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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF CALIFORNIA; EDMUND GERALD BROWN JR., Governor of California, in his Official Capacity; and XAVIER BECERRA, Attorney General of California, in his Official Capacity,

Defendants.

No. 18-264

NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

NOTICE

Notice is hereby given that the United States of America makes the following motion, which it proposes to notice for a hearing on April 5, 2018 at a as of yet to be determined courtroom.

MOTION

The United States hereby moves for a preliminary injunction enjoining enforcement of certain provisions of California law enacted through Assembly Bill 450 ("AB 450"), Assembly Bill 103 ("AB 103"), and Senate Bill 54 ("SB 54"). As detailed in the accompanying proposed order, the United States respectfully requests that this Court preliminarily enjoin Sections 7285.1, 7285.2, 7284.6(a)(1)(C) & (D), 7284.6(a)(4), and 12532 of the California Government Code, and Sections 90.2 and 1019.2 of the California Labor Code.

This motion is based on the memorandum and exhibits filed herewith, and the pleadings on file.

DATED: March 6, 2018

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PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW IN SUPPORT

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In order to avoid ongoing, irreparable harm to the United States and its interests, and pursuant to Federal Rule of Civil Procedure 65, the United States hereby moves this Court to preliminarily enjoin enforcement of certain provisions of California law enacted through Assembly Bill 450 ("AB 450"), Assembly Bill 103 ("AB 103"), and Senate Bill 54 ("SB 54"). As detailed in the accompanying proposed order, the United States respectfully requests that this Court preliminarily enjoin Sections 7285.1, 7285.2, 7284.6(a)(1)(C) and (D), 7284.6(a)(4), and 12532 of the California Government Code, and Sections 90.2 and 1019.2 of the California Labor Code.

INTRODUCTION

California is intentionally obstructing the enforcement of federal law in violation of the Supremacy Clause. California has enacted several laws with the express goal of interfering with "an expected increase in federal immigration enforcement actions," California Committee on the Judiciary Report (Assembly), Apr. 22, 2017, at 1, and shielding the "more than 2.6 million undocumented immigrant[s]" residing in California from any "increase in workplace immigration enforcement." California Committee on the Judiciary Report (Senate), July 10, 2017, at 1. As a matter of law and in the public interest, this Court should enter a preliminary injunction to enjoin certain provisions of three such laws. The challenged provisions have both the purpose and effect of obstructing enforcement of the federal immigration laws and discriminating against the Federal Government.

The first statute, AB 450, the "Immigrant Worker Protection Act," restricts private employers from voluntarily cooperating with federal officials who seek to ensure compliance with federal immigration laws in the workplace.

The second statute, AB 103, creates an intrusive inspection and review scheme applicable

only to facilities holding civil immigration detainees on the United States' behalf. The statute authorizes the California Attorney General to examine, among other things, the "due process provided" to civil immigration detainees by the United States, and the "circumstances around their apprehension and transfer" to detention facilities.

The third statute, SB 54, includes the "California Values Act," which precludes state and local officials from voluntarily providing to the United States information about the release date from state or local criminal custody of criminal aliens who may be subject to removal and are subject to detention by the United States, or other information relevant to the alien's immigration status. SB 54 also prohibits state and local officials from transferring aliens to the United States when they are scheduled to be released from state or local custody, thus interfering with the United States' ability to carry out its responsibilities under federal law.

All of these provisions are preempted by federal law. A state lacks the authority to intentionally interfere with private citizens' ability to cooperate voluntarily with the United States or to comply with federal obligations. Likewise, a state has no authority to target facilities holding federal detainees pursuant to a federal contract for an inspection scheme to review the "due process" afforded during the arrest and detention. Similarly, a state cannot direct state and local employees to refuse to engage in basic cooperation with federal immigration authorities contemplated by federal law. For example, Congress has determined that—rather than having the United States remove all criminal aliens immediately even if incarcerated for state convictions—states should be allowed to vindicate their law enforcement interests in the alien serving their sentence prior to their removal. This decision by Congress to allow states to punish individuals who commit crimes against their citizens hinges on one very reasonable assumption—once the individual has served his or her time under state law, the state will transfer custody to the United

States so the person can be properly processed under applicable federal immigration laws. When states release these criminals back onto the streets—rather than notifying DHS of the release and transferring custody—they intentionally subvert the careful balancing of state and federal interests that Congress established in the Immigration and Nationality Act ("INA"). And all the more so given that Congress has enacted 8 U.S.C. § 1373, which expressly prohibits states from restricting their officers from sharing information regarding immigration status with the United States.

California's acknowledged efforts to stymie immigration enforcement should be enjoined. These state enactments ""stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1023 (9th Cir. 2013) (quoting *Arizona v. United States*, 567 U.S. 387, 399 (2012)), and thus are preempted by federal law. In addition, they are invalid under the intergovernmental immunity doctrine: far from being laws that "affect the Federal Government incidentally as the consequence of a broad, neutrally applicable rule," *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2009), they "are invalid" because they "'regulate the United States directly'" or "'discriminate against the Federal Government or those with whom it deals.'" *Boeing Co. v. Movassaghi*, 768 F.3d 832, 839 (9th Cir. 2014) (quoting *North Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality op.) (brackets omitted)).

Absent injunctive relief, the United States will continue to suffer irreparable harm caused by California. Enforcement of these provisions disrupts the constitutional order by undermining the United States' control over the enforcement of the immigration laws and regulation of immigration policy. The challenged provisions severely frustrate the United States' enforcement of the immigration laws by placing significant burdens on the federal agencies responsible for

such enforcement. They interfere with those agencies' oversight of unlawful employment of aliens; intrude upon their performance of federal functions by authorizing investigations into their employees' performance of their mandated duties; and force federal officers to engage in burdensome, dangerous, and far more costly efforts to re-arrest aliens, including dangerous criminals, who were previously in local or state custody and have been released to the streets rather than to federal custody, thereby endangering federal officers, the alien at issue, others who may be nearby, and the public at large.

BACKGROUND

The California legislature recently enacted the three statutes at issue here for the explicit purpose of impeding the United States' enforcement of the immigration laws.

1. *Immigrant Worker Protection Act (AB 450)*

The Immigration Worker Protection Act, or AB 450, was enacted to regulate employers who might be the subject of "immigration worksite enforcement actions" by federal immigration authorities. AB 450, Preamble. Like the other statutes at issue, AB 450 is designed to frustrate "an expected increase in federal immigration enforcement actions." California Committee on the Judiciary Report (Assembly), Apr. 22, 2017, at 1. It also is intended to shield the "more than 2.6 million undocumented immigrant[s]" residing in California from any "increase in workplace immigration enforcement." Committee on the Judiciary Report (Senate), July 10, 2017, at 1. To that end, AB 450 restricts private (and public) employers from voluntarily cooperating with federal officers and in complying with obligations under federal law, including when those officers seek information relevant to federal efforts to investigate the illegal employment of aliens.

Among other things, AB 450 adds Sections 7285.1 and 7285.2 to the California

Government Code. Section 7285.1(a) provides that an employer or its agent "shall not provide voluntary consent to an immigration enforcement agent to enter any nonpublic areas of a place of labor," unless "the immigration enforcement agent provides a judicial warrant," or consent is "otherwise required by federal law." Section 7285.2(a)(1) similarly prohibits an employer or its agent from "provid[ing] voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant." Section 7285.2(a)(2) contains an exception for certain documents for which the United States has provided a "Notice of Inspection" issued pursuant to 8 U.S.C. § 1324a(b)(3).

AB 450 also adds provisions to the California Labor Code that establish new requirements that employers must satisfy before allowing U.S. Immigration and Customs Enforcement ("ICE"), a component of the U.S. Department of Homeland Security ("DHS"), to conduct its inspection process. New Section 90.2 of the Labor Code requires employers to notify employees and their authorized representatives of upcoming inspections of employment records "within 72 hours of receiving notice of the inspection," Cal. Lab. Code § 90.2(a)(1), and requires employers to provide employees and their authorized representatives, within 72 hours, with copies of written immigration agency notices providing results of inspections, *id.* § 90.2(b)(1). New Section 1019.2(a) of the Labor Code provides that an employer or its agent "shall not reverify the employment eligibility of a current employee at a time or in a manner not required by Section 1324a(b) of Title 8 of the United States Code."

The California statutory framework imposes severe financial consequences on private citizens who lawfully comply with federal immigration. All of these provisions are subject to a schedule of civil penalties "of two thousand dollars ($2,000) up to five thousand dollars ($5,000) for a first violation and five thousand dollars ($5,000) up to ten thousand dollars ($10,000) for

each subsequent violation." Cal. Gov't Code §§ 7285.1(b), 7285.2(b); Lab. Code § 90.2(c).

On January 18, 2018, the California Attorney General issued a warning to all employers in the state that his office would "prosecute those who violate [AB 450]" by voluntarily cooperating with ICE enforcement efforts. *See* Angela Hart, *'We will prosecute' employers who help immigration sweeps, California AG says*, Sacramento Bee, Jan. 18, 2018.[1] And on February 13, 2018, the California Attorney General issued guidance to employers, which "explains" that "they cannot voluntarily grant immigration enforcement agents physical access to nonpublic areas of the worksite or to employee records,"[2] without "trigger[ing] certain penalties for their violation."[3]

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

Under longstanding California law, "local detention facilities," including those that house federal immigration detainees on behalf of the United States, are subject to biennial inspections concerning health and safety, fire suppression preplanning, compliance with training and funding requirements, and the types and availability of visitation. Cal. Penal Code § 6031.1(a). The term "local detention facilities" includes facilities operated by cities, counties, or private entities that contract with cities or counties (while excluding certain facilities for parolees, treatment and restitution facilities, community correctional centers, and work furlough programs), but does not include federal facilities. *Id.* § 6031.4.

AB 103, which adds Section 12532(a) to the California Government Code, establishes an additional inspection and review scheme applicable only to "county, local, or private locked detention facilities in which *noncitizens* are being housed or detained for purposes of *civil*

[1] http://www.sacbee.com/news/politics-government/capitol-alert/article195434409.html.
[2] https://oag.ca.gov/news/press-releases/attorney-general-becerra-issues-advisory%C2%A0providing-guidance-privacy-requirements.
[3] https://oag.ca.gov/sites/all/files/agweb/pdfs/immigrants/immigration-ab450.pdf.

immigration proceedings in California." (emphases added). This new set of requirements goes far beyond inspections and review already established by Cal. Penal Code § 6031.1(a). The California Attorney General is instructed to examine and report on, among other things, the "due process provided" to civil immigration detainees, and "the circumstances around their apprehension and transfer to the facility." Cal. Gov't Code § 12532(b). Section 12532(c) requires that the state "shall be provided all necessary access for the observations necessary to effectuate reviews required pursuant to this section, including, but not limited to, access to detainees, officials, personnel, and records."

On November 16, 2017, the California Attorney General initiated via letter a request to inspect various detention facilities housing ICE detainees. Five such facilities have been inspected since the law's effective date. Homan Decl.. ¶¶ 58-59.

3. SB 54 and the California Values Act

The California Values Act is part of SB 54, which "prohibit[s] state and local law enforcement agencies," other than employees of the state Department of Corrections and Rehabilitation, from "cooperat[ing] with [Federal] immigration authorities" except in certain circumscribed circumstances. *See* SB 54, Preamble; Cal. Gov't Code § 7282.5(a). The Act is intended to serve as a "counterbalance to this [Presidential] administration" on enforcement of immigration laws, Hearing on S.B. 54 before the Senate Standing Comm. On Public Safety (Jan. 31, 2017) (statement of Sen. Scott Wiener),[4] by requiring state and local actions on immigration that are "separate from that of the Federal Government," Senate Floor Hearing on 04-03-2017.[5]

Among other things, with certain exceptions discussed below, new Section 7284.6 prohibits state and local officials from "[p]roviding information regarding a person's release date

[4] https://ca.digitaldemocracy.org/hearing/10091?startTime=275&vid=381a741e4e525c9efccbbf6062c67f3c
[5] https://ca.digitaldemocracy.org/hearing/52288?startTime=1150&vid=910977abbea937bca7424c93fe3caf1c.

or responding to requests for notification by providing release dates or other information," Cal Gov't Code § 7284.6(a)(1)(C); providing "personal information," including an individual's home address or work address, *id.* § 7284.6(a)(1)(D); and "[t]ransfer[ring] an individual to immigration authorities," *id.* § 7284.6(a)(4).

SB 54 provides that state and local law enforcement (other than employees of the California Department of Corrections and Rehabilitation) may share with the United States "information regarding a person's release date" or respond "to requests for notification by providing release dates or other information," only where an individual subject to such information sharing has been convicted of certain crimes, or where the information is available to the public. Cal. Gov't Code §§ 7282.5(a), 7284.6(a)(1)(C). Personal information may be shared only if it is available to the public. *Id.* § 7284.6(a)(1)(D). State and local law enforcement agencies may "[t]ransfer an individual to immigration authorities" only if the United States presents a "judicial warrant or judicial probable cause determination," or the individual in question has been convicted of one of certain crimes. Cal. Gov't Code §§ 7282.5(a); 7284.6(a)(4).

LEGAL STANDARD

A preliminary injunction is warranted where, as here, the movant has established that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) a preliminary injunction is in the public interest. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (citing *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008)). Generally, where the United States has demonstrated a likelihood of success on the merits of a Supremacy Clause claim, the other factors similarly favor an injunction. *See, e.g., id.*; *United States v. Arizona*, 641 F.3d 339, 366

(9th Cir. 2011), *aff'd in part, rev'd in part*, 567 U.S. 387 (2012).

ARGUMENT

I. The United States Is Likely to Prevail on the Merits

The federal immigration scheme, largely enacted in the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*., empowers DHS, including its component agencies, ICE and Customs and Border Protection ("CBP"), as well as other federal agencies including the Department of Justice ("DOJ"), and the Department of State ("DOS"), to administer and enforce the immigration laws. It affords the United States considerable discretion to provide for and direct enforcement of the immigration laws in a manner consistent with federal policy objectives.

"The Government of the United States has broad, undoubted power over the subject of immigration" and "[f]ederal governance of immigration and alien status is extensive and complex." *Arizona v. United States*, 567 U.S. 387, 394 (2012). The Constitution vests the political branches with exclusive and plenary authority to establish the nation's immigration policy—a power inherent in national sovereignty. *See* U.S. Const., art. I § 8, cl. 4 (Congress has the authority to "establish an uniform Rule of Naturalization"); U.S. Const., art. I § 8, cl. 3 (Congress has the authority to "regulate Commerce with foreign Nations"). The "[p]ower to regulate immigration is unquestionably exclusively a federal power," *De Canas v. Bica*, 424 U.S. 351, 354 (1976), and "[t]he federal power to determine immigration policy is well settled," *Arizona*, 567 U.S. at 395.

Where a state enactment "conflict[s] or [is] at cross-purposes" with the Federal exercise of its authority, "[t]he Supremacy Clause of the U.S. Constitution, art. VI, cl. 2, provides a clear rule that federal law 'shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary

notwithstanding.'" *Arizona*, 567 U.S. at 399 (quoting U.S. Const., art. VI, cl. 2). And given that immigration enforcement impacts foreign affairs—an exclusively federal function under the Supremacy Clause—courts should be especially skeptical of state regulation impacting immigration. *See id.* at 395 (explaining immigration regulation impacts the United States' "inherent power as sovereign to control and conduct relations with foreign nations"); *cf. Harisiades v. Shaughnessy*, 342 U.S. 580, 588–589 (1952) (explaining that "[s]uch matters are so exclusively entrusted to the political branches of government" because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government").

It follows that the California provisions at issue here are preempted and invalid under each of two related doctrines. First, a state law is preempted by federal law if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *see also Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000) ("obstacle" exists whether it "goes by the name of conflicting; contrary to; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; interference, or the like") (quotation marks omitted)); *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 151, 153 (1982) ("Federal regulations have no less pre-emptive effect than federal statutes"). Second, under the doctrine of intergovernmental immunity, state laws are invalid if they "regulate the United States directly" or "discriminate against the Federal Government or those with whom it deals.'" *North Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality op.); *see South Carolina v. Baker*, 485 U.S. 505, 514-15 (1988) (similar).[6] The provisions at issue here have the purpose and effect of interfering with and effectively nullifying the United States'

[6] Although the controlling opinion in *North Dakota* was a plurality, the Court was unanimous in concluding that states may not regulate or discriminate against the United States. 495 U.S. at 435 (plurality op.); *id.* at 444 (Scalia, J., concurring); *id.* at 451-52 (Brennan, J., dissenting).

enforcement of the immigration laws, and of singling out for adverse treatment the federal government and those who assist it with immigration enforcement efforts.

A. The Constitution does not allow California to obstruct federal law enforcement efforts by prohibiting employers from voluntarily cooperating with federal law enforcement officials (AB 450)

1. In enacting the Immigration Reform and Control Act of 1986 ("IRCA"), Congress established a "comprehensive framework for combating the employment of illegal aliens," *Arizona*, 567 U.S. at 404, and its "primary purpose" is to "reduce the flow of illegal immigration into the United States by removing the employment 'magnet' that draws undocumented aliens into the country," *Montero v. I.N.S.*, 124 F.3d 381, 384 (2d Cir. 1997) (quoting H.R. Rep. No. 99-682(I), at 45-46 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5649, 5649-50). IRCA makes it illegal for employers to knowingly hire, recruit, refer, or continue to employ unauthorized workers. 8 U.S.C. § 1324a(a)(1)(A), (a)(2). Employers who attempt to comply in good faith with verification requirements are protected from civil and criminal penalties under federal law. *Id.* § 1324a(b)(6)(A). And importantly, Congress established a uniform inspection process whereby employers are required to retain documentary evidence of authorized employment of aliens, and to permit federal investigative officers to inspect that evidence. *See id.* § 1324a(b), (e)(2)(A).

Federal law contains no requirement that immigration officials seeking to enforce either criminal or civil immigration provisions exclusively procure a judicial warrant before seeking to enter a place of employment for immigration enforcement purposes. *See* 8 U.S.C. § 1357(a)(1) (authorizing federal agents to interrogate suspected aliens without a warrant); *id.* § 1357(e) (federal immigration officer may not, "without the *consent* of the owner (or agent thereof) or a properly executed warrant," enter "a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States") (emphasis added). Instead, Congress provided for a method for immigration

enforcement, including in the context of worksite inspections, that is premised on the private property owner's ability to consent to inspections of their property and employee records. This framework, established by Congress, provides a rational balancing of Executive Branch and Judicial Branch resources.

It is thus established that "[i]n the course of enforcing the immigration laws, [federal immigration officers may] enter[] employers' worksites to determine whether any illegal aliens may be present as employees." *I.N.S. v. Delgado*, 466 U.S. 210, 211-12 (1984). As the Supreme Court explained, "it makes no difference . . . that the encounters t[ake] place inside a factory, a location usually not accessible to the public." *See id.* at 217 n.5. So long as immigration "officers were lawfully present *pursuant to consent* or a warrant," the "same considerations attending contacts between the police and citizens in public places should apply." *Id.* (emphasis added). Indeed, the Ninth Circuit has agreed with the United States' argument that "Congress, in adopting [8 U.S.C. § 1357]" intended for immigration officers to possess enforcement authority "to the fullest extent permissible under the fourth amendment." *Zepeda v. INS*, 753 F.2d 719, 725 (9th Cir. 1983); *accord Int'l Molders' & Allied Workers' Local Union No. 164 v. Nelson*, 799 F.2d 547, 553 (9th Cir. 1986) (reversing portion of injunction against INS because it "exceed[ed] the particularity requirements of the Fourth Amendment and unduly restrict[ed] [federal immigration officers'] ability to engage in consensual questioning" by requiring the United States to procure search warrant identifying specific persons suspected of being unlawfully present before undertaking a workplace search).

2. AB 450 imposes civil penalties on private employers in California who provide "consent[] to an immigration enforcement agent to enter any nonpublic areas of a place of labor," unless "the immigration enforcement agent provides a judicial warrant" or consent is "otherwise

required by federal law." Cal. Gov't Code § 7285.1(a).

The Constitution does not allow California to impede federal law enforcement in this fashion. It is well established that a state enactment is preempted if it "results in interference with Federal Government functions." *Gartrell Constr. Inc. v. Aubry*, 940 F.2d 437, 438 (9th Cir. 1991) (invalidating statute that purported to preclude a contractor from performing services on a federal construction project without first obtaining a license from the state); *cf. Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001) ("the relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law"). AB 450 interferes with federal law enforcement by making it more difficult for federal officers to investigate both criminal and civil immigration violations at employment sites. In particular, the statute poses an obstacle to federal enforcement by effectively restricting the ability to conduct federal investigations without a judicial warrant, despite the INA's express authorization of such enforcement.[7] *See, e.g.*, *Arizona*, 567 U.S. at 402, 406 (finding preempted a state law that conflicted with the "method of enforcement" of immigration laws available to the United States through the INA and thus "diminish[ed] the Federal Government's control over enforcement and detract[ed] from the integrated scheme of regulation created by Congress"). Indeed, the INA does not provide a mechanism for procuring judicial rather than administrative warrants for immigration enforcement. Thus, any requirement to do so further burdening DHS's ability to fulfill its statutory mandate in the manner prescribed by Congress. Homan Decl. ¶ 70. California cannot plausibly assert that it is vindicating a legitimate state interest in employee privacy here, given

[7] Indeed AB 450 was expressly designed to thwart federal law on consent. *See* Committee on the Judiciary Report (Senate), July 10, 2017, at 3 (acknowledging that "existing law provides, under federal law, that an immigration officer may" enter nonpublic areas of an employer with either "a warrant or the *consent* of the owner) (emphasis added).

that this restriction on employer consent does not apply to any other types of investigatory activity—not any state enforcement, or even federal non-immigration enforcement. Rather, AB 450's clear purpose and effect is to prevent federal immigration officials alone from carrying out their congressionally-mandated functions.[8]

For similar reasons, the state enactment violates principles of intergovernmental immunity. It is established that "the States may not directly obstruct the activities of the Federal Government." *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2009) (quoting *North Dakota*, 495 U.S. at 437-38 (plurality op.)). Applying this principle in *Arcata*, the Ninth Circuit invalidated local ordinances that purported to regulate military recruiting. As the court explained, such ordinances "do not merely regulate the Federal Government incidentally," but "are expressly intended to do so." *Arcata*, 629 F.3d at 991. Similarly, in *Boeing Co. v. Movassaghi*, 768 F.3d 832 (9th Cir. 2014), the Ninth Circuit invalidated a state enactment that purported to create special rules for cleanup of a federal nuclear site, concluding that by imposing regulations on a government contractor, the statute "directly interfere[d] with the functions of the Federal Government." *Id.* at 840.

