No. 18-16496

In the United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; EDMUND G. BROWN, JR., GOVERNOR OF CALIFORNIA; XAVIER BECERRA, ATTORNEY GENERAL OF CALIFORNIA,

Defendants-Appellees.

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

BRIEF FOR THE STATES OF TEXAS, ALABAMA, ARKANSAS, FLORIDA, GEORGIA, INDIANA, KANSAS, LOUISIANA, MICHIGAN, NEBRASKA, NEVADA, OHIO, OKLAHOMA, SOUTH CAROLINA, WEST VIRGINIA, AND GOVERNOR PHIL BRYANT OF THE STATE OF MISSISSIPPI AS AMICI CURIAE IN SUPPORT OF APPELLANT

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697
kyle.hawkins@oag.texas.gov

KYLE D. HAWKINS
Solicitor General

ERIC A. WHITE
ARI CUENIN
Assistant Solicitors General

TABLE OF CONTENTS

Page

Table of contents i
Table of authorities ii
Interest of amici curiae 1
Summary of the argument 2
Argument 3
I. California's AB450 is preempted, under *Arizona v. United States*, as an obstacle to the "careful balance struck by Congress with respect to the unauthorized employment of aliens." 3
II. AB103 is obstacle-preempted under *Arizona v. United States*, because it seeks to give state officials the "unilateral" power to second-guess federal determinations about which aliens warrant removal 7
III. SB54's judicial-warrant requirement is also obstacle-preempted under *Arizona v. United States*, because it undermines Congress's alien-detention scheme. 8
A. The alien-transfer provisions of SB54 are preempted under *Arizona* 9
B. SB54's alien-transfer provisions cannot be squared with Congress's alien-detention framework. 13
Conclusion 16
Certificate of service 18
Certificate of compliance 19

TABLE OF AUTHORITIES

Page(s)

Cases

Abel v. United States,
362 U.S. 217 (1960) 9, 10

Arizona v. United States,
567 U.S. 387 (2012) ..... *passim*

City of El Cenizo v. Texas,
890 F.3d 164 (5th Cir. 2018) 9

Demore v. Kim,
538 U.S. 510 (2003) 14

Hawai'i Wildlife Fund v. County of Maui,
886 F.3d 737 (9th Cir. 2018) 5

Jennings v. Rodriguez,
138 S. Ct. 830 (2018) 14

Roy v. County of L.A.,
No. 2:12-CV-09012, 2017 WL 2559616 (C.D. Cal. June 12, 2017) 9-10

Sherman v. U.S. Parole Comm'n,
502 F.3d 869 (9th Cir. 2007) 10

Teamsters v. Morton,
377 U.S. 252 (1964) 5

United States v. California,
No. 2:18-cv-490-JAM-KJN, Dkt. 193 (E.D. Cal. July 5, 2018) 4, 5

United States v. Tejada,
255 F.3d 1 (1st Cir. 2001) 11

Zadvydas v. Davis,
533 U.S. 678 (2001) 14

Constitutional Provisions, Statutes, and Rules

U.S. Const.:
amend. IV 9, 10
art. VI, § 2 6

8 U.S.C.:
§ 1182(a)(2) 13
§ 1182(a)(2)(B) 14
§ 1226(a) 9
§ 1226(a)(1) 10
§ 1226(c) 14
§ 1226(c)(1)(A) 14
§ 1227(a)(2) 13
§ 1231(a) 9
§ 1231(g)(1) 8
§ 1357(a)(1) 6
§ 1357(e) 6

Cal. Gov't Code:
§ 7282.5(a) 8, 12
§ 7282.5(a)(1)-(2) 13
§ 7282.5(a)(3) 14
§ 7282.5(a)(3)(A)-(AE) 13
§ 7282.5(a)(4)-(5) 13
§ 7284.6 8
§ 7284.6(a)(4) 8, 12
§ 7285.1(a) 4, 6
§ 7285.2(a)(1) 4
§ 12532(a) 7-8
§ 12532(b)(1) 8

