



GREGORY G. GILLOTT
County Counsel

GRACE L. PAK, DEPUTY
LESLEY B. GOMES, DEPUTY
ANGELA CREACH, PARALEGAL
JULIE BROWN, LEGAL SECRETARY

STAFF REPORT

TO: Board of Supervisors

FROM: Greg Gillott, County Counsel 

DATE: April 20, 2018

RE: Sanctuary State Legislation and Related Matters

Following the addition of this item to the Board's Agenda, it was requested that my office prepare a memo regarding the topic. Given the short time available, this memo only provides a very general overview. If, following the discussion, the Board seeks more specified information on certain questions or issues, we may need additional time to respond.

BACKGROUND:

As the Board may recall, at two separate meetings back in April of 2017, the Board considered the proposed legislation in Senate Bill 54 (SB 54) (the California Values Act) (often also referred to as the "Sanctuary State" bill). As part of those discussions, the Undersheriff indicated that under the proposed language, the ability of the Sheriff's Office to communicate and cooperate with U.S. Immigration and Customs Enforcement (ICE) would be significantly limited, even beyond already existing limitations in state law. It was also brought up during those meetings that the Trump Administration might view SB 54 as being in direct conflict with federal law, and/or could seek to tie certain federal grant funds to specific cooperation with ICE that could not occur under the State legislation being proposed.

At the conclusion of the meeting on April 25, 2017, the Board voted unanimously to draft a letter in strong opposition to SB 54. (A copy of the meeting minutes is attached.) Ultimately, the legislation was passed by the Legislature and signed by the Governor on October 5, 2017 and went into effect in January 2018.

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SB 54

The specific restrictions in SB 54 that apply to local law enforcement in connection with immigration related enforcement matters are summarized below. (Please note that this is simply a summary and is not intended to be a complete review and discussion of the restrictions in SB 54). Also, at the end of March 2018, the California Attorney General issued an Information Bulletin entitled “Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act” that further clarifies the obligations under SB 54.

1. SB 54 generally restricts direct enforcement of federal immigration laws. Government Code § 7284.6(a)(1).
2. SB 54 restricts the holding or detaining of individuals upon request of federal immigration authorities beyond the individual's scheduled release date. Government Code § 7284.6(a)(1)(B).

The courts have held that hold requests from immigration authorities are voluntary, not mandatory. If they were mandatory, they would violate the Tenth Amendment to the U.S. Constitution by compelling state and local governments to enforce a federal regulatory program. *Galarza v. Szalcyk*, 745 F.3d 634 (3d Cir. 2014).

Also, a local agency that complies with a hold request may also violate the individual's Fourth Amendment rights against unreasonable search and seizure if that continued detention is not based on probable cause. *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 (D. Or. 2014); *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015).

3. Under SB 54, Government Code § 7284.6(a)(4), a local law enforcement agency may only transfer individuals in local custody to federal immigration authorities when either (1) authorized by a judicial warrant or a judicial probable cause determination; or (2) under the following circumstances:
 - a. The individual has been convicted for specified offenses identified in Government Code § 7282.5. Attached is a copy of Government Code § 7282.5, which outlines those offenses.
 - b. The individual is a current registrant on the California Sex and Arson Registry.

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- c. The individual is the subject of an outstanding felony federal arrest warrant.
4. SB 54 prohibits a county law enforcement agency from providing to immigration authorities 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. Government Code § 7284.6(a)(1)(D).
5. SB 54 provides that a local law enforcement agency shall not provide information regarding a person's release date or respond to requests for notification by providing release dates or other information unless (1) that information is available to the public, or (2) is in response to a notification request from immigration authorities in accordance with Government Code § 7282.5. Government Code § 7284.6(a)(1)(C).

When immigration authorities have provided to a local law enforcement agency a "notification request" (a request from immigration authorities that a local law enforcement agency inform immigration authorities of the release date and time in advance of the public of an individual in its custody), a local law enforcement agency may only provide that information under the following circumstances:

- a. The individual has been convicted for specified offenses identified in Government Code § 7282.5.
- b. The individual is a current registrant on the California Sex and Arson Registry.
- c. The individual is the subject of an outstanding felony federal arrest warrant.
- d. The individual has been charged with certain felonies for which a judge has found probable cause under Penal Code § 872.
6. Under SB 54, the California Attorney General, by October 1, 2018, shall publish a model policy limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at health facilities operated by the County. These health facilities shall implement the model policy, or an equivalent policy. Government Code § 7284.8(a).

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SB 54 also establishes various exemptions from the above restrictions. Those exemptions are summarized below.

1. Local law enforcement agencies may investigate, enforce, or detain upon reasonable suspicion, or arrest an alien who (1) was previously denied admission or removed from the United States based on a conviction for committing an aggravated felony and who (2) enters, or attempts to enter or is at any time found in the United States. This information must have been detected during unrelated law enforcement activity. Government Code § 7284.6(b)(1).
2. Local law enforcement agencies may conduct enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of 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.
 - 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 does not violate any local law or policy. Government Code § 7284.6(b)(3).
3. Local law enforcement agencies may make inquiries into information necessary to certify whether an individual has been identified as a potential crime or trafficking victim and is eligible for a “T” or “U” visa under 8 U.S.C. §§ 1101(a)(15)(n or (U). Government Code § 7284.6(b)(4).
4. Local law enforcement agencies may make inquiries to comply with 18 U.S.C. § 922(d)(5). That federal statute makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is illegally or unlawfully in the United States. Government Code § 7284.6(b)(4).
5. Local law enforcement agencies may give immigration authorities access to interview an individual in agency or department custody. However, the interview access shall comply with the requirements of the TRUTH Act, commencing with Government Code § 7283.

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6. SB 54 does not prevent a local law enforcement agency from responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law. Government Code § 7284.6(b)(2).
7. SB 54 does not prohibit or restrict any government entity 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 8 U.S.C. § 1373 and 8 U.S.C. § 1644. Government Code § 7284.6(e).

EXISTING LITIGATION:

United States v. State of California, et al.,

United States District Court, Eastern District of California, Case No. 2:18-cv-00490

On March 6, 2018, the U.S. Attorney's Office filed litigation in Sacramento against the State of California regarding SB 54 and two other related state laws AB 450 and AB 103. (A copy of the Complaint is attached.) AB 450 (the "Immigrant Worker Protection Act") generally regulates how private employers in California respond and cooperate in federal immigration investigations at work sites, and the portion of omnibus bill AB 103 challenged in this action involves the inspection and review of county, local, or private immigration detention facilities by the California Attorney General.

In general, the federal government contends that these state statutes (or portions thereof) are preempted by federal law and impermissibly discriminate against the United States, and therefore violate the Supremacy Clause of the United States Constitution. The United States also is seeking a preliminary injunction to enjoin the enforcement of these provisions of California law. The parties are in the middle of briefing the Motion for Preliminary Injunction, and a hearing on the Motion is currently set for June 20, 2018.

Several parties have filed amici curiae briefs in support of the request for preliminary injunction, including cities within California, other states, interest groups, associations, and individuals. In

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reviewing the court's docket in preparation of this Memo, it does not appear that any California counties have participated in the case.

