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9 **UNITED STATES DISTRICT COURT**

10 **EASTERN DISTRICT OF CALIFORNIA**

11
 12 THE UNITED STATES OF AMERICA,
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 14 Plaintiff,
 15 v.
 16 STATE OF CALIFORNIA, et al.,
 17 Defendants.

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

**~~MOTION FOR LEAVE TO FILE AMICI
 CURIAE BRIEF AND PROPOSED AMICI
 CURIAE BRIEF OF FEDERAL LAW
 ENFORCEMENT OFFICERS
 ASSOCIATION AND NATIONAL
 BORDER PATROL COUNCIL IN
 SUPPORT OF PLAINTIFF'S MOTION
 FOR A PRELIMINARY INJUNCTION~~**

Judge: Hon. John A. Mendez

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1 **PROPOSED AMICI CURIAE BRIEF**

2 **ARGUMENT**

3 California’s AB 450, AB 103, and the detainee-transfer provisions of SB 54 are preempted
4 under *Arizona v. United States*, 567 U.S. 387, 397 (2012). If Arizona didn’t have the leeway to
5 pursue policies that it believed would assist in the vindication of federal immigration enforcement
6 when the federal government thought it was going too far, it should go without saying that
7 California doesn’t have the leeway to pursue policies that are expressly designed to impede federal
8 immigration enforcement. FLEOA’s and NBPC’s members are on the ground throughout the
9 United States enforcing the immigration laws. In no small part because of the laws passed by
10 California and several of its cities and counties actively promoting the violation of those laws—the
11 essence of “sanctuary” laws—California is a magnet for unlawful immigration.

12 Amici’s members interact daily with local law enforcement officers and large and small
13 private employers in California, many of whom are bewildered by the pro-illegal-immigration
14 laws passed by the State and some California local governments. Yet they are afraid of speaking
15 out against these laws for fear of retribution, or, as in the case of AB 450, being targeted for fines.
16 See, e.g., California Attorney General Threatens \$10,000 Fine for Businesses that Share
17 Information with Immigration Agents, L.A. Times (Jan. 18, 2018), available at
18 <https://lat.ms/2E2EOTJ>.

19 FLEOA’s and NBPC’s members are not so constrained, however, so amici offer this brief
20 to provide perspective on the laws being challenged here:

21 **1. SB 54 Radically Alters Federal Enforcement Programs And Places Federal Law**
22 **Enforcement Officers At Risk.**

23 As detailed in the Declaration of Thomas Homan, one of ICE’s core missions is identifying
24 aliens who are “removable” under federal law. See Homan Decl., ¶¶ 13–19; see also *Arizona v.*
25 *United States*, 567 U.S. at 397 (ICE “conducts criminal investigations involving the enforcement
26 of immigration-related statutes,” and ICE officers are responsible “for the identification,
27 apprehension, and removal of illegal aliens from the United States.”). ICE has established the
28 Enforcement and Removal Operations (“ERO”) agency to achieve this objective. ICE and ERO

1 work to identify such aliens who are incarcerated within state and local prisons and jails, among
2 other places.

3 As the Homan Declaration demonstrates, ICE makes these determinations in a variety of
4 different contexts. Often, ICE has received electronic transmissions of booking information
5 (including fingerprints) as California jurisdictions process arrestees. ICE computers can then
6 check this information against ICE’s various databases to confirm whether, for example, the
7 arrestees have overstayed their visa, are fugitive aliens, or are otherwise unauthorized residents.
8 Then, if that cross-checking process identifies a California arrestee as a removable alien, ICE has
9 historically issued a detainer to the state or local jurisdiction. This detainer instructs the state or
10 local law enforcement agency to inform ICE when the alien will be released. See Homan Decl., ¶
11 18 (ICE immigration detainers request that law enforcement agencies “provide advanced
12 notification of the alien’s release to allow for an orderly transfer of the individual into ICE
13 custody,” and maintain custody of the alien for up to 48 hours “so that ICE may respond to the
14 prison or jail and assume custody”).

15 Previously, state and local authorities routinely complied with ICE detainers and provided,
16 among other things, the release dates of removable individuals in their custody. See, e.g., Homan
17 Decl. ¶¶ 23–29. Now, with the passage of SB 54, this information is no longer shared. *Id.*, ¶¶ 29–
18 30.

