No. 19-532

In the Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

STATE OF CALIFORNIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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December 20, 2019

QUESTION PRESENTED

California's Senate Bill 54 defines the circumstances under which state and local officials may participate in the enforcement of federal immigration law. Among other things, it establishes when California law enforcement officers may provide, for immigration enforcement purposes, specified types of information, including the date on which individuals will be released from state or local custody and their home and work addresses. It also prescribes when state and local officials may transfer an individual from state custody to immigration custody. The statute allows certain forms of assistance with respect to non-citizens who have committed serious crimes while restricting such aid in other specified circumstances. The question presented is:

Whether California's decision to limit its own assistance with federal immigration enforcement in these ways is preempted by the Immigration and Nationality Act or discriminates against the United States in violation of intergovernmental immunity principles.

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INTRODUCTION

Federal law assigns both the power and the responsibility to enforce immigration law to federal officials. To the extent that the Immigration and Nationality Act addresses state cooperation in federal enforcement, it generally recognizes that each State may decide for itself whether to participate. Consistent with that framework, California adopted Senate Bill 54 to define the circumstances under which state and local officials may assist with immigration enforcement activities. In some situations, such as when a non-citizen has been convicted of a serious criminal offense, SB 54 allows state and local law enforcement officials to provide aid, including by notifying immigration officers when certain inmates will be released from jail or prison and transferring individuals from state to federal custody. In other situations, SB 54 restricts such assistance, leaving it to federal officials to collect information and apprehend individuals using their own personnel and resources. The state Legislature adopted SB 54 to address concerns that undue entanglement with immigration enforcement can deter victims and witnesses from reporting state crimes and divert limited resources from other activities that the Legislature has determined will better protect local public safety.

The district court and the court of appeals correctly held that the legal challenges to SB 54 that petitioner now asks this Court to review are not likely to succeed on the merits. California's choice of how to allocate its own law enforcement resources is consistent with the INA and does not violate the intergovernmental immunity doctrine. SB 54 does not address—much less interfere with—the federal government's discretion to

regulate the detention and removal of non-citizens according to the INA's mandates and federal enforcement priorities. California's statute is also consistent with the longstanding principle that the Constitution allows States to decline to use their own resources to carry out federal regulatory programs. The lower courts properly declined to grant provisional relief barring SB 54's enforcement pending final resolution of this litigation. Petitioner concedes there is no square conflict among the lower courts. And there is no other reason for review.

STATEMENT

A. Federal Regulation of Immigration

The federal government has broad constitutional authority to regulate immigration. *Arizona v. United States*, 567 U.S. 387, 394-395 (2012). In general, it is entitled to determine who may be admitted and the conditions under which non-citizens may remain. *See generally id.* at 394-397. The Immigration and Nationality Act prescribes detailed criteria for admission to the United States, defines different immigration statuses, establishes when persons without legal status may or must be detained, and creates an administrative and enforcement apparatus for detaining and removing specified non-citizens from the country. *See, e.g.*, 8 U.S.C. §§ 1101, 1103, 1181, 1182, 1226, 1231. The Immigration and Customs Enforcement agency, which is part of the Department of Homeland Security, is responsible for identifying, apprehending, and removing individuals who are unlawfully in the country. *Arizona*, 567 U.S. at 397.

The INA allows States to participate in federal immigration enforcement in certain circumstances. *See*

Arizona, 567 U.S. at 408-410. For example, "to the extent consistent with State and local law," States and localities may enter into formal agreements with the federal government to assume the responsibilities of immigration officers, subject to federal direction and supervision. 8 U.S.C. § 1357(g)(1), (3), (9). State and local law enforcement officials also may, "to the extent permitted by relevant State and local law," arrest and detain certain undocumented immigrants with prior felony convictions until ICE assumes custody. *Id.* § 1252c(a).

Similarly, the INA contemplates that federal officials may request certain forms of voluntary aid from the States. For example, immigration officers may ask state and local law enforcement officials to provide advance notice of an individual's release from state custody. *See Arizona*, 567 U.S. at 410 (citing 8 U.S.C. § 1357(d)). Federal officers seek such information through a "detainer" request. 8 C.F.R. § 287.7(a) (authorizing immigration officers to "request that [a state or local law enforcement] agency advise [DHS], prior to release of [an] alien, in order for [DHS] to arrange to assume custody").

By its terms, the INA requires States to allow one particular form of assistance. Section 1373 directs that "[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [ICE] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a); *see also id.* §§ 1373(b), 1644 (similar).