The time to file amicus curiae briefs in support of Plaintiff's Motion for Preliminary Injunction expired on April 6, 2018. Amici curiae briefs in support of Defendant's Opposition to the Preliminary Injunction are due on or before May 18, 2018. Given the political nature of this litigation, it is highly likely that any decision by the District Court will be appealed to the Ninth Circuit and perhaps to the U.S. Supreme Court. There will be additional opportunities for amici support at those levels.

The ultimate resolution of this litigation will determine whether or not the County must comply with these particular provisions of state law whether or not we participate in any manner. However, in the interim, Amador County must continue to comply with these state law provisions, even if the County deemed these state law provisions to be unconstitutional.

CONCLUSION

As this Item is discussion only, if the Board would like to consider possible action(s) at a future meeting, the Board would need to direct staff accordingly.

Attachments: Board Minutes from April 25, 2017
Government Code section 7282.5
Complaint- United States v. California

Amador County Board of Supervisors
ACTION MINUTES
REGULAR MEETING

DATE: Tuesday, April 25, 2017
TIME: 8:30 a.m.
LOCATION: County Administration Center, 810 Court Street, Jackson, California

The Board of Supervisors of the County of Amador met at the County Administration Center, 810 Court Street, Jackson, California, on the above date pursuant to adjournment, and the following proceedings were had, to wit:

Present on Roll Call:

Richard M. Forster, District II-Chairman
Lynn A. Morgan, District III-Vice-Chairman
Patrick Crew, District I
Frank U. Axe, District IV
Brian Oneto, Supervisor, District V

Staff: Charles T. Iley, County Administrative Officer
Gregory Gillott, County Counsel
Jennifer Burns, Clerk of the Board

Absent: None

NOTE: These minutes remain in *Draft* form until approved by Minute Order at the next regular meeting of the Board of Supervisors. Any packets prepared by County Staff are hereby incorporated into these minutes by reference as though set forth in full. Any staff report, recommended findings, mitigation measures, conditions, or recommendations which are referred to by Board members in their decisions which are contained in the staff reports are part of these minutes by reference only. Any written material, petitions, packets, or comments received at the hearing also become a part of these minutes by reference.

PLEDGE OF ALLEGIANCE: Chairman Forster led the Board and the public in the *Pledge of Allegiance*.

CLOSED SESSION may be called for labor negotiations (pursuant to Government Code §54957.6), personnel matters (pursuant to Government Code §54957), real estate negotiations/acquisitions (pursuant to Government Code §54956.8), and/or pending or potential litigation (pursuant to Government Code §54956.9). **At 8:30 a.m., the Board convened into closed session.**

REGULAR SESSION: At 9:00 a.m., the Board convened into regular session. Chairman Forster reported the following issues were reviewed in closed session:

Conference with Labor Negotiators: Pursuant to Government Code Section 54957.6. County Negotiator: Greg Gillott, County Counsel, Chuck Iley, County Administrative Officer, Judy Dias, Human Resources Director and Darrell P. Murray, IEDA. Employee Organization: All Units

ACTION: Nothing to report.

Conference with County Counsel - Existing Litigation {Government Code 54956.9(d)(1)}:
County of Amador v. Department of the Interior, et al: In the United States Court of Appeal, District of Columbia Circuit, Case No. 16-5082

ACTION: Nothing to report.

County of Amador v. The United States Department of the Interior; In the United States Court of Appeal, Ninth Circuit, Case No. 15-17253

ACTION: Nothing to report.

Foothill Conservancy v. County of Amador; In the Superior Court of California, Amador County, Case No. 16CV9876

ACTION: Nothing to report.

Conference with County Counsel – Anticipated Litigation {Government Code 54956.9(d) (2)}
Buena Vista Rancheria

ACTION: Nothing to report.

Confidential Minutes: Review and approval of the confidential minutes for April 11, 2017.

ACTION: Approved pursuant to the following motion.

MOTION: It was moved by Supervisor Axe, seconded by Supervisor Crew and unanimously carried to approve the confidential minutes for April 11, 2017.

AGENDA: Approval of agenda for this date; any and all off-agenda items must be approved by the Board (pursuant to §54954.2 of the Government Code.)

ACTION: Direction given pursuant to the following motion.

MOTION: It was moved by Supervisor Morgan, seconded by Supervisor Crew and unanimously carried to approve the agenda as presented.

PUBLIC MATTERS NOT ON THE AGENDA: Discussion items only, no action to be taken. Any person may address the Board at this time upon any subject within the jurisdiction of the Amador County Board of Supervisors; however, any matter that requires action may be referred to staff and/or Committee for a report and recommendation for possible action at a subsequent Board meeting. Please note - there is a **three (3) minute limit per person.**

Comments relative to Jail Presentation on March 28, 2017: Ms. Barbara Luttringer, District I resident, reviewed a memorandum which is hereby incorporated into these minutes as though set forth in full. Her comments included, but were not limited to comments made by Mr. Eric Fadness, Nacht and Lewis at the March 28, 2017 Board meeting.

Economic Development District: Supervisor Axe took this time to request the Board consider becoming a part of the Central Sierra Economic Development District and place it on a future agenda for discussion. Chairman Forster advised this matter will be place on an upcoming Administrative Committee Agenda for discussion and possible recommendation to the full Board.

Amador Council on Responsible Opioid Use: Supervisor Morgan reported she is a member of the Amador County Behavioral Health Advisory Committee and she recently learned of the subject Council that was formed in response to the rising challenges faced by Primary Care and Emergency Department providers in managing increasingly complex patient populations in times of continuously changing and competing governmental, legal, insurance and medical organization guidelines and mandates. Supervisor Morgan advised the initial meeting was held on April 3, 2017 and discussed issues associated but not limited to, identifying ways of lessening the risk of prescription related drug overdose, identify challenges faced by providers regarding opioid prescribing, work toward standardization of practices regarding opioid prescribing and identify patients and available area resources for substance abuse treatments. Supervisor Morgan said quarterly meetings of the Council are planned.

CONSENT AGENDA: Items listed on the consent agenda (see attached) are considered routine and may be enacted by one motion. Any item may be removed for discussion and possible action, and made a part of the regular agenda at the request of a Board member(s)

ACTION #1: Direction given pursuant to the following motion.

MOTION #1: It was moved by Supervisor Crew, seconded by Supervisor Oneto and unanimously carried to approve the Consent Agenda as presented.

REGULAR AGENDA

Clerk Recorders Office: Discussion and possible action relative to adoption and presentation of Resolution No's 17-045 and 17-046 to Ms. Marlana "Tico" Arnese and Ms. Elaine Lackey honoring and recognizing them for their years of service with the County of Amador.

Chairman Forster presented the following Resolutions to Ms. Marlana "Tico" Arnese and Ms. Elaine Lackey.

Former Clerk Recorder Mr. Sheldon Johnson spoke in recognition of the two retiring employees.

RESOLUTION NO. 17-045

Resolution honoring Marlana "Tico" Arnese for 42 years of service to the County of Amador in the Office of the Clerk/Recorder

RESOLUTION NO. 17-045

Resolution honoring Elaine Lackey for nearly 18 years of service to the County of Amador in the Office of the Clerk/Recorder

ACTION: Presentation Only.

UC Cooperative Extension Central Sierra: Presentation by Ms. Lynn Wunderlich, Farm Advisor, regarding Foothill Grape Day to be held on May 18, 2017 at the Amador County Fairgrounds.

