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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

NO. **2:18–CV–00490-JAM-KJN**

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA

Judge: Hon. John A. Mendez

NO HEARING NOTICED

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INTRODUCTION

The United States of America hereby opposes the Motion to Transfer Venue filed by California and the other State Defendants (ECF No. 18) (hereinafter, "Defendants' Motion" or "Defs.' Mot."). Remarkably, California seeks to transfer consideration of this matter away from this district, where the state laws at issue were enacted and where the government officials charged with enforcing them—the Governor and the Attorney General—reside. Venue is plainly appropriate here, and transfer under 28 U.S.C. § 1404(a) is inappropriate given that this is the district with by far the strongest ties to all of the Defendants. Given that, the United States' choice to file suit challenging California's laws in its own state capital is entitled to not only great weight, but overwhelming weight. California's motivation seems to be to select a forum that it believes will be more favorable. But that will only delay consideration of the United States' preliminary injunction motion—where the United States has identified the legal flaws in, and the ongoing harm caused by, the three challenged California laws, including the provisions that require local California law enforcement agencies to release, with no notice to the Department of Homeland Security ("DHS"), removable aliens arrested for criminal violations. The laws result in the need for DHS to conduct dangerous at-large apprehensions and increase the risk of criminal recidivism by aliens who are not in the country lawfully. Defendants' Motion should thus be denied.

Tethering this case to a narrow lawsuit regarding federal law enforcement grants, Defendants' Motion contends that the purportedly related litigation in San Francisco "turn[s] on the interplay between the federal government's power over immigration and the states' police powers under the Tenth Amendment." Defs.' Mot. at 1. That is simply not correct. Instead, the San Francisco litigation, which involves claims from both California and San Francisco, concerns the scope of the Attorney General's authority to impose conditions on two federal law enforcement grants, as measured by federal grant statutes and the Spending Clause. *See California ex rel. Becerra v. Sessions*, No. 17-cv-04701 (N.D. Cal.). This case, on the other hand, asks whether three unusual and newly enacted state immigration laws violate the Supremacy Clause. It is very well established that under the Spending Clause, Congress can, with certain limitations, offer funding to the States to carry out duties set forth in federal law; making inapplicable the

types of limits the Tenth Amendment might impose on direct regulation of the States. The Supremacy Clause issues, on the other hand, have nothing to do with federal grants or Congress' Spending Clause power. Rather, this case will address whether the three *California* laws stand as an obstacle to the accomplishment of Congress' objectives. It is entirely unrelated to limits on federal enactments. The legal questions in the two cases are entirely distinct, and the premise of California's motion is incorrect.

Furthermore, the only potential legal issue in common—whether two provisions of Senate Bill 54 ("SB 54") that bar information-sharing are in conflict with 8 U.S.C. § 1373—are discrete aspects of each case and will not necessarily be resolved in either case. The two suits cannot result in conflicting obligations imposed on the parties as the San Francisco cases will at most address the conditions imposed on the specific grants at issue there, which are not at issue here. Relief in this Court would be entirely different, and the United States does not read California's motion to suggest otherwise. As Judge Orrick recognized in rejecting the effort of another plaintiff to intervene, venue "rules result in different lower courts deciding similar legal issues, sometimes with divergent results. Such differences are appropriately reconciled by higher courts." *City & Cty. of San Francisco v. Sessions*, No. 17-cv-4642 (N.D. Cal.), ECF No. 39, at 2.

BACKGROUND

I. The Procedural Background Of *Becerra*.

In 2016, the United States Department of Justice began requiring applicants for Edward Byrne Memorial Justice Assistance Grants to certify compliance with the immigration-information sharing requirements of 8 U.S.C. § 1373. *See Becerra*, No. 17-cv-4701 (N.D. Cal.), ECF Nos. 27-2 and 27-3. California certified compliance in 2016 for the upcoming grant year. In Summer 2017, the Department of Justice indicated that it would add two additional conditions to those grants, requiring grant recipients to permit DHS access to prison facilities to interview aliens and to provide "as much advance notice as practicable" before detained aliens were released.

