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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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

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

**ORDER DENYING DEFENDANTS' MOTION  
TO TRANSFER**

The United States filed this action on March 6, 2018, ECF No. 1, and Defendants' request to transfer the suit to the Northern District of California ("NDCA") quickly followed, ECF No. 18.<sup>1</sup> Defendants seek to litigate this case in the NDCA where a lawsuit concerning one arguably similar issue and similar parties is already pending. Defendants' First Request for Judicial Notice ("RFJN"), ECF No. 19, Exh. A. Plaintiff opposes Defendants' motion. ECF No. 25. For the reasons set forth below, Defendants' motion is DENIED.

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

I. OPINION

A. Legal Standard

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. 28 U.S.C. § 1404(a). The United States does not dispute that this action might have been brought in the NDCA. The Court agrees: because the laws in question apply throughout the state of California, this case might have been brought in any of its districts. See 28. U.S.C. § 1391(b) (“A civil action may be brought in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred[.]”).

The law governing transfer motions instructs district courts to consider a number of factors related to both “convenience” and the “interests of justice” in determining whether to transfer the case. See Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986). These factors include:

- (1) the location where the relevant agreements were negotiated and executed,
- (2) the state that is most familiar with the governing law,
- (3) the plaintiff’s choice of forum,
- (4) the respective parties’ contacts with the forum,
- (5) the contacts relating to the plaintiff’s cause of action in the chosen forum,
- (6) the differences in the costs of litigation in the two forums,
- (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses,
- and (8) the ease of access to sources of proof.

Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-499 (9th Cir. 2000). District courts have broad discretion to weigh these factors on an individualized, case-by-case basis. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988). The pendency of an

1 action in another district is an important consideration, as is  
2 the feasibility of subsequent consolidation. A. J. Indus., Inc.  
3 v. U.S. Dist. Ct. for C. D. of Cal., 503 F.2d 384, 389 (9th Cir.  
4 1974); Am. Canine Found. v. Sun, No. CIV. S-06-654 LKK DAD, 2006  
5 WL 2092614, at \*3 (E.D. Cal. July 27, 2006).

6 B. Convenience to the Parties and Witnesses

7 Because the weight of Defendants' motion rests on the  
8 "interests of justice," the Court will address the factors  
9 related to convenience only briefly.<sup>2</sup>

10 The convenience factors do not heavily favor or disfavor  
11 transfer. The Eastern District of California ("EDCA") is the  
12 United States' choice of forum and this choice weighs against  
13 transfer. However, the challenged laws apply to and affect the  
14 entirety of the state, the evidence appears to be readily  
15 accessible from either forum, and, should the case be  
16 transferred, there will be little additional burden on the United  
17 States' witnesses and counsel in terms of travel and expense.  
18 The fact that ICE's San Francisco ERO Field Office is located in  
19 the Northern District, see Homan Decl., ECF No. 2-2, ¶ 21,  
20 counterbalances any weight this Court might afford to the EDCA's  
21 ties to the legislative process.

22 In sum, the Court finds the convenience factors are not  
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24 <sup>2</sup> Pursuant to Federal Rule of Evidence 201, the Court takes  
25 judicial notice of the court records attached to Defendants'  
26 Requests for Judicial Notice, ECF Nos. 19-1, 30-1. See Harris v.  
27 Cty. of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012). The Court  
28 also takes notice of the United States District Courts' Judicial  
Caseload Profile data, the accuracy and authenticity of which  
Plaintiff does not dispute. See Daniels-Hall v. Nat'l Educ.  
Ass'n, 629 F.3d 992, 999 (9th Cir. 2010).

1 determinative and that the United States' choice of forum tilts  
2 the scale against transfer.

3 C. Interests of Justice

4 If the interests of justice favor transfer, the United  
5 States' choice may still be uprooted. See Am. Canine Found.,  
6 2006 WL 2092614, at \*3 ("The interests of justice can be decisive  
7 even if witness and party convenience weigh against transfer.").  
8 "To permit a situation in which two cases involving precisely the  
9 same issues are simultaneously pending in different District  
10 Courts leads to the wastefulness of time, energy and money that  
11 [§] 1404(a) was designed to prevent." Cont'l Grain Co. v. The  
12 FBL-585, 364 U.S. 19, 26 (1960). "Moreover, such a situation is  
13 conducive to a race of diligence among litigants for a trial in  
14 the District Court each prefers." Id.

15 This lawsuit and the pending NDCA case, State ex rel.  
16 Becerra v. Sessions ("Becerra"), both involve the relationship  
17 between the California Values Act ("SB 54") and 8 U.S.C. § 1373  
18 ("Section 1373"). The factual and procedural backgrounds of the  
19 two cases are familiar to the parties; the Court will briefly  
20 summarize the relevant portions of the two cases here:

21 In Becerra, California challenges a condition the United  
22 States Department of Justice (USDOJ) placed on JAG awards  
23 requiring recipient jurisdictions to comply with Section 1373.  
24 RFJN, Exh. B, ¶ 5.<sup>3</sup> The same condition has been placed on the  
25 Community Oriented Policing Services ("COPS") grant. Id.