Ms. Lynn Wunderlich, UC Cooperative Extension Central Sierra Farm Advisor, addressed the Board and provided an informative Power Point presentation relative to Foothill Grape Day that will be held on May 18, 2017 at the Amador County Fairgrounds. She encouraged the Board to attend if they wish.

ACTION: None. Presentation only.

United States Bicycle Route 50 (USBR50): Discussion and possible action relative to Board input and direction to staff regarding the proposed (USBR50) route or potential alternate routes with conditions. (Continued from April 11, 2017)

Mr. Carl Baker, Cal Trans, District 10, and Ms. Danielle Bricker, Adventure Cycling Association addressed the Board and provided insight as to their individual entities involvement in the USBR50 designation.

Lengthy discussion ensued with the following individuals wishing to speak relative to this matter.

Mr. Gary Reinoehl, District V resident

Ms. Allison Platt, ACTC-Transportation Planner, ACTC

Ms. Maureen Funk, Co-Chair of the Bike and Pedestrian Committee

ACTION: Direction given pursuant to the following motion.

MOTION: It was moved by Supervisor Morgan, seconded by Supervisor Crew and carried to approve the Option 2 designation as recommended by the Public Works Committee on February 23, 2017, that included Michigan Bar Road to SR104 to SR88.

Ayes: Supervisors Morgan, Crew, Oneto and Axe.

Noes: Supervisor Forster

Amador Fire Safe Council: Discussion and possible action relative to a request by the Amador Fire Safe Council for a letter of support regarding a grant application they are submitting that will be used to achieve objectives identified in the Pioneer/Volcano, Greater Pine Grove, and Volcano Community Wildfire Protection Plan.

Ms. Jan Bray, Amador Fire Safe Council, reviewed the proposed letter with the Board.

Discussion ensued with the following individuals wishing to speak relative to this matter.

Ms. Katherine Evatt

Ms. Sherry Curtis, District III resident

ACTION: **Direction given pursuant to the following motion.**

MOTION: **It was moved by Supervisor Oneto, seconded by Supervisor Morgan and unanimously carried to approve the Chairman's signature on the letter drafted by AFSC in support for a grant application that will be submitted to the California Fire Safe Council. Some clarification regarding acronyms in the letter was requested and will be provided by the Fire Safe Council prior to the Chairman's signature.**

Senate Bill 54: Discussion and possible action relative to the subject legislation as it relates to Sanctuary State jurisdiction and potential impacts related to local law enforcement. Cal state sheriff's association and the sheriff are in opposition....

Undersheriff James Wegner, addressed the Board and provided the following statistics relative to the history of undocumented individual's detainees in the Amador County Detention Facility as requested by the Administrative Committee. Undersheriff Wegner also stated that Sheriff Martin Ryan and the Cal State Sheriff's Association are opposed to this legislation as written.

2014: 84 non-registered birthplace bookings
Twenty-two (22) undocumented individuals
Seven (7) individual's held by Immigrations and Customs Enforcement.

2015: 90 non-registered birthplace bookings
Twenty-two (22) undocumented individuals
Zero holds by Immigration and Customs.

2016: 71 non-registered birthplace bookings
Thirteen (13) undocumented individuals
Zero holds by Immigration and Customs Enforcement.

2017: 17 non-registered birthplace bookings to date
One (1) undocumented individual
Zero holds by Immigration and Customs Enforcement.

Lengthy discussion ensued with the following action being taken.

ACTION: **Direction given pursuant to the following motion.**

MOTION: It was moved by Supervisor Crew, seconded by Supervisor Oneto and unanimously carried to draft a letter in strong opposition to Senate Bill 54 as it is currently written with emphasis on, but not limited to, the ability for local law enforcement to communicate with Immigration and Customs Enforcement (ICE) when they are faced with a situation involving an illegal immigrant determined to be guilty of violent or serious crimes as well as potential limitations in applying for and receiving grants if this legislation is successful.

Community Development Agency: Discussion and possible action relative to a request for a loan from general fund contingencies to increase the Transportation and Public Works Budget-3000-52300 (Professional and Specialized Services) in the amount of \$250,000.00 and an increase to 3000-50102 (Overtime) in the amount of \$50,000.00 to cover costs associated with storm damage and landslides on Shake Ridge and Pioneer Creek Roads as a result of the January and February 2017 storms. The requested cost increases are eligible for reimbursement up to 75% by federal sources.

Discussion ensued with Mr. Aaron Brusatori, Community Development Director summarizing the staff report relative to this matter which is hereby incorporated into these minutes as though set forth in full.

The following individual wished to speak relative to this matter.

Mr. Gary Reinoehl, District V resident

ACTION: Direction given pursuant to the following motion.

MOTION: - It was moved by Supervisor Morgan, seconded by Supervisor Oneto and unanimously carried to approve the request for a loan from general fund contingencies to increase the Transportation and Public Works Budget-3000-52300 (Professional and Specialized Services) in the amount of \$250,000.00 and an increase to 3000-50102 (Overtime) in the amount of \$50,000.00 to cover costs associated with storm damage and landslides on Shake Ridge and Pioneer Creek Roads as a result of the January and February 2017 storms; 25% will come from contingencies and 75% from General Fund reserves and amounts will be reimbursed to the General Fund upon department's reimbursement from federal and state sources.

Waste Management: Review and possible recommendation relative to a budget transfer in the amount of \$125,000.00 from general fund contingencies to the waste management department to cover costs associated with higher than normal rainfall totals which resulted in impacts to the closed Buena Vista Landfill.

Mr. Jim McHargue, Air Pollution Control Office/Director of Solid Waste, summarized the staff report relative to this matter which is hereby incorporated into these minutes as though set forth in full.

Discussion ensued with the following action being taken.

ACTION: Direction given pursuant to the following motion.

MOTION: It was moved by Supervisor Morgan, seconded by Supervisor Axe and unanimously carried to approve the request for a budget transfer in the amount of \$125,000.00 from general fund contingencies to the waste management department to cover costs associated with higher than normal rainfall totals which resulted in impacts to the closed Buena Vista Landfill, 25% will be taken from contingencies and 75% from General Fund reserves.

Assembly Bill 975: Discussion and possible action relative to the subject legislation as it relates to wild and scenic rivers.

Lengthy discussion ensued with several Supervisors expressing opinions relative to this legislation.

The following individuals wished to speak relative to this matter:

Ms. Sherry Curtis, District III resident
Ms. Katherine Evatt spoke on behalf of the Foothill Conservancy.

ACTION: Direction given pursuant to the following motion.

MOTION: It was moved by Supervisor Oneto, seconded by Supervisor Crew and carried to draft a letter for the Chairman's signature opposing Assembly Bill 975 for reasons including but not limited to the language of AB975 greatly expands the values in which a river can be found eligible for designation under the California Wild and Scenic Rivers Act, and greatly expands immediate environment to ¼ mile each side of the river which would greatly impact private property owners.

Ayes: Supervisors Oneto, Crew and Forster

Noes: Supervisors Morgan and Axe

****10:30 A.M.****

PUBLIC HEARING

Planning Department-Holley Trust: Discussion and possible action relative to a public hearing to consider the Planning Commission's recommendation to grant a variance from Co. Code Sect. 19.24.040 to allow construction of a detached garage and entryway approx. 5 feet from the front property line in the "R1-PD" zoning district. The required setback from the front property line is 25 feet. The project is located at 33930 Dangberg Drive, Kirkwood, CA (APN 026-171-014).

