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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

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

**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 that this Court preliminarily enjoin the following provisions of

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."

1 California law: (1) California Government Code Section 12532 (as
2 added by AB 103); (2) California Government Code Sections 7285.1
3 and 7285.2 and California Labor Code Sections 90.2 and 1019.2 as
4 applied to private employers only (as added by AB 450); and (3)
5 California Government Code Sections 7284.6(a)(1)(C),
6 7284.6(a)(1)(D), and 7284.6(a)(4) (as added by SB 54). Plaintiff
7 claims that these statutes violate the Supremacy Clause of the
8 United States Constitution, Art. VI, cl.2, and are invalid.
9 Compl., ECF No. 1, ¶¶ 61, 63 & 65. Plaintiff argues that federal
10 law preempts each provision because, in the area of immigration
11 enforcement, California "lacks the authority to intentionally
12 interfere with private citizens' [and state and local employees']
13 ability to cooperate voluntarily with the United States or to
14 comply with federal obligations." Motion for Preliminary
15 Injunction ("Mot."), ECF No. 2-1, at 2.

16 Plaintiff also contends that California "has no authority to
17 target facilities holding federal detainees pursuant to a federal
18 contract for an inspection scheme to review the 'due process'
19 afforded during arrest and detention." Id. Accordingly,
20 Plaintiff implores this Court to enjoin these state law
21 provisions because they "stand as an obstacle to the
22 accomplishment and execution of the full purposes and objectives
23 of Congress and are therefore preempted by federal law." Id. at
24 3 (citations omitted).

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

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

12
13 This Motion presents unique and novel constitutional issues.
14 The Court must answer the complicated question of where the
15 United States' enumerated power over immigration ends and
16 California's reserved police power begins. The Court must also
17 resolve the issue of whether state sovereignty includes the power
18 to forbid state agents and private citizens from voluntarily
19 complying with a federal program. Plaintiff's Motion requires
20 this Court to carefully examine the purposes and principles of
21 the federalist system—a system, established by the Constitution,
22 of dual sovereignty between the States and the Federal Government
23 whose principal benefit may be "a check on abuses of government
24 power." Gregory v. Ashcroft, 501 U.S. 452, 458 (1991).

25 Deciding these critical issues requires this Court to
26 determine the proper balance between the twin powers of
27 California and the United States. The law is clear that so long
28 as the Federal Government is acting within the powers granted to

1 it under the Constitution, Congress may impose its will on the
2 States. Id. at 460. However, if Congress is going to preempt or
3 interfere with the decision of the people of California, "it is
4 incumbent upon [this Court] to be certain of [Congress's] intent
5 before finding that federal law overrides" the constitutional
6 balance of federal and state powers. Id. (citation omitted).

7 If Congress intends to alter the usual constitutional
8 balance between the States and Federal Government it
9 must make its intention to do so unmistakably clear in
10 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].

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

13 Applying these well-established principles of law to the
14 present Motion, and as explained in detail below, this Court
15 finds that AB 103, SB 54, and the employee notice provision of AB
16 450 are permissible exercises of California's sovereign power.
17 With respect to the other three challenged provisions of AB 450,
18 the Court finds that California has impermissibly infringed on
19 the sovereignty of the United States. Plaintiff's Motion is
20 therefore denied in part and granted in part.

21 II. Legal Standards

22 A. Preliminary Injunction Standard

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

1 that an injunction is in the public interest. Winter v. Nat.
2 Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). In the Ninth
3 Circuit, an injunction may also be proper “if there is a
4 likelihood of irreparable injury to plaintiff; there are serious
5 questions going to the merits; the balance of hardships tips
6 sharply in favor of the plaintiff; and the injunction is in the
7 public interest.” M.R. v. Dreyfus, 697 F.3d 706, 725 (9th Cir.
8 2012).

9 Here, however, the nature of the requested relief increases
10 Plaintiff’s burden. An order enjoining the enforcement of state
11 laws would alter the status quo and thus qualifies as a mandatory
12 injunction. Tracy Rifle & Pistol LLC v. Harris, 118 F. Supp. 3d
13 1182, 1194 (E.D. Cal. 2015). Plaintiff must establish that the
14 law and facts clearly favor its position, not simply that it is
15 likely to succeed on its claims. See Garcia v. Google, Inc., 786
16 F.3d 733, 740 (9th Cir. 2015).

17 B. Supremacy Clause

18 In the United States, “both the National and State
19 Governments have elements of sovereignty the other is bound to
20 respect.” Arizona v. United States, 567 U.S. 387, 398 (2012).
21 The Constitution establishes the balance between these sovereign
22 powers and the Nation’s dual structure. The Supremacy Clause
23 declares that the “Constitution, and the Laws of the United
24 States which shall be made in Pursuance thereof . . . shall be
25 the supreme Law of the Land; and the Judges in every State shall
26 be bound thereby[.]” U.S. Const. Art. VI, cl. 2. The Tenth
27 Amendment limits the powers of the United States to those which
28 the Constitution delegates, reserving the remaining powers to the

1 States. U.S. Const. amend. X ("The powers not delegated to the
2 United States by the Constitution, nor prohibited by it to the
3 States, are reserved to the States respectively, or to the
4 people."). Thus, rather than wielding a plenary power to
5 legislate, Congress may only enact legislation under those powers
6 enumerated in the Constitution. See Murphy v. Nat'l Collegiate
7 Athletic Ass'n, 138 S. Ct. 1461, 1476 (2018) ("The Constitution
8 confers on Congress not plenary legislative power but only
9 certain enumerated powers."); United States v. Morrison, 529 U.S.
10 598, 607 (2000) ("Every law enacted by Congress must be based on
11 one or more of its powers enumerated in the Constitution.").

12 The United States' broad power over "the subject of
13 immigration and the status of aliens" is undisputed. Arizona,
14 567 U.S. at 394.² "But the Court has never held that every state
15 enactment which in any way deals with aliens is a regulation of
16 immigration and thus per se pre-empted by this constitutional
17 power, whether latent or exercised." DeCanas v. Bica, 424 U.S.
18 351, 355 (1976) superseded by statute on other grounds as
19 recognized in Arizona, 567 U.S. at 404.

20 1. Obstacle Preemption

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

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

1 preemption, field preemption, and conflict preemption.

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

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

22 There is a strong presumption against preemption when
23 Congress legislates in an area traditionally occupied by the
24 States. Chinatown Neighborhood Ass'n v. Harris, 794 F.3d 1136,
25 1141 (9th Cir. 2015). The Court presumes " 'the historic police
26 powers of the States' are not superseded 'unless that was the
27 clear and manifest purpose of Congress.'" Arizona, 567 U.S. at
28 400 (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230

1 (1947)); see Rice, 331 U.S. at 230 (When Congress legislates in a
2 "field which the States have traditionally occupied[,] [] we
3 start with the assumption that the historic police powers of the
4 States were not to be superseded by the Federal Act unless that
5 was the clear and manifest purpose of Congress."). Such purpose
6 must be "unmistakably clear in the language of the statute,"
7 Gregory, 501 U.S. at 460 (quoting Atascadero State Hosp. v.
8 Scanlon, 473 U.S. 234 (1985)), as must the presence of an
9 obstacle. Chinatown Neighborhood Ass'n, 794 F.3d at 1141 ("[T]he
10 California statute cannot be set aside absent 'clear evidence' of
11 a conflict."); see also Savage, 225 U.S. at 533 (1912) ("In other
12 words, [the intent to supersede the State's exercise of its
13 police power] is not to be implied unless the act of Congress,
14 fairly interpreted, is in actual conflict with the law of the
15 state."). "Mere possibility of inconvenience" is not a
16 sufficient obstacle—the repugnance must be "so direct and
17 positive that the two acts cannot be reconciled or consistently
18 stand together." See Goldstein v. California, 412 U.S. 546, 554–
19 55 (1973) (quoting The Federalist No. 32, p. 243 (B. Wright ed.
20 1961)); Kelly v. Washington ex rel. Foss Co., 302 U.S. 1, 10
21 (1937).

22 The Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101
23 et seq., is "the comprehensive federal statutory scheme for
24 regulation of immigration and naturalization." DeCanas, 424 U.S.
25 at 353. Congress has amended and supplemented the scheme over
26 the years by passing statutes like the Immigration Reform and
27 Control Act ("IRCA") and the Illegal Immigration Reform and
28 Immigrant Responsibility Act ("IIRIRA" or "IIRAIRA"), among

1 others. Plaintiff argues that the INA, as amended, preempts the
2 state laws challenged in this case. Mot. at 2-3, 11-32.

