

1 SPENCER E. AMDUR (SBN 320069)
2 CODY H. WOFYSY (SBN 294179)
3 AMERICAN CIVIL LIBERTIES UNION
4 FOUNDATION
5 39 Drumm Street
6 San Francisco, CA 94111
7 Tel: (415) 343-0770
8 Fax: (415) 395-0950
9 Email: samdur@aclu.org
10 cwofsy@aclu.org

JULIA HARUMI MASS (SBN 189649)
ANGÉLICA H. SALCEDA (SBN 296152)
ACLU FOUNDATION OF NORTHERN
CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Tel: (415) 621-2493
Fax: (415) 255-8437
Email: jmass@aclunc.org
asalceda@aclunc.org

6 JESSICA KARP BANSAL (SBN 277347)
7 NATIONAL DAY LABORER
8 ORGANIZING NETWORK
9 674 S. La Fayette Park Place
10 Los Angeles, CA 90057
11 Tel: (213) 380-2214
12 Fax: (213) 380-2787
13 Email: jbanksal@ndlon.org

MICHAEL KAUFMAN (SBN 254575)
JENNIFER PASQUARELLA (SBN 263241)
ACLU FOUNDATION OF SOUTHERN
CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Tel: (213) 977-5232
Fax: (213) 977-5297
Email: mkaufman@aclusocal.org
jpasquarella@aclusocal.org

Attorneys for Intervenor-Defendants
Additional counsel on next page

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE EASTERN DISTRICT OF CALIFORNIA

16 THE UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 THE STATE OF CALIFORNIA; EDMUND
20 GERALD BROWN JR., Governor of
21 California, in his official capacity; and
22 XAVIER BECERRA, Attorney General of
23 California, in his official capacity,

24 Defendants.

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

Hon. John A. Mendez

**[PROPOSED] OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION OF
INTERVENOR-DEFENDANTS
THE CALIFORNIA PARTNERSHIP
TO END DOMESTIC VIOLENCE
AND THE COALITION FOR
HUMANE IMMIGRANT RIGHTS**

24
25
26
27
28

1 OMAR C. JADWAT*
2 LEE GELERNT*
3 MAHRAH TAUFIQUE*
4 AMERICAN CIVIL LIBERTIES UNION
5 FOUNDATION
6 125 Broad St., 18th Floor
7 New York, NY 10004
8 Tel: (212) 549-2660
9 Fax: (212) 549-2654
10 Email: ojadwat@aclu.org
11 lgelernt@aclu.org
12 irp_mt@aclu.org
13

14 ANGELA CHAN (SBN 250138)
15 ASIAN AMERICANS ADVANCING JUSTICE -
16 ASIAN LAW CAUCUS
17 55 Columbus Avenue
18 San Francisco, CA 94404
19 Tel: (415) 848-7719
20 Fax: (415) 896-1702
21 Email: angelac@advancingjustice-alc.org
22

23 BARDIS VAKILI (SBN 247783)
24 ACLU FOUNDATION OF SAN DIEGO &
25 IMPERIAL COUNTIES
26 P.O. Box 87131
27 San Diego, CA 92138-7131
28 Tel: (619) 398-4485
Email: bvakili@aclusandiego.org

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1 **INTRODUCTION**

2 The California Values Act limits the assistance the State will provide to federal
3 immigration officials, by directing state officers not to help arrest certain immigrants.¹ The
4 United States, however, seeks to force California to let its officers facilitate deportations, arguing
5 that Congress can and has taken that choice away from the People of California and their elected
6 representatives. That is wrong. The Tenth Amendment guarantees States the choice whether to
7 help administer a federal program like the deportation system. And even if Congress could take
8 that choice away, it has nowhere made the unmistakably clear statement that would be required
9 to preempt the Values Act. To the contrary, Congress has taken pains to ensure that States
10 generally remain free to limit their own participation in the federal immigration scheme.

11
12
13 The injunction the United States requests would be devastating to residents and local
14 service providers across California, gravely undermining immigrant communities’ trust in police
15 and local government. The California Partnership to End Domestic Violence (“Partnership”) and
16 Coalition for Humane Immigrant Rights (“CHIRLA”) therefore seek to defend the Values Act on
17 behalf of themselves and their members, which include thousands of individuals and hundreds of
18 organizations that serve immigrants and their families. The Court should deny the preliminary
19 injunction motion and dismiss the claims against the Values Act. *See* Proposed Mot. to Dismiss.
20

21 **BACKGROUND**

22 **A. The Costs of State Participation in Immigration Enforcement.**

23 The Immigration and Nationality Act (“INA”) charges the Department of Homeland
24 Security (“DHS”) with responsibility for enforcing federal immigration law. 8 U.S.C. §
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¹ Both state and local officers are “state officers” for purposes of the Tenth Amendment. *Printz v. United States*, 521 U.S. 898, 905, 930-31 (1997); *see Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 682 (1978) (municipalities are “state instrumentalities”).

1 1103(a)(1). The INA also “specifies limited circumstances” in which States can voluntarily
2 choose to lend their assistance. *Arizona v. United States*, 567 U.S. 387, 408 (2012).

3 State participation in this scheme imposes a number of costs on state residents. To keep
4 track of federal requests and arrange for custody transfers, state officers must divert limited time,
5 energy, and jail space away from pressing local needs. Any mistakes the federal government
6 makes can lead to steep financial liability for state and local taxpayers.² State participation in
7 deportations also instills fear and deters residents from accessing critical public services like
8 police, healthcare, and education, straining relationships between States and their constituents.
9 Cal. Gov’t Code § 7284.2(c) (legislative findings). When state residents understand that their
10 own police are helping enforce immigration law, many will not come forward to report crimes or
11 serve as witnesses, which decreases public safety for all residents. *See* Mot. to Intervene, at 3-4.

12
13
14 Recent federal practices have intensified these problems. Over the last year, immigration
15 enforcement has grown more indiscriminate, as DHS has rescinded policies that had set priorities
16 for enforcement.³ DHS has also stripped protections from a number of particularly vulnerable
17 groups of immigrants, who often have lived in the United States for many years and have deeply
18 rooted lives here.⁴ The human consequences of these practices have been devastating.⁵

19
20
21 ² For instance, DHS has mistakenly asked States to help detain hundreds of U.S. citizens in
22 recent years. *See, e.g.,* Eyder Peralta, *You Say You’re an American, but What If You Had to*
23 *Prove It or Be Deported?*, NPR, Dec. 22, 2016 (documenting “693 U.S. citizens [who] were held
24 in local jails on federal [immigration] detainers”), <https://n.pr/2rQlgQ8>.

25 ³ *See* Michael D. Shear, *New Trump Deportation Rules Allow Far More Expulsions*, NY Times,
26 Feb 21, 2017, <https://nyti.ms/2ljmRZ7>; Tal Kopan, *ICE Director: Undocumented Immigrants*
27 *“Should Be Afraid”*, CNN, June 16, 2017, <https://cnn.it/2rhJOyA>.

28 ⁴ *See* Dep’t of Homeland Sec., *Memorandum on Rescission of DACA*, Sept. 5, 2017,
<https://bit.ly/2eZuPmG>; DHS, *Termination of TPS for Haiti*, 83 Fed. Reg. 2648 (Jan. 18, 2018);
DHS, *Termination of TPS for El Salvador*, 83 Fed. Reg. 2654 (Jan. 18, 2018); DHS, *Termination*
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⁵ *See, e.g.,* Fwd.us, *Human Consequences of the Interior Immigration Enforcement Executive*
Orders (collecting individual accounts), <http://www.fwd.us/consequences>.