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26 <sup>3</sup> The State also challenges two additional conditions placed on  
27 JAG recipients, one requiring notice of the scheduled release of  
28 certain individuals and one requiring access to local detention  
facilities ("notice and access conditions"). Id. at ¶ 6.

1 California is concerned it will be denied access to these grants  
2 because the USDOJ will find that the TRUST Act (Cal. Gov. Code  
3 § 7282 *et seq.*), the TRUTH Act (Cal. Gov. Code § 7283 *et seq.*),  
4 SB 54 (Cal. Gov. Code § 7284 *et seq.* and other amendments), and  
5 California's Shield Confidentiality Statutes (Cal. Penal Code  
6 §§ 422.93, 679.10, 679.11; Cal. Welf. & Inst. Code § 831; Cal. C.  
7 Civ. P. § 155) violate Section 1373. Id. at ¶ 10. California  
8 alleges the Section 1373 condition on the JAG awards violates the  
9 Spending Clause and the Administrative Procedure Act. Id. at  
10 ¶¶ 127-144. California seeks a judicial declaration that SB 54  
11 and the other statutes comply with Section 1373 as properly  
12 interpreted and construed. Id. at ¶ 152. Alternatively,  
13 California seeks a declaration that Section 1373 cannot be  
14 constitutionally enforced against those acts under the Tenth  
15 Amendment of the U.S. Constitution. Id. at ¶ 153.

16 In this lawsuit, the United States challenges three recently  
17 enacted state laws. Complaint, ECF No. 1. The first cause of  
18 action challenges changes made to the California Government Code  
19 and California Labor Code by Assembly Bill 450 ("AB 450"), the  
20 Immigrant Worker Protection Act, which, *inter alia*, allegedly  
21 restricts employer cooperation with immigration enforcement. Id.  
22 at ¶¶ 27-35, 61. The second cause of action challenges a new  
23 section of the California Government Code (Section 12532, added  
24 by AB 103) that provides for state review of county, local, or  
25 private locked detention facilities being used to house or detain  
26 noncitizens for civil immigration proceedings in California. Id.  
27 at ¶¶ 36-49, 63. In its third cause of action, the United States  
28 claims that several subsections amended by SB 54 violate the

1 Supremacy Clause and Section 1373. Id. at ¶¶ 50-59, 65. It  
2 seeks a judgment declaring that each of these contested code  
3 sections violate the Supremacy Clause—and are therefore invalid—  
4 and a preliminary and permanent injunction that prohibits  
5 California from enforcing these new laws. Id. at 17-18 (Prayer  
6 for Relief).

7 Becerra and the case at bar have obvious differences.  
8 Becerra concerns USDOJ grant conditions that implicate the  
9 Spending Clause and the APA, which are not at issue in this  
10 litigation. That case may primarily turn on whether the USDOJ  
11 exceeded its authority or acted arbitrarily and capriciously in  
12 imposing the Section 1373 condition on funding. The defendants  
13 in that lawsuit are Attorney General Sessions, Acting Assistant  
14 Attorney General Alan R. Hanson, and the United States Department  
15 of Justice. Plaintiff here is the United States. Apart from SB  
16 54, there are also distinct laws at issue in each case: Becerra  
17 also concerns the TRUST Act, TRUTH Act, and California Shield  
18 Confidentiality Statutes; this case concerns AB 450 (specifically  
19 Cal. Gov. Code Sections 7285.1 and 7285.2, and Cal. Labor Code  
20 Sections 90.2 and 1019.2) and AB 103 (Cal. Gov. Code 12532).  
21 Additionally, the Becerra suit challenges notice and access  
22 conditions placed on the JAG awards.

23 There is one important similarity between the lawsuits.  
24 Both lawsuits implicate the potential conflict between SB 54 and  
25 Section 1373. Because the United States has taken the position  
26 that SB 54 violates Section 1373, this Court will likely be  
27 called upon to interpret that Section. Defendants will  
28 undoubtedly raise Tenth Amendment defenses in this litigation.