3 2. Intergovernmental Immunity

4 The Supremacy Clause gives rise to another doctrine
5 restricting States' power: the doctrine of intergovernmental
6 immunity. Under this line of precedent, a State may not regulate
7 the United States directly or discriminate against the Federal
8 Government or those with whom it deals. North Dakota v. United
9 States, 495 U.S. 423, 435 (1990) (plurality op.). "Since a
10 regulation imposed on one who deals with the Government has as
11 much potential to obstruct governmental functions as a regulation
12 imposed on the Government itself, the Court has required that the
13 regulation be one that is imposed on some basis unrelated to the
14 object's status as a Government contractor or supplier, that is,
15 that it be imposed equally on other similarly situated
16 constituents of the State." North Dakota, 495 U.S. at 437-38.
17 The doctrine protects private entities and individuals even when
18 the burdens imposed upon them are not then passed on to the
19 Federal Government. See Davis v. Michigan Dep't of Treasury, 489
20 U.S. 803, 814-15, 817 (1989) (finding a state tax system that
21 favored state retirees over federal retirees violated
22 intergovernmental immunity even though the tax arguably did not
23 interfere with the Federal Government's ability to perform its
24 governmental functions) (citing Phillips Chem. Co. v. Dumas
25 Indep. Sch. Dist., 361 U.S. 376, 387 (1960)). Though the
26 doctrine finds its most comfortable repose in tax cases, courts
27 have extended its reach to other contexts. See, e.g., North
28 Dakota, 495 U.S. 423 (analyzing North Dakota's liquor control

1 regulations); Boeing Co. v. Movassaghi, 768 F.3d 832 (9th Cir.
2 2014) (analyzing a California law governing cleanup of a federal
3 nuclear site); In re Nat'l Sec. Agency Telecomms. Records Litig.,
4 633 F. Supp. 2d 892 (N.D. Cal. 2007) (analyzing state
5 investigations into telecommunication carriers that concerned the
6 alleged disclosures of customer records to the NSA).

7 A targeted regulation is not invalid simply because it
8 distinguishes between the two sovereigns. "The State does not
9 discriminate against the Federal Government and those with whom
10 it deals unless it treats someone else better than it treats
11 them." North Dakota, 495 U.S. at 437-38 (quoting Washington v.
12 United States, 460 U.S. 536, 544-545 (1983)). Accordingly, a
13 regulation should not be struck down unless it burdens the
14 Federal Government (or those dealing with the Federal Government)
15 more so than it does others. North Dakota, 495 U.S. at 439
16 (finding a regulatory regime that did not disfavor the Federal
17 Government could not be considered to discriminate against it).
18 Furthermore, a regulation will survive if significant differences
19 between the two classes justify the burden. Davis, 489 U.S. at
20 815-17. "The relevant inquiry is whether the inconsistent []
21 treatment is directly related to, and justified by, significant
22 differences between the two classes." Id. at 816 (citation and
23 quotation marks omitted).

24 C. Tenth Amendment

25 The Tenth Amendment limits Congress's legislative authority
26 to those powers enumerated in the Constitution. Absent from this
27 list of powers "is the power to issue direct orders to the
28 governments of the States." Murphy, 138 S. Ct. at 1476. Thus,

1 in addition to erecting a higher wall against preemption, the
2 Tenth Amendment restrains Congress's ability to impose its will
3 upon the States directly.

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

20 The reasons behind the anticommandeering doctrine are
21 several. See Murphy, 138 S. Ct. at 1477 (Part III-B). First,
22 the rule reflects "the Constitution's structural protections of
23 liberty." Printz, 521 U.S. at 921. By balancing power between
24 the sovereigns, it prevents the accumulation of excessive power
25 and "reduce[s] the risk of tyranny and abuse from either front."
26 Gregory, 501 U.S. at 458. Second, the doctrine prevents Congress
27 from passing the costs and burdens of implementing a federal
28 program onto the States. Printz, 521 U.S. at 930. Third, the

1 doctrine promotes accountability; it ensures that blame for a
2 federal program's burdens and defects falls on the responsible
3 government. Id. ("And it will likely be the [state chief law
4 enforcement officers], not some federal official, who will be
5 blamed for any error (even one in the designated federal
6 database) that causes a purchaser to be mistakenly rejected.").
7 These reasons, among others, counsel that courts must adhere to
8 the strictures of the rule even where a Congressional act serves
9 important purposes, is most efficiently effectuated through state
10 officers, or places a minimal burden upon the State. Id. at 932.
11 "It is the very principle of separate state sovereignty that such
12 a law offends, and no comparative assessment of the various
13 interests can overcome that fundamental defect." Id.

14 III. OPINION

15 A. Likelihood of Success on the Merits

16 1. Assembly Bill 103

17 Approved by the Governor and filed with the Secretary of
18 State on June 27, 2017, Assembly Bill 103 added Section 12532 to
19 the California Government Code and directs the Attorney General
20 to review and report on county, local, and private locked
21 detention facilities in which noncitizens are housed or detained
22 for purposes of civil immigration proceedings in California.
23 Cal. Gov't Code § 12532. It directs the Attorney General to
24 conduct a review of such facilities by March 1, 2019. Cal. Gov't
25 Code § 12532(b). This review must include a review of the
26 conditions of confinement, the standard of care and due process
27 provided to the individuals housed or detained in the facilities,
28 and the circumstances around their apprehension and transfer to

1 the facility. Cal. Gov't Code § 12532(b)(1). Additionally—by
2 the same deadline—the Attorney General must provide a
3 comprehensive report of his findings to the Legislature, the
4 Governor, and the public. Cal. Gov't Code § 12532(b)(2). In
5 furtherance of this objective, the Attorney General “shall be
6 provided all necessary access for the observations necessary to
7 effectuate [these] reviews . . . , including, but not limited to,
8 access to detainees, officials, personnel, and records.” Cal.
9 Gov't Code § 12532(c).

10 Plaintiff argues that this review and reporting requirement
11 interferes with the Federal Government's exclusive authority in
12 the area of immigrant detention. Mot. at 18-19. Because the
13 decision whether to pursue removal is entrusted to the Federal
14 Government's discretion, California's efforts to assess the
15 process afforded to immigrant detainees poses an obstacle,
16 Plaintiff contends, to administering the federal immigration
17 scheme. Id. at 19-20. “Federal law,” it argues, “does not
18 contemplate any role for the facility itself, or for states and
19 localities, in determining which aliens are properly subject to
20 detention or the terms and conditions of that detention.” Id. at
21 18.

22 Defendant responds that the Legislature passed AB 103 in
23 reaction to growing concerns of egregious conditions in
24 facilities housing civil detainees. Opp'n at 6 (citing Decl. of
25 Holly Cooper and Def. RFJN, Exh. K (Office of Inspector General,
26 Management Alert on Issues Requiring Immediate Action at the Theo
27 Lacy Facility in Orange, California, OIG-17-43-MA, March 6,
28 2017)). Several amici echo these concerns. See See Br. for

1 Nat'l Health Law Program, et al., as Amici Curiae, ECF No. 104;
2 Br. for Immigrant Legal Res. Ctr., et al., as Amici Curiae, ECF
3 No. 126; Br. for Nat'l Immigr. Law Ctr., et al., as Amici Curiae,
4 ECF No. 136. Defendant argues the review and reporting AB 103
5 requires fall well within the Attorney General's broad
6 constitutional powers to enforce state laws and conduct
7 investigations relating to subjects under his jurisdiction.
8 Opp'n at 6 (citing Cal. Const. art. V, § 13; Cal. Gov't Code
9 § 11180). Rather than enacting a new regulatory scheme or
10 imposing substantive requirements, AB 103 "simply authorizes
11 funding" to address issues the Attorney General already has the
12 authority to review in response to increased concerns in this
13 area. Id. at 7, 30; June 20, 2018, Hearing Transcript
14 ("Trans."), ECF No. 189, at 25:2-13.

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

1 what that future action might be is subject to speculation and
2 conjecture.

3 The review and reporting requirement contemplated in AB 103
4 is different from the state licensing requirements struck down in
5 Leslie Miller and Gartrell. See Leslie Miller, Inc. v. Arkansas,
6 352 U.S. 187, 190 (1956); Gartrell Const. Inc. v. Aubry, 940 F.2d
7 437 (9th Cir. 1991). In Leslie Miller, the Supreme Court held
8 that an Arkansas statute imposing licensing requirements on a
9 federal contractor interfered with the federal government's power
10 to select contractors and schedule construction, and therefore
11 conflicted with the federal law regulating procurement. 352 U.S.
12 at 190. Thirty-five years later, the Ninth Circuit upheld an
13 injunction of a similar licensing requirement as applied to a
14 federal contractor in California. Gartrell, 940 F.2d at 438. It
15 found that the Federal Government already considered many of the
16 factors involved in the State's licensing determination during
17 its own "responsibility" determination and held that, under
18 Leslie Miller, the licensing requirement was preempted. Id. at
19 438-41. The Circuit reasoned: "Because the federal government
20 made a direct determination of Gartrell's responsibility,
21 California may not exercise a power of review by requiring
22 Gartrell to obtain state licenses." Id. at 441.