Mr. Chuck Beatty, Planning Department, summarized the staff report relative to this matter which is incorporated in full into the these minutes as though set forth in full.

Chairman Forster opened the public hearing at this time. Hearing no comment the following action was taken.

ACTION #1: Public Hearing closed pursuant to the following motion.

MOTION #1: It was moved by Supervisor Oneto, seconded by Supervisor Morgan and unanimously carried to close the public hearing.

ACTION #2: Direction given pursuant to the following motion.

MOTION #2: It was moved by Supervisor Oneto, seconded by Supervisor Crew and unanimously carried to approve the Planning Commission's recommendation to grant a variance from Co. Code Sect. 19.24.040 to allow construction of a detached garage and entryway approx. 5

feet from the front property line in the "R1-PD" zoning district. The required setback from the front property line is 25 feet. The project is located at 33930 Dangberg Drive, Kirkwood, CA (APN 026-171-014); including the following findings and conditions; and further direction was given to Planning Department staff to investigate the possibility of discontinuing the process of requiring property owners in the Kirkwood Meadows jurisdiction to request variances on roads in this area as the roads have been abandoned and given to the HOA. Staff will bring back to the Administrative Committee when a possible remedy is identified.

Conditions:

1. Prior to issuance of any building permit the applicant must complete the abandonment of the public utility easement included within the 25' front setback;
2. Prior to issuance of the building permit the applicant must obtain written approval from the Kirkwood Meadows Association Planning Committee for said construction;
3. Prior to issuance of the building permit the applicant must obtain from the Department of Transportation and Public Works an encroachment permit for the driveway, the location of which shall be such that it will not adversely impact the snow storage area adjacent to the proposed driveway.
4. All necessary building permits shall be obtained from the Building Department for construction of the proposed structure.

Findings:

1. This variance does not constitute the granting of a special privilege inconsistent with the limitations to which other lots in the vicinity with like zoning are subject;
2. Due to the location of the existing dwelling and the slope of the lot, the strict application of the front building setback is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications; and
3. This variance will not have a significant adverse effect on the environment and is categorically exempt according to Section 15305, Class 5 of the State CEQA Guidelines (minor setback variance not resulting in the creation of any new parcel) and a Notice of Exemption will be filed with the County Recorder.

Minutes: Review and possible approval of the April 11, 2017 Board of Supervisors Meeting Minutes.

Discussion ensued with the following action being taken.

ACTION: Direction given pursuant to the following motion.

MOTION: It was moved by Supervisor Morgan, seconded by Supervisor Oneto and unanimously carried to approve the April 11, 2017 Board of Supervisors Meeting Minutes with minor amendments.

ADJOURNMENT: Until Tuesday, May 9, 2017, at 8:30 a.m.

**AMADOR COUNTY
BOARD OF SUPERVISORS**

CONSENT MINUTES

April 25, 2017

NOTE: Items listed on the consent agenda are considered routine and may be enacted by one motion. Any item may be removed for discussion and possible action, and made a part of the regular agenda at the request of a Board member(s).

1. **BUDGET MATTERS** **None**

2. **TAX MATTERS** **None**

3. **RESOLUTIONS**

- A. **Board Of Supervisors:** Approval of a resolution declaring a Local State of Emergency in Amador County due to Pervasive Tree Mortality. (Original resolution adopted on February 23, 2016 and updated on September 13, 2016 and February 28, 2017.) **(Resolution # 17-038)**
- B. **Building Department:** Approval of a resolution authorizing recordation of an Agreement to Limit Uses of Agricultural Structure for Belledor Vineyards LLC for Building Permit AG01047 (APN 014-140-028-000). **(Resolution # 17-039)**
- C. **Treasurer/Tax Collector:** Approval of a resolution discharging the Tax Collector from further accountability for the collection of amounts on unsecured tax rolls where the amounts are so small as to not justify the cost of collection or enforcement. **(Resolution # 17-040)**

4. **AGREEMENTS**

- A. **Human Resources:** Approval of Vantage Care Retirement Health Saving Adoption Agreement and related documentation in order to establish the Retirement Health Savings Program for Mid-Management employees adopted on April 11, 2017, and adopt a resolution for same. **(Resolution # 17-041)**
- B. **Public Health:** Approval of an amended award agreement with the California Department of Health for the emergency preparedness and response award which will

increase the grant amount and extend the date of award, and adopt a resolution for same. **(Resolution # 17-042)**

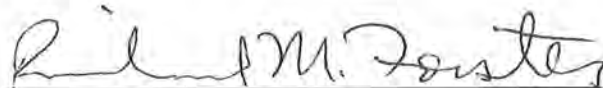
- C. **Transportation and Public Works:** Approval of a first amendment to Master on-Call Contract 14-03 with Geocon Consultants, Inc. for Task Order 14-03J Construction Materials Testing and Inspection for the New York Ranch Road / Ridge Road Intersection Improvement Project.
- D. **Transportation and Public Works:** Approval of a first amendment to the contract for consulting services with Mark Thomas & Company, Inc. for the SR88/Pine Grove Corridor PS&E services.

5. **ORDINANCES** **None**

6. **MISCELLANEOUS APPOINTMENTS** **None**

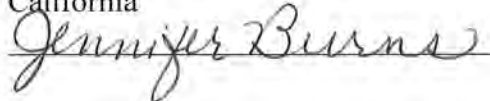
7. **MISCELLANEOUS**

- A. **General Services Administration:** Approval to authorize the GSA Director to execute and submit a grant application to the State Department of Transportation Aeronautics Division for matching grant funds to assist with Runway and Taxiway Rehabilitation and adopt a resolution for same. **(Resolution # 17-043)**
- B. **General Services Administration:** Approval to reject all bids for RBP 16-19 and authorize the Sheriff's Office to negotiate a contract with Watch Guard Video for the purchase and installation of 17 in-car video systems, accessories and video management solutions in an amount not to exceed \$145,328.57 contingent on County Counsel approval and authorize Chairman to execute said contract.
- C. **Human Resources:** Approval to change the classification title of Chief Deputy Clerk/Recorder Local Registrar of Births and Deaths to Chief Deputy Clerk/Recorder; modify the job description and update the Mid-Management Classification and Wage Plan resolution to reflect a decrease in salary. **(Resolution # 17-044)**
- D. **Social Services:** Approval to backfill on CPS Social Service Aide position due to employee resignation. This is a Merit Systems position and their standards and guidelines must be followed.



Richard M. Forster, Chairman, Board of Supervisors

ATTEST:
JENNIFER BURNS, Clerk of the
Board of Supervisors, Amador County,
California





KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Annotated California Codes

Government Code (Refs & Annos)

Title 1. General

Division 7. Miscellaneous

Chapter 17.1. Standards for Responding to United States Immigration and Customs Enforcement

Holdings (Refs & Annos)

West's Ann.Cal.Gov.Code § **7282.5**

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

Effective: January 1, 2018

[Currentness](#)

(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](#).

Credits

(Added by [Stats.2013, c. 570 \(A.B.4\)](#), § 2. Amended by [Stats.2017, c. 495 \(S.B.54\)](#), § 2, eff. Jan. 1, 2018.)