B. California's Senate Bill 54

For many years, some States and localities have chosen to limit their participation in the enforcement of federal immigration law. *See generally Nielsen v. Preap*, ___ U.S. ___, 139 S. Ct. 954, 968 (2019) (plurality opinion); Cong. Research Serv., "*Sanctuary" Jurisdictions: Federal, State, and Local Policies and Related Litigation*, at 3 (updated May 3, 2019).[1] In 2004 and 2013, for example, California adopted measures restricting state and local law enforcement's authority to detain individuals for immigration purposes. *See* Cal. Penal Code § 422.93(b); 2013 Cal. Stats., ch. 570 (AB 4) § 2. The Legislature enacted these laws in part to address concerns that crime victims and witnesses would be less likely to come forward and cooperate with local law enforcement officials if they feared that those interactions would lead to their removal. *See, e.g.*, Cal. Penal Code § 422.93(a); 2013 Cal. Stats., ch. 570 (AB 4) § 1(d).

In 2017, the California Legislature enacted Senate Bill 54 to further define the circumstances under which state and local law enforcement may participate in immigration enforcement activities. The Legislature recognized that, in early 2017, the United States adopted a new enforcement strategy that expanded deportation efforts and that planned to rely on local law enforcement as "'force multipliers.'" Assemb. Comm. on Pub. Safety Rep., SB 54, at 7 (June 13, 2017) (discussing author's statement). It also considered a report that, in early 2017, reports of sexual assault dropped by 25 percent and reports of domestic violence by 10 percent among Los Angeles's Latino

[1] *Available at* https://fas.org/sgp/crs/homesec/R44795.pdf (last visited Dec. 19, 2019).

population as compared with the same period during the prior year. *Id.*

Based on that information, the Legislature found that state and local entanglement in federal immigration enforcement threatens trust between California's immigrant community and state and local law enforcement agencies. Cal. Gov't Code § 7284.2(b), (c). Such entanglement causes immigrant residents to "fear approaching police when they are victims of, and witnesses to, crimes," jeopardizing public safety for all Californians. *Id.* § 7284.2(c). It also "diverts already limited resources and blurs the lines of accountability between local, state, and federal governments." *Id.* § 7284.2(d).

SB 54 restricts the ability of state and local law enforcement agencies to use public funds or personnel to participate in certain immigration enforcement activities. Cal. Gov't Code § 7284.6(a). This case involves three of those restrictions. First, SB 54 precludes state and local law enforcement agencies from transferring custody of an individual to immigration officers unless authorized by a judicial warrant or a judicial probable cause determination—or unless the individual has been convicted of any of hundreds of specified serious crimes, including any felony punishable by state imprisonment. *Id.* §§ 7284.6(a)(4), 7282.5(a). Second, SB 54 prohibits state and local law enforcement agencies from providing, for immigration enforcement purposes, a person's date of release from state or local custody, unless: the person has been convicted of any of the same serious crimes, *id.* § 7282.5(a); the information is available to the public, *id.* § 7284.6(a)(1)(C); or the person has been arrested for one of numerous specified felonies and a magistrate finds the charge is supported by probable cause,

id. § 7282.5(b). Third, SB 54 generally restricts state and local law enforcement agencies from providing personal information, including an individual's home and work address, for immigration enforcement purposes unless the information is publicly available. *Id.* § 7284.6(a)(1)(D).[2]

SB 54 allows state and local law enforcement agencies to participate in many other immigration enforcement activities. *See* Cal. Gov't Code § 7284.6(b). For example, its limitations do not apply to the California Department of Corrections and Rehabilitation, which operates the state prison system. *See id.* § 7284.4(a). SB 54 therefore does not restrict the State from providing release dates or transferring inmates when a term of state imprisonment concludes.[3] In addition, SB 54 "does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, … pursuant to Sections 1373 and 1644 of Title 8 of the United States

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[2] These statutory restrictions are not limited to aid provided to "federal immigration authorities," as petitioner contends. *See* Pet. 20. They restrict when the specified forms of assistance may be provided to "any federal, state, or local officer, employee, or person performing immigration enforcement functions." Cal. Gov't Code § 7284.4(c) (defining "'[i]mmigration authority'"); *see also id.* § 7284.4(f) (defining "'[i]mmigration enforcement'"); *Arizona*, 567 U.S. at 408-410 (describing circumstances in which state officers are permitted to enforce federal immigration law).

[3] As the petition notes (at 7 n.2), California Government Code Section 7284.10 imposes certain obligations on the Department of Corrections and Rehabilitation, but that statute does not affect the Department's authority to share information with or transfer individuals to immigration authorities. *See* Cal. Gov't Code § 7284.10(a).

Code." Cal. Gov't Code § 7284.6(e). The balance the Legislature struck in permitting some, but not all, forms of state or local assistance to immigration enforcement was designed to "ensure effective policing," protect local public safety, and direct limited state resources "to matters of greatest concern to state and local governments." *Id.* § 7284.2(f).