23 Unlike state licensing regulations, AB 103 does not impose
24 any substantive requirements upon detention facilities. For all
25 its bark, the law has no real bite. It directs the Attorney
26 General to channel an authority he already wields to an issue of
27 recent State interest. The facility need only provide access for
28 these reviews, which is of little or no consequence. Given the

1 Attorney General's power to conduct investigations related to
2 state law enforcement—a power which Plaintiff concedes, *Trans.* at
3 15:11–16:5—the Court does not find this directive in any way
4 constitutes an obstacle to the federal government's enforcement
5 of its immigration laws or detention scheme.

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

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

20 8 C.F.R. § 236.6 (Information regarding detainees).

21 According to Plaintiff, this regulation establishes that
22 information regarding detainees belongs solely to the Federal
23 Government and that facilities violate the regulation by turning
24 such information over to the Attorney General. *Mot.* at 22; *Reply*
25 at 9. For additional support, Plaintiff quotes the supplementary
26 information published with the rule in the Federal Register,
27 wherein the Immigration and Naturalization Service explained that
28 “the rule guarantees that information regarding federal detainees

1 will be released under a uniform federal scheme rather than the
2 varying laws of the fifty states." 68 Fed. Reg. 4364, 4366 (Jan.
3 29, 2003).

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

15 The Court agrees with Defendant that there is no conflict
16 apparent on the face of Section 12532(c). The federal regulation
17 at issue is most naturally read to prohibit public disclosures of
18 information, not the provision of information to other
19 governmental entities or law enforcement. 8 C.F.R. § 236.6. The
20 information published in the Federal Register supports this
21 interpretation. 68 Fed. Reg. 4364 , 4364 ("Summary: This final
22 rule governs the public disclosure . . . of the name and other
23 information relating to any immigration detainee[.]"), 4365
24 ("These provisions plainly authorize the Attorney General . . .
25 to provide by regulation that persons housing INS detainees on
26 behalf of the federal government shall not publicly disclose the
27 names and other information regarding those detainees."), 4367
28 ("Executive Order 13132[:] . . . This rule merely pertains to the

1 public disclosure of information concerning Service detainees
2 In effect, the rule will relieve state or local
3 government entities of responsibility for the public release of
4 information relating to any immigration detainee being housed or
5 otherwise maintained or provided service on behalf of the
6 Service. Instead, the rule reserves that responsibility to the
7 Service with regard to all Service detainees.”). Plaintiff’s
8 cited cases do not broaden the scope of the rule; each case
9 concerned public disclosure of detainee information, not the
10 provision of information to another government entity. See Voces
11 De La Frontera, Inc. v. Clarke, 373 Wis. 2d 348 (2017) (finding
12 records concerning detainees statutorily exempt from disclosure
13 under Wisconsin’s public records law); Comm’r of Corr. v. Freedom
14 of Info. Comm’n, 307 Conn. 53 (2012) (finding former detainee’s
15 records exempt from Connecticut’s Freedom of Information Act);
16 ACLU of New Jersey v. Cnty. of Hudson, 352 N.J. Super. 44 (2002)
17 (finding § 236.6 preempts New Jersey’s Right-to-Know Law to the
18 extent it requires public disclosure of information regarding INS
19 detainees).

20 Plaintiff nevertheless contends that California’s Attorney
21 General is a member of the public as contemplated by the
22 regulation. But Plaintiff did not identify, and the Court is
23 unaware of, any judicial decision interpreting the regulation to
24 restrict information sharing with government entities or law
25 enforcement. The regulation contemplates that such information
26 would fall into the hands of state and local government entities
27 through their contractual relationships with the federal
28 government. In light of the California Attorney General’s role

1 in state law enforcement, and without any authority to the
2 contrary, the Court does not find a conflict, express or implied,
3 between the access required under Government Code Section
4 12532(c) and 8 C.F.R. § 236.6.

5 Finally, the Court finds AB 103 is not invalid under the
6 doctrine of intergovernmental immunity. Plaintiff argues the law
7 violates this doctrine because it imposes a review scheme on
8 facilities contracting with the federal government, only. This
9 characterization is valid. However, the burden placed upon the
10 facilities is minimal and Plaintiff's evidence does not show
11 otherwise. See Homan Decl. at ¶ 60 (summarily stating that the
12 inspections are burdensome). Importantly, the review appears no
13 more burdensome than reviews required under California Penal Code
14 §§ 6030, 6031.1. Thus, even if AB 103 treats federal contractors
15 differently than the State treats other detention facilities,
16 Plaintiff has not shown the State treats other facilities better
17 than those contractors. North Dakota, 495 U.S. at 437-38 ("The
18 State does not discriminate against the Federal Government and
19 those with whom it deals unless it treats someone else better
20 than it treats them.").

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

24 2. Assembly Bill 450

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

27 ///

28 ///

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

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

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

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

28 "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

1 knowingly hire, recruit, refer, or continue to employ
2 unauthorized workers, but does not impose criminal sanctions on
3 employees. 8 U.S.C. § 1324a; Arizona, 567 U.S. at 404-07 (“The
4 correct instruction to draw from the text, structure, and history
5 of IRCA is that Congress decided it would be inappropriate to
6 impose criminal penalties on aliens who seek or engage in
7 unauthorized employment.”). The statute authorizes the Attorney
8 General to establish procedures for complaints and
9 investigations. 8 U.S.C. § 1324a(e)(1). It also confers
10 authority upon immigration officers and administrative law judges
11 to be given “reasonable access to examine evidence of any person
12 or entity being investigated” and to compel by subpoena the
13 attendance of witnesses and the production of evidence. 8 U.S.C.
14 § 1324a(e)(2).

15 The Supreme Court has found IRCA preempts additional
16 penalties on employers (via express preemption) and criminal
17 sanctions on unauthorized workers for seeking or performing work
18 (via conflict preemption). Arizona, 567 U.S. 387. Courts have
19 held IRCA does not preempt: a provision of Arizona law allowing
20 suspension and revocation of businesses licenses based on
21 employing unauthorized workers, Chamber of Commerce of U.S. v.
22 Whiting, 563 U.S. 582 (2011); an Arizona law requiring that every
23 employer verify the employment eligibility of hired employees
24 through the E-Verify system, id. (as amended by IIRIRA); and
25 various labor protections, with some limits on the damages an
26 unlawfully employed immigrant is entitled to receive, see, e.g.,
27 Salas v. Sierra Chem. Co., 59 Cal.4th 407 (2014) (holding the
28 State’s extension of employee protections to all workers

1 regardless of immigration status is preempted only to the extent
2 it authorizes lost pay awards for any period after an employer
3 discovers the employee's ineligibility to work in the United
4 States).

5 a. Prohibitions on Consent

6 The Court finds AB 450's prohibitions on consent, Cal. Gov't
7 Code §§ 7285.1, 7285.2., troubling due to the precarious
8 situation in which it places employers. Trans. at 92:9-18.
9 Despite that concern, the question before the Court is limited to
10 Plaintiff's Supremacy Clause claim and the relationship between
11 the State and the Federal Government.

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

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

1 See 8 U.S.C. § 1324a(e) (2).

2 The arguments are wanting on both sides. By attempting to
3 narrow the Court's focus to the criminal penalties at issue under
4 IRCA, Defendant fails to acknowledge that immigration enforcement
5 officers might also seek to investigate civil violations of the
6 immigration laws or pursue investigative activities outside of
7 IRCA's provisions. As Plaintiff pointed out at the June 20,
8 2018, hearing on its Motion, Trans. at 114:20-115:11, IRCA added
9 new sections to the already existing law governing immigration
10 enforcement activities; Defendant did not address any of these
11 other grants of power. Further, Defendant cites no authority for
12 its proposition that AB 450's judicial warrant requirement and
13 savings clause together constitute "reasonable access" under
14 IRCA. Irrespective of the State's interest in protecting
15 workers, the Court finds that the warrant requirement may impede
16 immigration enforcement's investigation of employers or other
17 matters within their authority to investigate.

