that preempts state law.' . . . [A] high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act." *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (quoting *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 110-11 (1992) (Kennedy, J., concurring in part and concurring in the judgment)).

"Under these principles," the United States contends, "the challenged provisions of California law are invalid and should have been enjoined." We consider each statute in turn.

I. AB 450

AB 450, which imposes penalties on employers based on their interactions with federal immigration authorities, was partially enjoined by the district court; specifically, its provisions relating to employers who provide consent to federal investigations or reverify the employment eligibility of current employees. The district court did not, however, enjoin the provisions of AB 450 that establish employee-notice requirements. The United States maintains that "these provisions violate the intergovernmental immunity doctrine and are also subject to obstacle preemption."

Congress enacted the IRCA to combat the employment of unauthorized noncitizens. *Arizona II*, 567 U.S. at 404-05. Employers are required to retain documentation regarding employees' work authorizations, and to make that documentation available for inspection by federal officers. 8 U.S.C. § 1324a(b)(3). Such inspections must be preceded by "at least three business days notice." 8 C.F.R. § 274a.2(b)(2)(ii). The United States notes that "[n]either the statute nor the regulations require any notice to employees before their employers' records are inspected, or after an inspection is conducted." AB 450, by contrast, requires two forms of notice: first, employers must inform their employees of upcoming inspections within 72 hours of receiving notice, Cal. Lab. Code § 90.2(a)(1), and second, employers must share any documents providing the results of the inspection with any employees who might lack work authorization, *id.* § 90.2(b)(1)-(2).

A. Intergovernmental Immunity

The United States contends that "AB 450's provisions impermissibly target and discriminate against federal immigration enforcement operations." It reasons that "[i]f any other entity—such as a state or federal regulator, or a private entity—inspects an employer's records, the employer would have no obligation under AB 450 to notify its employees," and thus that AB 450 impermissibly imposes a "unique regime" on the federal government.

This argument, however, extends intergovernmental immunity beyond its defined scope. The doctrine has been invoked, to give a few examples, to prevent a state from imposing more onerous clean-up standards on a federal hazardous waste site than a non-federal project, *Boeing*, 768 F.3d at 842-43; to preclude cities from banning only the U.S. military and its agents from recruiting minors, *United States v. City of Arcata*, 629 F.3d 986, 988, 990-92 (9th Cir. 2010); and to foreclose a state from taxing the lessees of federal property while exempting from the tax lessees of state property, *Phillips Chem. Co. v. Dumas Indep. Sch. Dist.*, 361 U.S. 376, 381-82, 387 (1960). Those cases dealt with laws that directly or indirectly affected the operation of a federal program or contract. The situation here is distinguishable—AB 450 is directed at the conduct of *employers*, not the United States or its agents, and no federal activity is regulated. We agree with California: "The mere fact that those notices contain information about federal inspections does not convert them into a burden on those inspections." Similarly, the mere fact that the actions of the federal government are incidentally *targeted* by

AB 450 does not mean that they are incidentally *burdened*, and while the latter scenario might implicate intergovernmental immunity, the former does not. As the district court correctly recognized, to rule otherwise "would stretch the doctrine beyond its borders." *California I*, 314 F. Supp. 3d at 1097.

The United States argues that the proposition that intergovernmental immunity is only implicated when federal activities are obstructed "is clearly wrong, because it would render the intergovernmental-immunity doctrine entirely redundant with the obstacle-preemption doctrine, which separately addresses the *burdensome effect* of *non-discriminatory* state laws." We disagree. The United States does not accurately distinguish between the doctrines of intergovernmental immunity and obstacle preemption. Reviewing the case law in which these doctrines were developed yields the proper distinction: simply put, intergovernmental immunity attaches only to state laws that discriminate against the federal government and burden it in some way. Obstacle preemption, by contrast, attaches to any state law, regardless of whether it specifically targets the federal government, but only if it imposes an obstructive, not-insignificant burden on federal activities.

Moreover, the United States' position that no obstruction is required in intergovernmental immunity cases ignores the origins of the doctrine and the occasions in which it has been applied. "The doctrine of intergovernmental immunity arose from the Supreme Court's decision in *M'Culloch v. Maryland*, which established that 'the states have no power, by taxation or otherwise, *to retard, impede, burden, or in any manner*

control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government.'" *City of Arcata*, 629 F.3d at 991 (emphasis added) (citation omitted) (quoting *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819)); *see also North Dakota*, 495 U.S. at 437-38 (plurality opinion) ("The nondiscrimination rule finds its reason in the principle that the States *may not directly obstruct* the activities of the Federal Government." (emphasis added)); *Washington v. United States*, 460 U.S. 536, 544 (1983) ("The important consideration . . . is not whether the State differentiates in determining what entity shall bear the legal incidence of the tax, but whether the tax is discriminatory with regard to the *economic burdens that result*." (emphasis added)); *City of Arcata*, 629 F.3d at 991 (applying the nondiscrimination rule to ordinances that "specifically target *and restrict* the conduct of military recruiters" (emphasis added)).

Since the advent of the doctrine, intergovernmental immunity has attached where a state's discrimination negatively affected federal activities in some way. It is not implicated when a state merely references or even singles out federal activities in an otherwise innocuous enactment. The Supreme Court has clarified that a state "does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them." *Washington*, 460 U.S. at 544-45. AB 450 does not treat the federal government worse than anyone else; indeed, it does not regulate federal operations at all. Accordingly, the district court correctly concluded that AB 450's employee-notice provisions do not violate the doctrine of intergovernmental immunity.

B. Preemption

The United States also contends that AB 450's employee-notice provisions are preempted because they seek "to alter the manner in which the federal government conducts inspections, by imposing requirements that neither Congress nor the implementing agency saw fit to impose." We disagree. The cases to which the United States cites concerned either the disruption of a federal relationship or the undermining of a federal operation. Here, there is indisputably a federal relationship, but it is between federal immigration authorities and the employers they regulate[6]—*not* between employers and their employees. AB 450 impacts the latter relationship, not the former, and imposes no additional or contrary obligations that undermine or disrupt the activities of federal immigration authorities. In *Arizona II*, the Supreme Court observed that a "[c]onflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy." 567 U.S. at 406 (alteration in original) (quoting *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emps. of Am. v. Lockridge*, 403 U.S. 274, 287 (1971)); *see also Crosby*, 530 U.S. at 376-77 (finding preempted a state law "imposing a different, state system" that "undermines the President's intended statutory authority"). Here, by contrast, there is no "conflict in technique," because federal activity is not regulated.

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[6] *Cf. Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001) ("[T]he relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law.").

AB 450's employee-notice provisions do not permit employers to hire individuals without federally defined authorization, or impose sanctions inconsistent with federal law, either of which *would* impermissibly "frustrate[] the purpose of the national legislation or impair[] the efficiency of those agencies of the Federal government." *Nash v. Fla. Indus. Comm'n*, 389 U.S. 235, 240 (1967) (quoting *Davis v. Elmira Sav. Bank*, 161 U.S. 275, 283 (1896)). But "nothing in IRCA (or federal immigration policy generally) demands that employers, site owners, or general contractors be absolved from" a state's employee-protection efforts "whenever undocumented aliens provide labor." *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 242 (2d Cir. 2006); *see also id.* at 241-42 (finding no preemption where "[t]here is no irreconcilable conflict between IRCA and [a state workplace-protection law] such that compliance with both the former's prohibition on the employment of undocumented workers and the latter's safe construction site obligation is physically impossible"). In the absence of irreconcilability, there is no conflict preemption, as the district court correctly recognized. *See California I*, 314 F. Supp. 3d at 1097.

II. AB 103

AB 103 authorizes the California Attorney General to inspect detention facilities that house civil immigration detainees. The United States contends that the law "impermissibly seeks to require facilities housing federal immigration detainees to cooperate with broad investigations that examine the due process provided to detainees and the circumstances surrounding the detainee's apprehension and transfer to the facility."

Again, it invokes intergovernmental immunity and obstacle preemption.

A. Intergovernmental Immunity

Like AB 450, AB 103 relates exclusively to federal conduct, as it applies only to "facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California." Cal. Gov't Code § 12532(a).[7] Unlike AB 450, AB 103 imposes a specialized burden on federal activity, as the district court recognized. *See California I*, 314 F. Supp. 3d at 1093. That vital distinction renders the burdensome provisions of AB 103 unlawful under the doctrine of intergovernmental immunity.

Prior to the enactment of AB 103, California law already required periodic inspections of prisons and de-

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[7] To "arrange for appropriate places of detention for aliens detained pending removal or a decision on removal," 8 U.S.C. § 1231(g)(1), the INA contemplates use of both federal facilities *and* nonfederal facilities with which the federal government contracts. *See id.* § 1231(g)(2) (requiring the federal government to "consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for" detainee detention); *id.* § 1103(a)(11) (authorizing "payments" to and "cooperative agreement[s]" with states and localities). For purposes of intergovernmental immunity, federal contractors are treated the same as the federal government itself. *See Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 181 (1988) ("[A] federally owned facility performing a federal function is shielded from direct state regulation, even though the federal function is carried out by a private contractor, unless Congress clearly authorizes such regulation."); *Gartrell Constr. Inc. v. Aubry*, 940 F.2d 437, 438-41 (9th Cir. 1991) (holding that state licensing requirements for construction contractors were preempted to the extent that they applied to federal contractors).

tainment facilities. *See* Cal. Penal Code § 6031.1 (mandating biennial inspections of "[h]ealth and safety," "[f]ire suppression preplanning," "[s]ecurity, rehabilitation programs, recreation, treatment of persons confined in the facilities, and personnel training," and visitation conditions, as well as the completion of subsequent reports). AB 103, however, does not merely replicate this inspection scheme; in addition to requiring "[a] review of the conditions of confinement," the enactment also calls for reviews of the "standard of care and due process provided to" detainees, and "the circumstances around their apprehension and transfer to the facility." Cal. Gov't Code § 12532(b)(1). These additional requirements burden federal operations, and *only* federal operations.[8]

The district court addressed this burden as follows: "[The United States] argues the law violates [the doctrine of intergovernmental immunity] because it imposes a review scheme on facilities contracting with the

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[8] The statute requires that the California Attorney General "be provided all necessary access for the observations necessary to effectuate reviews required pursuant to this section, including, but not limited to, access to detainees, officials, personnel, and records." Cal. Gov't Code § 12532(c). Immigration and Customs Enforcement (ICE) official Thomas Homan claimed that "[t]hese inspections have caused the facilities to expend resources otherwise necessary for ensuring the safety and security of the detainees. Each inspection presents a burdensome intrusion into facility operations and pulls scarce resources away from other sensitive law enforcement tasks." Homan also attested that "the broad allowances made by AB 103 for the California [Attorney General] to perform reviews of immigration detention facilities to include wide-ranging access to facilities, individuals, and records, if enforced by the state, will conflict with ICE's ability to comply with other federal information disclosure laws, regulations, and policies."

federal government, only. This characterization is valid. However, the burden placed upon the facilities is minimal and [the United States'] evidence does not show otherwise." *California I*, 314 F. Supp. 3d at 1093. Instead of challenging the factual conclusion regarding the severity of AB 103's burden, the United States questions the district court's legal conclusion, contending that "the application of the intergovernmental immunity doctrine does not depend on the size of the discriminatory burden imposed. Even a tax of $1 imposed only on entities that contract with the federal government would be unlawful." In essence, the district court applied a de minimis exception to the doctrine of intergovernmental immunity, concluding that a discriminatory enactment is lawful so long as the burden it imposes on the federal government is minimal. But the court cited no authority for this proposition. We must therefore determine whether such an exception is cognizable.

i. De Minimis Exception

We agree with the United States that Supreme Court case law compels the rejection of a de minimis exception to the doctrine of intergovernmental immunity.

The recent decision in *Dawson v. Steager*, 139 S. Ct. 698 (2019), supports this position. There, the Court suggested that *any* discriminatory burden on the federal government is impermissible, writing that "[s]ection 111 disallows *any* state tax that discriminates against a federal officer or employee." *Id.* at 704 (citing 4 U.S.C. § 111). The Court had previously explained that the prohibition against discriminatory taxes in § 111 "is coextensive with the prohibition against discriminatory taxes embodied in the modern constitutional doctrine of intergovernmental tax immunity."

Davis v. Mich. Dep't of Treasury, 489 U.S. 803, 813 (1989).

The parties do not dispute that the principles of the intergovernmental tax immunity doctrine apply to the general intergovernmental immunity doctrine. *See North Dakota*, 495 U.S. at 434-39 (plurality opinion). Accordingly, we are not prepared to recognize a de minimis exception to the doctrine of intergovernmental immunity. *Any* economic burden that is discriminatorily imposed on the federal government is unlawful.[9] In relying on a de minimis exception, the district court applied incorrect law and therefore abused its discretion.

ii. Burdensome Provisions

That is not to say, however, that the United States is likely to succeed on the merits as to the *entirety* of AB 103. Only those provisions that impose an additional economic burden exclusively on the federal government are invalid under the doctrine of intergovernmental immunity.

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[9] We note the practical merit of this conclusion. Rejecting a de minimis exception permits a clearer distinction between intergovernmental immunity and the related—but distinct—doctrine of obstacle preemption. Intergovernmental immunity is implicated when *any* burden is imposed exclusively on the federal government; obstacle preemption is implicated when an *obstructive* burden is imposed, regardless of its discriminatory nature. Our conclusion is also consistent with *M'Culloch*, the seminal intergovernmental immunity decision. There, the Supreme Court was loath to undertake the "perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power," and opined that "[a] question of constitutional power can hardly be made to depend on a question of more or less." *M'Culloch*, 17 U.S. (4 Wheat.) at 327, 430.

California maintains that all of AB 103's requirements duplicate preexisting inspection demands imposed on state and local detention facilities. It points to regulations requiring its Board of State and Community Corrections (the Board) to inspect not only compliance with general health and safety standards—which are included in AB 103, *see* Cal. Gov't Code § 12532(b)(1)(A)-(B) (requiring review of "the conditions of confinement" and "the standard of care" of detainees)—but also the availability of legal reference materials and confidential communications with counsel. *See* Cal. Penal Code § 6031.1; Cal. Code Regs. tit. 15, §§ 1063-64, 1068. California argues that AB 103's requirement that the California Attorney General review the "due process provided to" civil immigration detainees, Cal. Gov't Code § 12532(b)(1)(B), is therefore duplicative, on the assumption that "due process" refers to "conditions of confinement that affect detainees' ability to access courts—such as the adequacy of the facility's law library, the availability of unmonitored communications with counsel, and the ability to send and receive mail." *See Bounds v. Smith*, 430 U.S. 817, 828 (1977) (recognizing that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law"); *Cornett v. Donovan*, 51 F.3d 894, 897-98 (9th Cir. 1995) (finding that the *Bounds* right is "not limited to people who are committed following criminal proceedings"). At oral argument, California maintained that its Attorney General's interpretation of "due process" is indeed as limited as its brief suggests, and thus does not compel any

additional inspection requirements beyond those applied to other state facilities.

In the context of this appeal from the denial of a preliminary injunction, we accept California's limited construction. We therefore conclude that AB 103's due process provision likely does not violate the doctrine of intergovernmental immunity, and that the district court's denial of a preliminary injunction as to this provision should be affirmed. We note, however, that a broader reading of the term "due process" might empower the California Attorney General to scrutinize, say, an immigration judge's analysis, the results of the Board of Immigration Appeals, or other related court proceedings—all of which are well outside the purview of a state attorney general, and not duplicative of the inspection requirements otherwise imposed on California's state and local detention facilities.

That is not the end of our inquiry, for as the United States observes, California "does not even attempt to identify any provision of the pre-existing inspection scheme analogous to the unique requirement for immigration detainees that inspectors must examine the circumstances surrounding their apprehension and transfer to the facility." *See* Cal. Gov't Code § 12532(b)(1)(C). This is a novel requirement, apparently distinct from any other inspection requirements imposed by California law. The district court was therefore incorrect when it concluded that "the review appears no more burdensome than reviews required under California Penal Code §§ 6030, 6031.1." *California I*, 314 F. Supp. 3d at 1093.

In light of this apparent factual error, and the district court's erroneous reliance on a de minimis exception to

the doctrine of intergovernmental immunity, we reverse the district court's denial of a preliminary injunction as to California Government Code section 12532(b)(1)(C)—the provision of AB 103 requiring examination of the circumstances surrounding the apprehension and transfer of immigration detainees.

B. Preemption

The United States further argues that "even if AB 103's inspection regime had not discriminatorily targeted facilities holding federal immigration detainees, it still would be preempted by federal law." We disagree.

The cases on which the United States relies involved a far clearer interference with federal activity than AB 103 creates. In *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 189-90 (1956) (per curiam), and *Gartrell Construction Inc. v. Aubry*, 940 F.2d 437, 441 (9th Cir. 1991), states prevented the federal government from entering into agreements with its chosen contractors until the states' own licensing standards were satisfied. In *Tarble's Case*, the Supreme Court rejected a state court's attempt to discharge a prisoner held "by an officer of the United States, under claim and color of the authority of the United States, as an enlisted soldier mustered into the military service of the National government." 80 U.S. (13 Wall.) 397, 412 (1871). In *In re Neagle*, the Court determined that a county sheriff could not hold a U.S. marshal on murder charges for actions taken on duty. 135 U.S. 1, 62 (1890).

These cases evinced states' active frustration of the federal government's ability to discharge its operations. Here, by contrast, AB 103 does not regulate whether or where an immigration detainee may be confined, require

that federal detention decisions or removal proceedings conform to state law, or mandate that ICE contractors obtain a state license. The law might require some federal action to permit inspections and produce data—a burden that, as discussed above, implicates intergovernmental immunity—but as California persuasively notes, "[M]ere collection of such factual data does not (and cannot) disturb any federal arrest or detention decision."

