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11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 THE UNITED STATES OF AMERICA,  
 16  
 17 Plaintiff,  
 18 v.  
 19 THE STATE OF CALIFORNIA; EDMUND  
 20 GERALD BROWN JR., Governor of  
 California, in his official capacity; and  
 21 XAVIER BECERRA, Attorney General of  
 California, in his official capacity,  
 22 Defendants.  
 23

Case No. 2:18-cv-00490-JAM-KJN

**REPLY IN SUPPORT OF  
 DEFENDANTS' MOTION TO  
 TRANSFER VENUE TO THE  
 NORTHERN DISTRICT OF  
 CALIFORNIA**

Judge: Honorable John A. Mendez  
 Action Filed: March 6, 2018

1 **INTRODUCTION**

2 The standard set out by the Supreme Court and Ninth Circuit dictates that this case should  
3 be transferred to the Northern District, where identical constitutional and statutory questions are  
4 already being litigated between the same parties. The federal government’s opposition fails to  
5 rebut this plain legal conclusion. Instead, it pretends that the pre-existing lawsuit in the Northern  
6 District does not address the important Supremacy Clause and Tenth Amendment issues that are  
7 also present in this case—despite the Northern District judge’s plain statement that those very  
8 issues are at the core of the dispute. The federal government also improperly discounts the  
9 indisputable fact that both cases directly address the legal question whether SB 54 conflicts with  
10 U.S.C. § 1373.

11 Concerning the federal government’s unfair accusation of forum shopping, it is not the  
12 State that sought out a different district. The federal government represented in the Northern  
13 District that its administrative review of the State’s compliance with § 1373 was incomplete.  
14 Days later, it filed in this district, contending that the State is violating § 1373, in an apparent  
15 attempt to avoid Judge Orrick making the first ruling on SB 54’s compliance with § 1373,  
16 preliminary or otherwise.

17 Further, contrary to the federal government’s contention, factors of judicial economy and  
18 consistency point toward transfer, and the witnesses’ convenience will not be impaired by  
19 adjudicating the matter in the Northern District. Indeed, a great portion of the factual allegations  
20 in this case concern purported events in the Northern District. For these reasons, this Court  
21 should grant California’s motion and transfer this case to the Northern District of California.

22 **ARGUMENT**

23 **I. THE SAME PARTIES ARE ALREADY LITIGATING IDENTICAL LEGAL ISSUES**

24 The United States cannot reasonably dispute that the core legal issue in this case is already  
25 being addressed in the Northern District, in *California v. Sessions*, No. 17-cv-4701 (N.D. Cal.).  
26 Like this case, the previously filed action pits “the State’s broad constitutional police powers  
27 under the Tenth Amendment” against the federal government’s “broad, undoubted power over the  
28 subject of immigration and the status of aliens.” See ECF No. 19, RJN Ex. E at 1 (“Orrick

1 Order”) (quoting *United States v. Arizona*, 567 U.S. 387, 394 (2012)). The State understands that  
2 the Northern District lawsuit involves funding conditions, and a Spending Clause claim. *See*  
3 *Opp’n* at 1, 10-11. That is not its basis for arguing that the cases are related. Rather, one of the  
4 funding conditions at issue in the Northern District requires compliance with § 1373, and its  
5 propriety turns on whether the federal government’s interpretation of § 1373 is aligned with the  
6 plain text of the statute and the Tenth Amendment of the Constitution. This is the core of the  
7 third cause of action in this case. The United States acknowledges that resolving that issue, and  
8 the others in this case, will involve the federal government’s power under the Supremacy Clause  
9 and “the defenses that California might raise under the Tenth Amendment.” *Opp’n* at 11. Judge  
10 Orrick will have to adjudicate this exact issue in the Northern District to resolve the State’s  
11 declaratory-relief claim. This important constitutional question, and its broad impact, should be  
12 returned to the district where it first was raised between the same parties, ensuring both judicial  
13 economy and consistency in decisions.<sup>1</sup>

14 In addition to this common, overarching constitutional issue, both cases address the precise  
15 legal question of whether SB 54 conflicts with § 1373. Count Three of the United States’  
16 complaint here alleges that SB 54 “violate[s] the Supremacy Clause and 8 U.S.C. § 1373(a).”  
17 ECF No. 1 ¶ 65. And in the Northern District, the State’s amended complaint prays for a  
18 declaration that SB 54 “compl[ies] with Section 1373,” or in the alternative “that Section 1373  
19 cannot be lawfully enforced against” SB 54. ECF No. 19, Ex. B, ¶¶ 152-53. Indeed, in the  
20 Northern District case, Judge Orrick already asked: “Don’t you think that the clash is going to be  
21 what the Federal Government actually interprets 1373 to be; specifically, what does ‘regarding’  
22 mean? . . . And isn’t that the *entire guts of the issue that we’re going to have to deal with in this*  
23 *case?*” *Opp’n*, Ex. A at 11:19-24 (emphasis added). He then answered his own question: “The  
24 whole issue is going to boil down, it seems to me, here, on the difference between what  
25 ‘regarding status’ and ‘regarding enforcement’ is, and how far you take the definition of what  
26 ‘regarding status’ is, because there is a point at 1373 where it runs directly, it seems to me, into

27 \_\_\_\_\_  
28 <sup>1</sup> Because the scope of § 1373 and the constitutional limitations on the statute are at issue in each  
case, different forums risk imposing conflicting obligations on the State. *Contra Opp’n* at 2, 12.