C. Proceedings Below

1. In March 2018, petitioner sued the State of California, its Governor, and the state Attorney General, alleging that three provisions of SB 54 violate the Supremacy Clause under theories of implied obstacle preemption, express preemption, and the intergovernmental immunity doctrine. *See* Pet. App. 10a. Petitioner's complaint also challenged provisions of two other state laws, which are not at issue in the current proceeding before this Court: (i) provisions of Assembly Bill 103 that authorize the California Attorney General to inspect in-state facilities that house civil immigration detainees, and (ii) provisions of Assembly Bill 450 that impose specified obligations on private employers concerning immigration inspections. *See id.* at 7a-10a. Petitioner moved for a preliminary injunction against enforcement of the challenged provisions of all three laws. *Id.* at 10a.

The district court granted the motion in part and denied it in part. Pet. App. 10a. The court agreed that petitioner would likely prevail on its challenges to certain provisions of AB 450, but concluded that petitioner was unlikely to succeed on its claims against SB 54, AB 103, and the remaining provision of AB 450. *Id.* at 10a-12a. With respect to SB 54, the court rejected petitioner's theory that the state law impermissibly frustrated federal immigration efforts.

Id. at 90a-96a. The court explained that "[f]ederal objectives will always be furthered if states offer to assist federal efforts." *Id.* at 92a. Conversely, a "state's decision not to assist in [federal enforcement] activities will always make the federal object more difficult to attain than it would be otherwise." *Id.* But that increased difficulty does not amount to improper interference because "[s]tanding aside does not equate to standing in the way." *Id.*

2. Petitioner appealed the district court's ruling insofar as it denied preliminary relief. Pet. App. 13a. California did not appeal the adverse aspects of the order. *See id.* at 10a n.4. In a unanimous decision, the court of appeals affirmed the preliminary ruling in part and reversed it in part. *Id.* at 47a-48a.

The court of appeals agreed with the district court that petitioner was not likely to succeed on its challenges to SB 54. Pet. App. 30a-44a. It first rejected petitioner's theory of obstacle preemption. *Id.* at 30a-34a. It explained that SB 54 "does not directly conflict with any obligations that the INA or other federal statutes impose on state or local governments," because federal law generally does not compel any action by state or local officials. *Id.* at 33a; *see also id.* at 31a-32a, 36a. The court acknowledged petitioner's argument that SB 54 makes it more burdensome for federal immigration officers to do their jobs. *See id.* at 33a-34a. But it recognized that a State's choice to refrain from participating in federal enforcement efforts "cannot be invalid under the doctrine of obstacle preemption" when the State "retains the right of refusal." *Id.* at 37a. Here, the Tenth Amendment and anti-commandeering principles allow States to decline

to assist the federal government in carrying out federal immigration enforcement activities. *See id.* at 37a-38a.

The court of appeals also rejected petitioner's claim that 8 U.S.C. § 1373 expressly preempts SB 54's information-sharing provisions. Pet. App. 40a-44a. It explained that Section 1373's reference to "'information regarding the citizenship or immigration status, lawful or unlawful, of any individual' is naturally understood" as describing "a person's legal classification under federal law." *Id.* at 41a. The court recognized that the word "regarding" may have a broadening effect as a general matter. *Id.* at 41a-42a. In this context, however, if the word "were taken to extend to the furthest stretch of its indeterminancy, then for all practical purposes preemption would never run its course." *Id.* at 42a (internal quotation marks omitted).

Finally, the court of appeals held that petitioner was not likely to succeed on its claim that SB 54 violated the doctrine of intergovernmental immunity. Pet. App. 40a. A conclusion that California's law unconstitutionally discriminated against the United States would imply that States could not "refus[e] to assist" federal immigration enforcement efforts—"a result that would be inconsistent with the Tenth Amendment and the anticommandeering rule." *Id.*

Based on these conclusions, the court of appeals affirmed the district court's denial of provisional relief as to SB 54. Pet. App. 47a. It also affirmed the district court's refusal to enjoin the sole provision of AB 450 at issue in the appeal. *Id.* at 16a-21a, 47a. It further upheld the district court's ruling regarding most of AB 103, but determined that one part of that statute likely discriminated against the United States

in violation of the intergovernmental immunity doctrine. *Id.* at 21a-30a. The court remanded for consideration of whether equitable considerations warranted an injunction against that provision of AB 103 during the pendency of the litigation. *Id.* at 44a-48a. The court later denied the United States' petition for rehearing en banc, with no judge requesting a vote on the petition. *Id.* at 117a.

ARGUMENT

Petitioner seeks review only with respect to the court of appeals' decision declining to enjoin SB 54. That decision is correct because nothing in federal law precludes States from defining the circumstances under which state and local officials may use state resources to participate in the enforcement of federal immigration law. Petitioner concedes there is no square conflict among the lower courts. And there is no other reason for this Court's review.