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West's Ann. Cal. Gov. Code § [7282.5](#), CA GOVT § [7282.5](#)

Current with urgency legislation through Ch. 10 of 2018 Reg.Sess

1 CHAD A. READLER
 Acting Assistant Attorney General
 2 MCGREGOR SCOTT
 United States Attorney
 3 AUGUST FLENTJE
 Special Counsel
 4 WILLIAM C. PEACHEY
 Director
 5 EREZ REUVENI
 Assistant Director, Office of Immigration Litigation
 6 U.S. Department of Justice, Civil Division
 7 P.O. Box 868, Ben Franklin Station
 8 Washington, DC 20044
 Tel. (202) 307-4293
 9 Erez.R.Reuveni@usdoj.gov
 10 DAVID SHELEDY
 Civil Chief, Assistant United States Attorney
 11 LAUREN C. BINGHAM
 JOSEPH A. DARROW
 12 JOSHUA S. PRESS
 Trial Attorneys
 13 *Attorneys for the United States*

14
 15 **UNITED STATES DISTRICT COURT**
 16 **EASTERN DISTRICT OF CALIFORNIA**

17
 18 THE UNITED STATES OF AMERICA,
 19 Plaintiff,
 20 v.
 21 THE STATE OF CALIFORNIA;
 EDMUND GERALD BROWN JR.,
 Governor of California, in his Official
 22 Capacity; and XAVIER BECERRA,
 Attorney General of California, in his
 23 Official Capacity,
 24 Defendants.

No. 18-264

COMPLAINT

25
 26 Plaintiff, the United States of America, by and through its undersigned counsel, brings
 27 this civil action for declaratory and injunctive relief, and alleges as follows:
 28

PRELIMINARY STATEMENT

1
2 1. In this action, the United States seeks a declaration invalidating and preliminarily and
3 permanently enjoining the enforcement of certain provisions of California law. These
4 provisions are preempted by federal law and impermissibly discriminate against the
5 United States, and therefore violate the Supremacy Clause of the United States
6 Constitution.

7
8 2. The United States has undoubted, preeminent authority to regulate immigration matters.
9 This authority derives from the United States Constitution and numerous acts of
10 Congress. California has no authority to enforce laws that obstruct or otherwise conflict
11 with, or discriminate against, federal immigration enforcement efforts.

12
13 3. This lawsuit challenges three California statutes that reflect a deliberate effort by
14 California to obstruct the United States’ enforcement of federal immigration law, to
15 regulate private entities that seek to cooperate with federal authorities consistent with
16 their obligations under federal law, and to impede consultation and communication
17 between federal and state law enforcement officials.

18
19 4. The first statute, the “Immigrant Worker Protection Act,” Assembly Bill 450 (“AB 450”),
20 prohibits private employers in California from voluntarily cooperating with federal
21 officials who seek information relevant to immigration enforcement that occurs in places
22 of employment.

23
24 5. The second statute, Assembly Bill 103 (“AB 103”), creates an inspection and review
25 scheme that requires the Attorney General of California to investigate the immigration
26 enforcement efforts of federal agents.

27 6. The third statute, Senate Bill 54 (“SB 54”), which includes the “California Values Act,”
28

1 limits the ability of state and local law enforcement officers to provide the United States
2 with basic information about individuals who are in their custody and are subject to
3 federal immigration custody, or to transfer such individuals to federal immigration
4 custody.

5
6 7. The provisions of state law at issue have the purpose and effect of making it more
7 difficult for federal immigration officers to carry out their responsibilities in California.
8 The Supremacy Clause does not allow California to obstruct the United States' ability to
9 enforce laws that Congress has enacted or to take actions entrusted to it by the
10 Constitution. Accordingly, the provisions at issue here are invalid.

11
12 **JURISDICTION AND VENUE**

13 8. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

14 9. Venue is proper in this jurisdiction under 28 U.S.C. § 1391(b) because Defendants reside
15 within the Eastern District of California and because a substantial part of the acts or
16 omissions giving rise to this Complaint arose from events occurring within this judicial
17 district.

18
19 10. The Court has the authority to provide the relief requested under the Supremacy Clause,
20 U.S. Const. art. VI, cl. 2, as well as 28 U.S.C. §§ 1651, 2201, and 2202, and its inherent
21 equitable powers.

22
23 **PARTIES**

24 11. Plaintiff, the United States, regulates immigration under its constitutional and statutory
25 authorities, and it enforces the immigration laws through its Executive agencies,
26 including the Departments of Justice, State, and Labor, and the Department of Homeland
27 Security (DHS) including its component agencies U.S. Immigration and Customs
28

1 Enforcement (ICE), and U.S. Customs and Border Protection (CBP).

2 12. Defendant State of California is a state of the United States.

3 13. Defendant Edmund Gerald Brown Jr. is the Governor of the State of California and is
4 being sued in his official capacity.

5 14. Defendant Xavier Becerra is Attorney General for the State of California and is being
6 sued in his official capacity.
7

8 **FEDERAL IMMIGRATION LAW**

9 15. The Constitution affords Congress the power to “establish an uniform Rule of
10 Naturalization,” U.S. Const., art. I § 8, cl. 4, and to “regulate Commerce with foreign
11 Nations,” U.S. Const., art. I § 8, cl. 3, and affords the President of the United States the
12 authority to “take Care that the Laws be faithfully executed.” U.S. Const., art. II § 3.

13
14 16. The Supremacy Clause of the Constitution mandates that “[t]his Constitution, and the
15 Laws of the United States which shall be made in Pursuance thereof . . . shall be the
16 supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the
17 Contrary notwithstanding.” U.S. Const., art. VI, cl. 2. Thus, a state enactment is invalid if
18 it “stands as an obstacle to the accomplishment and execution of the full purposes and
19 objectives of Congress,” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941), or if it
20 “discriminate[s] against the United States or those with whom it deals,” *South Carolina v.*
21 *Baker*, 485 U.S. 505, 523 (1988).
22

23
24 17. Based on its enumerated powers and its constitutional power as a sovereign to control and
25 conduct relations with foreign nations, the United States has broad authority to establish
26 immigration laws, the execution of which the States cannot obstruct or discriminate
27 against. *See Arizona v. United States*, 567 U.S. 387, 394-95 (2012); *accord North*
28

1 *Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality); *id.* at 444-47 (Scalia, J.,
2 concurring).

3 18. Congress has exercised its authority to make laws governing the entry, presence, status,
4 and removal of aliens within the United States by enacting various provisions of the
5 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, the Immigration Reform
6 and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat 3359, codified at 8 U.S.C.
7 § 1324a *et seq.*, and other laws regulating immigration.
8

9 19. These laws codify the Executive Branch’s authority to inspect, investigate, arrest, detain,
10 and remove aliens who are suspected of being, or found to be, unlawfully in the United
11 States. *See* 8 U.S.C. §§ 1182, 1225, 1226, 1227, 1228, 1231, 1357.
12

13 20. Congress has also codified basic principles of cooperation and comity between state and
14 local authorities and the United States. For example, federal law contemplates that
15 removable aliens in state custody who have been convicted of state or local offenses will
16 generally serve their state or local criminal sentences before being subject to removal, but
17 that they will be taken into federal custody upon the expiration of their state prison terms.
18 *See id.* §§ 1226(c), 1231(a)(1)(B)(iii), (a)(4).
19

20 21. “Consultation between federal and state officials is an important feature of the
21 immigration system.” *Arizona*, 567 U.S. at 411. Congress has therefore directed that a
22 federal, state, or local government entity or official may not prohibit, or in any way
23 restrict, any government entity or official from sending to, or receiving from, DHS
24 “information regarding the citizenship or immigration status of an individual.” 8 U.S.C.
25 § 1373(a); *see* 8 U.S.C. § 1644 (same); *see also* 8 U.S.C. § 1357(g)(10)(A) (providing for
26 state and local “communicat[ion] with [DHS] regarding the immigration status of any
27
28

1 individual, including reporting knowledge that a particular alien is not lawfully present in
2 the United States”). Congress also authorized states and localities “to cooperate with the
3 [Secretary] in the identification, apprehension, detention, or removal of aliens not
4 lawfully present in the United States.” *Id.* § 1357(g)(10)(B).