1 **B. The Values Act.**

2 California responded to these problems by enacting the Values Act, S.B. 54 (Oct. 5,
3 2017), which passed with large majorities in both houses of its Legislature. Cal. Gov’t Code §
4 7284.2(a)-(f) (describing the Act’s goals). The United States challenges two parts in particular.
5 First, the Values Act provides that “California law enforcement agencies shall not . . . [t]ransfer
6 an individual to immigration authorities” unless certain exceptions apply. Cal. Gov’t Code §
7 7284.6(a)(4). The transfer provision means that the State generally will not “facilitate the
8 transfer of an individual in its custody to ICE” after state-law custody ends. *Id.* §§ 7284.6(a)(4),
9 7284.4(e), 7283(g). Second, the Values Act provides that California law enforcement will not
10 facilitate civil immigration arrests either by “[p]roviding information regarding a person’s
11 release date,” *id.* § 7284.6(a)(1)(C), or by notifying DHS of “the individual’s home address or
12 work address,” unless the information is publicly available, *id.* § 7284.6(a)(1)(D).

13 The Values Act contains numerous exceptions. The challenged provisions do not apply
14 to the State’s Department of Corrections and Rehabilitation. *Id.* § 7284.4(a). The Act allows
15 state officers to share a person’s release date with DHS or facilitate transfer if the person has
16 been convicted of an enumerated list of crimes, *id.* § 7282.5(a)(1), (2), (3)(A)-(AE), (5), or if the
17 person “is a current registrant on the California Sex and Arson Registry,” *id.* § 7282.5(a)(4).
18 And it allows officers to share release dates if a person is being prosecuted for “a serious or
19 violent felony” for which a magistrate has made a probable cause finding. *Id.* § 7282.5(b).

20 **C. The Intervenor-Defendants.**

21 The Partnership is a statewide nonprofit organization whose members include hundreds
22 of individuals, domestic violence shelters, legal service providers, and local government entities.
23 Moore Decl. ¶¶ 2-3, 6-8 (describing the Partnership’s mission and activities). Its members serve
24 thousands of immigrants and their communities across the State, and they rely on the trust that
25

1 the Values Act was designed to foster. *Id.* ¶ 6, 9; Cal. Gov’t Code § 7284.2(b)-(f). CHIRLA is a
2 nonprofit organization with immigrant and allied members throughout the State. Salas Decl. ¶ 2-
3 6. Its members’ ability to access police protection other critical public services would be
4 severely harmed by an injunction. *Id.* ¶ 7-11. *See* Mot. to Intervene, at 2-4.

5 6 ARGUMENT

7 To obtain a preliminary injunction, the United States must establish that it is likely to
8 prevail on the merits, that it faces irreparable harm, and that the balance of equities and public
9 interest weigh in favor of the injunction. *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

10 I. The United States Is Not Likely to Prevail on the Merits.

11 The federal government may not force California to help enforce immigration law. Any
12 attempt to do so would violate California’s constitutional prerogative to decline to help
13 administer federal programs. But the Court need not even reach that question, because Congress
14 has not sought to preempt the Values Act, either expressly or by implication. The Court should
15 reject the government’s unprecedented attempt to deny the People of California the choice of
16 whether their own government will help deport its residents.

17 A. The Tenth Amendment Guarantees States the Ability to Opt Out of Federal 18 Programs and Structure Their Own Governments.

19 States are “independent political entities” who “represent and remain accountable to
20 [their] own citizens.” *Printz*, 521 U.S. at 919-20. Their independence is central to our
21 constitutional system: “The Framers concluded that allocation of powers between the National
22 Government and the States enhances freedom . . . by protecting the people” from the arbitrary
23 action of either government. *Bond v. United States*, 564 U.S. 211, 221-22 (2011). Accordingly,
24 “State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties
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1 that derive from the diffusion of sovereign power.” *Nat’l Fed. of Indep. Bus. v. Sebelius (NFIB)*,
2 567 U.S. 519, 536 (2012) (quoting *New York v. United States*, 505 U.S. 144, 181 (1992)).

3 To preserve those liberties, the Constitution denies “Congress the ability to require the
4 States to govern according to Congress’ instructions.” *New York*, 505 U.S. at 162, 166. Three
5 specific principles flow from this general prohibition against federal control of state government.
6 Each one independently dooms the government’s challenge to the Values Act.
7

8 First, the federal government cannot commandeer States to help enforce federal schemes.
9 This means that, even when Congress wants the States’ assistance, it must give them the “critical
10 alternative” of “declin[ing] to administer the federal program.” *New York*, 505 U.S. at 176-77;
11 see *Printz*, 521 U.S. at 909-10 (when Congress asks for help, States may “refuse[] to comply
12 with the request”); *NFIB*, 567 U.S. at 587 (States “may choose not to participate” in a federal
13 program). Congress can still *encourage* States to lend their assistance by offering incentives—
14 for instance, by requiring compliance with federal standards as a condition of federal funds
15 (within certain limits), *New York*, 505 U.S. at 167, or as a condition of “continued state activity
16 in an otherwise pre-emptible field,” *FERC v. Mississippi*, 456 U.S. 742, 769 (1982); see *New*
17 *York*, 505 U.S. at 168 (explaining that “either of these methods” still preserves States’ ability to
18 opt out).⁶ But States must retain the “prerogative to reject Congress’s desired policy, not merely
19 in theory but in fact.” *NFIB*, 567 U.S. at 581 (quotation marks omitted).
20
21

22 Second, and independently, the federal government cannot “displace a State’s allocation
23 of governmental power and responsibility.” *Alden v. Maine*, 527 U.S. 706, 752 (1999). A
24 State’s ability to choose how it distributes authority among its officers is key to its independence:
25 A “State defines itself as a sovereign” through “the structure of its government.” *Gregory v.*
26

27 ⁶ Congress may also regulate States through its power to enforce the Fourteenth Amendment, see
28 U.S. Const. amend. XIV, § 2, and through its ability to create causes of action that state courts
must hear, see *Printz*, 521 U.S. at 929, but neither is at issue in this case.

1 *Ashcroft*, 501 U.S. 452, 460 (1991). Accordingly, Congress may not interfere with a State’s
 2 prerogative “to control the distribution of power among its own agents.” *Va. Office for*
 3 *Protection & Advocacy v. Stewart (VOPA)*, 563 U.S. 247, 263 (2011) (Kennedy, J., concurring);
 4 *id.* at 264 (States “need not empower their officers” to participate in a federal scheme).

5
 6 Third, even where Congress *can* regulate a core state function directly—for instance,
 7 through a “generally applicable law” that “regulate[s] state activities in the same manner as
 8 private conduct,” *Ohio v. United States*, 849 F.3d 313, 322 (6th Cir. 2017)—it still “must make
 9 its intention to do so unmistakably clear in the language of the statute.” *Gregory*, 501 U.S. at
 10 460 (quotation marks omitted); *see also McDonnell v. United States*, 136 S. Ct. 2355, 2373
 11 (2016) (under *Gregory*, a narrow interpretation prevails over one that “that leaves [the statute’s]
 12 outer boundaries ambiguous”). To satisfy *Gregory*, the government’s interpretation “must be
 13 plain to anyone reading the Act.” 501 U.S. at 467.