I. PETITIONER'S CHALLENGE TO THE MERITS OF THE DECISION BELOW PRESENTS NO BASIS FOR REVIEW

The bulk of the petition (Pet. 12-31) argues that the court of appeals erred in holding that the United States is unlikely to prevail on its preemption and intergovernmental immunity challenges to SB 54. Nothing in petitioner's extensive merits arguments suggests the need for this Court's review.

A. The court of appeals correctly rejected petitioner's preemption claims

The court of appeals properly concluded that the INA does not impliedly preempt any of the challenged provisions of SB 54 or expressly preempt its information-sharing restrictions.

1. A state law is impliedly preempted when it "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Arizona*, 567 U.S. at 399. Petitioner argues that SB 54 impedes the realization of the INA's purposes, but its argument rests on an erroneous understanding of both SB 54 and the INA.

a. SB 54 regulates the use of the State's own resources. It establishes the conditions under which state and local law enforcement agencies may deploy public funds and personnel to assist with federal immigration enforcement. It allows those agencies to communicate release dates and to transfer individuals for immigration enforcement purposes in a range of circumstances, including when an individual's criminal history indicates that he poses a risk to public safety. In other circumstances, where SB 54 restricts cooperation, the statute simply directs state and local officials to do nothing—allowing the federal government to enforce the INA's detention and removal provisions using the federal resources that Congress provided for that purpose. California's decision not to participate in those efforts does not "involve[] any affirmative interference with federal law enforcement at all." *See City of Chicago v. Sessions*, 888 F.3d 272, 282 (7th Cir. 2018) (emphasis omitted).[4] As the court of appeals below noted, "'refusing to help is not the same as impeding.'" Pet. App. 34a (quoting *id.* at 91a).

Petitioner is incorrect in repeatedly asserting that SB 54's "conceded purpose [is] to obstruct" the enforcement of federal law. *E.g.*, Pet. 17. The purpose of

[4] *Vacated in part on other grounds and reh'g en banc granted in part*, 2018 WL 4268817 (7th Cir. June 4, 2018) (concerning scope of preliminary injunction), *reh'g en banc vacated*, 2018 WL 4267714 (7th Cir. Aug. 10, 2018).

SB 54 is express in the statutory text: "to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state's limited resources to matters of greatest concern to state and local governments." Cal. Gov't Code § 7284.2(f).

Petitioner also errs in contending that SB 54 "compet[es]" with the federal regulatory scheme governing immigration. *See* Pet. 17; *see also id.* at 16, 19. SB 54 does not address who may enter or remain in the United States. It says nothing about whether or when any person may or should be apprehended, detained, or removed. Far from erecting a "competing regulatory scheme," *id.* at 17, SB 54 recognizes the exclusivity of the federal scheme and simply defines the circumstances in which the State will use its own resources to help the federal government carry out that scheme.

In that regard, SB 54 is different from the Arizona laws held preempted in *Arizona v. United States*, 567 U.S. 387. *See* Pet. 18-19. As relevant here, Arizona's statutes imposed state-law penalties for failure to comply with federal alien registration laws, *Arizona*, 567 U.S. at 400; made it a state criminal offense for non-citizens to work without authorization, *id.* at 403; and empowered state officers to make warrantless arrests based on suspicion that an individual had committed a public offense that made him removable, *id.* at 407. While the first enactment was invalid under a field-preemption analysis, *id.* at 400-403, the second and third were conflict preempted because they stood as obstacles to the achievement of Congress's objectives, *id.* at 403-410. The penalties for unlawful employment conflicted with Congress's decision not to impose such sanctions on employees. *Id.* at 403-406.

And the enactment allowing state officers to make warrantless arrests based on suspicion that an individual was removable interfered with the federal government's exclusive authority over the removal process. *Id.* at 407-410. SB 54, in contrast, does not address who may legally work in this country or when any individual may or must be arrested, detained, or removed. Federal officials retain complete discretion to regulate those matters according to federal law and the federal government's priorities.[5]

b. The INA does not divest States of the authority to regulate whether their own public officials may assist with federal immigration enforcement. The statute assigns the task of enforcing federal immigration law to federal officers. *E.g.*, 8 U.S.C. §§ 1226(c), 1231(a)(1)(A), 1231(a)(2); *see also* Pet. App. 32a. Where it addresses state involvement in such matters, it makes clear that each State may decide the extent of its own participation. *See* Pet. App. 36a. For example, the INA leaves it up to state and local lawmakers to decide whether state and local officials may assume the responsibilities of immigration officers. *See* 8 U.S.C. § 1357(g)(1). And the INA contemplates that federal officers may ask—but not compel—state and