In *Arizona II*, the Supreme Court noted that "[i]n preemption analysis, courts should assume that 'the historic police powers of the States' are not superseded 'unless that was the clear and manifest purpose of Congress.'" 567 U.S. at 400 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). The United States does not dispute that California possesses the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders, and neither the provisions of the INA that permit the federal government to contract with states and localities for detention purposes, *see* 8 U.S.C. §§ 1103(a)(11), 1231(g), nor the contracts themselves,[10] demonstrate *any* intent,

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[10] The contracts included in the record *require* that immigration facilities conform to California's authority. One contract—between DHS and the City of Holtville, California, for use of the Imperial Regional Detention Facility—includes a provision requiring "compl[iance] with all applicable ICE, federal, state and local laws, statutes, regulations, and codes. In the event there is more than one reference to a safety, health, or environment requirement . . . the most stringent requirement shall apply." Another agreement between the Office of the Federal Detention Trustee and a private contractor, Corrections Corporation of America, to house ICE detainees in San Diego County similarly required that "[a]ll services and programs shall comply with . . . all applicable federal, state

let alone "clear and manifest," that Congress intended to supersede this authority. The district court was correct when it concluded, "Given the Attorney General's power to conduct investigations related to state law enforcement—a power which [the United States] concedes—the Court does not find this directive in any way constitutes an obstacle to the federal government's enforcement of its immigration laws or detention scheme." *California I*, 314 F. Supp. 3d at 1091-92 (citation omitted).

III. SB 54

We now reach the most contentious of the three challenged laws, SB 54, which, the United States contends, "seeks to impede the enforcement of federal immigration laws by manipulating the overlap between state criminal enforcement and federal immigration enforcement."

A. Preemption

The United States argues that SB 54 unlawfully obstructs the enforcement of federal immigration laws. It focuses on a provision of the law that prohibits California law enforcement agencies from "[t]ransfer[ring] an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination." Cal. Gov't Code § 7284.6(a)(4). It notes

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and local laws and regulations." The district court correctly recognized these provisions, writing, "The Court finds no indication in the cited portions of the INA that Congress intended for States to have no oversight over detention facilities operating within their borders. Indeed, the detention facility contracts [California] provided to the Court expressly contemplate compliance with state and local law." *California I*, 314 F. Supp. 3d at 1091 (citations omitted).

that the INA provides that "[o]n a warrant issued *by the Attorney General*, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). It therefore concludes that "California has no authority to demand a judicial warrant that Congress chose not to require. . . . By prohibiting transfers of custody within secure areas of local jails in the absence of a judicial warrant, California prevents federal officers from obtaining custody through a safe and peaceful transfer."

We have no doubt that SB 54 makes the jobs of federal immigration authorities more difficult. The question, though, is whether that constitutes a "[c]onflict in technique" that is impermissible under the doctrine of obstacle preemption. *Arizona II*, 567 U.S. at 406 (alteration in original).

The United States relies in part on our opinion in *Oregon Prescription Drug Monitoring Program v. DEA*, 860 F.3d 1228 (9th Cir. 2017), but that case is easily distinguished. There, a federal agency issued statutorily authorized subpoenas to a state agency, and the latter sought a declaration that it need not respond because of a state statute requiring "a valid court order" in all cases in which a subpoena is issued. *Id.* at 1231-32, 1236. We concluded that the state statute "stands as an obstacle to the full implementation of the [federal statute] because it 'interferes with the methods by which the federal statute was designed to reach [its] goal.'" *Id.* at 1236 (second alteration in original) (quoting *Gade*, 505 U.S. at 103 (plurality opinion)). Here, by contrast, neither an administrative warrant issued by federal authorities nor any other provision of law identified by the

United States *compels* any action by a state or local official. With the exception of § 1373(a), discussed below, the various statutory provisions to which the United States points direct *federal* activities, not those of state or local governments. *See* 8 U.S.C. §§ 1226, 1231.

We cannot simply assume that Congress impliedly mandated that state and local governments would act in accordance with these statutes. Even if Congress had every expectation that they would, and opted not to codify its belief based on the presumption that states would conduct their law enforcement activities in concert with federal immigration efforts, it is a state's historic police power—not preemption—that we must assume, unless clearly superseded by federal statute. *See Arizona II*, 567 U.S. at 400.[11] As California notes, "There is [] nothing in the federal regulatory scheme requiring States to alert federal agents before releasing a state or local inmate." The Fifth Circuit has aptly noted that

> [f]ederal law does not suggest the intent—let alone a "clear and manifest" one—to prevent states from regulating *whether* their localities cooperate in immigration enforcement. Section 1357 does not require cooperation at all. And the savings clause allowing cooperation without a 287(g) agreement indicates that some state and local regulation of cooperation is permissible.

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[11] A state's ability to regulate its internal law enforcement activities is a quintessential police power. *See United States v. Morrison*, 529 U.S. 598, 618 (2000) ("[W]e can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.").

City of El Cenizo v. Texas, 890 F.3d 164, 178 (5th Cir. 2018) (citations omitted) (citing 8 U.S.C. § 1357(g)(9)-(10)).[12]

In short, SB 54 does not directly conflict with any obligations that the INA or other federal statutes impose on state or local governments, because federal law does not actually mandate any state action (again, with the exception of § 1373, discussed below).

But that does not resolve the lingering issue of obstacle preemption. The United States notes that SB 54 requires federal officers to, "in effect, stake out a jail and seek to make a public arrest. . . . Arrests of aliens in public settings generally require five officers and present risks to the arresting officer and the general public." It contends that "Congress did not contemplate that, as a consequence of letting state detention proceed first, federal officers who sought to detain an alien for immigration purposes would need to race to the front of a local detention facility and seek to effectuate an arrest before the alien manages to escape." Compounding the problem, the United States further claims, are provisions of SB 54 that preclude agencies from providing personal information and release dates to immigration authorities. *See* Cal. Gov't Code § 7284.6(a)(1)(C)-(D). "So not only would California require DHS to stake out jails to detain aliens upon their release," the United

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[12] The United States points out that *City of El Cenizo* "upheld a state enactment that merely required state and local officials to cooperate with requests by federal officials," as opposed to California's efforts "*to disrupt* the federal scheme." But this distinction does not alter the Fifth Circuit's conclusion regarding the ability of states and localities to regulate the extent to which they cooperate with federal immigration authorities.

States continues, "but California would require DHS to do so indefinitely because the agency would not otherwise know if and when any given alien would be released."

The district court concluded that this frustration does not constitute obstacle preemption:

> California's decision not to assist federal immigration enforcement in its endeavors is not an "obstacle" to that enforcement effort. [The United States'] argument that SB 54 makes immigration enforcement far more burdensome begs the question: more burdensome than what? The laws make enforcement more burdensome than it would be if state and local law enforcement provided immigration officers with their assistance. But refusing to help is not the same as impeding. If such were the rule, obstacle preemption could be used to commandeer state resources and subvert Tenth Amendment principles.

California I, 314 F. Supp. 3d at 1104.[13] We agree. Even if SB 54 obstructs federal immigration enforcement, the United States' position that such obstruction is unlawful runs directly afoul of the Tenth Amendment and the anticommandeering rule.

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[13] The Seventh Circuit has conducted a similar analysis: "[T]he Attorney General repeatedly characterizes the issue as whether localities can be allowed to thwart federal law enforcement. That is a red herring. . . . [N]othing in this case involves any affirmative *interference* with federal law enforcement at all, nor is there any interference whatsoever with federal immigration authorities." *City of Chicago v. Sessions*, 888 F.3d 272, 282 (7th Cir. 2018), *vacated in part on other grounds*, No. 17-2991, 2018 WL 4268817 (7th Cir. June 4, 2018).

B. The Tenth Amendment and Anticommandeering Rule

"The Constitution . . . 'confers upon Congress the power to regulate individuals, not States.'" *Murphy v. NCAA*, 138 S. Ct. 1461, 1476 (2018) (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)). Under the Tenth Amendment and other provisions of the Constitution, "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *Printz v. United States*, 521 U.S. 898, 925 (1997).

Ultimately, we conclude that the specter of the anticommandeering rule distinguishes the case before us from the preemption cases on which the United States relies. Those cases concerned state laws that affirmatively disrupted federal operations by mandating action (or inaction) contrary to the status quo.[14] In each, a

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[14] *See Arizona II*, 567 U.S. at 393-94 (considering four provisions of state law, including "[t]wo [that] create new state offenses" and two that "give specific arrest authority and investigative duties with respect to certain aliens to state and local law enforcement officers"); *Crosby*, 530 U.S. at 366 ("The issue is whether the Burma law of the Commonwealth of Massachusetts, restricting the authority of its agencies to purchase goods or services from companies doing business with Burma, is invalid under the Supremacy Clause of the National Constitution owing to its threat of frustrating federal statutory objectives." (footnote omitted)); *Lockridge*, 403 U.S. at 276 (exploring "the extent to which the maintenance of a general federal law of labor relations combined with a centralized administrative agency to implement its provisions necessarily supplants the operation of the more traditional legal processes in this field"); *Nash*, 389 U.S. at 236 ("The crucial question presented here is whether a State can refuse to pay its unemployment insurance to persons solely because they have preferred unfair labor practice charges against their former employer."); *Paul*, 373 U.S. at 133-34 (assessing a state statute

state statute affirmatively instituted a regulatory scheme that conflicted with federal law, either by commission (for example, by applying differing standards or mandating affirmative action irreconcilable with federal law) or omission (by demanding inaction that directly conflicted with federal requirements). The solution to avoid conflict preemption was the same: invalidate the state enactment. In each case, the status quo would return—either no future conflicting action would be taken, or active compliance with federal law would recommence—and federal activity would no longer be obstructed.

Here, by contrast, invalidating SB 54 would *not* prevent obstruction of the federal government's activities, because the INA does not require any particular action on the part of California or its political subdivisions. Federal law provides states and localities the *option*, not the *requirement*, of assisting federal immigration authorities. SB 54 simply makes that choice for California law enforcement agencies.

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that "gauge[d] the maturity of avocados by oil content," where federal law "gauge[d] the maturity of avocados grown in Florida by standards which attribute no significance to oil content"); *Hines*, 312 U.S. at 59 ("This case involves the validity of an Alien Registration Act adopted by the Commonwealth of Pennsylvania."); *Davis*, 161 U.S. at 283 (determining that "an attempt, by a State, to define [the] duties or control the conduct of [the] affairs [of national banks] is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal government to discharge the duties, for the performance of which they were created"). *Leslie Miller*, *Gartrell Construction*, *Tarble's Case*, and *Neagle* featured similarly affirmative disruptions of federal law; their specific facts are explored in our discussion of AB 103 and preemption.

The United States' primary argument against SB 54 is that it forces federal authorities to expend greater resources to enforce immigration laws, but that would be the case *regardless* of SB 54, since California would still retain the ability to "decline to administer the federal program." *New York*, 505 U.S. at 177. As the Supreme Court recently rearticulated in *Murphy*, under the anticommandeering rule, "Congress cannot issue direct orders to state legislatures," 138 S. Ct. at 1478, and the Court's earlier decision in *New York* underscored that the rule also permits a state's refusal to adopt preferred federal policies. *See* 505 U.S. at 161-62. Even in the absence of SB 54, Congress could not "impress into its service—and at no cost to itself—the police officers of the 50 States." *Printz*, 521 U.S. at 922.[15]

Federal schemes are inevitably frustrated when states opt not to participate in federal programs or enforcement efforts. But the choice of a state to refrain from participation cannot be invalid under the doctrine of obstacle preemption where, as here, it retains the right of refusal. Extending conflict or obstacle preemption to SB 54 would, in effect, "dictate[] what a state legislature may and may not do," *Murphy*, 138 S. Ct. at 1478, because it would imply that a state's otherwise

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[15] The United States suggests that these principles do not extend here because "both sovereigns [are] regulat[ing] private individuals," and the Supreme Court has held that it "is incorrect" to "assume that the Tenth Amendment limits congressional power to preempt or displace state regulation of private activities affecting interstate commerce." *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 289-90 (1981). But although the INA and SB 54 both implicate noncitizens—private actors—SB 54 governs how California and its localities can interact with the federal government, not the activities of private individuals, and so *Hodel* is inapposite.

lawful decision *not* to assist federal authorities is made unlawful when it is codified as state law.

We also find no constitutional infirmity in the specific provisions of SB 54 that govern the exchange of information with federal immigration authorities. *See* Cal. Gov't Code § 7284.6(a)(1)(C)-(D) (prohibiting California law enforcement agencies from "[p]roviding information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public," and "[p]roviding personal information . . . about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public"). These two subparts only concern the exchange of information, and the Supreme Court has implied the existence of a Tenth Amendment exception for reporting requirements. *See Printz*, 521 U.S. at 917-18 (distinguishing between federal statutes that "require only the provision of information to the Federal Government" and those that "force[the] participation of the States' executive in the actual administration of a federal program").

The United States relies on *Reno v. Condon*, which upheld against Tenth Amendment attack a federal statute that "regulate[d] the disclosure and resale of personal information contained in the records of state DMVs" because it did "not require the States in their sovereign capacity to regulate their own citizens" and instead "regulate[d] the States as the owners of data bases." 528 U.S. 141, 143, 151 (2000). But the Supreme Court recently explained,

> The anticommandeering doctrine does not apply when Congress evenhandedly regulates an activity in which both States and private actors engage.
>
> That principle formed the basis for the Court's decision in *Reno v. Condon*, which concerned a federal law restricting the disclosure and dissemination of personal information provided in applications for driver's licenses. The law applied equally to state and private actors. It did not regulate the States' sovereign authority to "regulate their own citizens."

Murphy, 138 S. Ct. at 1478-79 (citation omitted) (quoting *Reno*, 528 U.S. at 151). Here, by contrast, it is the state's responsibility to help enforce federal law, and not conduct engaged in by both state and private actors, that is at issue. We therefore conclude that *Murphy*'s reading of *Reno* suggests that the latter is not applicable here.

SB 54 may well frustrate the federal government's immigration enforcement efforts. However, whatever the wisdom of the underlying policy adopted by California, that frustration is permissible, because California has the right, pursuant to the anticommandeering rule, to refrain from assisting with federal efforts. The United States stresses that, in crafting the INA, Congress expected cooperation between states and federal immigration authorities. That is likely the case. But when questions of federalism are involved, we must distinguish between expectations and requirements. In this context, the federal government was free to *expect* as much as it wanted, but it could not *require* California's cooperation without running afoul of the Tenth Amendment.

C. Intergovernmental Immunity

The Government also argues that SB 54 violates the doctrine of intergovernmental immunity.

The district court correctly rejected that argument. *See California I*, 314 F. Supp. 3d at 1110. In *North Dakota*, the Supreme Court endorsed "a functional approach to claims of governmental immunity, accommodating of the full range of each sovereign's legislative authority and respectful of the primary role of Congress in resolving conflicts between the National and State Governments." 495 U.S. at 435 (plurality opinion). A finding that SB 54 violates the doctrine of intergovernmental immunity would imply that California *cannot* choose to discriminate against federal immigration authorities by refusing to assist their enforcement efforts—a result that would be inconsistent with the Tenth Amendment and the anticommandeering rule.

D. Section 1373

Lastly, the United States contends that 8 U.S.C. § 1373 directly prohibits SB 54's information-sharing restrictions.

Section 1373 provides that "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). SB 54, in turn, expressly *permits* the sharing of such information, and so does not appear to conflict with § 1373. *See* Cal. Gov't Code § 7284.6(e) ("This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration

authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual . . . pursuant to Section[] 1373."). But the United States argues that § 1373 actually applies to more information than just immigration status, and hence that SB 54's prohibition on sharing *other* information creates a direct conflict.

We disagree. Although the United States contends that "whether a given alien may actually be removed or detained by federal immigration authorities is, at a minimum, information regarding that alien's immigration status," the phrase "information regarding the citizenship or immigration status, lawful or unlawful, of any individual" is naturally understood as a reference to a person's legal classification under federal law, as the district court concluded. *See California I*, 314 F. Supp. 3d at 1102 ("[T]he plain meaning of Section 1373 limits its reach to information strictly pertaining to immigration status (i.e. what one's immigration status is) and does not include information like release dates and addresses.").[16] Phrases like "regarding" may generally

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[16] This is consistent with our decision in *Steinle v. City and County of San Francisco*, in which we determined that "[t]he statutory text [of § 1373(a)] does not include release-date information. It includes only 'information regarding' 'immigration status,' and nothing in [§ 1373(a)] addresses information concerning an inmate's *release date*." No. 17-16283, slip op. at 16 (9th Cir. Mar. 25, 2019). Several district courts have reached similar conclusions regarding § 1373's circumscribed scope. *See, e.g.*, *City and County of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 968 (N.D. Cal. 2018) ("Given my interpretation of Section 1373, limiting it to information relevant to citizenship or immigration status not including release date information, it is clear [SB 54] complies with Section 1373."), *appeal docketed*, No. 18-17308 (9th Cir. Dec. 4, 2018); *City of Philadelphia v.*

have "a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject," *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1759-60 (2018), but if the term "regarding" were "taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes preemption would never run its course, for '[r]eally, universally, relations stop nowhere.'" *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (alteration in original) (quoting H. James, *Roderick Hudson* xli (New York ed., World's Classics 1980)).[17]

Congress has used more expansive phrases in other provisions of Title 8 when intending to reach broader swaths of information. *See, e.g.*, 8 U.S.C. § 1360(a) (mandating the inclusion of "such other relevant information as the Attorney General shall require as an aid" to the creation of a central index of noncitizens entering

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Sessions, 309 F. Supp. 3d 289, 333 (E.D. Pa. 2018) ("The phrase 'citizenship or immigration status,' plainly means an individual's category of presence in the United States—e.g., undocumented, refugee, lawful permanent resident, U.S. citizen, etc.—and whether or not an individual is a U.S. citizen, and if not, of what country. The phrase 'information regarding' includes only information relevant to that inquiry. When an individual will be released from a particular City facility, cannot be considered 'information regarding' his immigration status."), *aff'd in part, vacated in part on other grounds sub nom. City of Philadelphia v. Attorney Gen.*, 916 F.3d 276 (3d Cir. 2019).