14
 15 **B. The Tenth Amendment Forecloses the Government’s Preemption Claims.**

16 Any attempt to preempt States from declining to administer a federal program would
 17 violate the principles described in Part I.A: It would deny States the prerogative to decline that
 18 *New York*, *Printz*, and *NFIB* guarantee; and it would reassign that prerogative from the State’s
 19 elected representatives to its unelected employees. These constitutional doubts provide ample
 20 reason to reject the government’s express (Part I.C) and implied (Part I.D) preemption claims.
 21 *See Nw. Austin MUD v. Holder*, 557 U.S. 193, 205 (2009) (“[T]he Court will not decide a
 22 constitutional question if there is some other ground upon which to dispose of the case.”).

23
 24 1. Congress cannot preempt States from doing precisely what the Tenth Amendment
 25 authorizes: “declin[ing] to administer” immigration law. *New York*, 505 U.S. at 177. Through
 26 the Values Act, California has made a statewide decision not to help DHS agents arrest and
 27 deport certain noncitizen residents. California’s prerogative to make that decision is “essential”
 28

1 to the “[p]reservation of the States as independent political entities,” *Printz*, 521 U.S. at 919, and
 2 a “quintessential attribute of sovereignty,” *FERC*, 456 U.S. at 761. Indeed, the “whole point” of
 3 the anti-commandeering rule is that States *must* be able to “reject” a federal policy and “decline
 4 to participate” in its enforcement. *NFIB*, 567 U.S. at 587.

5
 6 Preempting the State’s ability to opt out of immigration enforcement would, moreover,
 7 undermine “the political accountability key to our federal system.” *NFIB*, 567 U.S. at 578; *see*
 8 *Printz*, 521 U.S. at 930 (relying on accountability rationale); *New York*, 505 U.S. at 169 (same).
 9 Accountability relies on “elected public officials” being able to “regulate in accordance with the
 10 views of the local electorate,” including, crucially, by withdrawing from federal programs when
 11 the “State’s citizens view federal policy as sufficiently contrary to local interests.” *New York*,
 12 505 U.S. at 168-69. California’s residents have decided that facilitating deportations is often
 13 “contrary to local interests,” and they “would prefer their government to devote its attention and
 14 resources” to ordinary law enforcement. *Id.* Yet preemption of the Values Act would leave
 15 California’s elected representatives unable to oblige. Salas Decl. ¶ 12. Instead, they would have
 16 to allow every state officer to help administer immigration law. This would put them “in the
 17 position of taking the blame” for the “burdensomeness” and “defects” of federal immigration
 18 enforcement, *Printz*, 521 U.S. at 930—something that happened often prior to the Values Act.⁷

19
 20
 21 The government contends otherwise, arguing that Congress can preempt California from
 22 limiting its involvement in the deportation system. Thus, under the government’s view, even if
 23 the State’s residents—acting through their Legislature—would rather “decline to administer the
 24 federal [deportation] program,” *New York*, 505 U.S. at 168, 177, they must nonetheless authorize
 25

26 ⁷ See, e.g., Maddie Oatman, *Secure Governor, Insecure Communities*, Mother Jones, Nov. 4,
 27 2010, <https://bit.ly/2wd6Qvp>; *Group Rallies Against Deportation of Immigrants in Front of*
 28 *Alameda County Building*, Mercury News, Nov. 19, 2015, <https://bayareane.ws/2wbh6o4>; Leslie
 Rojas, *LAPD Chief on Secure Communities: “It Tends to Cause a Divide,”* KPCC, June 3, 2011,
<https://bit.ly/2I8sA07>.

1 all public employees to help administer it. *But see Printz*, 521 U.S. at 931 (rejecting the idea that
2 “the Federal Government cannot control the State, but can control all of its officers”). That view
3 simply cannot be squared with the Tenth Amendment’s guarantee that States must be able to
4 “decline to participate” in federal programs. *NFIB*, 567 U.S. at 587; *see Printz*, 521 U.S. at 933
5 (holding that sheriffs could refuse to conduct federal background checks); *id.* at 934 n.18 (noting
6 state laws that prohibited sheriffs “from taking on these federal responsibilities”).
7

8 It makes no difference that the statute the government principally invokes, 8 U.S.C. §
9 1373; *see infra* Part I.C, is framed as a prohibition, rather than a command.⁸ *New York* made
10 clear that prohibitions can violate the principle that Congress may not “require the States to
11 govern according to Congress’s instructions.” 505 U.S. at 162 (citing *Coyle v. Smith*, 221 U.S.
12 559, 564, 565 (1911), which struck down a federal statute providing that a State’s capitol “shall
13 not be changed”). And the Supreme Court definitively rejected such formalism in *NFIB*, where
14 the invalid statute did not issue any *command* to the States; it simply authorized the government
15 to withhold Medicaid funds if States did not participate in the Medicaid expansion. 567 U.S. at
16 585. Nonetheless, the Court explained that States must retain “a legitimate choice” about
17 whether to participate in a federal program, so that their elected officials “can fairly be held
18 politically accountable for” their choice. *Id.* at 578. The Medicaid expansion violated that rule
19 because it left States’ elected officials “no real choice” to opt out of the program. *Id.* at 587.
20 The Court emphasized that States’ prerogative to decline must be maintained “not merely in
21 theory but in fact.” *Id.* at 581.
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26 ⁸ Section 1373(a) provides that a “government entity or official may not prohibit, or in any way
27 restrict, any government entity or official from sending to, or receiving from, the [federal
28 immigration authorities] information regarding the citizenship or immigration status, lawful or
unlawful, of any individual.” Notably, the government itself describes § 1373 as an affirmative
command, explaining that States “are *required* to allow” cooperation with DHS. PI Mem. 24
(emphasis added).

1 Even apart from the anti-commandeering rule, Congress cannot “displace a State’s
2 allocation of governmental power and responsibility.” *Alden*, 527 U.S. at 752; *see id.* (Congress
3 could not interfere with a State’s decision to assign “the payment of debts” to “the political
4 branches, rather than the courts”). California law places control over state and local police in the
5 hands of the Legislature, which exercised that authority in enacting the Values Act. *See Cal.*
6 *Const. art. IV, § 1; Baggett v. Gates*, 32 Cal.3d 128, 139 n.15 (1982). Applying § 1373, or the
7 INA more generally, to preempt the Values Act would displace this arrangement by forcing the
8 State to place immigration-enforcement decisions in the hands of every individual officer, who
9 could then choose for himself whether to help DHS carry out deportations.
10

11 Congress may not “dictate the internal operations of state government” in that way.
12 *Mass. v. HHS*, 682 F.3d 1, 12 (1st Cir. 2012); *see Koog v. United States*, 79 F.3d 452, 460 (5th
13 Cir. 1996) (“[S]tate sovereignty . . . surely encompasses the right to set the duties of office for
14 state-created officials.”). If it could do that, Congress could (despite *NFIB*) require States to let
15 their insurance commissioners decide for themselves whether to accept the Medicaid expansion
16 or create Affordable Care Act exchanges—taking the choice out of the hands of the people’s
17 elected representatives. Or it could (despite *Printz*) require States to let each individual sheriff’s
18 deputy decide whether to conduct federal background checks. But Congress does not have
19 authority “to control the distribution of power among [a State’s] own agents,” especially power
20 over such a fundamental decision as whether to exercise the State’s anti-commandeering
21 prerogative. *VOPA*, 563 U.S. at 263 (Kennedy, J., concurring).⁹
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27 ⁹ While *Alden* and *VOPA* involved challenges brought under the Eleventh Amendment, their
28 underlying rationales—rejecting federal control over a State’s internal distribution of authority—
apply in the Tenth Amendment context as well. *Cf. Gregory*, 501 U.S. at 460-61 (explaining that
Eleventh Amendment clear-statement rule applied in Tenth Amendment context).