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[5] The United States appears to suggest (at 18) that California's position here differs from the arguments the State made as an *amicus curiae* in *Arizona*. That is not correct. In both cases, California has argued that States "can choose to cooperate or not cooperate with federal enforcement efforts"; "States have broad authority to enact and enforce laws affecting all persons within their borders"; state laws regulating the use of state funds are not preempted; and removals are the responsibility of the federal government. Br. of New York & California, et al., *Arizona v. United States*, No. 11-182 (U.S.), 2012 WL 1054493, at *2, *4-*6, *16 (2012) (footnote omitted).

local law enforcement officials to furnish advance notice of an individual's release from state custody. *See Arizona*, 567 U.S. at 410; 8 C.F.R. § 287.7(a); Pet. 31-32 (detainers are "requests"). As the court of appeals concluded, "[f]ederal law provides states and localities the *option*, not the *requirement*, of assisting federal immigration authorities." Pet. App. 36a; *see also City of El Cenizo v. Texas*, 890 F.3d 164, 178 (5th Cir. 2018) (INA does not "prevent states from regulating whether their localities cooperate in immigration enforcement") (emphasis omitted).

Petitioner argues that the INA implicitly compels certain forms of state aid by conditioning a State's ability to enforce its criminal laws on its willingness to help federal agents enforce federal immigration law after the State releases individuals from its custody. *See* Pet. 15-17, 28-29. That interpretation is contrary to the INA's text, which directs *federal* officials to implement Congress's removal and detention directives. *See, e.g.*, 8 U.S.C. § 1226(c)(1) ("Attorney General shall take into custody" certain individuals); *id.* § 1231(a)(1)(A) ("Attorney General shall remove"); *id.* § 1231(a)(2) ("Attorney General shall detain"); *id.* § 1231(a)(4)(A) ("Attorney General may not remove"). Nothing in these provisions, including Congress's general policy of permitting federal removal only after completion of a state criminal sentence, *see id.* § 1231(a)(4), reflects any intent to constrain state regulatory authority or to command States to maximize the efficiency of federal removal efforts when state custody ends.

Nor does Section 1226(a) require state or local officials to transfer individuals to federal custody, as the petition appears to suggest. *See* Pet. 16-17. That statute authorizes federal immigration officers to make

arrests based on administrative warrants. 8 U.S.C. § 1226(a); *see also* 8 C.F.R. § 287.5(e)(3) (listing officers authorized to execute such warrants). It does not purport to command state or local officials to assist with or facilitate those arrests. Pet. App. 31a-32a.

Furthermore, in reviewing implied-preemption claims, courts "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 (internal quotation marks omitted); *see also* Pet. App. 32a (same). Even if the vague implied conditions suggested by petitioner could be discerned in the INA, they are not the kind of clear statement that could arguably strip California of its sovereign authority to allocate its own law enforcement resources.

2. Petitioner's argument (at 21-23) that 8 U.S.C. § 1373(a) expressly preempts SB 54's information-sharing provisions is also incorrect and provides no basis for review. Section 1373(a) directs that a State may not restrict the sharing of information "regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). SB 54 expressly allows state and local officials to share that very information. Cal. Gov't Code § 7284.6(e) (permitting officials to "send[] to … federal immigration authorities[] information regarding the citizenship or immigration status, lawful or unlawful, of an individual … pursuant to" Section 1373).

Petitioner contends that Section 1373(a) extends to the communication of release dates and personal information that is restricted by SB 54. Pet. 21-23. It argues that the use of the word "regarding" in Section 1373(a) reflects an intent to encompass facts bearing on when a person "must be detained and removed"

and information that "may be critical in confirming whether an individual is removable or has been ordered removed." *Id.* at 23. Nothing in the text of the statute supports that implausibly capacious reading of the phrase "information regarding the citizenship or immigration status" of an individual. 8 U.S.C. § 1373(a). Indeed, other INA provisions demonstrate that Congress used different words when it intended to describe broad categories of information. Pet. App. 42a-43a. For example, Congress forbade disclosures of "any information which relates to an alien," 8 U.S.C. § 1367(a)(2), and it required federal agencies to communicate to ICE "[a]ny information in any records … as to the identity and location of aliens," *id.* § 1360(b). No similar words appear in Section 1373(a).

The absence of the term "regarding" in Section 1373*(c)* (*see* Pet. 22) likewise does not support petitioner's expansive interpretation of Section 1373*(a)*. Section 1373(c) requires ICE to respond to state and local agency requests to verify or ascertain "the citizenship or immigration status of any individual within the jurisdiction of the agency." *See* 8 U.S.C. § 1373(c). There was no need to use the word "regarding" in that context, because Congress was addressing ICE's official record of a person's immigration or citizenship status. Section 1373(a) addresses (among other things) federal information requests directed to state and local personnel, who do not maintain official records of immigration or citizenship status but who may have information about an individual's category of presence in the United States. That Section 1373(a) captures information other than ICE's official and authoritative record of an individual's immigration or citizenship status does not mean that it extends so far as to reach any fact that a federal officer might find

useful in detaining or removing a non-citizen, as the United States suggests.[6]

