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15 **UNITED STATES DISTRICT COURT**  
 16 **EASTERN DISTRICT OF CALIFORNIA**

17 **THE UNITED STATES OF AMERICA,**

18 Plaintiff,

19 v.

20 **STATE OF CALIFORNIA, et al.,**

21 Defendants.

) Case No.: 2:18-cv-00490-JAM-KJN

)  
 ) **BRIEF OF AMICI CURIAE**  
 ) **THE STATES OF TEXAS, ALABAMA,**  
 ) **ARKANSAS, FLORIDA, GEORGIA,**  
 ) **INDIANA, KANSAS, LOUISIANA,**  
 ) **MICHIGAN, MISSOURI, NEBRASKA,**  
 ) **NEVADA, OHIO, OKLAHOMA,**  
 ) **SOUTH CAROLINA,**  
 ) **WEST VIRGINIA, GOVERNOR PHIL**  
 ) **BRYANT OF THE STATE OF**  
 ) **MISSISSIPPI, AND PAUL R. LEPAGE,**  
 ) **GOVERNOR OF MAINE, IN SUPPORT**  
 ) **OF PLAINTIFFS' MOTION FOR A**  
 ) **PRELIMINARY INJUNCTION**

) Date: No hearing per Min. Order,

) ECF No. 17

) Judge: Hon. John A. Mendez

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1 **INTEREST OF AMICI CURIAE**

2 Amici are the States of Texas, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana,  
3 Michigan, Missouri, Nebraska, Nevada, Ohio, Oklahoma, South Carolina, West Virginia, Governor Phil  
4 Bryant of the State of Mississippi, and Paul R. LePage, Governor of Maine. The States “bear[] many of  
5 the consequences of unlawful immigration” but must rely on Congress and the INA to regulate which  
6 aliens may be present and work in their borders. *Arizona v. United States*, 567 U.S. 387, 397 (2012).  
7 Sanctuary laws and policies can cause harm to neighboring States by making it easier for people who are  
8 not lawfully in this country and have committed civil or criminal offenses to evade law enforcement and  
9 travel out-of-state. The States thus have an interest in the federal government’s ability to enforce federal  
10 immigration law. California, however, has attempted to override that enforcement—by prohibiting  
11 private employers from voluntarily giving information to federal immigration officers (AB450), by  
12 overseeing through investigations the immigration enforcement activities of federal agents (AB103), and  
13 by limiting the scenarios in which State or local law-enforcement agencies may transfer a detained  
14 individual to the custody of federal immigration authorities (SB54).

15 California may disagree with federal immigration policy—just as Arizona disagreed with federal  
16 immigration policy in *Arizona v. United States*. But if various Arizona laws designed to *enforce* federal  
17 immigration law were preempted in *Arizona* (as the Supreme Court held), then California’s laws designed  
18 to *interfere with or block* federal immigration enforcement are equally preempted.

19 **ARGUMENT**

20 California’s AB450, AB103, and the detainee-transfer provisions of SB54 are preempted under  
21 *Arizona v. United States*. *Arizona* held that various Arizona laws designed to *enforce* federal immigration  
22 laws were preempted. Under the rationale of *Arizona*, this is an even easier case as California’s laws  
23 designed to *interfere with or block* federal immigration enforcement must also be preempted. *Arizona* cannot  
24 stand for the proposition that state laws are preempted when they seek *additional* enforcement of federal  
25 immigration laws, but state laws are somehow valid when they seek to *decrease* enforcement of federal  
26 immigration laws.

27 In fact, California recognized this when it joined an amicus brief in the *Arizona* case in the  
28 Supreme Court, representing:

1 “Amici States have a strong interest in recognizing that the singular question of whether  
2 and how to remove undocumented immigrants is one that is committed to the federal  
3 government.”

4 Br. for the States of New York, California, et al., *Arizona*, No. 11-182 (U.S.), 2012 WL 1054493, at \*1.<sup>1</sup>

5 The central point of that brief was that the federal government has control over whether *and how* to  
6 remove unlawfully-present aliens. As the amici including California explained:

7 “Congress has carefully regulated not only *who* may be removed from the United States,  
8 but *how* such individuals should be identified, apprehended, and detained.”