1 2. The federal government has elsewhere argued that Congress can compel the States to
2 help administer immigration law, as long as the States’ role involves sharing information. That
3 is incorrect. *Printz* left open the possibility that *some* kinds of information sharing *might* fall
4 outside the anti-commandeering rule—specifically, information sharing that does *not* entail
5 participation in “the actual administration of a federal program.” *Printz*, 521 U.S. at 918. The
6 Court thus declined to resolve whether “purely ministerial reporting requirements” are
7 constitutional. *Id.* at 936 (O’Connor, J., concurring). But there is no question that forced
8 information sharing, where it facilitates the concrete, day-to-day administration of a federal
9 program, violates the anti-commandeering rule. Indeed, *Printz* itself invalidated a law because it
10 required state officers “to provide information that belongs to the State.” *Id.* at 932 n.17.¹⁰
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13 When Congress “compels the States” to help administer a program, or leaves the States
14 unable to decline, “it blurs the lines of political accountability” *regardless* of what form the
15 involvement takes. *NFIB*, 567 U.S. at 678. Whether local officers are placing the handcuffs or
16 helping DHS do so, residents understand that their government is funneling people to the
17 deportation system. Moore Decl. ¶ 9-20; Salas Decl. ¶ 7, 11. Forced information sharing can
18 thus cause the precise harms the Tenth Amendment seeks to prevent. *See Printz*, 521 U.S. at 930
19 (“absorb the costs,” “bear the brunt of public disapproval”); Cal. Gov. Code § 7284.2(b)-(d).
20

21 Here, the information the government seeks would clearly facilitate the “administration
22 of a federal program.” *Printz*, 521 U.S. at 918. The challenged Values Act provisions address
23 whether state officers can arrange for physical transfers of custody and otherwise help DHS
24

25 ¹⁰ The government has claimed, in other litigation, that *Reno v. Condon*, 528 U.S. 141 (2000),
26 recognized a Tenth Amendment carve-out for information mandates. Not so. The Court in
27 *Condon* upheld a “generally applicable” law because it regulated States’ economic activities
28 alongside equivalent private activity. *Id.* at 150-51; *see South Carolina v. Baker*, 485 U.S. 505,
515 (1988); *Ohio*, 849 F.3d at 322 (explaining *Baker*). The Court did not announce any rule
about information mandates, nor did it even identify any mandate to send information to the
federal government in the statutory scheme at issue.

1 locate and arrest noncitizens. The government itself stresses the operational impact of these
 2 actions: Transfer, release dates, and addresses help DHS “locate, detain, prosecute, and remove
 3 aliens,” PI Mem. 33; they increase “the United States’ ability to identify and apprehend
 4 removable aliens,” PI Mem. 35; and they facilitate “ICE’s efforts to take these aliens into
 5 custody for removal purposes,” which saves ICE “time and resources,” PI Mem. 35-36.
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7 By contrast, some federal reporting requirements serve only academic and record-
 8 keeping goals. *See, e.g., Printz*, 521 U.S. at 936 (O’Connor, J., concurring) (citing former
 9 version of 34 U.S.C. § 41307 (statistical data regarding missing children)); 42 U.S.C. § 11133(a)
 10 (peer review data bank). These are “purely ministerial,” *id.*, because they do not facilitate the
 11 federal government’s on-the-ground implementation of any federal regulatory program. As a
 12 result, they do not force state officials to “tak[e] the blame” for the “defects” of a federal
 13 program. *Id.* at 930.¹¹ The information in this case is clearly different. The Court should reject
 14 any suggestion that information mandates are categorically exempt from the anti-commandeering
 15 rule—something no court has ever held.
 16

17 3. The government also relies on the Second Circuit’s decision upholding § 1373 in *City*
 18 *of New York v. United States*, 179 F.3d 29 (2d Cir. 1999); PI Mem. 27. As explained below, Part
 19 I.C, the Court need not address § 1373’s constitutionality because the Values Act is consistent
 20 with that statute. But in any event, the *City of New York* opinion is both incorrect and inapposite.
 21

22 *City of New York* was wrong when decided. The Second Circuit did not address § 1373’s
 23 forcible restructuring of state authority, *supra* Part I.A, even though the Supreme Court had
 24 already made clear that “the structure of [a State’s] government” defines its very existence “as a
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 27 ¹¹ The few cases upholding reporting requirements have all involved these kinds of purely
 28 ministerial duties to “forward[] . . . information to a federal data bank.” *Freilich v. Upper Chesapeake Health*, 313 F.3d 205, 214 (4th Cir. 2002); *see U.S. v. Brown*, 2007 WL 4372829, at *5 (S.D.N.Y. Dec. 12, 2007) (requirement to forward information to “a national database”).

1 sovereign.” *Gregory*, 501 U.S. at 460. And the Second Circuit assumed that § 1373’s
2 constitutionality depended on the relative strength of the federal and state interests. *City of New*
3 *York*, 179 F. 3d at 35 (federal), 37 (state). But the Supreme Court had already emphatically
4 rejected that kind of balancing in the anti-commandeering context. *See Printz*, 521 U.S. at 932
5 (“[A] ‘balancing’ analysis is inappropriate” where “the whole *object* of the law is to direct the
6 functioning of the state executive.”); *New York*, 505 U.S. at 178 (the rule applies “[n]o matter
7 how powerful the federal interest involved”).

9 Since then, its rationale has been even more decisively rejected. *City of New York* started
10 from the premise that States had some obligation to offer their employees’ “voluntary
11 cooperation” to federal officials. 179 F.3d at 35. But that premise—for which the court cited no
12 authority—conflicts the Supreme Court’s confirmation in *NFIB* that States have the “prerogative
13 to reject Congress’s desired policy, not merely in theory but in fact.” 567 U.S. at 581. In
14 addition, *City of New York* reasoned that § 1373 could not violate the Tenth Amendment because
15 it did “not directly compel states or localities to require or prohibit anything.” 179 F.3d at 35.
16 But *New York* and *Coyle* indicated that prohibitions can also improperly regulate States, and
17 *NFIB* subsequently settled once and for all that Congress cannot force States to participate in
18 federal regulatory programs either through “direct commands” or “indirectly.” 567 U.S. at 578.

21 In any event, *City of New York* involved a restriction on sharing *immigration status*,
22 which § 1373 squarely prohibits. 179 F.3d at 31; *see* Part I.C. Limitations on transfer and
23 notification were not before the court, so it had no occasion to consider how *Gregory* and
24 constitutional avoidance would apply to the policies at issue here. For all these reasons, *City of*
25 *New York* does not provide a basis for granting the requested injunction.
26

1 **C. The Values Act Is Not Preempted by 8 U.S.C. § 1373.**

2 The Court need not reach the constitutional questions above, because § 1373 does not
3 apply to the Values Act. *See Nw. Austin*, 557 U.S. at 205. The government contends that § 1373
4 requires States to let their officers send DHS people’s release dates and addresses. PI Mem. 27-
5 29. Its interpretation can only prevail if it is “unmistakably clear in the language of the statute.”
6 *Gregory*, 501 U.S. at 460. But § 1373’s language only prohibits restrictions on sharing
7 “information regarding . . . citizenship or immigration status.” 8 U.S.C. § 1373(a). The statute’s
8 plain text simply does not encompass release dates or addresses. *See Steinle v. San Francisco*,
9 230 F. Supp. 3d 994, 1015 (N.D. Cal. 2017) (“[N]o plausible reading of ‘information regarding .
10 . . . citizenship or immigration status’ encompasses [a] release date.”).

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13 The government’s novel effort to expand § 1373 falters at every turn. For starters,
14 neither a release date nor an address demonstrates a person’s citizenship or immigration status.
15 A person’s citizenship and status are the same regardless of which day she walks out of jail. And
16 her address does not indicate whether she is a citizen, or whether she currently has lawful
17 permission to remain in the United States. *Cf.* 8 U.S.C. § 1101(a)(15)(A)-(V) (listing
18 immigration statuses). The text of § 1373 cannot bear the government’s position: Information
19 that does not indicate people’s citizenship or status cannot be considered “information regarding
20 the[ir] citizenship or immigration status.” 8 U.S.C. § 1373(a); *see Biggs v. Credit Collections*,
21 2007 WL 4034997, at *4 & n.3 (W.D.Ok. Nov. 15, 2007) (the phrase “information regarding a
22 debt” does not include information “that do[es] not impart . . . information about a debt”).
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25 The government does not appear to dispute that a release date cannot indicate a person’s
26 citizenship or immigration status.¹² But it argues that a person’s address could, theoretically, be

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¹² The government points out that a person generally cannot be removed while they are in criminal custody, *see* PI Mem. 28-29 (citing 8 U.S.C. § 1231(a)(4)), but that does not somehow give the person a lawful immigration status.

1 “relevant” to their immigration status in some circumstances. PI Mem. 29. In none of its
2 examples, however, would a person’s address demonstrate his or her immigration status. For
3 instance, an address does not indicate the length of a person’s “continuous presence,” “whether
4 the alien has been granted work authorization,” or whether the person “inten[ds] not to abandon
5 his or her foreign residence.” *Id.* The government’s examples are connected “only peripherally,
6 if at all,” to a person’s immigration status. *Farr v. US West, Inc.*, 58 F.3d 1361, 1366 (9th Cir.
7 1995), *abrogated on other grounds as recognized in Bowles v. Reade*, 198 F.3d 752, 759 (9th
8 Cir. 1999). Under those circumstances, “it would defy common sense” to conclude that
9 addresses qualify as information regarding immigration status. *Id.*

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11 To shoehorn release dates and addresses into § 1373, the government is forced to advance
12 an interpretation without limit. It suggests that § 1373 reaches every piece of information that
13 could conceivably, in *some* circumstance, bear on a noncitizen’s “presence,” his future “intent,”
14 or whether his activities “violate[] the terms” of his admission. PI Mem. 29. It is difficult to
15 imagine what would fall outside of those categories. A person’s medical records could reveal an
16 inaccuracy in his visa application; his school records could show how long he has remained in
17 the United States; the addresses of his family and friends could show his possible whereabouts.

18
19 The government’s argument disregards the specific words Congress chose to cabin §
20 1373’s scope: “citizenship or immigration status.” If it wanted § 1373 to reach *all* information
21 about immigrants, “Congress could easily have said so.” *Kucana v. Holder*, 558 U.S. 233, 248
22 (2010). Indeed, in the same bill that enacted § 1373, Congress referred to “any information
23 which relates to an alien.” 8 U.S.C. § 1367(a)(2); *see* Pub. L. 104-208, Div. C, Title VI, §§ 384,
24 642, 110 Stat. 3009 (1996). And in other INA provisions, Congress explicitly named the precise
25 pieces of information the government now seeks to import into § 1373: “information regarding
26 the name and *address* of the alien,” 8 U.S.C. § 1360(c)(2), “information concerning the alien’s
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1 *whereabouts* and *activities*,” 8 U.S.C. § 1184(k)(3)(A), and “information . . . regarding the
 2 purposes and *intentions* of the applicant,” 8 U.S.C. § 1225(a)(5) (emphases added); *compare* PI
 3 Mem. 28 (arguing that § 1373 reaches a noncitizen’s “address,” “intent,” “presence”). Congress
 4 clearly “knows how” to refer to this information when it wants to, but it chose not to in § 1373.
 5
 6 *Jama v. ICE*, 543 U.S. 335, 341 (2005).¹³

7 The government highlights that § 1373 covers information “regarding” a person’s
 8 citizenship and immigration status. PI Mem. 28-29. But that is a perfectly natural way to
 9 identify the indicia of citizenship and immigration status that local police are likely to
 10 encounter—like passports, visas, and green cards. Section 1373’s language thus accounts for the
 11 fact that local police will rarely have conclusive knowledge of a person’s “technical immigration
 12 status,” PI Mem. 28, unlike federal officials who have access to numerous immigration
 13 databases, *cf.* 8 U.S.C. § 1373(c) (requiring *federal* officials to verify the actual “citizenship or
 14 immigration status of any individual”). Thus, for example, a person’s admission that he crossed
 15 the border illegally would be information “regarding” both citizenship and immigration status,
 16 even though it conclusively establishes neither.¹⁴
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20 ¹³ The government invokes § 1373’s legislative history, PI Mem. 27-28, but that cannot “trump[]
 21 the plain text of the statute” or *Gregory*’s requirement of a clear textual statement. *Powers v.*
 22 *Wells Fargo Bank NA*, 439 F.3d 1043, 1045 (9th Cir. 2006); *PN v. Seattle Sch. Dist. No. 1*, 474
 23 F.3d 1165, 1171 (9th Cir. 2007). And in any case, § 1373’s legislative history is at best
 24 “ambiguous” and therefore not reliable. *Milner v. Dep’t of Navy*, 562 U.S. 562, 572 (2011). For
 25 instance, a committee report states that the motivation for a nearly-identical provision was to
 26 address local policies that “prevent[] local officials from disclosing the immigration status of
 individuals to INS.” H.R. Conf. Rep. No. 104-725, at 390-31 (1996) (addressing 8 U.S.C. §
 1644). And Congress simultaneously *rejected* proposals that would have required States to share
 an immigrant’s “name, address, and other identifying information.” *See, e.g.,* H.R.1157, § 308
 (Mar. 8, 1995). *See* Dep’t of Justice, Office of Legal Counsel, *Relationship Between IIRIRA and*
Statutory Requirement for Confidentiality of Census Information (May 18, 1999) (observing that
 for § 1373, “there is little in the way of legislative history that illuminates its scope”).

27 ¹⁴ The person might still be a derivative U.S. citizen, 8 U.S.C. § 1401(c)-(d), (g), or have been
 28 granted asylum, 8 U.S.C. § 1158(a)(1). The government briefly suggests that the Act could bar
 the sharing of a person’s oral statement that “they are illegally in the United States.” PI Mem.
 29. But the Act’s savings clause forecloses that interpretation. Cal. Gov’t Code § 7284.6(e).