18 Even though these two subsections of AB 450 interfere with
19 immigration enforcement's historical practices, the Court
20 hesitates to find the statutes preempted. In preemption
21 analysis, the Court presumes " 'the historic police powers of the
22 States' are not superseded 'unless that was the clear and
23 manifest purpose of Congress.' " Arizona, 567 U.S. at 400. Laws
24 governing labor relations and the workplace generally fall within
25 the States' police powers. Congress has not expressly authorized
26 immigration officers to enter places of labor upon employer
27 consent, nor has Congress authorized immigration enforcement
28 officers to wield authority coextensive with the Fourth

1 Amendment. Although Plaintiff's cited cases show instances of
2 immigration enforcement lawfully exercising its investigative
3 authority in accordance with the Fourth Amendment, none of these
4 cases establish that Congress has expressly or impliedly granted
5 immigration enforcement agents such authority. See I.N.S. v.
6 Delgado, 466 U.S. 210 (1984) (noting that the federal immigration
7 officers were lawfully present at a worksite because they
8 obtained either a warrant or the employer's consent to their
9 entry); Zepeda v. I.N.S., 753 F.2d 719, 725 (9th Cir. 1983)
10 (explaining that Congress, by authorizing the INS "to interrogate
11 any alien or person believed to be an alien as to his right to be
12 or to remain in the United States" without a warrant, authorized
13 the INS "to question aliens to the fullest extent permissible
14 under the [F]ourth [A]mendment") (citing 8 U.S.C. § 1357(a)(1));
15 Int'l Molders & Allied Workers' Local Union No. 164 v. Nelson,
16 799 F.2d 547 (9th Cir. 1986) (striking part of an injunction
17 order that required every INS warrant to "contain a specific
18 description of each suspect to be *questioned* and be based on
19 'probable cause to believe that such person is an illegal
20 alien' " because it misstated the standard for non-detentive
21 questioning"). Nor do these cases show consent to be an
22 essential pillar of the enforcement regime. Certainly, obstacle
23 preemption may be "implied," but precedent counsels against
24 reading Congressional "presumptions" or "assumptions" into the
25 statutes without a more robust record than that presently before
26 the Court.

27 Ultimately, however, the Court need not resolve the
28 preemption issue because Plaintiff is likely to succeed on its

1 Supremacy Clause claim under the intergovernmental immunity
2 doctrine. The doctrine applies in these circumstances even
3 though the laws regulate employers and not the Federal Government
4 directly. See Davis, 489 U.S. at 814, 817; Phillips Chem. Co.,
5 361 U.S. at 387 (holding that state taxes imposed on lessees of
6 federal land were invalid where those taxes were more burdensome
7 than taxes imposed on lessees of state land). For those
8 employers who choose to allow immigration enforcement agents to
9 enter or access documents, AB 450 imposes significant and
10 escalating fines. See Cal. Gov't Code § 7285.1(b) (subjecting
11 employers to a fine of \$2,000 to \$5,000 for a first violation and
12 \$5,000 to \$10,000 for each subsequent violation); Cal. Gov't Code
13 § 7285.2(b) (same). These fines inflict a burden on those
14 employers who acquiesce in a federal investigation but not on
15 those who do not.

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

23 The Court is not convinced that the term "deal" is
24 circumscribed in the manner Defendant suggests. As in other
25 intergovernmental immunity cases, the imposition of civil fines
26 (like the imposition of taxes) turns on whether an employer
27 chooses to work with federal immigration enforcement. These
28 fines are a clear attempt to "meddl[e] with federal government

1 activities indirectly by singling out for regulation those who
2 deal with the government.” See In re NSA, 633 F. Supp. 2d at
3 903. The Court does not find Defendant’s argument that the law
4 is neutral convincing. Opp’n at 29 (arguing the law applies to
5 “any person or entity seeking to enforce the civil immigration
6 laws, whether federal, state, or local”). Given that immigration
7 enforcement is the province of the Federal Government, it demands
8 no stretch of reason to see that Government Code Sections 7285.1
9 and 7285.2, in effect, target the operations of federal
10 immigration enforcement.

11 The Court finds that a law which imposes monetary penalties
12 on an employer solely because that employer voluntarily consents
13 to federal immigration enforcement’s entry into nonpublic areas
14 of their place of business or access to their employment records
15 impermissibly discriminates against those who choose to deal with
16 the Federal Government. The law and facts clearly support
17 Plaintiff’s claim as to these two subsections and Plaintiff is
18 likely to succeed on the merits.

19 b. Notice Requirement

20 AB 450 also added a provision to the California Labor Code
21 requiring employers to provide notice to their employees “of any
22 inspections of I-9 Employment Eligibility Verification forms or
23 other employment records conducted by an immigration agency
24 within 72 hours of receiving notice of the inspection.” Cal.
25 Lab. Code § 90.2(a)(1). It specifies the contents of the
26 requisite notice and instructs employers to provide a copy of the
27 inspection notice to any employee upon reasonable request. Id.
28 § 90.2(a)(1)-(3).

1 Labor Code Section 90.2 also requires employers to provide
2 each current, affected employee with the results of the
3 inspection within 72 hours of receipt, including any obligations
4 of the employer and affected employee arising from the results.
5 Id. § 90.2(b). The statute defines an "affected employee" as "an
6 employee identified by the immigration agency inspection results
7 to be an employee who may lack work authorization, or an employee
8 whose work authorization documents have been identified by the
9 immigration agency inspection to have deficiencies." Id.
10 § 90.2(b)(2). Employers are subject to civil penalties for
11 violations, except that the section "does not require a penalty
12 to be imposed upon an employer or person who fails to provide
13 notice to an employee at the express and specific direction or
14 request of the federal government." Id. § 90.2(c).

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

21 This argument convolutes the purposes of IRCA enforcement
22 actions. IRCA primarily imposes obligations and penalties on
23 employers, not employees. See 8 U.S.C. § 1324a. The new
24 California Labor Code section only requires employers to provide
25 notice to employees if the employer itself has received notice of
26 an impending inspection. The "targets" of the investigation have
27 thus already been "warned." Pursuant to federal regulations,
28 employers are to be given at least three business days' notice

1 prior to an I-9 inspection. See 8 C.F.R. § 274a.2(b)(2)(ii).
2 The state law merely extends this prior notice to employees.
3 Given IRCA's focus on employers, the Court finds no indication—
4 express or implied—that Congress intended for employees to be
5 kept in the dark.

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

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

26 c. Reverification Prohibition

27 California Labor Code Section 1019.2 limits an employer's
28 ability to reverify an employee's employment eligibility when not

1 required by law:

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

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

14 Under IRCA, an employer faces liability for continuing to
15 employ an immigrant in the United States knowing that the
16 immigrant is (or has become) unauthorized with respect to such
17 employment. 8 U.S.C. § 1324a(2). Plaintiff argues that this
18 continuing obligation to avoid knowingly employing an
19 unauthorized immigrant worker conflicts with California’s
20 prohibition on reverification. Mot. at 17-18 (citing New El Rey
21 Sausage Co., Inc. v. I.N.S., 925 F.2d 1153 (9th Cir. 1991)).
22 Defendant responds that there is no obstacle because the state
23 law contains an express savings clause for instances where
24 reverification is required by federal law and does not limit an
25 employer’s compliance with a memorandum of understanding
26 governing the use of the federal E-Verify system. Opp’n at 26-
27 28.

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

1 litigation. Neither party provided the Court with much
2 information on how the verification system currently works in
3 practice and how the new law does or does not change those
4 practices. Based on a plain reading of the statutes, the
5 prohibition on reverification appears to stand as an obstacle to
6 the accomplishment of Congress's purpose in enacting IRCA. See
7 Arizona, 567 U.S. at 399-400. Congress could have chosen to tie
8 employer liability to instances when an employer fails to verify
9 employment eligibility when required to do so by federal law.
10 Instead, Congress broadened liability to encompass situations
11 when an employer knows one of its immigrant employees is or has
12 become unauthorized to work and continues to employ them. In a
13 single act, Congress premised criminal sanction on an employer's
14 subjective knowledge and established a system through which
15 employers could verify compliance with the law. As the Ninth
16 Circuit explained in New El Rey Sausage Co.:

17 The inclusion in the statute of section 1324a(b)'s
18 verification system demonstrates that employers, far
19 from being allowed to employ anyone except those whom
20 the government had shown to be unauthorized, have an
21 affirmative duty to determine that their employees are
22 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.

23 925 F.2d at 1158. Prohibiting employers from reverifying
24 employment eligibility complicates the subjective element of the
25 crime; e.g., could an employer who might otherwise be found to
26 "know" that one of its employees lacks authorization find shelter
27 behind the state law because it could not confirm its suspicion?
28 The law frustrates the system of accountability that Congress

1 designed.

