

Agenda

Group/Meeting Name: Economic Opportunity Council (EOC) Business Meeting

Date: 11/08/2018 **Time: From:** 6:00 PM **To** 8:00 PM

Location: 1470 Civic Ct. Suite 200, Concord 207

Meeting Leader: Renee Zeimer, Chair

Purpose: To Conduct EOC Monthly Meeting

The Economic Opportunity Council will provide reasonable accommodations for persons with disabilities planning to participate in EOC meetings. Please contact EOC Staff at least 24 hours before the meeting at (925) 681-6311.

Desired Outcome: By the end of this meeting, we will:

Understand the desired outcomes and ground rules for this meeting so that we accomplish our meeting objectives in a timely and efficient manner.
Receive any public comments so that the public has an opportunity to provide input and we are knowledgeable of the community's concerns and/or interests for potential inclusion on future agenda.
Discussion on newly approved EOC bylaws so that members are informed of new requirements going into effect.
Review and approve the October 11, 2018 Business Meeting minutes.
A review and approval of the 2019-2020 Community Services Block Grant (CSBG) Budget so that the members are fully informed.
A review and approval of the 2019-2020 CSBG funded programs so that members are fully informed.
Recommendation to the board to support the Amicus brief regarding the SB54 challenge.
Receive the Community Services Bureau (CSB) Director's Report, EOC Chair, Administrative and EOC member's reports so that we are informed of activities and have identified appropriate next steps.
List next steps so that everyone is aware of their assigned tasks, upcoming meetings, and deadlines.
Evaluate the meeting.

Agenda			
What	How	Who	Time
1. Review Desired Outcomes & Ground Rules	Present Clarify Check for Understanding	Chair	5 Minutes
2. Public Comment	Present	Members of the Public	2 Minutes
3. Approved EOC Bylaws	Present Clarify Check for Understanding	Group	20 Minutes
4. Action: ➤ Review and approval of the October 11, 2018 Business Meeting minutes	Present Draft Check for Agreement	Secretary	10 Minutes

Agenda			
What	How	Who	Time
5. Action: ➤ 2019-2020 CSBG Budget	Present Clarify Check for Understanding	Fiscal Chair, Ajit Kaushal/CSB Staff	15 Minutes
6. Action: ➤ 2019-2020 CSBG awarded Programs	Present Clarify Check for Understanding	Group	15 Minutes
7. Action: ➤ Amicus Brief	Present Clarify Check for Understanding	Chair, Renee Zeimer/Group	10 Minutes
8. Reports: <ul style="list-style-type: none"> • EOC Chair • Fiscal-Actual • CSB Staff <ul style="list-style-type: none"> - CalCAPA • EOC Members <ul style="list-style-type: none"> ○ Policy Council updates 	Present	Group	10 Minutes 5 Minutes 10 Minutes 10 Minutes
9. Next steps	Present Clarify Check for Understanding	Group	5 Minutes
10. Evaluate the Meeting	Plus/Delta	Group	3 Minutes

THE ECONOMIC OPPORTUNITY COUNCIL
OF
CONTRA COSTA COUNTY
BYLAWS

Table of Contents

I. Name2

II. Authority.....2

III. Officers2

IV. Scope of Responsibilities3

V. Membership.....3

VI. Standards of Conduct5

VII. Terminations5

VIII. Membership Vacancies.....6

IX. Reimbursement.....6

X. Administration and Staff.....6

XI. Rules.....6

XII. Meeting and Meeting Notices.....6

XIII. Amendments.....7-8

THE ECONOMIC OPPORTUNITY COUNCIL
OF
CONTRA COSTA COUNTY
BYLAWS

I. Name

The Contra Costa County Economic Opportunity Council (EOC) is the tripartite board of the Community Action Agency (CAA) responsible for administering the Community Services Block Grant (CSBG). The Employment and Human Services Department's (EHSD) Community Services Bureau (CSB) is the Federal and State recognized public entity for the Community Action Agency (CAA) of Contra Costa County.

II. Authority

The Economic Opportunity Council of Contra Costa County was created under the Economic Opportunity Act of 1964, as amended, and the Community Services Administration Act of 1974, as amended, the Community Services Block Grant Act of 1981, as amended and the Coats Human Services Reauthorization Act of 1998, as amended. Federal CSBG Act 42 U.S.C. § 9910 states the entity shall administer the community services block grant program through a tripartite board able to participate actively in the development, planning, implementation, and evaluation of the CSBG program. Contra Costa County Board Resolution 3671 pursuant to the Economic Opportunity Act of 1964 created the legal authority for this body.

III. Officers

The officers of the EOC shall be the Chairperson, Vice-Chairperson and Secretary. Officers shall be elected annually at the September meeting.

A. Chairperson

The Chairperson shall preside at all EOC meetings. He or she has the authority to call special meetings and make appointment to standing and ad-hoc committees. The Chairperson shall enforce the observance of order and decorum among the members. Meetings shall be conducted in accordance with all applicable federal, state, and local laws.

B. Vice-Chairperson

The Vice-Chairperson shall assist the Chairperson and assume all the obligations and authority if the Chairperson is absent.

C. Secretary

The Secretary shall declare whether a quorum exists at the beginning of each meeting. The Secretary shall monitor attendance. He or she shall read any correspondence at EOC meetings. He or she shall check for any corrections or clarification on previous month's minutes, and seek approval of minutes. The Secretary shall also help prepare minutes of the meeting and ensure that the meeting is recorded. Staff assistance shall be provided.

D. Election of Officers

The officers shall be elected annually at the September EOC meeting. Nominations for the officers shall be made by the general membership. Should any elective office become vacant, the Chairperson shall appoint a member to fill the vacancy for the remainder of the unexpired term and the EOC shall approve the appointment.

THE ECONOMIC OPPORTUNITY COUNCIL
OF
CONTRA COSTA COUNTY
BYLAWS

E. Roles and Responsibility of the Executive Committee

Executive officers shall attend all EOC and Executive Committee meetings. They shall plan the general meetings, review the previous month's minutes and set the agenda. The Executive Committee may conduct emergency meetings if the majority of the members cannot meet. A quorum of 51% of current Executive Committee members, excluding vacancies, will be required to make a program recommendation on behalf of the general membership. In this case, all Executive Committee decisions must be ratified by the full body of the EOC at the next scheduled meeting.

IV. Scope of Responsibilities

As set forth in the Economic Opportunity Act of 1964, as amended, the Community Services Block Grant Act of 1981 and the Coats Human Services Reauthorization Act of 1998, as amended, and by the actions of the Contra Costa County Board of Supervisors, the responsibilities of the EOC are:

- A. To make recommendations to Board of Supervisors (BOS) for EOC membership.
- B. To hold public hearings for the Community Action Plan of CSB.
- C. To participate in subcontractor funding process as directed by program guidance.
- D. To conduct at least one (1) site monitoring visit to a subcontractor.
- E. To submit an Annual Report to the BOS on EOC activities accomplishments, membership attendance, required training/certification, proposed work plan or objectives.
- F. To review fiscal and programmatic reports submitted by staff regarding the performance of CSBG subcontractors and the Weatherization programs.
- G. To receive and review each month the budget, minutes, and other reports or materials prepared by staff.

V. Membership

A. The EOC shall consist of fifteen (15) members, divided equally among three sections, as follows:

1. Public Sector

The EOC Public Sector shall include five members of the Contra Costa County Board of Supervisors. Each Supervisor may appoint a delegate to serve and vote in his or her place. Delegate appointments must be approved by the Board of Supervisors

2. Low-Income Sector

a) The EOC Low Income Sector shall include five members who represent the low income population.

b) To be eligible for appointment, a person must reside in a Contra Costa County low income community or represent low income residents.

c) All persons seeking appointment must submit an application to the Clerk of the Board.

d) The EOC may recommend for appointment up to two alternate Low Income Sector members, who shall serve and vote in place of Low Income Sector members who are absent from, or who are disqualifying themselves from participating in a meeting of the EOC.

THE ECONOMIC OPPORTUNITY COUNCIL
OF
CONTRA COSTA COUNTY
BYLAWS

- e) Alternates must meet the same requirements as a regular Low Income Sector member.
- f) All appointments must be approved by the Board of Supervisors.
- g) Low-income representatives and alternates may be reimbursed for reasonable expenses (see Reimbursement Section 9).

3. Private/Non-Profit Sector

- a) The EOC Private/Non-Profit Sector shall include five members who represent the private sector, non-profit organizations and public services agencies within Contra Costa County.
- b) All persons seeking appointment must submit an application to the Clerk of the Board.
- c) The EOC may recommend for appointment up to two alternate Private/Non-Profit Sector members, who shall serve and vote in place of Private/Non-Profit Sector members who are absent from, or who are disqualifying themselves from participating in a meeting of the EOC.
- d) Alternates must meet the same requirements as a regular Private/Non-Profit Sector member.
- e) All appointments must be approved by the Board of Supervisors.

B. Seat Terms

1. The term of office for Low-Income and Private/Non-Profit Sector members of the EOC shall be for two (2) years. Low-Income or Private/Non-Profit Sector may serve no more than three (3) consecutive full terms. Low Income Sector and Private/Non-Profit Sector members may seek reappointment by submitting applications for review to the Clerk of the Board within a minimum of sixty (60) days prior to the end of their term. Members who fail to submit a completed application with in the specified time period must reapply as a new applicant.
2. Public Sector members shall serve terms that are equal in duration to their term as a member of the Board of Supervisors or until withdrawn from delegation by the supervisor. Delegates serve four (4) year terms for the duration of the Board member term of office or until withdrawn by the supervisor.
3. **Unscheduled Vacancies:** Terms of the EOC shall begin on July 1st and end on June 30th. Should any seat become vacant during its term, the person appointed to fill that position shall serve for the unexpired portion of that term.