5
6 22. Federal law also explicitly recognizes the United States’ authority to “arrange for
7 appropriate places of detention for aliens detained pending removal or a decision on
8 removal,” including the lease or rental of state, local, and private facilities. *See* 8 U.S.C.
9 § 1231(g); *accord* 8 U.S.C. § 1103(a)(11).

10 23. Federal regulation provides that “[n]o person, including any state or local government
11 entity or any privately operated detention facility, that houses, maintains, provides
12 services to, or otherwise holds any detainee on behalf of [DHS] (whether by contract or
13 otherwise), and no other person who by virtue of any official or contractual relationship
14 with such person obtains information relating to any detainee, shall disclose or otherwise
15 permit to be made public the name of, or other information relating to, such detainee.
16 Such information shall be under the control of [DHS] and shall be subject to public
17 disclosure only pursuant to the provisions of applicable federal laws, regulations and
18 executive orders.” 8 C.F.R. § 236.6.

19
20
21 24. Congress, through IRCA, has also enacted a “comprehensive framework for combating
22 the employment of illegal aliens.” *Arizona*, 567 U.S. at 404. IRCA makes it illegal for
23 employers to knowingly hire, recruit, refer, or continue to employ aliens without
24 appropriate work authorization. *See* 8 U.S.C. § 1324a(a)(1)(A), (a)(2). It also requires
25 every employer to verify the employment authorization status of prospective employees.
26 *See id.* § 1324a(a)(1)(B), (b). DHS enforces these requirements through criminal
27
28

1 penalties and an escalating series of civil penalties tied to the number of times an
2 employer has violated the provisions. *See* 8 U.S.C. §§ 1324a(e)(4), (f).

3 25. As a means of enforcing IRCA’s criminal and civil penalties, Congress established a
4 nationally uniform inspection process whereby employers are required to retain
5 documentary evidence of authorized employment of aliens, and to permit federal
6 investigative officers to inspect such documents. *See* 8 U.S.C. § 1324a(b), (e)(2)(A).

7
8 26. DHS, through ICE and CBP, performs a significant portion of its law enforcement
9 activities in California. In Fiscal Year 2017, ICE’s Enforcement and Removal Operations
10 (ERO) apprehended 20,201 aliens in California alone, or roughly 14% of the aliens
11 apprehended nationwide. Thus far in 2018, ICE ERO has apprehended 8,588 aliens in
12 California, or roughly 14% of the aliens apprehended nationwide. Of those aliens
13 apprehended nationwide in 2016, 2017, and thus far in 2018, 92%, 90%, and 87%
14 respectively, were criminal aliens. In Fiscal Year 2017, ICE ERO booked a total of
15 323,591 aliens into custody, 41,880 of whom were detained in California. And CBP is
16 responsible for enforcing the immigration laws at ports of entry and areas near the border
17 in California, including apprehending recent entrants with criminal convictions or who
18 are national security concerns, and patrolling the border for narcotics.
19
20

21 **CALIFORNIA PROVISIONS**

22 **Restrictions on Cooperation with Workplace Immigration Enforcement (AB 450)**

23
24 27. On October 5, 2017, Governor Brown signed into law the “Immigrant Worker Protection
25 Act,” Assembly Bill 450 (AB 450), effective January 1, 2018 (Exhibit 1). Through AB
26 450, California regulates how private employers in California must respond to federal
27 efforts to ensure compliance with federal immigration laws through investigations in
28

1 places of employment.

2 28. AB 450 added Section 7285.1(a) of the California Government Code, which provides that
3 an employer or its agent “shall not provide voluntary consent to an immigration
4 enforcement agent to enter any nonpublic areas of a place of labor,” unless “the
5 immigration enforcement agent provides a judicial warrant” or consent is “otherwise
6 required by federal law.”
7

8 29. Section 7285.2(a)(1) similarly prohibits an employer or its agent from “provid[ing]
9 voluntary consent to an immigration enforcement agent to access, review, or obtain the
10 employer’s employee records without a subpoena or judicial warrant.”
11

12 30. Section 7285.2(a)(2) contains an exception for certain documents for which the United
13 States has provided a “Notice of Inspection,” Cal. Gov’t Code § 7285.2(a)(2). AB 450
14 added provisions to the California Labor Code that establish new requirements employers
15 must satisfy *before* allowing ICE to conduct the inspection process directed by federal
16 law. AB 450 requires employers to notify employees and their authorized representatives
17 of upcoming inspections of employment records “within 72 hours of receiving notice of
18 the inspection.” Cal. Lab. Code § 90.2(a)(1). It also requires employers to provide
19 employees and their authorized representatives, within 72 hours, with copies of written
20 immigration agency notices providing results of inspections. *Id.* § 90.2(b)(1).
21

22 31. All these provisions are subject to a schedule of civil penalties “of two thousand dollars
23 (\$2,000) up to five thousand dollars (\$5,000) for a first violation and five thousand
24 dollars (\$5,000) up to ten thousand dollars (\$10,000) for each subsequent violation.” Cal.
25 Gov’t Code §§ 7285.1(b), 7285.2(b); Cal. Lab. Code § 90.2(c).
26

27 32. AB 450 added Section 1019.2(a) of the California Labor Code, which provides that an
28

1 employer or its agent “shall not reverify the employment eligibility of a current employee
2 at a time or in a manner not required by Section 1324a(b) of Title 8 of the United States
3 Code.” Violators are subject to “a civil penalty of up to ten thousand dollars (\$10,000).”
4 Cal. Lab. Code § 1019.2(b).

5 33. Upon information and belief, California law does not prohibit employers from voluntarily
6 complying with requests from any other federal or California entities for information or
7 inspection, or compel employers to provide notice to their employees of other efforts to
8 collect information.

9
10 34. In Fiscal Year 2017, ICE conducted approximately 1,300 worksite inspections authorized
11 by IRCA across the country, including approximately 230 in California. If conditions are
12 appropriate, any of those investigations could lead to an inspection with the consent of
13 the employer, and often employers are very willing to provide consent in order to
14 alleviate and address concerns that arise during the inspection process. In addition such
15 inspections with the consent of the employer are critical to investigating cross border
16 smuggling of people, narcotics, and terrorism.