While terms like "regarding" may "generally ha[ve] a broadening effect," *Lamar, Archer & Cofrin, LLP v. Appling*, __ U.S. __, 138 S. Ct. 1752, 1760 (2018), this Court has consistently held that they do not "extend to the furthest stretch of [their] indeterminancy," *e.g.*, *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995). Petitioner's far-reaching reading of Section 1373(a) would stretch the meaning of the word "regarding" in just that way—particularly when viewed in light of the broad range of facts that might conceivably bear some connection to federal removability or detention decisions. *See, e.g.*, 8 U.S.C. § 1182(a) (vaccination history, communicable disease diagnoses, physical or mental health disorders, education, skills, and financial resources all relevant to admissibility). The court of appeals properly rejected that unbounded interpretation.

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[6] The legislative history cited in the petition (at 22) also does not support petitioner's expansive reading of Section 1373(a). "Congress's authoritative statement is the statutory text, not the legislative history." *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 599 (2011) (internal quotation marks omitted). That is particularly true here, where the cited report's gloss is untethered to any statutory text and where other congressional reports do not express a similarly broad understanding of the statute. *See* H.R. Rep. No. 104-828, at 249 (1996) (Conf. Rep.) (Section 1373(a) applies to "information regarding the immigration status of any individual in the United States"); S. Rep. No. 104-249, at 19 (1996) (Section 1373(a) covers information "regarding a person's immigration status"); *id.* at 20 ("exchange of immigration-related information" consistent with purposes of INA).

B. The court of appeals correctly concluded that Tenth Amendment principles foreclose petitioner's preemption theory

Petitioner's merits arguments about the Tenth Amendment and anti-commandeering principles (at 24-31) likewise do not warrant this Court's review. The Constitution "'confers upon Congress the power to regulate individuals, not States.'" *Murphy v. Nat'l Collegiate Athletic Ass'n*, __ U.S. __, 138 S. Ct. 1461, 1476 (2018) (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)). Under the Tenth Amendment and the structure of the Constitution, the federal government may not compel state officials to enforce or administer a federal regulatory program. *See Printz v. United States*, 521 U.S. 898, 935 (1997). Similarly, it may not require state legislatures to affirmatively adopt federally preferred policies, *see New York*, 505 U.S. at 161-162, or prohibit them from enacting legislation of their own choosing, *see Murphy*, 138 S. Ct. at 1477-1478.

Under these settled principles, petitioner's effort to preclude California from limiting state and local participation in federal immigration enforcement activities would exceed the federal government's power. *See* Pet. App. 35a-39a. The federal government may not require the State and its political subdivisions to provide information or transfer individuals to federal immigration authorities, because doing so would conscript state and local officials into enforcing federal removal policies and would deny them the choice to decline to implement a federal regulatory program. *See, e.g.*, *New York*, 505 U.S. at 175-177. Nor may the United States prohibit the state Legislature from enacting a law like SB 54. Any such prohibition would improperly "dictate[] what a state legislature may and may not do." *See Murphy*, 138 S. Ct. at 1478.

Petitioner appears to concede that it cannot compel California's "active participation" in immigration enforcement, and it disclaims any such compulsion here. Pet. 25. But petitioner's central claim is that federal law requires California to allow state and local law enforcement officials to perform tasks that the federal government views as essential to the enforcement of federal immigration law and that federal agents would be required to perform themselves if not for California's aid. *See, e.g.*, *id.* at 17, 32. That is the essence of a federal effort to "impress into [federal] service—and at no cost to [the federal government] itself—the police officers of the 50 States." *See Printz*, 521 U.S. at 922.

Petitioner also errs in characterizing the cited provisions of the INA and SB 54 as competing regulations of private individuals. *See* Pet. 25-26; *see generally Murphy*, 138 S. Ct. at 1479 (for federal statute to preempt state law, it "must be best read as one that regulates private actors"). SB 54 does not regulate non-citizens' presence, detention, or removability. It only governs how state and local officials interact with other public officials in the discharge of their law enforcement responsibilities. Pet. App. 37a n.15; *see also supra* at 5-7 (describing SB 54's operation). It confers no rights and imposes no obligations on any private person.