AB 450 violates this settled principle. The state enactment imposes penalties on private

[8] AB 450 also poses an obstacle to enforcement activities that are unrelated to workplace enforcement but happen to occur at what AB 450 defines as a "place of labor," including critical enforcement activities that occur near the international border. For example, when DHS is engaged in an enforcement action – such as the search for an identified suspect who is a known criminal alien, or trying to locate or pursue recent illegal border-crossers near the international border – that action may lead agents onto private property. Homan Decl. ¶ 88; Scott Decl. ¶ 27-29. In those circumstances, seeking consent from the private property owner may be the most efficient method to continue that operation, including in potentially dangerous circumstances involving pursuit of absconding aliens near the border. *Id.* But AB 450 would preclude the property owner from providing consent if its property counted as a "place of labor" – a term with a potentially broad and malleable meaning that could include wide swaths of property used for farming or ranching, a warehouse, or other locations where DHS might need to conduct non-workplace enforcement related operations. Indeed, Congress has explicitly authorized immigration officers within a reasonable distance from the international border to have access—*without a warrant*—to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States." 8 U.S.C. § 1357(a)(3). More generally, non-work related enforcement operations frequently rely on property owner consent, and AB 450 places a clear obstacle in the path of an immigration enforcement scheme that clearly envisions access to property with the consent of the property owner. *Cf. id.* § 1357(e) (DHS officers authorized to enter farm property for interrogation with "consent of the owner").

employers, but only to the extent that they voluntarily cooperate with the United States. *See* Cal. Gov't Code §§ 7285.1(a), 7285.1(b). California is not attempting to impose a generally applicable law that purports to protect employee privacy, but rather is specifically targeting federal immigration enforcement. As in *Arcata*, the statute "do[es] not merely regulate the Federal Government incidentally; rather, [it is] expressly intended to do so." 629 F.3d at 991.

California cannot plausibly assert that it has authority to directly prohibit the United States from entering private property with consent from the property owner. Its effort to do so is no more permissible when achieved indirectly through regulation of the property owner. Because "a regulation imposed on one who deals with the Government has as much potential to obstruct governmental functions as regulation imposed on the Government itself," the Supreme Court "has required that the regulation be one that is imposed on some basis unrelated to the object's status as a Government contractor or supplier, that is, that it be imposed equally on other similarly situated constituents of the State." *North Dakota*, 495 U.S. at 438 (plurality op.). Here, the state enactment is imposed based solely on the private entity's decision to deal with the United States. Similarly, California cannot plausibly assert that it has authority to impose a tax only on those businesses that enter into agreements with the United States. *See, e.g., South Carolina*, 485 U.S. at 514-15. That basic principle does not yield when the tax takes the form of a civil penalty, and the agreement with the United States takes the form of cooperation with immigration officers.

That AB 450 regulates private property owners in a manner that discriminates exclusively against the United States is made plain by the fact that California law does not establish any similar proscription on a private employer's consenting to inspections by any California law enforcement agencies, some of whose regulatory schemes in fact *mandate* that regulated places

of employment provide state inspectors "free access" to their premises, often on penalty of criminal prosecution, and with no warrant requirement. *See, e.g.*, Cal. Lab. Code §§ 90, 1174, 1175(b) (Division of Labor Standards Enforcement); *id.* §§ 2666, 2667 (Department of Industrial Relations); *id.* § 6314 (Division of Occupational Safety and Health); *see also id.* § 1151 (Agricultural Labor Relations Board shall have "free access to all places of labor"). None of these provisions forbid private property owners from consenting to a State inspection. Nor does California law require private employers to refuse State officers consent unless a judicial warrant is presented. Rather, "[e]mployers have the right to consent to a police search," *People v. Shields*, 205 Cal. App. 3d 1065, 1068 (6th Dist. 1988), or to a regulatory "inspection." *Appeal of Rudolph and Sletten, Inc., Employer*, 2004 WL 817770, at *5 (Ca. O.S.H.A. Mar. 30, 2004). Moreover, law enforcement entities may rely on consent and need not normally procure judicial warrants before fulfilling their regulatory mandates. *See, e.g.*, *Walnut Hill Estate Enters., LLC v. City of Oroville*, No. 09-cv-0500, 2010 WL 2902346, at *3 (E.D. Cal. July 22, 2010); *Salwasser Mfg. Co. v. Occupational Safety & Health Appeals Bd.*, 214 Cal. App. 3d 625 (5th Dist. 1989).

The other challenged provisions of AB 450 have the same purpose and effect of impermissibly regulating and discriminating against the United States. California prohibits employers from "provid[ing] voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant." Cal. Gov't Code § 7285.2(a)(1). Although the statute contains exceptions for particular categories of documents, *id.* § 7285.2(a)(2), there can be no serious dispute that the statute, when it applies, deliberately stands as an obstacle to the enforcement of federal laws and targets the United States for adverse treatment. *See* Homan Decl. ¶¶ 86, 88 (explaining that AB 450's exception does not exempt criminal investigations, including, for example, investigations into "human smuggling

and trafficking" at certain employers, and impedes "[n]on-work related enforcement operations" that rely on "property owner consent and cooperation"). Indeed, California treats itself far better, providing that any place of business that "refuses to furnish [upon request] any statistics or information" to some of its own regulatory entities "is guilty of a misdemeanor." Cal. Lab. Code § 1174.

Similarly impermissible is California's requirement that employers provide notice to their employees and their authorized representatives of upcoming inspections within 72 hours of receiving notice of such inspections and their results. Cal. Lab. Code § 90.2. Federal investigations obiously will be less effective if targets of the investigations are warned ahead of time and kept abreast of the status of the United States' enforcement efforts. It would be unthinkable for a state to require that suspects be warned of upcoming criminal investigations by the Federal Bureau of Investigation ("FBI") or the California Bureau of Investigations, or that suspects be kept up to date on the results of investigative work done by the FBI and similar state law enforcement entities. There is no basis for a different rule for federal officers enforcing the immigration laws, particularly where California does not apply the same standard to its own law enforcement officers. *See* Cal. Lab. Code § 6321 ("[n]o person or employer shall be given advance warning of an [OSHA] inspection or investigation").

Finally, AB 450 precludes employers from reverifying the employment eligibility of their employees, except when such reverification is required by federal law. Cal. Lab. Code 1019.2(a). Under IRCA, it is unlawful both to hire an unauthorized worker and "to continue to employ [an] alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment." 8 U.S.C. § 1324a(a)(2). Thus, although employers do not have an obligation to continually reverify employment status for any particular individual, they do have a

continuing obligation to avoid knowingly employing unauthorized aliens. And as the Ninth Circuit has recognized, in some circumstances "deliberate failure to investigate suspicious circumstances imputes knowledge." *New El Rey Sausage Co. v. U.S. I.N.S.*, 925 F.2d 1153, 1158 (9th Cir. 1991). Congress thus intended that employers remain well-informed of their employees' immigration status and work authorization, thus satisfying their obligation to prevent unauthorized employment under IRCA. Prohibiting employers from reverifying work authorization when they deem it appropriate to remain in lawful compliance interferes with that employer's ability to mitigate liability and frustrates ICE's overall worksite enforcement efforts, which seek to instill a culture of compliance and accountability.

B. The Constitution does not allow California to inspect facilities holding federal detainees to review federal law enforcement efforts (AB 103)

1. The INA explicitly recognizes the United States' authority to "arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1). Congress expressly contemplated that some of those aliens might not be housed in federal facilities. *See id.* § 1231(g)(1)-(2) (lease or rental of facilities); *id.* § 1103(a)(11) (authorizing payment to states and localities for bed space for detainees).

Although detainees may be housed in nonfederal facilities, they remain federal detainees subject to the control of the United States. Federal law does not contemplate any role for the facility itself, or for states and localities, in determining which aliens are properly subject to detention or the terms and conditions of that detention. And federal regulation prohibits state, local, or private facilities from disclosing information related to detainees. 8 C.F.R. § 236.6.

DHS, through ICE, utilizes twenty detention facilities in California to house civil immigration detainees in federal custody, and regularly uses nine of these facilities. Homan Decl. ¶ 51. All together, these facilities can house approximately 5,700 immigration detainees. *Id.*

Most of these detention facilities are governed by agreements that ICE enters into with county, city, or local government entities. *Id.* ¶¶ 48-51.

2. AB 103 mandates inspection and review of immigration detention facilities that includes the California Attorney General's own assessment of the United States' basis for the alien's detention and transfer and the due process afforded to the alien. California thus seeks through AB 103 to use the location of detention as a mechanism to undertake its own inspection and review of the United States' enforcement of federal immigration law. Cal. Gov't Code § 12532(a), (b). But the Constitution and the INA give the Federal Government authority over federal immigration enforcement, and neither affords California authority to second-guess the Federal Government's determinations regarding detention and transfer of aliens. *See generally Arizona*, 567 U.S. at 394-97.

Under the federal immigration scheme, "[f]ederal officials," and not States, "must decide whether it makes sense to pursue removal." *Arizona*, 567 U.S. at 396. The Supreme Court has thus recognized "the principle that the removal process is entrusted to the discretion of the Federal Government," and held (invalidating a state statute that purported to authorize state officers to make unilateral immigration arrests) that states may not authorize their "officers to decide whether an alien should be detained for being removable." *Id.* at 409. "Decisions of this nature," the Court explained, "touch on foreign relations and must be made with one voice." *Id.*

AB 103 disregards the Federal Government's exclusive authority to determine detention and transfer of removable aliens by creating a state inspection scheme designed to review and publicly report on the circumstances surrounding an alien's apprehension. California's efforts to interfere with the Federal Government's enforcement efforts by applying its own assessment of due process afforded an alien pose an impermissible obstacle to administering the federal

immigration scheme. Just as incarceration of convicted criminals in a nonfederal facility does not afford states the authority to second-guess the circumstances of the prisoners' arrest and criminal conviction, the states have no authority to second-guess the United States' immigration enforcement efforts through an inspection and review scheme. *Cf. Tarble's Case*, 80 U.S. 397 (1871) (state courts cannot exercise habeas review of federal detention).

As the Ninth Circuit explained in invalidating state licensing requirements for federal contractors, a state enactment is preempted to the extent that it "is effectively attempting to review the Federal Government's responsibility determination" in selecting its contractor. *Gartrell Constr.*, 940 F.2d at 439; *see also Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 189-90 (1956) (invalidating state licensing requirement for federal contractors). Here, California attempts to inspect and review the United States' actions in an area of exclusive federal responsibility.

For similar reasons, the effort to inspect and review federal enforcement efforts is prohibited by the doctrine of intergovernmental immunity. *See Johnson v. Maryland*, 254 U.S. 51, 56–57 (1920) ("immunity of the instruments of the United States from state control in the performance of their duties extends to a requirements [sic] that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them"). While neutral, generally applicable state regulations may in certain circumstances incidentally regulate federal contractors, the Ninth Circuit has recognized that absent unambiguous congressional authorization, a state is barred from "regulat[ing] not only the federal contractor[,] but the effective terms of federal contract itself." *Boeing*, 768 F.3d at 840. Here, California impermissibly seeks to regulate and second-guess not only the performance of a federal contract for detention, but the government behavior that led to detention in the first place.

This is an impermissible effort to regulate the United States. *See id.* (invalidating California law that "directly interfere[d] with the functions of the Federal Government" by "mandating the ways in which [federal contractors] render[ed] services that the Federal Government hired [them] to perform").

California's violation of fundamental tenets of our federal system is underscored by the fact that its law applies solely to those having contracts with the United States. The inspection requirements of Section 12532 of the California Government Code apply only to "county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California." Cal. Gov't Code § 12532(a). In contrast, California subjects all other "local detention facilities" to only biennial inspections concerning health and safety, fire suppression preplanning, compliance with training and funding requirements, and the types and availability of visitation. Cal. Penal Code § 6031.1(a) (with the exception of certain specialized facilities). And these state investigations are limited to "minimum standards" concerning the conditions of local correctional facilities and the treatment of prisoners. *Id.* § 6030; *accord* 15 Cal. Code Reg. §§ 1000–1282. Any legitimate state interest in the operation of detention facilities within the state's borders could be addressed by the application of such provisions. There is no legitimate basis for conducting a unique review of immigration facilities merely because the state disagrees with the United States' enforcement of federal immigration law. *See Boeing*, 768 F.3d at 843 (contractor "cannot be subjected to discriminatory regulations because it contracted with the Federal Government").

The statute also impermissibly interferes with federal enforcement of the immigration laws by requiring facilities housing immigration detainees to provide "all necessary access for the observations necessary to effectuate reviews required pursuant to this section, including, but

not limited to, access to detainees, officials, personnel, and records." Cal. Gov't Code § 12532(c). The California Attorney General has already attempted to enforce this provision by seeking to inspect various detention facilities—and in fact inspecting five such facilities—housing immigration detainees on behalf of ICE, including detainee records and law enforcement decisions by facility personnel. Homan Decl. ¶¶ 58-59. Thus, Section 12532(c) intrudes on the orderly operation of facilities carrying out federal functions and is irreconcilable with 8 C.F.R. § 236.6, which establishes that information about immigration detainees belongs solely to the Federal Government. *See* 8 C.F.R. § 236.6. Section 12532(c) therefore "directly regulate[s] the Federal Government's . . . *property*," and is invalid for that reason as well. *See Blackburn v. United States*, 100 F.3d 1426, 1435 (9th Cir. 1996) (emphasis added). Indeed, AB 103 actually requires contractors to violate that regulation, which prohibits "any state or local government entity or any privately operated detention facility that houses, maintains, provides services to, or otherwise holds any detainee on behalf" of DHS from "disclos[ing] or otherwise permit[ting] to be made public the name of, or other information relating to, such detainee." 8 C.F.R. § 236.6; *see Am. Civil Liberties Union of New Jersey, Inc. v. Cty. of Hudson*, 799 A.2d 629, 646–47 (N.J. App. Div. 2002) (explaining that 8 C.F.R. § 236.6 "prohibits the disclosure" of information "concerning federal detainees"). And, unlike laws in other states concerning contract facilities housing immigration detainees, Section 12532 does not "expressly exempt[] from the act any information that is protected from disclosure under federal law." *See, e.g., Comm'r of Correction v. Freedom of Info. Comm'n*, 52 A.3d 636, 654 (Conn. 2012). Section 12532 therefore conflicts with federal law and is preempted because ICE contractors cannot comply with it and 8 C.F.R. § 236.6.[9] *See Arizona*, 567 U.S. at 399.

[9] E Even if section 12532 was not subject to preemption on its face, the manner in which Defendant Becerra has sought to enforce it demonstrates that it is preempted as applied. As noted, Defendant Becerra has, through various

C. **The Constitution does not allow California to restrict cooperation with the United States that is contemplated and protected by federal law (SB 54)**

1. In addition to establishing the circumstances in which aliens can enter, remain in, or be removed from the United States, the INA codifies the Executive Branch's constitutional and inherent authority to investigate, arrest, and detain aliens suspected of being, or found to be, unlawfully present in the United States. *See* 8 U.S.C. §§ 1182, 1225, 1226, 1231, 1357. Actual knowledge of the date of release from state or local custody or the home address of an alien covered by these provisions is critical to DHS's ability to fulfill its statutory obligations regarding detention and removal.

Where an alien has committed certain criminal offenses, "the [Secretary] shall take into custody any alien who" has committed such offenses "when the alien is released," if the alien is already in the custody of state or local officials. *Id.* § 1226(c)(1). Detention following such apprehension is mandatory. *Id.* Where "an alien [ha]s [been] ordered removed, the [Secretary] shall remove the alien from the United States within a period of 90 days," during which time an alien subject to a final order of removal shall be detained pending effectuation of the order. *Id.* § 1231(a)(2). Detention during the removal period prevents the alien from absconding and ensures the alien's presence for removal. *See id.* Aliens may be detained beyond the removal period if they have qualifying criminal convictions, have engaged in activity which endangers public safety, or have been found to be a risk to the community or to be unlikely to comply with the order of removal. *Id.* § 1231(a)(6).

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letters to DHS's detention contractors, indicated an intention to imminently inspect their facilities and has demanded access to various private documents respecting the "welfare of persons detained." To the extent such documents refer to any specific immigration detainee in any way, they are covered by section 236.6, and section 12532 is therefore preempted. *See, e.g., Cty. of Hudson*, 799 A.2d at 655 (finding preempted law "requiring public disclosure of information regarding [DHS] detainees"); *accord Voces de la Frontera v. Clarke*, 891 N.W.2d 803, 815 (Wis. 2017) (request under state law for disclosure of ICE Detainer Form I-247 would be preempted); *Comm'r of Correction*, 52 A.3d at 653 (request under state law for "[National Crime Information Center] printout" of immigration detainee would be preempted).

Congress has also determined, however, that confinement as part of a state criminal sentence shall generally be permitted to proceed notwithstanding the prospect of or pendency of federal removal proceedings, providing that the United States "may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment." 8 U.S.C. § 1231(a)(4); *see id*. § 1231(a)(4)(B) (permitting earlier removal in certain circumstances when the State agrees it is in the "best interest of the State"). The structure of the INA makes clear that states and localities are, in turn, required to allow a basic level of information-sharing to ensure that they do not frustrate federal immigration law. The INA presumes that the United States will be made aware of the release date of aliens who are subject to a final order of removal, providing that an alien's release date from state or local criminal custody and transfer to DHS will trigger a 90-day period in which to execute removal. *See* 8 U.S.C. § 1231(a)(1)(B)(iii) (removal period "begins on . . . the date the alien is released from [state criminal] detention"). Detention during this "removal period" is mandatory for aliens with a qualifying criminal history. *See* 8 U.S.C. § 1231(a)(2). Likewise, as to removable aliens in removal proceedings but not yet subject to a final order of removal, the INA directs DHS to take criminal aliens into mandatory detention during removal proceedings "when the alien is *released*" from state criminal custody. 8 U.S.C. § 1226(c)(1) (emphasis added). The need for information sharing is made more stark by the Ninth Circuit's holding in *Preap v. Johnson* that DHS may not detain such a criminal alien under the mandatory detention provisions if it does not take the alien into custody "promptly upon [his or her] release" from criminal custody. 831 F.3d 1193, 1205 (9th Cir. 2016), *pet. for cert. pending*, No. 16-1363 (U.S. filed May 11, 2017). Thus, it is critical that DHS timely obtain release date information in order to carry out its statutorily mandated functions. *Cf. Jennings v. Rodriguez*, No. 15-1204, --- U.S. ---, 2018 WL 1054878, at *4 (U.S. Feb. 27, 2018) ("To

implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

To effectuate the INA's provisions, DHS issues an "immigration detainer" that "serves to advise another law enforcement agency that [DHS] seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien." 8 C.F.R. § 287.7(a). An immigration "detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody." *Id.* DHS may also request, but not require, that custody be extended by a period not to exceed 48 hours, "in order to permit assumption of custody by the Department." *Id.* § 287.7(d).

Congress has underscored the necessity for "[c]onsultation between federal and state officials" in immigration enforcement, *Arizona*, 567 U.S. at 411, by expressly providing in 8 U.S.C. § 1373(a), that "[n]otwithstanding any other provision of . . . law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal authorities] information regarding the citizenship or immigration status . . . of any individual."

2. New California Government Code Section 7284.6 deliberately seeks to undermine the system that Congress designed, under which states are permitted to have aliens complete their state criminal sentences before being subject to removal by federal officials. The new California statute restricts state and local officials, other than state correctional officers, from cooperating with the United States. Among other things, Section 7284.6 prohibits state and local officials from: "[p]roviding information regarding a person's release date or responding to requests for notification by providing release dates or other information," Cal Gov't Code § 7284.6(a)(1)(C); providing "personal information," including an individual's home address or work address or

any "statements made by, or attributed to, the individual," *id.* § 7284.6(a)(1)(D); Cal. Civil Code § 1798.3; and "[t]ransfer[ring] an individual to immigration authorities," *id.* § 7284.6(a)(4). This general bar is subject to only limited exceptions. State and local law enforcement may share with the United States "information regarding a person's release date" or respond "to requests for notification by providing release dates or other information," but only where an individual subject to such information sharing has been convicted of a limited subset of crimes established by California rather than Congress, or where the information is available to the public. Cal. Gov't Code §§ 7282.5(a), 7284.6(a)(1)(C). Personal information may be shared only if it is available to the public. *Id.* § 7284.6(a)(1)(D). State and local law enforcement agencies may "[t]ransfer an individual to immigration authorities" only if the United States presents a "judicial warrant or judicial probable cause determination," or the individual in question has been convicted of a similarly limited subset of crimes, also established by California rather than Congress. *Id.* §§ 7284.6(a)(4), 7282.5(a).

