

Case N°: 18-AT-00264

**FILED**

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In the United States District Court  
for the Eastern District  
Western Division

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
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UNITED STATES OF AMERICA,  
Plaintiff  
v.  
THE STATE OF CALIFORNIA,  
Defendant.

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**APPLICANT'S PROPOSED AMICUS CURIAE BRIEF**

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Before: HONORABLE JAMES A. MENDEZ, U.S.D.J.

Vadim Stanley Miesegaes  
ID N°: 0527333, U-29  
c/o Department of State Hospitals-Atascadero  
10333 El Camino Real Boulevard  
Atascadero, CA 93423-7001

**Incarcerated Pro Se Litigant**

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## PRELIMINARY STATEMENT

Amicus Curiae ("AC") applicant, Vadim Stanley Miesegaes, is an incarcerated pro se litigant and an illegal criminal alien offender convicted of an aggravated felony, committed to California's Department of State Hospitals at Atascadero ("DSH-A"), whose interest in the litigation is that federal immigration law be honored as written by the U.S. Congress.

Pursuant to Federal Rule of Civil Procedure 7 and the Judge's format for ORDERS REGARDING THE FILINGS OF AMICUS CURIAE BRIEFS in Washington v. Trump, 2017 U.S. Dist.LEXIS 20881(W.D. Wash. 2017), applicant may motion this court for leave to file Amicus Curiae brief and submit a proposal AC Brief that offers "unique or helpful information beyond what parties can offer.". Id.

As applicant's place of incarceration, the California's Department of State Hospitals at Atascadero, lurks in the shadows of this litigation while appropriating Federal Medicare funds through Medi-Cal, it also hosts numerous illegal/criminal alien felons, as is applicant, who are ineligible for all public benefits, infra at p.5, and who also may be expeditiously transferred to Immigration and Customs Enforcement ("ICE") for deportation prior to their release dates. 8 U.S.C. §§1228(a)(3)(A), 1229(d)(1).

Since these issues are likely to evade the plaintiffs as well as the defenders during these proceedings, they are unique and helpful for this court allow applicant's AC motion and brief.

This brief follows the will of the U.S. Congress in the passing of §701 of the Immigration Reform and Control Act which amended the Immigration and Nationality Act ("INA") as §239(d)(1) (coded as 8 U.S.C. §1229(d)(1)), and the President's Executive Order on "Enhancing Public Safety in the Interior of the United States", January 25, 2017, in prioritizing deportations and the removal of criminal alien offenders prior to their release dates. §1229(d)(1) was written in effort to reduce expenses and inmate population nationwide.

Here it is estimated that the cost of care in the CDSHs for one patient, under Medicare/Medi-Cal, is \$200,000 per year.

## STATEMENT OF THE CASE

From the information available to applicant, this case was filed on March 6, 2018, by the plaintiffs--the United States, under 8 U.S.C. §1373, which provides that government agencies may not be restricted from communicating with ICE. 8 U.S.C. §1373(a). Plaintiff's central arguments are that defendant's three bills, SB54, AB103, and AB450, violate Article VI of the U.S. Constitution and are preempted by federal laws; defendants--The State of California, claim that California has the right to decline to participate in the civil enforcement of immigration laws under the Tenth Amendment to the U.S. Constitution.

As applicant does not have access to the CM/ECF, he does not know what stage of the proceedings the parties are in. However, given the arguments of the plaintiffs, plaintiffs should prevail and injunctive relief sought for California to enforce federal immigration laws under Article VI and the Federal Preemption Doctrine.

Applicant advances further arguments in support of the plaintiffs and in the interest of federal immigration law enforcement. The first one is premised on constitutional grounds; the second, third, and fourth ones on the non sanctity of the CDSH despite SB54, the ineligibility of illegal aliens to receive public benefits, and the preemption of federal laws.

### ARGUMENTS

#### ARGUMENT I

**THE TENTH AMENDMENT PROVISION CLAIM THAT DEFENDANTS ARE NOT REQUIRED TO PARTICIPATE IN CIVIL ENFORCEMENT FAILS; IMMIGRATION IS DELEGATED TO THE U.S. BY THE CONSTITUTION UNDER ARTICLE VI AND THE I.N.A. AND IS NOT RESERVED TO THE STATES.**

Article VI reads that the "...Constitution and the laws of the United States which shall be made in pursuance thereof...under the Authority of the United States, shall be the Supreme Law of the Land..." and the Tenth Amendment reads that "The powers not delegated to the United States by the Constitution, nor prohibited by to the States, are reserved to the States respectively..."

Under Article VI, INA, and its amendments, was written in pursuance of the

Constitution and under the Authority of the U.S. Congress, which makes it the Supreme Law of the Land. Drawing for all inferences of logic, INA's power is inherently delegated the United States, viz. plaintiffs, by the Constitution under the Tenth Amendment and not prohibited by it nor is reserved to the States, viz. defendants. California's own Constitution admits the Federal Supremacy of the U.S. Constitution. Cal.Const.Art.III§1. Moore v. Smaw, 17 Cal. 199 (1861)("To say that a State of the Union is sovereign, only means that she possesses supreme political authority, except as to matters over which such authority is delegated to the Federal Constitution or prohibited to the States".)