Nor is there any way in which petitioner's construction of the relevant INA provisions "can be understood as a regulation of private actors." *See Murphy*, 138 S. Ct. at 1481. Petitioner reads the cited federal provisions as divesting California of the authority to define the circumstances under which its law enforcement officials may provide information and other aid to other public officials. *See* Pet. 15-16, 28-29 (citing 8 U.S.C. §§ 1226, 1231). Under that reading,

the provisions would regulate how public officials perform legislative and enforcement duties—not any private conduct. Of course, the ultimate object of federal immigration law is to regulate private individuals who seek to enter and remain in this country. But that does not mean that the restraints on States proposed by petitioner here can reasonably be understood as regulation of private parties for purposes of preemption analysis. The ultimate object of the federal laws at issue in *Printz* and *Murphy* also involved addressing private conduct (firearms possession and sports betting), but the challenged provisions were still invalid because the means Congress chose—directing state and local officials to conduct regulatory and legislative activities in a certain way—exceeded the federal government's constitutional authority. *See Printz*, 521 U.S. at 925-931; *Murphy*, 138 S. Ct. at 1479-1481.

The state laws this Court held to be preempted in *Wisconsin Department of Industry, Labor & Human Relations v. Gould, Inc.*, 475 U.S. 282 (1986), and *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000), are unlike SB 54. *See* Pet. 27. While those laws were framed in terms of allocating state funds, in actuality they regulated private conduct. The statute in *Gould* barred certain federal labor law violators from receiving state contracts and "function[ed] unambiguously as a supplemental sanction" on private actors for their violations of federal labor law. 475 U.S. at 283-284, 288. Similarly, the statute in *Crosby* generally prohibited state purchases from companies doing business in Burma, imposing penalties on private entities that differed from those provided under federal law and policy. 530 U.S. at 377-380. In contrast, SB 54 does not add to or detract from any federal rights conferred, or sanctions imposed, on any private individual.

The petition's reliance on *Hodel v. Virginia Surface Mining & Reclamation Association, Inc.*, 452 U.S. 264 (1981), is misplaced for a similar reason. *See* Pet. 26, 28. There, the federal statute constrained States' choices in regulating *private* mine operators. *Hodel*, 452 U.S. at 288-293. Here, petitioner's claim is that the INA controls how States may regulate state and local officials in the discharge of their *public* duties. The two are not the same. *See* Pet. App. 37a n.15.

Petitioner is also mistaken in invoking the principle that "Congress may require particular forms of state participation as a condition of the State's voluntary choice to participate in a federal program." *See* Pet. 28. Petitioner's contention appears to be that California makes a "choice" to participate in a "federal program" whenever it enforces its own criminal laws against a non-citizen. *See id.* That is a remarkable proposition. Under our federal system, "[t]he *States* possess primary authority for defining and enforcing the criminal law." *Brecht v. Abrahamson*, 507 U.S. 619, 635 (1993) (emphasis added) (internal quotation marks omitted). Indeed, this Court has identified "no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." *United States v. Morrison*, 529 U.S. 598, 618 (2000).

Finally, the court of appeals correctly rejected petitioner's claim that a different constitutional analysis should apply to SB 54's information-sharing provisions. *See* Pet. App. 38a-39a; Pet. 29-31. In *Printz*, this Court declined to decide whether a federal mandate "requir[ing] only the provision of information to the Federal Government" stood on different constitutional footing from other types of federal commands to

state and local officials. 521 U.S. at 918. The Court has not since adopted the categorical exception for federal information-sharing demands that petitioner suggests here. And in *Murphy*, the Court made clear that its decision upholding a statute regulating information disclosure against a Tenth Amendment challenge, *Reno v. Condon*, 528 U.S. 141 (2000), rested not on any constitutional exception for information-reporting requirements but on the ground that the challenged statute applied equally to public and private parties. *Murphy*, 138 S. Ct. at 1478-1479 (discussing *Reno*). There is no reason for this Court to revisit that issue in the present case.

C. The court of appeals correctly rejected petitioner's intergovernmental immunity claim

Petitioner's arguments regarding the intergovernmental immunity doctrine likewise do not support certiorari. *See* Pet. 20-21. The Supremacy Clause prohibits States from "regulat[ing] the United States directly or discriminat[ing] against the Federal Government or those with whom it deals." *North Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality opinion); *see also Dawson v. Steager*, __ U.S. __, 139 S. Ct. 698, 702-704 (2019). This Court has taken "a functional approach to claims of governmental immunity, accommodating of the full range of each sovereign's legislative authority and respectful of the primary role of Congress in resolving conflicts between the National and State Governments." *North Dakota*, 495 U.S. at 435 (plurality opinion).

The court of appeals properly concluded that the anti-discrimination principle of the intergovernmental immunity doctrine does not constrain state laws

like SB 54 that limit state participation in federal regulatory activities. Pet. App. 40a. As explained above, the Constitution bars the federal government from commandeering States or localities into implementing a federal program. If the United States could re-cast a State's decision not to administer such a program as unconstitutional discrimination, there would be nothing left of the anti-commandeering doctrine.

Petitioner's discrimination claim is particularly unpersuasive here because the INA specifically contemplates that States will make their own voluntary choices about whether or not to participate in federal immigration enforcement. *See supra* at 13-14. A State that chooses not to provide certain forms of assistance does not impermissibly discriminate against the United States.