Notably, the limited subset of crimes under SB 54 that permits sharing release dates or personal information or transferring aliens to federal custody without a judicial warrant does not match the set of crimes under federal law governing that may serve as the predicate for removability (even without a conviction). *See, e.g.* 8 U.S.C. § 1227(a)(4)(A), (B) (individuals who engage in "criminal activity which endangers public safety or national security," or "is engaged in or is likely to engage . . . in any terrorist activity"); *see generally id.* §§ 1182(a)(2), 1227(a)(2), (4). Nor does SB 54 track the set of crimes that require the federal government to detain such aliens upon their release from state or local custody. *See, e.g.*, 8 U.S.C. § 1226(c)(1)(C); 1227(a)(2)(A)(i)(II) (mandating federal custody of aliens "convicted of a crime for which a sentence of one year or longer *may* be imposed") (emphasis added); *see generally id.*

§ 1226(c)(1).

If a state refuses to share with DHS an alien's release date, then DHS cannot fulfill its statutory responsibilities regarding detention and removal because it cannot arrest the alien upon the alien's release from custody. And if it cannot arrest the alien promptly upon release, DHS is impeded in effectuating its statutory mandate to detain dangerous criminals and prevent danger to the community or flight by removable aliens during the administrative immigration hearing and removal process. *See* 8 U.S.C. §§ 1226(c)(1), 1231(a); *Preap*, 831 F.3d at 1205. The effect of the prohibition on providing release dates is compounded by SB 54's prohibition on sharing personal information, including home addresses, with the United States, § 7284.6(a)(1)(D), which deprives DHS of information it needs to locate an alien if the locality refuses to provide notice of release. Such obstruction of DHS's ability to fulfill Congress's directives to it "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona*, 567 U.S. at 399; *see also Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987) ("state law . . . is pre-empted if it interferes with the *methods* by which the federal statute was designed to reach [its] goal") (emphasis added).

In prohibiting officials from sharing information such as an alien's release date, sections 7284.6(a)(1)(C) & (D) also directly conflict with 8 U.S.C. § 1373(a), under which a state or local government may not prohibit the exchange of "information regarding" an individual's immigration status. In "enacting section 1373, Congress sought to prevent any State or local law . . . that prohibits or in any way restricts any communication between State and local officials and the INS.'" *Bologna v. City & Cty. of San Francisco*, 121 Cal. Rptr. 3d 406, 414 (Cal. Ct. App. 3d Div. 2011) (quoting House report) (explaining further that Congressional reports on section 1373 "demonstrate legislative intent to facilitate the enforcement of federal immigration

law"); *see also City of New York v. United States*, 179 F.3d 29, 31-33 (2d Cir. 1999) (discussing legislative history and purpose of § 1373 and concluding that states cannot claim "an untrammeled right to forbid all voluntary cooperation by state or local officials with particular federal programs"). The relevant legislative history of the 1996 amendments to the INA, which added section 1373, explains that "[t]he acquisition, maintenance, and exchange of immigration-related information by State and local agencies is consistent with, and potentially of considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act." S. Rep. No. 104–249, at 19-20 (2d Sess. 1996).

Information such as the release date is "information regarding" immigration status within the contemplation of Section 1373, particularly where the release date implicates the federal authority to take custody pursuant to the removal statute in 8 U.S.C. § 1231. That term does not merely denote an alien's technical immigration status (as has been argued elsewhere), a reading that disregards the interrelationship between state custody and federal obligations. Indeed, Congress's use of "information regarding" in section 1373(a) was intended to broaden the scope of the information covered, as demonstrated by comparing Section 1373(a) to Section 1373(c), which uses the different phrase "[immigration] status information." 8 U.S.C. § 1373. Moreover, another provision of the INA, 8 U.S.C. § 1357(g)(10)(A), in fact defines the phrase "immigration status" to include whether "a particular alien is not lawfully present in the United States." Whether an alien has been *released* from state or local charges is highly relevant to his "lawful presence" given that Congress has explicitly excepted DHS from its duty to remove *unlawfully* present aliens subject to final orders of removal *only* where those aliens are serving a criminal

sentence in State or local custody. *See* 8 U.S.C. § 1231(a)(4).[10]

An alien's home and work address is also relevant to many immigration status issues, including whether an alien admitted in a particular nonimmigrant status (e.g., B-1 business visitor) has remained in the United States beyond their authorized period of admission, evidenced an intent not to abandon his or her foreign residence, or otherwise violated the terms and conditions of such admission (e.g., engaged in unauthorized employment), *see* 8 U.S.C. § 1227(a)(1)(C), 8 C.F.R. § 214.1; whether the alien has been granted work authorization as a benefit attached to a particular status or form of relief, *see* 8 C.F.R. § 274a.12; whether the alien has kept DHS informed of any change of address as required under 8 U.S.C. § 1305; and whether an alien has accrued the necessary continuous presence to be eligible for relief from removal, *id.* § 1229b(a)(1), (a)(2), (b)(1)(A). Moreover, because section 7284.6(a)(1)(D) incorporates Cal. Civil Code § 1798.3, SB 54's general prohibition on sharing any "statements made by, or attributed to" an alien in state or local custody does not just reach home and work address: it reaches even information "regarding immigration" status stated orally by an alien concerning whether they are illegally in the United States or subject to federal custody and removal from the United States.

New section 7284.6(a)(4) likewise impermissibly undermines the INA and impedes the enforcement of the immigration laws. That provision prohibits state and local law enforcement from "[t]ransfer[ring] an individual to immigration authorities," Cal. Gov't Code § 7284.6(a)(4), unless the United States presents a "judicial warrant or judicial probable cause determination," or the individual in question has committed one of a limited subset of crimes. *Id.* § 7282.5(a). As discussed, the INA contemplates that DHS will be able to take custody of removable criminal

[10] To the extent *Steinle v. City & Cty. of San Francisco*, 230 F. Supp. 3d 994, 1015 (N.D. Cal. 2017) suggests otherwise, that Court lacked the benefit of briefing from the United States on this question and did not squarely address the arguments raised by the United States here.

aliens directly at the point and place of release from state or local detention and that detention of such aliens "*must* continue pending a decision on whether the alien is to be removed from the United States" "and that detention may end prior to the conclusion of removal proceedings 'only if' the alien is released for witness-protection purposes." *Jennings*, --- U.S. ---, 2018 WL 1054878, *14-15. Frustrating that scheme will afford an alien the opportunity to abscond and potentially endanger federal officers or members of the public. *Cf. Demore v. Kim*, 538 U.S. 510, 528 (2003) (Congress determined that permitting "release of aliens pending their removal hearings would lead to large numbers of deportable criminal aliens skipping their hearings and remaining at large in the United States unlawfully").

Requiring a judicial warrant or judicial finding of probable cause is irreconcilable with the INA, which establishes a system of civil administrative warrants as the basis for immigration arrest and removal, and does not require or contemplate use of a judicial warrant for civil immigration enforcement. *See* 8 U.S.C. §§ 1226(a), 1231(a). Congress established, through the INA, that civil immigration enforcement is premised on administrative "warrant[s] issued by" DHS and that "an alien may be arrested and detained" based on such a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a)(1); *see Sherman v. U.S. Parole Comm'n*, 502 F.3d 869, 876–80 (9th Cir. 2007) (stating that an executive officer can constitutionally make the necessary probable-cause determination to warrant arrest of an alien "outside the scope of the Fourth Amendment's Warrant Clause," without presentment to a judicial officer); *see also Abel v. United States*, 362 U.S. 217, 233 (1960) (observing "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"). The INA does not require a judicial warrant or a judicial probable cause determination unless a

criminal offense is being charged. *See* 8 U.S.C. § 1226(a); *see also* Homan Decl. ¶ 70. Requiring that DHS procure a judicial warrant in order to take custody of aliens that Congress has already determined are subject to Federal, and not state or local, custody, for removal purposes thus upsets the careful calibration that Congress established in requiring only an administrative warrant as the basis of civil immigration enforcement. *See, e.g.*, *Arizona*, 567 U.S. at 402, 406, 408. It would add significant resource burdens to both the Judicial Branch and the Executive Branch – burdens that would be magnified if other states follow California's example.

Finally, sections 7284.6(a)(1)(C) & (D) and 7284.6(a)(4) are especially flawed because the restrictions on information-sharing and transfer apply only to requests made by federal entities, including "United States Immigration and Customs Enforcement or United States Customs and Border Protection as well as any other immigration authorities." Cal. Gov't Code § 7284.4(e); *see id*. §§ 7284.6(a)(1)(C), (D)(4). Moreover, while the statute defines "immigration authorities" to include, in addition to federal officers, "state, or local officer[s], employee[s], or person[s] performing immigration enforcement functions," *id*. § 7284.4(c), it also defines "[i]mmigration enforcement" to mean "any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any *federal* civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any *federal* criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States." *Id.* § 7284.4(f) (emphasis added).

The challenged provisions have the purpose and effect of treating federal immigration officials worse than other entities that might seek information. If other states or federal officials seek information or transfer of prisoners, SB 54 has no application. Rather, the provision is specifically designed to obstruct federal immigration enforcement: the Bill's drafters made clear

that the Bill is intended to serve as a "counterbalance to this administration" on immigration matters, *see* Hearing on S.B. 54 before the S. Standing Comm. on Public Safety (Jan. 31, 2017) (statement of Sen. Scott Wiener),[11] by requiring state and local actions on immigration "separate from that of the Federal Government." Senate Floor Hearing of 04-03-2017.[12] California has no legitimate interest in obstructing federal immigration enforcement.

II. Irreparable Harm to the United States, The Balance of Harms, and the Public Interest Strongly Militate in Favor of Injunctive Relief.

The challenged provisions of AB 450, AB 103, and SB 54 are intended to uniquely impede the enforcement of the immigration laws, and they have their intended effect. In so doing, the provisions inflict irreparable harm on the United States and on the strong public interest in enforcement of the immigration laws. *Cf. Nken v. Holder*, 556 U.S. 418, 435 (2009) (stating, in the related context of criteria governing stay of removal, that the criteria of "harm to the opposing party" and "the public interest" "merge when the Government is the opposing party" because the Government represents the public interest). In contrast, the State has no legitimate interest in thwarting the operation of the immigration laws and will suffer no harm whatsoever as a result of an injunction.

1. The challenged provisions irreparably undermine the United States' control over regulation of immigration and immigration policy and thereby interfere with the United States' ability to achieve the purposes and objectives of federal law and to pursue its chosen enforcement priorities. In so doing, they undermine the strong public interest in enforcement of the immigration laws.

Among other things, as explained above, these provisions impede federal immigration enforcement by (1) hindering the United States' detection of unauthorized alien workers and

[11] https://ca.digitaldemocracy.org/hearing/10091?startTime=275&vid=381a741e4e525c9efccbbf6062c67f3c
[12] https://ca.digitaldemocracy.org/hearing/52288?startTime=1150&vid=910977abbea937bca7424c93fe3caf1c

employers who employ them, (2) inspecting facilities that hold federal immigration detainees to review the United States' law enforcement efforts to apprehend and detain removable aliens, and (3) restricting cooperation and thus assisting removable aliens, including dangerous criminal aliens, in their efforts to evade federal law enforcement, thereby impairing the United States' ability to locate, detain, prosecute, and remove aliens who pose risks to the safety and security of our Nation's citizens. *See* Homan Decl. ¶¶ 12-92; Scott Decl. ¶¶ 9-29; Hoffman Decl. ¶¶ 13-21. If left intact, these provisions of California law would conflict with Congress's instruction that "the immigration laws of the United States should be enforced vigorously and uniformly," *see* IRCA, Pub. L. No. 99–603, § 115(1), 100 Stat. 3359, 338, and would encourage other state or local laws throughout the United States that seek to restrict or regulate the United States' immigration enforcement efforts, creating a patchwork system of laws severely undermining the "'integrated scheme of regulation' created by Congress," *Arizona*, 567 U.S. at 400; *see also id.* at 395 (immigration the province of "the national sovereign, not the 50 separate States"); *see* Risch Decl. ¶ 10 ("it is critically important that national immigration policy – including immigration enforcement – be governed by a uniform legal regime, and that decisions regarding the development and enforcement of immigration policy be made by the national government, so that the United States can speak to the international arena with one voice in this area.")

The impact on federal enforcement efforts and priorities is not speculative; it is the clear purpose and effect of these provisions. *See* AB 450, Preamble; Cal. Gov't Code § 12532(b); SB 4, Preamble; Cal. Gov't Code § 7282.5(a). Indeed, according to AB 450's sponsor, the purpose of AB 450 is to "protect[] workers from immigration enforcement." *See* Press Release, Assembly Member David Chiu, *Governor Brown Signs Bill to Provide Labor Protections Against ICE*

Worksite Raids.[13] And according to SB 54's sponsors, that law is designed to "build[] a wall of justice against" the United States' "immigration policies." Jazmine Ulloa, *California becomes 'sanctuary state' in rebuke of Trump immigration policy*, L.A. Times, Oct. 5, 2017.[14] And all three of these laws serve California's "goal of protecting immigrants from an expected increase in federal immigration enforcement activities," California Committee on the Judiciary Report, Apr. 22, 2017 (Assembly), at 1, including the "more than 2.6 million undocumented immigrant[s]" residing in California. California Committee on the Judiciary Report (Senate), July 10, 2017, at 1.

Irreparable harm will result because enforcement of the challenged provisions, as discussed above, has caused and continues to cause a significant burden on DHS resources and enforcement of the immigration laws. Homan Decl. ¶¶ 80-89; Hoffman Decl. ¶¶ 14-21; Scott Decl. ¶¶ 27-29. To start, by prohibiting consensual access to any non-public location in a "place of labor," AB 450 eliminates a critical enforcement tool—authorized by the INA—that ICE relies on to combat unauthorized employment of aliens. Homan Decl. ¶¶ 84-88. Similarly, it impedes enforcement efforts by both ICE and CBP, which rely on consent to locate and apprehend illegal aliens such as criminals, aliens unlawfully entering or re-entering between ports of entry, and aliens in flight, but who are located within a place of employment, including exigent circumstances where ICE or CBP agents are in pursuit of illegal aliens. Homan Decl. ¶¶ 86 (AB 450's bar on consent undermines investigations into "human smuggling and trafficking"); Scott Decl. ¶¶ 27, 28 ("If employers are not able to provide such consensual access, Border Patrol's ability to detect and interdict real time illegal activity, ranging from criminal activity to the smuggling of narcotics to potential terrorists seeking to enter the United

[13] available at https://a17.asmdc.org/press-releases/governor-brown-signs-bill-provide-labor-protections-against-ice-worksite-raids (last visited Feb. 14, 2018)
[14] available at http://www.latimes.com/politics/la-pol-ca-brown-california-sanctuary-state-bill-20171005-story.html

States, along the border will be diminished" and "the threat of cross border clandestine tunnels and maritime smuggling going undetected will increase"). Additionally, AB 450 interferes with ICE's ability to resolve civil and criminal cases based on mitigating factors that may warrant lower monetary penalties by limiting what actions employers may agree to take as part of any settlement. Homan Decl. ¶ 85. Furthermore, AB 450 could cause disclosure of employee's personal and sensitive information due to its prohibition on document inspection in private areas, unlike prior to AB 450. Homan Decl. ¶¶ 84, 87.

AB 103 similarly impedes DHS's ability to manage the congressionally mandated detention of removable aliens. Homan Decl. ¶ 60. Already the California Attorney General has demanded that ICE contractors allow inspections of their facilities, provide access to immigration detainees, and turn over sensitive information concerning detainees and immigration enforcement operations. *Id.* ¶¶ 58-60. These inspections require ICE contractors to violate federal statutes and regulations protecting detainee privacy and the confidentiality of ICE records, and require ICE contractors to devote scarce time and resources to responding to such inspection requests, which requires ICE and its contractors to re-allocate resources away from other mission-critical tasks. *Id.* ¶¶ 60, 65. The imposition of these burdensome review requirements, further, may deter private contractors from continuing to work with ICE, thereby necessitating the transfer of immigration detainees outside of California to detention facilities further afield, and the reallocation of scarce resources to do so. *Id.* ¶ 68.

Likewise, SB 54 severely impedes the United States' ability to identify and apprehend removable aliens, especially criminal aliens. Homan Decl. ¶ 22. "In effect, these laws shield from detection removable aliens detained in California prisons and jails and obstruct ICE's efforts to take these aliens into custody for removal purposes." *Id.* ¶ 22. And that effect requires

ICE to expend greater time and resources to identify and apprehend removable criminal aliens. *Id.* ¶ 35. Unlike the transfer of custody in a custodial setting, at-large arrests of removable aliens are both far more costly and dangerous. *Id.* ¶¶ 36-38. While a single ICE officer with timely information and access to a state or local detention facility can identify and arrest multiple individuals each day, ICE otherwise must provide a team of officers to engage in time-consuming work, *e.g.*, data-base searches, visits to address(es) associated with the target, coordination with the activities of other law enforcement agencies, and surveillance, in order to locate each at-large alien. *Id.* ¶ 37. Such apprehensions generally require five officers to be present for officer safety reasons, compared to an arrest of a removable alien within a prison or jail through an orderly transfer from state custody, where only one officer is needed, and require greater training and equipment investment for officers engaged in this comparatively more dangerous field work. *Id.* At-large arrests also involve a greater possibility of the use of force or violence by the target, who, once out in the community, may resist being taken back into custody and have greater access to weapons, exposing officers, the public, and the alien to greater risks of harm. *Id.* ¶ 38. The law has already caused ICE to repurpose at-large teams, which used to be focused on fugitive aliens with final orders of removal, to identifying and apprehending aliens who were released back into the community. *Id.* ¶ 39. This shift has necessarily caused a backlog of fugitive aliens evading their final orders of removal. *Id.*

Moreover, SB 54 undermines the cooperative scheme the INA establishes for purposes of prosecuting criminals on their state charges before removal. Because California effectively requires its subdivisions to release dangerous criminal aliens to the public rather than transfer them back to DHS custody upon release, Scott Decl. ¶ 22, DHS faces a deterrent to transferring aliens it encounters to state or local law enforcement to face accountability for state and local

criminal charges, including serious charges like child sexual abuse, possession of explosive devices, trafficking in controlled substances, slavery, human trafficking, torture, rape, and murder. Scott Decl. ¶¶ 11, 22, 26; Hoffman Decl. ¶¶ 14-18; Homan Decl. ¶ 75. And the release of criminal aliens Congress intended for mandatory detention under 8 U.S.C. § 1226(c) permits those aliens to commit further crimes, as illustrated by their high re-arrest rate, including for very serious crimes likes murder, rape, kidnapping, burglary, domestic abuse, and crimes involving child sexual assault, abuse, or cruelty. Homan Decl. ¶¶ 43-45. Further, SB 54's restrictions on information sharing impede DHS's counterterrorism operations as well, by obstructing real-time sharing of information between DHS and local law enforcement; this "could significantly delay a time-sensitive investigation, the identification of additional targets, and the ability for DHS to place lookouts in systems to prevent outbound travel via air carrier should a target attempt to flee the United States." Homan Decl. ¶ 72.

These provisions also cause irreparable harm to the United States' ability to manage foreign affairs. "A decision on removability requires a determination whether it is appropriate to allow a foreign national to continue living in the United States. Decisions of this nature touch on foreign relations and must be made with one voice." *Arizona*, 567 U.S. at 409. "[E]ven small changes or differences across states in immigration laws, policies, and practices can have ramifications for [the United States'] ability to communicate [its] foreign policy in a single voice – both in the immigration context and across American diplomatic concerns." Risch Decl. ¶ 12. "By imposing requirements on the federal government such as a search warrant to enter premises to enforce U.S. immigration law, or notice requirements prior to surrendering an alien to federal authorities for removal, California law deviates from the national government's policies of strict immigration enforcement and removal of aliens," *id.* ¶ 14, "interfere[s] with efforts to

communicate to foreign governments the need to take back their nationals who are subject to final orders of removal," *id.*, and "interfere[s] with actual removal efforts and dilute[s] the messages the U.S. government communicates to foreign governments concerning their need to cooperate with the United States on removal of their nationals who are subject to final orders of removal." *Id.* ¶ 15.

Finally, even apart from these immediate and concrete effects, the challenged provisions cause ongoing irreparable harm to the constitutional order. As the Supreme Court and the Ninth Circuit have explained, irreparable harm inherently results from the enforcement of a preempted state law. *See New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 366-67 (1989) (suggesting that "irreparable injury may possibly be established . . . by a showing that the challenged state statute is flagrantly and patently violative of . . . the express constitutional prescription of the Supremacy Clause"); *Valle del Sol*, 732 F.3d at 1029 (finding irreparable harm where Supremacy Clause violated); *Arizona*, 641 F.3d at 366 (same).

2. By contrast, a preliminary injunction will not meaningfully burden California and will restore the longstanding constitutional order. California enacted these statutes for the purpose of undermining federal enforcement of the immigration laws. It has no lawful interest in that goal, and it will suffer no cognizable harm as a result of an injunction. *See Cal. Pharmacists Ass'n v. Maxwell–Jolly*, 563 F.3d 847, 852–53 (9th Cir. 2009) ("[I]t is clear that it would not be equitable or in the public's interest to allow the state . . . to violate the requirements of federal law, especially when there are no adequate remedies available. . . . In such circumstances, the interest of preserving the Supremacy Clause is paramount."). There is, however, "always a public interest in prompt execution of [the immigration laws.]" *Nken*, 556 U.S. at 436 (recognizing that "[t]he continued presence of an alien lawfully deemed removable undermines [federal removal

proceedings] and permits and prolongs a continuing violation of United States law").

CONCLUSION

For the foregoing reasons, the Court should grant the United States' motion for a preliminary injunction.

DATED: March 6, 2018

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF CALIFORNIA; EDMUND GERALD BROWN, JR., Governor of California, in his Official Capacity; and XAVIER BECERRA, Attorney General of California, in his Official Capacity,

Defendants.

Case No. XX-cv-XXXX

DECLARATION OF THOMAS D. HOMAN

I, Thomas D. Homan, hereby declare that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I am the Deputy Director and Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS), a position I have held since November 2017. From January 2017 until November 2017, I served as Acting Director of ICE.[1] In both positions, I directly oversee ICE's core operational programs, as well as the agency's managerial and administrative support functions. I direct and oversee ICE's day-to-day work of enforcing the nation's immigration and customs laws; investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and outside of the United

[1] On November 14, 2017, President Trump nominated me to serve as the Director of ICE, and the confirmation process before the U.S. Senate remains ongoing.

States; and supporting the DHS litigators who prosecute exclusion, deportation, and removal proceedings, including against national security threats, criminal aliens, and other aliens posing a threat to public safety. ICE employs more than 20,000 federal civil servants and contract staff in more than 400 offices within the United States and 50 foreign countries.

2. I hold a Bachelor of Science degree in Criminal Justice from the State University of New York Polytechnic Institute (formerly SUNYIT) at Utica-Rome.

3. I am a 34-year veteran of law enforcement, having begun my career as a police officer in New York in 1983. In 1984, I became a U.S. Border Patrol Agent with the former Immigration and Naturalization Service (INS) in Campo, California.[2] In 1988, I became an INS Special Agent in Phoenix, Arizona, and was later promoted to Supervisory Special Agent and Deputy Assistant Director for Investigations. In 1999, I became the Assistant District Director for Investigations (ADDI) in San Antonio, Texas, and three years later transferred to the ADDI position in Dallas, Texas.

4. Upon the creation of ICE in March 2003, I was named the Assistant Special Agent in Charge in Dallas, Texas. In August 2004, I was named the Deputy Special Agent in Charge (DSAC) in that same office. As DSAC, I directed the day-to-day operations of seven local offices, with more than 200 special agents and support personnel, conducting investigations related to terrorism, export enforcement, illicit financing, money laundering, human trafficking, intellectual property rights violations, and cybercrimes.

5. In March of 2009, I became Enforcement and Removal Operations (ERO) Assistant Director for Enforcement at ICE Headquarters. In that position, I was responsible for ICE's

[2] The INS was abolished by the Homeland Security Act of 2002, and ICE was created to perform many of its former enforcement functions, along with the investigative functions of the former U.S. Customs Service. *See* 6 U.S.C. § 252(c); *see also* Reorganization Plan Modification for the Department of Homeland Security, H.R. Doc. No. 108-32, at 3-4 (2003) (set forth as a note to 6 U.S.C.A. § 542 (West 2018)).

enforcement initiatives and components through which ERO identifies and arrests removable aliens, including the Criminal Alien Program, the National Fugitive Operations Program, Field Training, the 287(g) Program,[3] the Law Enforcement Support Center (LESC), the Fugitive Operations Support Center (now the National Criminal Analysis and Targeting Center (NCATC)), the Detainee Enforcement and Processing Offenders by Remote Technology Center, and the Interoperability Response Centers.

6. In October of the following year, I was promoted to Deputy Executive Associate Director for ERO, and in May 2013, I was promoted to Executive Associate Director for ERO, a position I held until January 2017.

7. The statements contained in this declaration are based upon my personal knowledge or upon information provided to me in my official capacity.

Overview of ICE Programs

8. ICE is the largest investigative branch of DHS and is charged with the enforcement of more than 400 federal statutes. ICE's mission is to protect America from the cross-border crime and illegal immigration that threaten national security and public safety through enforcement of the federal laws governing border control, customs, trade, and immigration to promote homeland security and public safety. To carry out that mission, ICE focuses on enforcing immigration law, preventing terrorism, and combating transnational criminal threats.

9. Homeland Security Investigations (HSI), one of ICE's core operational directorates, employs ICE's special agents, who are both immigration officers under 8 U.S.C. § 1357 and customs officers under 19 U.S.C. § 1589a, charged with investigating criminal and civil violations of the federal customs and immigration laws. HSI consists of more than 8,500

[3] This refers to section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g).

employees, of which more than 6,000 are special agents, assigned to more than 200 cities throughout the United States and 50 countries around the world. In fiscal year (FY) 2017, HSI made 32,958 criminal arrests; arrested 4,818 gang members, including 796 MS-13 members; seized $56 million in bulk cash; identified or rescued 904 child exploitation victims and 518 human trafficking victims; and seized 981,586 pounds of narcotics, including 2,370 pounds of fentanyl and 6,967 pounds of heroin. HSI operations in California alone accounted for 4,767 criminal arrests, identifications or rescues of 62 child exploitation victims and 204 human trafficking victims, and seizures of 238,224 pounds of narcotics, including 4,072 pounds of fentanyl and heroin.

10. HSI special agents handling national security and counterterrorism issues participate in Joint Terrorism Task Forces (JTTFs) throughout the country, working closely with federal, state, and local law enforcement agencies to investigate and eradicate terrorist networks. They also work with the U.S. Department of State to ensure that individuals who pose a security risk are not issued U.S. visas and to investigate those believed to have violated the terms of their admission to the United States. HSI also monitors schools, nonimmigrant students, and exchange visitors to ensure that legitimate students, researchers, and exchange visitors are welcomed while those who seek to harm the United States are excluded.

11. HSI works with other federal and foreign law enforcement agencies on investigations targeting transnational organized crime. HSI also conducts investigations related to bulk cash smuggling, commercial fraud, and other financial crimes, as well as worksite violations, immigrant document fraud, benefit fraud, and cybercrime.

12. Key to all HSI investigations is close collaboration with other federal, state, and local partners, from information-sharing to complex joint operations. A global law enforcement

mission that spans so many investigative disciplines simply cannot be advanced without institutional partners. Relatedly, in order to facilitate the prosecution, both federal and state, of aliens who violate our criminal laws, HSI uses its delegated authority pursuant to 8 U.S.C. § 1182(d)(5) to parole aliens into the United States as witnesses and defendants. This mechanism is critical to bringing investigations through to their conclusion and holding violators – both foreign nationals and U.S. citizens – accountable.

13. ERO, another core ICE operational directorate, consists of more than 7,600 employees, including more than 5,700 deportation officers assigned to 24 ERO field offices and overseas locations in 19 countries. ERO deportation officers are immigration officers under 8 U.S.C. § 1357 and possess limited delegated customs officer authority under 19 U.S.C. § 1589a. It is the mission of ERO to identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally – including those who cross the border illegally, a federal misdemeanor, 8 U.S.C. § 1325, and those who illegally reenter after having been removed, a federal felony, 8 U.S.C. § 1326 – or otherwise undermine the integrity of our immigration laws and our border control efforts.

14. While ERO has significant assets near the border, the majority of its immigration enforcement operations take place in the interior of the country. ERO manages all logistical aspects of the removal process by identifying, apprehending, and, when appropriate, detaining removable aliens during the course of immigration proceedings and pending physical removal from the United States. This includes locating and taking into custody fugitive aliens and at-large criminal aliens, as well as identifying aliens in federal, state, and local prisons and jails and working with those authorities to transfer them to ICE custody

without releasing them into the community. When aliens are ordered removed, ERO is responsible for safely repatriating them, or otherwise overseeing their departure from the United States.

15. To accomplish ICE's immigration enforcement objectives, ERO coordinates closely with law enforcement partners within the United States and around the world. One of the most notable law enforcement coordination and partnership efforts within ERO is the 287(g) Program, which involves the identification of aliens who are incarcerated within state and local prisons and jails. This program enables a state or local law enforcement entity to receive delegated immigration officer authority, training, and technology resources for immigration enforcement under the oversight and direction of ICE.

16. ERO enhances multi-agency task forces through its authority to administratively arrest removable aliens who threaten public safety and national security. And, leveraging resources available through foreign law enforcement partners, including INTERPOL, and ICE HSI Attachés stationed abroad, ERO develops investigative leads and provides support in locating and arresting aliens who are wanted for crimes committed in other countries and are at-large in the United States.

17. ERO also administers the LESC, the NCATC, and the Pacific Enforcement Response Center (PERC). The LESC is a national clearinghouse providing timely immigration status, identity information, and real-time assistance to federal, state, and local law enforcement agencies regarding aliens suspected, arrested, or convicted of criminal activity. 8 U.S.C. § 1373(c). The NCATC serves as a national enforcement operations center, analyzing data, developing leads, and disseminating information to ERO law enforcement officials in order to locate and arrest aliens who pose a threat to U.S. communities nationwide. The PERC

operates around-the-clock, 365 days per year, and takes appropriate law enforcement action against aliens suspected, arrested, or convicted of criminal activity across the United States, including by sharing timely and relevant information with ERO field offices and law enforcement partners nationwide and issuing immigration detainers for criminal aliens.

18. Acting principally through ERO (both through the PERC and its 24 field offices across the country), ICE issues immigration detainers to federal, state, and local law enforcement agencies to provide notice of its intent to assume custody, at the time of their release from state or local custody, of aliens detained in these agencies' custody, based on their violation of federal immigration law. In 2017, in California alone, ICE issued over 35,000 detainers which request that the law enforcement agency in whose custody the alien is currently held: provide advance notification of the alien's release to allow for an orderly transfer of the individual into ICE custody; and maintain custody of the alien for up to 48 hours after the time he or she would otherwise have been released, so that ICE may respond to the prison or jail and assume custody. That number is a significant percentage of the 142,356 detainers issued by ICE nationwide during the same time period.

19. In FY 2017, ERO maintained an average daily capacity of 38,125 detention beds nationwide and conducted 143,470 administrative arrests, 105,736 of which were of aliens with at least one known criminal conviction and 22,256 of which were for aliens with a pending criminal charge at the time of arrest. Of these arrests, 40,666 were conducted at-large, meaning that the arrest did not occur in a custodial setting such as a prison or jail. In FY 2017, ICE apprehended 34,606 aliens in California alone, or roughly 15% of the aliens apprehended nationwide, 5,943 of which occurred at-large. Thus far in FY 2018, ICE has apprehended 8,588 aliens in California, or roughly 14% of the aliens apprehended nationwide. In FY

2018 to date, ERO has conducted 14,849 at-large arrests nationwide, of which 2,566 occurred in California. In FY 2017, ERO booked a total of 323,591 aliens into custody, 41,880 of whom were detained in California, and removed 226,119 aliens from the United States, of which 127,699 had at least one known criminal conviction. Of the aliens apprehended by ERO in 2016, 2017, and in 2018 to date, 92%, 90%, and 87%, respectively, were criminal aliens.

Overview of California Legislation Impacting ICE Operations

20. California has enacted a series of laws designed to obstruct enforcement of federal immigration law – California Assembly Bill No. 103 (AB 103), which went into effect on June 27, 2017; and Senate Bill No. 29 (SB 29); Senate Bill No. 54 (SB 54); Assembly Bill No. 450 (AB 450); and Assembly Bill No. 90 (AB 90), all of which became effective on January 1, 2018. These laws affect all aspects of ICE's operations, but they have the most profound impact on ICE's ability to conduct criminal investigations and participate in cooperative efforts with both state and other federal agencies; identify and apprehend removable aliens, especially criminal aliens; and manage the congressionally authorized detention of removable aliens.

21. California's laws impact three ICE geographic Areas of Responsibility (AORs): Los Angeles, San Diego, and San Francisco. The Los Angeles ERO Field Office footprint encompasses seven southern California counties: Los Angeles, Orange, Riverside, San Bernardino, Ventura, Santa Barbara, and San Luis Obispo. The San Diego ERO Field Office encompasses San Diego and Imperial Counties, both of which include the border between the United States and Mexico. The San Francisco ERO Field Office encompasses the remaining 49 counties in California.

Impact on ICE's Ability to Identify Removable Criminal Aliens – SB 54

22. The limitations imposed by SB 54 on the discretion of state and local law enforcement agencies in California to cooperate with ICE have served as an obstacle to ICE's enforcement of the immigration laws, including by limiting ICE's ability to determine which individuals detained in state or local criminal custody are removable from the United States. They also largely prevent state and local law enforcement from exercising discretion to notify ICE prior to releasing criminal aliens into the community or to allow ICE law enforcement officers access to secure space within prisons and jails to serve documents or effectuate arrests. In effect, these laws shield from detection removable aliens detained in California prisons and jails and obstruct ICE's efforts to take these aliens into custody for removal purposes. The lack of access to state and local information requires ICE to expend greater time and resources to identify removable criminal aliens.

23. Historically, ICE officers could obtain alien information (including personally identifiable information (PII)) directly from state and local law enforcement agencies to assist in determining whether prisoners or inmates were removable. However, given recent laws and policies enacted at the state and local level in California, ICE officers must now rely on the publicly available information provided by the prisons and jails. This has complicated the process, requiring that ICE cross-check the limited information provided in such public state and local records against federal databases to determine alienage and criminal history. It is not, however, always possible to determine based on the limited public information whether the individual taken into custody by the state (including for serious crimes) is a removable alien. Moreover, since ICE officers no longer have direct computer access or have only limited computer access in the jails, and portable devices may not always work in the

facilities, records searches may need to be conducted remotely, requiring an even greater expenditure of officer time and resources. Overall, not only is this a more burdensome process than otherwise would be available with better cooperation from state and local law enforcement agencies, but also many removable criminal aliens cannot be identified by this process.

24. In the Los Angeles AOR, ICE maintained cooperative relationships with state and local law enforcement agencies prior to the enactment of the state laws referenced above. Generally, state and local law enforcement agencies provided ICE with access to local jails by providing inmate information and notification of release, temporarily housing inmates for ICE, and honoring detainers – including by providing ICE with advance notice of release information, thereby enabling an orderly transfer of custody to ICE, or briefly maintaining custody of the alien. California law enforcement agencies also participated in the 287(g) Program, pursuant to which ICE enters into agreements with state, local, and tribal law enforcement agencies for those agencies to perform certain limited federal immigration functions at the direction and under the supervision of federal officials. The 287(g) Program enables ICE to achieve more apprehensions and removals than would be possible with existing resources.

25. Previously, ICE had four active 287(g) programs, through which the agency partnered with the Sheriffs of Los Angeles, Orange, Riverside, and San Bernardino Counties. Through the 287(g) Program, ICE had office space and computer access at the local jails in all four counties, including Los Angeles County and Orange County. The jails would also share detainee information directly with ICE, making it possible for ICE to efficiently investigate and identify criminal aliens.

26. SB 54 now prohibits state and local law enforcement agencies from performing the functions of an immigration officer, whether pursuant to the 287(g) Program or any other law, regulation, or policy. On or about December 27, 2017, the Orange County Sheriff's Department (OCSD) terminated its 287(g) agreement with ICE, the last in the Los Angeles AOR, due to SB 54. The loss of the OCSD 287(g) program will result in a significant reduction in the number of criminal aliens identified and removed. In FY 2013, with four active 287(g) programs, the programs had approximately 5,500 encounters with criminal aliens, resulting in approximately 2,600 removals. In FY 2017, the OCSD 287(g) program had approximately 227 encounters with criminal aliens, resulting in approximately 104 removals. An additional six deportation officers would be required to fill the gap left by the loss of the OCSD 287(g) program. With the termination of the OCSD 287(g) program, ICE lost its office space and access to computer equipment, including data lines it had installed at the Intake Release Center of the Orange County Jail.

27. In the San Diego AOR, ICE maintained cooperative relationships with state and local law enforcement agencies prior to the enactment of SB 54. One example of this cooperative relationship between ICE ERO and the Escondido Police Department was the creation of "Operation Joint Effort," which commenced in May 2010, and produced effective enforcement results year after year. In FY 2017 alone, more than 333 removable aliens were arrested by ICE officers assigned to this operation. This partnership allowed for information-sharing between ICE and local law enforcement that resulted in the successful identification of individuals through the use of technology to remotely identify and arrest removable criminal aliens. Local law enforcement and the California public benefited from ICE assistance when investigating crimes leading to more convictions and case closures.

Prior to SB 54, ERO San Diego received notification on all jail releases for which an immigration detainer was lodged, allowing ICE to assume custody in a controlled area of the jail. The enactment of SB 54 ended Operation Joint Effort and decreased public safety by allowing criminal aliens to remain in the community.

28. SB 54 also prevents ICE from having dedicated work space inside the San Diego County jails, resulting in operational inefficiencies, ongoing relocation costs, increased equipment purchases, and strained manpower resources. ERO San Diego was required to remove permanent computer workstations, including desktop computers, printers, scanners, and other items used by ICE officers. In order to maintain a presence at San Diego County jails, ERO instead was forced to purchase new laptop computers and mobile printers and scanners at additional government expense. The new law has also forced the Escondido and Oceanside Police Departments to remove ICE's permanent presence within those departments.

29. Prior to the enactment of SB 54 and similar legislation, most counties in the San Francisco AOR generally cooperated with ICE in providing access to prisoners and inmates, booking information, and release dates. They would generally allow ERO personnel access to secure areas within their jail facilities in order to effectuate arrests, rather than forcing ERO to effectuate those arrests in non-secure locations. Since the enactment of SB 54, Monterey, Sacramento, San Joaquin, and Fresno counties have denied ICE access to relevant booking information, including the names, places of birth, addresses, and criminal histories of aliens in their custody. Access to this information is critical to identifying and removing criminal aliens who have been arrested by local and county officials. Prior to December 22, 2017, Monterey County Jail permitted ICE to assign an officer on-site daily to access inmate

booking records. An ICE officer is no longer allowed access. Prior to January 4, 2018, Sacramento County Jail provided booking information and lists of foreign-born inmates. Now, due to SB 54, Sacramento County Jail will provide ICE access only to information that is available to the general public. Prior to January 24, 2018, San Joaquin County Jail provided ICE inmate-booking information, including lists of foreign-born inmates, but will no longer do so. Prior to enactment of SB 54, Fresno County Jail provided ICE complete access to the jail and its automated systems for booking information and lists of foreign-born inmates. Since January 4, 2018, Fresno County Jail provides ERO only with information that is available to the public.

30. Because SB 54 prevents county jails from notifying ICE of release unless that information is publicly available, the San Diego Sheriff's Office (SDSO) made pending release information available on its public website. However, whereas ICE previously received such information directly from SDSO and could send personnel to the facilities to take custody of the inmate(s) in a secure area without undue delay, ICE must now expend additional officer time actively monitoring the SDSO's webpage to identify release dates for removable aliens. The notification of pending release may be as short as twenty to thirty minutes on "book-and-release" cases or up to eight to ten hours for other releases. Rather than being able to have one officer go directly to the facility, pick up the alien in a secure environment, and travel to the next location as part of an orderly and planned effort, multiple ICE officers must now wait in a public area for an undetermined amount of time and make an at-large arrest outside the facility, at greater cost to the government and with needless risks to the safety of officers and the general public.

31. Starting January 1, 2018, California state prisons began denying ICE access to state prisoners to conduct interviews regarding their immigration status unless the prisoners have provided written consent. Before then, only some county jails required written consent before providing ICE access to county inmates. These consent requirements make it difficult for ICE to conduct enforcement operations. For example, the Wasco State Prison requires written consent from the state prisoners before it will allow ICE access even to serve administrative warrants and removal documents. Thus, ICE is prevented from exercising its authorities under the Immigration and Nationality Act (INA) to initiate removal proceedings and execute removal orders, due to the consent requirement. Because ICE officers are unable to access state prisoners, the Criminal Alien Program (CAP) has been impacted, forcing those officers to conduct at-large arrests out in the community, which poses greater risk to them and the community, while also requiring expenditure of additional resources to achieve the same result (i.e., apprehension of a criminal alien subject to removal from the United States under our immigration laws).

32. SB 54's restrictions on having dedicated space within the police departments have also impacted criminal investigations. The lack of an ICE presence at state police departments has reduced the ability of police detectives from the gang, sex crimes, and violent crimes departments to directly engage with ICE officers to request assistance and share information. Historically, local law enforcement partners would seek ICE assistance and technology to identify individuals with no identification documents or who refused to provide identification, often revealing that individuals had provided false identification to homicide detectives and the gang unit. This ICE technology was previously utilized approximately 30 times each month.

33. ICE's ability to identify removable aliens who are public safety risks was further limited by AB 90. Leading up to the effective date of AB 90, California terminated ICE's access to the CalGang database in October 2017. It is my understanding that the access of other federal law enforcement agencies has not been terminated. The CalGang database is the largest state repository of information concerning suspected and confirmed gang members and is accessed by over 6,000 law enforcement officers in over 56 counties. ICE can no longer effectively identify confirmed gang members in California as a result of AB 90. The CalGang database has been a very important law enforcement tool for ICE in carrying out its mission of enforcing the nation's immigration laws, and keeping the country safe by identifying, locating, and removing criminal aliens who pose a public safety or national security threat. ICE has dedicated gang units that are tasked exclusively with identifying and removing known gang members from the United States. Gang violence is a significant public safety issue in California and across the country. The CalGang database was used to generate leads for immigration law enforcement by screening known gang members in the database against the identity of an encountered subject. The CalGang database was also used by ICE officers upon arrest, or prior to an encounter, while a subject was still in local law enforcement custody. ICE's Fugitive Operations officers routinely ran checks on suspected gang members to identify any potential threats prior to an operation or enforcement action. The CalGang database also allowed for checks on detainees in custody with gang-related tattoos to verify gang membership status and last known contact with police, and was helpful in confirming or corroborating ICE's information about a gang member.

34. The loss of access to information on confirmed gang members and their affiliations also poses an officer and public safety risk. The CalGang database is an important tool for all law enforcement officers who need to follow trends and gang member affiliations within known gang areas, as well as the number of arrests and other law enforcement encounters of known gang members. The CalGang database allows law enforcement officers to obtain photographs of subjects, in addition to identifying characteristics such as facial scars and tattoos; location information such as reported addresses, locations of arrests, and locations where interviewed; information from field interviews conducted by local police, such as location of the interview, the subject's attire, and persons and vehicles associated with the subject.

35. When ICE lacks access to state and local prisons and jails or communication with state and local officials, ICE is less able to identify criminal aliens who are subject to removal from the United States and must spend more time apprehending those aliens at large. As a result, ICE officers have less time to address other enforcement priorities – for example, they have less time to manage caseloads with respect to aliens not detained in ICE custody, leading to delays in resolving those cases. They also have less time to meet with detained aliens regarding detention concerns or post-order custody issues, such as securing identity documents for removal. Ultimately, the more time and resources ICE officers must spend on at-large apprehensions, the fewer criminal illegal aliens they will be able to place into removal proceedings, leaving those criminals and the high recidivism risk they pose at large in the United States.