[17] Indeed, the range of facts that might have some connection to federal removability or detention decisions is extraordinarily broad. *See, e.g.*, 8 U.S.C. § 1182 (listing various admissibility considerations, including vaccination history, education, financial resources, and membership in "the Communist or any other totalitarian party").

the country); *id.* § 1360(b) ("Any information in any records kept by any department or agency of the Government as to the identity and location of aliens in the United States shall be made available to the Service upon request."). The United States claims that § 1373*(c)* demonstrates the extensive reach of § 1373*(a)*, as unlike the latter, the former does not use the term "regarding" but instead refers simply and explicitly to "the citizenship or immigration status of any individual." *Id.* § 1373(c). But the fact that subpart(c) only concerns itself with immigration status suggests, given § 1373's focus on reciprocal communication between states and the federal government, that immigration status is the extent of subpart(a)'s reach as well.[18]

The United States also relies heavily on an Information Bulletin issued by the California Department of Justice in June 2014, which read in part that "law enforcement officials may provide information to ICE, including notification of the date that an individual will be

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[18] We note that a congressional report concerning a statute with similar language to § 1373 indicated that it "provides that no State or local government entity shall prohibit, or in any way restrict, any entity or official from sending to or receiving from the [federal government] information regarding the immigration status of an alien or the presence, whereabouts, or activities of illegal aliens." H.R. Rep. No. 104-725, at 383 (1996) (Conf. Rep.), *as reprinted in* 1996 U.S.C.C.A.N. 2649, 2771. But the fact that the report distinguished between the two categories—"information regarding the immigration status of an alien *or* the presence, whereabouts, or activities"—suggests that "information regarding the immigration status" does *not* include "the presence, whereabouts, or activities" of noncitizens. And in any event, "Congress's 'authoritative statement is the statutory text, not the legislative history.'" *Whiting*, 563 U.S. at 599 (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005)).

released, as requested on an immigration detainer form. Federal law provides that state and local governments may not be prohibited from providing information to or receiving information from ICE." The United States contends that California's "limited view of the scope of [§ 1373] contradicts the longstanding views . . . of the California Attorney General." But the Information Bulletin attempted to summarize both federal law *and* California's then-governing TRUST Act, not the laws at issue today. And at any rate, the previous conclusions of the California Attorney General do not change the plain text and meaning of § 1373; that the California Department of Justice might have been incorrect *then* does not mean that its revised interpretation is incorrect *now*.

In summation, the district court correctly concluded that "Section 1373 and the information sharing provisions of SB 54 do not directly conflict." *California I*, 314 F. Supp. 3d at 1104.[19]

IV. *Winter* Factors

California argues that the three other *Winter* factors —irreparable harm, the balance of the equities, and the public interest, 555 U.S. at 20—provide an alternative

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[19] Because we agree with the district court's conclusion, we need not address whether § 1373 is itself unlawful, though we note that various district courts have questioned its constitutionality. *See, e.g.*, *City and County of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 949-53 (N.D. Cal. 2018), *appeal docketed*, No. 18-17308 (9th Cir. Dec. 4, 2018); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 873 (N.D. Ill. 2018); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 329-31 (E.D. Pa. 2018), *aff'd in part, vacated in part on other grounds sub nom. City of Philadelphia v. Attorney Gen.*, 916 F.3d 276 (3d Cir. 2019).

basis for affirming the district court's denial of a preliminary injunction. *See Big Country Foods, Inc. v. Bd. of Educ.*, 868 F.2d 1085, 1088 (9th Cir. 1989) (concluding that a district court's denial of a motion for a preliminary injunction "may [be] affirm[ed] on any ground supported by the record"). Because we agree with the district court that the United States is unlikely to succeed on the merits of its challenges to AB 450's employee-notice provisions and SB54, we consider these factors only as applied to the provision of AB 103 that imposes an impermissible burden on the federal government.

In granting the United States' motion to enjoin the two invalidated provisions of AB 450, the district court "presume[d] that [the United States] will suffer irreparable harm based on the constitutional violations." *California I*, 314 F. Supp. 3d at 1112. This conclusion was consistent with our previous recognition that preventing a violation of the Supremacy Clause serves the public interest. *See, e.g.*, *Arizona I*, 641 F.3d at 366 ("We have found that 'it is *clear that it would not be equitable or in the public's interest to allow the state* . . . to violate the requirements of federal law, especially when there are no adequate remedies available. . . . In such circumstances, the interest of preserving the Supremacy Clause is paramount.'" (alterations in original) (quoting *Cal. Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 852-53 (9th Cir. 2009))); *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1059-60 (9th Cir. 2009) (determining that "the balance of equities and the public interest [] weigh in favor of a preliminary injunction" against a likely preempted ordinance).

Nevertheless, California argues that "[t]he balance of equities and public interest weigh strongly against enjoining [its] laws during the pendency of litigation" because "a preliminary injunction here would lead to significant, concrete harm to the public." At the district court, California claimed that "the Legislature passed AB 103 in reaction to growing concerns of egregious conditions in facilities housing civil detainees," *California I*, 314 F. Supp. 3d at 1090-91—a conclusion supported in detail by amici curiae, including the National Health Law Program and the Immigrant Legal Resource Center. Moreover, we note that California retains an historic—and, since the federal government's contracts with immigration detainee facilities explicitly contemplate the application of state regulations, undisputed—authority to regulate the conditions of detainees housed within its borders. By contrast, other than relying on general pronouncements that a Supremacy Clause violation alone constitutes sufficient harm to warrant an injunction, the United States did not present compelling evidence that AB 103 inspections conducted by the California Attorney General harmed facilities' detention operations. Rather, the *only* evidence of AB 103's burdensome effect is conclusory assertions made by a DHS official in a declaration and deposition.[20]

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[20] The relevant deposition transcript reads as follows:

> [I]t's going to require yet another inspection that we think is unnecessary, because these are federal contracts, these are federal prisoners detained under federal authority. We have our own set of standards. We certainly don't believe there should be any inspections to talk about due process of people that are in federal custody, under federal authority, conditions

Neither he nor the United States provided any indication, even an estimate, of the actual costs imposed by AB 103 or the number of ICE officers forced to assist in the extra inspection efforts, or any quantification whatsoever of the enactment's burden. The United States' complaint in this action did not even plead that the statute imposes an economic or operational burden on DHS or anyone else.

We are not prepared, in the first instance, to affirm the district court's denial of a preliminary injunction as to AB 103's burdensome provision based on these considerations. However, on remand, we encourage the district court to reexamine the equitable *Winter* factors in light of the evidence in the record.

CONCLUSION

We conclude that the district court correctly determined that the United States was unlikely to succeed on the merits of its challenges to AB 450's employee-notice provisions and SB 54, and therefore AFFIRM its denial of a preliminary injunction as to these enactments. We also AFFIRM the denial as to those provisions of AB 103 that duplicate preexisting inspection requirements.

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of confinement when we have our own set of standards which is much higher than most states.

So there's this general feeling that this is—it's burdensome, that they're going to be required to pull resources to do these inspections, when we have numerous inspections already at these facilities from various different components.

So again, it's—it's talk of burdensomeness—right?—extra work, pulling people from their duties to host these things and gather documents and paperwork and making people available for interviews and so forth.

But because we conclude that California Government Code section 12532(b)(1)(C) both discriminates against and impermissibly burdens the federal government, we REVERSE the district court's denial of the United States' motion as to this provision and REMAND for further proceedings consistent with this opinion.[21]

[21] Finally, we grant the State of Michigan's motion to withdraw from an amicus brief in support of the United States.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

No. 2:18-cv-490-JAM-KJN

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA, ET AL., DEFENDANTS

July 4, 2018

ORDER RE: THE UNITED STATES OF AMERICA'S MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Before this Court is the United States of America's ("Plaintiff" or "United States") Motion for a Preliminary Injunction ("Motion"). Plaintiff seeks an Order from this Court enjoining enforcement of certain provisions of three laws enacted by the State of California ("Defendant" or "California")[1] through Assembly Bill 103 ("AB 103"), Assembly Bill 450 ("AB 450") and Senate Bill 54 ("SB 54"). Specifically, Plaintiff requests

[1] Because Edmund Gerald Brown Jr., Governor of California, and Xavier Becerra, Attorney General of California, are sued in their official capacities only, the Court will address all three named defendants as "California" or "Defendant."

that this Court preliminarily enjoin the following provisions of California law: (1) California Government Code Section 12532 (as added by AB 103); (2) California Government Code Sections 7285.1 and 7285.2 and California Labor Code Sections 90.2 and 1019.2 as applied to private employers only (as added by AB 450); and (3) California Government Code Sections 7284.6(a)(1)(C), 7284.6(a)(1)(D), and 7284.6(a)(4) (as added by SB 54). Plaintiff claims that these statutes violate the Supremacy Clause of the United States Constitution, Art. VI, cl.2, and are invalid. Compl., ECF No. 1, ¶¶ 61, 63 & 65. Plaintiff argues that federal law preempts each provision because, in the area of immigration enforcement, California "lacks the authority to intentionally interfere with private citizens' [and state and local employees'] ability to cooperate voluntarily with the United States or to comply with federal obligations." Motion for Preliminary Injunction ("Mot."), ECF No. 2-1, at 2.

Plaintiff also contends that California "has no authority to target facilities holding federal detainees pursuant to a federal contract for an inspection scheme to review the 'due process' afforded during arrest and detention." Id. Accordingly, Plaintiff implores this Court to enjoin these state law provisions because they "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress and are therefore preempted by federal law." Id. at 3 (citations omitted).

Defendant vigorously opposes Plaintiff's motion for a preliminary injunction, see Opp'n, ECF No. 74, contending that these three state laws properly "allocate the use of limited law-enforcement resources, provide workplace protections, and protect the rights of [Cali-

fornia's] residents." Id. at 1. Defendant further argues that these statutes "are consistent with applicable federal law and do not interfere with the federal government's responsibility over immigration." Id. Defendant claims that it "acted squarely within its constitutional authority when it enacted the law[s] [the United States seeks to enjoin] here[.]" Id. None of the state laws, according to Defendant, "conflict[] with federal law or undermine[] the federal government's authority or ability to undertake immigration enforcement and all are consistent with the legislative framework [of the immigration laws and regulations]." Id.

This Motion presents unique and novel constitutional issues. The Court must answer the complicated question of where the United States' enumerated power over immigration ends and California's reserved police power begins. The Court must also resolve the issue of whether state sovereignty includes the power to forbid state agents and private citizens from voluntarily complying with a federal program. Plaintiff's Motion requires this Court to carefully examine the purposes and principles of the federalist system—a system, established by the Constitution, of dual sovereignty between the States and the Federal Government whose principal benefit may be "a check on abuses of government power." Gregory v. Ashcroft, 501 U.S. 452, 458 (1991).

Deciding these critical issues requires this Court to determine the proper balance between the twin powers of California and the United States. The law is clear that so long as the Federal Government is acting within the powers granted to it under the Constitution, Congress may impose its will on the States. Id. at 460. However, if Congress is going to preempt or interfere

with the decision of the people of California, "it is incumbent upon [this Court] to be certain of [Congress's] intent before finding that federal law overrides" the constitutional balance of federal and state powers. Id. (citation omitted).

> If Congress intends to alter the usual constitutional balance between the States and Federal Government it must make its intention to do so unmistakably clear in the language of the statute. . . . Congress should make its intention clear and manifest if it intends to pre-empt the historic powers of [the State].

Id. at 460-61 (quoting Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 242 (1985)) (quotation marks omitted).

Applying these well-established principles of law to the present Motion, and as explained in detail below, this Court finds that AB 103, SB 54, and the employee notice provision of AB 450 are permissible exercises of California's sovereign power. With respect to the other three challenged provisions of AB 450, the Court finds that California has impermissibly infringed on the sovereignty of the United States. Plaintiff's Motion is therefore denied in part and granted in part.

II. Legal Standards

A. Preliminary Injunction Standard

Plaintiff moves the Court to enjoin enforcement of the challenged state laws. Before the Court can grant the requested relief, Plaintiff must establish—as to each challenged law—that it is likely to succeed on the merits of its claim, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in its favor, and that an injunction is in the

public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). In the Ninth Circuit, an injunction may also be proper "if there is a likelihood of irreparable injury to plaintiff; there are serious questions going to the merits; the balance of hardships tips sharply in favor of the plaintiff; and the injunction is in the public interest." M.R. v. Dreyfus, 697 F.3d 706, 725 (9th Cir. 2012).

Here, however, the nature of the requested relief increases Plaintiff's burden. An order enjoining the enforcement of state laws would alter the status quo and thus qualifies as a mandatory injunction. Tracy Rifle & Pistol LLC v. Harris, 118 F. Supp. 3d 1182, 1194 (E.D. Cal. 2015). Plaintiff must establish that the law and facts clearly favor its position, not simply that it is likely to succeed on its claims. See Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015).

B. Supremacy Clause

In the United States, "both the National and State Governments have elements of sovereignty the other is bound to respect." Arizona v. United States, 567 U.S. 387, 398 (2012). The Constitution establishes the balance between these sovereign powers and the Nation's dual structure. The Supremacy Clause declares that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby[.]" U.S. Const. Art. VI, cl. 2. The Tenth Amendment limits the powers of the United States to those which the Constitution delegates, reserving the remaining powers to the States. U.S. Const. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it

to the States, are reserved to the States respectively, or to the people."). Thus, rather than wielding a plenary power to legislate, Congress may only enact legislation under those powers enumerated in the Constitution. See Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1476 (2018) ("The Constitution confers on Congress not plenary legislative power but only certain enumerated powers."); United States v. Morrison, 529 U.S. 598, 607 (2000) ("Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.").

The United States' broad power over "the subject of immigration and the status of aliens" is undisputed. Arizona, 567 U.S. at 394.[2] "But the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted by this constitutional power, whether latent or exercised." DeCanas v. Bica, 424 U.S. 351, 355 (1976) superseded by statute on other grounds as recognized in Arizona, 567 U.S. at 404.

1. Obstacle Preemption

Where Congress has the power to enact legislation it has the power to preempt state law, even in areas traditionally regulated by the States. See Arizona, 567 U.S. at 399; Gregory, 501 U.S. at 460. Courts recognize three types of preemption: express preemption, field

[2] Unless quoting from another source, this Court will use the term "immigrant" when referring to "any person not a citizen or national of the United States." Cf. 8 U.S.C § 1101(a)(3) (defining "alien"). For persons who have not obtained lawful immigration or citizenship status, the Court will use the term "undocumented immigrants."

preemption, and conflict preemption. Plaintiff's preemption argument is primarily premised on the most enigmatic member of this doctrinal family, "obstacle" preemption—a species of conflict preemption.

Conflict preemption is found in cases where it is physically impossible to comply with both federal and state regulations or in cases where the "challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Arizona, 567 U.S. at 399-400 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 373 (2000). The Court must examine and consider the entire scheme of the federal statute, including those elements expressed and implied. Id. "If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power." Id. at 373 (quoting Savage v. Jones, 225 U.S. 501, 533 (1912)).

There is a strong presumption against preemption when Congress legislates in an area traditionally occupied by the States. Chinatown Neighborhood Ass'n v. Harris, 794 F.3d 1136, 1141 (9th Cir. 2015). The Court presumes "'the historic police powers of the States' are not superseded 'unless that was the clear and manifest purpose of Congress.'" Arizona, 567 U.S. at 400 (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230

(1947)); see Rice, 331 U.S. at 230 (When Congress legislates in a "field which the States have traditionally occupied[,] [] we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."). Such purpose must be "unmistakably clear in the language of the statute," Gregory, 501 U.S. at 460 (quoting Atascadero State Hosp. v. Scanlon, 473 U.S. 234 (1985)), as must the presence of an obstacle. Chinatown Neighborhood Ass'n, 794 F.3d at 1141 ("[T]he California statute cannot be set aside absent 'clear evidence' of a conflict."); see also Savage, 225 U.S. at 533 (1912) ("In other words, [the intent to supersede the State's exercise of its police power] is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state."). "Mere possibility of inconvenience" is not a sufficient obstacle—the repugnance must be "so direct and positive that the two acts cannot be reconciled or consistently stand together." See Goldstein v. California, 412 U.S. 546, 554-55 (1973) (quoting The Federalist No. 32, p. 243 (B. Wright ed. 1961)); Kelly v. Washington ex rel. Foss Co., 302 U.S. 1, 10 (1937).

The Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., is "the comprehensive federal statutory scheme for regulation of immigration and naturalization." DeCanas, 424 U.S. at 353. Congress has amended and supplemented the scheme over the years by passing statutes like the Immigration Reform and Control Act ("IRCA") and the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA" or "IIRAIRA"), among others. Plaintiff argues that the INA, as amended, preempts the state laws challenged in this case. Mot. at 2-3, 11-32.

2. Intergovernmental Immunity

The Supremacy Clause gives rise to another doctrine restricting States' power: the doctrine of intergovernmental immunity. Under this line of precedent, a State may not regulate the United States directly or discriminate against the Federal Government or those with whom it deals. North Dakota v. United States, 495 U.S. 423, 435 (1990) (plurality op.). "Since a regulation imposed on one who deals with the Government has as much potential to obstruct governmental functions as a regulation imposed on the Government itself, the Court has required that the regulation be one that is imposed on some basis unrelated to the object's status as a Government contractor or supplier, that is, that it be imposed equally on other similarly situated constituents of the State." North Dakota, 495 U.S. at 437-38. The doctrine protects private entities and individuals even when the burdens imposed upon them are not then passed on to the Federal Government. See Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 814-15, 817 (1989) (finding a state tax system that favored state retirees over federal retirees violated intergovernmental immunity even though the tax arguably did not interfere with the Federal Government's ability to perform its governmental functions) (citing Phillips Chem. Co. v. Dumas Indep. Sch. Dist., 361 U.S. 376, 387 (1960)). Though the doctrine finds its most comfortable repose in tax cases, courts have extended its reach to other contexts. See, e.g., North Dakota, 495 U.S. 423 (analyzing North Dakota's liquor control regulations); Boeing Co. v. Movassaghi, 768 F.3d 832 (9th Cir. 2014) (analyzing a California law governing cleanup of a federal nuclear site); In re Nat'l Sec. Agency Telecomms. Records Litig., 633 F. Supp. 2d 892 (N.D. Cal. 2007) (analyzing

state investigations into telecommunication carriers that concerned the alleged disclosures of customer records to the NSA).

A targeted regulation is not invalid simply because it distinguishes between the two sovereigns. "The State does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them." North Dakota, 495 U.S. at 437-38 (quoting Washington v. United States, 460 U.S. 536, 544-545 (1983)). Accordingly, a regulation should not be struck down unless it burdens the Federal Government (or those dealing with the Federal Government) more so than it does others. North Dakota, 495 U.S. at 439 (finding a regulatory regime that did not disfavor the Federal Government could not be considered to discriminate against it). Furthermore, a regulation will survive if significant differences between the two classes justify the burden. Davis, 489 U.S. at 815-17. "The relevant inquiry is whether the inconsistent [] treatment is directly related to, and justified by, significant differences between the two classes." Id. at 816 (citation and quotation marks omitted).

C. Tenth Amendment

The Tenth Amendment limits Congress's legislative authority to those powers enumerated in the Constitution. Absent from this list of powers "is the power to issue direct orders to the governments of the States." Murphy, 138 S. Ct. at 1476. Thus, in addition to erecting a higher wall against preemption, the Tenth Amendment restrains Congress's ability to impose its will upon the States directly.