Here defendants three bills, passed without voter approval, attempt to prohibit plaintiff's delegated power to enforce INA and its amendments. As the high court overturned its ruling that restricted Congress' power to regulate the State under the Tenth Amendment in Garcia v. San Antonio Metropolitan Transit Authority, 105 S.Ct 1005 1055 (1985)(Due respect for the reach of congressional power within the federal system mandates that we do so now. National League of Cities v. Usery, 426 U.S. 833 (1976) is overturned)(quotation marks omitted), Congress' power and will is presently unrestricted; States must be regulated under INA and its amendments notwithstanding the fact that States have no business regulating immigration to begin with, League of Latin American Citizens v. Wilson, 994 F.Supp. 1244 1245 (C.D. Cal. 1997)("The power to regulate immigration in unquestionably a federal power, any state statute that regulates immigration is constitutionally proscribed.").

Drawing from these conclusions of law, it follows that the defendants must participate in the civil enforcement of immigration law under federal laws and that their tenth amendment claims must be dismissed.

## ARGUMENT II

### **APPLICANT'S ESTABLISHMENT, THE CDSH, IS NOT ENTITLED TO THE SANCTITY PROTECTIONS OF SB54 PER THE CALIFORNIA STATUTES.**

Applying the principles of statutory interpretation: noscitur a sociis/ejusdem generis, United States v. Lacy, 119 F.3d 742 748 (9th Cir. 1997), California Civil Code, Section 23.3, reads that "If the provisions of any title conflict with or contravene the provisions of another title, the prov-

isions of each title shall prevail as to all matters and practices arising out of the subject matter of the title."

As the Welfare and Institution Code are the governing statutes for the CDSH' and since Cal.Civ.Code§23.3 divides the power of the titles, "...the provisions of [the Welfare and Institution Code] shall prevail as to all matters of the title.". Id.

Here Section 7201 of the Welfare and Institution Codes provide that "All institution under the jurisdiction of the State Department of State Hospitals shall be governed by...all the provisions of...Section 4100 of Division 4 of the code." and Section 4118 of Division 4 reads that " The [SDSH] shall cooperate with the United States Bureau of Immigration in arranging for the deportation of all aliens who are confined in, admitted, or committed to any state hospital."

It follows from Cal.Civ.Code§23.3 and Wel.Ins.Code§4118 that the SDSH must cooperate with the USBICE in arranging for the removal of all aliens in its custody notwithstanding defendant's SB54 which is restricted to the Government Code, viz. Gov.Code§§7282, 7282.5, and 7284 et seq.. This is equally true as applied to Wel.Ins.Code§4558 for Developmental Services and Wel.Ins.Code§1108 for Youth Authority that mandate cooperation with ICE for deportations.

### ARGUMENT III

**UNDER THE PERSONAL RESPONSIBILITY AND  
WORK OPPORTUNITY RECONCILIATION ACT  
(PRA), THE SDSH MAY NOT PROVIDE PUBLIC  
BENEFITS TO ILLEGAL CRIMINAL ALIEN WHO  
ARE NOT QUALIFIED; AS WITH CRIMINAL AL-  
IEN FELONS, NONE QUALIFIED ALIEN MUST  
BE REMANDED TO ICE AND DEPORTED.**

The court held in League of United Latin American Citizens v. Wilson, 994 F.Supp. 1244 (C.D. Cal. 1997) that "Congress has ousted state power in the

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<sup>1</sup> Wel.Ins.Code§7200 states "There are in the State the following state hospitals for the care, treatment, and education of the mentally ill."



field of regulation of public benefits to immigrant...who are not qualified. 8 U.S.C. §§1611, 1621. An alien not qualified is ineligible for any federal benefit. 8 U.S.C. §1611(a)".

Federal benefits are grants, contracts, professional license,..., provided by an agency of the United States; benefits include welfare, health, disability,..., for which payments are provided to an individual [as applicant] by an agency of the United States [i.e. Department of Health and Human Services and the Centers for Medicare/Medicaid Services], Ibid at Footnote 11.

As with the provisions of 8 U.S.C. §1373(a), 8 U.S.C. §1644 provide that a governmental entity may not prohibit another from communicating alien statuses to ICE. These provisions are reenforced in League of United Latin American Citizens v. Wilson, 994 F.Supp. 1244 1255 (C.D. Cal. 1997) ("Congress has expressly exercised its authority to establishing procedure that must be followed in verifying immigration eligibility for federal, state, and local benefits.").

Furthermore, "States do not retain under the Tenth Amendment an untrammelled right to forbid all voluntary cooperation by State or local officials with particular federal programs.", City of New York v. United States, 179 F.3d 29 (2nd Cir. 1998).

