No. 18-16496

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of California

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INTRODUCTION

In 2017, the California Assembly's Committee on the Judiciary considered "many bills that have come before the Committee this session with the goal of protecting immigrants from an expected increase in federal immigration enforcement action." Cal. Assemb. Comm. on Judiciary, Comm. Rep. for 2017 Cal. Assemb. B. No. 450, at 1 (Mar. 23, 2017) [ER 92]. This case concerns three of those bills that were enacted into law. The bills, individually and collectively, mark an extraordinary and intentional assault on the federal government's enforcement of the immigration laws.

First, California imposed penalties on employers who cooperate with federal immigration inspections without a judicial warrant, or who fail to provide notice to employees regarding such inspections, even though such warrants and notices are not required by federal law. Second, California created a new inspection and review scheme applicable only to facilities that house federal immigration detainees. The new scheme goes beyond the conditions within the facility to assess the due process provided to detainees and the circumstances surrounding their apprehension. Third, California restricted the ability of state and local law enforcement agencies to transfer aliens to the federal government, or to share certain information about aliens with the federal government, when federal immigration authorities seek to assume custody of aliens at the end of their state criminal custody.

California has no authority to deliberately undermine the enforcement of federal law. These state enactments are invalid under the Supremacy Clause for two independent, but related, reasons. First, they violate the doctrine of intergovernmental immunity because they "discriminate against the Federal Government or those with whom it deals." *Boeing Co. v. Movassaghi*, 768 F.3d 832, 839 (9th Cir. 2014) (quotation marks and brackets omitted). Second, they are preempted by federal law because they "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Oregon Prescription Drug Monitoring Program v. U.S. Drug Enf't Admin.*, 860 F.3d 1228, 1236 (9th Cir. 2017) (quotation marks omitted).

There would be no question that analogous state laws seeking to interfere with federal criminal enforcement would be invalid, and the impermissible nature of California's enactments should be all the more clear because setting policy concerning the enforcement of the immigration laws is the exclusive prerogative of the federal government. In *Arizona v. United States*, 567 U.S. 387 (2012), the Supreme Court held that even state enactments unilaterally *seeking to help* enforce federal immigration law can be preempted, in light of the federal government's exclusive authority to set federal immigration policy and the comprehensive scheme set out in the Immigration and Nationality Act. It follows *a fortiori* that California's *efforts to thwart* the federal government's enforcement of federal immigration law are preempted.

Neither California nor the district court offered any persuasive defense of the State's deliberate efforts to interfere with the functioning of the federal immigration scheme. California's assertion that its enactments serve various legitimate state interests is not only factually belied by the discriminatory nature of its laws, but also legally irrelevant. Even where, unlike here, a state law effectuates "some state interest or policy[,] other than frustration of the federal objective," it remains a "controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause." *Perez v. Campbell*, 402 U.S. 637, 652 (1971). Moreover, this type of obstacle preemption reflects an implied conflict with the federal regulatory scheme and thus does not depend on an express conflict with a specific provision of federal law. The district court misapplied these principles of preemption, and likewise contravened settled principles of intergovernmental immunity in failing to give proper weight to the manner in which California has singled out federal immigration enforcement for uniquely unfavorable treatment. In sum, although the court correctly enjoined portions of one of the three enactments at issue (the employer cooperation restrictions), it erred as a matter of law under cornerstone principles of federalism in failing to enjoin the reminder of the challenged provisions.

STATEMENT OF JURISDICTION

The United States sought declaratory and injunctive relief against three of California's laws as invalid under the Supremacy Clause, invoking the district court's jurisdiction under 28 U.S.C. §§ 1331 and 1345. The district court issued an order granting in part, and denying in part, the government's request for a preliminary injunction on July 5, 2018. PI Op. [ER 8]. The court granted in part California's motion to dismiss on July 9, 2018. MTD Order [ER 1]. The federal government filed a timely notice of appeal from the order denying a preliminary injunction on August 7, 2018. Notice of Appeal [ER 68]; *see* Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

The issues presented in this appeal are whether three California enactments should each have been preliminarily enjoined on grounds of preemption or intergovernmental immunity. The three enactments are:

1. A state law requiring employers to provide notice to employees regarding federal inspections of the employer's records regarding its employees' authorization to work in the United States, and further requiring employers to notify employees whose authorization to work is called into question in such inspections.

2. A state law creating a unique inspection and review scheme, applicable solely to facilities holding civil immigration detainees, that includes an evaluation of the due

process provided to such detainees and the circumstances surrounding their apprehension and transfer to the facility.

3. A state law that limits the ability of state and local officials to transfer custody of an alien to the federal government, or to share certain information about the alien with the federal government, when federal immigration officials seek to obtain custody of the alien at the termination of state criminal custody.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Federal Statutory Background

"The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona*, 567 U.S. at 394; *see* U.S. Const. art. I, § 8, cls. 3, 4. Through the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, and other related laws, Congress has exercised its authority to regulate the entry, presence, status, detention, and removal of aliens.

1. "Congress has specified which aliens may be removed from the United States and the procedures for doing so." *Arizona*, 567 U.S. at 396. Removal is a civil process initiated at the discretion of federal immigration officers. *Id.*

The INA contains a detailed scheme regarding the detention of aliens pending removal proceedings, as well as after the issuance of a final order of removal. In some situations, Congress authorized federal immigration officials to issue warrants

pursuant to which "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). For aliens not subject to a final order of removal, federal officials generally have authority to detain the alien or to release the alien on bond. *Id.* Detention is mandatory for certain categories of aliens, including certain aliens with criminal history who are subject to mandatory detention without bond upon their release from state or local custody. *See id.* § 1226(c). Likewise, certain aliens with a final administrative order of removal are subject to mandatory detention. *Id.* § 1231(a)(2).

The INA requires the federal government 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 may be housed in facilities operated by an entity other than the federal government. *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). Accordingly, the Department of Homeland Security (DHS) regularly uses nine facilities in California to house civil immigration detainees, with a capacity of approximately 5,700 detainees. Homan Decl. ¶ 51 [ER 467]. Most of these facilities are governed by agreements between the federal government and county, city, or local government entities. *Id.* ¶¶ 48-51 [ER 466-67]. All facilities housing detainees, whether federal or nonfederal, are subject to federal regulations that prohibit disclosure to the public of "the name of, or other information relating to," federal immigration detainees. 8 C.F.R. § 236.6.

Aliens subject to federal immigration proceedings may also be targets of state or local criminal enforcement, and the INA provides that aliens in state custody generally cannot be removed until they are released. For aliens subject to a final order of removal, DHS "shall" remove the alien within 90 days from "the date the alien is released from detention or confinement." 8 U.S.C. § 1231(a)(1)(B)(iii). DHS "may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment." *Id.* § 1231(a)(4). In general, DHS "shall detain the alien" beginning on his release from local custody and throughout the removal period, and "[u]nder no circumstance" may DHS release any alien with a qualifying criminal history during the removal period. *Id.* § 1231(a)(2).

In allowing an alien to complete state criminal custody before removal, Congress contemplated cooperation between federal and state officials, and several other provisions of the INA likewise reflect that expectation of collaboration. The federal government is responsible for making information available to state and local authorities regarding whether individuals who have been arrested for aggravated felonies are aliens. 8 U.S.C. § 1226(d)(1)(A). The federal government also designates liaisons with states and localities in connection with aliens charged with aggravated felonies. *Id.* § 1226(d)(1)(B). And if state or local officials "seek[] to verify or ascertain the citizenship or immigration status of any individual," the federal government must provide the requested information. 8 U.S.C. § 1373(c).

Congress similarly provided that federal, state, and local government entities and officials "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a); *see also id.* § 1373(b) (persons or agencies may not "prohibit, or in any way restrict, a Federal, State, or local government entity" from sending information regarding immigration status to DHS, receiving such information from DHS, maintaining such information, or exchanging such information with other entities).[1]

2. Through the INA and the Immigration Reform and Control Act of 1986 (IRCA), Congress enacted "a comprehensive framework for combating the employment of illegal aliens." *Arizona*, 567 U.S. at 404 (quotation marks omitted). Under IRCA, employers may not knowingly hire, recruit, refer, or continue to employ aliens without proper work authorization. 8 U.S.C. § 1324a(a)(1)(A), (a)(2). Employers who violate these provisions are subject to civil penalties and, in the case of a pattern or practice of violations, criminal penalties. *Id.* § 1324a(e)(4), (f).

Aliens who work without authorization are subject to civil consequences under federal law. *Arizona*, 567 U.S. at 404. "With certain exceptions, aliens who accept

[1] This general principle of cooperation between federal and state officials is also reflected in the inspection scheme governing aliens who are encountered at the U.S. border. If such aliens are subject to an active warrant, the government may transfer the alien to the custody of state or local officials for criminal proceedings, but will generally request that the alien be transferred back to its custody for appropriate immigration proceedings. *See* Scott Decl. ¶¶ 5-6 [ER 500-01].

unlawful employment are not eligible to have their status adjusted to that of a lawful permanent resident." *Id.* at 404-05 (citing 8 U.S.C. § 1255(c)(2), (c)(8)). Unauthorized work can also subject an alien to removal. *Id.* at 405 (citing 8 U.S.C. § 1227(a)(1)(C)(i); 8 C.F.R. § 214.1(e)). Although there are no criminal penalties for working without authorization, aliens who obtain employment through fraudulent means may be criminally prosecuted. 18 U.S.C. § 1546(b).

To ensure compliance with IRCA's provisions, employers must verify the employment authorization status of prospective employees. 8 U.S.C. § 1324a(a)(1)(B), (b). Congress established a national uniform inspection process whereby employers are required to retain documentary evidence of authorized employment of aliens and to permit federal investigative officers to inspect such documents. *Id.* § 1324a(b), (e)(2)(A). Under federal law, the information and documentation associated with the verification process may be used only to enforce provisions of IRCA and the INA, and for prosecution under specified criminal statutes for fraud, perjury, and related conduct. *Id.* § 1324a(b)(5), (d)(2)(F)-(G).

B. State Provisions at Issue

With the avowed "goal of protecting immigrants from an expected increase in federal immigration enforcement actions," California Assemb. Comm. on Judiciary, Comm. Rep. for 2017 Cal. Assemb. B. No. 450, at 1 (Mar. 23, 2017) [ER 92], California enacted several laws targeted specifically at federal immigration enforcement. Three of those enactments are at issue here.

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

This California law regulates how private employers in California must respond to federal efforts to ensure compliance with federal immigration laws. The law prohibits employers from "provid[ing] voluntary consent" to either 1) an immigration enforcement agent's request to enter any nonpublic areas of a place of labor; or 2) a request to "access, review, or obtain the employer's employee records," unless "the immigration enforcement agent provides a judicial warrant" or subpoena, or consent is "otherwise required by federal law." Cal. Gov't Code § 7285.1(a). The provision further prohibits the employer from "reverify[ing] 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." Cal. Lab. Code § 1019.2(a).

AB 450 also 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). In addition, after the federal government provides written notice of the results of an inspection of employment records, employers must provide information about the results of the inspection to any "affected employee," a term defined to mean any "employee identified by the immigration agency inspection results to be an employee who may lack work authorization, or an employee whose work authorization documents have been identified by the immigration agency inspection to have deficiencies." *Id.* § 90.2(b)(1), (2).

Failure to comply with AB 450 may result in a fine of $2,000 to $5,000 for a first violation, and up to $10,000 for each subsequent violation. Cal. Gov't Code §§ 7285.1(b), 7285.2(b); Cal. Lab. Code §§ 90.2(c), 1019.2(b). Penalties are not imposed upon employers who fail to provide notice "at the express and specific direction or request of the federal government." Cal. Lab. Code § 90.2(c).

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

Under longstanding California law, "local detention facilities" are subject to biennial inspections concerning health and safety, fire suppression preplanning, treatment of persons confined in the facility, compliance with training and funding requirements, and the types and availability of visitation. Cal. Penal Code § 6031.1(a). In AB 103, California established a new set of requirements specific 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).

Going well beyond conditions within the facility, AB 103's new provisions require the Attorney General of California to examine, among other things, the "due process provided" to civil immigration detainees, and "the circumstances around their apprehension and transfer to the facility," in order to provide a comprehensive report to the Legislature, the Governor, and the public. Cal. Gov't Code § 12532(b)(1)(B), (C). To accomplish this objective, the provision 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." *Id.* § 12532(c).

3. *California Values Act (SB 54).*

This California law prohibits "cooperat[ion]" between state and local law enforcement agencies that may detain aliens under the state's criminal laws (except for the State Department of Corrections and Rehabilitation) and federal "immigration authorities," other than in limited circumstances. *See* SB 54, pmbl.; Cal. Gov't Code § 7282.5(a). Specifically, SB 54 generally prohibits affected state and local officials from "[p]roviding information regarding a person's release date or other information," providing "personal information," including an individual's home address or work address, and "[t]ransfer[ring] an individual to immigration authorities." Cal. Gov't Code § 7284.6(a)(1)(C)-(D), (4).

The state enactment enumerates exceptions to its provisions. The prohibition on transfers does not apply if federal authorities have a "judicial warrant or judicial probable cause determination" or if the individual has been convicted of one of a limited, enumerated set of crimes. Cal. Gov't Code §§ 7282.5(a), 7284.6(a)(4). Information about an individual's release date from custody may be shared only where an individual has been convicted of the same enumerated set of crimes, or where the information is publicly available. *Id.* §§ 7284.5(a), 7284.6(a)(1)(C). And only where an individual's personal information is already "available to the public"

may that information be shared with federal immigration authorities. *Id.* § 7284.6(a)(1)(D).

C. Prior Proceedings

The United States brought this suit against California on the ground that these three state laws, which specifically thwart the federal government's enforcement of the immigration laws, are preempted by federal law and discriminate against the federal government, in violation of the Supremacy Clause of the U.S. Constitution.

The district court denied in part the federal government's request for a preliminary injunction, granting it only with respect to two aspects of AB 450 (protections for immigrant workers). The court agreed that the restriction on employers' voluntary consent to access for immigration enforcement officers likely "impermissibly discriminates against those [employers] who choose to deal with the Federal Government." PI Op. 26 [ER 33]. The court also enjoined the enforcement of AB 450's reverification provision, on the grounds that it is likely preempted because IRCA's "continuing obligation to avoid knowingly employing an unauthorized immigrant worker conflicts with California's prohibition on reverification" of work authorization status. *Id.* at 29 [ER 36].

The district court upheld the employee-notice provisions of AB 450. The court held that the requirement that employers provide notice to their employees of upcoming inspections by immigration officials does not interfere with the congressional design because the employers, who are directly regulated by IRCA, are

already warned of the upcoming inspection. PI Op. 27-28 [ER 34-35]. The court also held that these provisions do not contravene intergovernmental immunity, reasoning that they do not penalize employers for dealing with the federal government, but instead penalize the employer "for its failure to communicate with its employees." *Id.* at 28 [ER 35].

The district court upheld AB 103 (facilities inspection) in its entirety. The court held that the authorization for inspection and review of immigration detention facilities "does not impose any substantive requirements upon detention facilities," but rather "directs the [State] Attorney General to channel an authority he already wields to an issue of recent State interest." PI Op. 15 [ER 22]. The court deemed it "of little or no consequence" that the facility is required to provide access because the State Attorney General can already conduct investigations related to state law enforcement. *Id.* at 15-16 [ER 22-23]. The court additionally held that the statute did not violate the intergovernmental immunity doctrine, stating that "the burden placed upon the facilities is minimal" and "appears no more burdensome than reviews required under" the general inspection regime for detention facilities. *Id.* at 19 [ER 26].

The district court also upheld all the challenged provisions of SB 54 (restricted state and local cooperation with the federal government's assumption of custody of detained aliens). The court concluded "that California's decision not to assist federal immigration enforcement in its endeavors is not an 'obstacle' to that enforcement

effort" because "[r]efusing to help is not the same as impeding," and thus the doctrine of obstacle preemption does not render SB 54 unlawful. PI Op. 43 [ER 50]. The court further concluded that Tenth Amendment and anti-commandeering principles counsel against preemption in this context. *Id.* at 48 [ER 55]; *see also id.* at 52 [ER 59]. And the court concluded that 8 U.S.C. § 1373, which addresses "information regarding . . . immigration status," does not extend to release dates or other information beyond whether an immigrant has lawful status within the United States. PI Op. 38-39 [ER 45-46].

The court also declared that intergovernmental immunity does not "extend[] to the State's regulation over the activities of its own law enforcement and decision to restrict assistance with some federal endeavors." PI Op. 56 [ER 63]. The court additionally concluded that the United States had not shown that the laws uniquely burden federal immigration authorities, because information can be shared if it is publicly available and because the United States had not identified any similarly situated civil authorities who are treated differently. *Id.*

Having concluded that the United States is unlikely to prevail on the claims with regard to the provisions at issue in this appeal, the district court denied on that ground alone the request for a preliminary injunction as to those provisions, PI Op. 58 [ER 65], and it subsequently granted the State's motion to dismiss with regard to those provisions, *see* MTD Order 3-6 [ER 3-6].

With regard to the provisions in AB 450 as to which the court found that the United States has a likelihood of success on the merits, the court further concluded that the federal government would suffer irreparable harm based on the constitutional violations. It thus issued a preliminary injunction against enforcement of those provisions, and later denied the States' request to dismiss those claims. PI Op. 59 [ER 66]; MTD Order 4 [ER 4].

SUMMARY OF ARGUMENT

The California statutes at issue in this case, individually and collectively, mark an extraordinary assault on the federal government's enforcement of the immigration laws. The provisions of state law that the Supreme Court held invalid in *Arizona v. United States* were at least enacted with the avowed purpose of complementing federal immigration enforcement. The California statutes here, in contrast, lack even this purported justification: they are unabashedly designed to hinder federal immigration enforcement. The district court did not and could not cite any precedent sustaining laws of this kind, and its discussion of the provisions it upheld makes virtually no reference to their impermissible purpose and effect.

It is fundamental that a state may not discriminate against the federal government. The intergovernmental immunity doctrine forbids a state not only from regulating the federal government directly, but also from discriminating against those who deal with the federal government. The state enactments at issue here deliberately target and single out federal immigration enforcement efforts by operating solely on

those who interact with federal immigration officials. It is similarly foundational that a state law is preempted when it impedes the operation of federal law, even when compliance with both laws is technically possible. The state enactments at issue here have the effect—and indeed, purpose—of imposing an obstacle to the federal government's efforts to enforce the immigration laws.

The provisions at issue implicate these principles of intergovernmental immunity and obstacle preemption in the clearest way. The district court recognized as much with regard to some of the provisions designed to regulate federal inspections of employers. It reached a contrary conclusion with respect to the other provisions at issue only by misunderstanding the fundamental features of intergovernmental immunity and obstacle preemption.

In AB 450, the California legislature sought to impede the efficacy of workplace and employment-record investigations by federal immigration agents. The statute bars employers from cooperating without a judicial warrant, prohibits them from going beyond the federal-law minimum in reverifying the employment eligibility of their workers, requires employers to give employees 72 hours' notice of an inspection, and compels them to inform employees of anything discovered during an investigation that calls the employees' legal status into question.

The district court correctly enjoined the first two of these restrictions, but failed to recognize that the other two restrictions are likewise invalid because they impede the operation of the immigration regulatory scheme and single out federal

immigration enforcement for unique burdens. Just as it should be clear that a state could not require a financial institution to notify its clients when a financial regulator's investigation of the institution also casts doubt on the clients' actions, it should be beyond dispute that such a requirement is at least equally impermissible when the federal government conducts an inspection to enforce the immigration laws. And this is so even if the notice requirement arguably furthered a legitimate state interest rather than merely facilitating evasion of federal law enforcement. The unique treatment of federal immigration inspections also runs afoul of principles of intergovernmental immunity, and it is irrelevant to that analysis that these California provisions directly operate on communications between employers and employees, rather than on interactions with the federal government.

AB 103 establishes a unique inspection regime for facilities that contract with the federal government to house individuals for civil immigration purposes. Although a facility is not exempt from general state inspection requirements or other health and safety provisions simply because it contracts with the federal government, a state may not single out a facility for special inspection requirements simply because it contracts with the federal government. AB 103 is particularly anomalous because it is not limited to physical inspection of facilities but also mandates investigations into the "due process provided" to detainees and the circumstances under which they were detained. The statute thus requires investigation not only of federal contractors but also of the federal government itself, and, in the process, mandates access to detainee

records containing sensitive personal information that are generally shielded from public disclosure. A state may not invoke its general power to monitor health and safety conditions as a basis for launching investigations into the manner in which the federal government enforces the federal immigration laws.

SB 54 seeks to frustrate the transfer of aliens in state or local criminal custody to the federal government for purposes of immigration enforcement by prohibiting transfer absent a judicial warrant and by restricting the sharing of release-date and other information unless the alien has been convicted of certain crimes. The judicial warrant requirement is directly at odds with federal law, which authorizes federal immigration officers to arrest and detain aliens pursuant to administrative warrants; likewise, the limitation to conviction for particular crimes is contrary to the federal government's authority to detain and remove aliens in a broader set of circumstances. More generally, the district court misconceived the issue before it when it held, based on its view of preemption principles and Tenth Amendment concerns, that the California statute is lawful because states are not required to assist the federal government. This misapprehends the structure of the INA, which generally provides that aliens taken into state criminal custody will not be removed until they are released and thus presumes that the states will respond to requests for minimal information and facilitation needed to enable the federal government to take custody of aliens in a safe and orderly manner. In so doing, the INA does not regulate the states, but rather preempts the states from interfering with the federal regulation of aliens. And in any

event, California is not merely refusing to assist the federal government, but adopting a categorical policy of affirmatively restraining local and state officials from cooperating with the federal government.

In addition to conflicting with the INA's provisions governing the detention and removal of aliens, SB 54's information-sharing restriction is contrary to 8 U.S.C. § 1373, which expressly preempts state laws that "in any way restrict[] any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). That federal statute prohibits, in particular, restrictions on sharing information integral to whether an alien can be removed, such as the release date from state or local criminal custody. Indeed, as recently as 2014, the California Attorney General agreed with that assessment, advising that state and local officials could inform the federal government of "the date that an individual will be released" because "[f]ederal law provides that state and local governments may not be prohibited from providing information to or receiving information from ICE." Cal. Dep't of Justice, *Information Bulletin* 3 (June 25, 2014) [ER 90].

In sum, each of the challenged state-law provisions has the effect—and indeed, purpose—of impeding enforcement of the federal immigration laws. They thus each violate bedrock principles of federalism and should be enjoined.

STANDARD OF REVIEW

The denial of a preliminary injunction is reviewed for abuse of discretion, but "the district court's interpretation of the underlying legal principles is subject to de novo review and a district court abuses its discretion when it makes an error of law." *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 989 (9th Cir. 2006) (quotation marks, brackets, and ellipsis omitted).

ARGUMENT

The district court properly recognized that state laws that impermissibly interfere with the federal government's ability to carry out federal law cause irreparable harm to the federal government. The court's sole basis for denying injunctive relief against the California laws at issue in this appeal was the court's assessment of the merits.

And that assessment was erroneous because the district court adopted an unduly narrow view of two related doctrines, intergovernmental immunity and conflict preemption. The intergovernmental immunity doctrine forbids a state not only from regulating the federal government directly, but also from "discriminat[ing] against the Federal Government or those with whom it deals." *Boeing Co. v. Movassaghi*, 768 F.3d 832, 839 (9th Cir. 2014) (quotation marks and brackets omitted). Prior cases involving the intergovernmental immunity doctrine have made clear that states may not discriminate against the federal government even when they purport to be serving legitimate state interests. The state enactments at issue here are particularly

anomalous because they deliberately target the federal government's immigration enforcement efforts. Moreover, even a nondiscriminatory state law is preempted by federal law when there is a direct or implied conflict between the laws. Conflict preemption can occur not only when "compliance with both federal and state regulations is a physical impossibility," but also "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 567 U.S. 387, 399 (2012) (quotation marks omitted). Under these principles, the challenged provisions of California law are invalid and should have been enjoined.

I. California has no authority to impose penalties based on employers' response to federal inspections (AB 450).

AB 450 targets the federal enforcement of federal law by imposing a set of penalties on California employers based on their interactions with the federal government. The core of AB 450, which the district court properly enjoined, was a set of provisions prohibiting employers from providing consent to federal officials who seek to conduct immigration-related investigations. *See* Cal. Gov't Code §§ 7285.1, 7285.2. The statute also purported, in another provision that the district court properly enjoined, to prohibit employers from reverifying the employment eligibility of current employees when not required to do so by federal law. Cal. Lab. Code § 1019.2(a). California has not appealed the grant of a preliminary injunction as to those provisions.

The remaining provisions of the statute are equally invalid. They impose employee-notice requirements that go beyond what federal law provides, with both the effect and purpose of undermining federal law enforcement. By targeting federal inspections, and by interfering with the orderly operation of federal law, these provisions violate the intergovernmental immunity doctrine and are also subject to obstacle preemption.

A. Congress has adopted "a comprehensive framework for combating the employment of illegal aliens." *Arizona*, 567 U.S. at 404 (quotation marks omitted). In addition to civil penalties and (in the case of a pattern or practice of violations) criminal penalties for employers who knowingly employ unauthorized workers, 8 U.S.C. § 1324a(e)(4), (f), Congress also imposed a separate set of penalties for aliens who work without authorization. *See Arizona*, 567 U.S. at 404-05. Aliens who work without authorization may be ineligible to become lawful permanent residents, may be subject to removal from the country, and may face criminal enforcement if they obtain employment through fraudulent means. *Id.* (citing 8 U.S.C. § 1255(c)(2), (8) (ineligible for status adjustment); 8 U.S.C. § 1227(a)(1)(C)(i) (removal of nonimmigrants who fail to comply with conditions of status); 8 C.F.R. § 214.1(e) (unauthorized employment constitutes failure to maintain lawful nonimmigrant status); 18 U.S.C. § 1546(b) (criminal penalties)).

Congress provided for federal enforcement of these laws by requiring employers to retain documentation regarding their employees' authorization to work

and to make the documentation available for inspection upon request by federal officers. 8 U.S.C. § 1324a(b)(3). Although Congress did not specify the procedures for the inspection, federal regulations provide that employers will be given notice three business days before a planned inspection. 8 C.F.R. § 274a.2(b)(2)(ii). Neither the statute nor the regulations require any notice to employees before their employers' records are inspected, or after an inspection is conducted.

As relevant here, AB 450 imposes two types of notice requirements related to federal inspections, neither of which has any basis in federal law. First, employers must inform employees of upcoming inspections within 72 hours of receiving notice of the inspection. Cal. Lab. Code § 90.2(a)(1). Second, employers must provide notice to employees whose work authorization is called into question by federal inspectors.

These provisions were part of a state enactment designed to "combat the problems associated with immigration enforcement activity in the workplace." Cal. S. Comm. on the Judiciary, Comm. Rep. for Cal. Assemb. B. No. 450, at 2 (June 21, 2017) [ER 180]. They accomplish this end by ensuring that aliens who might be subject to enforcement actions under the immigration laws are warned that their authorization to work might be, or has been, called into question, thus encouraging them to take evasive action or impede federal agents conducting routine inspections. *See* Homan Decl. ¶ 88 [ER 483].

B. AB 450's provisions impermissibly target and discriminate against federal immigration enforcement operations. If any other entity—such as a state or federal regulator, or a private entity—inspects an employer's records, the employer would have no obligation under AB 450 to notify its employees on pain of monetary penalties. It should be evident that a state cannot impose this type of unique regime with regard to inspections conducted by the federal government.

This Court's decisions make clear that the intergovernmental immunity doctrine is not limited to circumstances in which a state is regulating the federal government directly, but applies to efforts to interfere with the federal government's functions by regulating those with whom it deals. Thus, this Court has applied the intergovernmental immunity doctrine to a state law regulating the actions taken by a federal contractor, explaining that the fact that the federal government had used a contractor rather than engaging in conduct itself "does not affect [the Court's] immunity analysis." *Boeing*, 768 F.3d at 842. The relevant point is that the federal government is the target of the state enactment, not the precise mechanism by which the state has singled out federal government activities.

The district court disregarded this principle in upholding AB 450's employee-notice provisions on the ground that "[a]n employer is not punished for its choice to work with the Federal Government, but for its failure to communicate with its employees." PI Op. 28 [ER 35]. The crucial point, to which the court gave no weight, is that the employer is punished for its failure to communicate with its

employees *only* about a federal immigration investigation, thus singling out federal immigration enforcement for uniquely unfavorable treatment. Rather than "affect[ing] 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), the notice requirement "discriminates against the federal government," which is precisely what the intergovernmental immunity doctrine prohibits, *Boeing*, 768 F.3d at 842.

It would be apparent in any other context that requirements of this type are impermissible. A state plainly could not require that financial institutions must inform their clients when federal regulators—but *only* federal regulators—have conducted inspections that might also suggest violations of federal law by the clients. It likewise cannot mandate that employers inform their workers of investigations and investigative results when DHS enforces the immigration laws.

The state statute is particularly anomalous because it does not even purport to have a purpose independent of its impermissible regulation of federal immigration enforcement—the type of justification typically at least asserted by states in this Court's prior intergovernmental immunity cases. Even where a state enactment purported to serve independent ends, this Court recognized that by enacting a state law "mandat[ing] the ways in which [a contractor] renders services that the federal government hired [the contractor] to perform," a state "regulate[d] not only the federal contractor but the effective terms of [the] federal contract itself." *Boeing*, 768

F.3d at 840. Here, similarly, California purports to dictate the terms of the federal inspections themselves, through the mechanism of regulating the entity subject to the inspections.

C. In addition, even if AB 450's notice provisions had not discriminatorily targeted federal immigration enforcement in the workplace, they still would be preempted by federal law. As noted, federal law does not require employers to provide notice to employees of upcoming inspections, much less to inform employees that their work authorization has been called into question. California thus seeks to alter the manner in which the federal government conducts inspections, by imposing requirements that neither Congress nor the implementing agency saw fit to impose. *See Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001) ("[T]he 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."). As the Supreme Court has recognized, "a 'conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy.'" *Arizona*, 567 U.S. at 406 (brackets omitted) (quoting *Motor Coach Emps. v. Lockridge*, 403 U.S. 274, 287 (1971)); *see also Crosby v. National Foreign Trade Council*, 530 U.S. 363, 376-77 (2000) (holding that state enactment that had effect of limiting President's flexibility in carrying out federal policies with respect to Burma was preempted).

Moreover, California's law does not merely constitute a conflict in technique to achieve the same ends as federal law. Rather, California's enactment impermissibly

seeks to protect aliens from federal immigration enforcement. *See Nash v. Florida Indus. Comm'n*, 389 U.S. 235, 240 (1967) (state has no authority to "impair[] the efficiency of those agencies of the Federal government to discharge the duties, for the performance of which they were created" (quotation marks omitted)).

The district court mistakenly suggested that there was no conflict with federal law because employees, as opposed to employers, are the "targets" of federal inspections. PI Op. 27 [ER 34]. As noted, federal law imposes consequences on aliens who unlawfully accept employment, including consequences within the federal immigration scheme and, in the case of fraud, criminal penalties. Congress expressly provided that the inspection forms that are the subject of the investigations at issue in AB 450 may be used to enforce the various provisions applicable to aliens who unlawfully accept employment. *See* 8 U.S.C. § 1324a(b)(5) (authorizing use of forms for provisions of the INA and for specified criminal statutes, including 18 U.S.C. § 1546); *see also* 8 U.S.C. § 1324c(a) (imposing criminal penalties for using fraudulent documents to subvert the employer verification system). Thus, although the employers are the entities who maintain the relevant records, employees are of course objects of the investigation rather than mere bystanders.

The district court was similarly mistaken in suggesting that employee notice could, in some circumstances, serve a legitimate purpose in allowing aliens to correct deficiencies in their paperwork. The Supreme Court has overruled "the aberrational doctrine" of cases that had held "that state law may frustrate the operation of federal

law as long as the state legislature in passing its law had some purpose in mind other than one of frustration." *Perez v. Campbell*, 402 U.S. 637, 651-52 (1971). And in any event, AB 450 was not designed to facilitate federal inspections, but to "combat the problems associated with immigration enforcement activity in the workplace," as evidenced by its core provisions restricting employers from consenting to federal inspections. Cal. S. Comm. on the Judiciary, Comm. Rep. for Cal. Assemb. B. No. 450, at 2 (June 21, 2017) [ER 180]. Tellingly, the district court's suggestion that the state enactment would facilitate federal enforcement came not from the legislation itself or even from the State's brief, but only from the suggestion of an amicus. *See* PI Op. 28 [ER 35].

II. California has no authority to impose special inspection requirements solely on facilities that house federal immigration detainees (AB 103).

Through AB 103, California impermissibly seeks to require facilities housing federal immigration detainees to cooperate with broad investigations that examine the due process provided to detainees and the circumstances surrounding the detainee's apprehension and transfer to the facility. California has no legitimate interest in these matters concerning federal immigration enforcement.

A. The INA requires the federal government to "arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1). While some aliens may be detained in federal facilities, Congress expressly contemplated that others would be held in nonfederal facilities. *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). Regardless of where an alien is detained, federal regulations protect against public disclosure of sensitive information concerning federal immigration detainees. 8 C.F.R. § 236.6; *see also* 68 Fed. Reg. 4364, 4366 (Jan. 29, 2003) (expressing federal government's interest in "guarantee[ing] that information regarding federal detainees will be released under a uniform federal scheme rather than the varying laws of fifty states").

Through AB 103, California seeks to take advantage of the location of facilities housing federal immigration detainees within its borders to conduct its own investigations regarding the enforcement efforts of federal officials. AB 103 creates an inspection and review scheme applicable only to facilities "in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California." Cal. Gov't Code § 12532(a). The scheme imposes obligations on the facilities by requiring them to provide "all necessary access for the observations necessary to effectuate reviews . . . including, but not limited to, access to detainees, officials, personnel, and records." *Id.* § 12532(c). These inspections, which are imposed in addition to "robust inspections" to ensure that the facilities meet federal standards, Homan Decl. ¶ 56 [ER 469], "cause[] the facilities to expend resources otherwise necessary for ensuring the safety and security of the detainees," *id.* ¶ 60 [ER 470]. And the state scheme goes well beyond conditions of confinement, requiring an examination of the "due process provided" to detainees and "the

circumstances around their apprehension and transfer to the facility," Cal Gov't Code § 12532(b), and thus calling for the inspection of detainee records unnecessary for other forms of inspection, *see* Homan Decl. ¶ 64 [ER 471]. The state legislature did not identify any executive action that required such an intrusive inquiry into how the federal government performed its immigration enforcement functions, instead merely directing the state Attorney General to prepare a report. *Id.* § 12532(b)(2).

B. AB 103 violates principles of intergovernmental immunity because it impermissibly targets and discriminates against facilities housing federal immigration detainees. On its face, the provision applies specifically and exclusively to such facilities. Detention facilities in California are generally subject only to a separate inspection scheme concerning matters like the conditions of confinement. *See* Cal. Penal Code §§ 6030, 6031.1. Moreover, the scheme that applies solely to facilities housing federal immigration detainees encompasses topics that are not covered in any other scheme, including the due process provided and the circumstances surrounding apprehension. *See* Cal. Gov't Code § 12532(b).

The singling out of facilities housing federal immigration detainees is a blatant violation of the fundamental principle that an entity "cannot be subjected to discriminatory regulations because it contracted with the federal government." *Boeing*, 768 F.3d at 842. As this Court has recognized, a state may not "regulate what . . . federal contractors ha[ve] to do or how they [do] it pursuant to their contracts." *Id.* at

839. And this case is even more egregious, because California is inspecting federal contractors to review how *federal officials* took custody in the first place.

Although the district court conceded that AB103 discriminatorily "imposes a review scheme on facilities contracting with the federal government, only," it nevertheless sustained the statute on the ground that, in its view, "the burden placed upon the facilities is minimal." PI Op. 19 [ER 26]. But that rationale is fundamentally misguided, because the application of the intergovernmental immunity doctrine does not depend on the size of the discriminatory burden imposed. Even a tax of $1 imposed only on entities that contract with the federal government would be unlawful. As the Supreme Court made clear in first announcing principles of intergovernmental immunity, "[a] question of constitutional power can hardly be made to depend on a question of more or less." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 327 (1819).

Moreover, the district court was simply wrong to conclude that "the review appears no more burdensome than reviews required under California Penal Code §§ 6030, 6031.1." PI Op. 19 [ER 26]. To begin, as noted, the review under those provisions does not encompass an evaluation of the due process provided or the circumstances surrounding detention or transfer. Inquiry into these matters will require evaluation of individual detainee records, creating a wholly additional and significant burden associated only with federal immigration detention. And even as to

conditions of confinement, AB 103's special review scheme by definition adds to the preexisting review scheme generally applicable to all detention facilities.

Finally, because there is no dispute that California has singled out the federal government for additional inspections and investigations, the district court erred (PI Op. 19 [ER 26]) in analogizing AB 103 to the statute at issue in *North Dakota v. United States*, 495 U.S. 423 (1990), which generally required liquor retailers to purchase liquor from in-state wholesalers, but provided an exception that allowed the federal government to purchase liquor from out-of-state wholesalers as long as those wholesalers complied with certain labeling and reporting regulations. *Id.* at 439 (plurality op.). In that case, emphasizing that state law singled out the federal government only insofar as it provided additional options unavailable to private persons, the Court concluded that "[a] regulatory regime which *so favors* the Federal Government cannot be considered to discriminate against it." *Id.* (emphasis added).

By contrast, California's laws do not favor the federal government in any respect, but rather "discriminate against the Federal Government and those with whom it deals" for immigration detention services by "treat[ing] [all other detention facilities] better than it treats them." *North Dakota*, 495 U.S. at 437-38 (plurality op.). Thus, far from supporting AB 103, *North Dakota* confirms that it cannot stand: "Since a regulation imposed on one who deals with the Government has as much potential to obstruct governmental functions as a regulation imposed on the Government itself, the 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." *Id.* at 438.

C. In addition, even if AB 103's inspection regime had not discriminatorily targeted facilities holding federal immigration detainees, it still would be preempted by federal law. The mere fact that federal detainees are held within California's borders does not give the state the authority to inspect and review the due process afforded to the alien and the federal government's basis for the alien's detention and transfer. States generally lack the power to inquire into the federal government's basis for detaining individuals. *See Tarble's Case*, 80 U.S. 397, 406-11 (1871); *see also In re Neagle*, 135 U.S. 1, 62 (1890) (observing that although federal officers "must act within the states," state governments may not "obstruct [the federal government's] authorized officers against its will"). That is especially so for immigration detention, as the Constitution and the INA give the federal government exclusive authority over federal immigration enforcement, and neither affords California the authority to review the federal government's determinations regarding detention and transfer of aliens. *See generally Arizona*, 567 U.S. at 394-97. To the contrary, the Supreme Court has emphasized "the principle that the removal process is entrusted to the discretion of the Federal Government." *Id.* at 409.

Moreover, as discussed above, in support of California's attempt to evaluate the federal government's immigration enforcement efforts, AB 103 impermissibly

imposes burdens on the operation of the federal detention scheme. The statute specifically compels facilities 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). Entities that hold federal immigration detainees are thus forced to comply with an additional inspection and review scheme, which includes review of sensitive information about the circumstances of individual detainees in which the state has no legitimate interest. *See* 8 C.F.R. § 236.6 (limiting public disclosure of information on individual detainees). As this Court and the Supreme Court have recognized in the context of efforts to impose licensing requirements on federal contractors, the state has no authority to "interfere with federal government functions." *See Gartrell Constr. Inc. v. Aubry*, 940 F.2d 437, 441 (9th Cir. 1991); *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 189-90 (1956) (per curiam).

The district court emphasized that California's review did not purport to overturn federal determinations regarding detention and removal. PI Op. 14 [ER 21]. But the court did not even attempt to explain what legitimate purpose inspections of this kind could serve. The court stated only that any future action by California premised on the inspection scheme "is subject to speculation and conjecture." *Id.* at 15 [ER 22]. States may not impose burdens on entities carrying out federal law in the absence of any identified legitimate interest.

The district court further stressed that California has authority to address conditions in detention facilities. PI Op. 14 [ER 21]. But the review at issue here is not limited to such conditions, instead extending to the entirely unrelated subject of the due process afforded to detainees and the circumstances of apprehension by federal officials. Only by ignoring this aspect of the inspection scheme could the district court conclude that the burden of compliance was justified by legitimate state interests.

III. California has no authority to enact a policy of disrupting the orderly transfer of aliens to federal custody (SB 54).

SB 54 seeks to impede the enforcement of federal immigration laws by manipulating the overlap between state criminal enforcement and federal immigration enforcement. California attempts, in particular, to protect aliens in state or local custody from detention by federal authorities by categorically refusing to provide (subject to limited exceptions) a basic level of cooperation necessary for federal officials to assume custody of aliens as contemplated by Congress.

A. The INA recognizes that aliens unlawfully in this country are subject to removal under federal immigration law and may also be subject to regulation under state criminal law. Addressing the intersection of the two regulatory schemes, the INA provides that state criminal custody will generally be completed before federal officials take custody for civil immigration purposes. The INA provides that DHS "may not remove an alien who is sentenced to imprisonment until the alien is released

from imprisonment." 8 U.S.C. § 1231(a)(4)(A). But within 90 days of "the date the alien is released from detention or confinement," DHS "shall remove" an alien subject to a final order of removal. *Id.* § 1231(a)(1)(A), (B)(iii). During this removal period, DHS "shall detain" such aliens, and, if the alien has a qualifying criminal history, "[u]nder no circumstance" shall DHS release the individual during the removal period. *Id.* § 1231(a)(2). Similarly, when an alien is not yet subject to a final order of removal, DHS may execute a warrant under 8 U.S.C. § 1226(a) to arrest and detain the alien when he is released from local criminal custody and, if the alien has qualifying criminal history, DHS "shall" take the alien into custody "when the alien is released," *id.* § 1226(c).

To ensure that state criminal enforcement does not interfere with the federal scheme, Congress enacted a number of measures to facilitate cooperation between the states and the federal government. The federal government is responsible for making information available to state and local authorities so they can be aware of which individuals who have been arrested for aggravated felonies are aliens. 8 U.S.C. § 1226(d)(1)(A). The federal government also designates and trains liaisons with states and localities in connection with aliens charged with aggravated felonies. *Id.* § 1226(d)(1)(B).

Congress also enacted provisions requiring the federal government and the states to share information. The federal government must provide information, upon request, to state or local officials "seeking to verify or ascertain the citizenship or

immigration status of any individual." 8 U.S.C. § 1373(c). And the states cannot "prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." *Id.* § 1373(a); *see also id.* § 1644 (similar); *id.* § 1373(b) (persons or agencies may not "prohibit, or in any way restrict, a Federal, State, or local government entity" from sending information regarding immigration status to DHS, requesting or receiving such information from DHS, maintaining such information, or exchanging such information with other government entities).

B. SB 54 is a deliberate effort to interfere with this federal scheme. It does so in two ways.

First, California purports to prohibit covered state and local officials from transferring aliens in their criminal custody to federal immigration officials in the absence of a judicial warrant. Cal. Gov't Code § 7284.6(a)(4). But Congress expressly provided that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a); *see Arizona*, 567 U.S. at 407-08 (noting that the Attorney General has discretion to issue warrants, which are executed by federal officers). When federal officials seek to assume custody of an alien pursuant to such warrants, California has no authority to demand a judicial warrant that Congress chose not to require. *See Oregon Prescription Drug Monitoring Program v. U.S. Drug Enf't Admin.*, 860 F.3d 1228, 1236 (9th Cir. 2017) (holding that Oregon statute requiring a court

order for Oregon Health Authority to disclose prescription monitoring information at the request of a federal, state, or local law enforcement agency "stands as an obstacle to the full implementation of the [Controlled Substances Act] because it 'interferes with the methods by which the federal statute was designed to reach [its] goal.'" (alteration in original) (quoting *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 103 (1992))); *see also Arizona*, 567 U.S. at 406 (recognizing that "a conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy" (brackets and quotation marks omitted)).

By prohibiting transfers of custody within secure areas of local jails in the absence of a judicial warrant, California prevents federal officers from obtaining custody through a safe and peaceful transfer. Instead, federal officers must, in effect, stake out a jail and seek to make a public arrest. *See* Homan Decl. ¶ 30 [ER 454]. Congress did not contemplate that, as a consequence of letting state detention proceed first, federal officers who sought to detain an alien for immigration purposes would need to race to the front of a local detention facility and seek to effectuate an arrest before the alien manages to escape. Arrests of aliens in public settings generally require five officers and present risks to the arresting officer and the general public. *Id.* ¶ 37 [ER 458-59]; *see also* Hutchens Decl. ¶ 15 [ER 129] (assertion by sheriff in California that "[i]n my opinion, SB 54 has placed more risk in our communities and has put law enforcement officers at unnecessary risk"). Again, California may not

"impair[] the efficiency of those agencies of the Federal government to discharge the duties, for the performance of which they were created." *Nash*, 389 U.S. at 240; *see also Neagle*, 135 U.S. at 59 (holding that federal law did not leave "officers of the government . . . defenseless and unprotected").

Second, California compounds the problem by restricting local and state officials from even providing basic information, such as the scheduled release date and home address, regarding aliens whom the federal government seeks to take into custody. *See* Cal. Gov't Code § 7284.6(a)(1)(C)-(D). As noted, Congress generally authorized (and in some cases directed) the federal government to take criminal aliens into federal custody for purposes of removal upon their release from state criminal custody. *See supra* pp. 36-37. So not only would California require DHS to stake out jails to detain aliens upon their release, but California would require DHS to do so indefinitely because the agency would not otherwise know if and when any given alien would be released. *See* Rocha Decl. ¶ 8 [ER 202] (noting that publicly available information does not provide adequate information about release dates). It is axiomatic that the federal government's ability to safely and effectively enforce federal law may not "be obscured by state or local action" in this fashion. *Crosby*, 530 U.S. at 381.

In sum, Congress did not create a scheme in which the federal government shall take custody of aliens upon their release from state criminal custody without having any mechanism for ascertaining when the alien would be released or any ability to assume custody in a safe and orderly manner. The INA's allowance for state

criminal custody to be completed before removal is premised on the assumption that the federal government will be able to learn such aliens' release dates and seamlessly take them into state custody. That assumption is consistent with the general structure of federal immigration law, which anticipates cooperation in various ways, including the sharing of information between federal and state officials. *See* 8 U.S.C. §§ 1226(d)(1)(A), 1373. As the Supreme Court has emphasized, "[c]onsultation between federal and state officials is an important feature of the immigration system." *Arizona*, 567 U.S. at 411; *see also Ponzi v. Fessenden*, 258 U.S. 254, 259 (1922) (recognizing that system of "two sovereignties . . . requires . . . a spirit of reciprocal comity and mutual assistance to promote due and orderly procedure").

In response, the district court provided various reasons why SB 54 is not preempted. They are all erroneous.

First, the district court was quite wrong to characterize the state's interference with the enforcement of federal law as a mere "decision not to assist federal immigration enforcement." PI Op. 43 [ER 50]. As a threshold matter, rather than just idly standing on the sidelines, California has affirmatively restricted the ability of otherwise-willing local and state officials to provide the minimal cooperation needed for federal officials to exercise their duties. Even if "refusing to help is not the same as impeding," *id.*, SB 54 does the latter.

And there is an even more fundamental reason why California is no mere bystander. What California is "refusing to help" with is the problems created by its

own exercise of regulatory authority over persons who are also subject to federal regulatory authority. By affirmatively asserting criminal custody over aliens whom the federal government seeks to detain and remove, California's scheme will impair the exercise of the parallel federal scheme unless California terminates custody in a manner that does not hinder the federal government in assuming custody. It is precisely when two regulatory schemes collide in this fashion that the Supremacy Clause prohibits the state from using its authority to create an obstacle to the functioning of the federal scheme. And again, while the district court emphasized California's asserted concern about "the impact that state law enforcement's entanglement in immigration enforcement has on public safety," PI Op. 50-51 [ER 57-58], the Supreme Court has squarely rejected the idea that states may impede the operation of federal law so long as they have "some purpose in mind other than one of frustration," *Perez*, 402 U.S. at 651-52.

Second, the district court erroneously suggested that Congress intended "to tolerate" state and local laws that interfered with the ability of federal officials to assume custody of aliens upon release from state criminal custody. PI Op. 45 [ER 52]. Although the court observed that the INA does not authorize state and local officials to perform federal immigration enforcement functions in violation of state law, PI Op. 45-46 [ER 52-53], that in no way means that Congress intended to allow states to enact laws requiring state and local officials to obstruct federal officials from themselves exercising immigration enforcement functions.

Even more flawed was the district court's reliance on the fact that federal "detainers soliciting 'temporary detention' have been found to be a non-mandatory 'request.'" PI Op. 46 [ER 53] (quoting 8 C.F.R. § 287.7(d)). It is certainly true that the federal government does not purport to force states to detain aliens on its behalf by extending the period of detention that would otherwise be warranted under state law. But that hardly demonstrates that Congress intended to allow states to release criminal aliens in a manner that affirmatively thwarts efforts by the federal government to assume custody pursuant to procedures set out by federal law.

Third, the district court mistakenly concluded that "Tenth Amendment and anticommandeering principles counsel against preemption." PI Op. 48 [ER 55]. Preventing states from adopting a policy of thwarting the seamless transfer of custody of aliens to federal officers does not require jurisdictions to regulate in a particular area by enacting or repealing a particular law, as in *New York v. United States*, 505 U.S. 144 (1992), and *Murphy v. National Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018). Nor does it require jurisdictions to enforce a federal regulatory scheme, as in *Printz v. United States*, 521 U.S. 898 (1997). Rather, the issue here is whether state and local governments can put into effect broad policies designed to hinder the federal government's enforcement of the immigration laws against individual aliens, notwithstanding the Supremacy Clause. In particular, the issue is whether localities may use the criminal-law authority over aliens that Congress has allowed them to

retain in a manner that would frustrate the operation of the parallel federal regulatory scheme for potential removal or detention upon the aliens' release from local custody.

Indeed, *Murphy* expressly declined to disturb the bedrock principle under the Supremacy Clause that state and local laws that obstruct federal laws "regulat[ing] private actors" are "preempt[ed]." *Murphy*, 138 S. Ct. at 1479. That principle could not save the federal statutory provision at issue in *Murphy* because that provision did not "impose any federal restrictions on private actors," but instead sought to prohibit states from authorizing sports gambling schemes. *Id.* at 1481. By contrast, where, as here, both sovereigns regulate private individuals, the issue is not whether the federal government has commandeered a state, but whether the state's scheme is preempted insofar as it poses an obstacle to the effectuation of the federal scheme. *See Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 289-90 (1981) (stating that it "is incorrect" to "assume that the Tenth Amendment limits congressional power to pre-empt or displace state regulation of private activities affecting interstate commerce").

Indeed, especially given its exclusive authority over immigration, Congress could have provided that it would immediately remove aliens regardless of pending state criminal prosecutions. Allowing state criminal custody to continue while requiring that states take the steps necessary to effect an orderly transfer to federal officers at the end of such custody does not in any sense "commandeer" the state into enforcing federal law, but merely places conditions on the state's exercise of its own

regulatory authority. *See Hodel*, 452 U.S. at 290-91 ("We fail to see why the Surface Mining Act should become constitutionally suspect simply because Congress chose to allow the States a regulatory role.").

So long as Congress is expressly or implicitly preempting the state from interfering with federal regulation of private parties, it is not impermissibly regulating the state directly. As the Supreme Court admonished in *Murphy,* "it is a mistake to be confused by the way in which a preemption provision is phrased," because "language might appear to operate directly on the States" but in substance merely prevent the States from obstructing federal regulation of private parties. 138 S. Ct. at 1480; *see id.* (discussing 49 U.S.C. app. § 1305(a)(1) (1988)).

The district court was mistaken to suggest that California "risks being blamed for a federal agency's mistakes, errors, and discretionary decisions to pursue particular individuals or engage in particular enforcement practices." PI Op. 50 [ER 57]. Unlike the "commandeering" cases where the Supreme Court was concerned about political accountability, the federal government is not requiring California to enforce federal law, by itself arresting particular individuals or extending their custody. *See Printz*, 521 U.S. at 926 (citing *New York*, 505 U.S. at 188). Instead, it is the federal government that seeks to assume custody, and only of those aliens that California has already decided, for its own reasons, to take into custody pursuant to state criminal law. The federal government bears sole responsibility for the actions it takes with respect to private persons pursuant to its regulatory authority.

Moreover, even if SB 54 could properly be analyzed apart from the overall federal immigration scheme, a requirement to respond to, or not interfere with, a federal inquiry about an alien's release date or home address would in no sense be "commandeering" local officials to execute federal law. In *Printz*, although the Court held that local law enforcement officers could not be required to perform background checks to validate the legality of gun sales under federal law, it distinguished statutes that "require only the provision of information to the Federal Government," as they "do not involve . . . the forced participation of the States' executive in the actual administration of a federal program." 521 U.S. at 918. In short, the Supreme Court's Tenth Amendment cases are not properly read to invalidate reporting requirements, such as the requirement for "state and local law enforcement agencies to report cases of missing children to the Department of Justice." *Id.* at 936 (O'Connor, J., concurring) (citing 42 U.S.C. § 5779(a), transferred to 34 U.S.C. § 41307); *see Reno v. Condon*, 528 U.S. 141, 151 (2000) (Constitution does not prohibit federal enactments that "do[] not require the States in their sovereign capacity to regulate their own citizens," but instead "regulate[] the States as the owners of data bases"). This Court thus had no difficulty holding that a state law was preempted insofar as it interfered with the federal government's ability to obtain information from a state agency in furtherance of the enforcement of the Controlled Substances Act. *See Oregon Prescription Drug Monitoring Program*, 860 F.3d at 1236.

C. Even if SB 54's restrictions on cooperation concerning the termination and transfer of custody would not have been preempted if they had been imposed in a nondiscriminatory manner, the law as enacted violates the intergovernmental immunity doctrine by singling out federal immigration enforcement for adverse treatment. SB 54 applies to no other entity, private or public, seeking information about a prisoner's release date, and it likewise has no application when a prison in California transfers a prisoner to the custody of another state or even to federal criminal custody. The statute applies uniquely to federal immigration enforcement efforts because it is designed solely to frustrate the federal government's enforcement of the immigration laws.

On its face, SB 54 is targeted solely at officials who wish to cooperate with federal immigration officials. It thus explicitly seeks to "discriminate against the Federal Government or those with whom it deals." *Boeing*, 768 F.3d at 839 (quotation marks and brackets omitted). California may not "interfere[] with the functions of the federal government," regardless of whether it targets intermediaries. *See id.* at 840.

The district court's objections to the invocation of the intergovernmental immunity doctrine were mistaken. The court suggested that the federal government had not "identified any examples of similarly situated authorities" that receive the requested cooperation, PI Op. 56 [ER 63], but the salient point is that SB 54 applies, on its face, only to federal immigration enforcement efforts, so there is no need to look for comparators in determining whether California is discriminating against the

federal government. As for the court's observation that no prior case had involved a state's regulation of state and local officials, *id.*, there is also no case upholding such a regulation discriminatorily prohibiting local and state officials from dealing with certain federal officials. That is unsurprising, both because California's law is so novel and because intergovernmental immunity does not depend on the mechanism of discrimination, but rather on whether the state is discriminating against the federal government as California is here. Finally, the district court's concerns about state sovereignty, PI Op. 56-57 [ER 63-64], were misplaced for the reasons discussed above.

D. Finally, wholly apart from implied obstacle preemption and intergovernmental immunity, SB 54's information-sharing restrictions are expressly prohibited by 8 U.S.C. § 1373. Although the district court suggested that § 1373 is likely unconstitutional under the construction of the Tenth Amendment adopted by the Supreme Court in *Murphy*, *see* PI Op. 35 [ER 42], the district court's constitutional analysis is flawed for the reasons already discussed, *see supra* pp. 43-46. And the court's holding that § 1373 does not reach the information covered by SB 54, *see* PI Op. 38-39 [ER 45-46], is also erroneous.

The applicable provision of 8 U.S.C. § 1373 provides that states "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from" federal immigration authorities "information regarding the . . . immigration status . . . of any individual." 8 U.S.C. § 1373(a); *see id.* § 1373(b) ("[N]o

person or agency may prohibit, or in any way restrict, a . . . local government entity from" sharing "information regarding the immigration status" of individuals with federal immigration authorities.). In contrast, § 1373(c), which deals with the obligations of the federal government, refers only to "immigration status."

The Supreme Court recently emphasized that words such as "regarding," "relating to," and "respecting" "generally ha[ve] a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." *See Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1759-60 (2018). And the significance of the phrase "information regarding" is underscored by the narrower language of § 1373(c). *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (alteration in original).

Of course, "information regarding" immigration status includes information necessary to ascertain an individual's "category of presence" in the United States, *see* PI Op. 37-39 [ER 44-46], but, contrary to the district court's suggestion, it is not limited to such information. In particular, whether a given alien may actually be removed or detained by federal immigration authorities is, at a minimum, information regarding that alien's immigration status. The legislative history confirms this understanding. When Congress first prohibited restrictions on the sharing of

"information regarding" an alien's "immigration status," a House Conference Report explained that such provisions were intended to enable state and local officials to "communicate with the INS regarding the presence, whereabouts, or activities of illegal aliens." H.R. Rep. No. 104-725, at 383 (1996) (Conf. Rep.); *see id.* (provision "is designed to prevent any State or local" prohibition or restriction on "any communication between State and local officials and the INS"). Likewise, the Senate Report accompanying § 1373 explained 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. 104-249, at 19-20 (1996).

And under the INA, as discussed above, an alien's release date from local criminal custody is critical to determining when DHS may actually detain and remove the alien. *See supra* pp. 36-37. The district court made no attempt to address these features of the INA when analyzing the scope of 8 U.S.C. § 1373.

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 has remained in the United States beyond the 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, 8 U.S.C. § 1229b(a)(1), (a)(2), (b)(1)(A).

Indeed, California's limited view of the scope of 8 U.S.C. § 1373 contradicts the longstanding views, reiterated recently, of the California Attorney General. In 2014, an Information Bulletin issued by the California Department of Justice reiterated the legal position, previously set out in an Attorney General opinion in 1992, that "[f]ederal law provides that state and local governments may not be prohibited from providing information to or receiving information from [Immigration and Customs Enforcement]." Cal. Dep't of Justice, *Information Bulletin* 3 [ER 90] (citing 75 Ops. Cal. Atty. Gen. 270, 277 (1992)). The bulletin specified that state and local law enforcement officers could provide "notification of the date that an individual will be released." *Id.* That position was correct, and is fundamentally inconsistent with the information-sharing restrictions in SB 54.

CONCLUSION

The judgment of the district court should be reversed insofar as it denied in part the United States' motion for a preliminary injunction.

Respectfully submitted,

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SEPTEMBER 2018

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, appellants state that they know of no related case pending in this Court.

s/ Daniel Tenny
Daniel Tenny

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,531 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2013 in Garamond 14-point font, a proportionally spaced typeface.

s/ Daniel Tenny
Daniel Tenny

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Daniel Tenny
Daniel Tenny

ADDENDUM

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Cal Gov't Code 7285.1

§ 7285.1. Voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor; violations; civil penalties; verification of judicial warrant; enforcement of section; application of section

(a) Except as otherwise required by federal law, an employer, or a person acting on behalf of the employer, shall not provide voluntary consent to an immigration enforcement agent to enter any nonpublic areas of a place of labor. This section does not apply if the immigration enforcement agent provides a judicial warrant.

(b) An employer who violates subdivision (a) shall be subject to a civil penalty 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. If a court finds that an immigration enforcement agent was permitted to enter a nonpublic area of a place of labor without the consent of the employer or other person in control of the place of labor, the civil penalty shall not apply. "Violation" means each incident when it is found that subdivision (a) was violated without reference to the number of employees, the number of immigration enforcement agents involved in the incident, or the number of locations affected in a day.

(c) This section shall not preclude an employer or person acting on behalf of an employer from taking the immigration enforcement agent to a nonpublic area, where employees are not present, for the purpose of verifying whether the immigration enforcement agent has a judicial warrant, provided no consent to search nonpublic areas is given in the process.

(d) The exclusive authority to enforce this section is granted to the Labor Commissioner or the Attorney General and enforcement shall be through civil action. Any penalty recovered shall be deposited in the Labor Enforcement and Compliance Fund.

(e) This section applies to public and private employers.

Cal. Gov't Code § 7285.2

§ 7285.2. Voluntary consent to an immigration enforcement agent to access, review, or obtain employee records; violations; civil penalties; enforcement of section; application of section

(a) (1) Except as otherwise required by federal law, and except as provided in paragraph (2), an employer, or a person acting on behalf of the employer, shall not provide voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant. This section does not prohibit an employer, or person acting on behalf of an employer, from challenging the validity of a subpoena or judicial warrant in a federal district court.

(2) This subdivision shall not apply to I-9 Employment Eligibility Verification forms and other documents for which a Notice of Inspection has been provided to the employer.

(b) An employer who violates subdivision (a) shall be subject to a civil penalty 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. If a court finds that an immigration enforcement agent was permitted to access, review, or obtain the employer's employee records without the consent of the employer or other person in control of the place of labor, the civil penalty shall not apply. "Violation" means each incident when it is found that subdivision (a) was violated without reference to the number of employees, the number of immigration enforcement agents involved in the incident, or the number of employee records accessed, reviewed, or obtained.

(c) The exclusive authority to enforce this section is granted to the Labor Commissioner or the Attorney General and enforcement shall be through civil action. Any penalty recovered shall be deposited in the Labor Enforcement and Compliance Fund.

(d) This section applies to public and private employers.

Cal. Lab. Code § 1019.2

§ 1019.2. Reverification of employment eligibility of current employee; violations; civil penalties; interpretation, construction, or application of chapter

(a) Except as otherwise required by federal law, a public or private employer, or a person acting on behalf of a public or private employer, 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.

(b) (1) Except as provided in paragraph (2), an employer who violates subdivision (a) shall be subject to a civil penalty of up to ten thousand dollars ($10,000). The penalty shall be recoverable by the Labor Commissioner.

(2) The actions of an employer that violate subdivision (a) and result in a civil penalty under paragraph (1) shall not also form the basis for liability or penalty under Section 1019.1.

(c) In accordance with state and federal law, nothing in this chapter shall be interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

Cal. Lab. Code § 90.2

§ 90.2. Notice posted to employees of inspection of I-9 in employee's language; copy of written immigration agency notice that provides results of I-9 investigation; written notice of employer and employee obligation arising from results of inspection; failure to provide notice; civil penalties; application of section; instruction, construction, and application of chapter

(a) (1) Except as otherwise required by federal law, an employer shall provide a notice to each current employee, by posting in the language the employer normally uses to communicate employment-related information to the employee, of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection. Written notice shall also be given within 72 hours to the employee's authorized representative, if any. The posted notice shall contain the following information:

(A) The name of the immigration agency conducting the inspections of I-9 Employment Eligibility Verification forms or other employment records.

(B) The date that the employer received notice of the inspection.

(C) The nature of the inspection to the extent known.

(D) A copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms for the inspection to be conducted.

(2) On or before July 1, 2018, the Labor Commissioner shall develop a template posting that employers may use to comply with the requirements of subdivision (a) to inform employees of a notice of inspection to be conducted of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency. The posting shall be available on the Labor Commissioner's Internet Web site so that it is accessible to any employer.

(3) An employer, upon reasonable request, shall provide an affected employee a copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms.

(b) (1) Except as otherwise required by federal law, an employer shall provide to each current affected employee, and to the employee's authorized representative, if any, a copy of the written immigration agency notice that provides the results of the inspection of I-9 Employment Eligibility Verification forms or other employment records within 72 hours of its receipt of the notice. Within 72 hours of its receipt of this notice, the employer shall also provide to each affected employee, and to the affected employee's authorized representative, if any, written notice of the obligations of the employer and the affected employee arising from the results of the inspection of I-9 Employment Eligibility Verification forms or other

employment records. The notice shall relate to the affected employee only and shall be delivered by hand at the workplace if possible and, if hand delivery is not possible, by mail and email, if the email address of the employee is known, and to the employee's authorized representative. The notice shall contain the following information:

(A) A description of any and all deficiencies or other items identified in the written immigration inspection results notice related to the affected employee.

(B) The time period for correcting any potential deficiencies identified by the immigration agency.

(C) The time and date of any meeting with the employer to correct any identified deficiencies.

(D) Notice that the employee has the right to representation during any meeting scheduled with the employer.

(2) For purposes of this subdivision, an "affected employee" is an employee identified by the immigration agency inspection results to be an employee who may lack work authorization, or an employee whose work authorization documents have been identified by the immigration agency inspection to have deficiencies.

(c) An employer who fails to provide the notices required by this section shall be subject to a civil penalty 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. This section does not require a penalty to be imposed upon an employer or person who fails to provide notice to an employee at the express and specific direction or request of the federal government. The penalty shall be recoverable by the Labor Commissioner.

(d) For purposes of this section, an "employee's authorized representative" means an exclusive collective bargaining representative.

(e) This section applies to public and private employers.

(f) In accordance with state and federal law, nothing in this chapter shall be interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

Cal. Gov't Code § 12532

§ 12532. Review of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings

(a) Until July 1, 2027, the Attorney General, or his or her designee, shall engage in reviews of 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. The order and number of facilities to be reviewed shall be determined by the Department of Justice. The Attorney General, or his or her designee, shall have authority over which facilities may be reviewed and when. The Department of Justice shall provide, during the budget process, updates and information to the Legislature and the Governor, including a written summary of findings, if appropriate, regarding the progress of these reviews and any relevant findings.

(b) The Attorney General, or his or her designee, shall, on or before March 1, 2019, conduct a review of 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. The order and number of facilities to be reviewed shall be determined by the Department of Justice.

(1) This review shall include, but not be limited to, the following:

(A) A review of the conditions of confinement.