Impact on ICE Operations to Apprehend Removable Criminal Aliens – SB 54

36. The inability to identify removable criminal aliens prior to release from state or local custody inhibits the safe and effective apprehension of criminal aliens for removal. SB 54's prohibition on notification of criminal release information hinders apprehension of criminal aliens before they are released into the community. Having advance notice of a criminal alien's release from detention is exceptionally important to ICE's ability to enforce the immigration laws and remove dangerous criminal aliens from the United States. There is a serious threat to community safety when criminal aliens are released into the community, and also a very real safety risk for ICE officers who must then re-apprehend these aliens at large. Rather than having these sometimes violent and dangerous offenders transferred to ICE custody in a controlled, law enforcement setting, where they have been searched for weapons and contraband, ICE officers must now search for them at-large in the community. During such encounters, other people may be present, the surroundings are not secure, and individuals may be armed or ready to flee. The inability of state and local law enforcement agencies to cooperate with ICE also means that ICE is unable to obtain information regarding whether additional criminals reside at or frequent the location of the planned ICE arrest, heightening the risk that is already inherent in at-large operations. Additionally, prior to these limitations on cooperation, state and local officers would accompany ICE officers to residences in order to provide a uniformed presence and serve as a deterrent to resistance to ICE's enforcement efforts, as well as allowing for the arrest of individuals who illegally interfered with such efforts.

37. At-large arrests of removable aliens generally require five officers to be present for officer safety reasons. When ICE is able to effect an orderly transfer from state or local custody

by arresting a removable alien within a prison or jail, only one officer is needed, because the alien will have been subject to search and be known to be unarmed; the encounter will be in a controlled environment with law enforcement officers available in the event there is a need for assistance; and there will be no opportunity for innocent bystanders or potential associates who mean to harm a law enforcement officer to be present. On the other hand, during an at-large arrest, the target may be armed; the officers have no physical control over the location; and there is always the potential for disruption of the ICE officers' enforcement action by family members, associates of the target, or members of the public who oppose immigration law enforcement. Thus, at a minimum, the manpower requirement for an at-large arrest is generally at least five times that required for arrests within state or local detention facilities. Also, the cost of training and equipping five officers for an at-large apprehension team is significantly greater than the resources required for an officer making an in-custody arrest (e.g., the costs of weeks of additional training related to at-large arrests, vehicle costs, fuel costs, and tactical communication equipment costs). Moreover, while a single ICE officer in a state or local detention facility can encounter, lodge detainers against, and arrest multiple aliens each day, each team of ICE officers must engage in time-consuming work (e.g., data-base searches, visits to address(es) associated with the target, deconfliction with the activities of other law enforcement agencies, and surveillance), in order to locate each at-large alien, compounding the inefficiencies created by SB 54.

38. At-large arrests unquestionably involve a greater possibility that the target will resist or resort to violence against ICE officers, particularly given that he or she will now have greater access to weapons. For example, in September 2017, while a Los Angeles ERO

Fugitive Operations team (FOT) was conducting a vehicle stop to arrest a confirmed gang member for whom a detainer was not honored by Ventura County, the alien placed his vehicle in reverse and attempted to collide with the FOT vehicle behind him. The FOT member in the vehicle slammed on his brakes and veered left to avoid the gang member, who then proceeded forward, driving around one FOT vehicle and colliding into another FOT vehicle, which immobilized the vehicles of both the alien and the FOT member. The gang member subsequently had to be extracted from his vehicle at gun-point. He was found with a loaded firearm on his person.

39. Since January 2018, ERO Los Angeles has repurposed at-large teams to focus on aliens released into the community by state and local law enforcement. The original focus of these at-large teams was to arrest fugitive aliens who had been issued a final order of removal. However, due to the increase in detainers not being honored, including refusal to provide release dates and prohibitions on the transfer of removable aliens to ICE in a secure custodial setting, ERO Los Angeles has been forced to direct some of the teams to focus on aliens released into the communities from state custody. This shift in resources will lead to an increased backlog of fugitive aliens in the community.

40. Although Fresno County Jail does provide ERO advance notification of pending releases and allows ERO officers to make arrests in the release vestibule area, since January 1, 2018, it has denied ICE physical access to its secured booking and processing area to effectuate arrests of aliens upon their release from the jail. Instead, ICE officers are forced to make arrests in public areas of the jail, significantly increasing the risk to officer safety and public safety, and necessitating multiple officers. Upon making an arrest in the release vestibule at Fresno County Jail, ICE officers must exit via a public area. This is a reversal of prior

policy, which allowed ICE personnel access to non-public areas in order to effectuate arrests.

41. Since January 1, 2018, Sacramento County Jail will release an alien to ICE in the secure area of the jail only if the alien meets certain criteria under SB 54, such as convictions for specific serious crimes or inclusion on the California Sex and Arson Registry. For aliens who do not meet these narrow criteria, however, the jail will release the alien into a public area irrespective of the existence of an ICE detainer requesting advance notification of release and orderly transfer of custody. Even if ICE is aware in advance of the release, ICE officers must take custody of the alien in public areas of the jail, significantly increasing the risk to officer safety and public safety, and necessitating the presence of multiple ICE officers.

42. In the short time since SB 54 went into effect, SDSO has refused to provide advance notification of release in the cases of more than 119 aliens against whom ICE ERO San Diego issued detainers seeking such notification. Some of these aliens were released with serious criminal charges pending, including 8 arrested for spousal battery, 32 arrested for driving under the influence, 5 arrested for drug crimes, and 1 for possession of a weapon. Aiming to be a cooperative partner, ICE transferred one alien in its custody to the San Diego Police Department on a warrant for possession of a firearm silencer, but rather than transfer the alien back to ICE after it completed its work on the case, SDSO simply allowed him to bond out of custody without notifying ICE of the release.

43. When California law enforcement agencies release these aliens into the community, rather than enabling ICE to enforce the federal immigration laws against them, they reoffend in the communities at an alarming rate. By way of reference, of 533 criminal aliens who were

released pursuant to *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), *rev'd and remanded sub nom., Jennings v. Rodriguez*, 583 U.S. ---, 2018 WL 1054878 (2018) (No. 15-1204), in the Los Angeles ERO Field Office AOR from October 2012 through December 2013, ICE records indicate that 223 were subsequently re-arrested by other law enforcement agencies, for a total of 651 crimes as of December 15, 2017. The arrests include arrests for murder, rape, kidnapping, burglary, domestic abuse, and crimes involving child sexual assault, abuse, or cruelty. More generally, I understand based upon statistics from the Department of Justice's Bureau of Justice Statistics that approximately two-thirds of prisoners released from state prisons were arrested for a new crime within 3 years.[4] Given these recidivism rates, ICE has a very strong interest in removing criminal aliens from the United States, and it is remarkable that California would decline to provide release information or transfer these aliens for removal or removal proceedings.

44. There are numerous examples in which state and local law enforcement agencies failed to honor detainers, requesting advance notification of release and the transfer of custody upon release, in cases of aliens convicted of serious offenses, including willful cruelty to a child, drug offenses, sexual battery, and lewd and lascivious acts with a minor.

    a. On January 12, 2017, ICE lodged a detainer against an alien who had been convicted of felony child cruelty and felony possession/purchase for sale of narcotics/controlled substance, among other offenses. On July 12, 2017, Santa Clara County Jail (SCCJ) released the alien without notification to ICE.

    b. On June 19, 2017, an alien twice removed from the United States was booked into the SCCJ, and ICE issued a detainer for the alien the same day. This alien had

[4] Bureau of Justice Statistics, Recidivism of Prisoners Released in 30 States in 2005, https://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986.

prior convictions for domestic violence and burglary, and Santa Clara County had failed to honor six prior detainers against the alien. On July 2, 2017, the alien was again released from custody by SCCJ without notification to ICE.

c. On October 30, 2017, the San Jose Police Department arrested a previously removed alien on the charge of assault with a firearm. The alien was booked into the SCCJ, and ICE issued a detainer. The next day, SCCJ released the alien without notification to ICE. This alien has prior convictions for possession of a controlled substance and carrying a loaded firearm.

d. On April 26, 2016, the Stockton Police Department arrested an alien on a charge of lewd or lascivious act with a child under 14. The alien was booked into San Joaquin County Jail, and ICE issued an immigration detainer against the alien. On February 26, 2017, the alien was convicted of the charge of lewd or lascivious acts with a child under fourteen. On an unknown date, the alien was released without notification to ICE.

e. On May 31, 2017, the Stockton Police Department arrested an alien on the charge of unlawful sexual intercourse with a minor and booked him into the San Joaquin County Jail. The alien had previously been granted voluntary return to Mexico. On the day of the arrest, ICE lodged a detainer. On August 8, 2017, the alien was convicted of unlawful sexual intercourse with a minor, and was subsequently released from custody without notification to ICE.

f. On January 2, 2018, a detainer was placed on an alien while he was in custody at the Ventura County Jail based on an arrest for continuous sexual abuse of a minor. On or about January 2, 2018, the detainer was declined by Ventura

County Jail and no notification was sent to ERO. The alien was released without notification to ERO.

g. On February 6, 2018, an alien was booked into the Sacramento County Jail for the offenses of violation of probation, taking a vehicle without consent, and presenting false identification to peace officers. He was previously convicted on April 13, 2011 for taking a vehicle without consent, a felony, and was sentenced to 487 days jail on March 29, 2012, following multiple probation violations. ICE lodged a detainer against him. On February 14, 2018, ICE ERO was notified that the Sacramento County Jail would not honor ICE's detainer due to SB 54.

h. On February 7, 2018, an alien was arrested for felony possession of a controlled substance while armed and booked into Santa Rita, Alameda County Jail. On February 8, 2018, ICE lodged a detainer with Alameda County. The alien has prior convictions, including a January 2006 conviction for possession of narcotics for sale, for which he was sentenced to 333 days in jail and 5 years of probation. On an unknown date following his arrest, the alien posted bond and was released from Santa Rita, Alameda County Jail without notification to ICE.

45. There have been egregious consequences to California's refusal to notify ICE of a criminal alien's release or transfer such aliens to ICE custody upon release, including the following:

a. On September 1, 2017, ICE lodged a detainer with the San Francisco County Jail (SFCJ) for an alien detained on the charge of petty theft. The SFCJ released the alien without even providing ICE advance notification of release. After his release, on December 6, 2017, he was arrested for first degree murder, second degree robbery, and participating in a criminal gang.

b. On August 2, 2017, the Santa Rosa Police Department arrested a previously removed alien on the charge of inflicting bodily injury on a spouse/cohabitant and booked him into the Sonoma County Jail (SCJ). On the same day, ICE lodged a detainer with the SCJ. SCJ released the alien from custody without providing ICE an opportunity to assume custody. Approximately two weeks after his release by SCJ, the alien was re-arrested for second degree murder and booked back into SCJ.

c. On May 24, 2017, the San Francisco Police Department (SFPD) arrested an alien who illegally entered the United States in 2013, on charges of marijuana sales, conspiracy to commit crime, and possession of brass knuckles. The SFPD booked the alien into the SFCJ. The next day, ICE lodged a detainer. The SFCJ subsequently released the alien without notifying ICE. On September 11, 2017, SFPD arrested the same alien and booked him into the SFCJ on charges of second degree burglary, three counts of robbery in the first degree, conspiracy to commit crime, and accessory to commit a crime.

d. On June 20, 2015, ICE lodged a detainer with the Buena Park Police Department on an alien following his arrest for driving under the influence. The alien had been removed from the United States on two prior occasions and had prior criminal convictions for cruelty to a child, infliction of corporal injury on a spouse or cohabitant, damage to power lines, DUI, spousal battery, and violation of a protective order. The detainer was not honored, and the alien was released back into the community. On February 18, 2018, the alien was arrested for homicide

after he struck and killed a six-year-old girl while driving under the influence and then tried to leave the scene.

46. Rather than promoting security, California's laws increase the risk to public safety by making it more likely that thousands of criminal aliens will be released into the community and reoffend. The laws also reduce efficiency of federal immigration enforcement efforts and expenditures and increase the risk to law enforcement officers by effectively requiring ICE to conduct at-large arrests.

Impact on ICE Detention Operations – AB 103

47. In addition to ICE's authority to identify and apprehend aliens for removal, Congress has authorized, and in some circumstances mandated, detention of aliens, placing particular emphasis on detention of criminal aliens, during removal proceedings and pending effectuation of a final order of removal. AB 103 prohibits state and local law enforcement agencies from entering into immigration detention contracts with the federal government if they did not have such a contract on June 15, 2017.

48. ICE is authorized to contract for detention services, and Congress appropriates funding for this purpose. Pursuant to the Competition in Contracting Act and the Federal Acquisition Regulation, ICE regularly awards contracts through negotiated procurements for detention space and detention services across the United States. ICE operates Service Processing Centers that are owned by the U.S. government, and contracts for support services at these facilities. ICE also utilizes Contract Detention Facilities, which are owned and operated by private contractors for detaining aliens.

49. ICE also has specific statutory authority, 8 U.S.C. § 1103(a)(11)(A), to enter into Intergovernmental Service Agreements (IGSAs). Under this authority, ICE may enter into

agreements with a state or its subdivisions, "for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of persons detained by [ICE] pursuant to Federal law . . . ." ICE relies on this authority for many detention contracts.

50. Finally, ICE also utilizes U.S. Marshals Service (USMS) Intergovernmental Agreements (IGAs) for detention bed space. The tradition of shared detention space between USMS prisoners, federally sentenced inmates, and immigration detainees is longstanding, dating back to the era of the former INS. The USMS enters into IGAs pursuant to 18 U.S.C. § 4013(a), and ICE is often an authorized agency user on these IGAs.

51. ICE has 20 active contracts, IGSAs, or IGAs in California and regularly uses 9 of those facilities, allowing ICE to access approximately 5,700 detention beds in California. These contractors employ approximately 1,903 Californians. Since FY 2013, ICE has spent $687,735,308 on detention beds in California. Average daily ICE detainee populations in California were 4,847 in FY 2016, 5,172 in FY 2017, and 5,209 so far in FY 2018.

52. The enactment of AB 103 has already prevented ICE from entering into new detention contracts and expanding the scope of existing detention contracts with county sheriffs. In addition to adversely impacting the local economy and preventing the creation of additional jobs in California, these laws limit ICE's ability to respond to the demand for detention capacity in California, including reopening any former facilities or contracting with new facilities if a need to accommodate a future surge of illegal immigration arises, and may ultimately require that aliens apprehended in California be detained in other states, far from their family, friends, and legal representatives. This need to transport detainees across the country would also impose a great fiscal cost on taxpayers.

53. ICE's efforts to expand its detention capacity in Sutter, Solano, Placer, Shasta, Fresno, Stanislaus, and San Mateo counties, have been completely frustrated by the enactment of AB 103. ICE was informed by officials in those counties that they were prohibited from negotiating any new contracts with ICE to house detainees in their county facilities. Further, ICE's efforts to modify existing contracts with its current partners – Theo Lacy and James Musick Facilities in Orange County, West County Detention Center in Contra Costa County, Yuba County Jail, and Rio Cosumnes Correctional Center in Sacramento County – were likewise refused. Many of these declinations directly cited a willingness to expand, but the inability to do so under SB 54 or AB 103.

54. Section 12 of AB 103 requires the California Attorney General to review immigration detention facilities, including with regard to: (1) conditions of confinement; (2) "the standards of care and due process provided" to the detainees; and (3) the "circumstances around the immigrants' apprehension and transfer to the facility." It also purports to allow the California Attorney General "all necessary access for the observations necessary to effectuate reviews" including, "but not limited to, access to detainees, officials, personnel, and records." Prior to AB 103, California did not engage in such review.

55. ERO is already responsible for ensuring a safe and secure environment for aliens detained in its custody, including by monitoring contract facilities for compliance with applicable laws, regulations, policies, and ICE detention standards; and renovating or acquiring new facilities as necessary. ICE takes very seriously the health, safety, and welfare of individuals in its custody. ICE's National Detention Standards 2000 and the Performance-Based National Detention Standards, dated 2008 and 2011, establish consistent conditions of confinement, program operations, and management expectations across the agency's detention system.

These standards were designed with the unique nature of civil immigration detention in mind and were developed with input from agency employees, stakeholders, subject matter experts, and nongovernmental organizations. ICE has also established policy and procedures for the prevention of sexual abuse and assault of individuals in ICE custody. ICE is committed to operating facilities that provide effective medical and mental health services, access to legal services and religious opportunities, improved communication with detainees with limited English proficiency, timely resolution of complaints and grievances, and increased recreation and visitation.

56. All ICE facilities undergo robust inspections to ensure they meet applicable ICE detention standards. ICE uses a multi-pronged approach to oversee conditions in its facilities, including inspections by local field office compliance teams; contract performance reviews conducted on an ongoing basis by the Contracting Officers' Representatives who manage facility contracts; and annual inspections conducted by ICE ERO via a contractor. Additionally, ICE has Detention Service Managers stationed at facilities housing nearly 80% of its detained population, who conduct daily on-site compliance reviews to quickly identify and resolve issues that arise during facility operations.

57. Facilities are also subject to oversight by the ICE Office of Professional Responsibility's Office of Detention Oversight (ODO), which conducts inspections focused solely on compliance with ICE detention standards tied directly to detainee life, health, safety, civil rights, and civil liberties. These targeted inspections focus on local policies and practices that may have long lasting and meaningful impacts on ICE detainees. ODO inspection teams consist of subject matter experts from the private and public sectors, many of whom have 20-30 years of experience operating detention facilities. ODO provides its findings to

ICE executive management and releases its final inspection reports publicly via ICE's Freedom of Information Act (FOIA) reading room at https://www.ice.gov/foia/library. ICE detention facilities are also subject to compliance visits and investigations by the DHS Office for Civil Rights and Civil Liberties and DHS Office of the Inspector General.

58. Representatives from the California Department of Justice, Office of the Attorney General (OAG) inspected the James A. Musick facility and the Intake and Release Center of the Orange County Jail on December 13, 2017 and the Theo Lacy facility on December 14, 2017. These facilities are maintained and operated by OCSD. ICE officials were notified that the inspection was conducted pursuant to California Government Code section 12532, as well as the Attorney General's authority under the California Constitution, article V, section 13. OCSD conducted the tours with local ICE management in attendance. Prior to the tour, Los Angeles ICE management objected to allowing the California OAG to conduct detainee interviews and to the release of PII. The OAG lead inspector noted the objection, cited California law, and continued with the inspection. OCSD staff permitted the OAG to interview federal immigration detainees over ICE's objections.

59. Representatives from the California OAG have also inspected the West County Detention Center in Contra Costa County, the Yuba County Jail, and the Rio Cosumnes Correctional Center in Sacramento County.

60. These inspections have caused the facilities to expend resources otherwise necessary for ensuring the safety and security of the detainees. Each inspection presents a burdensome intrusion into facility operations and pulls scarce resources away from other sensitive law enforcement tasks. These burdens are ongoing.

61. Moreover, as a federal agency subject to federal statutes, regulations, and policies on information disclosure, enforcement of AB 103's provisions allowing the California OAG to perform reviews of immigration detention facilities, including wide-ranging access to facilities, individuals, and records conflict with ICE's ability to comply with federal information disclosure laws, regulations, and policies.

62. Information obtained or developed as a result of the agreement with the detention facility are federal records under the control of ICE for purposes of disclosure and are subject to disclosure pursuant to applicable federal information laws, regulations, and policies.

63. In the first instance, AB 103 on its face allows the State of California to circumvent the provisions of the FOIA by providing for access to federal records outside the parameters of this statutory framework. The FOIA has specific requirements as to how third parties must seek access to records and information maintained by federal agencies. The FOIA also has specific exemptions that the federal government can apply to withhold certain types of information.

64. Notwithstanding the requirements of the FOIA, the broad allowances made by AB 103 for the California OAG to perform reviews of immigration detention facilities to include wide-ranging access to facilities, individuals, and records, if enforced by the state, will conflict with ICE's ability to comply with other federal information disclosure laws, regulations, and policies. For example, ICE is unable to provide such wide-ranging access to detainees in person or access to detainee information as would be required by AB 103, absent consent from the individual. For those individuals who are lawful permanent residents, ICE may only release personal information pursuant to the federal Privacy Act. For other aliens, ICE must comply with other DHS policies that generally prohibit the disclosure of information

about persons to third parties. Both the Privacy Act and the DHS Privacy Policy require that there be a valid exception (one of which is consent) to release any information pertaining to an individual.

65. In addition to compliance with the Privacy Act and DHS Privacy Policy, ICE is also required to comply with several confidentiality statutes and regulations that prohibit disclosure of information about persons who are applicants for or beneficiaries of certain types of immigration statuses. For example, 8 U.S.C. § 1367 prohibits disclosure of *any* information about an individual who is an applicant for or beneficiary of immigration benefits under the Violence Against Women Act or a T or U visa applicant, unless one or more specific statutory exceptions apply. The California OAG review under AB 103 would not fall under one of the statutory exceptions. Thus, ICE would be prohibited by law from disclosing any information about detainees that have these particular confidentiality protections. This places the access to information and records provisions of AB 103 in conflict with ICE's ability to comply with other federal information disclosure laws, regulations, and policies.

66. Further, AB 103 contemplates allowing the California OAG broad access to the facilities, records, and personnel in furtherance of their reviews. This access is in direct conflict with the law enforcement privilege that ICE routinely asserts over such records pertaining to the operations of ICE facilities. ICE routinely withholds such information in response to FOIA requests, responses to third-party requests for information, and other public disclosures, as law enforcement sensitive to the extent such records or access to information would disclose details regarding facility operations (e.g., information such as how many guards are at the

facility at any given time, shift changes, hours of guard duty, staffing and incident response plans, blueprints or layout of the facility).