2 Based on the authority and evidence before the Court at this
3 juncture, which clearly support Plaintiff's claim, the Court
4 finds Plaintiff is likely to succeed on the merits of its
5 Supremacy Clause claim against California Labor Code Section
6 1019.2(a).

7 3. Senate Bill 54

8 SB 54 added several subsections to the California Government
9 Code. Plaintiff seeks to enjoin three of these subsections. The
10 first two challenged by Plaintiff prohibit state law enforcement
11 agencies from sharing certain information for immigration
12 enforcement purposes:

13 (a) California law enforcement agencies shall not:

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

17 . . .

18 (C) Providing information regarding a person's release
19 date or responding to requests for notification by
20 providing release dates or other information unless
21 that information is available to the public, or is in
22 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.

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

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

1 § 7284.6(e).

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

4 (a) California law enforcement agencies shall not:

5 . . .

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

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

14 a. Direct Conflict with Section 1373

15 The primary, and most direct, conflict Plaintiff identifies
16 is that between the information sharing provisions and 8 U.S.C.
17 § 1373 ("Section 1373").³ Section 1373(a) bars States from
18 prohibiting, or in any way restricting, "any government entity or
19 official from sending to, or receiving from, the Immigration and
20 Naturalization Service information regarding the citizenship or
21 immigration status, lawful or unlawful, of any individual."

22 (emphasis added). Arguing for a broad interpretation of the
23 phrase "information regarding the citizenship or immigration
24 status, lawful or unlawful, of any individual," Plaintiff
25 contends the prohibitions on sharing release dates and home and
26

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

1 work addresses violates Section 1373.

2 Defendant argues that Section 1373 is unconstitutional under
3 the Supreme Court's recent holding in Murphy. 138 S. Ct. 1461
4 (2018); see Supp. Br., ECF No. 156. The Court in Murphy held
5 that Congress cannot dictate what a state legislature may and may
6 not do, "as if federal officers were installed in state
7 legislative chambers and were armed with the authority to stop
8 legislators from voting on any offending proposals." Id. at
9 1482. The decision clarified that the Court's anticommandeering
10 precedent extends to prohibitions on state legislative action.
11 Section 1373 does just what Murphy proscribes: it tells States
12 they may not prohibit (i.e., through legislation) the sharing of
13 information regarding immigration status with the INS or other
14 government entities.

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

28 Reno v. Condon involved a constitutional challenge to the

1 Driver's Privacy Protection Act ("DPPA"), which bars States from
2 disclosing a driver's personal information without the driver's
3 consent. 528 U.S. 141 (2000); see 18 U.S.C. § 2721(a) ("A State
4 department of motor vehicles, and any officer, employee, or
5 contractor thereof, shall not knowingly disclose or otherwise
6 make available to any person or entity personal information . . .
7 about any individual obtained by the department in connection
8 with a motor vehicle record[.]"). The Supreme Court held the
9 provision does not run afoul of the Tenth Amendment:

10 [T]he DPPA does not require the States in their
11 sovereign capacity to regulate their own citizens. The
12 DPPA regulates the States as the owners of data bases.
13 It does not require the South Carolina Legislature to
14 enact any laws or regulations, and it does not require
15 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.

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

21 Plaintiff's second source of support is dicta from Printz.
22 521 U.S. 898 (1997). The Printz Court evaluated a federal
23 statute that required state law enforcement officers to assist in
24 administering a federal regulatory scheme. In describing the
25 issues to be resolved, Justice Scalia wrote:

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

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

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

9 Defendant would have this Court follow the lead of the
10 district court in City of Philadelphia v. Sessions. No. 17-3894,
11 2018 WL 2725503 (E.D. Pa. June 6, 2018). That court rejected
12 Plaintiff's same-or substantially similar-arguments and found
13 Section 1373 unconstitutional under Murphy. Id. at *28-33. It
14 held that "on their face, [Section 1373(a) and (b)] regulate
15 state and local government entities and officials, which is fatal
16 to their constitutionality under the Tenth Amendment." Id. at
17 *32. The district court distinguished Reno, explaining that Reno
18 did not involve a "statute that commanded state legislatures to
19 enact or refrain from enacting state law." Id. (noting the
20 Murphy Court's discussion of Reno). It also refused to put much
21 weight in the cited dicta from Printz, finding that Printz's
22 holding supports the court's conclusion as to Section 1373.

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

1 open.

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

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

1 The state statute expressly permits information sharing in
2 accordance with Section 1373. Cal. Gov't Code § 7284.6(e). The
3 functionality of this clause depends on whether Section 1373 is
4 construed broadly to encompass information such as release dates
5 and addresses or narrowly to include only one's immigration
6 status or citizenship (i.e., category of presence in the United
7 States, and whether an individual is a U.S. citizen, and if not,
8 the country of citizenship). See City of Philadelphia, 2018 WL
9 2725503, at *35.

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

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

23 230 F. Supp. 3d 994, 1015 (N.D. Cal. 2017). Plaintiff urges the
24 Court to limit its reliance on Steinle, which involved a
25 negligence claim and in which the United States did not appear as
26 a party. But, the district court in City of Philadelphia—a case
27 in which the United States did appear—agreed with the Steinle
28 court's analysis and concluded that the United States' broad

1 interpretation "is simply impossible to square with the statutory
2 text." 2018 WL 2725503, at *34.

3 Both district courts rejected the analysis in Bologna v.
4 City & Cnty. of San Francisco, the principal case Plaintiff cites
5 for persuasive value. 192 Cal. App. 4th 429, 438-40 (Ct. App.
6 2011). In analyzing a tort claim similar to the claim at issue
7 in Steinle, the California Appellate Court characterized Section
8 1373 as invalidating "all restrictions on the voluntary exchange
9 of immigration information between federal, state and local
10 government entities and officials and federal immigration
11 authorities." Id. at 438. The Steinle court expressly disavowed
12 this interpretation:

13 This Court is not bound by the state court's
14 interpretation of federal law, and respectfully
15 disagrees with the Bologna court's characterization of
16 the scope of § 1373(a). "As [the Supreme Court has]
17 repeatedly held, the authoritative statement is the
18 statutory text, not the legislative history or any
19 other extrinsic material. Extrinsic materials have a
20 role in statutory interpretation only to the extent
21 they shed a reliable light on the enacting
22 Legislature's understanding of otherwise ambiguous
23 terms." Exxon Mobil Corp. v. Allapattah Servs., Inc.,
24 545 U.S. 546, 568 (2005). The Ninth Circuit has
25 explained in some detail why the Constitution does not
26 permit giving legislative effect to language found only
27 in congressional reports that is not consistent with
28 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.

26 Steinle, 230 F. Supp. 3d at 1014-15; see City of Philadelphia,
27 2018 WL 2725503, at *35 (disagreeing with Bologna).

28 The Court agrees with its fellow district courts that the

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

10 A contrary interpretation would know no bounds. The phrase
11 could conceivably mean "everything in a person's life." See Br.
12 for City & Cnty. of San Francisco, as Amicus Curiae, ECF No. 112;
13 see also State ex rel. Becerra v. Sessions, 284 F. Supp. 3d 1015,
14 1035 (N.D. Cal. 2018) ("Under the INA, almost every bit of
15 information about an individual could be relevant to status,
16 particularly with respect to the right to asylum or as a defense
17 to removal."). If Congress intended the statute to sweep so
18 broadly, it could have used broader language or included a list
19 to define the statute's scope. See, e.g., 8 U.S.C. § 1367(a)(2)
20 (prohibiting immigration enforcement officers from "permit[ting]
21 the use by or disclosure to anyone . . . of any information which
22 relates to an alien who is the beneficiary of an application for
23 relief under [certain sections of the INA]"). One cannot
24 naturally read "information regarding immigration status" to
25 include the types of information Plaintiff now seeks to
26 incorporate. While an immigrant's release date or home address
27 might assist immigration enforcement officers in their endeavors,
28 neither of these pieces of information have any bearing on one's

1 immigration or citizenship status.

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

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

21 Id. at 849-50 (citations omitted). Plaintiff urges the Court to,
22 instead, focus on the Supreme Court's more recent interpretation
23 of the term "respecting" in Lamar, Archer & Cofrin, LLP v.
24 Appling. 138 S. Ct. 1752 (2018) (interpreting a provision in the
25 Bankruptcy Code excepting debts obtained by fraud from
26 discharge); Reply at 16. In Appling, the Court read the word
27 "respecting" to have a broadening effect, instructing the Court
28 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.