9 *Id.* at \*3 (emphasis in original).

10 With a new presidential administration, however, California has changed its tune. While  
11 California no longer agrees with the level of federal enforcement of immigration laws, the preemption  
12 principles California advanced in *Arizona* were adopted by the Supreme Court. California is free to argue  
13 that *Arizona*’s findings of preemption should be overruled. Unless they are overruled, however, *Arizona*  
14 binds the States of California and Arizona alike. And under the principles articulated in *Arizona*,  
15 California cannot now impede the federal government’s enforcement of immigration laws.

16 **I. CALIFORNIA’S AB450 IS PREEMPTED, UNDER *ARIZONA V. UNITED STATES*, AS  
17 AN OBSTACLE TO THE “CAREFUL BALANCE STRUCK BY CONGRESS WITH  
18 RESPECT TO THE UNAUTHORIZED EMPLOYMENT OF ALIENS.”**

19 California’s Assembly Bill 450 (“AB450”) obstructs federal enforcement of the “comprehensive  
20 framework for combating the employment of illegal aliens” that Congress enacted in the Immigration  
21 Reform and Control Act of 1986. *Arizona*, 567 U.S. at 404. In fact, the stated purpose of AB450 is to  
22 interfere with this comprehensive federal work-authorization framework. Assembly Bill No. 450,  
23 Legislative Counsel’s Digest (stating law’s purpose to regulate employers who might be subject to  
24 “immigration worksite enforcement actions” by the federal government).

25 AB450 commands that employers cannot give consent to federal immigration enforcement agents  
26 entering the employer’s workplace, Cal. Gov’t Code §§ 7285.1(a), 7285.2(a)(1), and that employers must  
27

28 <sup>1</sup> Available at [https://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/briefs/11-182\\_respondentamcu11states.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcu11states.authcheckdam.pdf)

1 give employees 72-hour notice of any federal immigration inspections that are permitted in the workplace  
2 without the employer’s consent, Cal. Lab. Code § 90.2(a)(1), (b)(1).

3 This law is preempted for substantially the same reason that Arizona’s work-authorization law  
4 was preempted in *Arizona*. See 567 U.S. at 403-07. There, Arizona enacted a state criminal prohibition  
5 on an alien working in violation of federal law, even though “no federal counterpart exists.” *Id.* at 403.  
6 In finding Arizona’s law preempted despite the absence of a federal criminal prohibition, the Court relied  
7 on the “careful balance struck by Congress with respect to unauthorized employment of aliens,” in the  
8 Immigration Reform and Control Act of 1986 (“IRCA”). *Id.* at 406. *Arizona* recognized that Arizona  
9 could have enacted its criminal penalty before IRCA. *Id.* at 404. But Congress later enacted a  
10 comprehensive framework striking a careful balance about methods of enforcement, which the Supreme  
11 Court held create a “conflict in technique” with Arizona’s state-law approach to enforcement. *Id.* at 406  
12 (alteration marks omitted).

13 If Arizona’s law tipped the “careful balance” struck by Congress too far in favor of *enforcing*  
14 federal immigration laws, then California’s law tips that balance too far in the other direction of *impeding*  
15 enforcement of federal immigration laws. Congress chose not to require immigration officials to obtain  
16 a judicial warrant before entering workplaces to enforce federal immigration law. See 8 U.S.C.  
17 § 1357(a)(1), (e). But California law now requires just that. Cal. Gov’t Code § 7285.1(a). Congress and  
18 California have therefore each selected a different “method of enforcement.” *Arizona*, 567 U.S. at 406.  
19 Under the Supremacy Clause as interpreted in *Arizona*, Congress’s commands control. Because  
20 California’s law “is an obstacle to the regulatory system Congress chose,” *id.*, it is preempted under  
21 *Arizona*.