67. Finally, section 12 of AB 103 provides that the California Attorney General will report to the State Legislature, Governor, and public on his findings. The law, as drafted, makes no allowance for the protection from disclosure of law enforcement sensitive information or statutorily protected information about individuals, or for any other information considered by the government to be privileged. This provision exacerbates the information-sharing issues mentioned above relating to individualized detainee access/information and access/information to law enforcement sensitive material or other privileged material. As written, not only will AB 103 place ICE in potential conflict with federal information law statutes, regulations, and policies, but if any of the above information was then released to the state legislature, Governor, and the public as part of the California OAG's findings, it may subject ICE to potential liability from individuals, and potentially subject ICE officers or facility personnel to operational risk or harm.

68. The imposition of burdensome new requirements on private contractors by AB 103, including reviews of detention conditions by the California OAG and the requirement that all facilities used to detain aliens for immigration purposes be subject to the California Public Records Act (CPRA), may also deter private contractors from working with ICE. For example, the Adelanto Detention Facility has already received an extensive request for records under the CPRA.

69. In addition, SB 29, a separate law, builds on AB 103 by extending the contracting prohibitions to apply to ICE contracts with private entities. SB 29 also requires all

immigration detention facilities in California to be subject to CPRA, rendering all of the private corporation's records subject to release.

Impact on ICE National Security and Investigative Operations – SB 54

70. In addition to their significant impact on ICE removal operations, California's laws encroach upon ICE's investigative authorities—adversely impacting ICE's national security and criminal investigation missions. SB 54 only permits local and state authorities to accept a judicial warrant that is based on probable cause for a violation of federal criminal immigration law before turning a removable alien over to ICE for processing under federal immigration law. Congress, however, provided authority to ICE officers and agents to arrest on administrative civil immigration warrants. ICE makes hundreds of thousands of civil immigration arrests each year. Requiring ICE to first seek out a federal judge would create operational difficulties and burdens for both ICE and the federal courts, significantly impeding ICE's ability to fulfill its Congressional charge to issue administrative warrants for the arrest of aliens believed to be removable. Requiring criminal immigration violations as a predicate to cooperating with ICE also prevents ICE from setting its own immigration enforcement priorities. And, SB 54 proceeds from a flawed assumption, as I am unaware of any authority for a federal court to issue a warrant for a civil immigration arrest under the INA.

71. Although SB 54 provides a carve-out to its limitations for participation in joint law enforcement task forces where "the primary purpose" of the task force is not "immigration enforcement," and other requirements are met, many jurisdictions have read this exception exceedingly narrowly. While HSI continues to contribute the second largest number of personnel to JTTFs nationwide, certain California law enforcement agencies now refuse to

share information directly with HSI and, rather, require that the request for such information come directly from the Federal Bureau of Investigation (FBI).

72. The lack of prompt information-sharing will impede HSI's counter-terrorism work on a day-to-day basis and could have a significant negative impact on national security in the event of a crisis when the need for such sharing is most critical. For example, following the December 2, 2015, terrorist attack in San Bernardino, California, information-sharing between the San Bernardino Police Department (SBPD) and HSI agents assigned to the local JTTF allowed for real-time sharing of essential DHS-held information, including immigration history, information from alien files, and international travel histories of several subjects of interest in the investigation. SBPD led the investigation in the first 72 hours post-attack, at which point the FBI declared the San Bernardino attack an international terrorism event and took lead of the investigation. Within the first 72 hours post-attack, the ease of information-sharing between ICE and SBPD resulted in the identification of accomplices and the discovery of a marriage fraud conspiracy among the accomplices. Today, if a similar terrorist attack were to occur within California, the SB 54 prohibitions on information-sharing between local law enforcement agencies and ICE could significantly delay a time-sensitive investigation, the identification of additional targets, and the ability for DHS to place lookouts in systems to prevent outbound travel via air carrier should a target attempt to flee the United States.

73. SB 54 has also limited ICE access to aliens who may assist in building criminal cases, thus interfering with ICE's ability to pursue the prosecution or removal of aliens who pose particularly significant threats to public safety or national security. Aliens unlawfully in the United States may have important information about criminals they encounter—from

transnational narco-terrorists to alien smugglers and beyond—and routinely support ICE's enforcement activities by serving as confidential informants (CIs) or witnesses. When ICE's witnesses or CIs are removable aliens, ICE can exercise its discretion to ensure the alien is able to remain in the United States to assist in an investigation, prosecution, or both.

74. In addition, lack of cooperation among California law enforcement agencies and ICE jeopardizes public safety, as well as the safety of our nation's law enforcement officers. For example, in May 2017, HSI San Jose notified the Santa Cruz County Sheriff's Office (SCCSO) of an impending child exploitation search warrant to be executed at a residence behind a local elementary school. In light of the possibility that HSI may encounter illegal aliens in executing the warrant, the SCCSO denied HSI San Jose's request for marked units to be parked outside the subject's residence, during the execution of the warrant, to ensure public and officer safety. As a result, HSI San Jose was forced to acquire assistance outside of the Santa Cruz County jurisdiction. Throughout FY 2017, similar denials of cooperation with HSI occurred in Los Angeles during an enforcement action against 18th Street gang members, and in Long Beach during a criminal narcotics investigation. The lack of cooperation and delays in enforcement action not only place the local community at risk, but also create an increasing risk to officer safety.

75. SB 54 has also had adverse implications for state criminal prosecutions. Federal law, 8 U.S.C. § 1182(d)(5)(A), authorizes DHS to parole into the United States aliens who are otherwise inadmissible for urgent humanitarian reasons or a significant public benefit. Pursuant to that authority as delegated within DHS, a federal, state or local law enforcement agency may request that HSI grant a "significant public benefit parole" (SPBP) to allow inadmissible aliens to enter the United States, for a brief period of time, if their limited

presence would be beneficial to enforcing public safety. This frequently occurs in the context of paroling into the United States criminal defendants or important witnesses needed for trial or investigations but who are otherwise inadmissible. Of note, such witnesses or defendants may be inadmissible due to a violent criminal history, or for having engaged in terrorist activity or human rights violations. Allowing a criminal defendant into the United States for prosecution may ensure that justice is done because one or more criminal investigations or prosecutions are successful. However, public safety demands that the paroled alien be monitored and removed from the country when the criminal proceedings, or sentence, is complete. To this end, law enforcement agencies requesting SPBP are required to adhere to HSI protocols with regard to requesting, vetting, supervising, and tracking individuals for whom HSI has granted a SPBP. In the interest of public safety, cooperation from the law enforcement agency that is granted a SPBP is necessary to allow ICE to ensure that the parolee is subsequently removed from the United States upon termination of the SPBP. SB54 makes it impossible for state and local law enforcement agencies to meet their obligation to return parolees to DHS custody, frustrating our ability to authorize them to come to the United States for prosecution.

76. While SPBP is a vital tool for furthering law enforcement in the United States, ICE takes into consideration the serious risks associated with SPBPs and the possibility that an otherwise inadmissible alien may permanently remain in the United States, for instance, if the state or local law enforcement agency fails to notify ICE that a defendant has been acquitted or released on bail by a state court judge overseeing the criminal case.

77. HSI has approved approximately 45 SPBP requests each of the past three FYs from California for state prosecutions. While the total number of SPBP requests granted annually

has remained constant since FY 2015, SB 54 interferes with the ability to grant SPBPs for the purpose of California criminal prosecutions. Specifically, the prohibitions on California law enforcement agencies to cooperate with ICE to ensure the transfer of custody of a parolee to ICE for removal at the conclusion of the SPBP period stand in the way of this important law enforcement and foreign policy tool.

78. In fact, HSI recently denied a California law enforcement agency's request for a parole to bring into the United States a Guatemalan native charged with multiple counts of child abuse because the requesting law enforcement agency could not confirm that it would notify ICE if the alien were released from state or local custody. In light of the recent enactment of SB 54, ICE must weigh the benefit of a potentially successful prosecution with the very likely risk that the relevant California law enforcement agencies cannot, due to SB 54, notify ICE of an impending release or transfer the alien to ICE custody for removal upon completion criminal proceedings. The law's prohibition on advance notification of release or transfer of custody would result in the alien being released, without legal status in the United States or effective monitoring, among the public in California, and with the possibility of becoming a repeat criminal offender.

79. The harms caused by SB 54's prohibitions on information sharing are compounded by AB 90, which, as discussed above, precludes ICE access to the CalGang database, hampering state and local criminal law enforcement efforts. Previously, ICE not only accessed the database, but also provided information for inclusion therein, including new or updated photographs of the subject showing the face, tattoos, scars, and style of dress; aliases; associates; change in gang membership (e.g., switching to a different gang, or dropping out of a gang); and information important to officer safety such as whether the individual is

violent, uses controlled substances, or possesses a weapon. As ICE has now lost access to CalGang, it will no longer be able to search, update, or add subjects and their information. Consequently, AB 90 deprives state and local law enforcement agencies in California of information in ICE's possession that it once provided freely.

Impact on ICE Worksite Enforcement Operations – AB 450

80. In a combination of criminal and civil interference, California has targeted ICE's ability to conduct investigations regarding unlawful employment. Unlawful employment is a magnet for illegal immigration. Accordingly, ICE is committed to combating violations of federal law by both employers and employees. AB 450 prohibits public and private employers from providing voluntary consent for ICE to enter any nonpublic area of a place of labor without a judicial warrant except where otherwise provided by federal law or to access to records other than Employment Eligibility Verification Form I-9 (Form I-9) documents. AB 450 also imposes requirements on employers to notify employees of information pertaining to a notice of inspection.

81. Section 274A(b) of the INA, 8 U.S.C. § 1324a(b), requires employers to verify the identity and employment eligibility of all individuals hired in the United States after November 6, 1986. An implementing regulation, 8 C.F.R. § 274a.2, designates the Form I-9 as the primary means of documenting this verification. Employers are required by law to maintain for inspection original Forms I-9 for all current employees. In the case of former employees, retention of Forms I-9 is required for a period of at least three years from the date of hire or for one year after the employee is no longer employed, whichever is longer.

82. ICE's worksite enforcement efforts are not only related to unlawful employment and document fraud. Employment violations can relate to numerous other areas of criminal

activity including those that pose grave danger to American communities. Unlawful employment can increase the risk to, and vulnerabilities of, high-value target worksites, including chemical facilities, communications, critical manufacturing, dams, emergency services, government facilities, information technology, nuclear reactors and materials and waste and transportation systems. As such, ICE focuses its criminal investigations on the most egregious violators and concentrates its worksite inspection efforts on employers conducting business in these critical infrastructure and national security interest industries and sectors Further, ICE prioritizes employers who abuse and exploit their workers, aid in the smuggling or trafficking of their alien workforce into the United States, create false identity documents or facilitate document fraud, or create an entire business model using an unauthorized workforce. ICE also investigates employers who use force, threats, or coercion – such as threatening to have employees deported – to keep unauthorized alien workers from reporting substandard wages or unsafe working conditions.

83. The Form I-9 inspection process is an essential component of ICE's overall worksite enforcement efforts. The Notice of Inspection initiates the Form I-9 administrative inspection process. Employers are provided with at least three business days to produce the Forms I-9. ICE conducted approximately 1,300 I-9 inspections in FY 2017 across the country, including approximately 230 in California. If conditions are appropriate, any of those I-9 inspections could lead to a worksite inspection with the consent of the employer, and employers are often very willing to provide consent in order to alleviate and address concerns that arise during the inspection process. AB 450 may directly interfere with this cooperative process.

84. While Section 2(a)(2) of AB 450 exempts I-9 Employment Eligibility Verification forms and other documents for which a Notice of Inspection has been provided to an employer, the overall language of the law may add confusion about what an employer is and is not permitted to do during a Form I-9 inspection. While service of the Notice of Inspection may not be impacted, the law may create confusion on behalf of an employer when HSI agents or auditors return to the place of business to retrieve the Forms I-9 and other supporting documentation. This documentation may be located in a non-public area of a business. However, under AB 450, an employer may violate the law if he or she permits HSI agents to enter into the private areas of the business to retrieve these documents. Preventing ICE officers or agents from entering a non-public area to have discussions with employers has negative consequences. The ability to communicate freely in private benefits both ICE and the employer, including when the PII of employees or other sensitive information is being discussion. In practice, the prohibition of ICE officers from entering a non-public area places the employer in an extremely difficult situation. Even employers complying with all laws and regulations related to the Forms I-9 may not want the public, including their customers or clients, to see ICE reviewing their records.

85. During a Form I-9 inspection, HSI often has cause to serve additional notices upon an employer, to include a Notice of Technical/Procedural Failures, Notice of Discrepancies, Notice of Suspect Documents, Warning Notice and a Notice of Intent to Fine. Service of these documents usually occurs in person at the place of business, in an office or private area to allow the employer some discretion and to permit HSI to answer any questions that the employer may have. AB 450 would prohibit HSI from entering the private areas for the service of these additional documents. HSI agents and auditors routinely conduct in-depth

interviews with business owners, managers and human resource personnel in connection with a Form I-9 inspection, either during service of the Notice of Inspection or during a follow-up interview at a previously arranged time. These interviews often involve sensitive discussions regarding particular employees, hiring practices, and information that may contain PII. AB 450 would prohibit an employer from admitting HSI agents/auditors into non-public areas of a business to conduct this interview in a private setting. This prohibition could impede HSI from obtaining valuable evidence (e.g., statements from business owners, employees and/or human resource managers) to be used in the prosecution of an employer found to be committing egregious employment violations. This prohibition may also prevent HSI from obtaining sufficient information to determine the existence of aggravating or mitigating factors used in the process of determining any civil monetary sanctions contemplated against an employer in connection with a Form I-9 audit, as an employer may be hesitant to cooperate with HSI agents for fear of being prosecuted under AB 450.

86. In enforcing civil and criminal violations of federal law, consent can be a valuable tool, especially when an investigation has not proceeded to the point where a judicial warrant is available. In warrantless situations, AB 450 would become problematic where an employer wishes to grant consent to enter but cannot do so because of the civil penalties he or she would face due to AB 450. This impedes ICE's ability to conduct operations in a manner which would be permissible in any non-immigration-related civil or criminal investigation by any other federal agency. In many cases, consensual entry and encounters occur at the beginning of civil and criminal investigations with the information gleaned acting to further the investigation. Not being able to commence an investigation in this manner could be

extremely detrimental to ICE's enforcement efforts, particularly in the realm of human smuggling and trafficking.

87. While the stated purpose of AB 450 is to protect employees, the practical effect of AB 450 will likely be that discussions that have historically been, and should be, conducted in private between ICE and the employer will now be conducted in a public area. This may cause the disclosure of an employee's PII, which is not in the employee's best interest and jeopardizes the employee's privacy.

88. AB 450 could also cause the workforce, authorized and unauthorized, undue panic and adversely affect ICE's worksite enforcement investigations. Employees whom ICE would identify for potential interview may now think when ICE comes to interview them that they are going to be arrested. This could lead to a violent confrontation, which would put the agent, the individual, and others in the vicinity at risk. Finally, AB 450 would also potentially prohibit employers from joining the ICE Mutual Agreement between Government and Employers (IMAGE) program. This voluntary program allows employers to partner with ICE to ensure the integrity and stability of their workforce. Partnership in the IMAGE program requires an employer to voluntarily submit to a Form I-9 audit, and requires close, repeated interaction between HSI agents and a business. By necessity, this interaction would normally occur in a private area of a business and may include training on Form I-9 completion, use of the E-Verify system, and an analysis of an employer's hiring policies and practices. Many issues discussed during the IMAGE process may involve sensitive personnel issues and may include PII of employees. While entirely voluntary, the IMAGE program will be negatively impacted by AB 450.

89. As illustrated by these examples, SB 54, AB 90, and AB 450 extend well beyond immigration-related enforcement to target national security operations and investigations regarding potential violations of federal law. The combined effect of these laws is to impede the entirety of ICE's mission set, jeopardizing agency operations and public safety throughout the United States, not simply California.

General Impact of Mosaic of Anti-Immigration Enforcement Legislation on ICE Operations

90. In addition to the concrete adverse effects on ICE's law enforcement operations, the attitudinal climate in California has fostered hostility towards ICE's congressionally authorized mission and obligations. For example, on February 24, 2018, Oakland County Mayor Libby Schaaf issued a press release warning of upcoming ICE immigration enforcement actions, noting that California state law prohibits federal agents from accessing employee-only areas of business and concluding that "immigrants and families [ ] deserve to live free from the constant threat of arrest and deportation." These irresponsible actions, explicitly premised in part on state law, serve only to impede federal law enforcement and place federal law enforcement officials at risk.

91. Although not directly attributable to a specific California law, the mosaic of anti-immigration enforcement legislation enacted by California has created an atmosphere of defiance, which places the safety of ICE officers and employees at risk. The increase in the number of assaults on ICE law enforcement officers and contract personnel is particularly concerning. The number of such incidents increased from 15 in FY 2015 to 73 in FY 2017, nationwide. As of January 10, 2018, there have already been 34 incidents. In California alone, the incidents increased from 4 in FY 2015 to 17 in FY 2017, with 2 reported as of January 10, 2018.

Conclusion

92. California's efforts to put into place its own immigration law regime are frustrating ICE's ability to identify, apprehend, detain, and remove criminal aliens from the United States and hindering ICE's enforcement missions in other arenas, including national security, criminal investigations and prosecutions, and worksite enforcement. In addition, California's legislative obstructions to enforcement of federal law have jeopardized officer and public safety by requiring unnecessary at-large arrests, limiting sharing of valuable law enforcement information, and promoting a culture of hostility toward ICE's mission and personnel. As long as these laws remain in effect, the safety of the people of California, including ICE employees and contractors who reside in the state, is subject to unnecessary and inappropriate risk.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed in Washington, D.C. on this 6th day of March, 2018.

Thomas D. Homan
Deputy Director and Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

United States of America, *Plaintiff,*	)	
v.	)	No.
State of California, *et al.*, *Defendants.*	)	

DECLARATION OF TODD HOFFMAN

I, Todd Hoffman, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me in the course of my employment, hereby make the following declaration with respect to the above-captioned matter:

1. I am the Executive Director, Admissibility and Passenger Programs (APP), Office of Field Operations (OFO), U.S. Customs and Border Protection (CBP). In this position, I oversee nine Director-level program offices: the Admissibility Review Office; Electronic System for Travel Authorization Program Management Office; Fraudulent Document Analysis Unit; Traveler Entry Programs; Immigration Advisory Programs; Traveler Policy; Enforcement Programs Division; Trusted Traveler Programs; and the Traveler Call Center. I have served in this position since 2015. Prior to serving in this role, I was the Port Director at Los Angeles International Airport.
2. As Executive Director of APP, I am responsible for overseeing and coordinating all OFO programs related to the admission and processing of international visitors and travelers to the United States.

3. CBP, a component of the Department of Homeland Security (DHS), is responsible for safeguarding the United States from dangerous people and materials, while facilitating legitimate trade and travel. OFO, as the primary law enforcement agency responsible for securing the U.S. border at ports of entry (POEs), plays a critical role in executing CBP's mission. In fiscal year 2017, for example, CBP (to include OFO and the United States Border Patrol) arrested 28,768 individuals with criminal convictions or who were wanted by law enforcement; and seized over 65,000 pounds of cocaine, over 4,000 pounds of heroin, over 1.1 million pounds of marijuana, over 45,000 pounds of methamphetamine, and over 1,000 pounds of fentanyl. Specifically, OFO seized almost 450,000 pounds of narcotics (including cocaine, heroin, marijuana, methamphetamine, and fentanyl) at the POEs, and arrested more than 17,000 individuals with criminal convictions or active warrants. In addition, on a typical day in fiscal year 2017, CBP seized 5,863 pounds of narcotics, seized $265,205 in undeclared currency, arrested 21 wanted criminals at POEs, and identified 1,607 individuals of suspected national security concern.

4. At the POEs, CBP officers ensure that persons and merchandise seeking to enter the United States comply with all U.S. laws, including immigration, customs, and agriculture laws, as well as laws enforced on behalf of other federal agencies. In addition, CBP officers inspect incoming cargo on a daily basis to ensure that it complies with all appropriate agricultural laws, trade laws (including intellectual property protections and the appropriate payment of duties), and other requirements. CBP officers are thus the first line of protection at the POEs against people and goods that seek to do America harm – be that harm physical or economic.

5. At POEs, all travelers, as well as their luggage and personal effects, arriving in the United States are subject to inspection, to determine admissibility under the immigration laws (for non-citizens), and to determine whether the traveler and his or her luggage or personal effects are in compliance with other requirements such as customs and agricultural laws.

6. During an immigration inspection, a CBP officer may, in the course of determining whether the alien may be admitted, examine information in appropriate databases. Those systems may indicate that the alien has an outstanding warrant(s). If so, the officer may pause the inspection through a process known as deferred inspection. In other words, the CBP officer has not yet finished determining whether the alien may be lawfully permitted to enter in a process known as being "admitted." In these situations, the alien may physically leave the POE (and may be transferred to the custody of the arresting law enforcement agency), but must return to OFO to complete his or her immigration inspection for a final determination of admissibility. In other situations, OFO may complete the inspection of a particular alien, determine that the alien is inadmissible to the United States, but parole the alien into the custody of a requesting state law enforcement agency for appropriate court proceedings.

7. In the situations described above, CBP officers may issue a detainer for that alien, to request that the receiving law enforcement agency return the alien to the custody of CBP at the end of any court proceedings. This permits OFO to complete any outstanding immigration processing, if needed, and, where appropriate, place the individual in removal proceedings. Aliens arriving in the United States who are found inadmissible at POEs are all subject to mandatory detention, although final detention decisions are made by U.S. Immigration and Customs Enforcement (ICE).