17
18
19 35. These provisions, individually and collectively, have the purpose and effect of interfering
20 with the enforcement of the INA and IRCA’s prohibition on working without
21 authorization. California has no lawful interest in protecting unauthorized workers from
22 detection or in shielding employers who have violated federal immigration law from
23 penalty. These provisions, as applied to private employers, violate the Supremacy Clause
24 by, among other things, constituting an obstacle to the United States’ enforcement of the
25 immigration laws and discriminating against federal immigration enforcement.
26

27 **Inspection and Review of Immigration Detention Facilities (AB 103)**
28

1 36. Under longstanding California law, “local detention facilities” are subject to biennial
2 inspections concerning health and safety, fire suppression preplanning, compliance with
3 training and funding requirements, and the types and availability of visitation. Cal. Penal
4 Code § 6031.1(a). The law defines “local detention facilities” as any city, county, or
5 regional facility in which individuals are confined for more than 24 hours, and includes
6 private facilities (though it excludes certain facilities for parolees, treatment and
7 restitution facilities, community correctional centers, and work furlough programs). *Id.*
8 § 6031.4.
9

10 37. On June 27, 2017, California enacted Assembly Bill 103 (AB 103) (Exhibit 2). Section
11 12 of AB 103 added Section 12532 to the California Government Code.
12

13 38. Rather than subject facilities housing civil immigration detainees to the inspection
14 scheme deemed sufficient for other detention facilities, the statute imposes a new set of
15 requirements specific to facilities housing immigration detainees. In particular, Section
16 12532(a) requires the California Attorney General or his designee “to engage in reviews
17 of county, local, or private locked detention facilities in which noncitizens are being
18 housed or detained for purposes of civil immigration proceedings in California.”
19

20 39. The statute is not limited to an inspection of facilities. The law also requires the
21 California Attorney General or his designee to examine the “due process provided” to
22 civil immigration detainees, and “the circumstances around their apprehension and
23 transfer to the facility.” Cal. Gov’t Code § 12532(b). Section 12532(c) instructs that the
24 California Attorney General or his designee “shall be provided all necessary access for
25 the observations necessary to effectuate reviews required pursuant to this section,
26 including, but not limited to, access to detainees, officials, personnel, and records.”
27
28

1 40. DHS, through ICE, has entered into contracts for detention services with private entities,
2 intergovernmental services agreements (IGSAs) with county, city, or local government
3 entities in California, and intergovernmental agreements (IGAs) with the U.S. Marshals
4 service that provide ICE with guaranteed housing for ICE detainees as needed. ICE
5 currently has twenty active contracts, IGSAs or IGAs, in California and regularly uses
6 nine detention facilities in California to house civil immigration detainees in ICE
7 custody.
8

9 41. Information obtained or developed as a result of an agreement with the detention facility
10 are federal records under the control of ICE for purposes of disclosure and are subject to
11 disclosure only pursuant to applicable federal information laws, regulations, and policies,
12 including but not limited to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 8
13 C.F.R. § 236.6.
14

15 42. Three of these facilities, the Adelanto Correctional Facility, the Imperial Regional
16 Detention Facility, and the Mesa Verde Detention Facility are dedicated facilities that
17 exclusively house immigration detainees. In Fiscal Year 2018, these three facilities have
18 had an average daily population of 1,685, 680, and 384 detainees pending the outcome of
19 their administrative immigration cases, respectively.
20

21 43. The remaining facilities with IGSAs house both immigration detainees and local
22 detainees and are used on an as-needed basis. In Fiscal Year 2018, average daily detainee
23 populations at the as-needed facilities have ranged between a high of 956 at Otay Mesa
24 Detention and a low of 171 at Rio Cosumnes Correctional Center.
25

26 44. DHS, through ICE, houses civil immigration detainees at the Otay Mesa Detention
27 Center in California, a private detention facility that CoreCivic owns and operates. Otay
28

1 Mesa has an average daily population of around 1,000 detainees awaiting removal or a
2 decision on removal.

3 45. Upon information and belief, on November 16, 2017, Defendant Becerra initiated via
4 letter a request to inspect various ICE detention facilities, including Imperial, Adelanto,
5 Mesa Verde, the Theo Lacy Facility, the James A. Musick Facility, Yuba County Jail,
6 Rio Cosumnes Correctional Center, Contra Costa West County Detention Facility, and
7 Otay Mesa, as well as a request to inspect DHS documents concerning aliens detained in
8 these locations.
9

10 46. Upon information and belief, Yuba, Rio Cosumnes, Contra Costa, Theo Lacy, and James
11 A. Musick, have been inspected since the law's passage
12

13 47. On January 24, 2018, Defendant Becerra via letter informed Imperial, Adelanto, Mesa
14 Verde, and Otay Mesa that he intended to inspect those facilities on either February 26,
15 2018 or March 5, 2018, and required access to documents and other material subject to
16 ICE control and deemed privileged under federal law and regulation. *See* 8 C.F.R. §
17 236.6.
18

19 48. Upon information and belief, California does not require any local detention facility to
20 comply with section 12532's heightened inspections regime when it houses detainees for
21 other federal or California entities. AB 103's requirements apply only when local
22 detention facilities house federal civil immigration detainees.
23

24 49. AB 103 thus requires the California Attorney General to investigate the law enforcement
25 efforts of federal agents engaged in apprehending and transferring aliens, to assess the
26 "due process" provided to those aliens and the "circumstances around their apprehension
27 and transfer to the facility," and to assess the law enforcement decisions of personnel
28

1 under contract to the United States, as well as records of unspecified scope. The statute
2 thus commands an improper, significant intrusion into federal enforcement of the
3 immigration laws. California has no lawful interest in investigating federal law
4 enforcement efforts. These provisions violate the Supremacy Clause by, among other
5 things, constituting an obstacle to the United States' enforcement of the immigration laws
6 and discriminating against the United States.
7

8 **Restrictions on State and Local Cooperation with Federal Officials (SB 54)**

9 50. On October 5, 2017, the Governor signed into law the Senate Bill 54 (SB 54), which
10 includes the "California Values Act," effective January 1, 2018 (Exhibit 3).

11 51. SB 54 limits state and local cooperation with federal immigration enforcement in a
12 number of ways. New Section 7284.6 prohibits state and local law enforcement officials,
13 other than employees of the California Department of Corrections, from, among other
14 things: "[p]roviding information regarding a person's release date or responding to
15 requests for notification by providing release dates or other information," Cal Gov't Code
16 § 7284.6(a)(1)(C); providing "personal information," including (but not limited to) an
17 individual's home address or work address, *id.* § 7284.6(a)(1)(D); and "[t]ransfer[ring] an
18 individual to immigration authorities," *id.* § 7284.6(a)(4).
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21 52. These provisions contain limited exceptions. State and local law enforcement may share
22 with the United States "information regarding a person's release date" or respond "to
23 requests for notification by providing release dates or other information," but only where
24 an individual subject to such information sharing has been convicted of a limited subset
25 crimes, or where the information is available to the public. Cal. Gov't Code §§ 7282.5(a),
26 7284.6(a)(1)(C). Personal information also may be shared only if it is available to the
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1 public. *Id.* § 7284.6(a)(1)(D). State and local law enforcement agencies may “[t]ransfer
2 an individual to immigration authorities” only if the United States presents a “judicial
3 warrant or judicial probable cause determination,” or the individual in question has been
4 convicted of one of a limited set of enumerated felonies or other serious crimes. Cal.
5 Gov’t Code §§ 7284.6(a)(4), 7282.5(a).