As the SDSH<sup>2</sup> is a licensed psychiatric health facility that is certified by the Federal Centers for Medicare/Medicaid Services, Wel.Ins.Code §4080(b)(4), whose proposed charges are reviewed by the California Department of Health and Human Services ("CDHHS"), Wel.Ins.Code §4080(k), it may not provide health care services, viz. psychiatric care, to unqualified criminal aliens under the PRA. United States ex rel. Allabouni v. Advocate Mental Health & Hosps. Corp., 2017 U.S. Dist. LEXIS 160060 (N.D. Ill. 2017) ("Medicare is a federal health insurance program under Title 18 of the Social Security Act, 42 U.S.C. §1395, [and] the Centers for Medicare and Medicaid Services (CMS), a federal agency within the Department of Health and Human Services [that] administers Medicare."); Edson v. Riverview Psychiatric Ctr., 2017 U.S. Dist. LEXIS

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<sup>2</sup> Wel.Ins.Code §4000 states that "there is in the California Health and Human Services Agency a State Department of State Hospitals."

27808 (D.C. Maine 2017)(As with Riverview, Atascadero State Hospital<sup>3</sup> is a "...State-operated forensic hospital [that] is a Medicaid and/or Medicare participating hospital that has accepted federal funds."; Asante v. Cal.Dept. of Health Care Servs., 155 F.Supp.3d 1008 1031 (N.D. Cal. 2015)("[F]ederal reimbursement to States which appeared to be keyed up in-state hospital statutes and reporting requirements."

These services include community programs for the judicially committed patients, Wel.Ins.Code§4360(a); The SDSH "shall provide mental health treatment and supervision for judicially committed persons."

Accordingly, aliens who are not qualified beneficiaries, 8 U.S.C. §§1601-1646, as well as aggravated criminal alien offender, 8 U.S.C. §1227 et seq., must be remanded by the federal courts to the jurisdiction of ICE for removal proceedings.

#### ARGUMENT IV

**BECAUSE THE SDSH IS CERTIFIED BY THE FEDERAL CENTER FOR MEDICARE AND IS GOVERNED BY THE WELFARE AND INSTITUTION CODES, AS DEFENDANTS MAY NOT RESTRICT THE SDSH, AS A HEALTH FACILITY UNDER THEIR GOVERNMENT CODE§7284.4(d), FROM ENFORCING IMMIGRATION LAWS UNDER GOVERNMENT CODE§7284.2(g).**

As noted in applicant's third argument, the SDSH is a licensed psychiatric facility that is certified by the federal Center for Medicare Services (CMS). Wel.Ins.Code§4080(b)(4). As it has accepted federal Medicare funds for its programs, it must comply with applicable federal laws including the enforcement of immigration laws. 8 U.S.C. §§1373(a), 1644.

Accordingly the State's licensing restrictions as applied to the SDSH's Executives and Law Enforcement Officials under Gov.Code§7284.2(g) and Gov. Code§7284.4(d) are preempted by 8 U.S.C. §1644 and 8 U.S.C. §1373(a) congruent with Wel.Ins.Code§4080(b)(4) and Wel.Ins.Code§4118 (see page 4), and prevailing under the divided powers of California's Civil Codes, Section 23.3

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<sup>3</sup> Wel.Ins.Code§7200 identifies all the state hospitals in California; §7200(b) Atascadero State Hospital (where applicant presently is).

(see Argument II). See also United States v. Arizona, 703 F.Supp.2d 980 (9th Cir. 2010)(State laws preempted by Federal laws and enforced by injunction); League of United Latin American Citizens v. Wilson, 994 F.Supp. 1244 (C.D. Cal 1997)("[T]he PRA is a comprehensive regulatory scheme that restricts alien eligibility for all public benefits, however funded, that states have no power to legislate in this area.").

Additionally, the fact that applicant informed law enforcement officials of his illegal alien offender status, and that the officials made no efforts to initiate contact with ICE, subjects the SDSH to sanctioning by the CMS and/or to the prosecution by the United States Attorney General under 8 U.S.C. §1324(a)(1)(A)(iii). United States v. De Evans, 531 F.2d 428 (9th Cir. 1976) (Standard definition for conviction of harboring); United States v. Lopez, 521 F.2d 437 (2nd Cir. 1975)(Conviction of harboring sustained de to defendant's knowledge).

For those reasons, plaintiff should prevail against the defendants in ensuring the immigration enforcement in the SDSH and may elect to prosecute the SDSH for harboring illegal criminal alien offenders under 8 U.S.C. §1324 (a)(1)(A)(iii).

#### CONCLUSION

Drawing from all inference of logic herein, plaintiff's claims that immigration enforcement, under the Supremacy Clause and the Federal Preemption Doctrine, may not be restricted by the defendant's three bills, is valid, and because applicant's AC brief offers unique information that is likely not to be raised by the parties, it should be granted in the interest of the court and in support of the plaintiffs.

Respectfully submitted,

Dated: May 16, 2018



Vadim S. Miesegeas, Pro Se Litigant