22 **II. AB103 IS OBSTACLE-PREEMPTED UNDER ARIZONA V. UNITED STATES,**  
23 **BECAUSE IT SEEKS TO GIVE STATE OFFICIALS THE “UNILATERAL” POWER**  
24 **TO SECOND GUESS FEDERAL DETERMINATIONS ABOUT WHICH ALIENS**  
25 **WARRANT REMOVAL.**

26 *Arizona* holds that States cannot make “unilateral” determinations about the removability of  
27 aliens wholly separate from federal officials, and that any attempt to do so “creates an obstacle to the full  
28 purposes and objectives of Congress.” *Id.* at 410. California’s Assembly Bill 103 (“AB103”) falls within  
that prohibition for the same reason that § 6 of Arizona’s S.B. 1070 did.

1 Section 6 of Arizona’s law “attempt[ed] to provide state officers even greater authority to arrest  
2 aliens on the basis of possible removability than Congress has given to trained federal immigration  
3 officers.” *Id.* at 408. Specifically, state police who witnessed what they believed was a public offense  
4 that made an alien removable could arrest the alien. *Id.* Hence, “the unilateral decision of state officers”  
5 about which aliens were unlawfully present under federal immigration law would, under Arizona’s law,  
6 allow detention. The Supreme Court held this law preempted because Congress created a system for state  
7 officers to unilaterally make immigration arrests, but that system did not allow state officers the unilateral  
8 power conferred by Arizona’s law. *Id.* at 409-10 (describing the federal program that ensures training  
9 and ensures that removability decisions are “made with one voice”).

10 California’s AB103 likewise purports to allow state officers to unilaterally review what federal  
11 law makes the exclusive work of federal officials. Specifically, AB103 establishes a heightened  
12 inspection scheme for facilities where “noncitizens are being housed or detained for purposes of civil  
13 immigration proceedings,” Cal. Gov’t Code § 12532(a), and directs the California Attorney General to  
14 examine and report on the “due process provided” to detainees and “the circumstances around their  
15 apprehension and transfer to the facility.” *Id.* § 12532(b)(1).<sup>2</sup> This directly parallels section 6 of Arizona’s  
16 law, which purported to allow state officials to unilaterally decide that an alien *should* be held for removal  
17 and thus arrest the alien. Likewise, California’s AB103 authorizes state officials to declare that an alien  
18 *should not* be held for removal in a certain facility because of a purported violation of due process or the  
19 underlying circumstances of the apprehension and transfer to the detention facility—all determined  
20 unilaterally by those state officials. The valence of the respective state laws may be different, but their  
21 prohibited mechanism of operation is the same. Just as Arizona’s law was held obstacle-preempted under  
22 *Arizona*, so must California’s SB103 be held preempted. Federal law gives state detention facilities no  
23 unilateral role in overriding the federal government’s detention of aliens for civil immigration violations.  
24 *See, e.g.*, 8 U.S.C. § 1231(g)(1); 8 C.F.R. § 236.6.

25  
26  
27  
28 <sup>2</sup> To effectuate that immigration-specific scheme, AB103 authorizes the California Attorney General to  
interrogate federal immigration officials and inspect federal immigration records. *Id.* § 12532(c). This  
likely violates the doctrine of intergovernmental immunity, under which a State cannot regulate federal  
officers in the performance of their duties. *See Johnson v. Maryland*, 254 U.S. 51, 56-57 (1920).



1 **III. SB54’S JUDICIAL-WARRANT REQUIREMENT IS ALSO OBSTACLE-PREEMPTED**  
2 **UNDER *ARIZONA V. UNITED STATES*, BECAUSE IT UNDERMINES CONGRESS’S**  
3 **CRIMINAL-ALIEN-DETENTION SCHEME.**

4 Under part of California’s Senate Bill 54 (“SB54”), state and local law enforcement agencies may  
5 “[t]ransfer an individual to immigration authorities” only if the United States presents a “judicial warrant  
6 or judicial probable cause determination,” or the individual in question has been convicted of one of a  
7 limited set of enumerated felonies or other serious crimes. Cal. Gov’t Code §§ 7284.6(a)(4), 7282.5(a).  
8 These provisions are preempted because they stand as an obstacle to Congress’s immigration-  
9 enforcement scheme.

