IN THE SUPREME COURT OF THE UNITED STATES

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No. 19A-____

UNITED STATES OF AMERICA, APPLICANT

v.

STATE OF CALIFORNIA, ET AL.

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APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully requests a 30-day extension of time, to and including October 24, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. The opinion of the court of appeals (App., infra, 1a-54a) is reported at 921 F.3d 865. The court of appeals entered its judgment on April 18, 2019. A petition for rehearing (App., infra, 55a) was denied on June 26, 2019. Unless extended, the time within which to file a petition for a writ of certiorari will expire on September 24, 2019. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. In 2017, California "enacted three laws expressly designed to protect its residents from federal immigration enforcement." App., infra, 10a.

Senate Bill 54 (SB 54) prohibits cooperation between California law enforcement officials and federal immigration authorities, except in limited circumstances. Specifically, SB 54 prohibits state and local law enforcement officials (other than in the Department of Corrections) from "[p]roviding information regarding a person's release date" or "personal information," including an individual's home address or work address, to immigration authorities "unless that information is available to the public." Cal. Gov't Code § 7284.6(a)(1)(C)-(D) (West 2019). SB 54 also prohibits covered state and local law enforcement officials from "[t]ransfer[ring] an individual to immigration authorities unless" the transfer is "authorized by a judicial warrant or judicial probable cause determination" or the individual has been convicted of specified crimes. Cal. Gov't Code § 7284.6(a)(4) (West 2019); see Cal. Gov't Code § 7282.5 (West 2019) (listing specified crimes); App., infra, 17a.

Assembly Bill 103 (AB 103) requires the California Attorney General to conduct "reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings." Cal. Gov't Code § 12532(a) (West 2019). Among other things, the review

must address "the conditions of confinement," "the standard of care and due process provided," and "the circumstances around [the] apprehension" of civil immigration detainees. Cal. Gov't Code § 12532(b) (West 2019). To facilitate the review, the California Attorney General "shall be provided all necessary access, * * * including, but not limited to, access to detainees." Cal. Gov't Code § 12532(c) (West 2019); see App., infra, 16a.

Assembly Bill 450 (AB 450) limits employer cooperation with federal immigration authorities. Among other things, AB 450 imposes monetary penalties on "public and private employers" who "provide voluntary consent to an immigration enforcement agent to enter any nonpublic areas of a place of labor," or "to access, review, or obtain the employer's employee records," unless the "immigration enforcement agent provides a judicial warrant" or subpoena. Cal. Gov't Code §§ 7285.1(a) and (e), and 7285.2(a)(1) (West 2019). AB 450 also limits employers' ability to "reverify the employment eligibility of a current employee at a time or in a manner not required by" federal law. Cal. Lab. Code § 1019.2(a) (West Supp. 2019). And AB 450 requires employers to "provide a notice to each current employee" of any inspections of I-9 "forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection," and to provide a copy of the inspection results to any employee identified as "an employee who may lack work authorization" or who has

"deficiencies" in work-authorization documents. Cal. Gov't Code § 90.2(a)(1) and (b)(2) (2019); see App., infra, 15a-16a.

2. In 2018, the United States filed an action in federal district court seeking to enjoin provisions of SB 54, AB 103, and AB 450 as preempted by federal law or barred by principles of intergovernmental immunity. App., infra, 18a. The court declined to preliminarily enjoin SB 54, AB 103, or the provisions of AB 450 requiring employers to provide notice of immigration inspections to their employees. Id. at 18a-20a. The court did preliminarily enjoin the provisions of AB 450 preventing employers from voluntarily consenting to immigration inspections and reverifying the work authorization of their employees. Id. at 18a.

3. The court of appeals affirmed in part and reversed in part. See App., infra, 1a-54a.

The court of appeals affirmed the district court's decision not to enjoin SB 54. The court of appeals had "no doubt that SB 54 makes the jobs of federal immigration authorities more difficult," but reasoned that "this frustration does not constitute obstacle preemption" because federal law "does not require any particular action on the part of California or its political subdivisions." App., infra, 38a, 40a, 43a. The court added that "[e]ven if SB 54 obstructs federal immigration enforcement, the United States' position that such obstruction is unlawful runs directly afoul of the Tenth Amendment and the

anticommandeering rule." Id. at 41a. The court concluded that intergovernmental-immunity principles do not bar SB 54 for similar reasons. Id. at 46a-47a. And the court declined to find SB 54 preempted by 8 U.S.C. 1373(a), which prevents state and local governments from declining to provide federal immigration authorities with "information regarding * * * citizenship or immigration status." See App., infra, 47a-51a.

The court of appeals reversed in part the district court's decision not to enjoin AB 103. App., infra, 28a-37a. The court of appeals concluded that the district court had erred in creating "a de minimis exception to the doctrine of intergovernmental immunity," and remanded for the district court to consider whether the provision of AB 103 requiring state inspectors to "'examine the circumstances surrounding [an immigration detainee's] apprehension and transfer to the facility'" should be enjoined under the intergovernmental-immunity doctrine. Id. at 16a (citation omitted); see id. at 32a-34a. After accepting a limiting construction proposed by the State for the provision of AB 103 requiring a review of "the standard of care and due process provided" to immigration detainees, the court of appeals affirmed the district court's decision not to enjoin any other provisions of AB 103 as preempted or barred by intergovernmental immunity. Id. at 33a-34a.

The court of appeals affirmed the district court's decision not to enjoin the provisions of AB 450 requiring employers to provide notice of immigration inspections to their employees. App., infra, 23a-28a. The court of appeals concluded that those provisions were not conflict preempted or barred by intergovernmental immunity because they did not burden the federal government or treat the federal government "worse than anyone else." Id. at 27a.*

4. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case. The additional time sought in this application is needed to continue consultation within the government and to assess the legal and practical impact of the court of appeals' ruling. Additional time is also needed, if a petition is authorized, to permit its preparation and printing.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

SEPTEMBER 2019

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* The State did not appeal the district court's decision to preliminarily enjoin AB 450's prohibitions on employer consent to immigration inspections and employer reverification of employees' work authorization. See App., infra, 18a n.4.