26 The Court finds the law in Appling sufficiently distinct
27 from the law at issue here to limit the decision's instructional
28 value. The Appling Court was not called upon to determine the

1 preemptive effect of a federal statute and thus did not have
2 presumptions against preemption to factor into its analysis.
3 Further, the Appling Court held that “a statement about a single
4 asset can be a ‘statement respecting the debtor’s financial
5 condition.’ ” Id. at 1757. It reasoned, “[a] single asset has a
6 direct relation to and impact on aggregate financial condition,
7 so a statement about a single asset bears on a debtor’s overall
8 financial condition[.]” Id. at 1761. In contrast, as noted
9 above, a person’s address or release date has no direct relation
10 to one’s immigration or citizenship status.

11 Unlike the law in Appling, a narrow reading of the phrase
12 “regarding immigration status” does not read “regarding” out of
13 the statute. Plaintiff makes a similar argument by noting the
14 omission of the term “regarding” in Section 1373(c) as compared
15 to subsection (a). Mot. at 28. Section 1373(c) governs the
16 obligation of federal immigration authorities in responding to
17 inquiries from other government entities, and an official record
18 of a person’s citizenship or immigration status is presumably
19 within their control. Opp’n at 12-13; Br. for City and Cnty. of
20 San Francisco, as Amicus Curiae, at 9. Subsection (a) is
21 directed toward government entities and their officers, who might
22 possess information pertaining to an individual’s immigration
23 status but not hold an official record. The phrase “information
24 regarding” thus serves a purpose even when the statute is read
25 narrowly.

26 In any event, neither Roach nor Appling involved a provision
27 like the one at issue in this case. The Court is convinced,
28 based on the analysis above, that “information regarding

1 immigration or citizenship status" does not include an
2 immigrant's release date or home and work addresses. Section
3 1373 and the information sharing provisions of SB 54 do not
4 directly conflict.

5 b. Obstacle Preemption

6 Apart from any direct conflict with Section 1373, Plaintiff
7 argues that "the structure of the INA makes clear that states and
8 localities are required to allow a basic level of information
9 sharing" and cooperation with immigration enforcement. Mot. at
10 24. Plaintiff points to 8 U.S.C. § 1226(c)(1), a law that
11 requires "mandatory detention" for certain immigrants after their
12 release from criminal custody. It also cites 8 U.S.C. § 1231,
13 which instructs the Attorney General to remove an immigrant
14 within a period of 90 days after the immigrant has been ordered
15 removed. 8 U.S.C. § 1231(a)(1)(A). For certain immigrants,
16 detention during the removal period is mandatory. 8 U.S.C. §
17 1231(a)(2). With some exceptions "the Attorney General may not
18 remove an [immigrant] who is sentenced to imprisonment until the
19 [immigrant] is released from imprisonment. Parole, supervised
20 release, probation, or possibility of arrest or further
21 imprisonment is not a reason to defer removal." 8 U.S.C. §
22 1231(a)(4)(A).

23 Plaintiff argues that SB 54 undermines the system Congress
24 designed. Mot. at 25. The limits on information sharing and
25 transfers prevent or impede immigration enforcement from
26 fulfilling its responsibilities regarding detention and removal
27 because officers cannot arrest an immigrant upon the immigrant's
28 release from custody and have a more difficult time finding

1 immigrants after the fact without access to address information.
2 Id. at 25-27. It contends that limiting adherence to transfer
3 requests affords undocumented immigrants an opportunity to
4 abscond. Plaintiff also points out that the subset of crimes for
5 which SB 54 permits cooperation do not match the crimes under
6 federal law that may serve as the predicate for removability or
7 crimes for which detention is mandatory. Id. at 26.

8 Additionally, it argues that requiring a judicial warrant or
9 judicial finding of probable cause is irreconcilable with the
10 INA, which establishes a system of civil administrative warrants
11 as the basis for immigration arrest and removal. Id. at 30.

12 The Court disagrees and instead finds that California's
13 decision not to assist federal immigration enforcement in its
14 endeavors is not an "obstacle" to that enforcement effort.
15 Plaintiff's argument that SB 54 makes immigration enforcement far
16 more burdensome begs the question: more burdensome than what?
17 The laws make enforcement more burdensome than it would be if
18 state and local law enforcement provided immigration officers
19 with their assistance. But refusing to help is not the same as
20 impeding. If such were the rule, obstacle preemption could be
21 used to commandeer state resources and subvert Tenth Amendment
22 principles. Federal objectives will always be furthered if
23 states offer to assist federal efforts. A state's decision not
24 to assist in those activities will always make the federal object
25 more difficult to attain than it would be otherwise. Standing
26 aside does not equate to standing in the way.

27 Though not analyzing an obstacle preemption claim, the
28 Seventh Circuit recently expressed a similar view with respect to

1 decisions to withhold assistance. See City of Chicago v.
2 Sessions, 888 F.3d 272 (7th Cir. 2018). The Circuit explained:

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

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

26 The Court is also wary of finding preemption in the absence
27 of a "clear and manifest purpose of Congress" to supersede the
28 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.

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

10 The Court's reluctance to glean such a purpose from the
11 cited statutes is amplified because Congress indicated awareness
12 that state law might be in tension with federal objectives and
13 decided to tolerate those competing interests. See Bonito Boats,
14 Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 166-67 (1989)
15 ("The case for federal pre-emption is particularly weak where
16 Congress has indicated its awareness of the operation of state
17 law in a field of federal interest, and has nonetheless decided
18 to stand by both concepts and to tolerate whatever tension there
19 is between them.") (citation and quotation marks omitted); see
20 also Wyeth v. Levine, 555 U.S. 555, 575 (2009) (quoting Bonito
21 Boats and finding that a plaintiff's failure-to-warn claims were
22 not preempted by federal law).

23 First, in the portions of the INA where Congress provided
24 for cooperation between state and federal officials, it
25 conditioned cooperation on compliance with state law. For
26 instance, 8 U.S.C. § 1252c(a) authorizes state and local law
27 enforcement officials to arrest and detain certain immigrants "to
28 the extent permitted by relevant State and local law."

1 Subsection (b) imposes an obligation on the Attorney General to
2 cooperate with states in providing information that would assist
3 state and local law enforcement, but does not impose any
4 corollary obligations on state or local law enforcement.

5 Similarly, 8 U.S.C. § 1357(g) authorizes the Attorney General to
6 enter into agreements with the State to perform immigration
7 officer functions, but only “to the extent consistent with State
8 and local law.” These conditions on cooperation indicate that
9 Congress did not intend to preempt state law in this area.

10 Second, the primary mechanism—a “detainer”—by which
11 immigration enforcement agents solicit release dates, transfers,
12 and detention is a “request.” See 8 C.F.R. § 287.7(a); Mot. at
13 25 (“To effectuate the INA’s provisions, DHS issues an
14 ‘immigration detainer[.]’ ”). Even detainers soliciting
15 “temporary detention” have been found to be a non-mandatory
16 “request,” despite the use of the word “shall” in the governing
17 provision. 8 C.F.R. § 287.7(d); see Galarza v. Szalczyk, 745
18 F.3d 634, 640 (3d Cir. 2014) (“[N]o provisions of the [INA]
19 authorize federal officials to command local or state officials
20 to detain suspected aliens subject to removal.”); see also
21 Miranda-Olivares v. Clackamas Cnty., No. 3:12-CV-02317-ST, 2014
22 WL 1414305, at *7 (D. Or. Apr. 11, 2014) (following Galarza and
23 noting that the Ninth Circuit has interpreted detainer letters,
24 in the habeas corpus context, to be advisory in nature, not
25 imposing—or even allowing—a warden to hold a detainee at the end
26 of his term of imprisonment) (citing Garcia v. Taylor, 40 F.3d
27 299 (9th Cir. 1994)). The voluntary nature of any response to
28 these requests demonstrates that the federal government has not

1 supplanted state discretion in this area.

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

8 Plaintiff argues that "Congress could have authorized the
9 federal government to take custody of aliens immediately, without
10 regard to the status of state criminal enforcement," Reply at 22-
11 23, and that because it did not, the Court can infer that
12 Congress intended states to cooperate with immigration law
13 enforcement. The Court does not find such inference warranted.
14 The Court can just as readily infer that Congress recognized the
15 States' sovereign power to enforce their criminal laws and
16 thought interference would upset the balance in powers. See Def.
17 Reply to MTD at 1 ("It is not Congress that offers California the
18 'opportunity' to enforce state criminal laws[;] it is a right
19 inherent in California's sovereignty."). Furthermore, it is
20 often the case that an immigrant is not deemed removable or
21 inadmissible until after they have been convicted of a crime. In
22 these cases, state process is a predicate to federal action.