10 First, SB54’s provision requiring a judicial warrant or judicial finding of probable cause cannot  
11 be squared with Congress’s immigration-enforcement scheme. Congress, through the INA, established a  
12 system of civil administrative warrants as the basis for immigration arrest and removal, and Congress  
13 does not require or contemplate use of a judicial warrant for civil immigration enforcement. *See* 8 U.S.C.  
14 §§ 1226(a), 1231(a). Thus, immigration enforcement arrests based on federal officials’ determinations of  
15 removability need not be supported by *judicial* warrants. *See, e.g., Roy v. Cty. of L.A.*, No. 2:12-cv-09012,  
16 2017 WL 2559616, at \*6-10 (C.D. Cal. June 12, 2017) (“No court has held to the contrary.”). Rather,  
17 “the executive and the Legislature have the authority to permit executive—rather than judicial—officers  
18 to make probable cause determinations regarding an individual’s deportability.” *Id.* at \*8. Federal  
19 immigration authorities are indeed vested with that power: The INA provides that civil immigration  
20 enforcement is premised on administrative “warrant[s] issued by” DHS and that “an alien may be arrested  
21 and detained” based on such a warrant “pending a decision on whether the alien is to be removed from  
22 the United States.” 8 U.S.C. § 1226(a)(1).

23 That authority was clearly delegated to the Executive by Congress in the INA. *See Abel v. United*  
24 *States*, 362 U.S. 217, 232 (1960) (noting that the INA gave “authority to the Attorney General or his  
25 delegate to arrest aliens pending deportation proceedings under an administrative warrant, not a judicial  
26 warrant within the scope of the Fourth Amendment.”). And even before Congress passed the INA, there  
27 was “impressive historical evidence of acceptance of the validity of statutes providing for *administrative*  
28 deportation arrest from almost the beginning of the Nation.” *Id.* at 234. Unsurprisingly, multiple courts  
of appeals have rejected claims that judicial warrants or judicial probable-cause determinations are

1 required for civil immigration detention. *See Sherman v. U.S. Parole Comm'n*, 502 F.3d 869, 876–80  
2 (9th Cir. 2007) (stating that an executive officer can constitutionally make the necessary probable-cause  
3 determination to warrant arrest of an alien “outside the scope of the Fourth Amendment’s Warrant  
4 Clause,” without presentment to a judicial officer); *United States v. Tejada*, 255 F.3d 1, 3 (1st Cir. 2001)  
5 (“[T]o comply with the applicable [detention] statute, the arresting authorities needed to bring appellant  
6 to an [ICE] examining officer, not a magistrate, ‘without unnecessary delay.’”).

7 To be sure, California may retain prerogatives about when to voluntarily comply with requests to  
8 itself *detain* aliens at the requests of federal officials, as the federal government is subject to limits on  
9 commandeering state resources for federal programs. But when federal officials show up at a state  
10 detention facility seeking merely to *transfer* an alien already in state custody into the custody of federal  
11 officials, they are not asking the State of California or its political subdivisions to detain the alien. Instead,  
12 federal officials are asserting their federal primacy in enforcing immigration law by demanding *federal*  
13 custody of a person already in state detention. This does not commandeer California to take any additional  
14 action, as it has already detained the individual before the federal government requested a transfer to  
15 federal custody. And Congress has determined that taking federal custody for civil immigration detention  
16 requires no more than an administrative warrant. Accordingly, California’s law requiring DHS to go  
17 further and procure a judicial warrant upsets the scheme that Congress carefully established and is  
18 obstacle-preempted under *Arizona*. *E.g., Arizona*, 567 U.S. at 402, 406, 408.

19 SB54’s exception for aliens convicted of certain offenses does not save the statute from  
20 preemption, because the statute remains in its other applications an obstacle to Congress’s criminal-alien-  
21 detention scheme. Moreover, SB54’s specific exemptions themselves effectively create priorities for  
22 *federal detention* that conflict with Congress’s choices.

23 Section 7284.6 references a narrow list of exceptions on prohibiting the transfer of an individual  
24 to immigration authorities. That list reflects instances in which the State of California considers federal  
25 detention and removal of an alien to be a priority. These scenarios include where an individual has been  
26 convicted of certain “serious or violent” felonies or felonies punishable by imprisonment in California  
27 state prison, Cal. Gov’t Code § 7282.5(a)(1)-(2), as well as where an individual has been convicted of  
28 one of thirty-one types of offenses within the past five years if a misdemeanor or within the past fifteen

1 years if a felony, *id.* § 7282.5(a)(3)(A)-(AE). Inclusion on California’s Sex and Arson Registry and  
2 conviction of a federal crime that is an aggravated felony under the INA, as well as being the subject of  
3 an outstanding felony arrest warrant by ICE, also trigger the exception. *Id.* § 7282.5(a)(4)-(5).