VI. Standards of Conduct

A. Standards

THE ECONOMIC OPPORTUNITY COUNCIL
OF
CONTRA COSTA COUNTY
BYLAWS

1. All members, alternates and designated staff shall prioritize service to the poor over service to oneself.
2. EOC members are held to the same policies and procedures stated in the county's code of conduct at the following website "Understanding Ethics & Conflict of Interest Codes"
<http://www.contracosta.ca.gov/6191/Understanding-Ethics-Conflict-of-Interes>.

B. Conflict of Interest

1. All members, alternates and designated staff shall disclose potential conflicts of interest by filing an annual Statement of Economic Interest (FORM 700) and all other necessary and required documents.
1. Where there is actual or potential conflict of interest, members will recuse themselves from the discussion and/or action taken.

VII. Terminations

An EOC member may be terminated from the body by a recommendation to the Board of Supervisors for removal.

A. Attendance

1. The EOC schedules 10 business meetings annually. A quorum is necessary to conduct the business of the board. Two absences from the regularly scheduled EOC business meetings in a rolling 12-month period will warrant inquiry from the Executive Committee. Three absences from the regularly scheduled business meeting in a 12-month period will result in a recommendation to the Board of Supervisors for removal from the EOC

B. Misconduct

1. Any members who have been called out of order by the chair more than once will be removed from the meeting for misconduct.
2. Any business decision up to the point of removal will stand.
3. Due process in accordance with county guidelines will be followed. Refer to "Understanding Ethics & Conflict of Interest Codes <http://www.contracosta.ca.gov/6191/Understanding-Ethics-Conflict-of-Interes>.
4. For reasons of misconduct, a member will be recommended to the Board of Supervisor for removal by majority vote of EOC members.

THE ECONOMIC OPPORTUNITY COUNCIL
OF
CONTRA COSTA COUNTY
BYLAWS

VIII. Membership Vacancies

A. Scheduled Vacancy

A scheduled vacancy occurs when a member's term expires. A scheduled vacancy can be filled after an open recruitment process and upon approval by the Board of Supervisors.

B. Unscheduled Vacancy

An unscheduled vacancy occurs when a member leaves prior to the end of their seat term. Staff will notify the Board of Supervisors, of any unscheduled vacancies. The Clerk of the Board will post the vacancy for a minimum of ten business days. All persons seeking appointment must follow membership protocols.

IX. Reimbursement

- A. The Economic Opportunity Council is responsible for providing, if necessary, reimbursements for reasonable expenses incurred by the low income sector representatives and alternates (i.e. transportation).
- B. Low Income representatives and alternates will be reimbursed for mileage according to standard rates when attending approved activities related to the Economic Opportunity Council.

- 1. Rates

All reimbursement rates are based on Administrative Bulletin #111.8 (dated 7-13-2010) and are subject to change.

- 2. Procedures for Requesting Reimbursement

Reimbursement request must be made using Demand for D-15 with original receipts attached. Reimbursement is made on a monthly basis.

X. Administration and Staff

CSB staff will provide technical and administrative program management and support to the EOC. Staff will ensure compliance with all local, state and federal requirements.

XI. Rules

The EOC may adopt such rules and procedures as are necessary to conduct its business. The EOC shall be governed in its activities by all applicable laws, regulations and instructions.

XII. Meeting and Meeting Notices

Meeting notices shall comply with the Brown Act, Contra Costa County's Better Government Ordinance, and all applicable local and state meetings laws.

A. General Meetings

General meetings of the EOC shall be held monthly at a time and location convenient for the members and the general public. Each September, the EOC will set its general meeting schedule for

THE ECONOMIC OPPORTUNITY COUNCIL
OF
CONTRA COSTA COUNTY
BYLAWS

the year. The Chair, in consultation with the Executive Committee, may cancel a meeting if there is no business to warrant a meeting.

B. Special Meetings

A special meeting may be called at any time by the Chairperson or by a majority of the members of the EOC in accordance with the Brown Act (public meeting law) and Contra Costa County's Better Governance Ordinance.

C. Quorum

A quorum is 51% of the fifteen authorized seats.

D. Voting

1. Voting on resolutions and all other matters shall be by roll call vote of members in attendance. When the vote is held, the ayes, nays, and abstentions shall be entered into the minutes. Proxy voting is not permitted.

2. Alternates shall be designated as Alternate number 1 and Alternate number 2 for purposes of voting.

E. Agenda

The agenda shall comply with the Brown Act and Contra Costa County's Better Government Ordinance and all applicable laws.

F. Executive Committee

The Executive Committee shall consist of the Chairperson, the Vice-Chairperson and the Secretary.

XIII. Amendments

A. Amendments of ByLaws

These bylaws may be amended by two-thirds (2/3) vote of the current membership of the EOC. All amendments must be approved by the Board of Supervisors.

B. Notice of Amendment

Notice of proposed bylaws amendments must be presented in writing to the EOC and agenzized at a general meeting. The proposed amendments may be voted upon at the next general meeting of the EOC. The agenda for the meeting at which the proposed amendment is to be voted upon shall contain an item entitled "Proposed ByLaws Amendment."

C. Public Access to EOC Records

The EOC shall make available to the public all records as required by the Brown Act, Contra Costa County's Better Government Ordinance, the Public Records Act, and other applicable laws.

D. Dissolution

Dissolution of the EOC shall be affected in accordance with applicable law.



Economic Opportunity Council (EOC) Business Meeting Minutes

Location: 1470 Civic Court, Suite 200, Concord CA 94520



Date: 10/11/2018 **Time Convened:** 6:14 PM **Time Terminated:** 8:00 PM **Recorder:** Mele Tupou

Attendees: Samuel Houston (6:30 pm), Tanya Brown, Armando Morales, Devlyn Sewell, Renee Zeimer, Ajit Kaushal, Dawn Miguel, Tricia Piquero, Acaria Almeida, Juan Pablo Benavente

Absentees: Lauren Babb (Excused)

Staff: Camila Rand, Nancy Sparks, Mele Tupou Lolohea, Christina Reich (Excused)

Quorum: Yes

TOPIC	RECOMMENDATION / SUMMARY
Review Desired Outcomes	<ul style="list-style-type: none"> Chair Zeimer called the meeting to order at 6:15 PM. Kaushal read the desired outcomes.
Public Comment	<ul style="list-style-type: none"> None present
<p>Action: Review and approval of the draft September 13, 2018 Business meeting minutes</p>	<ul style="list-style-type: none"> The group reviewed the draft September 13, 2018 Business meeting minutes with no changes. <p>A motion to approve the draft September 13, 2018 Business meeting minutes was made by Piquero and second by Kaushal.</p> <p>The motion passed with EOC members voting as follows: Ayes: Morales, Almeida, Sewell, Zeimer, Kaushal, Piquero, Brown, Miguel Nays: None Abstentions: Benavente Absent: Babb, Houston</p>
<p>➤ California Community Action Partnership Association (CalCAPA) Conference</p>	<ul style="list-style-type: none"> Zeimer thanked Sparks for applying for the CalCAPA stipend, which was in the amount of \$1500.00. Zeimer encouraged more members to attend now that there is extra funding. Sparks stated there is a total budget of \$5,426.00 which also includes what was previously allocated when building the 2018 budget. At the moment, there were 5 travel requests that were approved by the County Counsel, 2 staff and 3 members. Zeimer stated after the Executive Committee Meeting, Tupou sent out an Urgent message to everyone regarding CalCAPA. Tupou heard back from a couple of members who expressed interest in attending.

TOPIC	RECOMMENDATION / SUMMARY
	<ul style="list-style-type: none"> • Sparks stated there is enough funding for members, who will be attending the conference all three days, to stay overnight. • The following members are interested in attending and would like to stay at the hotel: <ul style="list-style-type: none"> ○ Samuel Houston ○ Dawn Miguel ○ Armando Morales ○ Tanya Brown <p>A motion to approve 8 members, at the most 7 registrations, to attend the CalCAPA conference was made by Zeimer and second by Almeida.</p> <p>The motion passed with EOC members voting as follows: Ayes: Houston, Morales, Almeida, Sewell, Zeimer, Kaushal, Piquero, Brown, Miguel Nays: None Abstentions: None Absent: Babb</p>
EOC Tri Fold	<ul style="list-style-type: none"> • Piquero shared a sample of the CSB Tri Fold Brochure sample so that the EOC could have an idea of how the trifold will look. Piquero discussed the content and asked for input from the members on what they wanted added to the trifold brochure. • Piquero recommended the brochure give light to the organizations that the EOC is working with. • Zeimer stated the high priority areas could take the lead showing the EOC and other community partners working together from year to year. Pictures from the subcontractors could be examples of community agencies that are addressing the EOC's priority areas. • Miguel explained there is a piece in the pamphlet as a good example that explains innovated partnerships. • Zeimer explained she is struggling with two (2) things; first, looking at what we are trying to address among poor marginalize communities in the county. Second, is the hope that the EOC could provide copies to the people to connect the dots about EHSD, Community Action Partnership and EOC. She states she is confused about the Community Action Partnership logo which doesn't connect or worded to the EOC at all. • Rand mentioned that the information is already in the pamphlet and perhaps should be reworded in a clearer way. The group agreed to just reword the language. • Rand reminded the group the Trifold will be used for a long time and only redone every 10 years or so. • Piquero asked who are these brochures targeted for and what is the goal? Houston explained people between the ages of 22-50 should be the targeted audience as far as getting them to respond.