The Supreme Court's so-called "anticommandeering" doctrine recognizes this check on Congressional power. Congress may not directly compel States to enact a regulation or enforce a federal regulatory program, conscript state officers for such purpose, or prohibit a State from enacting laws. See New York v. United States, 505 U.S. 144, 188 (1992) ("The Federal Government may not compel the States to enact or administer a federal regulatory program."); Printz v. United States, 521 U.S. 898, 935 (1997) ("Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly."); Murphy, 138 S. Ct. at 1478 ("The PASPA provision at issue here—prohibiting state authorization of sports gambling—violates the anticommandeering rule. That provision unequivocally dictates what a state legislature may and may not do."). Even requiring state officers to perform discrete, ministerial tasks violates the doctrine. Printz, 521 U.S. at 929-30.

The reasons behind the anticommandeering doctrine are several. See Murphy, 138 S. Ct. at 1477 (Part III-B). First, the rule reflects "the Constitution's structural protections of liberty." Printz, 521 U.S. at 921. By balancing power between the sovereigns, it prevents the accumulation of excessive power and "reduce[s] the risk of tyranny and abuse from either front." Gregory, 501 U.S. at 458. Second, the doctrine prevents Congress from passing the costs and burdens of implementing a federal program onto the States. Printz, 521 U.S. at 930. Third, the doctrine promotes accountability; it ensures that blame for a federal program's burdens and defects falls on the responsible government. Id. ("And it will likely be the [state chief law enforcement officers], not some federal official, who will be blamed for any error

(even one in the designated federal database) that causes a purchaser to be mistakenly rejected."). These reasons, among others, counsel that courts must adhere to the strictures of the rule even where a Congressional act serves important purposes, is most efficiently effectuated through state officers, or places a minimal burden upon the State. Id. at 932. "It is the very principle of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect." Id.

III. OPINION

A. Likelihood of Success on the Merits

1. Assembly Bill 103

Approved by the Governor and filed with the Secretary of State on June 27, 2017, Assembly Bill 103 added Section 12532 to the California Government Code and directs the Attorney General to review and report on county, local, and private locked detention facilities in which noncitizens are housed or detained for purposes of civil immigration proceedings in California. Cal. Gov't Code § 12532. It directs the Attorney General to conduct a review of such facilities by March 1, 2019. Cal. Gov't Code § 12532(b). This review must include a review of the conditions of confinement, the standard of care and due process provided to the individuals housed or detained in the facilities, and the circumstances around their apprehension and transfer to the facility. Cal. Gov't Code § 12532(b)(1). Additionally—by the same deadline—the Attorney General must provide a comprehensive report of his findings to the Legislature, the Governor, and the public. Cal. Gov't Code

§ 12532(b)(2). In furtherance of this objective, the Attorney General "shall be provided all necessary access for the observations necessary to effectuate [these] reviews . . . , including, but not limited to, access to detainees, officials, personnel, and records." Cal. Gov't Code § 12532(c).

Plaintiff argues that this review and reporting requirement interferes with the Federal Government's exclusive authority in the area of immigrant detention. Mot. at 18-19. Because the decision whether to pursue removal is entrusted to the Federal Government's discretion, California's efforts to assess the process afforded to immigrant detainees poses an obstacle, Plaintiff contends, to administering the federal immigration scheme. Id. at 19-20. "Federal law," it argues, "does not contemplate any role for the facility itself, or for states and localities, in determining which aliens are properly subject to detention or the terms and conditions of that detention." Id. at 18.

Defendant responds that the Legislature passed AB 103 in reaction to growing concerns of egregious conditions in facilities housing civil detainees. Opp'n at 6 (citing Decl. of Holly Cooper and Def. RFJN, Exh. K (Office of Inspector General, Management Alert on Issues Requiring Immediate Action at the Theo Lacy Facility in Orange, California, OIG-17-43-MA, March 6, 2017)). Several amici echo these concerns. See See Br. for Nat'l Health Law Program, et al., as Amici Curiae, ECF No. 104; Br. for Immigrant Legal Res. Ctr., et al., as Amici Curiae, ECF No. 126; Br. for Nat'l Immigr. Law Ctr., et al., as Amici Curiae, ECF No. 136. Defendant argues the review and reporting AB 103 re-

quires fall well within the Attorney General's broad constitutional powers to enforce state laws and conduct investigations relating to subjects under his jurisdiction. Opp'n at 6 (citing Cal. Const. art. V, § 13; Cal. Gov't Code § 11180). Rather than enacting a new regulatory scheme or imposing substantive requirements, AB 103 "simply authorizes funding" to address issues the Attorney General already has the authority to review in response to increased concerns in this area. Id. at 7, 30; June 20, 2018, Hearing Transcript ("Trans."), ECF No. 189, at 25:2-13.

The Court finds no indication in the cited portions of the INA that Congress intended for States to have no oversight over detention facilities operating within their borders. See 8 U.S.C. § 1231(g)(1)-(2); 8 U.S.C. § 1103(a)(11). Indeed, the detention facility contracts Defendant provided to the Court expressly contemplate compliance with state and local law. Melton Decl., Exhs. M-S (filed under seal), ECF No. 81. These contracts demonstrate that California retains some authority over the detention facilities. Contrary to Plaintiff's characterization, AB 103's review process does not purport to give California a role in determining whether an immigrant should be detained or removed from the country. The directive contemplates increased transparency and a report that may serve as a baseline for future state or local action. At this point, what that future action might be is subject to speculation and conjecture.

The review and reporting requirement contemplated in AB 103 is different from the state licensing requirements struck down in Leslie Miller and Gartrell. See Leslie Miller, Inc. v. Arkansas, 352 U.S. 187, 190 (1956);

Gartrell Const. Inc. v. Aubry, 940 F.2d 437 (9th Cir. 1991). In Leslie Miller, the Supreme Court held that an Arkansas statute imposing licensing requirements on a federal contractor interfered with the federal government's power to select contractors and schedule construction, and therefore conflicted with the federal law regulating procurement. 352 U.S. at 190. Thirty-five years later, the Ninth Circuit upheld an injunction of a similar licensing requirement as applied to a federal contractor in California. Gartrell, 940 F.2d at 438. It found that the Federal Government already considered many of the factors involved in the State's licensing determination during its own "responsibility" determination and held that, under Leslie Miller, the licensing requirement was preempted. Id. at 438-41. The Circuit reasoned: "Because the federal government made a direct determination of Gartrell's responsibility, California may not exercise a power of review by requiring Gartrell to obtain state licenses." Id. at 441.

Unlike state licensing regulations, AB 103 does not impose any substantive requirements upon detention facilities. For all its bark, the law has no real bite. It directs the Attorney General to channel an authority he already wields to an issue of recent State interest. The facility need only provide access for these reviews, which is of little or no consequence. Given the Attorney General's power to conduct investigations related to state law enforcement—a power which Plaintiff concedes, Trans. at 15:11-16:5—the Court does not find this directive in any way constitutes an obstacle to the federal government's enforcement of its immigration laws or detention scheme.

There is, however, one federal regulation that might directly conflict with Government Code Section 12532(c). Under 8 C.F.R. § 236.6, no one—including state or local government entities or any privately operated detention facility—who obtains information relating to any detainee, "shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee." It continues:

> Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6 (Information regarding detainees).

According to Plaintiff, this regulation establishes that information regarding detainees belongs solely to the Federal Government and that facilities violate the regulation by turning such information over to the Attorney General. Mot. at 22; Reply at 9. For additional support, Plaintiff quotes the supplementary information published with the rule in the Federal Register, wherein the Immigration and Naturalization Service explained that "the rule guarantees that information regarding federal detainees will be released under a uniform federal scheme rather than the varying laws of the fifty states." 68 Fed. Reg. 4364, 4366 (Jan. 29, 2003).

Defendant counters that there is no conflict because the regulation prohibits only the public disclosure of information about detainees, not disclosure to other government entities. Opp'n at 30-31. Because the Attorney General "conducts these reviews in his capacity as the chief law officer of the State," and "not as a member of the public," Defendant maintains there is no conflict. Id. Defendant points out that AB 103, on its face, does not provide for disclosure of detainee information to the public. Id. Further, such disclosure is unlikely because "much if not all" of the information in question remains confidential under state law. Id.

The Court agrees with Defendant that there is no conflict apparent on the face of Section 12532(c). The federal regulation at issue is most naturally read to prohibit public disclosures of information, not the provision of information to other governmental entities or law enforcement. 8 C.F.R. § 236.6. The information published in the Federal Register supports this interpretation. 68 Fed. Reg. 4364 , 4364 ("Summary: This final rule governs the public disclosure . . . of the name and other information relating to any immigration detainee[.]"), 4365 ("These provisions plainly authorize the Attorney General . . . to provide by regulation that persons housing INS detainees on behalf of the federal government shall not publicly disclose the names and other information regarding those detainees."), 4367 ("Executive Order 13132[:] . . . This rule merely pertains to the public disclosure of information concerning Service detainees. . . . In effect, the rule will relieve state or local government entities of responsibility for the public release of information relating to any immigration detainee being housed or otherwise main-

tained or provided service on behalf of the Service. Instead, the rule reserves that responsibility to the Service with regard to all Service detainees."). Plaintiff's cited cases do not broaden the scope of the rule; each case concerned public disclosure of detainee information, not the provision of information to another government entity. See Voces De La Frontera, Inc. v. Clarke, 373 Wis. 2d 348 (2017) (finding records concerning detainees statutorily exempt from disclosure under Wisconsin's public records law); Comm'r of Corr. v. Freedom of Info. Comm'n, 307 Conn. 53 (2012) (finding former detainee's records exempt from Connecticut's Freedom of Information Act); ACLU of New Jersey v. Cnty. of Hudson, 352 N.J. Super. 44 (2002) (finding § 236.6 preempts New Jersey's Right-to-Know Law to the extent it requires public disclosure of information regarding INS detainees).

Plaintiff nevertheless contends that California's Attorney General is a member of the public as contemplated by the regulation. But Plaintiff did not identify, and the Court is unaware of, any judicial decision interpreting the regulation to restrict information sharing with government entities or law enforcement. The regulation contemplates that such information would fall into the hands of state and local government entities through their contractual relationships with the federal government. In light of the California Attorney General's role in state law enforcement, and without any authority to the contrary, the Court does not find a conflict, express or implied, between the access required under Government Code Section 12532(c) and 8 C.F.R. § 236.6.

Finally, the Court finds AB 103 is not invalid under the doctrine of intergovernmental immunity. Plaintiff argues the law violates this doctrine because it imposes a review scheme on facilities contracting with the federal government, only. This characterization is valid. However, the burden placed upon the facilities is minimal and Plaintiff's evidence does not show otherwise. See Homan Decl. at ¶ 60 (summarily stating that the inspections are burdensome). Importantly, the review appears no more burdensome than reviews required under California Penal Code §§ 6030, 6031.1. Thus, even if AB 103 treats federal contractors differently than the State treats other detention facilities, Plaintiff has not shown the State treats other facilities better than those contractors. North Dakota, 495 U.S. at 437-38 ("The State does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them.").

Plaintiff is not likely to succeed on the merits of this claim. Its motion for a preliminary injunction as to AB 103 is denied.

2. Assembly Bill 450

The regulation of employment traditionally falls within the States' police power:

> States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety, and workmen's compensation laws are only a few examples.

DeCanas v. Bica, 424 U.S. 351, 356 (1976) (decision superseded by statute).

AB 450 imposes various requirements on public and private employers with respect to immigration worksite enforcement actions. 2017 Cal. Stat., ch. 492 (A.B. 450). It prohibits employers from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor or to access, review, or obtain the employer's employee records. Cal. Gov't Code §§ 7285.1, 7285.2. It requires employers to provide notice to their employees of any impending I-9 (or other employment record) inspection within 72 hours of receiving notice of that inspection. Cal. Lab. Code § 90.2. Lastly, AB 450 prohibits employers from reverifying the employment eligibility of current employees when not required by federal law. Cal. Lab. Code § 1019.2. As passed, AB 450 states that its provisions are severable. 2017 Cal. Stat., ch. 492, Sec. 6 (A.B. 450).

Plaintiff challenges AB 450 as applied to private employers only, Compl. ¶¶ 35, 61, Trans. at 10:2-19, arguing that the above-noted additions to state law pose an obstacle to immigration enforcement objectives under the Immigration Reform and Control Act ("IRCA") and the INA.

"Congress enacted IRCA as a comprehensive framework for 'combatting the employment of illegal aliens.'" Arizona, 567 U.S. at 404. IRCA imposes criminal sanctions on employers who knowingly hire, recruit, refer, or continue to employ unauthorized workers, but does not impose criminal sanctions on employees. 8 U.S.C. § 1324a; Arizona, 567 U.S. at 404-07 ("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."). The statute authorizes the Attorney General to establish procedures for complaints and investigations. 8 U.S.C. § 1324a(e)(1). It also confers authority upon immigration officers and administrative law judges to be given "reasonable access to examine evidence of any person or entity being investigated" and to compel by subpoena the attendance of witnesses and the production of evidence. 8 U.S.C. § 1324a(e)(2).

The Supreme Court has found IRCA preempts additional penalties on employers (via express preemption) and criminal sanctions on unauthorized workers for seeking or performing work (via conflict preemption). Arizona, 567 U.S. 387. Courts have held IRCA does not preempt: a provision of Arizona law allowing suspension and revocation of businesses licenses based on employing unauthorized workers, Chamber of Commerce of U.S. v. Whiting, 563 U.S. 582 (2011); an Arizona law requiring that every employer verify the employment eligibility of hired employees through the E-Verify system, id. (as amended by IIRIRA); and various labor protections, with some limits on the damages an unlawfully employed immigrant is entitled to receive, see, e.g., Salas v. Sierra Chem. Co., 59 Cal. 4th 407 (2014) (holding the State's extension of employee protections to all workers regardless of immigration status is preempted only to the extent it authorizes lost pay awards for any period after an employer discovers the employee's ineligibility to work in the United States).

a. Prohibitions on Consent

The Court finds AB 450's prohibitions on consent, Cal. Gov't Code §§ 7285.1, 7285.2., troubling due to the precarious situation in which it places employers.

Trans. at 92:9-18. Despite that concern, the question before the Court is limited to Plaintiff's Supremacy Clause claim and the relationship between the State and the Federal Government.

Plaintiff's preemption argument rests on the notion that Congress presumed immigration enforcement officers could gain access to worksites by consent of the employer. Mot. at 11-13. Plaintiff contends the entire enforcement scheme is premised on this authority. Id.

Defendant does not dispute that immigration enforcement agents could, prior to AB 450, gain access to nonpublic areas of a worksite through employer consent. In enacting AB 450, the state legislators acknowledged that immigration officers could do so under existing law. See Pl. Exh. J (Senate Judiciary Committee Report), ECF No. 171-10. But, Defendant argues, the entry and access provisions do not conflict with IRCA because "IRCA was not intended to diminish states' labor protections." Opp'n at 26. Because AB 450 permits entry and access pursuant to judicial warrant (or subpoena, for documents), or when otherwise required by federal law, Defendant claims the law does not deny the "reasonable access to examine evidence" required under IRCA. See 8 U.S.C. § 1324a(e)(2).

The arguments are wanting on both sides. By attempting to narrow the Court's focus to the criminal penalties at issue under IRCA, Defendant fails to acknowledge that immigration enforcement officers might also seek to investigate civil violations of the immigration laws or pursue investigative activities outside of IRCA's provisions. As Plaintiff pointed out at the June 20, 2018, hearing on its Motion, Trans. at 114:20-115:11,

IRCA added new sections to the already existing law governing immigration enforcement activities; Defendant did not address any of these other grants of power. Further, Defendant cites no authority for its proposition that AB 450's judicial warrant requirement and savings clause together constitute "reasonable access" under IRCA. Irrespective of the State's interest in protecting workers, the Court finds that the warrant requirement may impede immigration enforcement's investigation of employers or other matters within their authority to investigate.

Even though these two subsections of AB 450 interfere with immigration enforcement's historical practices, the Court hesitates to find the statutes preempted. In preemption analysis, the Court presumes "'the historic police powers of the States' are not superseded 'unless that was the clear and manifest purpose of Congress.'" Arizona, 567 U.S. at 400. Laws governing labor relations and the workplace generally fall within the States' police powers. Congress has not expressly authorized immigration officers to enter places of labor upon employer consent, nor has Congress authorized immigration enforcement officers to wield authority coextensive with the Fourth Amendment. Although Plaintiff's cited cases show instances of immigration enforcement lawfully exercising its investigative authority in accordance with the Fourth Amendment, none of these cases establish that Congress has expressly or impliedly granted immigration enforcement agents such authority. See I.N.S. v. Delgado, 466 U.S. 210 (1984) (noting that the federal immigration officers were lawfully present at a worksite because they obtained either a warrant or the employer's consent to their entry);

Zepeda v. I.N.S., 753 F.2d 719, 725 (9th Cir. 1983) (explaining that Congress, by authorizing the INS "to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States" without a warrant, authorized the INS "to question aliens to the fullest extent permissible under the [F]ourth [A]mendment") (citing 8 U.S.C. § 1357(a)(1)); Int'l Molders & Allied Workers' Local Union No. 164 v. Nelson, 799 F.2d 547 (9th Cir. 1986) (striking part of an injunction order that required every INS warrant to "contain a specific description of each suspect to be *questioned* and be based on 'probable cause to believe that such person is an illegal alien' " because it misstated the standard for non-detentive questioning"). Nor do these cases show consent to be an essential pillar of the enforcement regime. Certainly, obstacle preemption may be "implied," but precedent counsels against reading Congressional "presumptions" or "assumptions" into the statutes without a more robust record than that presently before the Court.

Ultimately, however, the Court need not resolve the preemption issue because Plaintiff is likely to succeed on its Supremacy Clause claim under the intergovernmental immunity doctrine. The doctrine applies in these circumstances even though the laws regulate employers and not the Federal Government directly. See Davis, 489 U.S. at 814, 817; Phillips Chem. Co., 361 U.S. at 387 (holding that state taxes imposed on lessees of federal land were invalid where those taxes were more burdensome than taxes imposed on lessees of state land). For those employers who choose to allow immigration enforcement agents to enter or access documents, AB 450 imposes significant and escalating fines. See Cal. Gov't Code § 7285.1(b) (subjecting employers to a fine of

$2,000 to $5,000 for a first violation and $5,000 to $10,000 for each subsequent violation); Cal. Gov't Code § 7285.2(b) (same). These fines inflict a burden on those employers who acquiesce in a federal investigation but not on those who do not.