On August 11, 2017, the City of San Francisco filed a complaint for declaratory and injunctive relief challenging these three conditions, *San Francisco*, No. 17-cv-4642 (N.D. Cal.), ECF No. 1, and Defendant Becerra filed a similar lawsuit the very next day challenging the Byrne

JAG conditions as well as a similar condition imposed on the Justice Department Community Oriented Policing Services grant, *see Becerra*, No. 17-cv-4701 (N.D. Cal.), ECF No. 1. In the introduction to its complaint, California explained that the "Administration has threatened to withhold congressional appropriated federal funds" and "faces the immediate prospect of losing $31.1 million between two federal grants." *Id.* ¶ 1. Three days after filing suit, Defendant Becerra moved to relate his case to San Francisco's. *See San Francisco*, No. 17-cv-4642 (N.D. Cal.), ECF No. 17. In that motion, Becerra explained that "both [cases are] challenging the federal government's ongoing attempts to use access to federal funds as a method of forcing states and local law enforcement into adopting federal immigration enforcement priorities." *Id.* at 2. The United States agreed that the two cases were related, and the district court issued an order to that effect. *Id.* at ECF No. 32.

On October 31, 2017, Defendant Becerra moved for a preliminary injunction, arguing that the State's potential loss of JAG and COPS grants violates the Spending Clause and the Administrative Procedure Act ("APA"). Alternatively, he sought an order enjoining the Department of Justice from finding that any of several state laws violate grant conditions relating to Section 1373 in either the Byrne JAG or COPS programs.[1] The Department of Justice opposed the motion for a preliminary injunction and moved to dismiss both complaints in mid-January 2018. *See Becerra*, No. 17-cv-4701 (N.D. Cal.), ECF Nos. 42 & 77; *San Francisco*, No. 17-cv-4642 (N.D. Cal.), ECF No. 66. The district court denied all three motions on March 5, 2018. *See San Francisco*, No. 17-cv-4642 (N.D. Cal.), ECF No. 78; *Becerra*, No. 17-cv-4701 (N.D. Cal.), ECF Nos. 88 & 89. Both cases are still at the pleadings stage.

II. The Procedural Posture Of This Case.

On March 6, 2018, the United States filed the instant lawsuit and accompanying motion for a preliminary injunction. The United States' motion and Complaint focus on three California statutes that are invalid under the Supremacy Clause: specifically, the "Immigrant Worker

[1] That is, California's "TRUST Act," Cal. Gov't Code §§ 7282-7282.5; the "TRUTH Act," Cal. Gov't Code §§ 7283–7283.2; the "California Values Act," Cal. Gov't Code §§ 7284–7284.12; California Penal Code §§ 422.93, 679.10, or 679.11; California Code of Civil Procedure § 155; or California Welfare and Institutions Code §§ 827 or 831.

Protection Act," Assembly Bill 450 ("AB 450"); Assembly Bill 103 ("AB 103"); and SB 54, which includes the "California Values Act." The United States has sought a judgment that these laws violate the Supremacy Clause, and a preliminary injunction against their enforcement due to the irreparable harm they have had upon the United States' ability to enforce immigration laws.

The United States' lawsuit has nothing to do with grants, the Spending Clause, the APA, or any of the other non-immigration related laws at issue in *Becerra*. And unlike that case, where the district court specifically ruled that further factual development of the record should proceed, factual development is not required to evaluate the three laws challenged in this litigation under the Supremacy Clause—instead, those are purely legal issues. Simply put, *Becerra* is about federal grant conditions, whether they may be imposed under specific federal grant programs and the Spending Clause, and whether California is complying with those conditions. This case is about California laws enacted to "protect[] immigrants from … federal immigration enforcement[.]" California Committee on the Judiciary Report (Assembly), Apr. 22, 2017, at 1.

LEGAL STANDARDS

Section 1404(a) states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Courts consider two prongs when ruling on a motion to transfer: (1) the district where transfer is sought must be one where the case might have been brought, and (2) transfer must be convenient for the parties and witnesses, as well as in the interests of justice. *Adoma v. Univ. of Phoenix, Inc.*, 711 F. Supp. 2d 1142, 1151 (E.D. Cal. 2010). Since *Jones v. GNC Franchising, Inc.*, courts consider the following convenience factors:

> (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof.

211 F.3d 495, 498–99 (9th Cir. 2000). The burden is on the moving party to demonstrate that the balance of conveniences favors the transfer. *CFTC v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). "A plaintiff's choice of forum is rarely disturbed, unless the balance is *strongly* in favor of the defendant." *Adoma*, 711 F. Supp. 2d at 1151 (emphasis added) (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)); *Luchini v. Carmax, Inc.*, No. 12-cv-0417, 2012 WL 2401530, at *3 (E.D. Cal. June 25, 2012) (same). Boiled down, a defendant "must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum." *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)).

Under the separate first-to-file rule, a court may "decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district." *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1161 (9th Cir. 2011) (quotation and citation omitted). This normally happens "when two *identical* actions are filed in courts of concurrent jurisdiction." *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982) (emphasis added). In *Pacesetter*, "[e]xamination of the complaints filed in the[] two actions indicate[d] that the issues raised [we]re identical" because "[t]he central questions in each [we]re the validity and enforceability of three specific patents" and "permitting multiple litigation of these identical claims could serve no purpose of judicial administration." *Id.*

ARGUMENT

I. There Is No Reason Why This Case Should Be Transferred Under 28 U.S.C. § 1404(a).

The United States does not dispute that this action "might have been brought," 28 U.S.C. § 1404(a), in the Northern (or, for that matter, any other) District of California. But here the United States followed the normal, appropriate, and, indeed, predictable practice of filing suit against California in the State's seat of its government: Sacramento, in the Eastern District of California. That determination should be honored absent compelling circumstances. First, the events giving rise to this suit all took place in this District. Second, the choice of forum should be given great weight and, in these circumstances, that weight should be dispositive. Third, all of the Defendants reside in this district. Fourth, the various cost factors militate strongly toward retaining the case. And finally, the interests of justice call for maintaining the case here, as nothing

about the San Francisco litigations—which were combined before a single judge to address issues pertaining to federal grant law and the Spending Clause—justifies a transfer of this case, which concerns a Supremacy Clause challenge to California state laws which have nothing to do with federal grant law or the Spending Clause.

A. The Relevant Events Giving Rise To This Suit Occurred In This District.

The first venue factor weighs overwhelmingly in favor of retaining jurisdiction in this District, as all of the Defendants reside here and the events—the enactment and execution of the State laws at issue—also occurred here. Indeed, it is curious that Defendants would seek to transfer venue *away* from this State's capital given that "venue is proper inasmuch as Sacramento is the seat of government for the State of California, Cal. Gov't Code § 450 … [when] the named defendants are being sued in their official capacities as constitutional officers of the State of California, Cal. Gov't Code § 1060." *H.J. Justin & Sons, Inc. v. Brown*, 519 F. Supp. 1383, 1385 (E.D. Cal. 1981), *aff'd in part, rev'd in part*, 702 F.2d 758 (9th Cir. 1983). The laws were debated in Sacramento, enacted in Sacramento, and enforced in Sacramento for the express purpose of frustrating and obstructing federal immigration enforcement. This is directly related to the first of the *Jones* convenience factors—"the location where the relevant [statute] w[as] negotiated and executed." 211 F.3d at 498. As the United States explained in its Complaint, "a substantial part of the acts or omissions giving rise to this Complaint arose from events occurring within this judicial district." ECF No. 1 ¶ 9. That is undeniable, and Defendants' Motion makes no argument against this critical first factor weighing in favor of the United States.

B. The United States' Choice Of Forum Is Entitled To "Great Weight."

The next relevant (third) *Jones* factor concerns a plaintiff's choice of forum. "In this circuit, a plaintiff's choice of forum is generally granted great weight[.]" *DeFazio v. Hollister Emp. Share Ownership*, 406 F. Supp. 2d 1085, 1089 (E.D. Cal. 2005) (citing *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987)); *accord McCormack v. Medcor, Inc.*, No. 13-cv-02011, 2014 WL 1934193, at *4 (E.D. Cal. May 14, 2014) (Mendez, J.) ("As is always the case, Plaintiff's choice of forum is entitled to consideration."). California argues that the United States' Complaint "contains no allegations indicating a particularized interest of either the parties or subject matter

in the Eastern District." Defs.' Mot. at 10. Not so. In reality, the United States sued California in its state capital, where the challenged laws were enacted, where the state official Defendants—the Governor and the Attorney General—reside, and where state officials have spoken on the laws, described their purpose, and discussed how they would be enforced. The choice of venue here—the Defendants' home jurisdiction, is indisputably the jurisdiction where the challenged acts occurred and that is most closely tied to every Defendant—is a choice that shows the utmost of intergovernmental comity. Moreover, the U.S. Attorney in this District and his staff have expended significant resources in this matter; the Northern District, on the other hand, has had no involvement. This factor weighs strongly in favor of retaining jurisdiction in the Eastern District.

In arguing to the contrary, California appears to misunderstand this Court's decision in *Stay-Dri Continence Mgmt. Sys., LLC v. Haire*. No. 08-cv-1386, 2008 WL 4304604, at *2 (E.D. Cal. Sept. 10, 2008) (Mendez, J.). In *Stay-Dri*, this Court discounted the plaintiffs' choice of forum because "only one of the Plaintiffs resides permanently in the Eastern District … and because Plaintiffs have not demonstrated that significant [contract] negotiations took place in the District[.]" *Id.* Neither of these concerns are present here because (1) the United States has had a permanent presence in Sacramento since 1850, and (2) the three challenged laws were each conceived, enacted, and are enforced by state government officials *within this very district*. These are exceptionally strong ties to the Eastern District—and no discounting of the choice of forum as occurred in *Stay-Dri* is therefore justified. And even there, this Court ruled that "Plaintiffs' choice of forum weighs against transfer." *Id.* Defendants have thus failed "to present strong grounds" on this factor and the United States' choice of forum is entitled to deference. *Wordtech Sys., Inc. v. Integrated Network Sols., Corp.*, No. 04-cv-1971, 2014 WL 2987662, at *5 (E.D. Cal. July 1, 2014) (internal quotations omitted).

C. This Case's Contacts Are Strongest In This District.

The fourth and fifth *Jones* factors concern the contacts of the respective parties and the plaintiff's cause of action in the chosen forum. As previously explained, the parties' strongest contacts are in this District, given that it contains the seat of California's government. Moreover, the cause of action arose within this district because it is undisputed that California legislators

wrote, debated, voted upon, and eventually passed AB 450, AB 103, and SB 54 within Sacramento—not San Francisco. And the state officials charged with putting these laws into execution—the Governor and Attorney General—reside here. In other words, "the operative facts have … occurred within the forum and the forum has [a strong] interest in the parties or subject matter." *DeFazio*, 406 F. Supp. 2d at 1088. That is clearly the case here, in particular, given that the United States challenges the constitutionality of three California laws enforced *from this District* in buildings blocks from this courthouse. It is therefore most appropriate that the constitutionality of California's laws be decided in their own "home forum." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256 (1981). Defendants' Motion completely ignores these factors—both of which weigh in favor retaining jurisdiction.

D. The Other* Jones *Factors Weigh In Favor Of This District.

The final three *Jones* factors, "(6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof," 211 F.3d at 498–99, also weigh in favor of retaining jurisdiction. Although Defendants' Motion states that these convenience factors "weigh in favor of transfer," they fail to identify a single party or witness to support that assertion. That "does not bear [Defendants'] heavy burden of showing a strong balance of convenience" to justify a transfer. *E & J Gallo Winery v. F. & P. S.p.A.*, 899 F. Supp. 465, 467 (E.D. Cal. 1994).

These convenience and cost factors strongly suggest retaining jurisdiction. The named Defendants, Governor Brown and Attorney General Becerra, can hardly argue that it is more convenient or less costly for them and their employees to travel some 90 miles to San Francisco rather than walk a few city blocks to this courthouse for proceedings. It is likewise inexplicable for Defendants to claim that "[t]he federal government is located in the District of Columbia and has alleged no significant contacts with the Eastern District[.]" Defs.' Mot. at 10. It is true that the seat of the federal government is located in the District of Columbia, and this might be of importance if this suit had been filed in Washington, D.C., rather than in the *Defendants'* seat of government. The federal government, of course, is also located within the Eastern District—evidenced, for example, by the presence of the U.S. Attorney, the work his office has already

done on this case, and the work of other federal officers.