1 the Tenth Amendment.” *Id.* at 44:22-45:2. In fact, there has already been a hearing on the State’s  
2 motion for preliminary injunction almost exclusively devoted to this very issue. *See* Req. for  
3 Judicial Notice in Supp. of Mot. to Transfer Venue (“Reply Br. RJN”), Ex. A (Prelim. Inj. Hr’g  
4 Tr.). The State’s motion to transfer seeks to place these identical legal issues, between the same  
5 two parties, before the same district court in accordance with the well-established doctrine of the  
6 first-to-file rule. *See Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 625 (9th Cir. 1991).

7 If there has been any forum shopping here, as the United States has accused, *see* Opp’n at  
8 14-15, it is not by the State. *See Kurtz v. Intelius, Inc.*, No. 11-cv-1009, 2011 WL 4048645, at \*2  
9 (E.D. Cal. Sept. 9, 2011) (Mendez, J.) (explaining plaintiffs’ accusation of “forum shopping [was]  
10 unfounded” when it was the plaintiff that sought “to get around an adverse ruling by . . . filing in  
11 a different district”). The State filed suit in the Northern District last year, amending its  
12 complaint to include the § 1373 claim in October 2017. ECF No. 19, Ex. B. During the  
13 following months, the federal government repeatedly argued that the court should dismiss that  
14 claim, and deny the State a preliminary injunction based on assertions that the ongoing federal  
15 administrative process addressing SB 54’s compliance with § 1373 was not yet complete. *See*  
16 Reply Br. RJN, Ex. A at 27:6-8, 29:22-23, 39:22-24; Ex. B (Defs.’ Opp’n to Mot. for Prelim. Inj.)  
17 at 17-18 (discussing the “ongoing” administrative process to determine “whether [SB 54] violates  
18 Section 1373” and “has not had an opportunity to fully consider the State’s arguments to the  
19 contrary”); Ex. C (Defs.’ Mot. to Dismiss) at 2, 22-23 (same); Ex. D (Defs.’ Reply in Supp. of  
20 Mot. to Dismiss) at 13 (same). Indeed, on February 28, 2018, counsel for the United States  
21 argued in the Northern District that: “I just want to remind the Court there’s still an administrative  
22 process going on . . . and that there is no final agency determination yet on 1373 compliance.”  
23 Opp’n, Ex. A at 6:7-15; *see also id.* at 41:7-13. On March 5, 2018, Judge Orrick declined to  
24 dismiss the claim, and also declined to issue a preliminary injunction, largely based on the United  
25 States’ expression of uncertainty about the federal government’s own interpretation of § 1373 vis-  
26 à-vis SB 54. *See* Orrick Order at 2, 23, 25, 26 (collectively discussing the “number of open  
27 questions” regarding the federal government’s interpretation of § 1373). The *next day*, the United  
28 States filed this lawsuit, and included a cause of action that SB 54 “violate[s]” § 1373(a).

1           The fact that the two lawsuits involve other specific claims, *see* Opp’n at 11-12, is  
2 immaterial. The Supreme Court has instructed that “[t]o permit a situation in which two cases  
3 involving precisely the same issues are simultaneously pending in different District Courts leads  
4 to the wastefulness of time, energy and money that [28 U.S.C.] § 1404(a) was designed to  
5 prevent.” *Cont’l Grain Co. v. The Barge FBL-585*, 364 U.S. 19, 26 (1960). In the Ninth Circuit  
6 an important consideration in determining whether the interests of justice dictate a transfer of  
7 venue under § 1404(a) is the pendency of a related case in the transferee forum. *A.J. Indus., Inc.*  
8 *v. U.S. Dist. Ct. for C.D. Cal.*, 503 F.2d 384, 389 (9th Cir. 1974). Given the commonality of the  
9 legal issues in these two cases—including both the Tenth Amendment issue that broadly  
10 permeates all of the laws at issue in each case and the precise question of whether SB 54 complies  
11 with § 1373—this legal dispute should be transferred to the district where it began.<sup>2</sup>

## 12   **II. THE UNITED STATES MISCONSTRUES THE CIRCUMSTANCES CONCERNING THE** 13   **CONVENIENCE OF THE PARTIES AND WITNESSES**

14           When it comes to the convenience of the parties and witnesses in litigating this action in the  
15 Eastern District versus the Northern District, the United States again mischaracterizes the  
16 situation. In particular, the United States wrongly emphasizes that the challenged laws “were  
17 enacted” in the Eastern District and that the Governor and Attorney General, the officials charged  
18 with enforcing those laws, “reside” there. Opp’n at 1. Where the votes took place when the  
19 Legislature approved the bills at issue, and where the Governor may have been located when he  
20 signed those bills, simply are not factors mentioned in the relevant authorities applicable to a  
21 motion to transfer. The Legislature obviously legislates in a statewide manner, not just in one  
22 federal judicial district. The Governor and Attorney General likewise are statewide officials with  
23 statewide authority and responsibilities, which they carry out through offices located statewide,  
24 including in the Northern District. Simply stated, it is of no practical or legal consequence to this  
25 case that California’s capital is located in the Eastern District.

26 <sup>2</sup> Indeed, if the two cases already were in the same district—either the Northern District or  
27 Eastern District—it is likely they would be related under the applicable local rule. *See* N.D. Cal.  
28 L.R. 3-12(a) (“An action is related to another when: (1) The actions concern substantially the  
same parties, property, transaction or event; and (2) It appears likely that there will be an unduly  
burdensome duplication of labor and expense or conflicting results if the cases are conducted  
before different Judges.”); *see* E.D. Cal. L.R. 123(a) (similar criteria for relating cases).



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Dated: March 23, 2018

Respectfully Submitted,  
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/s/ Lee I. Sherman  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2018, I electronically transmitted the attached 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 on all counsel of record.

/s/ Lee I. Sherman  
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Deputy Attorney General