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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

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

**ORDER RE: STATE OF CALIFORNIA'S
MOTION TO DISMISS**

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

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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 The parties appeared before the Court on June 20, 2018, and
2 argued the merits of the United States' claims as they related to
3 the United States' pending Motion for Preliminary Injunction and
4 California's pending Motion to Dismiss. The Court filed its
5 Order Re: The United States of America's Motion for Preliminary
6 Injunction on July 5, 2018, in which the Court set forth, in
7 detail, its evaluation of the United States' claims and the
8 challenged state laws. ECF No. 193. The Court concluded the
9 United States is not likely to succeed on the merits of its
10 Supremacy Clause claims against SB 54, AB 103, and the notice
11 requirement provision of AB 450. It also found the United States
12 has shown a likelihood of success on its claim against the
13 remaining provisions of AB 450, as those provisions apply to
14 private employers.

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

18
19 I. OPINION

20 A. Legal Standard

21 Defendant moves to dismiss the Complaint under Federal Rule
22 of Civil Procedure 12(b)(6). In reviewing such motion, the Court
23 "inquire[s] whether the complaint's factual allegations, together
24 with all reasonable inferences, state a plausible claim for
25 relief." Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.,
26 637 F.3d 1047, 1054 (9th Cir. 2011). "Dismissal can be based on
27 the lack of a cognizable legal theory or the absence of
28 sufficient facts alleged under a cognizable legal theory."

1 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
2 1988).

3 B. Assembly Bill 103

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

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

28 For these reasons and those stated in this Court's

1 Preliminary Injunction Order, at 12-19, Plaintiff's Supremacy
2 Clause claim against AB 103 is dismissed.

3 C. Assembly Bill 450 - Consent, Access, and
4 Reverification Provisions

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

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

20 D. Assembly Bill 450 - Notice Requirement

21 AB 450 also added a provision to the California Labor Code
22 that requires employers to provide notice to their employees "of
23 any inspections of I-9 Employment Eligibility Verification forms
24 or other employment records conducted by an immigration agency
25 within 72 hours of receiving notice of the inspection." Cal.
26 Lab. Code § 90.2(a)(1). The law also requires employers to
27 provide affected employees with the results of the inspection.
28 Id. § 90.2(b). Plaintiff argues this law is impermissible

1 because "it would be unthinkable for a state to require that
2 suspects be warned of upcoming criminal investigations by the
3 Federal Bureau of Investigation, or that suspects be kept up to
4 date on the results of investigative work done by the Bureau."
5 Opp'n at 8.

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

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

18 E. Senate Bill 54

19 Senate Bill 54 ("SB 54") added several provisions to the
20 government code that Plaintiff challenges. SB 54 restricts
21 California law enforcement agencies from sharing an individual's
22 release dates and personal information (i.e. home and work
23 addresses) for immigration enforcement purposes. Cal. Gov't Code
24 § 7284.6(a)(1)(C) & (D). It further restricts those agencies
25 from transferring individuals to immigration authorities. Cal.
26 Gov't Code § 7284.6(a)(4).

27 The Court finds that the challenged provisions of SB 54 do
28 not violate the Supremacy Clause. See Order at 32-57. Because

1 "information regarding immigration or citizenship status" does
2 not include an immigrant's release date or home and work
3 addresses, SB 54 does not directly conflict with 8 U.S.C. § 1373.
4 Id. at 32-41. For the reasons set forth in Part III.A.3.b. of
5 the Preliminary Injunction Order, the Court also finds that the
6 INA does not preempt SB 54. Id. at 42-55. Finally, the Court
7 finds SB 54 does not violate the doctrine of intergovernmental
8 immunity because it falls outside of the doctrine's scope or,
9 alternatively, because California's reasons for enacting the law
10 justify the differential treatment, if any. Id. at 55-57.

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

14 F. Leave to Amend

15 Neither party addressed whether the Court should grant
16 Plaintiff leave to amend the Complaint. However, "a district
17 court should grant leave to amend even if no request to amend the
18 pleading was made, unless it determines that the pleading could
19 not possibly be cured by the allegation of other facts." Cook,
20 Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d
21 242, 247 (9th Cir. 1990).

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

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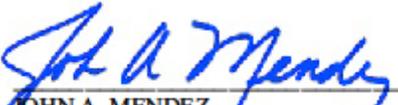
II. ORDER

For the reasons set forth above, and incorporated by reference herein, the Court GRANTS Defendant's motion to dismiss Plaintiff's Supremacy Clause claims against AB 103, SB 54, and California Labor Code Section 90.2 (added by AB 450) without leave to amend. The Court DENIES Defendant's motion to dismiss Plaintiff's Supremacy Clause claim with respect to California Government Code Sections 7285.1 and 7285.2 and California Labor Code Section 1019.2 (added by AB 450).

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

IT IS SO ORDERED.

Dated: July 9, 2018



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE