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SANDRA HUTCHENS, Sheriff-Coroner for the County of Orange
9

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 UNITED STATES OF AMERICA,
13
14 Plaintiff,

15 v.

16 STATE OF CALIFORNIA; EDMUND
GERALD BROWN JR., *Governor of*
17 *California, in his Official Capacity;* and
XAVIER BECERRA, *Attorney General of*
18 *California, in his Official Capacity,*
19 Defendants.

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

**BRIEF OF AMICI CURIAE
COUNTY OF ORANGE AND
SANDRA HUTCHENS, SHERIFF-
CORONER FOR THE COUNTY OF
ORANGE**

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1 **I. IDENTITY AND INTEREST OF AMICI CURIAE**

2 Amicus Curiae COUNTY OF ORANGE (“County” and/or “the County”) is a
3 political subdivision of Defendant STATE OF CALIFORNIA. Amicus Curiae
4 SANDRA HUTCHENS, Sheriff-Coroner for the County of Orange (“Sheriff” and/or
5 “the Sheriff”) is a constitutionally elected official for the County sworn to enforce the
6 constitutions of both Plaintiff UNITED STATES OF AMERICA and Defendant STATE
7 OF CALIFORNIA. Since both Amici Curiae have direct and vital interests in the issues
8 before this Court, both Amici Curiae hereby submit this brief in support of Plaintiff’s
9 Motion for Preliminary Injunction and in opposition to California Defendants’ Motion to
10 Dismiss in accordance with this Court’s “Order Denying Motion for Leave to Intervene
11 by County of Orange and Sandra Hutchens” entered on June 4, 2018 (ECF 163), which
12 permits the filing of this brief herein. The undersigned counsel for the Amici Curiae
13 have authored this brief in whole.

14 The California Values Act [a.k.a. Senate Bill 54 (S.B. 54) codified as California
15 Government Code sections 7284, *et seq.*] is a deliberate effort by Defendants STATE
16 OF CALIFORNIA; EDMUND GERALD BROWN JR., Governor of California, in his
17 Official Capacity; and XAVIER BECERRA, Attorney General of California, in his
18 Official Capacity (collectively “the State” and/or “Defendants” and/or “California
19 Defendants”) to obstruct the federal government’s ability to enforce federal immigration
20 law. The County and the Sheriff have a strong interest in the preemption of the
21 California Values Act under the Supremacy Clause. The California Values Act puts the
22 public safety of Orange County’s local residents at risk by restricting the Sheriff’s
23 communication and cooperation with federal immigration authorities. Moreover, the
24 Sheriff’s discretionary power to disclose information to federal immigration authorities
25 conferred by Congress pursuant to 8 U.S.C. § 1373(a) is being extinguished by the
26 California Values Act. Furthermore, because the Sheriff has taken an oath to support the
27 United States Constitution and believes the California Values Act is unconstitutional,
28 she is in a position of having to choose between violating her oath to the federal

1 Constitution or refusing to comply with the state law, which could result in her
2 expulsion from office.

3 **II. ARGUMENT**

4 **A. California’s Senate Bill 54 And Assembly Bill 103 Are Preempted By**
5 **The Exclusive Governance Of The Federal Government In Regard To**
6 **Immigration.**

7 State laws are preempted when they conflict with federal law, including when
8 they stand “as an obstacle to the accomplishment and execution of the full purposes and
9 objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). In the field of
10 immigration, it is clear that “the Government of the United States has broad, undoubted
11 power over the subject of immigration and the status of aliens.” *Arizona v. United*
12 *States*, 567 U.S. 387, 394 (2012) (citing *Toll v. Moreno*, 458 U.S. 1, 10 (1982)). This
13 power is conferred on Congress by the Constitution under Article I, Section 8, Clause 4,
14 and because the United States has the inherent power as sovereign to “control and
15 conduct relations with foreign nations.” See *Toll*, 458 U.S. at 10. When the National
16 Government is operating under its express constitutional power, the Supremacy Clause
17 provides that federal law “shall be the supreme Law of the Land; and the Judges in every
18 State shall be bound thereby, any Thing in the Constitution or Laws of any state to the
19 Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

20 One of the ways in which state law must give way to federal law is when
21 Congress, acting within its proper authority, has determined that conduct must be
22 regulated by its exclusive governance. See *Gade v. National Solid Wastes Management*
23 *Assn.*, 505 U.S. 88, 115 (1992).

24 “The intent to displace state law altogether can be inferred from a framework of
25 regulation ‘so pervasive... that Congress left no room for the States to supplement
26 it’ or where there is a ‘federal interest... so dominant that the federal system will
27 be assumed to preclude enforcement of state laws on the same subject.” *Arizona*,
28 567 U.S. at 399 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230
(1947)); see also *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990).

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1 A second way in which state law is preempted is when state law conflicts with
2 federal law. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372 (2000). This
3 includes situations such as those present in this case, where “compliance with both
4 federal and state regulations is a physical impossibility,” *Florida Lime & Avocado*
5 *Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963), and those instances where the
6 challenged state law “stands as an obstacle to the accomplishment and execution of the
7 full purposes and objectives of Congress,” *Hines*, 312 U.S. at 67.

8 The Supreme Court states “[p]reemption is based on the Supremacy Clause, and
9 that Clause is not an independent grant of legislative power to Congress. Instead, it
10 simply provides “a rule of decision.” It specifies that federal law is supreme in case of a
11 conflict with state law.” *Murphy v. National Collegiate Athletic Ass’n*, 138 S.Ct. 1461,
12 1479 (2018) (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S.Ct. 1378, 1383
13 (2015)). There are two requirements for preemption:

14 “First, it must represent the exercise of a power conferred on Congress by the
15 Constitution; pointing to the Supremacy Clause will not do. Second, since the
16 Constitution “confers upon Congress the power to regulate individuals, not
17 States,” the [act’s] provision at issue must be best read as one that regulates
private actors.” *Murphy*, 138 S.Ct. at 1479 (2018) (quoting *New York v. United*
States, 505 U.S. 144, 166 (1992)).

18 Here, 8 U.S.C. § 1373 is the exercise of an essential power to regulate
19 immigration conferred on Congress by the Constitution under Article I, Section 8,
20 Clause 4. Second, the purpose of Section 1373 is to regulate individuals and naturally to
21 have access to information necessary to that regulation. Congress undoubtedly has the
22 authority to access information necessary to effectuate its regulation of individuals in the
23 field of immigration. Congress in its enactment of Section 1373 decided to devise a
24 scheme of cooperative federalism where Congress chose merely to block any
25 interference that would prevent the federal government from receiving necessary
26 regulatory information regarding those individuals. Because Section 1373 represents the
27 exercise of a power conferred upon Congress by the Constitution and because it
28 regulates private actors which naturally includes their information, it preempts S.B. 54

1 which stands in direct contradiction to federal access of private actor's information
2 under federal regulation.

3 Not only does Section 1373 meet both prongs for preemption, but its provisions
4 are fundamentally different than the statute at issue in *Murphy*. First, the United States
5 does not simply point to the Supremacy clause to undergird its authority to enforce a
6 federal statute generally making it unlawful for a State to license sports gambling.
7 Rather, the power that underlies Section 1373 is the exercise of an essential power to
8 regulate immigration conferred on Congress by the Constitution. Second, in *Murphy* an
9 essential underlying principle for the court, and the second prong of the preemption test,
10 is that the statute cannot be characterized as a power conferred to a private actor or a
11 regulation over a private actor; whereas Section 1373 is a regulatory scheme over private
12 actors. Third, Section 1373 is about information access while *Murphy* has nothing to do
13 with information access.

14 The State's interpretation of *Murphy* to stand for the proposition that if the State
15 had to give access to information of private actors who are within the regulation scheme
16 of federal immigration authorities, then that would be tantamount to commandeering is
17 an untenably expansive interpretation of *Murphy*. The federal agencies are only seeking
18 to access the private information that they have been authorized by Congress to obtain.
19 Just because that information is in the hands of state and local governments does not
20 mean that federal access now becomes commandeering, and there is nothing in *Murphy*
21 which would stand for that proposition. To hold otherwise would be to take the
22 prohibition of anticommandeering to the extreme, and is not supported by prior Supreme
23 Court precedent. See *Reno v. Condon*, 528 U.S. 141, 150 (2000) (holding federal
24 provision as consistent with Tenth Amendment even if the regulation would "require
25 time and effort on the part of state employees"); *Printz v. United States*, 521 U.S. 898,
26 918 (1997) (statutes "which require provision of information to the Federal Government
27 do not involve ... the forced participation of the States' executive in the actual
28 administration of a federal program"); see, e.g., *Freilich v. Upper Chesapeake Health*,

1 *Inc.*, 313 F.3d 205, 214 (4th Cir. 2002); *United States v. Brown*, No. 07-485, 2007 WL
 2 4372829 at *6 (S.D.N.Y. Dec. 12, 2007), *aff'd* 328 F. App'x 57 (2d Cir. 2009); *cf.*
 3 *Arizona*, 567 U.S. at 411 (“Consultation between federal and state officials is an
 4 important feature of the immigration system”). While there are limits to what the federal
 5 government can require the states to do, there is nothing that indicates that a mere
 6 request for information would violate the Tenth Amendment, even if it may require time
 7 and effort on the part of state employees. Obtaining information regarding regulation of
 8 private actors is not the same as actually regulating the party with that information. The
 9 state and local governments are merely acting as pass-through entities for information
 10 regarding private actors to which federal agencies are properly entitled under federal
 11 law. To invalidate any federal provision that may require the states to do something, no
 12 matter how minimal, under the anticommandeering doctrine, is not the law.

13 Similarly, A.B. 103 is in direct conflict with the federal scheme involving
 14 immigration. Indeed, even regulations that "complement" federal law, or "enforce
 15 additional or auxiliary regulations," are preempted by a comprehensive federal scheme.
 16 *Hines*, 312 U.S. at 66-67; *Arizona*, 567 U.S. at 387. A.B. 103 imposes additional
 17 burdens on the federal scheme of immigration, in the form of inspections of facilities
 18 housing federal detainees. The state has no authority to enforce these additional and
 19 auxiliary regulations on the federal government. The County has contracted with the
 20 federal government to house federal detainees, and is thus bound to the dictates of the
 21 federal government, and not the whims of the state. Declaration of Robert J. Peterson in
 22 Support of Motion by County of Orange and Sandra Hutchens, Sheriff-Coroner for the
 23 County of Orange, for Leave to Intervene (“Peterson Decl.”), ¶¶2-3. (ECF 59-3.) (See
 24 attached hereto as **Exhibit 1** to this brief.) The Sheriff has already been put in the
 25 untenable position of having to satisfy both inspections under A.B. 103 and operating
 26 under the Intergovernmental Service Agreement with ICE. Peterson Decl., ¶4.
 27 Complying with opposite federal and state dictates is an “impossibility” for the County.
 28 *Florida Lime & Avocado Growers, Inc.*, 373 U.S. at 142-43.

1 Because S.B. 54 and A.B. 103 “stand as an obstacle to the accomplishment and
2 execution of the full purposes and objections” of Congressional immigration law,
3 *Arizona*, 567 U.S. at 406; *Hines*, 312 U.S. at 67; because Section 1373 satisfies the
4 Supreme Court’s two prong test in *Murphy* for valid preemption; and since the
5 anticommandeering doctrine is inapplicable, those two state laws are ultimately
6 preempted.

7 **B. The California Values Act Has Impermissibly Interfered With The**
8 **County’s Voluntary Cooperation With Federal Immigration Officials**
9 **To The Detriment To Public Safety.**

10 It is clear that the state and federal laws at issue are in conflict. The California
11 Values Act requires that the Sheriff choose between complying with state law or
12 complying with federal law. Declaration of Sandra Hutchens in Support of Reply by the
13 United States of America in Support of Motion for Preliminary Injunction (“Hutchens
14 Decl.”), ¶4. (ECF 171-6) (See attached hereto as **Exhibit 2** to this brief.)

15 As stated in *Arizona*, 567 U.S. at 411-412:

16 “Consultation between federal and state officials is an important feature of the
17 immigration system. Congress has made clear that no formal agreement or special
18 training needs to be in place for state officers to “communicate with the [Federal
19 Government] regarding the immigration status of any individual, including
reporting knowledge that a particular alien is not lawfully present in the United
States.” 8 U.S.C. § 1357(g)(10)(A).

20 As a practical matter, the California Values Act creates a public safety issue for
21 the citizens of Orange County by restricting the Sheriff’s ability to share information and
22 cooperate with ICE and federal immigration authorities in regards to inmates in the
23 Orange County Jail. Hutchens Decl., ¶4. Specifically, the Sheriff may be required
24 under California law to release an inmate with an ICE detainer without communicating
25 that inmate’s release to ICE. That individual may then go on to commit a terrible crime,
26 which would have been prevented if the Sheriff was allowed to cooperate with ICE
27 under federal law. *Id.*, at ¶5. This scenario is a risk that is already in place. Between
28 January 1, 2018, and April 30, 2018, the Orange County Sheriff’s Department has had

1 601 inmates with ICE detainees. *Id.*, at ¶6. Of those, 341 inmates were released without
2 notification to ICE, due to the limitations of the California Values Act. *Id.*

3 The Orange County Sheriff's Department conducted a random sampling of the
4 charges pending against 89 of the 341 inmates with ICE detainees who were released
5 without informing ICE. Hutchens Decl., ¶7. Forty-two of the 89 records reviewed
6 (47%) were charged with violent or serious crimes that present a public safety concern,
7 including but not limited to: willful infliction of corporal injury, possession of
8 methamphetamine for sale, possession of firearms and a controlled substance, assault
9 with a deadly weapon, lewd or lascivious acts on a minor, possession of a loaded
10 firearm, statutory rape, willful harm or injury to a child, intimidation of witnesses and
11 victims, and threat to commit crime that will result in death or great bodily injury. *Id.*
12 These are individuals that, but for the state law at issue, would have likely been detained
13 by ICE under their immigration detainees. The only reason they could not be detained
14 by ICE is because state law prevents the Orange County Sheriff from communicating
15 this information with the federal government, despite the fact that the Sheriff wishes to
16 do so. *Id.* These individuals are now walking the streets of Orange County, where they
17 represent a threat to public safety. *Id.*

18 Additionally, a review of the records determined that 45 out of the 341 inmates
19 with ICE detainees who were released without informing ICE have been rearrested at
20 least once in Orange County. *Id.*, at ¶8. Out of this 13% recidivism rate, a handful have
21 been arrested more than once during the four-month period. *Id.* The crimes include, but
22 are not limited to, attempted murder, assault with a deadly weapon, spousal battery,
23 DUI, child abduction and sex crimes on a child, and possession of drugs or
24 paraphernalia. *Id.* It is difficult to be aware of this information and come to the
25 conclusion the state has reached that the California Values Act was instituted to protect
26 the public.

27 The Orange County Sheriff's Department has also been forced to decline to
28 provide ICE investigators personal identifying information of two former inmates being

1 investigated by ICE, despite the fact that the Sheriff’s Department was willing to
2 voluntarily provide this information. *Id.*, at ¶9. By preventing this voluntary
3 information sharing, the California laws at issue are clearly standing “as an obstacle to”
4 Congressional immigration law, and must be preempted. *Arizona*, 567 U.S. at 406.

5 **III. CONCLUSION**

6 For the foregoing reasons Amici Curiae COUNTY OF ORANGE and SANDRA
7 HUTCHENS, Sheriff-Coroner for the County of Orange request that this Court, as to the
8 causes of action concerning S.B. 54 and A.B. 103, grant the Motion for Preliminary
9 Injunction filed by Plaintiff UNITED STATES OF AMERICA and deny the Motion to
10 Dismiss filed by the California Defendants.

11
12 DATED: June 12, 2018

Respectfully submitted,

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15 WENDY J. PHILLIPS, Senior Deputy
16 STEVEN C. MILLER, Senior Deputy
17 PATRICK K. BRUSO, Deputy
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19 By: /s/ John (Jack) W. Golden
20 John (Jack) W. Golden, Senior Assistant

21 *Attorneys for Amici Curiae*
22 COUNTY OF ORANGE *and*
23 SANDRA HUTCHENS, Sheriff-Coroner
24 for the County of Orange
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CERTIFICATE OF SERVICE

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I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 West Santa Ana Boulevard, Suite 407, Santa Ana, California 92701. I am not a party to the within action.

I hereby certify that on **June 12, 2018**, I served the foregoing **BRIEF OF AMICI CURIAE COUNTY OF ORANGE AND SANDRA HUTCHENS, SHERIFF-CORONER FOR THE COUNTY OF ORANGE** on all other parties to this action by serving a true copy of said document in the following manner:

(BY CM/ECF), I filed the foregoing document with the Clerk of the Court via CM/ECF, which automatically sends notice of the filing to all counsel of record. I declare under 28 U.S.C. § 1746 that the above is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: **June 12, 2018** in Santa Ana, California.

_____/S/ Simon Perng
Simon Perng