19 When California jurisdictions used to press their computer buttons to inform ICE when
20 releases were occurring, ICE agents could simply arrive at the state or local facility to usher the
21 removable person into federal custody. This orderly process minimized the risk of altercation.
22 Now that California facilities are no longer pressing their computer buttons to inform ICE about
23 release dates as a result of SB 54, removable persons are being released into the population at
24 large. *Id.*, ¶ 36.

25 Separate and apart from being concerned about the interference SB 54 poses on the
26 effective enforcement of the immigration laws and the risks imposed on California civilians by this
27 change of course, amici are alarmed at the grave risks SB 54 poses for the safety of its members
28 located in California. To the extent ICE is even able to determine that a removable person has

1 been released into the general population, its agents must apprehend them wherever they can be
2 found. This obviously increases the operational risks exponentially. The removable persons now
3 have access to firearms and confederates, among other things. *Id.*, ¶ 37.

4 Under SB 54 moreover, local jurisdictions no longer participate in—or even respond to a
5 simple phone call asking for information in advance of—these at-large operations, which further
6 increases the risk to amici’s members and the general population. Local law enforcement knows
7 the local scene better than federal agents and historically provided valuable information (such as
8 information about location, identification, and confederates, among other things) to aid these sorts
9 of missions. After SB 54, federal agents proceed with far less information than they did before.
10 Even such mundane matters as traffic control are no longer provided. *Id.*, ¶¶ 36–37 (discussing
11 dangers, safety risks, and practical difficulties encountered by federal law enforcement officers
12 when conducting at-large arrests); see *id.*, ¶ 38 (detailing at-large arrest of a confirmed gang
13 member who “had to be extracted from his vehicle at gun-point,” and “was found with a loaded
14 firearm on his person”). This local overreach needs to be corrected.

15 **2. SB 54 Impairs The Ability Of U.S. Customs And Border Protection To Effectively**
16 **Enforce Federal Immigration Laws.**

17 SB 54’s restriction on information sharing and cooperation also impairs the work of U.S.
18 Customs and Border Protection enforcing federal immigration laws and securing the border. As
19 the declaration of Chief Border Patrol Agent Rodney Scott explains, the bill’s prohibition against
20 complying with immigration detainers and hold requests compromises Border Patrol’s ability to
21 complete immigration processing and removal proceedings. Scott Decl., ¶¶ 8–12. The Scott
22 Declaration identifies instances where, for example, the Border Patrol identifies a person as
23 removable, but the state or local jurisdiction affirmatively wants to prosecute the individuals for
24 state crimes. *Id.*, ¶¶ 6–8. In these cases, Border Patrol would turn over aliens to state and local
25 law enforcement temporarily, with the clear expectation that the aliens would be returned to
26 immigration custody once the state or local issue had been resolved. *Id.*

27 But because state and local law enforcement agencies are prohibited from complying with
28 a detainer, SB 54 has affected Border Patrol’s ability to assist with the prosecution of aliens for

1 serious state criminal offenses. Just as described above, the local agencies’ refusal to
2 communicate has led to multiple instances of removable individuals being released into the general
3 population after being delivered to local custody by Border Patrol. *Id.*, ¶¶ 23–24. Furthermore, in
4 several instances Border Patrol Agents have determined that, due to their responsibility to enforce
5 federal immigration law, they could not release a criminal alien to state or local law enforcement
6 because there was no assurance that they would be returned to federal custody—a concern borne
7 out by experience. *Id.*, ¶ 22 (detailing incidents where Border Patrol agents did not release a
8 suspect to California law enforcement agencies). To be sure, the local authorities’ refusal to
9 communicate endangers the public: the Scott Declaration identifies instances where a suspect may
10 not have committed a federal crime but has obviously committed a state crime (like drunk driving),
11 but is released into the general population due to the local authorities’ refusal to engage. *Id.*, ¶¶
12 16–17. By erecting a wall between federal authorities and state law enforcement, SB 54 has
13 already strained critical law enforcement partnerships, including the Border Patrol’s relationship
14 with the California Highway Patrol, county sheriffs’ departments, and local police departments.
15 See *id.*, ¶¶ 18–21, 23–26.