Defendant argues the application of the doctrine in these circumstances would expand its reach. It notes that the intergovernmental immunity cases evaluating indirect discrimination have typically concerned laws that imposed burdens on entities contracting with, or supplying something to, the Federal Government, thus "dealing" with the United States in an economic sense. Trans. at 93:1-95:6.

The Court is not convinced that the term "deal" is circumscribed in the manner Defendant suggests. As in other intergovernmental immunity cases, the imposition of civil fines (like the imposition of taxes) turns on whether an employer chooses to work with federal immigration enforcement. These fines are a clear attempt to "meddl[e] with federal government activities indirectly by singling out for regulation those who deal with the government." See In re NSA, 633 F. Supp. 2d at 903. The Court does not find Defendant's argument that the law is neutral convincing. Opp'n at 29 (arguing the law applies to "any person or entity seeking to enforce the civil immigration laws, whether federal, state, or local"). Given that immigration enforcement is the province of the Federal Government, it demands no stretch of reason to see that Government Code Sections 7285.1 and 7285.2, in effect, target the operations of federal immigration enforcement.

The Court finds that a law which imposes monetary penalties on an employer solely because that employer

voluntarily consents to federal immigration enforcement's entry into nonpublic areas of their place of business or access to their employment records impermissibly discriminates against those who choose to deal with the Federal Government. The law and facts clearly support Plaintiff's claim as to these two subsections and Plaintiff is likely to succeed on the merits.

b. Notice Requirement

AB 450 also added a provision to the California Labor Code requiring employers to provide notice to their employees "of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection." Cal. Lab. Code § 90.2(a)(1). It specifies the contents of the requisite notice and instructs employers to provide a copy of the inspection notice to any employee upon reasonable request. Id. § 90.2(a)(1)-(3).

Labor Code Section 90.2 also requires employers to provide each current, affected employee with the results of the inspection within 72 hours of receipt, including any obligations of the employer and affected employee arising from the results. Id. § 90.2(b). The statute defines an "affected employee" as "an employee identified by the immigration agency inspection results to be an employee who may lack work authorization, or an employee whose work authorization documents have been identified by the immigration agency inspection to have deficiencies." Id. § 90.2(b)(2). Employers are subject to civil penalties for violations, except that the section "does not require a penalty to be imposed upon an em-

ployer or person who fails to provide notice to an employee at the express and specific direction or request of the federal government." Id. § 90.2(c).

Plaintiff argues that this notice provision stands as an obstacle to the implementation of federal law by aiming to thwart immigration regulation. Reply at 5. "Obviously," it argues, investigations "will be less effective if the targets of the investigations are warned ahead of time and kept abreast of the status of the United States' enforcement efforts." Mot. at 17.

This argument convolutes the purposes of IRCA enforcement actions. IRCA primarily imposes obligations and penalties on employers, not employees. See 8 U.S.C. § 1324a. The new California Labor Code section only requires employers to provide notice to employees if the employer itself has received notice of an impending inspection. The "targets" of the investigation have thus already been "warned." Pursuant to federal regulations, employers are to be given at least three business days' notice prior to an I-9 inspection. See 8 C.F.R. § 274a.2(b)(2)(ii). The state law merely extends this prior notice to employees. Given IRCA's focus on employers, the Court finds no indication—express or implied—that Congress intended for employees to be kept in the dark.

The Court declines to adopt Plaintiff's cynical view of the law. As amici point out, notice provides employees with an opportunity to cure any deficiencies in their paperwork or employment eligibility. See Br. for Cal. Labor Fed'n, et al., as Amici Curiae, ECF No. 134. Federal law affords such a courtesy to employers; the Court does not view an extension of that courtesy to employees as an attempt to thwart IRCA's goals.

The notice provision also does not violate the intergovernmental immunity doctrine. Unlike the prohibitions on consent, violations of this provision do not turn on the employer's choice to "deal with" (i.e., consent to) federal law enforcement. An employer is not punished for its choice to work with the Federal Government, but for its failure to communicate with its employees. This requirement does not readily fit into the contours of the intergovernmental immunity doctrine and application would stretch the doctrine beyond its borders. The Court thus finds no merit to Plaintiff's Supremacy Clause claim as to California Labor Code Section 90.2. Plaintiff's motion for a preliminary injunction as to this subdivision of AB 450 is denied.

c. Reverification Prohibition

California Labor Code Section 1019.2 limits an employer's ability to reverify an employee's employment eligibility when not required by law:

> Except as otherwise required by federal law, a public or private employer, or a person acting on behalf of a public or private employer, shall not reverify the employment eligibility of a current employee at a time or in a manner not required by Section 1324a(b) of Title 8 of the United States Code.

Cal. Lab. Code § 1019.2(a). An employer that violates this subsection is subject to a civil penalty of up to $10,000. Id. § 1019.2(b)(1). The law should not be "interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system." Id. § 1019.2(c).

Under IRCA, an employer faces liability for continuing to employ an immigrant in the United States knowing that the immigrant is (or has become) unauthorized with respect to such employment. 8 U.S.C. § 1324a(2). Plaintiff argues that this continuing obligation to avoid knowingly employing an unauthorized immigrant worker conflicts with California's prohibition on reverification. Mot. at 17-18 (citing New El Rey Sausage Co., Inc. v. I.N.S., 925 F.2d 1153 (9th Cir. 1991)). Defendant responds that there is no obstacle because the state law contains an express savings clause for instances where reverification is required by federal law and does not limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system. Opp'n at 26-28.

The Court finds Plaintiff is likely to succeed on the merits of this claim, with the caveat that a more complete evidentiary record could impact the Court's analysis at a later stage of this litigation. Neither party provided the Court with much information on how the verification system currently works in practice and how the new law does or does not change those practices. Based on a plain reading of the statutes, the prohibition on reverification appears to stand as an obstacle to the accomplishment of Congress's purpose in enacting IRCA. See Arizona, 567 U.S. at 399-400. Congress could have chosen to tie employer liability to instances when an employer fails to verify employment eligibility when required to do so by federal law. Instead, Congress broadened liability to encompass situations when an employer knows one of its immigrant employees is or has become unauthorized to work and continues to employ them. In a single act, Congress premised criminal

sanction on an employer's subjective knowledge and established a system through which employers could verify compliance with the law. As the Ninth Circuit explained in New El Rey Sausage Co.:

> The inclusion in the statute of section 1324a(b)'s verification system demonstrates that employers, far from being allowed to employ anyone except those whom the government had shown to be unauthorized, have an affirmative duty to determine that their employees are authorized. This verification is done through the inspection of documents. Notice that these documents are incorrect places the employer in the position it would have been if the alien had failed to produce the documents in the first place: it has failed to adequately ensure that the alien is authorized.

925 F.2d at 1158. Prohibiting employers from reverifying employment eligibility complicates the subjective element of the crime; e.g., could an employer who might otherwise be found to "know" that one of its employees lacks authorization find shelter behind the state law because it could not confirm its suspicion? The law frustrates the system of accountability that Congress designed.

Based on the authority and evidence before the Court at this juncture, which clearly support Plaintiff's claim, the Court finds Plaintiff is likely to succeed on the merits of its Supremacy Clause claim against California Labor Code Section 1019.2(a).

3. Senate Bill 54

SB 54 added several subsections to the California Government Code. Plaintiff seeks to enjoin three of

these subsections. The first two challenged by Plaintiff prohibit state law enforcement agencies from sharing certain information for immigration enforcement purposes:

> (a) California law enforcement agencies shall not:
>
> (1) Use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:
>
> . . .
>
> (C) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities in accordance with Section 7282.5. Responses are never required, but are permitted under this subdivision, provided that they do not violate any local law or policy.
>
> (D) Providing personal information, as defined in Section 1798.3 of the Civil Code, about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.

Cal. Gov't Code § 7284.6(a)(1)(C) & (D). Subsection (e) contains a savings clause expressly exempting the exchange of information pursuant to 8 U.S.C. §§ 1373 and 1644. Cal. Gov't Code § 7284.6(e).

Plaintiff also challenges the subsection limiting transfers of individuals to immigration authorities:

> (a) California law enforcement agencies shall not:

. . .

> (4) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or in accordance with Section 7282.5.

Cal. Gov't Code § 7284.6(a)(4). California Government Code Section 7282.5 defines the circumstances in which law enforcement officials have discretion to cooperate with immigration authorities as referenced in subparagraphs (a)(1)(C) and (a)(4) above, i.e., convictions for certain offenses.

a. Direct Conflict with Section 1373

The primary, and most direct, conflict Plaintiff identifies is that between the information sharing provisions and 8 U.S.C. § 1373 ("Section 1373").[3] Section 1373(a) bars States from prohibiting, or in any way restricting, "any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." (emphasis added). Arguing for a broad interpretation of the phrase "information regarding the citizenship or immigration status, lawful or unlawful, of any individual," Plaintiff contends the prohibitions on sharing release dates and home and work addresses violates Section 1373.

Defendant argues that Section 1373 is unconstitutional under the Supreme Court's recent holding in

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[3] In its Complaint, Plaintiff identifies another statute, 8 U.S.C. § 1644, that contains the same prohibition as Section 1373(a). Plaintiff does not discuss Section 1644 in its Motion.

Murphy. 138 S. Ct. 1461 (2018); see Supp. Br., ECF No. 156. The Court in Murphy held that Congress cannot dictate what a state legislature may and may not do, "as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals." Id. at 1482. The decision clarified that the Court's anti-commandeering precedent extends to prohibitions on state legislative action. Section 1373 does just what Murphy proscribes: it tells States they may not prohibit (i.e., through legislation) the sharing of information regarding immigration status with the INS or other government entities.

Plaintiff argues that Murphy's holding—and the anticommandeering rule generally—does not reach statutes requiring information sharing between government entities. Reply at 17-22. Plaintiff points to a number of federal statutes that require States to convey information to the Federal Government. Reply at 19 n.14. For additional support, it cites Reno v. Condon for the principle that a regulation on States as the owners of databases does not violate the Tenth Amendment. Reply at 18; 528 U.S. 141 (2000). Plaintiff also notes that the Printz opinion distinguished federal laws regulating the provision of information to the federal government from regulations requiring forced participation of the States in administering a federal program.

Reno v. Condon involved a constitutional challenge to the Driver's Privacy Protection Act ("DPPA"), which bars States from disclosing a driver's personal information without the driver's consent. 528 U.S. 141 (2000); see 18 U.S.C. § 2721(a) ("A State department of motor vehicles, and any officer, employee, or contractor

thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information . . . about any individual obtained by the department in connection with a motor vehicle record[.]"). The Supreme Court held the provision does not run afoul of the Tenth Amendment:

> [T]he DPPA does not require the States in their sovereign capacity to regulate their own citizens. The DPPA regulates the States as the owners of data bases. It does not require the South Carolina Legislature to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals. We accordingly conclude that the DPPA is consistent with the constitutional principles enunciated in New York and Printz.

Id. at 150. The Court rejected South Carolina's argument that the DPPA is unconstitutional for its exclusive regulation of the States, finding the Act to be generally applicable but not deciding whether general applicability is required to survive constitutional scrutiny. Id.

Plaintiff's second source of support is dicta from Printz. 521 U.S. 898 (1997). The Printz Court evaluated a federal statute that required state law enforcement officers to assist in administering a federal regulatory scheme. In describing the issues to be resolved, Justice Scalia wrote:

> The Government points to a number of federal statutes enacted within the past few decades that require the participation of state or local officials in implementing federal regulatory schemes. . . . [Some of these statutes], which require only the provision of

> information to the Federal Government, do not involve the precise issue before us here, which is the forced participation of the States' executive in the actual administration of a federal program.

Id. at 918. Justice Scalia expressly distinguished the laws under consideration in Printz from laws that require the provision of information to the Federal Government. Thus, Printz left open the question of whether required information sharing could constitute commandeering.

Defendant would have this Court follow the lead of the district court in City of Philadelphia v. Sessions. No. 17-3894, 2018 WL 2725503 (E.D. Pa. June 6, 2018). That court rejected Plaintiff's same—or substantially similar—arguments and found Section 1373 unconstitutional under Murphy. Id. at *28-33. It held that "on their face, [Section 1373(a) and (b)] regulate state and local government entities and officials, which is fatal to their constitutionality under the Tenth Amendment." Id. at *32. The district court distinguished Reno, explaining that Reno did not involve a "statute that commanded state legislatures to enact or refrain from enacting state law." Id. (noting the Murphy Court's discussion of Reno). It also refused to put much weight in the cited dicta from Printz, finding that Printz's holding supports the court's conclusion as to Section 1373.

The Court finds the constitutionality of Section 1373 highly suspect. Like the district court in City of Philadelphia, the Court reads Section 1373 to dictate what states may and may not do, in contravention of the Tenth Amendment. The more critical question, however, is whether required information sharing constitutes commandeering at all. Printz left this question open.

One view, which amici, the California Partnership to End Domestic Violence and the Coalition for Humane Immigrant Rights, articulate, is that the context of the information sharing affects the commandeering inquiry. See Br. for Cal. P'ship to End Domestic Violence and the Coal. for Humane Immigrant Rights, as Amici Curiae, ECF No. 182. Amici argue "purely ministerial reporting requirements" might not constitute commandeering, but "forced information sharing, where it facilitates the on-the-ground, day-to-day administration of a federal program, runs afoul of the anti-commandeering rule." Id. at 7. They argue that "none of [the] examples [Plaintiff cites to show that Congress frequently calls on states to share relevant information] remotely resembles a system of state officers performing daily services for immigration agents." Id. at 8. The Court agrees —cautiously, because these other provisions were not heavily briefed—that the information sharing provisions cited in footnote 14 of Plaintiff's Reply do not appear to approximate the level of state and local law enforcement integration into federal immigration enforcement operations seen in this context.

Whether the constitutionality of an information sharing requirement is absolute or whether it turns on how much the requirement effectively integrates state law enforcement into a federal regime is an interesting, and seemingly open, constitutional question that may prove dispositive in another case. Here, however, the Court need not reach a definitive answer because the Court finds no direct conflict between SB 54 and Section 1373.

The state statute expressly permits information sharing in accordance with Section 1373. Cal. Gov't

Code § 7284.6(e). The functionality of this clause depends on whether Section 1373 is construed broadly to encompass information such as release dates and addresses or narrowly to include only one's immigration status or citizenship (i.e., category of presence in the United States, and whether an individual is a U.S. citizen, and if not, the country of citizenship). See City of Philadelphia, 2018 WL 2725503, at *35.

Two district courts have held that Section 1373 must be interpreted narrowly. In Steinle v. City & Cnty. of San Francisco, the district court explained:

> Nothing in 8 U.S.C. § 1373(a) addresses information concerning an inmate's release date. The statute, by its terms, governs only "information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). If the Congress that enacted the Omnibus Consolidated Appropriations Act of 1997 (which included § 1373(a)) had intended to bar all restriction of communication between local law enforcement and federal immigration authorities, or specifically to bar restrictions of sharing inmates' release dates, it could have included such language in the statute. It did not, and no plausible reading of "information regarding . . . citizenship or immigration status" encompasses the release date of an undocumented inmate. Because the plain language of the statute is clear on this point, the Court has no occasion to consult legislative history.

230 F. Supp. 3d 994, 1015 (N.D. Cal. 2017). Plaintiff urges the Court to limit its reliance on Steinle, which involved a negligence claim and in which the United States did not appear as a party. But, the district court in City of Philadelphia—a case in which the United States

did appear—agreed with the Steinle court's analysis and concluded that the United States' broad interpretation "is simply impossible to square with the statutory text." 2018 WL 2725503, at *34.

Both district courts rejected the analysis in Bologna v. City & Cnty. of San Francisco, the principal case Plaintiff cites for persuasive value. 192 Cal. App. 4th 429, 438-40 (Ct. App. 2011). In analyzing a tort claim similar to the claim at issue in Steinle, the California Appellate Court characterized Section 1373 as invalidating "all restrictions on the voluntary exchange of immigration information between federal, state and local government entities and officials and federal immigration authorities." Id. at 438. The Steinle court expressly disavowed this interpretation:

> This Court is not bound by the state court's interpretation of federal law, and respectfully disagrees with the Bologna court's characterization of the scope of § 1373(a). "As [the Supreme Court has] repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005). The Ninth Circuit has explained in some detail why the Constitution does not permit giving legislative effect to language found only in congressional reports that is not consistent with the language of a statute itself: The principle that committee report language has no binding legal effect is grounded in the text of the Constitution and in the structure of

> separated powers the Constitution created. . . . Treating legislative reports as binding law also undermines our constitutional structure of separated powers, because legislative reports do not come with the traditional and constitutionally-mandated political safeguards of legislation.

Steinle, 230 F. Supp. 3d at 1014-15; see City of Philadelphia, 2018 WL 2725503, at *35 (disagreeing with Bologna).

The Court agrees with its fellow district courts that the plain meaning of Section 1373 limits its reach to information strictly pertaining to immigration status (i.e. what one's immigration status is) and does not include information like release dates and addresses. See Carson Harbor Vill., Ltd. v. Unocal Corp., 270 F.3d 863, 878 (9th Cir. 2001) ("It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the courts is to enforce it according to its terms.") (citation omitted).

A contrary interpretation would know no bounds. The phrase could conceivably mean "everything in a person's life." See Br. for City & Cnty. of San Francisco, as Amicus Curiae, ECF No. 112; see also State ex rel. Becerra v. Sessions, 284 F. Supp. 3d 1015, 1035 (N.D. Cal. 2018) ("Under the INA, almost every bit of information about an individual could be relevant to status, particularly with respect to the right to asylum or as a defense to removal."). If Congress intended the statute to sweep so broadly, it could have used broader language or included a list to define the statute's scope. See, e.g., 8 U.S.C. § 1367(a)(2) (prohibiting immigration enforcement officers from "permit[ting] the use by or

disclosure to anyone . . . of any information which relates to an alien who is the beneficiary of an application for relief under [certain sections of the INA]"). One cannot naturally read "information regarding immigration status" to include the types of information Plaintiff now seeks to incorporate. While an immigrant's release date or home address might assist immigration enforcement officers in their endeavors, neither of these pieces of information have any bearing on one's immigration or citizenship status.