4 This limited subset of criminal violations, however, is narrower than those provided by Congress  
5 that render an alien inadmissible or removable. *See* 8 U.S.C. §§ 1182(a)(2), 1227(a)(2). Nor does SB54’s  
6 list match the set of criminal offenses that *require* the federal government to detain such aliens upon their  
7 release from state or local custody. *Id.* § 1226(c). For example, entirely absent from California’s list of  
8 exceptions is any provision for aliens who are inadmissible on the grounds that they were convicted of  
9 multiple criminal convictions for which the aggregate sentences were five years or more. *See id.*  
10 § 1182(a)(2)(B). Such an alien could be subject to detention under 8 U.S.C. § 1226(c)(1)(A), regardless  
11 of whether the convictions were in the past five or fifteen years, *see* Cal. Gov’t Code § 7282.5(a)(3).

12 Ultimately, immigration enforcement necessarily contemplates removal, and civil removal  
13 proceedings contemplate the necessity of detention. *See, e.g., Demore v. Kim*, 538 U.S. 510, 523 (2003)  
14 (stating, regarding no-bail detention: “this Court has recognized detention during deportation proceedings  
15 as a constitutionally valid aspect of the deportation process”); *Zadvydas v. Davis*, 533 U.S. 678, 697  
16 (2001) (distinguishing “detention pending a determination of removability” from the question of  
17 authority to detain indefinitely). Similarly, the INA contemplates that DHS will be able to take custody  
18 of removable criminal aliens; that detention “must continue pending a decision on whether the alien is to  
19 be removed from the United States” and “may end prior to the conclusion of removal proceedings ‘only  
20 if’ the alien is released for witness-protection purposes.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 846–47  
21 (2018) (some quotation marks and citations omitted). California’s law frustrates that scheme because it  
22 readily affords an alien released from state or local custody the opportunity to abscond, not only  
23 increasing burdens on officials tasked with tracking down those aliens but also potentially endangering  
24 law-enforcement officers or members of the public. *Cf. Demore*, 538 U.S. at 528 (“[R]elease of aliens  
25 pending their removal hearings would lead to large numbers of deportable criminal aliens skipping their  
26 hearings and remaining at large in the United States unlawfully”). SB54 impermissibly allows California  
27 to “achieve its own immigration policy” by deciding to transfer certain aliens to federal-immigration  
28 custody on the theory that some immigration-enforcement cooperation with federal officials should be

1 ignored in favor of the State’s other policy goals. But that approach reflects the sorts of “unilateral  
2 decisions” regarding immigration enforcement that the Supreme Court rejected in *Arizona*. 567 U.S. at  
3 408, 410.

4 \* \* \*

5 If California prefers different immigration policies, it is free to voice those concerns to Congress.  
6 But, as California itself said in *Arizona*, “Amici States may have differing views about precisely what  
7 removal priorities and enforcement practices would be optimal, but they agree that, where removal is  
8 concerned, Congress and the Executive Branch are the appropriate bodies for determining these national  
9 policies.” Br. for the States of New York, California, et al., *Arizona*, at \*2. Under that rationale advanced  
10 by California and adopted by the Supreme Court in *Arizona*, California’s AB450, AB103, and the  
11 detainee-transfer provisions of SB54 are preempted.

12 **CONCLUSION**

13 The Court should grant the Plaintiffs’ motion for a preliminary injunction.

14  
15 Dated: March 26, 2018.

Respectfully submitted,

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**PROOF OF SERVICE**

I hereby certify that on March 26, 2018, I filed the foregoing document with the Clerk of the Court via CM/ECF, which automatically sends notice of the filing to all counsel of record. I declare under 28 U.S.C. § 1746 that the above is true and correct.

Executed on March 26, 2018 at Austin, Texas.

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