1 See Mot. at 9 (“[T]his matter, at its core, involves the same  
2 fundamental legal issue as Becerra v. Sessions: ‘the contours  
3 of the State’s broad constitutional police powers under the Tenth  
4 Amendment and the federal government’s broad, undoubted power  
5 over the subject of immigration and the status of aliens.’”)  
6 (quoting the Preliminary Injunction Order, RFJN, Exh. E). And  
7 despite the United States’ and its attorneys’ efforts to separate  
8 the issues in Becerra from the Tenth Amendment, see Opp. at 11  
9 (“These questions are entirely distinct from . . . the defenses  
10 that California might raise under the Tenth Amendment, which are  
11 not implicated in Spending Clause cases.”); Pl. Exh. A, ECF No.  
12 25-1, at 12 (“With respect to the 1373 provision, as a matter of  
13 law the governing analysis here is the Spending Clause line of  
14 cases; not the Tenth Amendment line of cases.”), Judge Orrick has  
15 clearly homed in on the Tenth Amendment as a central issue in  
16 that case, see State ex rel. Becerra v. Sessions, No. 17-cv-  
17 04701-WHO, 2018 WL 1156774 (N.D. Cal. 2018) (Preliminary  
18 Injunction Order). Furthermore, even if the JAG conditions are  
19 resolved by challenges under the Spending Clause or the APA, the  
20 declaratory relief claim related to the Section 1373 condition on  
21 the COPS grant remains in play. It appears likely that Judge  
22 Orrick, at some point, may need to reach the more direct  
23 challenges to an interpretation of Section 1373 that conflicts  
24 with California law. The recently issued Preliminary Injunction  
25 Order in Becerra certainly bears this out. See Becerra, 2018 WL  
26 1156774, at \*14-16.

27 Although the cases have this one important issue in common,  
28 the Court nevertheless finds that Defendants have not adequately

1 demonstrated that the interests of justice warrant transfer. The  
2 thrust of this lawsuit concerns the Supremacy Clause, which has  
3 not arisen in the Becerra case. Apart from the potential  
4 conflict between SB 54 and Section 1373, the lawsuits present  
5 distinct legal questions, statutes, and factual circumstances to  
6 review and resolve. Given these differences, the actual savings  
7 on time, energy, and resources for the district courts and the  
8 parties appears minimal. The administrative and logistical  
9 challenges that accompany transfer would likely be more  
10 burdensome than any marginal gains in efficiency. This Court has  
11 already devoted time and resources to this case, which would need  
12 to be replicated in the NDCA following transfer. Finally, while  
13 feasibility of consolidation is not necessary to warrant  
14 transfer, the Court notes that such post-transfer consolidation  
15 could prove difficult given the distinct posture of each case.

16 Defendants' remaining concerns are also insufficient to  
17 warrant transfer. Although the EDCA's weighted caseload is  
18 greater than that of the NDCA, both districts have figures that  
19 exceed the national average.<sup>4</sup> And the median times from filing  
20 to disposition do not significantly differ between the two  
21 districts. Moreover, the EDCA remains among the nation's most  
22 efficient courts in terminations of actions-923 cases per  
23 judgeship. Indeed, few districts can match the efficiency of the  
24 EDCA in resolving lawsuits despite the obvious need for

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25 <sup>4</sup> Nationally, the average number of weighted filings per  
26 judgeship is 489. The number in the Northern District is 556 and  
27 in the Eastern District is 764. See U.S. District Court -  
28 Judicial Caseload Profile, available at  
[http://www.uscourts.gov/sites/default/files/data\\_tables/fcms\\_na\\_distprofile1231.2017.pdf](http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile1231.2017.pdf).



1 additional judgeships.

2 The Court is also not persuaded that the possibility of  
3 inconsistent judgments warrants transfer. In the instant case,  
4 the United States seeks, in part, a judicial declaration that  
5 Sections 7284.6(a)(1)(C) & (D) and 7283.6(a)(4)—three subsections  
6 amended by SB 54—of the California Government Code violate the  
7 Supremacy Clause and seeks a preliminary and permanent injunction  
8 prohibiting Defendants from enforcing these provisions.

9 Complaint at 17–18. In Becerra, California seeks a declaration  
10 that SB 54 complies with Section 1373 and thus should not be a  
11 basis for withholding and terminating federal funding. RFJN,  
12 Exh. B, at ¶ 152. Alternatively, California seeks a declaration  
13 that Section 1373 cannot be constitutionally enforced against SB  
14 54 under the Tenth Amendment, and should not be a basis for  
15 withholding and terminating federal funding. Id. at ¶ 153.

16 There is a possibility—though it depends upon contingencies in  
17 each case—that this Court could reach a determination that  
18 conflicts with Judge Orrick’s findings and conclusions in some  
19 future motion. But, given the relief sought, the Court does not  
20 see how such circumstances would impose conflicting obligations  
21 on the State. It may result in a disputed legal question—and an  
22 important one at that—but such a question may be appropriately  
23 resolved by an appeal to the Ninth Circuit. Conflicting findings  
24 at the trial court level are sometimes a part of the judicial  
25 process. This does not, however, justify concentrating multiple  
26 cases of considerable magnitude and distinct legal issues before  
27 one district judge with an already overloaded caseload.

28 All of these factors require this Court to conclude that

1 Defendants have not shown the interests of justice overcome the  
2 United States' forum choice. Due to the noted differences  
3 between the claims, parties, and subject matter of each case, the  
4 Court further finds the "first-to-file" rule does not apply to  
5 this action. As a matter of law, this case should, and will,  
6 remain in the Eastern District of California.

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8 II. ORDER

9 For the reasons set forth above, the Court DENIES  
10 Defendants' Motion to Transfer.

11 IT IS SO ORDERED.

12 Dated: March 29, 2018

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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