TOPIC	RECOMMENDATION / SUMMARY
	<ul style="list-style-type: none"> • Rand explained potential subcontractors, potential EOC members in the community and potential community members who need services. • Almeida suggested to have these out in booths at local events in the county. • Kaushal states that the trifold should go to those who needs services such as housing, food, and homelessness. • Staff recommended scheduling an outreach subcommittee meeting to discuss the content of the trifold.
<p>2018 Subcommittee - Update/ Assignment</p>	<ul style="list-style-type: none"> • The group reviewed the 2018 subcommittee list and Zeimer recommended that Kaushal takes over the Fiscal Subcommittee meeting as chair.
<p>Reports:</p> <ul style="list-style-type: none"> • EOC Chair -Educational • Fiscal- Actual • CSB Staff • EOC Members <ul style="list-style-type: none"> ○ Policy council updates 	<p><u>EOC Chair</u></p> <ul style="list-style-type: none"> • Zeimer shared a FESP flyer with the group containing information about “Your Vote Matters!” and asked for staff to send to subcontractors in order to get it out to clients. <p><u>Fiscal-Actual</u></p> <ul style="list-style-type: none"> • Zeimer presented the August expenditure report for the 2018 CSBG 18F-5007 contract. At the last Fiscal meeting, staff reported that the budget information reflected the increase of the 2.55% that was received. Zeimer went on to report that 67% of the budget has been expended and that we are right on target with Administrative costs. • Zeimer reported Program costs, and stated that, with the exception of subcontractors and some of the other line items that have yet to be spent, we are pretty much on budget. • Zeimer expressed how pleased she was to see that subcontractors are submitting their demands. • The CalCAPA expenses will hit the books the following month. We are projecting that the administrative projections will be spent by December of this year. As a reminder we extended the 18F-5007 contract through February 2019 to allow our subcontractors to have a full 12 months to spend their grant allocation. • Zeimer stated the group had to make a decision about the \$9,000 that needed to be distributed to all the subcontractors evenly or proportionally to their allocation. The group wanted to spilt it evenly and as a next step staff was going to come back and report if there was a way to not amend the contracts. <p><u>CSB Staff</u></p> <ul style="list-style-type: none"> • Rand reported that October is Head Start Awareness Month. Rand invited the members to check out the artwork that the children made all along the Board and Supervisors lobby in Martinez. CSB has been very active on Facebook with raising awareness around Head Start. Also, CSB will be getting visits from the State Department of Education Director of Early Childhood and the LAO (Legislative Analysis Office next month.

TOPIC	RECOMMENDATION / SUMMARY
	<ul style="list-style-type: none"> • Rand reported there will be a joint press release by Employment and Human Services Department (EHSD), Contra Costa Housing Authority, and the Health Department about the Public Charge. It is a statement saying that we are still committed to fulfilling our mission which is to serve low income families. • Rand explained that the Public Charge is what the government considered an individual who is likely to become primarily dependent on the government for subsistence. Rand went on to explain that some families are stating that their attorneys are recommending they not sign up for Head Start. They are also saying some of the programs that might be considered are Calfresh and Medi-cal. • Miguel explained there is a public comment card that will need to be filled out during the 60-day comment period. • Staff will send it out once the press release is out. • Sparks reported she spoke with Field Representative, Katie Walker, about the lengthy contract process and the concerns of the EOC around the discretionary dollars. Katie mentioned the difference with last year's discretionary contract there were three categories but this year the discretionary funds are a part of the contract therefore should support the programs for clients in the low income community. With that being said, we would still have to amend the contracts to extend the scope of work in the current contracts. • Zeimer asked has the department done any cost benefits because the hands that touch each contracts far exceeds the amount that is being added to each contract. • Sparks expressed maybe consider having a two-year contract. • Camilla added this is something Katie mentioned that having a multi-year contract will help with the contract process and allowable costs. • Zeimer explained that the allocation is year to year, the contracts would have to be amended every time we receive notice for extra funds. Zeimer mentioned she would like to have a conversation about this offline once she looks into the plus 10% float where we could increase up to 10% without amending. • Sparks mentioned that Walker will be providing staff with more information about an open resolution for future funding, but at this moment staff will have to get started with amending the current contracts. • Sparks informed the group the Request for Information (RFI) informational session was successful. There were eleven (11) agencies that attended which was more than we had in the past. All proposal packets are ready for distribution and Program Services Committee will meet on October 29 from 6 pm- 9 pm to review and recommend who the 2019-2020 subcontractors will be. • Sparks shared an update on the current EOC roster and reported 4 vacancies on the board; two in the private/non-profit and 2 in the Public sector. She went on to inform that Supervisor Gioia was interviewing and diligently trying to recruit to fill his seat on the board. Rand will email Supervisor Glover for more information on a representative, which has been vacant since 2017.

TOPIC	RECOMMENDATION / SUMMARY
	<ul style="list-style-type: none"> • Staff will post vacancy fliers on Facebook and other website to help with recruiting. <p><u>Policy Council</u></p> <ul style="list-style-type: none"> • Miguel attended training and will be at the next Policy Council meeting. She will be providing an update to the board in November. <p><u>EOC Members</u></p> <ul style="list-style-type: none"> • Miguel shared that Uber is offering free rides for people who want to vote in November’s elections. • Brown is working with the Black Women Organized for Political Action (BWOPA) who will be offering rides to residents in the west county area who would like to vote in the upcoming November elections. The group is also offering to pay volunteers to stay at the polls. • Sewell attended a Local 2 event and was mailed a button that stated “One Job should be enough”. Sewell was able to contact someone for more buttons and will distribute next month hopefully. • Morales reported on the National Alliance on Mental Illness (NAMI) training he recently took and mentioned that it gives information on how to deal with children who are experiencing mental health issues. Morales explained that he is ready to start training parents with this information and is excited to help the community. • Houston encouraged for everyone to attend a NAMI training as we all know someone or have experienced a mental breakdown. Houston also reported that he will be part of the <i>So, Do You Think You Can Dance?</i> fundraiser by Putnam Clubhouses and hopes everyone can come and watch. • Houston also reported he has been dealing with residents in the community who are under the impression that Covered California is being eliminated. Houston confirmed that Covered California is one of the strongest health care providers in the nation. Houston informed the members that open enrollment is on October 15th and asked members to share this information with others. • Zeimer reported there is a proposal for a private company that is asking the county to rezone a residential site in Walnut Creek so they can open a vitally needed short term facility to accommodate sixteen (16) people in need of mental health rehab. There will be a hearing this upcoming Monday at 1:30 pm and there are neighbors mobilizing against it because of the stigma. • Kaushal shared the Festival of lights had a great turnout and over 300 people showed up. Highlight of the night was out of twenty-two (22) states in India, people from seventeen (17) states came to support. • Piquero shared that A Place of Learning Fiesta Fundraiser was a success although not many tickets were sold due to a number of events taking place on the same day in Brentwood. She also reported that although not many tickets were sold, they were still able to raise the same amount of money. • Benavente shared that Monument Impact had their biggest event with over 150 attendees. They are looking into doing a Gala next year in February and will update the group as it develops.
<p>Next Steps:</p> <ul style="list-style-type: none"> • Planning Calendar 	<p><u>Next Steps</u></p> <ul style="list-style-type: none"> • See above in each section.

TOPIC	RECOMMENDATION / SUMMARY
Evaluate the Meeting	<ul style="list-style-type: none">• On time• Great meeting

DRAFT

2019 Community Services Block Grant				
Contract # 19F-4007				
Proposed Budget				
		Refer to Footnotes		
		A	B	C
		2018	2019 Decrease	Proposed
		Budget	-1.51%	2019 CSBG
				Budget
ADMINISTRATIVE COSTS:				
Line Item				
1	Salaries and Wages	\$ 18,235	\$ (276)	\$ 17,959
	Community Services Director	4,802	(73)	4,729
	Accountant III	13,433	(203)	13,230
2	Fringe Benefits	\$ 13,311	\$ (201)	\$ 13,110
4	Other Costs (Indirect Costs)	\$ 71,579	\$ (1,081)	\$ 70,498
	Subtotal Adm Costs (A)	\$ 103,125	\$ (1,558)	\$ 101,567
PROGRAM COSTS:				
Line Item				
1	Salaries and Wages	\$ 229,626	\$ (7,989)	\$ 221,637
	Subtotal Program	\$136,036	\$ (2,055)	\$133,981
	Division Manager	33,492	(506)	32,986
	Comprehensive Services Manager	68,579	(1,036)	67,543
	Intermediate Clerk	33,965	(513)	33,452
	Student Interns	\$93,590	\$ (5,934)	\$87,656
2	Fringe Benefits	\$107,065	\$ (2,159)	\$104,906
	Program Fringe Benefits	95,834	(1,447)	94,387
	Student Interns-Fringe Benefits	11,231	(712)	10,519
4	Operating Expenses	\$15,500	\$ (229)	\$15,271
	Office Supplies	2,077	(26)	2,051
	Communications	1,096	(17)	1,079
	Telephone	549	(8)	541
	Membership Dues	3,040	(46)	2,994
	Auto Mileage-Employee	521	(8)	513
	In-State Travel (Employee)	2,314	(35)	2,279
	Training & Registration (EOC)	1,612	(24)	1,588
	Educ Supplies & Courses (Outreach)	1,476	(22)	1,454
	Other Costs	2,815	(43)	2,772
5	Out-of-State Travel	\$4,061	\$ (61)	\$4,000
6	Subcontractor Services	\$400,992	\$ (992)	\$400,000
	Subtotal Program Costs (B)	\$757,244	\$ (11,430)	\$745,814
	TOTAL	\$860,369	\$ (12,988)	\$847,381
FOOTNOTES:				
Column A reflects the 2018 CSBG allocation. It is being used as the base to reflect any increase and/or decrease in the 2019 CSBG proposed budget.				
Column B is the proposed decrease in the 2019 CSBG based on the initial allocation by State CSD resulting in the slight decrease of 1.51% or about \$12,988. Based on this ratio, the decrease has been allocated to administrative and program costs. To bring the subcontractors funding to the \$400,000 level, an additional \$5,063 reduction in Student Intern salaries and benefits was needed. This reduction is equivalent to 307 hours for the year or 44 hours per Intern for the year. The resulting additional decrease is about 7% of the Student Intern allocation.				
Column C represents the proposed 2019 CSBG budget.				
Date Prepared: October 30, 2018				
fn: 2019 Budget Dev 10-23-18				