1 The text and context of § 1373 thus provide ample reason to reject the government’s
2 expansive position. But if doubt remained, *Gregory* compels the less intrusive interpretation.
3 *Supra* Part I.A. Section 1373 triggers the *Gregory* rule with particular force both for the reasons
4 in Part I.B and because it regulates the duties of state police, who “perform functions that go to
5 the heart of representative government.” *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973); *see*
6 *Foley v. Connelie*, 435 U.S. 291, 296-97 (1978) (applying *Sugarman* to state police). Under
7 *Gregory*, § 1373 cannot apply to release dates or addresses “unless Congress has made it clear
8 that [they] are included”—it “must be plain to anyone reading the Act.” 501 U.S. at 467. The
9 government’s position clearly fails that standard: It is not “unmistakably clear in the language of
10 the statute.” *Id.* at 460. Accordingly, “*Gregory*’s answer is—do not construe the statute to reach
11 so far.” *City of Abilene v. FCC*, 164 F.3d 49, 53 (D.C. Cir. 1999).

14 **D. The Values Act Is Not Impliedly Preempted.**

15 Unable to rely on any clear statement from Congress, the government advances the
16 sweeping and novel theory that California is *impliedly* preempted from declining to administer
17 immigration law. This claim fails as well. First, as explained in Part I.B, Congress cannot
18 preempt a State from opting out of a federal regulatory program—whether expressly or
19 impliedly. Second, even if it could, Congress could not take that grave step silently, through
20 implication only. Part I.D.1. Third, Congress has not shown an intention to impliedly preempt
21 the Values Act sufficient to overcome the general presumption against preemption. Part I.D.2.

23 **1. The Values Act Cannot Be Subject to Implied Preemption.**

24 Even if Congress could preempt a State from opting out of a federal program, it would
25 have to do so *explicitly*. This is a dispositive basis to reject the obstacle preemption claim.

26 Implied preemption in this context would violate the rule that federal intrusions into core
27 state prerogatives require “unmistakably clear” textual statements. *Gregory*, 501 U.S. 460.
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1 Congress must be “explicit” if it wants to “readjust the balance of state and national authority.”
2 *Bond v. United States*, 134 S. Ct. 2077, 2089 (2014) (quotation marks and alteration omitted);
3 *see BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994) (requiring “explicit” statement to
4 displace state land title law). That principle forecloses the argument that Congress can *silently*,
5 through implication only, “alter[] the State’s governmental structure” and preempt States from
6 exercising fundamental sovereign rights, like declining a federal program. *City of Abilene*, 164
7 F.3d at 52. Courts do “not simply *infer* this sort of congressional intrusion.” *Id.* (emphasis
8 added). Where Congress has made no explicit statement of preemptive intent—as the
9 government’s implied preemption theory assumes—there is no assurance that Congress “has in
10 fact faced” the gravity of interfering with the “substantial sovereign powers” of the States.
11 *Gregory*, 501 U.S. at 461 (quotation marks omitted).
12

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14 Moreover, the government’s obstacle preemption claim cannot be squared with the
15 Supreme Court’s anti-commandeering cases, because it would eliminate States’ prerogative to
16 opt out of every federal scheme that invites state participation.

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18 For instance, in *Printz*, the Brady Act relied on States to conduct background checks
19 during the initial stage of the statute’s gun-control scheme. 521 U.S. at 903-04, 931-32 (scheme
20 was “most efficiently administered” with the help of local law enforcement). Nonetheless, the
21 Supreme Court held that law enforcement officers could refuse to spend time conducting federal
22 background checks, even though that meant the Brady Act could not function as Congress
23 intended. Under the government’s theory, however, the sheriffs in *Printz* were impliedly
24 preempted from refusing those background checks, because the statute “presume[d]” that they
25 would provide such assistance. PI Mem. 24.
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27 The same was true in *NFIB*. In the Affordable Care Act, Congress “assumed that every
28 State would participate in the Medicaid expansion.” *NFIB*, 567 U.S. at 587. Indeed, under that

1 scheme, Congress’s goal of expanding Medicaid *could not* be realized without the help of States
2 and their agencies. *Id.* at 541-42. Yet the Supreme Court held that States were nonetheless free
3 “to reject Congress’s desired policy” and decline to take part. *Id.* at 581. The government’s
4 theory, however, would preempt state policies declining to expand Medicaid, since those policies
5 would “impede[]” HHS in administering Medicaid as Congress intended. PI Mem. 27.
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7 It is therefore unsurprising that the government has not found a single case applying
8 obstacle preemption to a State’s policy limiting its own agents’ participation in a federal
9 program. *See Geier v. Am. Honda Motor Co.*, 529 U.S. 861 (2000) (private cause of action);
10 *Int’l Paper Co. v. Ouellette*, 479 U.S. 481 (1987) (same); *Fidelity Fed. Sav. & Loan Ass’n v. de*
11 *la Cuesta*, 458 U.S. 141 (1982) (common-law property rule); *Hines v. Davidowitz*, 312 U.S. 52
12 (1941) (law regulating noncitizens directly). The government’s only other obstacle preemption
13 cases are categorically different from this one. In *Arizona*, 567 U.S. 387, none of the challenged
14 statutes exercised a State’s constitutional prerogative to *limit* its participation in a federal
15 program. Just the opposite: The Court in *Arizona* struck down three state laws that invaded
16 *federal* prerogatives by regulating immigrants directly. *See id.* at 403 (registration requirement);
17 *id.* at 406-07 (employment prohibition); *id.* at 410 (authority to arrest immigrants). The same
18 was true in *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006 (9th Cir. 2013). In other words, these
19 cases involved State actions that were preempted because they involved *too much* state
20 regulation of immigrants, which Congress is free to prohibit (whether expressly or impliedly).
21 They did not involve the States’ prerogative to opt out of federal deportation programs.
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24 The government thus asks this Court to be the first to hold that a State can be impliedly
25 preempted from exercising the prerogatives recognized in *New York*, *Printz*, and *NFIB*. The
26 Court should refuse to take that unprecedented step.
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2. Even If It Could, the INA Does Not Impliedly Preempt the Values Act.

Even if Congress could impliedly preempt States from declining to administer federal programs, it has not done so here. “In preemption analysis, courts should assume that ‘the historic police powers of the States’ are not superseded ‘unless that was the clear and manifest purpose of Congress.’” *Arizona*, 567 U.S. at 400. This presumption, like the other principles in this case, rests on “respect for the States as independent sovereigns in our federal system.” *Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009) (quotation marks omitted).

The government argues that the Values Act is preempted because it “impedes the enforcement of the immigration laws” by denying DHS the use of California’s employees and resources. PI Mem. 29, 27. To support its entitlement to those resources, the government cites statutes that direct DHS—but not the States—to detain and remove noncitizens after their release from criminal custody. *See, e.g.*, 8 U.S.C. §§ 1226(c)(1), 1231(a)(2), 1231(a)(4).

Those assertions cannot overcome the presumption against preemption. “The Supreme Court has warned that obstacle preemption analysis does ‘not justify a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives.’” *Atay v. Cty. of Maui*, 842 F.3d 688, 704 (9th Cir. 2016). Even if the Tenth Amendment could allow preemption here, the Values Act is not preempted simply because DHS would find it more convenient if California chose to lend more assistance.