Cal. Lab. Code:
§ 90.2(a) 5
§ 90.2(a)(1) 4
§ 90.2(a)(1)-(3) 4, 6
§ 90.2(b) 4, 5
§ 90.2(b)(1) 4

8 C.F.R.:
§ 236.6 8
§ 274a.2(b)(2)(ii) 4, 6

Fed. R. App. P.:
26.1 1
29(a)(2) 1
29(a)(4)(E) 1

Other Authority

Br. for the States of New York, California, et al., *Arizona*, No. 11-182 (U.S.), 2012 WL 1054493 (Mar. 26, 2012) 2-3, 5, 12, 15

INTEREST OF AMICI CURIAE[1]

Amici are the States of Texas, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Michigan, Nebraska, Nevada, Ohio, Oklahoma, South Carolina, West Virginia, and Governor Phil Bryant of the State of Mississippi (collectively "the States"). The States "bear[] many of the consequences of unlawful immigration" but must rely on Congress and the INA to regulate which aliens may be present and work inside their borders. *Arizona v. United States*, 567 U.S. 387, 397 (2012). Sanctuary laws and policies can cause harm to neighboring States by making it easier for people who are not lawfully in this country and have committed civil or criminal offenses to evade law enforcement and travel out-of-state. The States thus have an interest in the federal government's ability to enforce federal immigration law. California, however, has attempted to override that enforcement—by requiring private employers to inform employees of federal immigration-enforcement targets (AB450), by overseeing through investigations the immigration enforcement activities of federal agents (AB103), and by limiting the scenarios in which State or local law-enforcement agencies may transfer a detained individual to the custody of federal immigration authorities (SB54).

---

[1] As governmental parties, amici need not file a disclosure statement. Fed. R. App. 26.1. As States, amici file as a matter of right. Fed. R. App. P. 29(a)(2). In any event, no party or party's counsel authored any part of this brief. And no person or entity, other than amici, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

California disagrees with federal immigration policy—just as Arizona disagreed with federal immigration policy in *Arizona v. United States*. But if various Arizona laws designed to *enforce* federal immigration law were preempted in *Arizona* (as the Supreme Court held), then California's laws designed to *interfere with or block* federal immigration enforcement are equally preempted.

SUMMARY OF THE ARGUMENT

California's Assembly Bill 450 ("AB450"), Assembly Bill 103 ("AB103"), and the detainee-transfer provisions of Senate Bill 54 ("SB54") are preempted under *Arizona v. United States*. *Arizona* held that various Arizona laws designed to *enforce* federal immigration laws were preempted. Under the rationale of *Arizona*, this is an even easier case as California's laws designed to *interfere with or block* federal immigration enforcement must also be preempted. *Arizona* cannot stand for the proposition that state laws are preempted when they seek *additional* enforcement of federal immigration laws, but state laws are somehow valid when they seek to *decrease* enforcement of federal immigration laws.

In fact, California recognized this when it joined an amicus brief in the *Arizona* case in the Supreme Court, representing that "Amici States have a strong interest in recognizing that the singular question of whether and how to remove undocumented immigrants is one that is committed to the federal government." Br. for the States of New York, California, et al., *Arizona*, No. 11-182 (U.S.), 2012 WL 1054493, at *1

(Mar. 26, 2012).[2] The central point of that brief was that the federal government has control over whether *and how* to remove unlawfully present aliens. As the amici including California explained: "Congress has carefully regulated not only *who* may be removed from the United States, but *how* such individuals should be identified, apprehended, and detained." *Id.* at *3 (emphasis in original).

But now California has changed its tune. Although California no longer agrees with the level of federal enforcement of immigration laws, the preemption principles California advanced in *Arizona* were adopted by the Supreme Court. And under those principles, California cannot now impede the federal government's enforcement of immigration laws.

ARGUMENT

I. California's AB450 Is Preempted, Under *Arizona v. United States*, as an Obstacle to the "Careful Balance Struck by Congress with Respect to the Unauthorized Employment of Aliens."