(B) A review of the standard of care and due process provided to the individuals described in subdivision (a).

(C) A review of the circumstances around their apprehension and transfer to the facility.

(2) The Attorney General, or his or her designee, shall provide, on or before March 1, 2019, the Legislature and the Governor with a comprehensive report outlining the findings of the review described in this subdivision, which shall be posted on the Attorney General's Internet Web site and otherwise made available to the public upon its release to the Legislature and the Governor. The Department of Justice shall provide, during the budget process, updates and information to the

Legislature and the Governor, including a written summary of findings, if appropriate, regarding the progress of the review described in this subdivision and any relevant findings.

(c) The Attorney General, or his or her designee, 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.

(d) This section shall become inoperative on July 1, 2027, and, as of January 1, 2028, is repealed.

Cal. Gov't Code § 7282

§ 7282. Definitions

For purposes of this chapter, the following terms have the following meanings:

(a) "Conviction" shall have the same meaning as subdivision (d) of Section 667 of the Penal Code.

(b) "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

(1) All criminal charges against the individual have been dropped or dismissed.

(2) The individual has been acquitted of all criminal charges filed against him or her.

(3) The individual has served all the time required for his or her sentence.

(4) The individual has posted a bond.

(5) The individual is otherwise eligible for release under state or local law, or local policy.

(c) "Hold request," "notification request," and "transfer request" have the same meanings as provided in Section 7283. Hold, notification, and transfer requests include requests issued by the United States Immigration and Customs Enforcement or the United States Customs and Border Protection as well as any other immigration authorities.

(d) "Law enforcement official" means 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.

(e) "Local agency" means any city, county, city and county, special district, or other political subdivision of the state.

(f) "Serious felony" means any of the offenses listed in subdivision (c) of Section 1192.7 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code.

(g) "Violent felony" means any of the offenses listed in subdivision (c) of Section 667.5 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a violent felony as defined by subdivision (c) of Section 667.5 of the Penal Code.

Cal. Gov't Code § 7282.5

§ 7282.5. Cooperation with immigration authorities; certain activities relating to immigration enforcement; conditions

(a) A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act (Chapter 17.25 (commencing with Section 7284)). Additionally, the specific activities described in subparagraph (C) of paragraph (1) of subdivision (a) of, and in paragraph (4) of subdivision (a) of, Section 7284.6 shall only occur under the following circumstances:

(1) The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code.

(2) The individual has been convicted of a felony punishable by imprisonment in the state prison.

(3) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted within the last 15 years of a felony for, any of the following offenses:

(A) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.

(B) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.

(C) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.

(D) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.

(E) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.

(F) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.

(G) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony.

(H) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.

(I) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.

(J) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.

(K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.

(L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).

(M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.

(N) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.

(O) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.

(P) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.

(Q) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.

(R) Possession or use of a firearm in the commission of an offense.

(S) An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code.

(T) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.

(U) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.

(V) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.

(W) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.

(X) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.

(Y) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.

(Z) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.

(AA) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.

(AB) An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.

(AC) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.

(AD) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.

(AE) A violation of subdivision (c) of Section 20001 of the Vehicle Code.

(4) The individual is a current registrant on the California Sex and Arson Registry.

(5) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

(6) In no case shall cooperation occur pursuant to this section for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to

passage of the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code.

(b) In cases in which the individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, respectively, or a felony that is punishable by imprisonment in state prison, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code, a law enforcement official shall additionally have discretion to cooperate with immigration officials pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 7284.6.

Cal. Gov't Code § 7284.2

§ 7284.2. Legislative findings and declarations

The Legislature finds and declares the following:

(a) Immigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.

(b) A relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California.

(c) This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians.

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

(e) State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status. See Sanchez Ochoa v. Campbell, et al. (E.D. Wash. 2017) 2017 WL 3476777; Trujillo Santoya v. United States, et al. (W.D. Tex. 2017) 2017 WL 2896021; Moreno v. Napolitano (N.D. Ill. 2016) 213 F. Supp. 3d 999; Morales v. Chadbourne (1st Cir. 2015) 793 F.3d 208; Miranda-Olivares v. Clackamas County (D. Or. 2014) 2014 WL 1414305; Galarza v. Szalczyk (3d Cir. 2014) 745 F.3d 634.

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

(g) It is the intent of the Legislature that this chapter shall not be construed as providing, expanding, or ratifying any legal authority for any state or local law enforcement agency to participate in immigration enforcement.

Cal. Gov't Code § 7284.4

§ 7284.4. Definitions

For purposes of this chapter, the following terms have the following meanings:

(a) "California law enforcement agency" means a state or local law enforcement agency, including school police or security departments. "California law enforcement agency" does not include the Department of Corrections and Rehabilitation.

(b) "Civil immigration warrant" means any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.

(c) "Immigration authority" means any federal, state, or local officer, employee, or person performing immigration enforcement functions.

(d) "Health facility" includes health facilities as defined in Section 1250 of the Health and Safety Code, clinics as defined in Sections 1200 and 1200.1 of the Health and Safety Code, and substance abuse treatment facilities.

(e) "Hold request," "notification request," "transfer request," and "local law enforcement agency" have the same meaning as provided in Section 7283. Hold, notification, and transfer requests include requests issued by United States Immigration and Customs Enforcement or United States Customs and Border Protection as well as any other immigration authorities.

(f) "Immigration enforcement" includes 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.

(g) "Joint law enforcement task force" means at least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.

(h) "Judicial probable cause determination" means a determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody the individual.

(i) "Judicial warrant" means a warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

(j) "Public schools" means all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board, the California State University, and the California Community Colleges.

(k) "School police and security departments" includes police and security departments of the California State University, the California Community Colleges, charter schools, county offices of education, schools, and school districts.

Cal. Gov't Code § 7284.6

§ 7284.6. Law enforcement agency personnel or resources; investigation or detainment of persons for immigration enforcement purposes; report on joint task forces

(a) California law enforcement agencies shall not:

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

(A) Inquiring into an individual's immigration status.

(B) Detaining an individual on the basis of a hold request.

(C) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities in accordance with Section 7282.5. Responses are never required, but are permitted under this subdivision, provided that they do not violate any local law or policy.

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

(E) Making or intentionally participating in arrests based on civil immigration warrants.

(F) Assisting immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.

(G) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.

(2) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All peace officers remain subject to California law governing conduct of peace officers and the policies of the employing agency.

(3) Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

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

(5) Provide office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility.

(6) Contract with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees for purposes of civil immigration custody, except pursuant to Chapter 17.8 (commencing with Section 7310).

(b) Notwithstanding the limitations in subdivision (a), this section does not prevent any California law enforcement agency from doing any of the following that does not violate any policy of the law enforcement agency or any local law or policy of the jurisdiction in which the agency is operating:

(1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a violation of, Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity. Transfers to immigration authorities are permitted under this subsection only in accordance with paragraph (4) of subdivision (a).

(2) Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.

(3) Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:

(A) The primary purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section 7284.4.

(B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement.

(C) Participation in the task force by a California law enforcement agency does not violate any local law or policy to which it is otherwise subject.

(4) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.

(5) Giving immigration authorities access to interview an individual in agency or department custody. All interview access shall comply with requirements of the TRUTH Act (Chapter 17.2 (commencing with Section 7283)).

(c) (1) If a California law enforcement agency chooses to participate in a joint law enforcement task force, for which a California law enforcement agency has agreed to dedicate personnel or resources on an ongoing basis, it shall submit a report annually to the Department of Justice, as specified by the Attorney General. The law enforcement agency shall report the following information, if known, for each task force of which it is a member:

(A) The purpose of the task force.

(B) The federal, state, and local law enforcement agencies involved.

(C) The total number of arrests made during the reporting period.

(D) The number of people arrested for immigration enforcement purposes.

(2) All law enforcement agencies shall report annually to the Department of Justice, in a manner specified by the Attorney General, the number of transfers pursuant to paragraph (4) of subdivision (a), and the offense that allowed for the transfer pursuant to paragraph (4) of subdivision (a).

(3) All records described in this subdivision shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be disclosed.

(4) If more than one California law enforcement agency is participating in a joint task force that meets the reporting requirement pursuant to this section, the joint task force shall designate a local or state agency responsible for completing the reporting requirement.

(d) The Attorney General, by March 1, 2019, and annually thereafter, shall report on the total number of arrests made by joint law enforcement task forces, and the total number of arrests made for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in the Attorney General's report. The Attorney General shall post the reports required by this subdivision on the Attorney General's Internet Web site.

(e) This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

(f) Nothing in this section shall prohibit a California law enforcement agency from asserting its own jurisdiction over criminal law enforcement matters.

8 U.S.C. § 1226

§ 1226. Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--

(1) may continue to detain the arrested alien; and

(2) may release the alien on--

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who--

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence1 to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of Title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system--

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available--

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 1231(a)

§ 1231. Detention and removal of aliens ordered removed

(a) Detention, release, and removal of aliens ordered removed

(1) Removal period

(A) In general

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) Suspension of period

The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

(2) Detention

During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

(3) Supervision after 90-day period

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien--

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

(A) In general

Except as provided in section 259(a) of Title 42 and paragraph (2), the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this chapter before the alien has completed a sentence of imprisonment--

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(B), (C), (E), (I), or (L) of this title and (II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 1101(a)(43)(C) or (E) of this title), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

(C) Notice

Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) No private right

No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) Reinstatement of removal orders against aliens illegally reentering

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

(6) Inadmissible or criminal aliens

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) Employment authorization

No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that--

(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or

(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

. . . .

8 U.S.C. § 1373

§ 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local 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, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.