23 The Ninth Circuit's holding in Preap does not require a
24 different outcome. Preap v. Johnson, 831 F.3d 1193 (9th Cir.
25 2016) cert. granted sub nom. Nielsen v. Preap, 138 S. Ct. 1279
26 (2018). The Preap court held that the INA's mandatory detention
27 provision only applies in cases when immigrants are "promptly"
28 detained after being released from custody. Id. at 1197. Preap

1 does not, however, require contemporaneous transfer for the
2 mandatory detention provision to apply. And, a longer delay in
3 securing custody does not preclude detention. It just makes
4 detention a discretionary decision rather than a mandatory
5 obligation. See id. at 1201; 8 U.S.C. § 1226. The Court finds
6 that the operational challenges immigration enforcement agencies
7 may have faced following the Preap decision do not alter the
8 Court's conclusions with respect to Congress's clear and manifest
9 purpose.

10 The Court further finds that Tenth Amendment and
11 anticommandeering principles counsel against preemption. Though
12 responding to requests for information and transferring
13 individuals to federal custody may demand relatively little from
14 state law enforcement, "[t]he issue of commandeering is not one
15 of degree[.]" Galarza, 745 F.3d at 644; see Printz, 521 U.S. at
16 932 ("But where, as here, it is the whole object of the law to
17 direct the functioning of the state executive, and hence to
18 compromise the structural framework of dual sovereignty, such a
19 'balancing' analysis is inappropriate. It is the very principle
20 of separate state sovereignty that such a law offends, and no
21 comparative assessment of the various interests can overcome that
22 fundamental defect."). Under Printz, even enlisting state
23 officers to perform discrete, ministerial tasks constitutes
24 commandeering. Thus, it is highly unlikely that Congress could
25 have made responses to requests seeking information and/or
26 transfers of custody mandatory. See Cnty. of Santa Clara v.
27 Trump, 250 F. Supp. 3d 497, 534 (N.D. Cal. 2017), ("The Executive
28 Order uses coercive means in an attempt to force states and local

1 jurisdictions to honor civil detainer requests, which are
2 voluntary 'requests' precisely because the federal government
3 cannot command states to comply with them under the Tenth
4 Amendment.") (focusing on requests for detention).

5 The Printz Court outlined several reasons why commandeering
6 is problematic, which parallel California's concerns in enacting
7 SB 54. The Court noted that commandeering shifts the costs of
8 program implementation from the Federal Government to the states.
9 Printz, 521 U.S. at 930. The California Legislature enacted SB
10 54, in part, to divert California's resources away from
11 supporting the Federal Government's enforcement efforts. It
12 stated:

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

17 . . .

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

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

29 The Printz Court also explained that "even when States are
30 not forced to absorb the costs of implementing a federal program,
31 they are still put in the position of taking the blame for its

1 burdensomeness and for its defects.” 521 U.S. at 930 (“And it
2 will likely be the CLEO, not some federal official, who will be
3 blamed for any error (even one in the designated federal
4 database) that causes a purchaser to be mistakenly rejected.”).

5 Here, when California assists federal immigration
6 enforcement in finding and taking custody of immigrants, it risks
7 being blamed for a federal agency’s mistakes, errors, and
8 discretionary decisions to pursue particular individuals or
9 engage in particular enforcement practices. Under such a regime,
10 federal priorities dictate state action, which affects the
11 State’s relationship with its constituency and that
12 constituency’s perception of its state government and law
13 enforcement. Indeed, Defendant and amici highlight the impact
14 these perceptions have on the community’s relationship with local
15 law enforcement. See Cal. Gov’t Code § 7284.2 (“This trust is
16 threatened when state and local agencies are entangled with
17 federal immigration enforcement, with the result that immigrant
18 community members fear approaching police when they are victims
19 of, and witnesses to, crimes, seeking basic health services, or
20 attending school, to the detriment of public safety and the well-
21 being of all Californians.”); Br. for Current and Former
22 Prosecutors and Law Enforcement Leaders, as Amici Curiae, ECF No.
23 127; Br. for City of Los Angeles, as Amicus Curiae, ECF No. 128;
24 Br. for Cnty. of Los Angeles, et al., as Amici Curiae, ECF No.
25 129.

26 Plaintiff discounts Defendant’s interest in extracting
27 itself from immigration enforcement, but fails to confront
28 California’s primary concern: the impact that state law

1 enforcement's entanglement in immigration enforcement has on
2 public safety. The historic police powers of the State include
3 the suppression of violent crime and preservation of community
4 safety. In this power inheres the authority to structure and
5 influence the relationship between state law enforcement and the
6 community it serves. The ebb of tensions between communities and
7 the police underscores the delicate nature of this relationship.
8 Even perceived collaboration with immigration enforcement could
9 upset the balance California aims to achieve. It is therefore
10 entirely reasonable for the State to determine that assisting
11 immigration enforcement in any way, even in purportedly passive
12 ways like releasing information and transferring custody, is a
13 detrimental use of state law enforcement resources.

14 However, because Congress has not required states to assist
15 in immigration enforcement—and has merely made the option
16 available to them—this case presents a unique situation. As
17 Judge Orrick observed in State ex rel. Becerra v. Sessions: “No
18 cited authority holds that the scope of state sovereignty
19 includes the power to forbid state or local employees from
20 voluntarily complying with a federal program.” 284 F. Supp. 3d
21 1015, 1035 (N.D. Cal. 2018). The Second Circuit in City of New
22 York concluded a state could not do so. City of New York v.
23 United States, 179 F.3d 29, 35 (2nd Cir. 1999) (“We therefore
24 hold that states do not retain under the Tenth Amendment an
25 untrammelled right to forbid all voluntary cooperation by state or
26 local officials with particular federal programs.”).
27 Nevertheless, the Supreme Court's holding in Murphy undercuts
28 portions of the Second Circuit's reasoning and calls its

1 conclusion into question. Compare City of New York, 179 F.3d at
2 35 (distinguishing Section 1373 from the laws in Printz and New
3 York because the Section does not compel state and local
4 governments to enact or administer any federal regulatory program
5 or conscript them into federal service) with Murphy, 138 S. Ct.
6 at 1478 (holding the anticommandeering rule applies to
7 Congressional prohibitions on state actions in addition to
8 commands to take affirmative actions). Further, the Second
9 Circuit's broad proclamations may be limited to the specific City
10 Executive Order at issue, procedural posture, and record in that
11 case. See Br. for Admin. L., Const. L., Crim. L., and Immigr. L.
12 Scholars, as Amici Curiae, ECF No. 132, at 13 (distinguishing
13 City of New York). Regardless, the City of New York holding is
14 not binding on this Court.

15 The Court finds that a Congressional mandate prohibiting
16 states from restricting their law enforcement agencies'
17 involvement in immigration enforcement activities—apart from,
18 perhaps, a narrowly drawn information sharing provision—would
19 likely violate the Tenth Amendment. See City of Chicago v.
20 Sessions, 888 F.3d 272, 282 (7th Cir. 2018) (stating, in dicta:
21 “The choice as to how to devote law enforcement resources—
22 including whether or not to use such resources to aid in federal
23 immigration efforts—would traditionally be one left to state and
24 local authorities.”); Koog v. United States, 79 F.3d 452, 460
25 (5th Cir. 1996) (“Whatever the outer limits of state sovereignty
26 may be, it surely encompasses the right to set the duties of
27 office for state-created officials and to regulate the internal
28 affairs of governmental bodies.”). The Tenth Amendment analysis

1 in Murphy supports this conclusion. Murphy, 138 S. Ct. at 1478
2 (a prohibition on state legislation violates the
3 anticommandeering rule), 1481 (“[P]reemption is based on a
4 federal law that regulates the conduct of private actors, not
5 States.”); see New York, 505 U.S. at 166 (“[T]he Framers
6 explicitly chose a Constitution that confers upon Congress the
7 power to regulate individuals, not States.”). If Congress lacks
8 the authority to direct state action in this manner, then
9 preemption cannot and should not be used to achieve the same
10 result. The Supremacy Clause requires courts to hold federal law
11 supreme when Congress acts pursuant to one of its enumerated
12 powers; those powers do not include the authority to dictate a
13 state’s law enforcement policies.