Additionally, Defendants' Motion completely fails to identify which witnesses, if any, would be inconvenienced by the United States' choice of the Eastern District. *See, e.g.*, *Wordtech*, 2014 WL 2987662, at *6; *Adoma*, 711 F. Supp. 2d at 1151 ("The party moving for transfer must demonstrate, through affidavits or declarations containing admissible evidence, who the key witnesses will be and what their testimony will generally include."); *see also Johnson v. Experian Info. Sols., Inc.*, No. 12-cv-0230, 2012 WL 5292955, at *3 (C.D. Cal. Sept. 5, 2012) (same); *Cal. Writer's Club v. Sonders*, No. 11-cv-02566, 2011 WL 4595020, at *14 (N.D. Cal. Oct. 3, 2011) (denying a defendant's transfer motion when it provided only "vague and conclusory assertions regarding the inconvenience of participating in litigation"). The same point is true regarding Defendants' assertion that "the documentary evidence in both cases will likely be located in the District of Columbia and in various locations throughout California." Defs.' Mot. at 11. Defendants do not propose a transfer to the District of Columbia, and the fact that there is documentary evidence "throughout California" supports keeping the case here. If anything, venue in this Court is the most convenient for all parties. The documents concerning the creation and enforcement of AB 450, AB 103, and SB 54 are controlled by offices within this district and many of the Defendants' witnesses are already here for governmental business. *See Safarian v. Maserati N.A, Inc.*, 559 F. Supp. 2d 1068, 1072 (C.D. Cal. 2008); *Adoma*, 711 F. Supp. 2d at 1151. The *Jones* convenience factors weigh in favor of this district.

E. The Interests Of Justice Favor Venue In This District.

Defendants' assertion that transfer is "in the interests of justice … because it involves the same parties and overlapping issues" as the cases filed in San Francisco is similarly meritless. Defs.' Mot. at 8. In evaluating the interests of justice, courts consider factors such as the existence of a pending related action in the forum to which transfer has been proposed and the differences in litigation in each forum, including court congestion and time to trial. *See Tittl v. Hilton Worldwide, Inc.*, No. 12-cv-2040, 2013 WL 1087730, at *5–6 (E.D. Cal. Mar. 14, 2013). Defendants argue that there would be cost savings if this lawsuit were consolidated with *Becerra* because it involves "the same fundamental legal issue." Defs.' Mot. at 9. But as California itself

explained just a few weeks ago to Judge Orrick, *Becerra* is about the Spending Clause and Byrne JAG grants: "This case is fundamentally about [the Attorney General of the United States'] attempt to legislate from the Executive Branch. These are not conditions that were imposed by Congress. And here—and in three different respects—[he] ha[s] attempted to insert [his] own immigration-enforcement preferences into [a] federal [grant] statute." Plaintiff's Exhibit A at 20.

> Likewise, when California sought to relate *Becerra* to *San Francisco*, the State explained:
>
> Both San Francisco and California are challenging the constitutionality of the access and notification conditions [included in Byrne JAG grants] on substantially similar grounds. ... California alleges the same causes of actions, and makes substantially similar constitutional arguments that Defendants exceeded the statutory authority given to the executive branch in imposing the access and notification conditions. ... Both cases name as defendants United States Attorney General Jefferson B. Sessions, Acting Assistant Attorney General Alan R. Hanson, and USDOJ. Both San Francisco and California are asking the Court to declare the access and notification conditions unconstitutional and to enjoin the Defendants from using the conditions as a funding restriction for JAG awards.