Far from overriding States’ choices, Congress has made clear throughout the INA that it wanted any state participation to be *voluntary*. *See* 8 U.S.C. § 1357(g)(1) (providing for participation by “agreement”); *id.* § 1357(g)(9) (such “agreement” is not “require[d]”); *id.* § 1226(d)(3) (requiring federal “assistance” at the “request” of a State). Notably, this includes the INA provision that specifically addresses notification about release dates, which lets *States* decide whether to “request[]” this form of cooperation. 8 U.S.C. § 1357(d)(3); *see Arizona*, 567

1 U.S. at 410. Congress has also repeatedly confirmed that States may limit their officers’
 2 participation in immigration enforcement. *See id.* § 1357(g)(1) (allowing participation “to the
 3 extent consistent with State and local law”); *id.* § 1252c(a) (similar); *id.* § 1103(a)(10)
 4 (participation only “with the consent of” state officials). These provisions show that Congress
 5 intended to *preserve*, not preempt, States’ choices about how much to participate. *See*
 6 *Chinatown Neighborhood Ass’n v. Harris*, 794 F.3d 1136, 1143 (9th Cir. 2015) (such provisions
 7 “undermine[] any inference of interference with Congress’s method”).

9 The one place where Congress did restrict States’ options—§ 1373—weighs strongly
 10 against implied preemption, because it shows that Congress knew how to preempt policies that it
 11 thought “posed an obstacle to its objectives.” *Wyeth*, 555 U.S. at 574-75 (relying on inapplicable
 12 express preemption clause as “powerful evidence” against implied preemption). Fully cognizant
 13 of immigration agents’ statutory duties, Congress chose only to preempt state policies that limit
 14 the sharing of “citizenship or immigration status” information. 8 U.S.C. § 1373. Congress has
 15 consistently refused to go further, rejecting numerous proposals to expand § 1373.¹⁵ Thus,
 16 whatever its constitutionality, § 1373’s intentional narrowness “creates a ‘reasonable inference’
 17 that Congress did not intend to preempt state . . . laws that do not fall within [its] scope.” *Atay*,
 18 842 F.3d at 704 (quoting *Freightliner Corp. v. Myrick*, 514 U.S. 280, 288 (1995)).¹⁶

21 Moreover, the government’s obstacle preemption claim would render § 1373 entirely
 22 unnecessary. If it were really true that the INA *already* implicitly preempted state policies that
 23 “restrict[] state and local officials . . . from cooperating” with DHS, PI Mem. 25, there would
 24

25 ¹⁵ *See, e.g.*, H.R. 2964, 114 Cong., § 5 (2015); H.R. 2278, 113 Cong., § 114 (2013); H.R. 6789,
 110th Cong., § 905 (2008).

26 ¹⁶ To be clear, § 1373 does not “foreclose[]” or place a “special burden” on implied preemption
 27 principles. *Geier*, 529 U.S. at 872-73. But it is strong evidence that Congress did not intend
 28 preemption here, because it shows that Congress “knew how” but did not “expressly forbid state
 laws” like the Values Act. *Chicanos Por La Causa v. Napolitano*, 558 F.3d 856, 867 (9th Cir.
 2009).

1 have been no need to enact § 1373, which singles out a small subset of those same policies for
2 preemption. The government’s theory thus fails for the additional reason that it “would render
3 statutory text superfluous.” *Clark v. Rameker*, 134 S. Ct. 2242, 2249 (2014).

4
5 In the face of this textual evidence against implied preemption, the removal statutes the
6 government invokes utterly fail to make preemption clear and manifest. Section 1231(a)(4), for
7 instance, simply prohibits removal while a noncitizen is serving a criminal sentence. PI Mem.
8 24. It serves to *protect* States’ criminal justice systems from federal interference. *See Garcia v.*
9 *San Antonio MTA*, 469 U.S. 528, 552-54 (1985) (explaining how Congress “ensures that laws
10 that unduly burden the States will not be promulgated”). That protection cannot be turned on its
11 head to force States to sacrifice their own policing goals in service of federal ends.

12
13 Likewise, 8 U.S.C. § 1231(a)(1) directs *federal* officers to remove people within 90 days
14 of a final removal order. It says nothing about what *States* must do or not do. Moreover, it bears
15 no relationship at all to the vast majority of releases from state custody: A person’s “release date
16 from state or local criminal custody” can “trigger” a 90-day removal period (PI Mem. 24) when
17 the person receives a final removal order while in state custody. *Id.* § 1231(a)(1)(B)(iii). Yet
18 that rarely, if ever, happens in California’s local jails. *See* Dep’t of Justice, *Institutional Hearing*
19 *Program*, at 2, Jan. 2018, <https://bit.ly/2rfubHM>. In other words, there is essentially no one in
20 jails subject to the Values Act whose release date triggers a 90-day removal period.

21
22 Similarly, § 1226(c)(1) simply directs DHS, not the States, to detain certain noncitizens
23 once they complete their criminal sentences. The Values Act leaves DHS free to arrest, detain,
24 and remove noncitizens, just without certain assistance from California—assistance the State has
25 a constitutional prerogative to decline. The government argues that without state aid, some
26 people will not be arrested by DHS upon release from criminal custody. PI Mem. 24, 27. But
27 even if that happens, and DHS does not arrest them until later, the only consequence is that they
28

1 become eligible for a bond hearing. *See Preap v. Johnson*, 831 F.3d 1193, 1206 (9th Cir. 2016)
2 (holding that *mandatory* detention only applies to people DHS arrests “promptly after their
3 release from criminal custody”), *cert. granted*, 138 S.Ct. 1279. The possibility of a bond hearing
4 in some cases is a slender reed on which to base the government’s preemption argument.
5

6 Even that connection between the Values Act and § 1226(c) is minimal. Noncitizens are
7 only subject to detention under § 1226(c) if they have committed an enumerated crime, and the
8 Values Act’s exceptions allow for transfer and notification based on long list of crimes. Cal.
9 Gov’t Code § 7282.5. The government’s § 1226(c) argument therefore only applies to the
10 narrow set of people who have committed crimes that trigger § 1226(c) but not a Values Act
11 exception. Such occasional and hypothetical scenarios do not establish preemption. *See Harris*,
12 794 F.3d at 1142 (no preemption based on “the prospect of a ‘modest impediment’ to general
13 federal purposes”). And in all events, they cannot justify the facial relief the government seeks.
14 *See Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571, 579 & n.3 (9th Cir. 2008)
15 (en banc) (no facial relief unless challenged provision is preempted under all circumstances).
16

17 A final flaw in the government’s obstacle theory is that it lacks meaningful limits. For
18 instance, the government fails to explain *who* it thinks is preempted from declining assistance—
19 just policymakers, or also individual employees. *See* PI Mem. 24 (“The INA presumes that the
20 United States will be made aware of the release date.”). If each employee were preempted from
21 declining to help DHS, the result would be indisputable commandeering: every time DHS asks
22 for help, the state employee would be unable to say no. But if only policymakers were
23 preempted, the exact same action—state employees not helping DHS—would be either
24 preempted or not preempted depending entirely on who made the decision. Non-assistance
25 chosen by employees would be allowed, while non-assistance chosen by policymakers would be
26
27
28

1 preempted. Nothing in § 1226 or § 1231 makes that result “clear and manifest.” *Rice v. Santa*
2 *Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