The parties offer competing precedent to aid the Court in interpreting the term "regarding." In Roach, the Ninth Circuit cautioned courts to refrain from interpreting the words "relate to," in an express preemption provision, too broadly. Roach v. Mail Handlers Ben. Plan, 298 F.3d 847 (9th Cir. 2002). The Circuit explained:

> [I]n the context of a similarly worded preemption provision in the Employee Retirement Income Security Act (ERISA), the Supreme Court has explained that the words "relate to" cannot be taken too literally. "If 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for 'really, universally, relations stop nowhere.'" Instead, "relates to" must be read in the context of the presumption that in fields of traditional state regulation "the historic police powers of the States [are] not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress."

Id. at 849-50 (citations omitted). Plaintiff urges the Court to, instead, focus on the Supreme Court's more recent interpretation of the term "respecting" in Lamar,

Archer & Cofrin, LLP v. Appling. 138 S. Ct. 1752 (2018) (interpreting a provision in the Bankruptcy Code excepting debts obtained by fraud from discharge); Reply at 16. In Appling, the Court read the word "respecting" to have a broadening effect, instructing the Court to read the relevant text expansively. Id. at 1760. The Supreme Court also observed that a limiting construction would effectively read the term "respecting" out of the statute. Id. at 1761.

The Court finds the law in Appling sufficiently distinct from the law at issue here to limit the decision's instructional value. The Appling Court was not called upon to determine the preemptive effect of a federal statute and thus did not have presumptions against preemption to factor into its analysis. Further, the Appling Court held that "a statement about a single asset can be a 'statement respecting the debtor's financial condition.'" Id. at 1757. It reasoned, "[a] single asset has a direct relation to and impact on aggregate financial condition, so a statement about a single asset bears on a debtor's overall financial condition[.]" Id. at 1761. In contrast, as noted above, a person's address or release date has no direct relation to one's immigration or citizenship status.

Unlike the law in Appling, a narrow reading of the phrase "regarding immigration status" does not read "regarding" out of the statute. Plaintiff makes a similar argument by noting the omission of the term "regarding" in Section 1373(c) as compared to subsection (a). Mot. at 28. Section 1373(c) governs the obligation of federal immigration authorities in responding to inquiries from other government entities, and an official record of a person's citizenship or immigration status is

presumably within their control. Opp'n at 12-13; Br. for City and Cnty. of San Francisco, as Amicus Curiae, at 9. Subsection (a) is directed toward government entities and their officers, who might possess information pertaining to an individual's immigration status but not hold an official record. The phrase "information regarding" thus serves a purpose even when the statute is read narrowly.

In any event, neither Roach nor Appling involved a provision like the one at issue in this case. The Court is convinced, based on the analysis above, that "information regarding immigration or citizenship status" does not include an immigrant's release date or home and work addresses. Section 1373 and the information sharing provisions of SB 54 do not directly conflict.

b. Obstacle Preemption

Apart from any direct conflict with Section 1373, Plaintiff argues that "the structure of the INA makes clear that states and localities are required to allow a basic level of information sharing" and cooperation with immigration enforcement. Mot. at 24. Plaintiff points to 8 U.S.C. § 1226(c)(1), a law that requires "mandatory detention" for certain immigrants after their release from criminal custody. It also cites 8 U.S.C. § 1231, which instructs the Attorney General to remove an immigrant within a period of 90 days after the immigrant has been ordered removed. 8 U.S.C. § 1231(a)(1)(A). For certain immigrants, detention during the removal period is mandatory. 8 U.S.C. § 1231(a)(2). With some exceptions "the Attorney General may not remove an [immigrant] who is sentenced to imprisonment until the [immigrant] is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or

further imprisonment is not a reason to defer removal." 8 U.S.C. § 1231(a)(4)(A).

Plaintiff argues that SB 54 undermines the system Congress designed. Mot. at 25. The limits on information sharing and transfers prevent or impede immigration enforcement from fulfilling its responsibilities regarding detention and removal because officers cannot arrest an immigrant upon the immigrant's release from custody and have a more difficult time finding immigrants after the fact without access to address information. Id. at 25-27. It contends that limiting adherence to transfer requests affords undocumented immigrants an opportunity to abscond. Plaintiff also points out that the subset of crimes for which SB 54 permits cooperation do not match the crimes under federal law that may serve as the predicate for removability or crimes for which detention is mandatory. Id. at 26. Additionally, it argues that requiring a judicial warrant or judicial finding of probable cause is irreconcilable with the INA, which establishes a system of civil administrative warrants as the basis for immigration arrest and removal. Id. at 30.

The Court disagrees and instead finds that California's decision not to assist federal immigration enforcement in its endeavors is not an "obstacle" to that enforcement effort. Plaintiff's argument that SB 54 makes immigration enforcement far more burdensome begs the question: more burdensome than what? The laws make enforcement more burdensome than it would be if state and local law enforcement provided immigration officers with their assistance. But refusing to help is not the same as impeding. If such were the rule, obstacle preemption could be used to commandeer state

resources and subvert Tenth Amendment principles. Federal objectives will always be furthered if states offer to assist federal efforts. A state's decision not to assist in those activities will always make the federal object more difficult to attain than it would be otherwise. Standing aside does not equate to standing in the way.

Though not analyzing an obstacle preemption claim, the Seventh Circuit recently expressed a similar view with respect to decisions to withhold assistance. See City of Chicago v. Sessions, 888 F.3d 272 (7th Cir. 2018). The Circuit explained:

> [T]he Attorney General repeatedly characterizes the issue as whether localities can be allowed to thwart federal law enforcement. That is a red herring. First, nothing in this case involves any affirmative interference with federal law enforcement at all, nor is there any interference whatsoever with federal immigration authorities. The only conduct at issue here is the refusal of the local law enforcement to aid in civil immigration enforcement through informing the federal authorities when persons are in their custody and providing access to those persons at the local law enforcement facility. Some localities might choose to cooperate with federal immigration efforts, and others may see such cooperation as impeding the community relationships necessary to identify and solve crimes. The choice as to how to devote law enforcement resources—including whether or not to use such resources to aid in federal immigration efforts—would traditionally be one left to state and local authorities.

City of Chicago, 888 F.3d at 282 (analyzing conditions imposed on federal grants). This common-sense distinction militates against adopting Plaintiff's perspective of the laws.

The Court is also wary of finding preemption in the absence of a "clear and manifest purpose of Congress" to supersede the States' police powers. See Arizona, 567 U.S. at 400. California has not crossed over into the exclusively federal realm of determining who may enter and remain within the United States. SB 54 only governs the activities of the State's own law enforcement agencies. Although Congress clearly intends its immigration laws to exclusively regulate the subject of immigration and the activities of federal immigration enforcement officers, the Court sees no clear indication that Congress intended to displace the States' regulation of their own law enforcement agencies.

Despite Plaintiff's urgings, this case does not mirror Arizona v. United States. 567 U.S. 387 (2012). Arizona sought to impose additional rules and penalties upon individuals whom Congress had already imposed extensive, and exclusive, regulations. SB 54 does not add or subtract any rights or restrictions upon immigrants. Immigrants subject to removal remain subject to removal. SB 54, instead, directs the activities of state law enforcement, which Congress has not purported to regulate. Preemption is inappropriate here.

The Court's reluctance to glean such a purpose from the cited statutes is amplified because Congress indicated awareness that state law might be in tension with federal objectives and decided to tolerate those competing interests. See Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 166-67 (1989) ("The case for

federal pre-emption 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 stand by both concepts and to tolerate whatever tension there is between them.") (citation and quotation marks omitted); see also Wyeth v. Levine, 555 U.S. 555, 575 (2009) (quoting Bonito Boats and finding that a plaintiff's failure-to-warn claims were not preempted by federal law).

First, in the portions of the INA where Congress provided for cooperation between state and federal officials, it conditioned cooperation on compliance with state law. For instance, 8 U.S.C. § 1252c(a) authorizes state and local law enforcement officials to arrest and detain certain immigrants "to the extent permitted by relevant State and local law." Subsection (b) imposes an obligation on the Attorney General to cooperate with states in providing information that would assist state and local law enforcement, but does not impose any corollary obligations on state or local law enforcement. Similarly, 8 U.S.C. § 1357(g) authorizes the Attorney General to enter into agreements with the State to perform immigration officer functions, but only "to the extent consistent with State and local law." These conditions on cooperation indicate that Congress did not intend to preempt state law in this area.

Second, the primary mechanism—a "detainer"—by which immigration enforcement agents solicit release dates, transfers, and detention is a "request." See 8 C.F.R. § 287.7(a); Mot. at 25 ("To effectuate the INA's provisions, DHS issues an 'immigration detainer[.]'"). Even detainers soliciting "temporary detention" have been found to be a non-mandatory "request," despite the

use of the word "shall" in the governing provision. 8 C.F.R. § 287.7(d); see Galarza v. Szalczyk, 745 F.3d 634, 640 (3d Cir. 2014) ("[N]o provisions of the [INA] authorize federal officials to command local or state officials to detain suspected aliens subject to removal."); see also Miranda-Olivares v. Clackamas Cnty., No. 3:12-CV-02317-ST, 2014 WL 1414305, at *7 (D. Or. Apr. 11, 2014) (following Galarza and noting that the Ninth Circuit has interpreted detainer letters, in the habeas corpus context, to be advisory in nature, not imposing—or even allowing—a warden to hold a detainee at the end of his term of imprisonment) (citing Garcia v. Taylor, 40 F.3d 299 (9th Cir. 1994)). The voluntary nature of any response to these requests demonstrates that the federal government has not supplanted state discretion in this area.

Congress's deliberate decision to condition enforcement cooperation on consistency with state law, and the primary mechanism by which immigration officials seek law enforcement assistance being merely a "request," counsels against implied preemption in this area. A clear and manifest purpose to preempt state law is absent from these provisions.

Plaintiff argues that "Congress could have authorized the federal government to take custody of aliens immediately, without regard to the status of state criminal enforcement," Reply at 22-23, and that because it did not, the Court can infer that Congress intended states to cooperate with immigration law enforcement. The Court does not find such inference warranted. The Court can just as readily infer that Congress recognized the States' sovereign power to enforce their criminal laws and thought interference would upset the balance

in powers. See Def. Reply to MTD at 1 ("It is not Congress that offers California the 'opportunity' to enforce state criminal laws[;] it is a right inherent in California's sovereignty."). Furthermore, it is often the case that an immigrant is not deemed removable or inadmissible until after they have been convicted of a crime. In these cases, state process is a predicate to federal action.

The Ninth Circuit's holding in Preap does not require a different outcome. Preap v. Johnson, 831 F.3d 1193 (9th Cir. 2016) cert. granted sub nom. Nielsen v. Preap, 138 S. Ct. 1279 (2018). The Preap court held that the INA's mandatory detention provision only applies in cases when immigrants are "promptly" detained after being released from custody. Id. at 1197. Preap does not, however, require contemporaneous transfer for the mandatory detention provision to apply. And, a longer delay in securing custody does not preclude detention. It just makes detention a discretionary decision rather than a mandatory obligation. See id. at 1201; 8 U.S.C. § 1226. The Court finds that the operational challenges immigration enforcement agencies may have faced following the Preap decision do not alter the Court's conclusions with respect to Congress's clear and manifest purpose.

The Court further finds that Tenth Amendment and anticommandeering principles counsel against preemption. Though responding to requests for information and transferring individuals to federal custody may demand relatively little from state law enforcement, "[t]he issue of commandeering is not one of degree[.]" Galarza, 745 F.3d at 644; see Printz, 521 U.S. at 932 ("But where, as here, it is the whole object of the law to

direct the functioning of the state executive, and hence to compromise the structural framework of dual sovereignty, such a 'balancing' analysis is inappropriate. It is the very principle of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect."). Under Printz, even enlisting state officers to perform discrete, ministerial tasks constitutes commandeering. Thus, it is highly unlikely that Congress could have made responses to requests seeking information and/or transfers of custody mandatory. See Cnty. of Santa Clara v. Trump, 250 F. Supp. 3d 497, 534 (N.D. Cal. 2017), ("The Executive Order uses coercive means in an attempt to force states and local jurisdictions to honor civil detainer requests, which are voluntary 'requests' precisely because the federal government cannot command states to comply with them under the Tenth Amendment.") (focusing on requests for detention).

The Printz Court outlined several reasons why commandeering is problematic, which parallel California's concerns in enacting SB 54. The Court noted that commandeering shifts the costs of program implementation from the Federal Government to the states. Printz, 521 U.S. at 930. The California Legislature enacted SB 54, in part, to divert California's resources away from supporting the Federal Government's enforcement efforts. It stated:

> (d) Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.
>
> . . .

> (f) This chapter seeks to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state's limited resources to matters of greatest concern to state and local governments.

Cal. Gov't Code § 7284.2 (Legislative findings and declarations). Defendant contends that working with immigration enforcement diverts resources from the States' priorities. Opp'n at 15-16; see e.g., Hart Decl., ECF No. 75-3, at 4 ("[W]e are often faced with staffing shortages that make even processing the additional paperwork related to detainers difficult.").

The Printz Court also explained that "even when States are not forced to absorb the costs of implementing a federal program, they are still put in the position of taking the blame for its burdensomeness and for its defects." 521 U.S. at 930 ("And it will likely be the CLEO, not some federal official, who will be blamed for any error (even one in the designated federal database) that causes a purchaser to be mistakenly rejected.").

Here, when California assists federal immigration enforcement in finding and taking custody of immigrants, it risks being blamed for a federal agency's mistakes, errors, and discretionary decisions to pursue particular individuals or engage in particular enforcement practices. Under such a regime, federal priorities dictate state action, which affects the State's relationship with its constituency and that constituency's perception of its state government and law enforcement. Indeed, Defendant and amici highlight the impact these perceptions have on the community's relationship with local law enforcement. See Cal. Gov't Code § 7284.2 ("This

trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians."); Br. for Current and Former Prosecutors and Law Enforcement Leaders, as Amici Curiae, ECF No. 127; Br. for City of Los Angeles, as Amicus Curiae, ECF No. 128; Br. for Cnty. of Los Angeles, et al., as Amici Curiae, ECF No. 129.

Plaintiff discounts Defendant's interest in extracting itself from immigration enforcement, but fails to confront California's primary concern: the impact that state law enforcement's entanglement in immigration enforcement has on public safety. The historic police powers of the State include the suppression of violent crime and preservation of community safety. In this power inheres the authority to structure and influence the relationship between state law enforcement and the community it serves. The ebb of tensions between communities and the police underscores the delicate nature of this relationship. Even perceived collaboration with immigration enforcement could upset the balance California aims to achieve. It is therefore entirely reasonable for the State to determine that assisting immigration enforcement in any way, even in purportedly passive ways like releasing information and transferring custody, is a detrimental use of state law enforcement resources.

However, because Congress has not required states to assist in immigration enforcement—and has merely made the option available to them—this case presents a

unique situation. As Judge Orrick observed in State ex rel. Becerra v. Sessions: "No cited authority holds that the scope of state sovereignty includes the power to forbid state or local employees from voluntarily complying with a federal program." 284 F. Supp. 3d 1015, 1035 (N.D. Cal. 2018). The Second Circuit in City of New York concluded a state could not do so. City of New York v. United States, 179 F.3d 29, 35 (2nd Cir. 1999) ("We therefore hold that states do not retain under the Tenth Amendment an untrammeled right to forbid all voluntary cooperation by state or local officials with particular federal programs."). Nevertheless, the Supreme Court's holding in Murphy undercuts portions of the Second Circuit's reasoning and calls its conclusion into question. Compare City of New York, 179 F.3d at 35 (distinguishing Section 1373 from the laws in Printz and New York because the Section does not compel state and local governments to enact or administer any federal regulatory program or conscript them into federal service) with Murphy, 138 S. Ct. at 1478 (holding the anti-commandeering rule applies to Congressional prohibitions on state actions in addition to commands to take affirmative actions). Further, the Second Circuit's broad proclamations may be limited to the specific City Executive Order at issue, procedural posture, and record in that case. See Br. for Admin. L., Const. L., Crim. L., and Immigr. L. Scholars, as Amici Curiae, ECF No. 132, at 13 (distinguishing City of New York). Regardless, the City of New York holding is not binding on this Court.

The Court finds that a Congressional mandate prohibiting states from restricting their law enforcement agencies' involvement in immigration enforcement

activities—apart from, perhaps, a narrowly drawn information sharing provision—would likely violate the Tenth Amendment. See City of Chicago v. Sessions, 888 F.3d 272, 282 (7th Cir. 2018) (stating, in dicta: "The choice as to how to devote law enforcement resources—including whether or not to use such resources to aid in federal immigration efforts—would traditionally be one left to state and local authorities."); Koog v. United States, 79 F.3d 452, 460 (5th Cir. 1996) ("Whatever the outer limits of state sovereignty may be, it surely encompasses the right to set the duties of office for state-created officials and to regulate the internal affairs of governmental bodies."). The Tenth Amendment analysis in Murphy supports this conclusion. Murphy, 138 S. Ct. at 1478 (a prohibition on state legislation violates the anticommandeering rule), 1481 ("[P]reemption is based on a federal law that regulates the conduct of private actors, not States."); see New York, 505 U.S. at 166 ("[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States."). If Congress lacks the authority to direct state action in this manner, then preemption cannot and should not be used to achieve the same result. The Supremacy Clause requires courts to hold federal law supreme when Congress acts pursuant to one of its enumerated powers; those powers do not include the authority to dictate a state's law enforcement policies.

Having concluded that California may restrict the assistance its law enforcement agencies provide immigration enforcement, the Court finds California's choice to cooperate in certain circumstances permissible. See Cal. Gov't Code § 7284.6(a)(1)(C) (allowing California

law enforcement agencies to provide information regarding a person's release date when that person has been convicted of certain crimes), § 7284(a)(4) (permitting California law enforcement agencies to transfer individuals to immigration authorities when authorized by a judicial warrant or judicial probable cause determination, or when the individual has been convicted of certain crimes). As the Seventh Circuit explained:

> [F]or the persons most likely to present a threat to the community, City law enforcement authorities will cooperate with ICE officials even in "sanctuary" cities. The decision to coordinate in such circumstances, and to refuse such coordination where the threat posed by the individual is lesser, reflects the decision by the state and local authorities as how best to further the law enforcement objectives of their communities with the resources at their disposal.