California's AB450 obstructs federal enforcement of the "comprehensive framework for combating the employment of illegal aliens" that Congress enacted in the Immigration Reform and Control Act of 1986. *Arizona*, 567 U.S. at 404. In fact, the stated purpose of AB450 is to interfere with this comprehensive federal work-authorization framework. Assembly Bill No. 450, Legislative Counsel's Digest (stating law's purpose to regulate employers who might be subject to "immigration worksite enforcement actions" by the federal government).

---

[2] *Available at* https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcu11states.authcheckdam.pdf.

In principal, AB450 imposes two requirements on employers. First, it forbids employers to give consent to federal immigration enforcement agents entering the employer's workplace. Cal. Gov't Code §§ 7285.1(a), 7285.2(a)(1). Second, it requires employers to give employees 72-hour notice of any federal immigration inspections that are permitted in the workplace without the employer's consent. Cal. Lab. Code § 90.2(a)(1), (b)(1). This is known as the "notice provision." *See id.* Federal law requires 72 hours' advance notice be given to employers. 8 C.F.R. § 274a.2(b)(2)(ii). California law now purports to take this a substantial step further. The provision requires employers to provide notice to their employees of federal immigration inspections within 72 hours and a copy of the inspection notice if requested. Cal. Lab. Code § 90.2(a)(1)-(3). Employers must then notify "affected employee[s]" of the results of the inspection within 72 hours. *Id.* § 90.2(b).

The district court properly enjoined the first of those two requirements as applied to private employers. *See United States v. California*, No. 2:18-cv-490-JAM-KJN, Dkt. 193, at 22-26 (E.D. Cal. July 5, 2018) ("Op."). It also correctly enjoined the related "reverification provision," under which employers would be subjected to civil penalties if they reverified the employment eligibility of a current employee at a time not specifically required by federal law—"frustrat[ing]" as it does "the system of accountability that Congress designed." *Id.* at 30-31.

But the district court erred in failing to enjoin AB450's notice provision. *See id.* at 26-28. The district court reasoned that, under the California law, "[a]n employer is not punished for its choice to work with the Federal Government, but for its failure to communicate with its employees." *Id.* at 28. Thus, the district court bemoaned

the federal government's "cynical view of the law," choosing instead to treat the notice provision as merely a (State-mandated) "courtesy to employees." *Id.* But that charitable view ignores the obvious effect of California's law on federal immigration enforcement operations: the provision requires—at the pain of substantial penalties—California employers to give federal-immigration investigation targets advance warning of the investigation far beyond what federal law requires. *See* Cal. Lab. Code § 90.2(a), (b).

These advance notice requirements plainly "would operate to frustrate the purpose" of federal legislation. *Teamsters v. Morton*, 377 U.S. 252, 258 (1964). State laws that so "frustrate" federal legislation are preempted. *See id.* California could not itself erect impediments to federal immigration officials enforcing federal immigration law. That would be an "intrusion upon the federal scheme." *Arizona*, 567 U.S. at 402; *accord* Br. for the States of New York, California, et al., *Arizona*, at *1, *3. And it is axiomatic that a State is prevented "from doing indirectly that which it cannot do directly." *Hawai'i Wildlife Fund v. County of Maui*, 886 F.3d 737, 752 (9th Cir. 2018).

In applying these principles, the Supreme Court's decision in *Arizona* confirms that AB450 is preempted in its entirety. *See* 567 U.S. at 403-07. In *Arizona*, the State enacted a state criminal prohibition on aliens working in violation of federal law, even though "no federal counterpart exist[ed]." *Id.* at 403. In finding Arizona's law preempted despite the absence of a federal criminal prohibition, the Court relied on the "careful balance struck by Congress with respect to unauthorized employment of aliens" in the Immigration Reform and Control Act of 1986 ("IRCA"). *Id.* at 406.