San Francisco, No. 17-cv-4642 (N.D. Cal.), ECF No. 17 at 3. Critically, *none* of the factors California itself identified as justifying related case treatment in that case is present here: this case does not "challenge ... the ... conditions" on Byrne JAG grants. *Id.* This case does not include "similar ... arguments that [the Department of Justice] exceeded ... statutory authority given to the executive branch in imposing" the conditions. *Id*. This case does not involve the "Attorney General[.] ... Acting Assistant Attorney General, and USDOJ" as parties. And this case does not involve a request that the Court "declare the ... [grant] conditions unconstitutional." *Id.*

Unlike *Becerra*'s central focus, this case has nothing to do with Byrne JAG grants or the Spending Clause; it is exclusively focused on whether three California laws are invalid under the Supremacy Clause. The legal questions are not the same. In the Byrne JAG case, the court must decide whether (1) Congress authorized the Attorney General to impose immigration-related conditions on the Byrne JAG grants, (2) the Attorney General acted arbitrarily and capriciously

under the APA in imposing those conditions, and (3) the Spending Clause permits imposition of the conditions under its four-part test. Under that test, the court will ask whether the conditions (a) are "in pursuit of 'the general welfare,'" (b) are "unambiguous[] ... enabl[ing] the States to exercise their choice knowingly," (c) are "[]related 'to the federal interest'" furthered by the program, and (d) do not violate a separate constitutional provision. *South Dakota v. Dole*, 483 U.S. 203, 207–08 (1987). The financial inducement also cannot be "so coercive as to pass the point as which 'pressure turns into compulsion.'" *NFIB v. Sebelius*, 567 U.S. 519, 580 (2012) (quoting *Dole*, 483 U.S. at 211). These questions are entirely distinct from those asked when applying the Supremacy Clause—which asks whether state laws stand as an obstacle to the accomplishment of Congress' objectives—or the defenses that California might raise under the Tenth Amendment, which are not implicated in Spending Clause cases. *See Dole*, 483 U.S. at 210 ("conditions legitimately placed on federal grants" do not implicate "Tenth Amendment limitation[s] on … regulation of state affairs" because "the State could … adopt the simple expedient of not" accepting the grant (internal quotation marks omitted)).

Judge Orrick's recent preliminary injunction ruling underscores these differences. In that ruling, the Court concluded that it had jurisdiction over the case based solely on the potential loss of grant funds under the Byrne JAG and COPS programs. *See* Order at 17 (the "State claims that the federal government threatens to penalize it ... by withholding the COPS grant and the Byrne JAG Program grant" and this potential "'loss of funds ... satisfies Article III's standing requirement'"). And in declining to grant relief, Judge Orrick further explained that "the question I decide is narrow: is the State entitled to a preliminary injunction to require the federal government to fund a $1 million law enforcement grant that it has held up because it appears likely to decide that the State is not complying with 8 U.S.C. § 1373." Thus, while California seeks to expand the scope of that litigation through the instant motion, it has up to now been focused on the lawfulness of, and compliance with, Department of Justice grant conditions.

Even disregarding these overarching differences in the two cases, only one of the three California laws being challenged here overlaps with any of the laws at issue in *Becerra*—SB 54—and even there, the question is whether the law precludes California from qualifying for a Justice

Department grant that has been conditioned on compliance with 8 U.S.C. § 1373. Moreover, in *Becerra*, California asks the Court to hold that it qualifies for a Justice Department grant even though it enacted *seven* laws addressing law enforcement information-sharing—among them SB 54. The United States has not challenged six of those laws here, but is challenging two other California laws—AB 450 and AB 103—that have no relevance to *Becerra*. With so little overlap in the underlying legal issues, Section 1404(a)'s purpose of "prevent[ing] the waste of time, energy and money" and "protect[ing] litigants, witnesses and the public against unnecessary inconvenience and expense" will not be served. *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964).