II. PETITIONER'S OTHER ARGUMENTS DO NOT SUPPORT REVIEW

Most of the petition challenges the merits of the court of appeals' ruling. Petitioner's other arguments in support of review (*see* Pet. 31-34) are not persuasive.

Petitioner concedes the absence of any "square conflict" among the federal courts of appeals. Pet. 33. The petition argues that it is "difficult to reconcile" the decision below and the Second Circuit's ruling in *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999), but the two decisions do not address the same legal question, as petitioner itself acknowledges (at 33). In *City of New York*, the Second Circuit rejected a claim that Section 1373(a) facially violated the Tenth Amendment. 179 F.3d at 35-37. The court of appeals below declined to address the constitutionality of Section 1373(a), concluding instead that the

statute does not extend to the types of information demanded by petitioner here. Pet. App. 44a n.19.

There is also no reason for this Court to take up this case to address any inconsistency in reasoning between the two decisions. *City of New York* upheld Section 1373(a) based on the conclusion that the statute only "prohibit[s] state and local governmental entities or officials from directly restricting the voluntary exchange" of information and does not "directly compel states or localities to require or prohibit anything." 179 F.3d at 35. This Court's subsequent decision in *Murphy*, however, made clear that a federal proscription on state legislative action offends the Constitution in the same way as a federal compulsion to enact a state law. 138 S. Ct. at 1478 (distinction between the two is "empty"). Following that decision, a district court in New York concluded that *City of New York* "cannot survive" *Murphy*, and that ruling is now before the Second Circuit. *New York v. Dep't of Justice*, 343 F. Supp. 3d 213, 234 (S.D.N.Y. 2018), *appeals docketed*, Nos. 19-267 & 19-275 (2d Cir. Jan. 28, 2019). To the extent that any reasoning in *City of New York* may be in tension with the analysis below, review at the present time would be premature at best.[7]

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[7] Like the district court in *New York*, other district courts have agreed with California and other government plaintiffs that Section 1373(a) violates the Tenth Amendment to the extent it forbids States from enacting laws regulating state and local sharing of immigration and citizenship status information. *See, e.g.*, Pet. App. 44a n.19 (citing cases). Appeals in at least two of those cases are currently pending. *See City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 866-873 (N.D. Ill. 2018), *appeal docketed*, No. 18-2885 (7th Cir. Aug. 28, 2018); *City & Cty. of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 949-953 (N.D. Cal. 2018), *appeals docketed*, Nos. 18-17308 & 18-17311 (9th Cir. Dec. 4, 2018).

Petitioner's arguments regarding the purported practical implications of SB 54 likewise provide no basis for review. *See* Pet. 31-32. Petitioner vaguely asserts that SB 54 "makes it more difficult for federal officers" to do their jobs. *Id.* at 32. That claim largely ignores the fact that SB 54 permits substantial assistance to immigration authorities, especially when it comes to detaining individuals who pose a threat to public safety.[8] SB 54 allows custody transfers and the communication of release dates concerning individuals convicted of serious criminal offenses, including any felony punishable by a term of state imprisonment. Cal. Gov't Code § 7282.5(a). The statute authorizes such aid with respect to the vast majority of offenses that trigger a duty on the part of federal officials to detain a non-citizen pending removal proceedings. *Compare* 8 U.S.C. § 1226(c), *with* Cal. Gov't Code § 7282.5(a). And SB 54's restrictions on transfers and information sharing do not apply when an individual is released from state prison. *See* Cal. Gov't Code §§ 7282.5(a)(2), 7284.4(a) (exempting California Department of Rehabilitation and Corrections). Where SB 54 does limit aid, the federal government, of course, remains free to deploy whatever of its own resources and personnel as it deems appropriate to achieve its enforcement objectives.

Issues involving the allocation of federal and state authority are of course consequential. *See* Pet. 31. The decision below properly addressed those issues

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[8] That claim also relies in part on reports from federal officials concerning events that predate SB 54 or concerning provisions of California law that petitioner has not challenged. *See* Pet. 32 (citing, *inter alia*, C.A. E.R. 452 (¶ 26), 453 (¶ 28), 455-456 (¶¶ 31-33), 493-494 (¶ 15)).

when it concluded that California acted within its jurisdiction in defining the circumstances under which its own law enforcement resources may be used to assist in enforcing federal law. To be sure, petitioner would prefer that States and localities provide immigration authorities with any assistance requested by the federal government. But especially where Congress contemplated the possibility of voluntary state and local aid but did not purport to mandate it, a State does not intrude on federal prerogatives by volunteering help in some circumstances but not in others. The lower courts' decision declining to grant provisional relief against the enforcement of SB 54 does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

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December 20, 2019