Arizona recognized that Arizona could have enacted its criminal penalty before IRCA. *Id.* at 404. But Congress later enacted a comprehensive framework striking a careful balance about methods of enforcement, which the Supreme Court held created a "conflict in technique" with Arizona's state-law approach to enforcement. *Id.* at 406 (alteration marks omitted).

If Arizona's law tipped the "careful balance" struck by Congress too far in favor of *enforcing* federal immigration laws, then California's law tips that balance too far in the other direction of *impeding* enforcement of federal immigration laws. Congress chose not to require immigration officials to obtain a judicial warrant before entering workplaces to enforce federal immigration law. *See* 8 U.S.C. § 1357(a)(1), (e). But California law sought to require as much. Cal. Gov't Code § 7285.1(a). Likewise, for obvious reasons, the federal government chose not to require employees at immigration-enforcement targets be given advance notice of any federal inspection. *See* 8 C.F.R. § 274a.2(b)(2)(ii). But California law now requires just that. Cal. Lab. Code § 90.2(a)(1)-(3). Congress and California have therefore each selected a different "method of enforcement." *Arizona*, 567 U.S. at 406. Under the Supremacy Clause as interpreted in *Arizona*, Congress's commands control. Because California's law "is an obstacle to the regulatory system Congress chose," *id.*, it is preempted under *Arizona*.

II. AB103 Is Obstacle-Preempted Under *Arizona v. United States*, Because It Seeks to Give State Officials the "Unilateral" Power to Second-Guess Federal Determinations About Which Aliens Warrant Removal.

Arizona holds that States cannot make "unilateral" determinations about the removability of aliens wholly separate from federal officials, and that any attempt to do so "creates an obstacle to the full purposes and objectives of Congress." *Id.* at 410. California's AB103 falls within that prohibition for the same reason that section 6 of Arizona's S.B. 1070 did.

Section 6 of Arizona's law "attempt[ed] to provide state officers even greater authority to arrest aliens on the basis of possible removability than Congress has given to trained federal immigration officers." *Id.* at 408. Specifically, state police who witnessed what they believed was a public offense that made an alien removable could arrest the alien. *Id.* Hence, "the unilateral decision of state officers" about which aliens were unlawfully present under federal immigration law would, under Arizona's law, allow detention. The Supreme Court held this law preempted because Congress created a system for state officers to unilaterally make immigration arrests, but that system did not allow state officers the unilateral power conferred by Arizona's law. *Id.* at 409-10 (describing the federal program that ensures training and ensures that removability decisions are "made with one voice").

California's AB103 likewise purports to allow state officers to unilaterally review what federal law makes the exclusive work of federal officials. Specifically, AB103 establishes a heightened inspection scheme for facilities where "noncitizens are being housed or detained for purposes of civil immigration proceedings," Cal. Gov't

Code § 12532(a), and directs the California Attorney General to examine and report on the "due process provided" to detainees and "the circumstances around their apprehension and transfer to the facility." *Id.* § 12532(b)(1). California's scheme directly parallels section 6 of Arizona's law, which purported to allow state officials to unilaterally decide that an alien *should* be held for removal and thus arrest the alien.

Likewise, California's AB103 authorizes state officials to declare that an alien *should not* be held for removal in a certain facility because of a purported violation of due process or the underlying circumstances of the apprehension and transfer to the detention facility—all determined unilaterally by those state officials. The valence of the respective state laws may be different, but their prohibited mechanism of operation is the same. Just as Arizona's law was held obstacle-preempted under *Arizona*, so must California's AB103 be held preempted. Federal law gives state detention facilities no unilateral role in overriding the federal government's detention of aliens for civil immigration violations. *See, e.g.*, 8 U.S.C. § 1231(g)(1); 8 C.F.R. § 236.6.

III. SB54's Judicial-Warrant Requirement Is Also Obstacle-Preempted Under *Arizona v. United States*, Because It Undermines Congress's Alien-Detention Scheme.