City of Chicago, 888 F.3d at 281. While the Court, again, acknowledges that City of Chicago involved different claims than those presented here, the Court agrees with the assessment. Just as the State may restrict the assistance its law enforcement officers provide immigration enforcement, the State may choose to outline exceptions to that rule in accordance with its own law enforcement priorities and concerns. For example, California is concerned with the monetary liability law enforcement agencies may face if they maintain custody of an individual for purposes of transfer without a judicial warrant or probable cause determination justifying that custody. See Roy v. Cnty. of Los Angeles, No. CV 12-09012-AB (FFMx), 2018 WL 914773, at *22-24 (C.D. Cal. Feb. 7, 2018) ("The LASD officers have no

authority to arrest individuals for civil immigration offenses, and thus, detaining individuals beyond their date for release violated the individuals' Fourth Amendment rights."); Br. for States and the District of Columbia, as Amici Curiae, ECF No. 139 ("SB 54's [warrant requirement] is a reasonable way to protect the state and its law enforcement agencies from monetary liability for unlawfully detaining individuals requested to be transferred to federal immigration authorities after their period of state custody expires."). The California Legislature expressed this concern when it passed SB 54:

> State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status. See Sanchez Ochoa v. Campbell, et al. (E.D. Wash. 2017) 2017 WL 3476777; Trujillo Santoya v. United States, et al. (W.D. Tex. 2017) 2017 WL 2896021; Moreno v. Napolitano (N.D. Ill. 2016) 213 F. Supp. 3d 999; Morales v. Chadbourne (1st Cir. 2015) 793 F.3d 208; Miranda-Olivares v. Clackamas County (D. Or. 2014) 2014 WL 1414305; Galarza v. Szalczyk (3d Cir. 2014) 745 F.3d 634.

Cal. Gov't Code § 7284.2(e). Because California's directive to its law enforcement agencies is not preempted, the Court finds its determination to make certain exceptions to the rule also survives preemption analysis.

c. Intergovernmental Immunity

The intergovernmental immunity doctrine has no clear application to SB 54. SB 54 regulates state law enforcement; it does not directly regulate federal immigration authorities.

Plaintiff argues the information sharing and transfer restrictions "apply only to requests made by federal entities[.]" Mot. at 31. It claims that although "the statute defines 'immigration authorities' to include, in addition to federal officers, 'state, or local officers, employees or persons performing immigration enforcement functions,' it also defines 'immigration enforcement' to mean 'any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.'" Id. (citing the definitions in Cal. Gov't Code § 7284.4).

The Court is not convinced that the intergovernmental immunity doctrine extends to the State's regulation over the activities of its own law enforcement and decision to restrict assistance with some federal endeavors. None of the cases cited in the parties' briefs involve an analogous regulation. The preemption analysis above thus counsels against expanding the doctrine to the present situation. North Dakota v. United States, 495 U.S. 423, 435 (1990) ("The Court has more recently adopted a functional approach to claims of governmental immunity, accommodating of the full range of each sov-

ereign's legislative authority and respectful of the primary role of Congress in resolving conflicts between the National and State Governments.").

Even if the doctrine might arguably apply to this situation, Plaintiff has not shown it is likely to succeed on this claim. First, Plaintiff has not shown that the laws uniquely burden federal immigration authorities. The information sharing provisions permit sharing when the information is available to the public. Cal. Gov't Code § 7284.6(a)(1)(C)-(D). Plaintiff has not identified any examples of similarly situated authorities (i.e., civil law enforcement agencies) that the State treats better than it does federal immigration authorities. And while the Court agrees with Plaintiff that "federal, state, or local officer[s] . . . performing immigration enforcement functions" boils down to federal immigration enforcement, see Cal. Gov't Code § 7284.4, the Court finds the discrimination—if any—is justified by California's choice to divert its resources away from assisting immigration enforcement efforts. As explained in detail above, the purported "burden" here is California's decision not to help the Federal government implement its immigration enforcement regime. The State retains the power to make this choice and the concerns that led California to adopt this policy justify any differential treatment that results.

For all of the reasons set forth in Part III.A.3 of this Order, the Court finds that Plaintiff is not likely to succeed on the merits of its SB 54 claim and its motion for a preliminary injunction as to this statute is denied.

B. Preliminary Injunction Equitable Factors

Each party submitted evidence showing hardships to their sovereign interests and their constituencies should the Court fail to decide this Motion in their favor. See Exhs. to Mot. and Reply, ECF Nos. 2-2-5, 46, 171-1-25, 173, 178; Exhs. to Opp'n, ECF Nos. 75, 78, 81, 83. Many of the amici curiae also identified harms that would befall themselves or their constituencies because of this Court's Order. The parties' interests largely hang in balance, each seeking to vindicate what it—and its supporters—view as critical public policy objectives. These harms are not susceptible to remediation through damages; each side faces much more than mere economic loss. See Ariz. Dream Act Coal. v. Brewer, 757 F.3d 1053, 1068 (9th Cir. 2014) ("Irreparable harm is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages.").

"[A]n alleged constitutional infringement will often alone constitute irreparable harm." United States v. Arizona, 641 F.3d 339, 366 (9th Cir. 2011) (citation omitted), rev'd in part on other grounds, 567 U.S. 387 (2012). "It is clear that it would not be equitable or in the public's interest to allow the state to violate the requirements of federal law. . . . In such circumstances, the interest of preserving the Supremacy Clause is paramount." Id. (quoting Cal. Pharmacists Ass'n v. Maxwell-Jolly, 563 F.3d 847, 852-53 (9th Cir. 2009)); see Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1059-60 (9th Cir. 2009) ("Similarly, while we do not denigrate the public interest represented by the Ports, that must be balanced against the public interest represented in [Congress's] decision to deregulate the

motor carrier industry, and the Constitution's declaration that federal law is to be supreme.").

For the state laws which the Court found no likelihood that Plaintiff will succeed on its claims—California Government Code Sections 12532 (AB 103), 7284.6(a)(1)(C) & (D), and 7284.6(a)(4) (SB 54), and California Labor Code Section 90.2 (AB 450)—no injunction will issue. "Because it is a threshold inquiry, when a plaintiff has failed to show the likelihood of success on the merits, [the Court] need not consider the remaining three Winter elements." Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015) (citation and quotation marks omitted). The Court will not find an irreparable injury where it has not found an underlying constitutional infringement. See Goldie's Bookstore, Inc. v. Super. Ct. of Cal., 739 F.2d 466, 472 (9th Cir. 1984) ("In this case, however, the constitutional claim is too tenuous to support our affirmance on [the] basis [of irreparable harm].").

As to California Government Code Sections 7285.1 and 7285.2 and California Labor Code Section 1019.2, the Court presumes that Plaintiff will suffer irreparable harm based on the constitutional violations identified above. The equitable considerations favor an injunction in such circumstances. See United States v. Alabama, 691 F.3d 1269, 1301 (11th Cir. 2012) ("The United States suffers injury when its valid laws in a domain of federal authority are undermined by impermissible state regulations. Frustration of federal statutes and prerogatives are not in the public interest, and we discern no harm from the state's nonenforcement of invalid

legislation."). The Court therefore enjoins enforcement of these provisions as to private employers, as set forth in the Order below.

C. Conclusion

This Court has gone to great lengths to explain the legal grounds for its opinion. This Order hopefully will not be viewed through a political lens and this Court expresses no views on the soundness of the policies or statutes involved in this lawsuit. There is no place for politics in our judicial system and this one opinion will neither define nor solve the complicated immigration issues currently facing our Nation.

As noted in the Introduction to this Order, this case is about the proper application of constitutional principles to a specific factual situation. The Court reached its decision only after a careful and considered application of legal precedent. The Court did so without concern for any possible political consequences. It is a luxury, of course, that members of the other two branches of government do not share. But if there is going to be a long-term solution to the problems our country faces with respect to immigration policy, it can only come from our legislative and executive branches. It cannot and will not come from piecemeal opinions issued by the judicial branch. Accordingly, this Court joins the ever-growing chorus of Federal Judges in urging our elected officials to set aside the partisan and polarizing politics dominating the current immigration debate and work in a cooperative and bi-partisan fashion toward drafting and passing legislation that addresses this critical political issue. Our Nation deserves it. Our Constitution demands it.

IV. ORDER

For the reasons set forth above, the Court DENIES IN PART AND GRANTS IN PART Plaintiff's Motion for Preliminary Injunction.

The Court DENIES Plaintiff's Motion to enjoin California Government Code Sections 12532, 7284.6(a)(1)(C) & (D), and 7284.6(a)(4), and California Labor Code Section 90.2.

The Court GRANTS Plaintiff's Motion and preliminarily enjoins the State of California, Governor Brown, and Attorney General Becerra from enforcing California Government Code Sections 7285.1 and 7285.2 and California Labor Code Section 1019.2(a)&(b) as applied to private employers.

IT IS SO ORDERED.

Dated: July 4, 2018

/s/ JOHN A. MENDEZ
JOHN A. MENDEZ
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

No. 2:18-cv-490-JAM-KJN

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA, ET AL., DEFENDANTS

Filed: July 9, 2018

ORDER RE: STATE OF CALIFORNIA'S MOTION TO DISMISS

In response to the United States of America's ("Plaintiff" or "United States") allegations that California overstepped its authority and violated the Supremacy Clause, the State of California ("Defendant" or "California")[1] moves to dismiss the Complaint in its entirety. ECF No. 77. The United States opposes dismissal. ECF No. 166.

The parties appeared before the Court on June 20, 2018, and argued the merits of the United States' claims as they related to the United States' pending Motion for Preliminary Injunction and California's pending Motion

[1] Because Edmund Gerald Brown Jr., Governor of California, and Xavier Becerra, Attorney General of California, are sued in their official capacities only, the Court will address all three named defendants as "California" or "Defendant."

to Dismiss. The Court filed its Order Re: The United States of America's Motion for Preliminary Injunction on July 5, 2018, in which the Court set forth, in detail, its evaluation of the United States' claims and the challenged state laws. ECF No. 193. The Court concluded the United States is not likely to succeed on the merits of its Supremacy Clause claims against SB 54, AB 103, and the notice requirement provision of AB 450. It also found the United States has shown a likelihood of success on its claim against the remaining provisions of AB 450, as those provisions apply to private employers.

For the reasons set forth in the Court's Preliminary Injunction Order, and as explained further below, Defendant's motion to dismiss is granted in part and denied in part.

I. OPINION

A. Legal Standard

Defendant moves to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6). In reviewing such motion, the Court "inquire[s] whether the complaint's factual allegations, together with all reasonable inferences, state a plausible claim for relief." Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1054 (9th Cir. 2011). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

B. Assembly Bill 103

AB 103 directs the California Attorney General's attention to civil immigration detention facilities within the State and establishes a review and reporting requirement with respect to those facilities. Plaintiff's theory of liability rests on the notion that federal law preempts that new requirement and that the new requirement conflicts with 8 C.F.R. § 236.6. Opp'n at 9. Additionally, Plaintiff argues that AB 103 violates the intergovernmental immunity doctrine. Id. at 10.

The Court finds AB 103 does not violate the Supremacy Clause. As explained in the Preliminary Injunction Order, the Court does not find any indication in the cited federal statutes that Congress intended for States to have no oversight over detention facilities operating within their borders. Order at 12-19. AB 103's review and reporting requirement does not give California a role in determining whether an immigrant should be detained or removed from the country, nor does it place any substantive requirements or burdens on these detention facilities apart from providing access. Id. at 14-16. The Court finds no conflict between AB 103 and 8 C.F.R. § 236.6; on its face, AB 103 only requires disclosure of records to the Attorney General and does not contemplate the release of detainee information to the public. Id. at 17-18. Finally, the Court finds that the minimal burden the reviews place on the facilities does not violate the intergovernmental immunity doctrine. Id. at 19.

For these reasons and those stated in this Court's Preliminary Injunction Order, at 12-19, Plaintiff's Supremacy Clause claim against AB 103 is dismissed.

C. Assembly Bill 450—Consent, Access, and Reverification Provisions

AB 450 added several provisions to California law. It added sections to the California Government Code that prohibit employers from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor or to access, review, or obtain the employer's employee records. Cal. Gov't Code §§ 7285.1, 7285.2. It also added a provision to the Labor Code that prohibits employers from reverifying the employment eligibility of current employees when not required by federal law. Cal. Lab. Code § 1019.2.

The Court preliminarily enjoined these three laws. Order at 60. Suffice it to say, the Court finds that Plaintiff has stated a plausible claim for relief with respect to these provisions. The Court denies Defendant's motion to dismiss Plaintiff's claim as to California Government Code Sections 7285.1 and 7285.2 and California Labor Code Section 1019.2.

D. Assembly Bill 450—Notice Requirement

AB 450 also added a provision to the California Labor Code that requires employers to provide notice to their employees "of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection." Cal. Lab. Code § 90.2(a)(1). The law also requires employers to provide affected employees with the results of the inspection. Id. § 90.2(b). Plaintiff argues this law is impermissible because "it would be unthinkable for a state to require that suspects be warned of upcoming criminal investigations by the Federal Bureau of Investigation,

or that suspects be kept up to date on the results of investigative work done by the Bureau." Opp'n at 8.

The Court does not agree with Plaintiff's characterization of this provision. Order at 27-28. The law does no more than extend the notice afforded employers—the primary targets of IRCA enforcement actions—to employees. Id. Further, because employer liability is based on an employer's failure to communicate information to its employees, and not on the employer's choice to "deal with" immigration enforcement, the provision does not violate the intergovernmental immunity doctrine. Id.

For these reasons and those stated in this Court's Preliminary Injunction Order, at 27-28, Plaintiff's Supremacy Clause claim against California Labor Code Section 90.2 is dismissed.

E. Senate Bill 54

Senate Bill 54 ("SB 54") added several provisions to the government code that Plaintiff challenges. SB 54 restricts California law enforcement agencies from sharing an individual's release dates and personal information (i.e. home and work addresses) for immigration enforcement purposes. Cal. Gov't Code § 7284.6(a)(1)(C) & (D). It further restricts those agencies from transferring individuals to immigration authorities. Cal. Gov't Code § 7284.6(a)(4).

The Court finds that the challenged provisions of SB 54 do not violate the Supremacy Clause. See Order at 32-57. Because "information regarding immigration or citizenship status" does not include an immigrant's release date or home and work addresses, SB 54 does not directly conflict with 8 U.S.C. § 1373. Id. at 32-41.

For the reasons set forth in Part III.A.3.b. of the Preliminary Injunction Order, the Court also finds that the INA does not preempt SB 54. Id. at 42-55. Finally, the Court finds SB 54 does not violate the doctrine of intergovernmental immunity because it falls outside of the doctrine's scope or, alternatively, because California's reasons for enacting the law justify the differential treatment, if any. Id. at 55–57.

For these reasons and those stated in this Court's Preliminary Injunction Order, at 32-57, Plaintiff's Supremacy Clause claim against SB 54 is dismissed.

F. Leave to Amend

Neither party addressed whether the Court should grant Plaintiff leave to amend the Complaint. However, "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 247 (9th Cir. 1990).

Given the nature of Plaintiff's claims, the Court finds amendment would be futile. Plaintiff challenges the constitutional validity of the state laws and resolution of its claims turns on questions of law. The parties have extensively litigated these issues over the past several months. The Court finds new allegations will not cure the deficiencies in Plaintiff's Complaint and leave to amend is therefore denied.

II. ORDER

For the reasons set forth above, and incorporated by reference herein, the Court GRANTS Defendant's motion to dismiss Plaintiff's Supremacy Clause claims

against AB 103, SB 54, and California Labor Code Section 90.2 (added by AB 450) without leave to amend. The Court DENIES Defendant's motion to dismiss Plaintiff's Supremacy Clause claim with respect to California Government Code Sections 7285.1 and 7285.2 and California Labor Code Section 1019.2 (added by AB 450).

The parties shall file an amended Joint Status Report no later than July 31, 2018. The parties should specifically address how they anticipate the case will proceed in this Court and suggest dates for discovery cut-off, expert witness disclosure, filing of dispositive motions, pretrial conference and trial.

IT IS SO ORDERED.

Dated: July 9, 2018

/s/ JOHN A. MENDEZ
JOHN A. MENDEZ
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-16496
D.C. No. 2:18-cv-00490-JAM-KJN
Eastern District of California, Sacramento

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

STATE OF CALIFORNIA; GAVIN NEWSOM, GOVERNOR OF CALIFORNIA; XAVIER BECERRA, ATTORNEY GENERAL OF CALIFORNIA, DEFENDANTS-APPELLEES

Filed: June 26, 2019

ORDER

Before: M. SMITH, WATFORD, and HURWITZ, Circuit Judges.

Judges M. Smith, Watford, and Hurwitz vote to deny the petition for panel rehearing or rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 35. The petition is DENIED.

APPENDIX E

1. 8 U.S.C. 1226 provides:

Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a) of this section, rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[2] to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person

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[2] So in original. Probably should be "sentenced".

cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

2. 8 U.S.C. 1231(a) provides:

Detention and removal of aliens ordered removed

(a) Detention, release, and removal of aliens ordered removed

(1) Removal period

(A) In general

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) Suspension of period

The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to

the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

(2) Detention

During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

(3) Supervision after 90-day period

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

(A) In general

Except as provided in section 259(a)[1] of title 42 and paragraph (2),[2] the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this chapter before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(B), (C), (E), (I), or (L) of this title[3] and (II) the removal of the alien is appropriate and in the best interest of the United States; or

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[1] See References in Text note below.

[2] So in original. Probably should be "subparagraph(B).".

[3] So in original. Probably should be followed by a closing parenthesis.

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 1101(a)(43)(C) or (E) of this title), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

(C) Notice

Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) No private right

No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) Reinstatement of removal orders against aliens illegally reentering

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and

the alien shall be removed under the prior order at any time after the reentry.

(6) Inadmissible or criminal aliens

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) Employment authorization

No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—

(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or

(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

3. 8 U.S.C. 1357(g) provides:

Powers of immigration officers and employees

(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant

to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the

authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5 (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

4. 8 U.S.C. 1373 provides:

Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

5. Cal. Civ. Code § 1798.3(a) (West 2009) provides:

Definitions

As used in this chapter:

(a) The term "personal information" means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.

6. Cal. Gov't Code Ch. 17.25 (West 2019) provides:

COOPERATION WITH IMMIGRATION AUTHORITIES

§ 7284. Short title

This chapter shall be known, and may be cited, as the California Values Act.