3 Nor does the government explain *which* actions it thinks States are required to allow.
4 Many forms of aid might help DHS arrest people after their release from state custody. If States
5 were truly preempted from withholding anything that facilitates those arrests, States could be
6 forced to let their officers make immigration arrests, give DHS jail space, and more. The
7 government’s reasoning would herald a remarkable intrusion into state criminal justice systems.
8

9 In sum, the government has not carried its heavy burden to overcome the presumption
10 against preemption. Even if implied preemption were possible here, Congress instead chose to
11 preserve States’ discretion. Congress’s directions to DHS do not require the States to help.
12

13 **E. The Values Act Does Not Violate the Intergovernmental Immunity Doctrine.**

14 The immunity doctrine cannot, consistent with the Tenth Amendment, prevent a State
15 from choosing not to administer a federal program. That would wipe out States’ most essential
16 Tenth Amendment prerogative, and it would do so *automatically*, without any indication of
17 preemptive intent from Congress. Unsurprisingly, the government has not cited a single case
18 that applies the immunity doctrine to a State’s decision to opt out of a federal program.
19

20 The government argues that the Values Act violates intergovernmental immunity because
21 it “treat[s] federal immigration officials worse than other entities.” PI Mem. 31. But that is true
22 every time a State exercises its anti-commandeering prerogative. After *Printz*, for example, a
23 sheriff who refused Brady Act background checks would be treating ATF officials worse than
24 others who asked for background checks. If the government were right, Congress could force
25 States to administer federal programs simply by seeking assistance of the same sort that States
26 provide to other entities. That does not square with *Printz*, *New York*, *NFIB*, or the absolute
27 “prerogative to reject Congress’s desired policy” that they recognize. *NFIB*, 567 U.S. at 581.
28

1 At bottom, the government misses the limited purpose of intergovernmental immunity.
 2 The immunity doctrine is rooted in the understanding that “the power to tax” entails the “power
 3 to destroy.” *McCulloch v. Maryland*, 17 U.S. 316, 327 (1819). It therefore ensures that States
 4 do not “directly obstruct” federal activities, whether “through regulation or taxation.” *North*
 5 *Dakota v. United States*, 495 U.S. 423, 437-38 & n.9 (1990) (plurality op.) (quotation marks
 6 omitted). But when a State decides not to administer a federal scheme—as California has done
 7 here—it is not *obstructing* that scheme; it is simply declining to contribute its own assistance.
 8 The State’s prerogative to make that decision is equally rooted in our constitutional order. *See*
 9 *Printz*, 521 U.S. at 919-22. The Supreme Court has accordingly recognized that immunity must
 10 “protect *each* sovereign’s governmental operations from undue interference by the other.” *Davis*
 11 *v. Mich. Dep’t of Treas.*, 489 U.S. 803, 814 (1989) (emphasis added); *see also N. Dakota*, 495
 12 U.S. at 435 (similar).¹⁷

15 II. The Government Faces No Irreparable Harm.

16 The government cannot establish irreparable harm. *See Caribbean Marine Servs. v.*
 17 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (reversing preliminary injunction on this basis).
 18 First, the government waited a full five months after the Values Act’s enactment to file this
 19 lawsuit, which “implies a lack of urgency and irreparable harm.” *Oakland Tribune, Inc. v.*
 20 *Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1377 (9th Cir. 1985). Second, the Values Act does not
 21 obstruct DHS’s own operations; the agency remains free to arrest, detain, and deport. The Act
 22 only restricts how much assistance California will provide—assistance that the government has
 23 no right to demand. Third, the suggestion that the Act “severely impedes” the government’s
 24

25
 26 ¹⁷ Even if the immunity doctrine could have some conceivable application here, there are
 27 “significant differences” between immigration enforcement and criminal enforcement. *Davis*,
 28 489 U.S. at 816. Immigration enforcement instills fear and destroys cooperation with state
 residents in a way that finds no parallel in ordinary law enforcement. Cal. Gov’t Code § 7284.2
 (listing its unique harms). Under those circumstances, the State’s decision to treat immigration
 differently would be fully “justified” even if immunity doctrine applied. *Davis*, 489 U.S. at 816.

1 ability to arrest “dangerous criminal aliens,” PI Mem. 35, 36, is meritless; the Act carves out
2 exceptions for a long list of criminal offenses. Cal. Gov’t Code § 7282.5.

3 **III. An Injunction Would Severely Harm Intervenor-Defendants and the Public.**

4 An injunction would cause numerous injuries to Intervenor-Defendants, their members,
5 and the public. As explained in the motion to intervene, an injunction would prevent domestic
6 violence survivors and other crime victims from accessing critical public services, like police
7 protection, education, and healthcare.¹⁸ It would force the Partnership, its members, and
8 CHIRLA to divert resources to outreach, education, and lobbying. Mot. to Intervene, at 10. And
9 it would drive a wedge between California’s residents and their elected officials. The People of
10 California have determined that devoting their own resources to immigration enforcement harms
11 their interests. Cal. Gov’t Code § 7284.2. The Court should not enjoin that sovereign decision.
12
13

14 **CONCLUSION**

15 The Court should deny the motion for preliminary injunction.

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Respectfully submitted,

/s/ Spencer E. Amdur

Spencer E. Amdur (SBN 320069)

Cody H. Wofsy (SBN 294179)

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

39 Drumm Street

San Francisco, CA 94111

(415) 343-0770

samdur@aclu.org

cwofsy@aclu.org

17
18 Julia Harumi Mass (SBN 189649)
19 Angelica H. Salceda (SBN 296152)
20 ACLU FOUNDATION OF NORTHERN
21 CALIFORNIA
22 39 Drumm Street
23 San Francisco, CA 94111
(415) 621-2493
jmass@aclunc.org
asalceda@aclunc.org

24 Jessica Karp Bansal (SBN 277347)
25 NATIONAL DAY LABORER
26 ORGANIZING NETWORK
674 S. La Fayette Park Place

Michael Kaufman (SBN 254575)

Jennifer Pasquarella (SBN 263241)

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

27 ¹⁸ See Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of*
28 *Police*, L.A. Times, Oct. 9, 2017, <https://lat.ms/2gqs93>; Queally, *Latinos Are Reporting Fewer*
Sexual Assaults Amid a Climate of Fear, L.A. Times, Mar. 21, 2017, <https://lat.ms/2nPwdva>.

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27
28

Los Angeles, CA 90057
(213) 380-2214
jbansal@ndlon.org

Angela Chan (SBN 250138)
ASIAN AMERICANS ADVANCING
JUSTICE -
ASIAN LAW CAUCUS
55 Columbus Avenue
San Francisco, CA 94404
(415) 848-7719
angelac@advancingjustice-alc.org

Bardis Vakili (SBN 247783)
ACLU FOUNDATION OF SAN DIEGO
& IMPERIAL COUNTIES
P.O. Box 87131
San Diego, CA 92138-7131
(619) 398-4485
bvakili@aclusandiego.org

1313 West 8th Street
Los Angeles, CA 90017
(213) 977-5232
mkaufman@aclusocal.org
jpasquarella@aclusocal.org

Omar C. Jadwat*
Lee Gelernt*
Mahrah Taufique*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2660
ojadwat@aclu.org
lgelernt@aclu.org
irp_mt@aclu.org

Counsel for Intervenor-Defendants
**pro hac vice application forthcoming*