Under part of California's SB54, state and local law enforcement agencies may "[t]ransfer an individual to immigration authorities" only if the United States presents a "judicial warrant or judicial probable cause determination," or the individual in question has been convicted of one of a limited set of enumerated felonies or other serious crimes. Cal. Gov't Code §§ 7284.6(a)(4), 7282.5(a).

Section 7284.6 references a narrow list of exceptions on prohibiting the transfer of an individual to immigration authorities. That list reflects instances in which the State of California considers transferring the alien to federal custody for removal to be a priority. These provisions are preempted because they stand as an obstacle to Congress's immigration-enforcement scheme for two reasons. One, they run afoul of the Supreme Court's admonishments in *Arizona.* And two, they cannot be squared with Congress's immigration-enforcement scheme.

A. The alien-transfer provisions of SB54 are preempted under *Arizona*.

SB54's alien-transfer provisions must fall under any principled reading of *Arizona*. The provision requiring a judicial warrant or judicial finding of probable cause cannot be squared with Congress's immigration-enforcement scheme. Congress, through the INA, established a system of civil administrative warrants as the basis for immigration arrest and removal, and Congress does not require or contemplate use of a judicial warrant for civil immigration enforcement. *See* 8 U.S.C. §§ 1226(a), 1231(a). Thus, immigration enforcement arrests based on federal officials' determinations of removability need not be supported by *judicial* warrants.

No case holds that federal officials' ability to arrest for immigration violations without judicial warrants violates the Fourth Amendment. Indeed, federal immigration arrests under this process "have the sanction of time." *Abel v. United States*, 362 U.S. 217, 230 (1960); *see also City of El Cenizo v. Texas*, 890 F.3d 164, 187 (5th Cir. 2018) ("federal immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability"); *Roy v. County*

of L.A., No. 2:12-CV-09012, 2017 WL 2559616, at *5-10 (C.D. Cal. June 12, 2017) ("[F]ailure to submit ICE officers' probable cause determinations for review by an immigration, magistrate, or federal district court judge is not unconstitutional. . . . No court has held to the contrary."). Rather, "the executive and the Legislature have the authority to permit executive—rather than judicial—officers to make probable cause determinations regarding an individual's deportability." *Id.* at *8. Federal immigration authorities are indeed vested with that power: The INA provides that civil immigration enforcement is premised on administrative "warrant[s] issued by" DHS and that "an alien may be arrested and detained" based on such a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a)(1).

That authority was plainly delegated to the Executive by Congress in the INA. *See Abel*, 362 U.S. at 232 (noting that the INA gave "authority to the Attorney General or his delegate to arrest aliens pending deportation proceedings under an administrative warrant, not a judicial warrant within the scope of the Fourth Amendment."). And even before Congress passed the INA, there was "impressive historical evidence of acceptance of the validity of statutes providing for *administrative* deportation arrest from almost the beginning of the Nation." *Id.* at 234 (emphasis added). Unsurprisingly, multiple courts of appeals have rejected claims that judicial warrants or judicial probable-cause determinations are required for civil immigration detention. *See, e.g.*, *Sherman v. U.S. Parole Comm'n*, 502 F.3d 869, 876–80 (9th Cir. 2007) (stating that an executive officer can constitutionally make the necessary probable-cause determination to warrant arrest of an alien

"outside the scope of the Fourth Amendment's Warrant Clause," without presentment to a judicial officer); *United States v. Tejada*, 255 F.3d 1, 3 (1st Cir. 2001) ("[T]o comply with the applicable [detention] statute, the arresting authorities needed to bring appellant to an [ICE] examining officer, not a magistrate, 'without unnecessary delay.'").

The district court concluded that the SB54 "does not mirror" *Arizona* because Arizona "sought to impose additional rules and penalties upon individuals whom Congress had already imposed extensive, and exclusive regulations." Op. 45. The California law, by contrast, supposedly "does not add or subtract any rights or restrictions upon immigrants" themselves but rather "directs the activities of state law enforcement." *Id.*

But that is a distinction without a difference. The net result of California's law would be to substitute California's priorities for immigration enforcement in place of Congress's. Whatever concern California might have for "the relationship between state law enforcement and the community it serves" (Op. 51) cannot override the federal government's "broad, undoubted power over the subject of immigration and the status of aliens," *Arizona*, 567 U.S. at 394; *see also id.* at 397 (acknowledging Arizona's immigration-related burdens, observing that "[t]he pervasiveness of federal regulation does not diminish the importance of immigration policy to the States," but striking down Arizona's immigration regulations anyway).