16 **3. SB 54 Compromises National Security By Restricting State And Local Cooperation**
17 **With ICE Investigations.**

18 SB 54 also compromises federal law enforcement officers’ ability to conduct national-
19 security-related criminal investigations. The bill restricts state and local authorities from releasing
20 a removable alien unless ICE obtains a judicial warrant for a criminal violation of federal
21 immigration law. Cal. Gov. Code § 7284.6(a)(4). This frustrates the scope of ICE’s enforcement
22 authority, which includes the authority to make civil immigration arrests. *Homan Decl.*, ¶ 70; see
23 Cal. Gov. Code § 7284.6(a)(1)(E) (prohibiting California law enforcement agencies from using
24 resources to “[m]ak[e] or intentionally participat[e] in arrests based on civil immigration
25 warrants.”). SB 54’s information-sharing restrictions likewise compromise ICE’s ability to
26 conduct homeland security investigations because it limits the agency’s access to critical
27 witnesses, and constrains its ability to manage aliens who are cooperating with criminal
28 investigations and prosecutions. *Homan Decl.*, ¶¶ 73, 75–78 (discussing SB 54’s effect on

1 potential confidential informants and witnesses, and the “significant benefit parole program”).

2 Restricting information sharing with federal law enforcement agencies threatens their
3 ability to effectively conduct counter-terrorism work in the event of a terrorist attack or other
4 national security emergency. As Homan explains, cooperation between state and local law
5 enforcement and ICE was critical in the aftermath of the December 2, 2015 terrorist attack in San
6 Bernardino. “[I]nformation-sharing between the San Bernardino Police Department and HSI
7 agents . . . allowed for real-time sharing of essential DHS-held information, including information
8 from alien files, and international travel histories of several subjects of interest in the investigation.
9 . . . Within the first 72 hours post-attack, the ease of information-sharing between ICE and SBPD
10 resulted in the identification of accomplices and the discovery of a marriage fraud conspiracy
11 among the accomplices.” Homan Decl., ¶ 72. This is but one example of how SB 54 poses an all-
12 too-real threat to effective law enforcement in a time of crisis, when time is of the essence and
13 access to information is paramount.

14 Indeed, SB 54’s restrictions run counter to the post-9/11 federal policy of broader
15 information sharing and cooperation among law enforcement agencies nationwide. As the 9/11
16 Commission Report concluded, “[t]he biggest impediment to all-source analysis—to a greater
17 likelihood of connecting the dots—is the human or systemic resistance to sharing information.”
18 The Nat’l Comm’n on Terrorist Attacks Upon the U.S., The 9/11 Commission Report 416 (2004).
19 To address this issue, the Federal government implemented intelligence reforms designed to foster
20 cooperation and information sharing between law enforcement agencies, and adopted a national
21 strategy for sharing and safeguarding information in the national security sphere. See, e.g., Office
22 of the Director of National Intelligence, Information Sharing Environment Implementation Plan
23 (Nov. 2006), online at <https://www.hsdl.org/?abstract&did=467681>; The White House, The
24 National Strategy for Information Sharing: Successes and Challenges In Improving Terrorism-
25 Related Information Sharing (Oct. 2007), available at <https://bit.ly/2uLPkh4>; The White House,
26 National Strategy for Information Sharing and Safeguarding (Dec. 2012), available at
27 <https://bit.ly/2Eksa0V>. SB 54 discourages—and outright forbids—state and local law enforcement
28 from actively sharing information with federal law enforcement officials, even though such

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information could prove critical in a national security investigation.

FLEOA and NBPC, and their members, oppose California’s effort to undermine this important pillar of the national government’s national security policy.

CONCLUSION

The Court should grant the Plaintiff’s motion for a preliminary injunction.

Dated: April 6, 2018

BENBROOK LAW GROUP, PC

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National Border Patrol Council

CERTIFICATE OF SERVICE

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

I hereby certify that on April 06, 2018, I electronically filed the following documents with the Clerk of the Court for the United States District Court, Eastern District of California by using the CM/ECF system:

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND PROPOSED AMICI CURIAE BRIEF OF FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION AND NATIONAL BORDER PATROL COUNCIL IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Kelly Rhodes