6
7 53. The limited subset of criminal violations does not match federal law governing what may
8 serve as the predicate for inadmissibility or removability, including listing a set of crimes
9 more narrow than those that render an alien removable. *See* 8 U.S.C. §§ 1182(a)(2),
10 1227(a)(2). And it does not match the set of criminal offenses that require the federal
11 government to detain such aliens upon their release from state or local custody. *Id.* §
12 1226(c).

13
14 54. Upon information and belief, California law does not impose these restrictions on other
15 forms of information sharing on other topics, nor does it restrict transfers of individuals
16 to other law enforcement agencies in this way.

17
18 55. These provisions impermissibly prohibit even the most basic cooperation with federal
19 officials. As noted above, federal law contemplates that criminal aliens in state custody
20 who may be subject to removal will complete their state or local sentences first before
21 being detained by the United States, but that federal immigration detention for
22 immigration proceedings or for removal will begin upon the alien’s release from state
23 custody. 8 U.S.C. § 1226(c); § 1231(a)(4). Additionally, federal law contemplates that
24 DHS will be able to inspect all applicants for admission, and take all appropriate action
25 against those found to be inadmissible to the United States, even those that may have
26 been transferred to the custody of state and local law enforcement pending such a state
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1 and local prosecution. *See* 8 U.S.C. §§ 1182, 1225(b)(2); 8 C.F.R. § 235.2. And, to
2 facilitate coordination between state and local officials and the United States, Congress
3 expressly prohibited any federal, state, or local government entity or official from
4 prohibiting, or in any way restricting, any government entity or official from sending to,
5 or receiving from, DHS “information regarding the citizenship or immigration status of
6 an individual.” 8 U.S.C. § 1373(a); *see also* 8 U.S.C. § 1644. Although SB 54 purports to
7 be consistent with section 1373, *see* Cal. Gov’t Code § 7284.6(e), sections
8 7284.6(a)(1)(C) and (D) explicitly forbid the sharing of information covered by 8 U.S.C.
9 § 1373.

10
11 56. The transfer restriction additionally requires that the United States present a “judicial
12 warrant or judicial probable cause determination” before the state or locality may transfer
13 an alien to DHS for appropriate immigration enforcement action. This provision also
14 conflicts with federal law, which establishes a system of civil administrative warrants as
15 the basis for immigration arrest and removal, and does not require or contemplate use of a
16 judicial warrant for civil immigration enforcement. *See* 8 U.S.C. § 1226(a), 1231(a).

17
18 57. Upon information and belief, since January 1, 2018, law enforcement agencies in
19 California, as defined by SB 54, will not communicate to DHS the release date or home
20 address of aliens DHS has reason to believe are removable from the United States, or
21 transfer such aliens to DHS custody, even where DHS presents a Congressionally-
22 authorized civil administrative warrant of arrest or removal, *see* 8 U.S.C. § 1226(a);
23 1231(a), or has transferred those aliens to local law enforcement in the first instance to
24 permit California or its subdivisions to criminally prosecute them for a state crime.

25
26 58. By restricting basic information sharing and by barring the transfer to DHS of aliens in
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1 state or local custody upon their release through the means provided for by federal law,
2 SB 54 requires federal immigration officers to either engage in difficult and dangerous
3 efforts to re-arrest aliens who were previously in state custody, endangering immigration
4 officers, the alien at issue, and others who may be nearby, or to determine that it is not
5 appropriate to transfer an alien to state or local custody in the first place, in order to
6 comply with their mission to enforce the immigration laws. California has no lawful
7 interest in assisting removable aliens to evade federal law enforcement.
8

9 59. These provisions violate the Supremacy Clause by, among other things, constituting an
10 obstacle to the United States' enforcement of the immigration laws and discriminating
11 against federal immigration enforcement, as well as (with respect to the information-
12 sharing restrictions) expressly violating 8 U.S.C. § 1373(a).
13

14 **CLAIM FOR RELIEF**

15 **COUNT ONE – Restrictions on Cooperation with Workplace Immigration Enforcement**

16 60. Plaintiff hereby incorporates paragraphs 1 through 26, and 27 through 35 of the
17 Complaint as if fully stated herein.
18

19 61. Sections 7285.1, and 7285.2 of the California Government Code and Sections 90.2 and
20 1019.2 of the California Labor Code, violate the Supremacy Clause as applied to private
21 employers, and are invalid.
22

23 **COUNT TWO – Inspection and Review of Detention Facilities**

24 62. Plaintiff hereby incorporates paragraphs 1 through 26, and 36 through 49 of the
25 Complaint as if fully stated herein.
26

27 63. Section 12532 of the California Government Code violates the Supremacy Clause, and is
28 invalid.

COUNT THREE – Restrictions on State and Local Cooperation

1
2 64. Plaintiff hereby incorporates paragraphs 1 through 26, and 50 through 59 of the
3 Complaint as if fully stated herein.

4 65. Sections 7284.6(a)(1)(C) & (D) and 7284.6(a)(4) of the California Government Code
5 violate the Supremacy Clause and 8 U.S.C. § 1373(a), and are invalid.
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7 **PRAYER FOR RELIEF**

8 WHEREFORE, the United States respectfully requests the following relief:

- 9 1. That this Court enter a judgment declaring that Sections 7285.1 and 7285.2 of the
10 California Government Code, and Sections 90.2 and 1019.2 of the California Labor Code
11 violate the Supremacy Clause as applied to private employers and are therefore invalid;
12
- 13 2. That this Court enter a judgment declaring that Section 12532 of the California
14 Government Code violates the Supremacy Clause and is therefore invalid;
- 15 3. That this Court enter a judgment declaring that Sections 7284.6(a)(1)(C) & (D) and
16 7284.6(a)(4) of the California Government Code violate the Supremacy Clause and are
17 therefore invalid;
18
- 19 4. That this Court issue preliminary and permanent injunctions that prohibit Defendants as
20 well as their successors, agents, and employees, from enforcing against private employers
21 sections 7285.1 and 7285.2 of the California Government Code, and Sections 90.2 and
22 1019.2 of the California Labor Code;
- 23 5. That this Court issue preliminary and permanent injunctions that prohibit Defendants, as
24 well as their successors, agents, and employees, from enforcing Section 12532 of the
25 California Government Code;
26
- 27 6. That this Court issue preliminary and permanent injunctions that prohibit Defendants as
28

1 well as their successors, agents, and employees, from enforcing Sections 7284.6(a)(1)(C)
2 & (D) and 7284.6(a)(4) of the California Government Code;

3 7. That this Court award the United States its costs in this action; and

4 8. That this Court award any other relief it deems just and proper.

5 DATED: March 6, 2018

6 CHAD A. READLER
Acting Assistant Attorney General

7 MCGREGOR SCOTT
8 United States Attorney

9 AUGUST FLENTJE
10 Special Counsel

11 WILLIAM C. PEACHEY
12 Director

13 /s/ Erez Reuveni
14 EREZ REUVENI
Assistant Director
15 U.S. Department of Justice, Civil Division
Office of Immigration Litigation
16 P.O. Box 868, Ben Franklin Station
Washington, DC 20044
17 Telephone: (202) 307-4293
18 Fax: (202) 616-8202
E-mail: Erez.R.Reuveni@usdoj.gov

19 DAVID SHELEDY
20 Civil Chief, Assistant United States
21 Attorney

22 LAUREN C. BINGHAM
23 JOSEPH A. DARROW
24 JOSHUA S. PRESS
Trial Attorneys

25 *Attorneys for Plaintiff*