California recognized as much when it attacked Arizona's laws for promoting more aggressive immigration enforcement. Then, California said that doing so would "implement[]a distinct state policy on removal that supplants federally mandated

enforcement priorities and disregards the federal requirement that state assistance in this area proceed under federal oversight." Br. for the States of New York, California, et al., *Arizona*, at *1. It cannot be the case that *Arizona* establishes a one-way ratchet where a state law tending to *increase* immigration enforcement (by, say, "prioritiz[ing] the classes of persons targeted for removal . . . to serve Arizona's own removal objectives and not the federal government's," *id.* at *20) is to be struck down while a state law tending to *decrease* immigration enforcement (by prioritizing the class of persons to be handed over for removal to serve California's, not the federal government's belief that only those who have been convicted of certain crimes are worthy of removal, *see* Cal. Gov't Code §§ 7284.6(a)(4), 7282.5(a)) is to be upheld.

To be sure, California may retain prerogatives about when to voluntarily comply with requests to itself *detain* aliens at the requests of federal officials, as the federal government is subject to limits on commandeering state resources for federal programs. *See, e.g.*, Op. 48-49. But when federal officials show up at a state detention facility seeking merely to *transfer* an alien already in state custody into the custody of federal officials, they are not asking the State of California or its political subdivisions to detain the alien. Instead, federal officials are asserting their federal primacy in enforcing immigration law by demanding *federal* custody of a person already in state detention. This does not commandeer California to take any additional action, as it has already detained the individual before the federal government requested a transfer to federal custody. And Congress has determined that taking federal custody for civil immigration detention requires no more than an administrative warrant.

Accordingly, California's law requiring DHS to go further and procure a judicial warrant upsets the scheme that Congress carefully established and is obstacle-preempted under *Arizona*. *E.g.*, 567 U.S. at 402, 406, 408.

B. SB54's alien-transfer provisions cannot be squared with Congress's alien-detention framework.

Apart from *Arizona*, a plain reading of SB54 shows that it conflicts with Congress's immigration-enforcement scheme. SB54 provides a narrow set of circumstances under which the warrantless transfer of an individual to immigration authorities would be allowed. That list, referenced in section 7284.6, reflects instances in which California considers federal detention and removal of an alien to be a priority. These scenarios include where an individual has been convicted of certain "serious or violent" felonies or felonies punishable by imprisonment in California state prison, Cal. Gov't Code § 7282.5(a)(1)-(2), as well as where an individual has been convicted of one of thirty-one types of offenses within the past five years if a misdemeanor or within the past fifteen years if a felony, *id.* § 7282.5(a)(3)(A)-(AE). Inclusion on California's Sex and Arson Registry and conviction of a federal crime that is an aggravated felony under the INA, as well as being the subject of an outstanding felony arrest warrant by ICE, also trigger the exception. *Id.* § 7282.5(a)(4)-(5).

This limited subset of criminal violations, however, is narrower than those provided by Congress that render an alien inadmissible or removable. *See* 8 U.S.C. §§ 1182(a)(2), 1227(a)(2). Nor does SB54's list match the set of criminal offenses that *require* the federal government to detain such aliens upon their release from state

or local custody. *Id.* § 1226(c). For example, entirely absent from California's list of exceptions is any provision for aliens who are inadmissible on the grounds that they were convicted of multiple criminal convictions for which the aggregate sentences were five years or more. *See id.* § 1182(a)(2)(B). Such an alien could be subject to detention under 8 U.S.C. § 1226(c)(1)(A), regardless of whether the convictions were in the past five or fifteen years, *see* Cal. Gov't Code § 7282.5(a)(3).