The only potential legal issue in common—how to square two provisions of SB 54 that bar information-sharing with Section 1373, which bars policies limiting information-sharing—are discrete aspects of each case and will not necessarily be resolved in either case. And even if the Courts reach different answers to that question, there will be no conflicting obligations imposed upon the parties and the parties will not face anything different than is commonly faced by large institutional litigants like the State and the United States where policies are regularly tested and evaluated by multiple courts. Importantly, a ruling cannot impose conflicting obligations on either party. At most, given the basis for their Article III injury, the San Francisco litigation will result in an order that either dismisses the case or precludes the Department of Justice from imposing certain immigration-related conditions on Byrne JAG or COPS grants. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009) (a court order that went beyond remedying party's "injury in fact" would "fly in the face of Article III's injury-in-fact requirement"). This case, on the other hand, will either be dismissed or result in a judgment that one or more of the three newly-enacted California laws violate the Supremacy Clause. As Judge Orrick recognized, if venue rules call for a case to be litigated elsewhere, as they do here, those "rules result in different lower courts deciding similar legal issues, sometimes with divergent results. Such differences are appropriately reconciled by higher courts." *San Francisco*, No. 17-cv-4642 (N.D. Cal.), ECF No. 39, at 2.

Finally, adding an entirely distinct set of constitutional issues to the litigation in San Francisco will not promote judicial economy, but will be hitching a new set of issues onto cases

that are far down the road toward addressing the scope of the Justice Department's grant-making authority. If anything, it will only further serve to bog down cases where a plaintiff other than California—San Francisco—is seeking judicial resolution. This district court recently reaffirmed that "'[a]dministrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled *at its origin*.'" *Huddleston v. John Christner Trucking, LLC*, No. 17-cv-00925, 2017 WL 4310348, at *11 (E.D. Cal. Sept. 27, 2017) (emphasis added) (quoting *Gulf Oil*, 330 U.S. at 508). Defendants contest this maxim by pointing to the "average pending actions per judgeship" between the two districts. Defs.' Mot. at 9 n.3. That consideration is relevant, of course, but is only part of the analysis. It is not merely the "average pending actions per judgeship" that should be assessed, but, as this Court has stated, "[t]he interest of ensuring … *this matter* proceeds speedily to trial[.]" *Stay-Dri*, 2008 WL 4304604, at *4 (emphasis added).[2]

II. The First-To-File Rule Also Does Not Support Transfer.

As an alternative, Defendants raise the first-to-file rule as another reason favoring transfer. "Under that rule, when cases involving the same parties and issues have been filed in two different districts, the second district court has discretion to transfer … the second case in the interest of efficiency and judicial economy." *Cedars-Sinai Medical Ctr. v. Shalala*, 125 F. 3d 765, 769 (9th Cir. 1997). This is a rule of equity that requires two matters to exhibit chronology, identity of parties, and similarity of issues. *See Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625–27 (9th Cir. 1991). Factors such as bad faith, anticipatory suits, and forum shopping are also weighed. *Id.* at 628; *Xoxide, Inc. v. Ford Motor Co.*, 448 F. Supp. 2d 1188, 1992 (C.D. Cal. 2006).

A. The Issues In* Becerra *Are Distinct

The issues in the two cases are not similar enough for the first-to-file rule. Critically, the cases where the Ninth Circuit has approved application of that rule to override a plaintiff's choice

[2] Where congestion statistics differ only marginally, this interest will not favor transfer. *Roling v. E*Trade Secs.*, LLC, 756 F. Supp. 2d 1179, 1187 (N.D. Cal. 2010). Reviewing the statistics cited by Defendants bears this out—as the median time from filing to disposition for civil cases differs by only three months. *See* ECF No. 19-1 at 175 & 177. And when other factors do not favor transfer, court congestion is not a reason to transfer. *See Hendricks v. Starkist Co.*, No. 13-cv-0729, 2014 WL 1245880, at *6 (N.D. Cal. Mar. 25, 2014).

of forum have involved *identical* issues. *See Pacesetter*, 678 F.2d at 95 (applying "when two identical actions are filed in courts of concurrent jurisdiction"); *Apple Inc.*, 658 F.3d at 1161 (courts may "decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district"); *Cedars-Sinai*, 125 F. 3d at 768. California makes no such claim here, and the United States has described above why the issues are distinct. Defendants want to have this Supremacy Clause case transferred to the Northern District to relate it to their case regarding the Spending Clause. But even if *Becerra* fully resolves all legal issues surrounding SB 54 with respect to the grant condition, it will not address the Supremacy Clause issues or the two other California laws that the United States is challenging. *See Cedars-Sinai*, 125 F.3d at 769 (first-to-file rule does not apply when some of the issues are different).