Existing Cooperation with State and Local Partners in California

8. At POEs across the country, OFO works closely with its federal, state, and local partners. Much of this cooperation comes, as described above, in the form of ensuring that individuals with active criminal warrants (which can include U.S. citizens) are transferred to the appropriate law enforcement agency. Such cooperation is particularly important in California, which is home to the largest land POE in the western hemisphere (San Ysidro), as well as the third and fourth largest airports in the country (Los Angeles International and San Francisco International, respectively), as determined by the number of international passengers boarded.

9. In 2017, the San Diego, Los Angeles, and San Francisco Field Offices turned over more than 2,300 individuals (both citizens and aliens) with active warrants to other law enforcement entities. This number includes approximately 170 aliens who were turned over from the POEs in and around San Diego.

10. Cooperation with state and local partners is not limited to the transfer of criminal aliens. For example, CBP has an agreement with Fresno County near San Francisco, whereby the county jail provides services related to custody for certain arriving aliens who are subject to removal during the short period of time that these aliens remain in CBP custody. In addition, CBP often works with local universities and schools and employers in the San Diego, San Francisco, and Los Angeles areas to verify that any aliens traveling to the United States with visas to attend these universities or schools or work at these employers are actual bona fide students or employees associated with these entities. In general, OFO has enjoyed a good working relationship with many of these schools and universities, as this cooperation benefits the schools by ensuring that they maintain their existing SEVIS

accreditation, and ensures that local schools and universities and employers can be certain that all individuals whom the entities wish to bring to the United States are lawfully traveling to this country.

11. CBP also relies heavily on its state and local partners to provide vital assistance in the execution of other aspects of CBP's mission. Such collaboration often takes the form of participation in task forces with state and local law enforcement partners, usually for purposes of investigating state, local, or federal criminal laws. The full cooperation of state and local partners is critical for the success of these task forces. For example, OFO in California works extensively with state and local partners on the Joint Terrorism Task Force (JTTF); the Border Enforcement Security Team, which investigates a wide range of criminal activity with a nexus to the border; DHS-led Maritime Task Forces in the San Diego, Los Angeles, and San Francisco areas; the Joint Regional Intelligence Center, a fusion center focused on preventing terrorist attacks in the Los Angeles area; and the Los Angeles Airport Criminal Enterprise Task Force.

12. Even outside of such formal collaboration, CBP cooperates with its state and local partners. For example, state and local law enforcement are often the first to respond to a significant incident, such as an interdiction of narcotics, and thus can provide important, time-sensitive information to help CBP interdict contraband. This is particularly true in areas in which CBP does not have a large presence, such as the northern California coastline. This is an area where small vessels, often operated by aliens without lawful status in the United States, often land and unload illegal narcotics into the United States. Local law enforcement officers are often the first to respond to these arrivals, and alert CBP of the incident. Due to CBP's limited presence in this area, it may take some time for CBP

officers to respond. Thus, local law enforcement officers play a vital role in holding both the perpetrators and the narcotics until CBP officers can arrive.

SB 54

13. I understand that California recently passed a law, known as Senate Bill No. 54 ("SB 54"), which limits the authority of law enforcement officials in that state to cooperate with federal immigration authorities. Specifically, I understand that, pursuant to this law, California law enforcement agencies are not required to cooperate with both CBP and ICE, and are specifically prohibited from, among other things, (1) inquiring into an individual's immigration status; (2) detaining or holding an individual on the basis of a DHS detainer; (3) providing information about an individual's date of release from criminal custody or responding to any request for notification from DHS, except in certain limited circumstances (in which case a response is always discretionary); (4) providing any personal information about an individual to DHS; or (5) making, or assisting in, an arrest based on an immigration warrant. California law enforcement officials are also prohibited from transferring any individual to DHS unless a judge, as opposed to an immigration officer, has issued a warrant or otherwise found probable cause.

14. The restrictions and limitations in this state law threaten to severely impact, and indeed already have had an impact on, OFO's ability to execute its mission. Most fundamentally, this bill has the potential to severely impact OFO's ability to turn aliens with criminal warrants over to the state of California or any of its subdivisions. While this problem did arise in some jurisdictions prior the passage of SB-54, the explicit restrictions on information sharing contained in the bill threaten to make this problem more pronounced in the future. Specifically, the bill prohibits any state law enforcement official from holding

an alien pursuant to a DHS detainer and notifying OFO of an alien's release or transferring of an alien back to OFO, absent a judicial warrant. In reality, what this means is that law enforcement entities in the state of California are prohibited from notifying CBP of an alien's release or transferring that individual back to CBP's custody, even aliens who have been convicted of a crime, so that OFO can regain custody and effectuate removal. Therefore, under the strictures of this bill, if OFO paroles an alien into the custody of a law enforcement agency in California for criminal prosecution, the state law actively inhibits the type of cooperation necessary for OFO to regain custody, including simply gaining information about the alien's release date. Thus, the state or local law enforcement entity will likely actually release the individual at the end of the criminal process, rather than returning the alien to OFO custody.

15. For example, in several recent situations in which I am aware (some dating back to before the passage of SB 54), OFO placed a detainer on an alien with an active criminal warrant from the state, paroled the alien into the custody of a local California law enforcement agency, attempted to coordinate with the law enforcement entity, but learned, from publicly available information, that the alien was released from the custody of the local law enforcement agency, rather than turned back over to OFO for removal. OFO was not informed of the aliens' release dates, and, in fact, in some situations, learned that the aliens had been released when the aliens arrived at the Los Angeles Deferred Inspections Office. Similarly, in two instances in January 2018 of which I am aware, the San Diego Field Office arrested inadmissible aliens, and turned the aliens over to the U.S. Marshals Service, for eventual prosecution for illegal entry/reentry, pursuant to 8 U.S.C. §§ 1325/1326. Because the U.S. Marshals Service itself contracts with state and private detention

facilities, the aliens were detained in the Imperial County Jail pending their prosecution. After the aliens completed prosecution, the Imperial County Jail released the aliens without notifying OFO of their release date. OFO was therefore unable to take these aliens back into custody for purposes of removal. While some of these incidents occurred before the passage of SB 54, the additional restrictions on transfer contained in SB 54 make it more likely that this situation will continue to occur. Without knowing the date on which a paroled alien is to be released from state or local custody, CBP officers have no way of knowing when to arrive at the jail to take the alien back into custody for appropriate immigration action. Similarly, without receiving a paroled alien back in OFO custody for appropriate immigration action, CBP officers have no way of removing such an alien, who may have been convicted of a crime.

16. Therefore, SB 54's restrictions on information sharing virtually ensure that OFO will not be able to remove individuals who has been convicted of a crime – even though these individuals potentially pose a danger to public safety. This impact is particularly egregious in the OFO context, where the alien normally would have been subject to mandatory detention or immediate removal from the port of entry. OFO generally transfers custody of an individual on the assumption that the state or local law enforcement agency will exchange relevant information with OFO and, eventually, return the individual to CBP for such mandatory detention and eventual removal. The restrictions on information sharing contained in SB 54 make it unlikely that OFO will receive relevant information and will therefore be able to effectuate the requirements of the law related to detention and removal.

17. Thus, in order to put CBP's mission of protecting the homeland at the forefront, it has become necessary for OFO, in certain situations, to limit the transfer of aliens to localities

in California for prosecution. There have been instances when OFO in Los Angeles, for example, has not turned over aliens over to a state or local law enforcement agency if the state or local agency indicates that it will not honor a detainer, and simply processes the alien for removal.

18. Similarly, as described above, CBP relies heavily on local law enforcement in northern California to interdict small vessels carrying dangerous narcotics. Under SB 54, however, the apprehending local law enforcement officers are prohibited from inquiring into the immigration status of the operators of these boats. Law enforcement officers are also prohibited from turning any of these aliens who are not lawfully present over to CBP, absent a judicial warrant. Thus, the operators of these vessels – who attempt to introduce illegal and dangerous narcotics into the United States – are unlikely to be subject to removal from the United States, and so will be able to continue to bring drugs into the country.

19. Given the wide restrictions on information sharing contained in SB 54, it is also possible that state and local partners may decrease their participation in some of the task forces described above, specifically those that may implicate immigration enforcement. Specifically, I understand that the Los Angeles Police Department (LAPD) currently prohibits its officers from engaging in any task force in which the primary purpose is to enforce civil immigration laws. However, the LAPD does permit its officers to participate in a CBP or ICE task force if the purpose of the task force is to investigate criminal laws. Given the sweeping prohibitions on information-sharing presented by SB 54, however, there is a very real concern that this law will have a chilling effect on existing relationships with state and local partners, such as the LAPD and the San Francisco Police Department,

with the potential to negatively impact the work of the task forces that investigate non-immigration related offenses and criminal organizations.

20. Lastly, given CBP's broad operations at both airports and seaports, it is possible that SB 54 may impact some of OFO's non-immigration functions, as well. CBP vets all airline employees seeking access to the most security sensitive areas of an airport, including the aircraft, cargo, and passenger areas, for all international flights. Permission to enter these areas is provided in a form known colloquially as a "seal." I am concerned that the overarching impact of the law may be that SB 54's restriction on information sharing could impact this process as well. That could have a detrimental impact on the overall safety and security of the airports.

21. In summary, SB 54 threatens to severely impact, and has already had a significant impact on, OFO's ability to successfully execute its mission at ports of entry in California. Such impacts have far ranging consequences, given the number and size of the ports of entry in California, and the amount of individuals and merchandise that pass through these ports every day. The ripple effects to public safety and to the orderly enforcement of the law will be felt throughout the nation.

22. I declare that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 6th day of March, 2018.

Todd Hoffman
Executive Director
Admissibility and Passenger Programs
Office of Field Operations
U.S. Customs and Border Protection

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

United States of America, *Plaintiff,*	)	
v.	)	No.
State of California, *et al.*, *Defendants.*	)	

DECLARATION OF CHIEF RODNEY S. SCOTT

I, Rodney S. Scott, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me in the course of my employment, hereby declare as follows.

1. I am the Chief Patrol Agent, San Diego Sector, United States Border Patrol (Border Patrol), U.S. Customs and Border Protection (CBP). I have held this position since November 2017. I have over 15 years of federal law enforcement experience in the State of California. I have 20 years of progressive supervisory and leadership experience within CBP and the Border Patrol, with 15 of those years in field leadership positions and 5 years assigned to Headquarters, Washington D.C. I entered on duty with Border Patrol in May of 1992. I was first assigned to the Imperial Beach Station in San Diego Sector. In September of 1996, I was promoted to Senior Patrol Agent at the Chula Vista Station, San Diego Sector. In November of 1997, I was promoted to Supervisory Border Patrol Agent at the Chula Vista Station. In 1998, I transferred as a Supervisory Border Patrol Agent to the Nogales Station in Tucson Sector. In 2002, I was promoted to Field Operations Supervisor at the Nogales Station, where I became involved in national level policy development, specifically for traffic checkpoint operations. In January 2005, I accepted a promotion as the Assistant Chief in the Office of Anti-Terrorism (OAT),

Office of the Commissioner at CBP Headquarters in Washington DC. While in this position, I served as a principal advisor to the Commissioner and other senior officials on anti-terrorism issues. I was later promoted to Deputy Executive Director for the Office of Anti-Terrorism in 2006. In 2007, I was appointed as the Director for the Incident Management and Operations Coordination Division at CBP Headquarters. In 2008, I returned to San Diego, and accepted the position of Assistant Chief Patrol Agent in San Diego Sector. I was selected as the Patrol Agent in Charge of the Brown Field Station in San Diego Sector in 2009. I was promoted to the Senior Executive Service ranks as Deputy Chief Patrol Agent in San Diego Sector in January of 2012. I was promoted to Chief Patrol Agent over the El Centro Sector in February 2016, and was selected as the Chief Patrol Agent for San Diego Sector in October of 2017.

2. As the Chief Patrol Agent, I am responsible for managing all Border Patrol operations and administrative functions within the San Diego Sector, which encompasses 60 miles of land border between California and Mexico, as well as the coastal region of California, extending to the Oregon State line. In this role, I have management and oversight over 8 Border Patrol stations, a Special Operations Detachment, a robust intelligence unit, and over 2,300 sworn federal law enforcement agents and mission support staff. This operational oversight extends to all areas, to include federal and state and local partnerships and interoperability in the broader law enforcement context. I coordinate with, and represent, San Diego Sector Border Patrol operations, and issues relating to San Diego Sector activities, to the Border Patrol Headquarters.

3. CBP, a component of the Department of Homeland Security (DHS), is responsible for safeguarding the United States from dangerous people and materials, while facilitating

legitimate trade and travel. Border Patrol is the primary federal law enforcement agency responsible for preventing terrorists and their weapons from entering the United States between ports of entry. Border Patrol is also tasked with preventing the illicit trafficking of people and contraband between the official ports of entry.

4. In the law enforcement community, Border Patrol is committed to strong working relationships with state and local law enforcement partners. Given the nature of its mission, Border Patrol often acts within the same geographic area as state and local law enforcement entities, and relies heavily on these partnerships to ensure officer safety and public safety.

5. When individuals are apprehended by Border Patrol, agents perform a number of routine checks to determine, for instance, immigration status, criminal history and other information that is often important in immigration processing decisions. In the course of those routine checks, Border Patrol agents often learn that there are pending state or local criminal charges and outstanding warrants.

6. As part of its important cooperation with state and local law enforcement partners, Border Patrol routinely permits state and local law enforcement authorities to take custody of aliens initially apprehended by Border Patrol, so that the alien may be prosecuted for any pending state or local charges. This is normally done by the discretionary act of releasing the alien from immigration custody directly to the appropriate law enforcement agency with a detainer requesting notification of the alien's release and transfer back to CBP custody upon release from state or local custody. That way, the state or local law enforcement agency is on notice that Border Patrol is turning over the alien *temporarily*—with an expectation that he or she will be returned to immigration custody

once the reason for which the alien was turned over to the state or local agency has been resolved. From FY2013 through FY2018 year to date (February 2, 2018), the San Diego and El Centro Sectors (the two Sectors that encompass portions of the state of California) have turned over approximately 700 aliens who were not lawfully present to state and local law enforcement agencies. Some of these individuals were wanted for serious crimes, including robbery, kidnapping, aggravated battery, arson, and sexual abuse. The Sectors also turned over approximately 150 individuals with lawful immigration status, but whom Border Patrol encountered for some other violation of law.

7. While most aliens apprehended by Border Patrol entered the United States in violation of the federal immigration laws and therefore may be prosecutable under 8 U.S.C. §§ 1325 (illegal entry) and 1326 (illegal reentry), that prosecution may be deferred or foregone if a state or local law enforcement entity desires to pursue more serious prosecutions. In these situations, after completion of the state or local case, the alien is placed in civil administrative removal proceedings. In my experience, most aliens who are first prosecuted in the state or local system and then returned to federal custody are detained in immigration custody and referred for either a reinstatement of a prior order of removal, or removal proceedings before an Immigration Judge, rather than referred for federal criminal prosecution.

8. Border Patrol issues detainers in order to ensure that aliens it has apprehended, but determined to exercise its discretion to turn over to state and local law enforcement agencies, do not end up being released into the community after facing or serving state or local charges. These detainers serve to notify local law enforcement agencies that Border Patrol seeks to take custody of the alien upon completion of the state or local case.

9. When Border Patrol turns over an alien wanted for the most egregious crimes by the state of California, it is Border Patrol's desire to assist California citizens in holding the alien accountable for his or her actions under California law.

10. To the best of my knowledge, San Diego and El Centro Sectors generally did not have any problems with local law enforcement honoring these detainers; that is, aliens were routinely returned to Border Patrol for the completion of their immigration processing and potential removal, prior to the passage of 2017 California Senate Bill No. 54 ("SB 54") in October 2017. Specifically, prior to October 2017, for many of the criminal acts listed in the California Values Act, most state and local law enforcement agencies routinely provided notification of release to Border Patrol without any additional process or requiring a warrant in order to facilitate the alien's transfer back to CBP custody.

11. I understand that, pursuant to SB 54, state and local law enforcement agencies are prohibited from honoring immigration detainers or hold requests, sharing information concerning an alien's release from state custody, or transferring such aliens back to Border Patrol absent a judicial warrant. Even in the most serious of offenses (such as child sexual abuse, possession of explosive devices, trafficking in controlled substances, slavery, human trafficking, torture, rape, murder, etc.), it is my understanding that the California Values Act forbids state and local law enforcement in California from transferring custody of an alien to DHS without a judicial warrant, and, unless very limited circumstances apply, sharing with DHS an alien's release date or home address. This information is critical to Border Patrol's operational ability to turn over aliens wanted for crimes in California, including serious ones, to law enforcement in that state for prosecution.

12. Border Patrol remains committed to cooperating with its state and local law enforcement partners, including to ensure that all people are held accountable for their conduct. However, Border Patrol's mission also includes the faithful enforcement of federal immigration laws. Border Patrol is committed to ensuring the security of the border, including the removal of those aliens who pose a risk to this country, such as those charged with these serious crimes. Releasing aliens who have entered the country unlawfully and who are also wanted in connection with crimes is inconsistent with Border Patrol's mission. It poses a serious risk of permitting the alien to avoid removal proceedings.

13. The implementation of SB 54 has already had an impact on relationships between Border Patrol and law enforcement agencies in the state of California. Normally, Border Patrol routinely works with state, local and tribal agencies in California. For example, Border Patrol oversees the implementation of DHS's Operation Stonegarden, which provides grants to state, local, and tribal agencies. Participating agencies provide enhanced enforcement presence in proximity to the border and/or routes of ingress from the international land and water borders. Grant funds are used to increase operational patrols and to modernize equipment and the capabilities of the state, local, and tribal agencies. While participating agencies do not enforce immigration laws, the agencies' activities promote border security and reduce border-related crimes in the region. For example, the enhanced enforcement resulted in 4,020 apprehensions for violations of the California Penal Code and 1,859 non-immigration seizures from FY 2013-2016 in San Diego Sector, as well as 2,156 apprehensions and 315 seizures in El Centro Sector. Currently, 11 local law enforcement agencies participate in El Centro Sector's program and 22 law

enforcement agencies participate in San Diego Sector's program. However, despite the past collaborative working relationship between Border Patrol and Operation Stonegarden participants, two local law enforcement agencies have withdrawn from participating as a result of SB 54 thus far.

14. SB 54 has had additional impacts on relationships between Border Patrol and law enforcement agencies in the state of California. For example, Border Patrol routinely engages and enlists state and local law enforcement partners to participate in treasury forfeiture fund (TFF) joint operations. These agreements provide for the reimbursement of certain expenses to California state and local law enforcement agencies incurred as participants in joint operations conducted with Border Patrol as a federal law enforcement agency participating in the TFF. The TFF joint operations are similar in intent to Stonegarden, and do not convey any additional CBP or immigration enforcement authority to California law enforcement agencies.

15. TFF provides an opportunity to conduct joint operations, directed and coordinated by Border Patrol, with state and local law enforcement agencies. These operations often involve increased vehicle patrols to provide additional law enforcement presence or report observations of violations witnessed, in order to enhance border security. TFF patrols may consist of only state and local officers, or may include Border Patrol Agents working with state and local officers. TFF operations also focus on identification of suspects in and around areas known to be susceptible to illegal entries, predominantly in areas susceptible to maritime smuggling events. The prohibitions in SB 54 have the potential to render TFF operations ineffective, as state and local officers can no longer

"assist" Border Patrol Agents, and are prohibited from providing information that may be beneficial in intelligence and targeting operations for maritime smuggling threats.

16. SB 54 has also had an impact on state and local law enforcement agencies' willingness to respond to Border Patrol's calls for service. On a recent incident, Border Patrol Agents from the Indio Station conducted a stop under their immigration authorities. As the Border Patrol agents approached the vehicle, it was obvious that the driver was intoxicated. After determining that no immigration issues required further inquiry, the agents notified the Indio Police Department (IPD) to respond to the intoxicated driver. IPD stated they would not respond because the initial vehicle stop was immigration based. IPD further stated that they would only respond to Border Patrol calls based on "Officer Safety" concerns. Under those circumstances, Border Patrol had no choice but to release the intoxicated subject to the public.

17. SB 54 also impacted state and local law enforcement agencies' responding to Border Patrol's calls for service in another event. Border Patrol Agents from the Campo Station attempted a vehicle stop on February 12, 2018. The vehicle failed to yield on Interstate 8 in California and fled west, travelling a distance of more than 20 miles, while being pursued by Border Patrol. Eventually Border Patrol Agents assigned to the El Cajon station successfully deployed a controlled tire deflation device, and the vehicle came to a stop on Highway 67 in the city of El Cajon, California. Three subjects fled the vehicle; two were successfully arrested, and one absconded. During the pursuit, requests for assistance were made by Border Patrol Dispatch to the El Cajon Police Department. The El Cajon Police Department declined to assist. After the event, it was determined that the officer declined the request to assist presuming it was an immigration matter, as opposed

to a fleeing subject whose identity/immigration status was not known at the time of the incident. This declination for assistance occurred even though it involved a vehicle that failed to yield, endangering federal law enforcement and the public while traveling on a California Interstate and highway within their jurisdiction.

18. Another example of how SB 54 is already affecting the relationships between Border Patrol and law enforcement agencies in the state of California occurred in January of 2018. A Border Patrol Agent on routine patrol witnessed a single officer vehicle stop being made by California Highway Patrol (CHP). The CHP vehicle stop was in relation to an invalid registration. The stop occurred in a remote location in the eastern portion of San Diego, California. It is an area well known for alien and narcotic smuggling, with little infrastructure and limited resources for officer back up. The Border Patrol Agent pulled over to provide backup and assistance to the CHP officer. As it turned out, the stopped vehicle was a cloned United Parcel Service truck with stolen plates. There were 77 illegal aliens inside the vehicle being smuggled into the United States. After determining that all of the subjects were illegally present in the United States, the Border Patrol Agent placed the subjects and the driver under arrest.