Ultimately, immigration enforcement necessarily contemplates removal, and civil removal proceedings contemplate the necessity of detention. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 523 (2003) (stating, regarding no-bail detention: "this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process"); *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001) (distinguishing "detention pending a determination of removability" from the question of authority to detain indefinitely). Similarly, the INA contemplates that DHS will be able to take custody of removable criminal aliens; that detention "must continue pending a decision on whether the alien is to be removed from the United States" and "may end prior to the conclusion of removal proceedings 'only if' the alien is released for witness-protection purposes." *Jennings v. Rodriguez*, 138 S. Ct. 830, 846-47 (2018) (quotation marks and citations omitted).

California's law frustrates that scheme because it readily affords an alien released from state or local custody the opportunity to abscond, not only increasing burdens on officials tasked with tracking down those aliens but also potentially endangering law-enforcement officers or members of the public. *Cf. Demore*, 538 U.S. at 528 ("[R]elease of aliens pending their removal hearings would lead to large

numbers of deportable criminal aliens skipping their hearings and remaining at large in the United States unlawfully"). SB54 impermissibly allows California to "achieve its own immigration policy" by deciding to transfer certain aliens to federal-immigration custody on the theory that some immigration-enforcement cooperation with federal officials should be ignored in favor of the State's other policy goals. SB54 purports to allow the transfer of aliens convicted of certain offenses, but in doing so, remains in its other applications an obstacle to Congress's criminal-alien-detention scheme. By creating specific exemptions to SB54, California has effectively created priorities for *federal detention* that conflict with Congress's choices. But that approach reflects the sorts of "unilateral decision[s]" regarding immigration enforcement that the Supreme Court has rejected. *Arizona*, 567 U.S. at 408, 410.

* * *

If California prefers different immigration policies, it is free to voice those concerns to Congress. But, as California itself said in *Arizona*, "Amici States may have differing views about precisely what removal priorities and enforcement practices would be optimal, but they agree that, where removal is concerned, Congress and the Executive Branch are the appropriate bodies for determining these national policies." Br. for the States of New York, California, et al., *Arizona*, at *2. Under that rationale advanced by California and adopted by the Supreme Court in *Arizona*, California's AB450, AB103, and the detainee-transfer provisions of SB54 are preempted.

Conclusion

The Court should reverse the district court's order denying a preliminary injunction of the notice provision of AB450, AB103, and the detainee-transfer provisions of SB54.

Respectfully submitted.

Steve Marshall
Attorney General of Alabama

Leslie Rutledge
Attorney General of Arkansas

Pamela Jo Bondi
Attorney General of Florida

Christopher M. Carr
Attorney General of Georgia

Curtis T. Hill, Jr.
Attorney General of Indiana

Derek Schmidt
Attorney General of Kansas

Jeff Landry
Attorney General of Louisiana

Bill Schuette
Attorney General of Michigan

Doug Peterson
Attorney General of Nebraska

Adam Paul Laxalt
Attorney General of Nevada

Ken Paxton
Attorney General of Texas

Jeffrey C. Mateer
First Assistant Attorney General

s/ Kyle D. Hawkins
Kyle D. Hawkins
Solicitor General

Eric A. White
Ari Cuenin
Assistant Solicitors General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697
kyle.hawkins@oag.texas.gov

MICHAEL DEWINE
Attorney General of Ohio

MIKE HUNTER
Attorney General of Oklahoma

ALAN WILSON
Attorney General of South Carolina

PATRICK MORRISEY
Attorney General of West Virginia

PHIL BRYANT
Governor of Mississippi

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2018, I electronically filed the foregoing document 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/ Kyle D. Hawkins
KYLE D. HAWKINS

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it is prepared in a proportionally spaced typeface in Microsoft Word using 14-point Equity typeface, and with the type-volume limitation because it contains 3,860 words.

/s/ Kyle D. Hawkins
KYLE D. HAWKINS