B. Principles Of Equity Counsel Against Defendants' Forum Shopping.

Principles of equity are also relevant to a first-to-file inquiry. *See Pacesetter*, 678 F.2d at 95. Two aspects are relevant to Defendants' Motion: anticipatory suits and forum-shopping. Regarding the former, this district court has explained how "[a]nticipatory suits are generally not entitled to deference under the 'first to file' rule and are disfavored[.]" *Lighting Sci. Grp. Corp. v. U.S. Philips Corp.*, No. 08-cv-2238, 2009 WL 10694995, at *3 (E.D. Cal. Feb. 3, 2009). When a litigant files an action almost instantly after a predicate event, such a filing "smack[s] of forum shopping." *Knapp v. Depuy Synthes Sales, Inc.*, 983 F. Supp. 2d 1171, 1178 (E.D. Cal. 2013). In *Knapp*, for example, Judge Nunley was confronted with a litigant who filed for a declaratory judgment action against his former employer regarding a non-compete clause. *Id.* This use of the first-to-file rule "as a sword" was therefore rejected. *Id.* The same should hold true here in relation to *Becerra*. California filed suit in *Becerra* before the United States took any action with respect to California's grant compliance, and now seeks to expand that suit beyond the grant context as a "sword" to override the United States' choice to sue California in its own state capital over three state laws. Indeed, California's qualification for specific grants was the only basis for the district court's jurisdiction in *Becerra*, and any effort to describe the case as having a broader sweep should not be credited in applying the rule. "[W]here a declaratory judgment action has been triggered by a[n action that] notifies the party of the possibility of litigation upon collapse of

negotiations, equity militates in favor of allowing the second-filed action to proceed to judgment rather than the first." *Xoxide*, 448 F. Supp. 2d at 1193 (internal citations and quotation marks omitted). That principle rings true here—the United States should not be penalized for prudently waiting until California's laws became effective in 2018. The United States was compelled to file this suit only after seeing the concrete impediments AB 450, AB 103, and SB 54 wrought upon immigration enforcement. This is evidenced by the multiple declarations filed alongside the United States' Motion for a Preliminary Injunction (ECF No. 2).

The same principle is true where a movant requests transfer to a court that "just issued a favorable ruling." *Miller v. Cal. Dep't of Corr. & Rehab.*, No. 12-cv-0353, 2016 U.S. Dist. LEXIS 145072, at *9 (E.D. Cal. Oct. 19, 2016). When that occurs, this district court has noted how "motion[s] to transfer [can be viewed a]s an attempt to forum shop and have … claims in this case transferred to a judge … believe[d] [to be] more inclined to support the [movant], rather than a genuine concern for the convenience of the witnesses and judicial economy." *Id.* at *10. That is evidenced here by two points: (1) this case, as previously described, is focused on the Supremacy Clause and whether three California laws are preempted—not the Spending Clause that is at issue in *Becerra*; and (2) two of the laws challenged by the United States (including SB 54) came into effect just this year—months after Defendants filed their Amended Complaint in front of Judge Orrick. *See Becerra*, 17-cv-04701 (N.D. Cal.), ECF No. 11 (Oct. 13, 2017).

Two weeks ago, Judge Orrick denied the *Becerra* defendants' motion to dismiss. *See id.*, ECF No. 88. Judge Orrick has previously held that the Executive Order issued by the President concerning funding for sanctuary cities was unlawful and issued a nationwide injunction. *See Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497 (N.D. Cal. 2017). But judicial selection based on rulings in other cases is not a proper reason to transfer under the first-to-file rule. *See Miller*, 2016 U.S. Dist. LEXIS, at *10. "[W]hile it would have been possible … to file one complaint in one forum covering all claims and time periods, there is no overwhelming reason to combine them [all] now, nor to prefer one jurisdiction over another." *Id.* at *11.

CONCLUSION

For the foregoing reasons, this Court should deny Defendants' Motion to Transfer Venue.

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2018, I electronically transmitted the foregoing document to the Clerk's Office using the U.S. District Court for the Eastern District of California's Electronic Document Filing System (ECF), which will serve a copy of this document upon all counsel of record.

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