§ 7284.2. Legislative findings and declarations

The Legislature finds and declares the following:

(a) Immigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.

(b) A relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California.

(c) This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians.

(d) Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.

(e) State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status. See Sanchez Ochoa v. Campbell, et al. (E.D. Wash. 2017) 2017 WL 3476777; Trujillo Santoya v. United States, et al. (W.D. Tex. 2017) 2017 WL 2896021; Moreno v. Napolitano (N.D. Ill. 2016) 213 F. Supp. 3d 999; Morales v. Chadbourne (1st Cir. 2015)

793 F.3d 208; Miranda-Olivares v. Clackamas County (D. Or. 2014) 2014 WL 1414305; Galarza v. Szalczyk (3d Cir. 2014) 745 F.3d 634.

(f) This chapter seeks to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state's limited resources to matters of greatest concern to state and local governments.

(g) It is the intent of the Legislature that this chapter shall not be construed as providing, expanding, or ratifying any legal authority for any state or local law enforcement agency to participate in immigration enforcement.

§ 7284.4. Definitions

For purposes of this chapter, the following terms have the following meanings:

(a) "California law enforcement agency" means a state or local law enforcement agency, including school police or security departments. "California law enforcement agency" does not include the Department of Corrections and Rehabilitation.

(b) "Civil immigration warrant" means any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.

(c) "Immigration authority" means any federal, state, or local officer, employee, or person performing immigration enforcement functions.

(d) "Health facility" includes health facilities as defined in Section 1250 of the Health and Safety Code, clinics as defined in Sections 1200 and 1200.1 of the Health

and Safety Code, and substance abuse treatment facilities.

(e) "Hold request," "notification request," "transfer request," and "local law enforcement agency" have the same meaning as provided in Section 7283. Hold, notification, and transfer requests include requests issued by United States Immigration and Customs Enforcement or United States Customs and Border Protection as well as any other immigration authorities.

(f) "Immigration enforcement" includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.

(g) "Joint law enforcement task force" means at least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.

(h) "Judicial probable cause determination" means a determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody the individual.

(i) "Judicial warrant" means a warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal

magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

(j) "Public schools" means all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board, the California State University, and the California Community Colleges.

(k) "School police and security departments" includes police and security departments of the California State University, the California Community Colleges, charter schools, county offices of education, schools, and school districts.

§ 7284.6. Law enforcement agency personnel or resources; investigation or detainment of persons for immigration enforcement purposes; report on joint task forces

(a) California law enforcement agencies shall not:

(1) Use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

(A) Inquiring into an individual's immigration status.

(B) Detaining an individual on the basis of a hold request.

(C) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that

information is available to the public, or is in response to a notification request from immigration authorities in accordance with Section 7282.5. Responses are never required, but are permitted under this subdivision, provided that they do not violate any local law or policy.

(D) Providing personal information, as defined in Section 1798.3 of the Civil Code, about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.

(E) Making or intentionally participating in arrests based on civil immigration warrants.

(F) Assisting immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.

(G) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.

(2) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All peace officers remain subject to California law governing conduct of peace officers and the policies of the employing agency.

(3) Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

(4) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial

probable cause determination, or in accordance with Section 7282.5.

(5) Provide office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility.

(6) Contract with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees for purposes of civil immigration custody, except pursuant to Chapter 17.8 (commencing with Section 7310).

(b) Notwithstanding the limitations in subdivision (a), this section does not prevent any California law enforcement agency from doing any of the following that does not violate any policy of the law enforcement agency or any local law or policy of the jurisdiction in which the agency is operating:

(1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a violation of, Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity. Transfers to immigration authorities are permitted under this subsection only in accordance with paragraph (4) of subdivision (a).

(2) Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.

(3) Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:

(A) The primary purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section 7284.4.

(B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement.

(C) Participation in the task force by a California law enforcement agency does not violate any local law or policy to which it is otherwise subject.

(4) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.

(5) Giving immigration authorities access to interview an individual in agency or department custody. All interview access shall comply with requirements of the TRUTH Act (Chapter 17.2 (commencing with Section 7283)).

(c)(1) If a California law enforcement agency chooses to participate in a joint law enforcement task force, for which a California law enforcement agency has agreed to dedicate personnel or resources on an ongoing basis, it shall submit a report annually to the Department of Justice, as specified by the Attorney General.

The law enforcement agency shall report the following information, if known, for each task force of which it is a member:

(A) The purpose of the task force.

(B) The federal, state, and local law enforcement agencies involved.

(C) The total number of arrests made during the reporting period.

(D) The number of people arrested for immigration enforcement purposes.

(2) All law enforcement agencies shall report annually to the Department of Justice, in a manner specified by the Attorney General, the number of transfers pursuant to paragraph (4) of subdivision (a), and the offense that allowed for the transfer pursuant to paragraph (4) of subdivision (a).

(3) All records described in this subdivision shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be disclosed.

(4) If more than one California law enforcement agency is participating in a joint task force that meets the reporting requirement pursuant to this section, the

joint task force shall designate a local or state agency responsible for completing the reporting requirement.

(d) The Attorney General, by March 1, 2019, and annually thereafter, shall report on the total number of arrests made by joint law enforcement task forces, and the total number of arrests made for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in the Attorney General's report. The Attorney General shall post the reports required by this subdivision on the Attorney General's Internet Web site.

(e) This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

(f) Nothing in this section shall prohibit a California law enforcement agency from asserting its own jurisdiction over criminal law enforcement matters.

§ 7284.8. Attorney General; publication of model policies limiting assistance with immigration enforcement; guidance on database governance policies

(a) The Attorney General, by October 1, 2018, in consultation with the appropriate stakeholders, shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, health facilities operated by the state or a political subdivision of the state, courthouses, Division of Labor Standards Enforcement facilities, the Agricultural Labor Relations Board, the Division of Workers Compensation, and shelters, and ensuring that they remain safe and accessible to all California residents, regardless of immigration status. All public schools, health facilities operated by the state or a political subdivision of the state, and courthouses shall implement the model policy, or an equivalent policy. The Agricultural Labor Relations Board, the Division of Workers' Compensation, the Division of Labor Standards Enforcement, shelters, libraries, and all other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the University of California, are encouraged to adopt the model policy.

(b) For any databases operated by state and local law enforcement agencies, including databases maintained for the agency by private vendors, the Attorney General shall, by October 1, 2018, in consultation with appropriate stakeholders, publish guidance, audit criteria, and training recommendations aimed at ensuring

that those databases are governed in a manner that limits the availability of information therein to the fullest extent practicable and consistent with federal and state law, to anyone or any entity for the purpose of immigration enforcement. All state and local law enforcement agencies are encouraged to adopt necessary changes to database governance policies consistent with that guidance.

(c) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2), the Department of Justice may implement, interpret, or make specific this chapter without taking any regulatory action.

§ 7284.10. Duties of Department of Corrections and Rehabilitation

(a) The Department of Corrections and Rehabilitation shall:

(1) In advance of any interview between the United States Immigration and Customs Enforcement (ICE) and an individual in department custody regarding civil immigration violations, provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

(2) Upon receiving any ICE hold, notification, or transfer request, provide a copy of the request to the individual and inform him or her whether the department intends to comply with the request.

(b) The Department of Corrections and Rehabilitation shall not:

(1) Restrict access to any in-prison educational or rehabilitative programming, or credit-earning opportunity on the sole basis of citizenship or immigration status, including, but not limited to, whether the person is in removal proceedings, or immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual.

(2) Consider citizenship and immigration status as a factor in determining a person's custodial classification level, including, but not limited to, whether the person is in removal proceedings, or whether immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual.

§ 7284.12. Severability

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

7. Cal. Gov't Code Ch. 17.3 (West 2019) provides:

ENFORCEMENT ACTIONS

§ 7285. Legislative findings and declarations; immigration status; severability

The Legislature finds and declares the following:

(a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.

(b) For purposes of enforcing state labor, employment, civil rights, consumer protection, and housing laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status unless the person seeking to make the inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

(c) The provisions of this section are declaratory of existing law.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

§ 7285.1. Voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor; violations; civil penalties; verification of judicial warrant; enforcement of section; application of section

(a) Except as otherwise required by federal law, an employer, or a person acting on behalf of the employer, shall not provide voluntary consent to an immigration enforcement agent to enter any nonpublic areas of a place of labor. This section does not apply if the immigration enforcement agent provides a judicial warrant.

(b) An employer who violates subdivision (a) shall be subject to a civil penalty of two thousand dollars ($2,000) up to five thousand dollars ($5,000) for a first violation and five thousand dollars ($5,000) up to ten thousand dollars ($10,000) for each subsequent violation. If a court finds that an immigration enforcement agent was permitted to enter a nonpublic area of a place of labor without the consent of the employer or other person in control of the place of labor, the civil penalty shall not apply. "Violation" means each incident when it is found that subdivision (a) was violated without reference to the number of employees, the number of immigration enforcement agents involved in the incident, or the number of locations affected in a day.

(c) This section shall not preclude an employer or person acting on behalf of an employer from taking the immigration enforcement agent to a nonpublic area, where employees are not present, for the purpose of verifying whether the immigration enforcement agent has a judicial warrant, provided no consent to search nonpublic areas is given in the process.

(d) The exclusive authority to enforce this section is granted to the Labor Commissioner or the Attorney General and enforcement shall be through civil action. Any penalty recovered shall be deposited in the Labor Enforcement and Compliance Fund.

(e) This section applies to public and private employers.

§ 7285.2. Voluntary consent to an immigration enforcement agent to access, review, or obtain employee records; violations; civil penalties; enforcement of section; applications of section

(a)(1) Except as otherwise required by federal law, and except as provided in paragraph (2), an employer, or a person acting on behalf of the employer, shall not provide voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant. This section does not prohibit an employer, or person acting on behalf of an employer, from challenging the validity of a subpoena or judicial warrant in a federal district court.

(2) This subdivision shall not apply to I-9 Employment Eligibility Verification forms and other documents for which a Notice of Inspection has been provided to the employer.

(b) An employer who violates subdivision (a) shall be subject to a civil penalty of two thousand dollars ($2,000) up to five thousand dollars ($5,000) for a first violation and five thousand dollars ($5,000) up to ten thousand dollars ($10,000) for each subsequent violation. If a court finds that an immigration enforcement agent was permitted to access, review, or obtain the employer's

employee records without the consent of the employer or other person in control of the place of labor, the civil penalty shall not apply. "Violation" means each incident when it is found that subdivision (a) was violated without reference to the number of employees, the number of immigration enforcement agents involved in the incident, or the number of employee records accessed, reviewed, or obtained.

(c) The exclusive authority to enforce this section is granted to the Labor Commissioner or the Attorney General and enforcement shall be through civil action. Any penalty recovered shall be deposited in the Labor Enforcement and Compliance Fund.

(d) This section applies to public and private employers.

§ 7285.3. Interpretation, construction, or application of chapter

In accordance with state and federal law, nothing in this chapter shall be interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

8. Cal. Gov't Code § 7282.5 (West 2019) provides:

Cooperation with immigration authorities; certain activities relating to immigration enforcement; conditions

(a) A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act (Chapter 17.25 (commencing with Section 7284)).

Additionally, the specific activities described in subparagraph (C) of paragraph (1) of subdivision (a) of, and in paragraph (4) of subdivision (a) of, Section 7284.6 shall only occur under the following circumstances:

(1) The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code.

(2) The individual has been convicted of a felony punishable by imprisonment in the state prison.

(3) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted within the last 15 years of a felony for, any of the following offenses:

(A) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.

(B) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.

(C) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.

(D) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.

(E) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.

(F) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.

(G) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony.

(H) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.

(I) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.

(J) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.

(K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.

(L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).

(M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.

(N) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.

(O) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.

(P) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.

(Q) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.

(R) Possession or use of a firearm in the commission of an offense.

(S) An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code.

(T) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.

(U) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.

(V) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.

(W) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.

(X) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.

(Y) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.

(Z) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.

(AA) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.

(AB) An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.

(AC) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 287 or of former Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.

(AD) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.

(AE) A violation of subdivision (c) of Section 20001 of the Vehicle Code.

(4) The individual is a current registrant on the California Sex and Arson Registry.

(5) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

(6) In no case shall cooperation occur pursuant to this section for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to passage of the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code.

(b) In cases in which the individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, respectively, or a felony that is punishable by imprisonment in state prison, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code, a law enforcement official shall additionally have discretion to cooperate with immigration officials pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 7284.6.

9. Cal. Gov't Code § 12532 (West 2018) provides:

Review of county, local or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings

(a) Until July 1, 2027, the Attorney General, or his or her designee, shall engage in reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California, including any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained on behalf of, or pursuant to a contract with, the federal Office of Refugee Resettlement or the United States Immigration and Customs Enforcement. The order and number of facilities to be reviewed shall be determined by the Department of Justice. The Attorney General, or his or her designee, shall have authority over which facilities may be reviewed and when. The Department of Justice shall provide, during the budget process, updates and information to the Legislature and the Governor, including a written summary of findings, if appropriate, regarding the progress of these reviews and any relevant findings.

(b) The Attorney General, or his or her designee, shall, on or before March 1, 2019, conduct a review of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California, including any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained on behalf of, or pursuant to a contract with, the federal Office of Refugee Resettlement

or the United States Immigration and Customs Enforcement. The order and number of facilities to be reviewed shall be determined by the Department of Justice.

(1) This review shall include, but not be limited to, the following:

(A) A review of the conditions of confinement.

(B) A review of the standard of care and due process provided to the individuals described in subdivision (a).

(C) A review of the circumstances around their apprehension and transfer to the facility.

(2) The Attorney General, or his or her designee, shall provide, on or before March 1, 2019, the Legislature and the Governor with a comprehensive report outlining the findings of the review described in this subdivision, which shall be posted on the Attorney General's Internet Web site and otherwise made available to the public upon its release to the Legislature and the Governor. The Department of Justice shall provide, during the budget process, updates and information to the Legislature and the Governor, including a written summary of findings, if appropriate, regarding the progress of the review described in this subdivision and any relevant findings.

(c) The Attorney General, or his or her designee, shall be provided all necessary access for the observations necessary to effectuate reviews required pursuant to this section, including, but not limited to, access to detainees, officials, personnel, and records.

(d) This section shall become inoperative on July 1, 2027, and, as of January 1, 2028, is repealed.

10. Cal. Lab. Code § 90.2 (West Supp. 2019) provides:

Notice posted to employees of inspection of I-9 in employee's language; copy of written immigration agency notice that provides results of I-9 investigation; written notice of employer and employee obligation arising from results of inspection; failure to provide notice; civil penalties; application of section; instruction, construction, and application of chapter

(a)(1) Except as otherwise required by federal law, an employer shall provide a notice to each current employee, by posting in the language the employer normally uses to communicate employment-related information to the employee, of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection. Written notice shall also be given within 72 hours to the employee's authorized representative, if any. The posted notice shall contain the following information:

(A) The name of the immigration agency conducting the inspections of I-9 Employment Eligibility Verification forms or other employment records.

(B) The date that the employer received notice of the inspection.

(C) The nature of the inspection to the extent known.

(D) A copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms for the inspection to be conducted.

(2) On or before July 1, 2018, the Labor Commissioner shall develop a template posting that employers

may use to comply with the requirements of subdivision (a) to inform employees of a notice of inspection to be conducted of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency. The posting shall be available on the Labor Commissioner's Internet Web site so that it is accessible to any employer.

(3) An employer, upon reasonable request, shall provide an affected employee a copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms.

(b)(1) Except as otherwise required by federal law, an employer shall provide to each current affected employee, and to the employee's authorized representative, if any, a copy of the written immigration agency notice that provides the results of the inspection of I-9 Employment Eligibility Verification forms or other employment records within 72 hours of its receipt of the notice. Within 72 hours of its receipt of this notice, the employer shall also provide to each affected employee, and to the affected employee's authorized representative, if any, written notice of the obligations of the employer and the affected employee arising from the results of the inspection of I-9 Employment Eligibility Verification forms or other employment records. The notice shall relate to the affected employee only and shall be delivered by hand at the workplace if possible and, if hand delivery is not possible, by mail and email, if the email address of the employee is known, and to the employee's authorized representative. The notice shall contain the following information:

(A) A description of any and all deficiencies or other items identified in the written immigration inspection results notice related to the affected employee.

(B) The time period for correcting any potential deficiencies identified by the immigration agency.

(C) The time and date of any meeting with the employer to correct any identified deficiencies.

(D) Notice that the employee has the right to representation during any meeting scheduled with the employer.

(2) For purposes of this subdivision, an "affected employee" is an employee identified by the immigration agency inspection results to be an employee who may lack work authorization, or an employee whose work authorization documents have been identified by the immigration agency inspection to have deficiencies.

(c) An employer who fails to provide the notices required by this section shall be subject to a civil penalty of two thousand dollars ($2,000) up to five thousand dollars ($5,000) for a first violation and five thousand dollars ($5,000) up to ten thousand dollars ($10,000) for each subsequent violation. This section does not require a penalty to be imposed upon an employer or person who fails to provide notice to an employee at the express and specific direction or request of the federal government. The penalty shall be recoverable by the Labor Commissioner.

(d) For purposes of this section, an "employee's authorized representative" means an exclusive collective bargaining representative.

(e) This section applies to public and private employers.

(f) In accordance with state and federal law, nothing in this chapter shall be interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

11. Cal. Lab. Code § 1019.1 (West Supp. 2019) provides:

Verification of employment authorization; unlawful acts; penalty; liability for equitable relief

(a) It is unlawful for an employer, in the course of satisfying the requirements of Section 1324a(b) of Title 8 of the United States Code, to do any of the following:

(1) Request more or different documents than are required under Section 1324a(b) of Title 8 of the United States Code.

(2) Refuse to honor documents tendered that on their face reasonably appear to be genuine.

(3) Refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work.

(4) Attempt to reinvestigate or reverify an incumbent employee's authorization to work using an unfair immigration-related practice.

(b)(1) Any person who violates this section shall be subject to a penalty imposed by the Labor Commissioner and liability for equitable relief.

(2) An applicant for employment or an employee who is subject to an unlawful act that is prohibited by this section, or a representative of that applicant for employment or employee, may file a complaint with the Division of Labor Standards Enforcement pursuant to Section 98.7.

(3) The penalty recoverable by the applicant or employee, or by the Labor Commissioner, for a violation of this section shall not exceed ten thousand dollars ($10,000) per violation.