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16 IN THE UNITED STATES DISTRICT COURT
17 FOR EASTERN DISTRICT OF CALIFORNIA

18 THE UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

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

25 Defendants.

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

Hon. John A. Mendez

BRIEF OF AMICI CURIAE
THE CALIFORNIA PARTNERSHIP TO
END DOMESTIC VIOLENCE AND THE
COALITION FOR HUMANE
IMMIGRANT RIGHTS

Date: June 5, 2018

Time: 1:30 p.m.

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TABLE OF CONTENTS

I. Congress Cannot Preempt California’s Choice Not to Help Administer the Federal Deportation Scheme 2

II. Even If It Could, Congress Has Not Preempted the Values Act. 10

 A. The United States Barely Defends Its Interpretation of 8 U.S.C. § 1373. 10

 B. Implied Preemption Is Foreclosed by *Gregory*. 10

 C. Even If It Could, Congress Has Not Impliedly Preempted the Values Act. 11

III. The Values Act Does Not Violate Intergovernmental Immunity. 14

TABLE OF AUTHORITIES

Cases

1

2

3 *Alden v. Maine*, 527 U.S. 706 (1999) 4

4 *Arizona v. United States*, 567 U.S. 387 (2012)..... 11, 13

5 *Atay v. Cty. of Maui*, 842 F.3d 688 (9th Cir. 2016) 12, 13

6 *Baggett v. Gates*, 32 Cal.3d 128 (1982)..... 4

7 *Bond v. United States*, 134 S. Ct. 2077 (2014) 6, 11, 13

8 *Chicanos Por La Causa v. Napolitano*, 558 F.3d 856 (9th Cir. 2009) 12

9 *Chinatown Neighborhood Ass’n v. Harris*, 794 F.3d 1136 (9th Cir. 2015) 13, 14

10 *City of Abilene v. FCC*, 164 F.3d 49 (D.C. Cir. 1999) 11

11 *Clark v. Rameker*, 134 S. Ct. 2242 (2014)..... 12

12 *Davis v. Michigan Dep’t of Treasury*, 489 U.S. 803 (1989)..... 15

13 *DeCanas v. Bica*, 424 U.S. 351 (1976)..... 6

14 *FERC v. Mississippi*, 456 U.S. 742 (1982)..... 3, 5

15 *Freightliner Co. v. Myrick*, 514 U.S. 280 (1995) 12

16 *Freilich v. Upper Chesapeake Health*, 313 F.3d 205 (4th Cir. 2002) 9

17 *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) 4

18 *Geier v. Am. Honda Motor Co.*, 529 U.S. 861 (2000) 12

19 *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) 9

20 *Gregory v. Ashcroft*, 501 U.S. 452 (1991)..... 1, 10, 11

21 *Hodel v. Va. Surface Mining & Recl. Ass’n*, 452 U.S. 264 (1981)..... 5, 6

22 *In re Tax Liabilities of Does*, 2011 WL 6302284 (E.D. Cal. Dec. 15, 2011) 9

23 *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996)..... 4

24 *Lamar, Archer & Cofrin, LLP v. Appling*, No. 16-1215 (S. Ct. June 4, 2018)..... 10

25 *McDonnell v. United States*, 136 S. Ct. 2355 (2016)..... 6

26 *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018) passim

27 *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)..... 2, 3, 8, 15

28 *New York v. United States*, 505 U.S. 144 (1992)..... passim

1 *Nixon v. Missouri Mun. League*, 541 U.S. 125 (2004) 10

2 *North Dakota v. U.S.*, 495 U.S. 423 (1990) 15

3 *Oregon Prescription Drug Monitoring Program v. DEA*, 860 F.3d 1228 (9th Cir. 2017)..... 9

4 *Philadelphia v. Sessions*, 2018 WL 2725503 (E.D. Pa. June 6, 2018) 2, 7, 8, 10

5 *Preap v. Johnson*, 831 F.3d 1193 (9th Cir. 2016)..... 14

6 *Printz v. United States*, 521 U.S. 898 (1997)..... passim

7 *Reno v. Condon*, 528 U.S. 141 (2000) 5, 7

8 *Roach v. Mail Handlers Ben. Plan*, 298 F.3d 847 (9th Cir. 2002) 10

9 *South Carolina v. Baker*, 485 U.S. 505 (1988)..... 5

10 *Standley v. Dep't of Justice*, 835 F.2d 216 (9th Cir. 1987) 9

11 *Steinle v. City & Cty. of San Francisco*, 230 F. Supp. 3d 994 (N.D. Cal. 2017)..... 10

12 *United States v. Brown*, 2007 WL 4372829 (S.D.N.Y. Dec. 12, 2007) 9

13 *United States v. Gomez*, 911 F.2d 219 (9th Cir. 1990) 3

14 *United States v. Lewis Cty.*, 175 F.3d 671 (9th Cir. 1999) 15

15 *United States v. Lopez*, 514 U.S. 549 (1995) 6

16 *United States v. Morrison*, 529 U.S. 598 (2000) 6

17 *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247 (2011) 4

18 *Wyeth v. Levine*, 555 U.S. 555 (2009). 11, 12

19 **Federal Statutes**

20 8 U.S.C. § 1103(a)(10)..... 13

21 8 U.S.C. § 1226(c) 12, 13, 14

22 8 U.S.C. § 1231(a) 12, 13, 14

23 8 U.S.C. § 1252c..... 13

24 8 U.S.C. § 1357(d) 12, 13, 15

25 8 U.S.C. § 1373..... passim

26 15 U.S.C. § 2224..... 9

27 20 U.S.C. § 4013..... 8

28 20 U.S.C. § 4014..... 8

1 34 U.S.C. § 41307..... 9

2 42 U.S.C. § 11133(b) 8

3 42 U.S.C. § 14072(g)(4) 8

4 52 U.S.C. § 20701..... 9

5 17 Stat. 466 (1873)..... 8

6 54 Stat. 401 (1940) 8

7 Pub. L. No. 91-452, § 806..... 8

8 Pub. L. No. 102-559 9

9 **State Constitution**

10 Cal. Const. art. IV 4

11 **State Statutes**

12 Cal. Gov’t Code § 7284.2 8, 15

13 Cal. Gov’t Code § 7282.5 14

14 Cal. Gov’t Code § 7284.4(a)..... 3

15 Cal. Gov’t Code § 7284.6(a)..... 3, 12

16 **Legislative History**

17 H.R. 2278, 113 Cong. § 114 (2013)..... 12

18 H.R. 2964, 114 Cong. § 5 (2015)..... 12

19 **Other Authorities**

20 Dep’t of Justice, *Institutional Hearing Program* (2018)..... 14

21 *Group Rallies Against Deportation in Front of Alameda County Building,*

22 *Mercury News*, Nov. 19, 2015..... 8

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1 Faced with a wall of Supreme Court precedent guaranteeing California the prerogative to
2 decide whether its own agents will assist in federal deportation efforts, the government offers a
3 series of unfounded and outlandish arguments in support of its claims against the Values Act.¹
4 PI Reply 10-23, Dkt. 171. It posits, almost in passing, that States can only arrest and prosecute
5 noncitizens *for state criminal offenses* if Congress decides to allow it—that Congress could
6 essentially outlaw state criminal law enforcement as it has existed throughout our country’s
7 history. That breathtaking claim to unlimited federal dominance is anathema to our system of
8 dual sovereignty. Alternatively, it contends that Congress can issue any commands it wants to
9 the States so long as the commands relate to information. No court has ever accepted that
10 sweeping assertion, which cannot be squared with the Constitution’s prohibition on federal
11 control of state government. At least where, as here, forced “information sharing” is integral to
12 the daily operation of a federal regulatory program, Congress cannot destroy state officials’
13 accountability to their own electorate and force them to participate.

14
15 Thus, because this case is about California’s clear prerogative to opt out of assisting with
16 deportations, the preemption principles the government invokes have no application.

17 But even if Congress could require States to share release dates and addresses, it has not
18 done so. The government attempts to rewrite the Immigration and Nationality Act (INA),
19 warping provisions that expressly protect States’ choices into supposed commands. But the
20 INA’s consistent, explicit solicitude for States’ independence does not carry some secret
21 intention to conscript their officers. To the contrary, the one narrow provision where Congress
22 *did* seek to limit States’ choices, 8 U.S.C. § 1373, is powerful evidence that, beyond its terms,
23 Congress intended States to make their own decisions. The government thus falls far short of
24 showing, as it must, that an intent to preempt the Values Act is “unmistakably clear in the
25 language of the statute.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

26
27
28 ¹ Amici the California Partnership to End Domestic Violence and the Coalition for Humane
Immigrant Rights submit this brief in defense of the California Values Act pursuant to the
Court’s Order of June 5, Dkt. 164, at 12.

1 **I. Congress Cannot Preempt California’s Choice Not to Help Administer the**
 2 **Federal Deportation Scheme.**

3 1. The Constitution gives Congress “the power to regulate individuals, not States.”
 4 *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1476 (2018) (quoting *New York v.*
 5 *United States*, 505 U.S. 144, 166 (1992)). That principle is fatal to both of the federal
 6 government’s preemption claims (express and implied). As *Murphy* held, Congress may not
 7 “issue orders directly to the States,” *id.* at 1475, including orders to “refrain from enacting state
 8 law,” *id.* at 1478. That is exactly what 8 U.S.C. § 1373 does: It orders States not to enact
 9 policies that withhold their own agents’ enforcement assistance. The government’s obstacle
 10 preemption claim suffers the same defect, because if accepted, it would effectively order States
 11 to refrain from enacting laws regulating their own agents. “A more direct affront to state
 12 sovereignty is not easy to imagine.” *Id.*; *Philadelphia v. Sessions*, 2018 WL 2725503, at *31-33
 13 (E.D. Pa. 2018) (holding that § 1373 is unconstitutional under *Murphy*).

14 *Murphy* is the latest in a long line of Supreme Court cases making absolutely clear that
 15 the Constitution guarantees States the ability to “decline to administer [a] federal program.” *New*
 16 *York*, 505 U.S. at 176-77 ; see *Nat’l Fed’n of Indep. Bus. v. Sebelius (NFIB)*, 567 U.S. 519, 587
 17 (2012) (Tenth Amendment ensures that States “may choose not to participate” in a federal
 18 program); *Printz v. United States*, 521 U.S. 898, 909-10 (1997) (States may “refuse[] to comply
 19 with [a] request” to help administer federal law). Congress cannot interfere with this choice:
 20 States must retain the “prerogative to reject Congress’s desired policy, not merely in theory but
 21 in fact.” *NFIB*, 567 U.S. at 581. The government’s preemption theories would eliminate this
 22 “critical alternative.” *New York*, 505 U.S. at 176-77.

23 Where, as here, the State exercises its anti-commandeering prerogative, there can be no
 24 preemption. Like the law in *Murphy*, § 1373 “does not confer any federal rights on private
 25 actors” or “impose any federal restrictions on private actors.” *Id.* at 1481. Instead, it regulates
 26 only the States’ own agents, by prohibiting them from opting out of the deportation system.
 27 Congress has no power to enact such a prohibition, either explicitly or implicitly. Nor does the
 28 *state* law in this case confer rights or impose restrictions on private actors; it too regulates only

1 the States' own agents. *Compare id.* at 1480 (valid obstacle preemption where State "impose[s]
2 a duty" on private actors that conflicts with private actors' federal rights or duties).

3 The government ignores these holdings almost entirely. It complains repeatedly that the
4 Values Act "obstructs" immigration enforcement, Reply Br. 11, 13, 14, 15, 17, 25, but it does not
5 and cannot deny that what it calls "obstruction" is simply the State's decision to limit its *own*
6 participation in the federal deportation scheme²—a choice that is "essential" to the
7 "[p]reservation of the States as independent political entities," *Printz*, 521 U.S. at 919-19, and a
8 "quintessential attribute of sovereignty," *FERC v. Mississippi*, 456 U.S. 742, 761 (1982). The
9 government's complaint about California's decision to opt out would have applied equally to the
10 sheriffs in *Printz* and the States in *NFIB*.³

11 The government fails to meaningfully grapple with the accountability concerns at the
12 heart of these cases. *See NFIB*, 567 U.S. at 578; *Printz*, 521 U.S. at 930; *New York*, 505 U.S. at
13 169. Accountability requires "elected state officials" to "regulate in accordance with the views
14 of the local electorate," including, crucially, by withdrawing from federal programs when the
15 "State's citizens view federal policy as sufficiently contrary to local interests"—exactly as
16 California's citizens have chosen. *Id.* at 168-69. Yet the government believes it can deny
17 California's citizens that choice and force them to volunteer their officers' assistance.⁴

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21 ² The challenged provisions of the Values Act only apply to "California law enforcement
22 agenc[ies]." Cal. Gov't Code §§ 7284.4(a), 7284.6(a). Both state and local officers are "state
23 officers" for purposes of the Tenth Amendment. *Printz*, 521 U.S. at 905, 930-31. The
24 government does not claim otherwise.

25 ³ The government's reliance on a 25-year-old California Attorney General opinion is misplaced,
26 PI Reply 1, 16, as it predates *Printz* (applying anti-commandeering to state and local officers),
27 *NFIB*, *Arizona*, and *Murphy*. And because it interpreted *federal* as opposed to state law, it is
28 entitled to "no special weight." *United States v. Gomez*, 911 F.2d 219, 221 n.2 (9th Cir. 1990).
Nor can the government draw any support from the subsequent 2014 "Bulletin," PI Reply 1, 16,
which is cursory, ambiguous, and contained no relevant analysis.

⁴ The government tries to minimize these accountability concerns by claiming that "the Federal
Government retains full responsibility and accountability for its [immigration] actions." PI
Reply 18. But *Printz* rejected a similar argument, citing major accountability problems even
where States were only given "discrete, ministerial tasks" within a program administered
principally by the federal government. 521 U.S. at 929-30.

1 The government also cannot dispute that this suit seeks to override California’s
2 “distribution of power among its own agents.” *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S.
3 247, 263 (2011) (Kennedy, J., concurring). California law places control over state and local
4 police in the hands of the State Legislature, which exercised that power in enacting the Values
5 Act. *See* Cal. Const. art. IV, § 1; *Baggett v. Gates*, 32 Cal.3d 128, 139 n.15 (1982). According
6 to the government, however, Congress has displaced that arrangement and instead required the
7 Legislature to delegate immigration enforcement decisions to thousands of line-level officers,
8 who may now choose for themselves whether and when to help DHS deport state residents. But
9 Congress cannot “displace a State’s allocation of governmental power” in this way. *Alden v.*
10 *Maine*, 527 U.S. 706, 752 (1999); *see also Stewart*, 563 U.S. at 263 (Kennedy, J., concurring)
11 (States “need not empower their officers” to participate in a federal scheme); Dkt. 73-2, at 5-6, 9.
12 The government fails to explain why it thinks Congress can make such an extreme “incursion
13 into state sovereignty.” *Koog v. United States*, 79 F.3d 452, 460 (5th Cir. 1996).

14
15 2. The government’s attempts to distinguish *Murphy* are deeply unpersuasive.

16 First, it claims *Murphy* is inapplicable here because the commands the government
17 purports to identify are “part of” a federal “scheme regulating” private parties (the INA), which
18 *Murphy* lacked. PI Reply 20-21. But *Printz* forecloses any suggestion that direct orders to States
19 are permissible as “part of” a broader federal scheme. The invalid directive in *Printz* was
20 attached to a broader federal scheme that regulated private handgun purchases. 521 U.S. at 902-
21 03. The Court still invalidated the provision that dictated how state officers had to participate in
22 the scheme’s information-gathering efforts. Those “same principles” applied in *Murphy* and
23 apply here. 138 S. Ct. at 1477; *see also Galarza v. Szalczyk*, 745 F.3d 634, 644 (3d Cir. 2014)
24 (applying anti-commandeering in the INA context).

25 Straining to support this argument, the government suggests that *Murphy* approved of an
26 earlier preemption provision because it was “part of” a federal scheme “regulating air carriers.”
27 PI Reply 21. But that is not remotely what *Murphy* said. *Murphy* explains that the airline
28 provision is valid because it effectively “confers on private entities (*i.e.*, covered carriers) a

1 federal right to engage in certain conduct” free from state regulation. 138 S. Ct. at 1480.
2 Likewise, preemption of state alien registration laws is permissible not because it is “part of” a
3 federal registration scheme, but because it gives private actors “a federal right to be free from
4 any [state] registration requirements.” *Id.* at 1481. Here, in stark contrast, the government’s
5 preemption theories would impose *no* private rights or restrictions.

6 Second, the government makes the puzzling assertion that § 1373 is permissible because
7 it “evenhandedly regulates an activity in which both States and private actors engage.” PI Reply
8 21 (quoting *Murphy*, 138 S. Ct. at 1478). But § 1373 applies only to “a Federal, State, or local
9 government entity or official.” 8 U.S.C. § 1373(a). It imposes no restrictions on private actors at
10 all, including those who know about a person’s citizenship or immigration status. Nor is it
11 somehow rendered generally applicable by the INA’s “registration rules” for noncitizens and
12 employers. PI Reply 21; *see Printz*, 521 U.S. at 902-03, 932 & n.17 (holding that provision was
13 not generally applicable even though the Brady Act imposed related, but different, requirements
14 on handgun buyers and sellers). To the extent “there is no private analog” for Congress to
15 regulate evenhandedly, PI Reply 22, that only confirms the commandeering problem. *See Printz*,
16 521 U.S. at 932 n.17 (striking down statute where “extension of th[e] statute to private citizens”
17 was “impossible”). By contrast, the law upheld in *South Carolina v. Baker*, 485 U.S. 505, 514
18 (1988), “treat[ed] state bonds *the same* as private bonds.” *Murphy*, 138 S. Ct. at 1478 (emphasis
19 added). And the law upheld in *Reno v. Condon*, 528 U.S. 141, 151 (2000), “applied *equally* to
20 state and private actors,” regulating their dissemination of the *same* driver data. *Murphy*, 138 S.
21 Ct. at 1479 (emphasis added).

22 Third, grasping at straws in the aftermath of *Murphy*, the government offers a startling
23 new assertion: that the orders it seeks to issue to the States are just conditions “for continued
24 state activity in an otherwise pre-emptible field.” PI Reply 22-23 (quoting *FERC*, 456 U.S. at
25 769, and *Hodel v. Va. Surface Mining & Recl. Ass’n*, 452 U.S. 264, 288 (1981)). Without
26 specifying what “field” it means, the government appears to argue that Congress can demand
27

28

1 whatever deportation assistance it wants, because it could have simply ordered States not to
2 arrest, prosecute, or imprison noncitizens who violate their criminal laws. MTD Opp. 13.

3 Every facet of this argument—which the government did not make in its opening brief—
4 is wrong. As *Murphy* explains, under a valid “cooperative federalism” arrangement of this sort,
5 Congress “comprehensively regulate[s]” the activity at issue, and then offers States “the choice
6 of either implementing the federal scheme or else yielding to” federal administration. 138 S. Ct.
7 at 1479 (quoting *Hodel*, 452 U.S. at 288). Nothing of the sort is even possible here. The
8 government’s premise—that Congress could flatly prohibit States from arresting and prosecuting
9 all (possible) noncitizens—is utterly at odds with our constitutional system, which gives States
10 “primary authority for defining and enforcing the criminal law.” *United States v. Lopez*, 514
11 U.S. 549, 561 n.3 (1995) (citations omitted); see *Bond v. United States*, 134 S. Ct. 2077, 2089
12 (2014). Indeed, Congress lacks the power to punish ordinary crimes—much less occupy that
13 field altogether. *United States v. Morrison*, 529 U.S. 598, 618-19 (2000) (“The Constitution
14 withholds from Congress a plenary police power.”) (quotation marks and alteration omitted); see
15 also *DeCanas v. Bica*, 424 U.S. 351, 355 (1976) (rejecting the notion that “every state enactment
16 which in any way deals with aliens is a regulation of immigration”). Congress simply could not
17 make the “unprecedented incursion into the criminal jurisdiction of the States” of barring the
18 States from enforcing their criminal laws against a large segment their residents. *McDonnell v.*
19 *United States*, 136 S. Ct. 2355, 2374 (2016) (citation omitted).⁵ The government offers no
20 reasoning to support this stunning assertion.
21

22 In any event, the government is wrong that it can conscript the States simply by
23 imagining a broad hypothetical statute Congress *might have* passed. *New York*, for instance,
24 struck down a statute even though “Congress could, if it wished, pre-empt state radioactive waste
25 regulation” altogether. 505 U.S. at 160. And it did so over Justice White’s dissent, which made
26

27 ⁵ The government’s suggestion that Congress could authorize DHS to forcibly pluck inmates out
28 of state prisons, PI Reply 22, is likewise inconsistent with federalism principles. That possibility
is also irrelevant, because it would not constitute congressional occupation of any “field,” so
Hodel would have no application.

1 the same argument the government presses here. *See id.* at 204 (White, J., concurring in part and
 2 dissenting in part). Likewise, in *NFIB*, Congress’s ability to preempt state healthcare laws did
 3 not allow it to command state participation. By contrast, in *Hodel*, Congress actually *had*
 4 “comprehensively regulated” the relevant field, and in *FERC*, Congress simply asked States to
 5 “to consider” federal standards, which they were free to disregard. *Murphy*, 138 S. Ct. at 1479.⁶

6
 7 3. The government maintains that Congress can compel the States to help administer
 8 immigration law, as long as the help involves sharing information. PI Reply 18-20. It claims
 9 that it order States to produce any information about their residents, any time, for any purpose, as
 10 often as it wants. That is wrong. *Printz* left open the possibility that *some* kinds of information
 11 sharing *might* fall outside the anti-commandeering rule—specifically, information that does not
 12 entail “the actual administration of a federal program.” *Printz*, 521 U.S. at 918. The Court thus
 13 declined to resolve whether “purely ministerial reporting requirements” are constitutional. *Id.* at
 14 936 (O’Connor, J., concurring). But there is no question that forced information sharing, where
 15 it facilitates the on-the-ground, day-to-day administration of a federal program, runs afoul of the
 16 anti-commandeering rule. Indeed, *Printz* itself invalidated a law because it required state
 17 officers “to provide information that belongs to the State.” *Id.* at 932 n.17.⁷

18 Here, the information the government seeks would clearly facilitate the “administration
 19 of a federal program.” *Printz*, 521 U.S. at 918. The challenged provisions address whether state
 20 officers can make physical transfers of custody and otherwise help DHS identify, locate, and
 21

22 ⁶ The government cites ambiguous language in *FERC* that Congress can issue commands in a
 23 field that is “pre-emptible.” PI Reply 23. Whatever *FERC* meant by that, *New York* made clear
 24 that Congress cannot issue direct commands to States simply because it could have, but did not,
 25 regulate private conduct. And *Murphy* counseled against applying *FERC* beyond its facts—
 26 asking States to “consider” standards—highlighting that “*FERC* was decided well before our
 27 decisions in *New York* and *Printz*.” 138 S. Ct. at 1479.

28 ⁷ The government suggests that *Reno v. Condon* established a Tenth Amendment carve-out for
 information mandates. PI Reply 18, 22. It is mistaken. *Condon* upheld a “generally applicable
 law,” 518 U.S. at 150-51, because the law “evenhandedly regulate[d] an activity in which both
 States and private actors engage[d],” *Murphy*, 138 S. Ct. at 1478-79 (“That principle formed the
 basis for the Court’s decision . . .”). The Court did not announce any rule about information
 mandates, or even identify any mandate to send information to federal agents. *See Philadelphia*,
 2018 WL 2725503, at *32 (rejecting the government’s identical argument about *Condon*).

1 arrest noncitizens. The government itself stresses the operational impact of these actions:
 2 Transfer, release dates, and addresses help DHS “locate, detain, prosecute, and remove aliens,”
 3 PI Mem. 33; they increase its “ability to identify and apprehend removable aliens,” *id.* at 35; and
 4 they facilitate “ICE’s efforts to take these aliens into custody for removal purposes,” *id.*

5 That kind of conscription simply cannot be squared with anti-commandeering law. The
 6 Constitution reflects a “fundamental structural decision” to *entirely* “withhold from Congress the
 7 power to issue orders directly to the States,” a principle that leaves no room for systematic
 8 demands for information. *Murphy*, 138 S. Ct. at 1475. Indeed, when Congress “compels the
 9 States” to help administer a program, “it blurs the lines of political accountability” *regardless* of
 10 what form the involvement takes. *NFIB*, 567 U.S. at 678. Whether state officers are placing the
 11 handcuffs or helping DHS do so, residents understand that their government is funneling people
 12 to the deportation system. Indeed, California’s experience makes clear that when state officials
 13 pave the way for deportations—including by sending information about state residents to DHS—
 14 they incur serious political and financial costs. *See Group Rallies Against Deportation in Front*
 15 *of Alameda County Building*, Mercury News, Nov. 19, 2015, <https://bayareane.ws/2wbh6o4>;
 16 Dkt. 73-2, at 7 & n.7, 10; Cal. Gov’t Code 7284.2.

17
 18 The government asserts that Congress “frequently calls on states to share relevant
 19 information,” PI Reply 19, but none of its examples remotely resembles a system of state officers
 20 performing daily services for immigration agents. Many of the purported requirements it cites
 21 impose no obligations at all; States are free to decline to participate.⁸ Others are in reality
 22 funding conditions, not direct orders.⁹ Yet others serve academic and record-keeping goals.

23
 24 ⁸ *See, e.g.*, 54 Stat. 401 (1940) (directing federal government to collect data, without imposing
 25 any state or local obligation); 17 Stat. 466 (1873) (same); 42 U.S.C. § 11133(b) (state medical
 26 boards can opt out of reporting and be replaced by another agency); 42 U.S.C. § 14072(g)(4)
 (repealed sex offender reporting requirement that States could avoid entirely by choosing not to
 implement a qualifying registration program); Pub. L. No. 91-452, § 806 (“does not require
 states to provide any information,” *Philadelphia*, 2018 WL 2725503, at *33 n.10).

27 ⁹ *See, e.g., Printz*, 521 U.S. at 936 (O’Connor, J., concurring) (explaining that 23 U.S.C. § 402
 28 “condition[s] States’ receipt of federal funds for highway safety program on compliance with
 federal requirements”); 20 U.S.C. § 4013 (information submitted as part of application for
 federal funds, *see id.* § 4014).

1 These are “purely ministerial” because they do not facilitate the federal government’s on-the-
 2 ground implementation of any federal regulatory program. *Printz*, 521 U.S. at 936 (O’Connor,
 3 J., concurring).¹⁰ As a result, they do not force state officials to “tak[e] the blame” for the
 4 “defects” of any federal program. *Id.* at 930. The information in this case is clearly different.¹¹

5 Finally, the government suggests that a sweeping exception for information mandates
 6 “makes sense,” because subpoenas involve information too. PI Reply 19. That is a nonsequitur.
 7 Of course States, like everyone else, must comply with judicial subpoenas and other court orders.
 8 *See Standley v. DOJ*, 835 F.2d 216, 218 (9th Cir. 1987) (“A grand jury is an arm of the judicial
 9 branch of government.”). In fact, the Supremacy Clause “presupposes” as much. *New York*, 505
 10 U.S. at 179. But “[t]he Constitution contains no analogous grant of authority to Congress.” *Id.*
 11 The government also suggests that it can issue administrative subpoenas to States, so it must be
 12 able to demand systematic information sharing. PI Reply 19-20. But it offers no reason to think
 13 an agency could lawfully use subpoenas to conscript States to participate in the ongoing
 14 administration of a federal program, in a manner analogous to its preemption theories.¹²

15 The Court should reject the suggestion that information mandates are categorically
 16 exempt from the anti-commandeering rule—something no court has ever held.
 17

18 ¹⁰ *See* 34 U.S.C. § 41307 (statistical data regarding missing children); 15 U.S.C. § 2224
 19 (information collected for FEMA publication). The few cases upholding reporting requirements
 20 have all addressed these kinds of purely ministerial duties to “forward[] . . . information to a
 21 federal data bank.” *Freilich v. Upper Chesapeake Health*, 313 F.3d 205, 214 (4th Cir. 2002); *see*
 22 *United States v. Brown*, 2007 WL 4372829, at *5 (S.D.N.Y. Dec. 12, 2007) (requirement to
 forward information to “a national database”). In contrast to this case, 52 U.S.C. § 20701 *et*
seq.—which addresses records about federal elections—is an exercise of Congress’s “unique”
 Elections Clause authority. *Gonzalez v. Arizona*, 677 F.3d 383, 391 (9th Cir. 2012) (en banc),
aff’d, 570 U.S. 1 (2013).

23 ¹¹ In any event, all of these statutes were enacted before *Printz* established that anti-
 24 commandeering applied to state executive officers. Notably, the statute *Murphy* struck down
 25 was passed in 1992, Pub. L. No. 102–559, during the same period when Congress enacted many
 of the statutes the government cites here. Congress’s decision to enact a handful of information-
 sharing statutes in the “few decades” before *Printz* is simply not “probative” of their
 constitutionality. *Printz*, 521 U.S. at 917-18.

26 ¹² The cursory analysis of *In re Tax Liabilities of Does*, 2011 WL 6302284, at *4 (E.D. Cal. Dec.
 27 15, 2011), issued *ex parte*, does not address any of the anti-commandeering cases. In any event,
 it addressed a one-time enforcement operation rather than an ongoing, indefinite reliance on state
 28 officers to effectuate a federal program. And *Oregon Prescription Drug Monitoring Program v.*
DEA, 860 F.3d 1228, 1236 (9th Cir. 2017), addressed no Tenth Amendment argument at all.

1 **II. Even If It Could, Congress Has Not Preempted the Values Act.**

2 Even if Congress could bar states from opting out of the deportation regime, Congress
3 would have to make that intention “unmistakably clear in the language of the statute.” *Gregory*,
4 501 U.S. at 460. The government does not dispute that *Gregory* applies to its preemption
5 theories. See Dkt. 73-2, at 16. To satisfy *Gregory*, the government’s interpretation “must be
6 plain to anyone reading the Act.” *Id.* at 467. Where *Gregory* applies, it is typically “fatal.”
7 *Nixon v. Missouri Mun. League*, 541 U.S. 125, 141 (2004).

8 **A. The United States Barely Defends Its Interpretation of 8 U.S.C. § 1373.**

9 The government does not explain why its broad reading of § 1373 is not just plausible,
10 but “unmistakably clear in the language of the statute.” 501 U.S. at 460. That omission is
11 striking, but not surprising. As multiple courts have now held, the government’s present
12 interpretation “is simply impossible to square with the statutory text.” *Philadelphia*, 2018 WL
13 2725503, at *33-35; *Steinle v. San Francisco*, 230 F. Supp. 3d 994, 1015 (N.D. Cal. 2017).

14 The government offers little in response. It does not deny that its interpretation of § 1373
15 is virtually limitless, Cal. PI Opp. 13-14; Dkt. 112, at 4-7. It ignores the many statutes showing
16 that Congress knows how to refer to information beyond citizenship and immigration status
17 when it wants to, Cal. PI Opp. 12 & n.11; Dkt. 112, at 13-14. It does not address the many failed
18 efforts to expand § 1373 to reach the information it seeks through this lawsuit, Dkt. 112, at 14.
19 And it has no response to *Roach v. Mail Handlers Ben. Plan*, 298 F.3d 847, 850 (9th Cir. 2002)
20 (interpreting “relate to” narrowly to preserve “the historic police powers of the States”).¹³

21 **B. Implied Preemption Is Foreclosed by *Gregory*.**

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

25 ¹³ Unlike *Roach*, *Appling* did not involve preemption, and it had not occasion to consider the
26 impact of *Gregory*. PI Reply 16 (citing *Lamar, Archer & Cofrin, LLP v. Appling*, No. 16-1215
27 (S. Ct. June 4, 2018)). *Appling* is also consistent with California’s argument that § 1373 extends
28 beyond a person’s technical immigration status to include items that “indicate” a person’s status,
Appling, slip op. at 9—a narrow set of information such as verbal admissions, copies of
immigration documents, and the like. See Cal. PI Opp. 12-13; Dkt. 112, at 9; Dkt. 73-2, at 15.
In all events, *Appling* did not endorse any limitless interpretation like the government’s.

1 Implied preemption in this context would violate the rule that federal intrusions into core
 2 state prerogatives require “unmistakably clear” textual statements. *Gregory*, 501 U.S. at 460.
 3 Congress must be “explicit” if it wants to “readjust the balance of state and national authority.”
 4 *Bond*, 134 S. Ct. at 2089 (quotation marks and alteration omitted). That principle forecloses the
 5 argument that Congress can *silently*, through implication only, “alter[] the State’s governmental
 6 structure” and preempt States from exercising fundamental sovereign rights, like declining to
 7 help administer a federal program. *City of Abilene v. FCC*, 164 F.3d 49, 52 (D.C. Cir. 1999).
 8 Courts do “not simply infer this sort of congressional intrusion.” *Id.* Indeed, *Gregory* usually
 9 forecloses applying even an *express* requirement to a core state function. Where Congress has
 10 made *no* preemptive statement at all—as the government’s implied preemption theory
 11 assumes—there is no assurance that Congress “has in fact faced” the gravity of interfering with
 12 the “substantial sovereign powers” of the States. *Gregory*, 501 U.S. at 461 (citation omitted).
 13

14 The government has not even mentioned *Gregory*. It has not found a single case
 15 imposing obstacle preemption where *Gregory* applied. And it certainly has not found a case
 16 applying obstacle preemption to a State’s policy limiting its own agents’ participation in a
 17 federal program.¹⁴ The Court should refuse to take that unprecedented step.

18 **C. Even If It Could, Congress Has Not Impliedly Preempted the Values Act.**

19 Even if it could preempt the Values Act through implication only, Congress has not made
 20 any such intention “clear and manifest.” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009).

21 1. The government has entirely ignored a dispositive reason to reject its implied
 22 preemption claim: Congress has already determined what it deemed to be the proper scope of
 23 preemption in § 1373. Cal. PI Opp. 22. An express preemption statute like § 1373 is “powerful
 24 evidence” against implied preemption, because it shows that Congress has already decided which
 25

26 ¹⁴ For instance, *Gregory* did not apply to the preemption claims in *Arizona v. United States*, 567
 27 U.S. 387 (2012), because none of the challenged statutes exercised a State’s fundamental
 28 prerogatives to structure its government or limit its participation in a federal program. Just the
 opposite: The Court struck down three state laws that invaded *federal* prerogatives by enacting
 the State’s “own immigration policy.” *Id.* at 408; *see id.* at 403 (alien registration requirement);
id. at 406-07 (alien employment prohibition); *id.* at 410 (authority to arrest immigrants).

1 state laws “posed an obstacle to its objectives.” *Wyeth*, 555 U.S. at 574-75 (rejecting obstacle
 2 preemption on this basis). Fully cognizant of DHS’s statutory duties, Congress chose only to
 3 preempt state policies that limit the sharing of “citizenship or immigration status” information. 8
 4 U.S.C. § 1373(a). And Congress has consistently refused to go further, rejecting numerous
 5 proposals to expand § 1373.¹⁵ The case for *implied* preemption is therefore “particularly weak”
 6 here. *Wyeth*, 555 U.S. at 575 (quotation marks omitted). Whatever its constitutionality, *see*
 7 *supra*, § 1373’s intentional narrowness “creates a ‘reasonable inference’ that Congress did not
 8 intend to preempt state . . . laws that do not fall within [its] scope.” *Atay v. Cty. of Maui*, 842
 9 F.3d 688, 704 (9th Cir. 2016) (quoting *Freightliner Co. v. Myrick*, 514 U.S. 280, 288 (1995)).¹⁶

10
 11 Moreover, the government’s obstacle preemption claim would render § 1373 entirely
 12 unnecessary. If it were really true that the INA *already* implicitly preempted state policies that
 13 “restrict[] state and local officials . . . from cooperating” with DHS, PI Mem. 25, there would
 14 have been no need to enact § 1373, which singles out a small subset of those same policies for
 15 preemption. The government’s theory thus “would render statutory text superfluous.” *Clark v.*
 16 *Rameker*, 134 S. Ct. 2242, 2249 (2014). It makes no attempt to justify that result.

17 2. The statutes the government invokes confirm just how weak its obstacle preemption
 18 claim is. Its brief relies exclusively on statutes that direct DHS—but not the States—to detain
 19 and remove noncitizens after their release from criminal custody. *E.g.*, 8 U.S.C. §§ 1226(c)(1),
 20 1231(a)(2), 1231(a)(4), 1357(d). Its basic theory is that DHS’s job would be easier if California
 21 volunteered its own resources to help DHS, and so the INA implicitly requires California to offer
 22 that assistance.¹⁷ *See, e.g.*, PI Mem. 35-36 (state assistance saves DHS “time and resources”); PI

23
 24 ¹⁵ *See, e.g.*, H.R. 2964, 114 Cong. § 5 (2015); H.R. 2278, 113 Cong. § 114 (2013).

25 ¹⁶ While § 1373 does not “foreclose[]” implied preemption principles, *Geier v. Am. Honda Motor*
 26 *Co.*, 529 U.S. 861, 872-73 (2000), it is strong evidence against implied preemption 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).

27 ¹⁷ The government also criticizes an *exception* in the Values Act that allows transfers when DHS
 28 obtains a judicial warrant. PI Reply 14; *see* Cal. Gov’t Code § 7284.6(a)(4). But that provision
 simply conditions the *State’s* participation, which the State is free to withhold completely. If it
 can decline altogether, surely it can also identify the circumstances in which it will participate.

1 Reply 13 (state assistance means “minimal effort by federal officials”). Those assertions are
2 plainly insufficient to overcome the presumption against preemption. “The Supreme Court has
3 warned that obstacle preemption analysis does ‘not justify a freewheeling judicial inquiry into
4 whether a state statute is in tension with federal objectives.’” *Atay*, 842 F.3d at 704.

5 None of the statutes remotely supports preemption. For instance, § 1357(d) directs DHS
6 to “take custody of the alien” after state criminal custody ends, and is the only place the INA
7 mentions notification of release dates. *See Arizona*, 567 U.S. at 410 (explaining that § 1357(d)
8 allows States to “respond[] to requests for information about when an alien will be released”).
9 Critically, § 1357(d) lets *States* decide whether to “request[]” this form of cooperation. 8 U.S.C.
10 § 1357(d)(3). Thus, the INA explicitly leaves notification of release dates to States’ discretion.

11 Deference to States’ choices is echoed in numerous other provisions throughout the INA,
12 which explicitly allow States to limit their participation in the deportation scheme. *See, e.g., id.*
13 § 1357(g)(1) (allowing participation “to the extent consistent with State and local law”); *id.* §
14 1252c(a) (similar); *id.* § 1103(a)(10) (participation only “with the consent of” state officials); *id.*
15 § 1226(d)(3) (federal “assistance” at the “request” of a State). These cooperative provisions
16 “undermine[] any inference of interference with Congress’s method.” *Chinatown Neighborhood*
17 *Ass’n v. Harris*, 794 F.3d 1136, 1143 (9th Cir. 2015) (rejecting obstacle preemption where “the
18 federal scheme is cooperative” and invites States to make their own choices).

19 Next, the government relies heavily on 8 U.S.C. § 1231(a)(4), which prohibits removal
20 while a noncitizen is serving a criminal sentence. PI Reply 12-13; PI Mem. 24; MTD Opp. 11,
21 13. But § 1231(a)(4) serves to *protect* States’ criminal justice systems from federal interference,
22 in recognition of the States’ paramount authority over “the punishment of local criminal
23 activity.” *Bond*, 134 S. Ct. at 2089. It exudes deference to the States, which are empowered to
24 decide whether earlier removal is “in the best interest of the State.” 8 U.S.C. § 1231(a)(4)(B)(ii).
25 The government’s theory would turn Congress’s solicitude on its head.

26 Section 1231(a)(1) works the same way, directing DHS to pursue removal after criminal
27 custody ends. 8 U.S.C. § 1231(a)(1)(B)(iii). Its function is to protect, not conscript, state criminal
28

1 justice systems. And it only imposes obligations on DHS, not the States. Moreover, even by its
 2 terms it bears no relationship to most (if not all) releases from state detention: In virtually all
 3 cases, a person’s “release date from state or local criminal custody” can only “trigger” the 90-day
 4 removal period (PI Mem. 24) when the person received a final removal order while in state
 5 custody. *Id.* § 1231(a)(1)(B). Yet that rarely, if ever, happens in California jails. *See* DOJ, *Inst.*
 6 *Hearing Prog.*, at 2 (2018) (showing no California jails with an in-custody removal program),
 7 <https://bit.ly/2rfubHM>. The government itself has produced *no* evidence that there is *anyone* in
 8 California jails subject to the Values Act whose release date triggers a 90-day removal period.

9
 10 Similarly, § 1226(c) simply provides for DHS—not the States—to detain certain
 11 noncitizens when they are released from criminal custody. The Values Act, of course, leaves
 12 DHS free to arrest, detain, and remove noncitizens, just without certain assistance from
 13 California. The government argues that without state aid, some people will not be arrested by
 14 DHS immediately upon release. PI Mem. 24, 27. But even if that happens, and DHS does not
 15 arrest them until later, the only possible consequence is that they become eligible for a bond
 16 hearing.¹⁸ *See Preap v. Johnson*, 831 F.3d 1193, 1206 (9th Cir. 2016), *cert. granted*, 138 S. Ct.
 17 1279; 8 U.S.C. § 1226(a) (providing bond hearings). The possibility of a bond hearing in some
 18 cases is a slender reed on which to base the government’s preemption challenge.¹⁹

19 **III. The Values Act Does Not Violate Intergovernmental Immunity.**

20 The immunity doctrine cannot, consistent with the Tenth Amendment, prevent a State
 21 from choosing not to administer a federal program. That would wipe out States’ most essential
 22 Tenth Amendment prerogative, and it would do so *automatically*, without any indication of

23
 24 ¹⁸ The government disputes even that much. On appeal in *Preap*, it argues that mandatory
 25 detention applies “regardless of when the arrest occurred,” U.S. Br., *Nielsen v. Preap*, No. 16-
 1363, at 9 (June 2018), in which case the Values Act would *never* impact mandatory detention.

26 ¹⁹ Even that connection is minimal. Noncitizens are only subject to mandatory detention under §
 27 1226(c) if they have committed an enumerated crime, and the exceptions in the Values Act allow
 28 for transfer and notification based on long list of crimes. Cal. Gov’t Code § 7282.5. The
 government’s § 1226(c) argument therefore only applies to the narrow set of people who have
 committed crimes that trigger § 1226(c) but not a Values Act exception. Such occasional and
 hypothetical scenarios do not establish preemption. *See Harris*, 794 F.3d at 1142 (no preemption
 based on “the prospect of a ‘modest impediment’ to general federal purposes”) (citation omitted).

1 preemptive intent from Congress. Unsurprisingly, the government cannot find a single case that
2 applies the immunity doctrine to a State’s decision to opt out of a federal program.

3 The government argues that the Values Act violates intergovernmental immunity because
4 it “treat[s] federal immigration officials worse than other entities.” PI Mem. 31. But that is true
5 every time a State exercises its anti-commandeering prerogative. After *Printz*, for example, a
6 sheriff who refused Brady Act background checks would be treating ATF officials worse than
7 others who asked for background checks. If the government were right, Congress could force
8 States to administer programs simply by seeking assistance of the same sort that States provide
9 to other entities. That does not square with *Printz*, *New York*, *NFIB*, or the “prerogative to reject
10 Congress’s desired policy” that they recognize. *NFIB*, 567 U.S. at 581; Dkt. 73-2, at 23-24.

11 Even if immunity could apply here, it would not bar the Values Act. First, Congress
12 retains “the primary role” in resolving immunity questions. *North Dakota v. United States*, 495
13 U.S. 423, 435 (1990) (plurality op.). And Congress has thoroughly addressed States’ role in the
14 deportation scheme. *See, e.g.*, 8 U.S.C. §§ 1373, 1357(d), 1357(g). Where “Congress has made
15 its assessment of the federal interest” and allows the States leeway, its “action sufficiently
16 qualifies the intergovernmental immunity of the United States to permit the state to make the
17 distinction it has.” *United States v. Lewis Cty.*, 175 F.3d 671, 676 (9th Cir. 1999). Second, there
18 are “significant differences” between immigration enforcement and criminal enforcement. *Davis*
19 *v. Michigan Dep’t of Treasury*, 489 U.S. 803, 816 (1989) (discrimination permissible under these
20 circumstances). Immigration enforcement instills fear and destroys cooperation with state
21 residents in a way that finds no parallel in ordinary law enforcement. Cal. Gov’t Code § 7284.2
22 (listing its unique harms). Accordingly, the State’s decision to treat immigration differently
23 would be fully “justified” even if intergovernmental immunity applied. *Davis*, 489 U.S. at 816
24 (citation omitted).
25

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2018, I electronically filed the foregoing Brief of Amici Curiae with the Clerk for the United States District Court for the Eastern District of California by using the CM/ECF system. A true and correct copy of this brief has been served via the Court’s CM/ECF system on all counsel of record.

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