19. Under SB 54, as I understand the law, the CHP officer is not permitted to question any of the 77 occupants perilously crammed into the rear compartment area as to their citizenship, or even contact Border Patrol based upon his suspicions or observations. While circumstances here meant that a Border Patrol Agent happened to arrive at the scene, this is unlikely to happen in other circumstances. Thus, individuals who have been put at risk or who may be committing serious crimes like smuggling or trafficking would not be apprehended.

20. There is the real possibility that had the Border Patrol Agent not stopped to provide back up, or had the CHP officer declined assistance or been forced to decline assistance under SB 54, that all 77 occupants may have been allowed to travel on or depart the scene (aside from any other state crime or motor vehicle violation). This would undermine not only the potential criminal prosecution of the driver and several other subjects, but it also would have allowed a serious trafficking and smuggling incident to go unchecked by federal authorities.

21. The most troubling issue for Border Patrol is that after the arrest, and due to the passage of SB 54, CHP officers expressed concern about Border Patrol's encounter and subsequent arrest of the subjects. Although the encounter was the result of an Agent taking initiative and attempting to ensure the safety of a fellow law enforcement officer conducting a single officer vehicle stop, it was seen as a negative encounter due to the passage of SB 54. However, this protective and friendly practice of providing back up to each other has existed amongst the law enforcement community for decades. Such camaraderie between Border Patrol and state and local law enforcement in California will likely soon begin to deteriorate, and providing back up to a fellow officer for safety reasons will no longer be acceptable.

22. Below are just a few of the numerous examples of how SB 54 is affecting Border Patrol's ability to assist the state of California in prosecuting aliens wanted for serious criminal charges. In each example, after determining that the alien was illegally present in the United States, the Border Patrol Agent placed the alien under arrest. As a routine step in processing, the alien's biographical and biometric information was checked. During those checks, state or local pending criminal charges and/or outstanding warrants were

identified. In each instance, the Border Patrol Agent determined it was not appropriate, consistent with his or her federal responsibilities to ensure the enforcement of immigration law, to release a criminal alien to the state and local law enforcement. This was because, although the alien was subject to removal, if released to California law enforcement, the alien would ultimately be released into the public. Instead, the alien remained in DHS custody, and was processed for prosecution under 8 U.S.C. §§ 1325, 1326, and/or removal from the United States.

a. Example 1: Systems checks revealed that the alien was a previously-removed felon from Nicaragua, was a registered sex offender from the state of Arizona, and had an active warrant from the San Diego Sheriff's Office (SDSO) for "Sexual Assault." Despite these egregious criminal violations, the SDSO could not provide any assurances it would cooperate with the Border Patrol so that immigration authorities would be notified if and when the alien was released. Therefore, the criminal alien remained in DHS custody, and was processed for prosecution under 8 U.S.C. § 1326.

b. Example 2: Systems checks revealed that the alien was a previously-removed felon from Mexico, with a current no bail felony warrant issued by Orange County Sheriff's Department (OCSD) for possession of a controlled substance. Despite the past criminal history and multiple violations and convictions, OCSD could not provide any assurances it would cooperate with Border Patrol so that immigration authorities would be notified if and when the alien was released. Thus, the criminal alien remained in DHS custody, and was processed for removal from the United States.

c. Example 3: Systems checks revealed that the alien was a previously-removed felon from Mexico, with a current no bail felony warrant issued by Santa Barbara County Sheriff's Office (SBSO) for Driving Under the Influence (DUI) with multiple prior convictions, and reckless highway driving. Despite the past criminal history with multiple DUI violations, SBSO could not provide any assurances it would cooperate with Border Patrol so that immigration authorities would be notified if and when the alien was released. Therefore, Border Patrol declined to parole the alien into the custody of California law enforcement, instead processing the alien for removal to ensure that all steps possible to remove the alien were taken.

d. Example 4: Systems checks revealed that the alien was a previously-removed felon from Mexico, with a current no bail felony warrant issued by Santa Barbara County Sheriff's Office (SBSO) for a probation violation relating to the possession, transportation, and sale of narcotics and controlled substances. The alien had been previously convicted for charges relating to possession and transportation of cocaine, and was released on probation in California. Despite the alien's criminal narcotics history, SBSO could not provide any assurances it would cooperate with Border Patrol so that immigration authorities would be notified if and when the alien was released. Thus, the criminal alien remained in DHS custody, and was processed for removal from the United States

23. Since the implementation of SB 54, I understand that El Centro Sector has also seen the impact on its ability to cooperate with the Imperial County Sheriff's Office (ICSO). For example, the El Centro Station apprehended an alien with an active warrant for a probation violation from the Ventura County Sheriff's Office. Relying on a long history

of cooperation, Border Patrol released the alien to the ICSO based on the confirmation of extradition by Ventura County. Ventura County rescinded their intent to extradite the individual. ICSO subsequently released the alien without notifying Border Patrol that he was pending release or that he was released.

24. In another case, an alien that was federally prosecuted for violating 8 U.S.C. § 1325 was incarcerated at the Imperial County Jail. After serving his sentence for the misdemeanor conviction under 8 U.S.C. § 1325, the alien was released by Imperial County Jail (ICJ) without any notice to Border Patrol or immigration authorities of his pending release or that he was released. Notably, ICJ is the only location Border Patrol utilizes in the local Imperial Valley area for detainees awaiting court proceedings. In this case, this individual had a criminal history, to include two felony convictions (Possession without Prescription, Burglary). Since this incident, Border Patrol has tried to work with the U.S. Marshals Service to relocate individuals to San Diego Metropolitan Correctional Center or facilities run by the GEO Group in order to ensure removal after time served.

25. By contrast, San Diego Sheriff's Department (SDSD) worked cooperatively with Border Patrol to extradite an alien to Los Angeles County to face serious criminal charges in January 2018. As a result, this alien, who has no lawful status in the United States, can be prosecuted, and if successful, held responsible for his violations of both California and federal law. After determining that the alien was illegally present in the United States, a Border Patrol Agent placed the subject under arrest. At the time of the arrest, the alien was attempting to depart the United States into Mexico between the ports of entry near the Otay Mesa area. Upon processing the alien, systems checks revealed that he was previously arrested by California authorities in 2015 for a DUI, and was scheduled to

appear in Los Angeles County court on January 4, 2018, to face charges for a 2017 arrest for sexual battery and assault with a deadly weapon. The alien had been granted bail by a state court in the course of prosecution for those charges and had been out of custody on bond. Initially, Border Patrol considered simply placing the alien in removal proceedings because SDSD could not confirm it would notify CBP when he would be released or notify Border Patrol of release, and transfer the alien back to Border Patrol's custody. However, after later confirmation by SDSD that it would agree to provide notification and transfer, the alien was turned over to SDSD for extradition to Los Angeles County. That alien can now continue to be prosecuted for the serious local charges but also, upon return to Border Patrol custody, likely removed from the United States. That being said, we have ongoing concerns that SDSD is engaging in this cooperation in a way that likely cannot be squared with the text of SB 54, and have significant ongoing concerns with relying on this kind of informal cooperation in the face of SB 54.

26. SB 54 is also impacting Border Patrol's ability to assist other states throughout the nation in the extradition of criminal aliens responsible for state law violations that occurred outside of California. An example occurred in January 2018. After determining that an alien was illegally present in the United States, a Border Patrol Agent placed the alien under arrest. During processing, systems checks revealed that the alien had a previous state charge filed in the state of Iowa for felony "willful injury," and had a warrant issued for his arrest pursuant to "ASSAULT – Serious." Border Patrol contacted Des Moines, Iowa law enforcement officials who communicated they were willing to extradite, would honor the detainer and notification requests, and that they would cover related logistical and detention expenses associated with the extradition process with California SDSD.

However, I understand that state extradition legal procedures in California allow an individual to refuse or contest the extradition. Thus, if the alien were turned over to California law enforcement, even though the underlying warrant was in Iowa, the alien could still be released from California custody during the extradition process. Thus, it was important to Border Patrol that any immigration notification request be honored. SDSD advised they could not provide assurances to Border Patrol that immigration authorities would be notified if and when the alien could be released while facing extradition. Border Patrol investigated whether there were any other means to transfer custody to Iowa law enforcement officials. However, I understand that such a transfer of custody could not be accomplished. Given the significant risk that an alien with a significant felony arrest warrant from another state who was unlawfully present in the United States would simply be released into the country, Border Patrol declined to permit SDSD to take custody. The criminal alien remained in DHS custody, and was ultimately processed and removed from the United States.

27. I also understand that California has passed a separate law, AB 450, which may also negatively impact Border Patrol's operations and relationships with local businesses in California. Specifically, Border Patrol Agents have developed trusted relationships with many business owners in close proximity to the border. At times, some of these business owners may provide Border Patrol Agents access to non-public areas of their businesses, which can provide Agents with real-time information on cross border smuggling and other illegal activity. This consensual access is extremely beneficial to enforcement operations, especially in the densely populated and urbanized areas of California. These rapidly evolving situations often involve subjects that are significant flight risks, and

timely access and information is essential to a successful or positive law enforcement outcome. If employers are not able to provide such consensual access, Border Patrol's ability to detect and interdict real time illegal activity, ranging from criminal activity to the smuggling of narcotics to potential terrorists seeking to enter the United States, along the border will be diminished.

28. It is also possible that, if employers are not able to consent to allowing access to local businesses, the threat of cross border clandestine tunnels and maritime smuggling going undetected will increase. In recent years, the San Diego Tunnel Taskforce (TTF), an integrated team comprised of CBP Officers, Border Patrol Agents and ICE Agents, routinely worked with businesses in and around the Otay Mesa Port of Entry to educate them on the indicators of cross border clandestine tunnel activity and solicit their support to notify law enforcement if they saw or heard anything suspicious. Similarly, the San Diego Marine Task Force (MTF), an integrated team comprised of CBP Officers, Border Patrol Agents and ICE Agents, routinely worked with businesses in and around the coastal area to educate them on the indicators of maritime smuggling activity and solicit their support to notify law enforcement if they saw or heard anything suspicious.

29. Working with these businesses, including having access to non-public areas, allowed the TTF and the MTF to maximize very limited investigative resources by narrowing the number of warehouses that required additional investigative follow up. Access to nonpublic areas has also played a critical role in numerous investigations that resulted in the discovery of sophisticated cross border tunnels and the seizure of thousands of tons of illegal narcotics, as well as the discovery of illegal maritime human and narcotics

smuggling loads and the seizure of tons of illegal narcotics, and arrests of many criminal defendants and aggravated felons.

I declare that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 6 day of March, 2018.

Rodney S. Scott
Chief Patrol Agent
San Diego Sector
U.S. Customs and Border Protection

EXHIBIT D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF CALIFORNIA; EDMUND GERALD BROWN JR., Governor of California, in his Official Capacity; and XAVIER BECERRA, Attorney General of California, in his Official Capacity, Defendants.	Civil Action No.

DECLARATION OF CARL C. RISCH

1. I am Assistant Secretary of State for Consular Affairs. I make this declaration based on my personal knowledge and on information I have received in my official capacity.

2. I have served as Assistant Secretary of State for Consular Affairs since August 11, 2017. Prior to assuming my position at the Department of State, I served in various capacities at U.S. Citizenship and Immigration services beginning in 2006. I hold a Juris Doctor degree from the Dickinson School of Law. I am a licensed attorney and am admitted to the Bar in the District of Columbia.

3. In my capacity as Assistant Secretary of State for Consular Affairs, I assist the Secretary of State in the formulation and conduct of U.S. foreign policy and giving general supervision to the Bureau of Consular Affairs.

4. I have read and am familiar with several recent laws enacted by California including the following:

- The "Immigrant Worker Protection Act," Assembly Bill 450 (AB 450), which restricts private employers from voluntarily cooperating with federal officials who seek to ensure compliance with the federal immigration laws in the workplace.
- Assembly Bill 103 (AB-103), which creates a broad "review" scheme applicable only to facilities holding civil immigration detainees on the Federal Government's behalf.

- The "California Values Act," Senate Bill 54 (SB 54), which precludes local officials from providing information to the Federal Government about the release date of aliens who may be subject to removal or transferring aliens to the Federal Government when they are scheduled to be released from state or local custody.

5. As I explain further below, U.S. federal immigration law incorporates foreign relations concerns by providing a comprehensive range of tools for regulating entry and enforcement. These may be employed with sensitivity to the spectrum of foreign relations interests and priorities of the national government. By contrast, these laws establish a state-specific immigration policy that is not responsive to these concerns. If allowed to stand, the laws identified in paragraph 4 above could have negative consequences for U.S. foreign relations by diluting the content of U.S. government communications to foreign governments concerning this Administration's priority in seeking cooperation from foreign governments to accept the return of their foreign nationals who are subject to final orders of removal.

6. Through the Immigration and Nationality Act ("INA") and other federal laws, the national government has developed a comprehensive regime of immigration regulation, administration, and enforcement, in which the Department of State participates. This regime is designed to accommodate complex and important U.S. foreign relations priorities that are implicated by immigration policy – including humanitarian and refugee protection, access for diplomats and official foreign visitors, national security and counterterrorism, criminal law enforcement, and the promotion of U.S. policies abroad. To allow the national government flexibility in addressing these concerns, the INA provides the Executive Branch with a range of regulatory options governing the entry, treatment and departure of aliens. Moreover, foreign governments' reactions to immigration policies and the treatment of their nationals in the U.S. impacts not only immigration matters, but also any other issue in which we seek cooperation with foreign states, including on international trade, tourism, and security cooperation. These foreign relations priorities and policy impacts are ones to which the national government is sensitive in ways that individual states are not.

7. The Secretary of State is charged with the day-to-day conduct of U.S. foreign affairs, as directed by the President, and exercises authority derived from the President's powers to represent the United States under Article II of the Constitution and from statute. As part of these responsibilities, the Department of State plays a substantial role in administering U.S. immigration law and policy, as well as in managing and negotiating its foreign relations aspects and impact. Within the Department of State, the Bureau of Consular Affairs has responsibility for the adjudication and issuance of passports, visas, and related services; protection and welfare of U.S. citizens and interests abroad; third-country representation of interests of foreign governments; and the determination of nationality of persons not in the United States. See 1 Foreign Affairs Manual 250. Several other bureaus within the Department of State, including the Bureau of Population, Refugees and Migration; the Bureau of Human Rights, Democracy and Labor; the Bureau of International Organization Affairs; and all regional bureaus are routinely engaged in negotiations and multilateral diplomatic and policy work in global, regional, and bilateral forums on migration issues. Collectively, the Department of State promotes U.S. policies internationally in this area and bears the burden of managing foreign governments' reactions to and understanding of policies that impact foreign nationals.

8. U.S. law, and particularly Section 104 of the INA, as amended by the Homeland Security Act, invests the Secretary of State with specific powers and duties relating to immigration and nationality. A 2003 Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002 (MOU), ¶ 1(b), provided that the Secretary of Homeland Security would establish visa policy, review implementation of that policy, and provide additional direction as provided in the MOU, while respecting the prerogatives of the Secretary of State to lead and manage the consular corps and its functions, to manage the visa process, and to execute the foreign policy of the United States.

9. The Secretary of State's authorities under the INA are found in various provisions, including §§ 104, 105, 349(a)(5), 358, and 359 (8 U.S.C. §§ 1104, 1105, 1481(a)(5), 1501, and 1502) (visa and other immigration-related laws). The Department also exercises passport-related authorities, including those found at 22 U.S.C. §§ 211a, et seq.

10. In all activities relating to U.S foreign relations, including immigration, the United States is constantly engaged in weighing multiple competing considerations and choosing among priorities in order to develop an overall foreign policy strategy that will most effectively advance U.S. interests. The United States likewise is constantly seeking the support of foreign governments through a delicately-navigated balance of interests across the entire range of U.S. national policy goals. Only the national government has the information available to it to be able to appropriately evaluate these choices on a continuing basis in response to fluctuating events on the international stage. Because of the broad-based and often unintended ways in which U.S. immigration policies can adversely impact our foreign relations, it is critically important that national immigration policy – including immigration enforcement – be governed by a uniform legal regime, and that decisions regarding the development and enforcement of immigration policy be made by the national government, so that the United States can speak to the international arena with one voice in this area.

11. When states and localities assist the federal government, and take measures that are in line with federal priorities, then the United States retains its ability to speak with one voice on matters of immigration policy, which in turn enables it to keep control of the message it sends to foreign states and to calibrate responses as it deems appropriate, given the ever-changing dynamics of foreign relations.

12. Given the diplomatic, legal, and policy sensitivities surrounding immigration issues, even small changes or differences across states in immigration laws, policies, and practices can have ramifications for our ability to communicate our foreign policy in a single voice – both in the immigration context and across American diplomatic concerns. It is for this reason that, although federal law recognizes that states and localities may play beneficial roles in assisting in the enforcement of federal immigration law, *see* INA § 287(g)(1) (8 U.S.C. § 1357(g)(10)), the authority to directly regulate immigration has been assigned exclusively to the federal government.

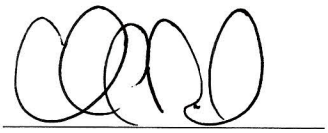
13. Removal of aliens subject to final orders of removal is a top priority for this Administration. The Department of State and ICE work together closely on these matters, and in particular the Department of State is often on the front lines seeking the cooperation of other governments to accept their nationals. Department of State officials raise these issues in bilateral channels, with Foreign Mission personnel in Washington, D.C. and through our diplomats in foreign capitals. Some countries cooperate closely with the United States by timely issuing travel documents for their nationals, coordinating with ICE on dates and times of travel, and generally facilitating their return. Other countries either delay or deny return of their nationals. For this reason, the INA provides for visa sanctions to be imposed on uncooperative countries. INA § 243(d) (8 U.S.C. 1283(d)).

14. By imposing requirements on the federal government such as a search warrant to enter premises to enforce U.S. immigration law, or precluding notice or transfer to federal authorities for removal proceedings, California law deviates from the national government's policies of strict immigration enforcement and removal of aliens. The California law establishes a distinct state-specific immigration policy, driven by an individual state's own policy choices, which risks not only undermining federal immigration enforcement efforts, but also has the potential to interfere with efforts to communicate to foreign governments the need to take back their nationals who are subject to final orders of removal.

15. The California laws referenced in paragraph 4, above, also hamper U.S. government efforts to speak with one voice to foreign governments on matters of deportation and removal. In particular, the intent behind these laws and the practical effects may interfere with actual removal efforts and dilute the messages the U.S. government communicates to foreign governments concerning their need to cooperate with the United States on removal of their nationals who are subject to final orders of removal. Efforts to remove individuals or groups of individuals could be scuttled at the last minute by California's restrictions on ICE's ability to obtain custody of them. This could undermine ICE's credibility with the foreign government and make that country less willing to cooperate in the future. More importantly, the California laws dilute the force of the messages the United States routinely communicates to foreign governments concerning the Administration's priority of removing aliens subject to final orders of removal, which has the potential to damage the U.S. Government's credibility and make our efforts to seek their cooperation less effective.

16. Accordingly, after having reviewed the California laws in question and considered the factors enumerated above, I have concluded that the laws could have ongoing negative consequences for U.S. foreign relations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed the 06 day of March, 2018 in Washington, D.C.



Carl C. Risch

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF CALIFORNIA; EDMUND GERALD BROWN JR., Governor of California, in his Official Capacity; and XAVIER BECERRA, Attorney General of California, in his Official Capacity,

Defendants.

No. 18-264

[Proposed] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This matter is before the Court on Plaintiff the United States' Motion for a Preliminary Injunction. Having considered the motion, including Plaintiff's Memorandum of Law and Defendants' opposition thereto, and having further considered: (1) the likelihood that the United States will succeed on the merits of its claims; (2) the likelihood that the United States will suffer irreparable injury absent an injunction; (3) whether injunctive relief would substantially harm Defendants; and (4) whether the public interest would be furthered by an injunction, this Court concludes that Plaintiff is entitled to preliminary injunctive relief. THEREFORE pursuant to Federal Rule of Civil Procedure 65, Plaintiff's Motion is GRANTED.

The Court FINDS that Plaintiff is likely to succeed on its claims that Sections 7285.1, 7285.2, 7284.6(a)(1)(C) & (D), 7284.6(a)(4), and 12532 of the California Government Code and Sections 90.2 and 1019.2 of the California Labor Code violate the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, and are therefore invalid.

The Court also FINDS that Plaintiff has made a strong showing that it suffers and will continue to suffer irreparable harm caused by these provisions of California law, and that the

balance of harms and the public interest favor an injunction.

Accordingly, Defendants are HEREBY ENJOINED from enforcing Sections 7285.1, 7285.2, 7284.6(a)(1)(C) & (D), and 7284.6(a)(4) of the California Government Code and Sections 90.2 and 1019.2 of the California Labor Code, until such time as the Court enters judgment on the United States' claims for relief, as follows:

1. Defendants are enjoined from enforcing sections 7285.1 and 7285.2 of the California Government Code, and Sections 90.2 and 1019.2 of the California Labor Code, as applied to any private employer or place of labor in the State of California.

2. Defendants are enjoined from enforcing Section 12532 of the California Government Code as to any detention facility that houses federal immigration detainees in the State of California. Such facilities, as defined by section 12532(a), include any "county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California, including any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained on behalf of, or pursuant to a contract with, the federal Office of Refugee Resettlement or the United States Immigration and Customs Enforcement that houses federal immigration detainees in the State of California."

3. Defendants are enjoined from enforcing Sections 7284.6(a)(1)(C) & (D) and 7284.6(a)(4) of the California Government Code with respect to any "California law enforcement agency" in the State of California, defined by section 7284.4(a) as any "state or local law enforcement agency, including school police or security departments," or any "law enforcement official," defined by section 7282.4(d) as any "local agency or officer of a local agency authorized to enforce criminal statutes, regulations, or local ordinances or to operate jails

or to maintain custody of individuals in jails, and any person or local agency authorized to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities."

DONE AND ORDERED this __ day of _____, 2018,

_____

Hon. _____

UNITED STATES DISTRICT JUDGE