14 Having concluded that California may restrict the assistance
15 its law enforcement agencies provide immigration enforcement, the
16 Court finds California’s choice to cooperate in certain
17 circumstances permissible. See Cal. Gov’t Code § 7284.6(a)(1)(C)
18 (allowing California law enforcement agencies to provide
19 information regarding a person’s release date when that person
20 has been convicted of certain crimes), § 7284(a)(4) (permitting
21 California law enforcement agencies to transfer individuals to
22 immigration authorities when authorized by a judicial warrant or
23 judicial probable cause determination, or when the individual has
24 been convicted of certain crimes). As the Seventh Circuit
25 explained:

26 [F]or the persons most likely to present a threat to
27 the community, City law enforcement authorities will
28 cooperate with ICE officials even in “sanctuary”
cities. The decision to coordinate in such
circumstances, and to refuse such coordination where

1 the threat posed by the individual is lesser, reflects
2 the decision by the state and local authorities as how
3 best to further the law enforcement objectives of their
4 communities with the resources at their disposal.

4 City of Chicago, 888 F.3d at 281. While the Court, again,
5 acknowledges that City of Chicago involved different claims than
6 those presented here, the Court agrees with the assessment. Just
7 as the State may restrict the assistance its law enforcement
8 officers provide immigration enforcement, the State may choose to
9 outline exceptions to that rule in accordance with its own law
10 enforcement priorities and concerns. For example, California is
11 concerned with the monetary liability law enforcement agencies
12 may face if they maintain custody of an individual for purposes
13 of transfer without a judicial warrant or probable cause
14 determination justifying that custody. See Roy v. Cnty. of Los
15 Angeles, No. CV 12-09012-AB (FFMx), 2018 WL 914773, at *22-24
16 (C.D. Cal. Feb. 7, 2018) ("The LASD officers have no authority to
17 arrest individuals for civil immigration offenses, and thus,
18 detaining individuals beyond their date for release violated the
19 individuals' Fourth Amendment rights."); Br. for States and the
20 District of Columbia, as Amici Curiae, ECF No. 139 ("SB 54's
21 [warrant requirement] is a reasonable way to protect the state
22 and its law enforcement agencies from monetary liability for
23 unlawfully detaining individuals requested to be transferred to
24 federal immigration authorities after their period of state
25 custody expires."). The California Legislature expressed this
26 concern when it passed SB 54:

27 State and local participation in federal immigration
28 enforcement programs also raises constitutional
concerns, including the prospect that California

1 residents could be detained in violation of the Fourth
2 Amendment to the United States Constitution, targeted
3 on the basis of race or ethnicity in violation of the
4 Equal Protection Clause, or denied access to education
5 based on immigration status. See Sanchez Ochoa v.
6 Campbell, et al. (E.D. Wash. 2017) 2017 WL 3476777;
7 Trujillo Santoya v. United States, et al. (W.D. Tex.
8 2017) 2017 WL 2896021; Moreno v. Napolitano (N.D. Ill.
9 2016) 213 F. Supp. 3d 999; Morales v. Chadbourne (1st
10 Cir. 2015) 793 F.3d 208; Miranda-Olivares v. Clackamas
11 County (D. Or. 2014) 2014 WL 1414305; Galarza v.
12 Szalczyk (3d Cir. 2014) 745 F.3d 634.

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

17 c. Intergovernmental Immunity

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

21 Plaintiff argues the information sharing and transfer
22 restrictions "apply only to requests made by federal entities[.]"
23 Mot. at 31. It claims that although "the statute defines
24 'immigration authorities' to include, in addition to federal
25 officers, 'state, or local officers, employees or persons
26 performing immigration enforcement functions,' it also defines
27 'immigration enforcement' to mean 'any and all efforts to
28 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

1 the definitions in Cal. Gov't Code § 7284.4).

2 The Court is not convinced that the intergovernmental
3 immunity doctrine extends to the State's regulation over the
4 activities of its own law enforcement and decision to restrict
5 assistance with some federal endeavors. None of the cases cited
6 in the parties' briefs involve an analogous regulation. The
7 preemption analysis above thus counsels against expanding the
8 doctrine to the present situation. North Dakota v. United
9 States, 495 U.S. 423, 435 (1990) ("The Court has more recently
10 adopted a functional approach to claims of governmental immunity,
11 accommodating of the full range of each sovereign's legislative
12 authority and respectful of the primary role of Congress in
13 resolving conflicts between the National and State
14 Governments.").

15 Even if the doctrine might arguably apply to this situation,
16 Plaintiff has not shown it is likely to succeed on this claim.
17 First, Plaintiff has not shown that the laws uniquely burden
18 federal immigration authorities. The information sharing
19 provisions permit sharing when the information is available to
20 the public. Cal. Gov't Code § 7284.6(a)(1)(C)-(D). Plaintiff
21 has not identified any examples of similarly situated authorities
22 (i.e., civil law enforcement agencies) that the State treats
23 better than it does federal immigration authorities. And while
24 the Court agrees with Plaintiff that "federal, state, or local
25 officer[s] . . . performing immigration enforcement functions"
26 boils down to federal immigration enforcement, see Cal. Gov't
27 Code § 7284.4, the Court finds the discrimination—if any—is
28 justified by California's choice to divert its resources away

1 from assisting immigration enforcement efforts. As explained in
2 detail above, the purported "burden" here is California's
3 decision not to help the Federal government implement its
4 immigration enforcement regime. The State retains the power to
5 make this choice and the concerns that led California to adopt
6 this policy justify any differential treatment that results.

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

11 B. Preliminary Injunction Equitable Factors

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

27 "[A]n alleged constitutional infringement will often alone
28 constitute irreparable harm." United States v. Arizona, 641 F.3d

1 339, 366 (9th Cir. 2011) (citation omitted), rev'd in part on
2 other grounds, 567 U.S. 387 (2012). "It is clear that it would
3 not be equitable or in the public's interest to allow the state
4 to violate the requirements of federal law In such
5 circumstances, the interest of preserving the Supremacy Clause is
6 paramount." Id. (quoting Cal. Pharmacists Ass'n v. Maxwell-
7 Jolly, 563 F.3d 847, 852-53 (9th Cir. 2009)); see Am. Trucking
8 Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1059-60 (9th
9 Cir. 2009) ("Similarly, while we do not denigrate the public
10 interest represented by the Ports, that must be balanced against
11 the public interest represented in [Congress's] decision to
12 deregulate the motor carrier industry, and the Constitution's
13 declaration that federal law is to be supreme.").

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

1 As to California Government Code Sections 7285.1 and 7285.2
2 and California Labor Code Section 1019.2, the Court presumes that
3 Plaintiff will suffer irreparable harm based on the
4 constitutional violations identified above. The equitable
5 considerations favor an injunction in such circumstances. See
6 United States v. Alabama, 691 F.3d 1269, 1301 (11th Cir. 2012)
7 (“The United States suffers injury when its valid laws in a
8 domain of federal authority are undermined by impermissible state
9 regulations. Frustration of federal statutes and prerogatives
10 are not in the public interest, and we discern no harm from the
11 state’s nonenforcement of invalid legislation.”). The Court
12 therefore enjoins enforcement of these provisions as to private
13 employers, as set forth in the Order below.

14 C. Conclusion

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

22 As noted in the Introduction to this Order, this case is
23 about the proper application of constitutional principles to a
24 specific factual situation. The Court reached its decision only
25 after a careful and considered application of legal precedent.
26 The Court did so without concern for any possible political
27 consequences. It is a luxury, of course, that members of the
28 other two branches of government do not share. But if there is

1 going to be a long-term solution to the problems our country
2 faces with respect to immigration policy, it can only come from
3 our legislative and executive branches. It cannot and will not
4 come from piecemeal opinions issued by the judicial branch.
5 Accordingly, this Court joins the ever-growing chorus of Federal
6 Judges in urging our elected officials to set aside the partisan
7 and polarizing politics dominating the current immigration debate
8 and work in a cooperative and bi-partisan fashion toward drafting
9 and passing legislation that addresses this critical political
10 issue. Our Nation deserves it. Our Constitution demands it.

11 IV. ORDER

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

14 The Court DENIES Plaintiff's Motion to enjoin California
15 Government Code Sections 12532, 7284.6(a)(1)(C) & (D), and
16 7284.6(a)(4), and California Labor Code Section 90.2.

17 The Court GRANTS Plaintiff's Motion and preliminarily
18 enjoins the State of California, Governor Brown, and Attorney
19 General Becerra from enforcing California Government Code
20 Sections 7285.1 and 7285.2 and California Labor Code Section
21 1019.2(a)&(b) as applied to private employers.

22 IT IS SO ORDERED.

23 Dated: July 4, 2018

24 
25 JOHN A. MENDEZ,
26 UNITED STATES DISTRICT JUDGE
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