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 15 **UNITED STATES DISTRICT COURT**  
 16 **EASTERN DISTRICT OF CALIFORNIA**

17  
 18 THE UNITED STATES OF AMERICA,  
 19 Plaintiff,  
 20 v.  
 21 THE STATE OF CALIFORNIA;  
 EDMUND GERALD BROWN JR.,  
 Governor of California, in his Official  
 22 Capacity; and XAVIER BECERRA,  
 Attorney General of California, in his  
 23 Official Capacity,  
 24 Defendants.

No. 18-cv-246

**PLAINTIFF’S RESPONSE TO  
 DEFENDANTS’ STATEMENT ON  
 SCHEDULING**

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 26 Plaintiff submits this response to Defendants’ proposed briefing schedule (ECF 14) in  
 27 which, rather than simply address a schedule for the Preliminary Injunction motion filed by the  
 28

1 United States (ECF 2), Defendants have proposed various strategies to delay briefing on the  
2 motion and consideration of it by this Court. In the meantime, the United States will suffer  
3 continuing irreparable injury—including the release of unlawfully present aliens who have  
4 engaged in criminal conduct onto the streets of California, the risks to the public and Department  
5 of Homeland Security (DHS) officials in conducting at large apprehensions of these aliens, the  
6 threats of coercive penalties imposed on businesses lawfully cooperating with federal  
7 immigration enforcement, and the ongoing State interference with lawful federal immigration  
8 detention in the State. *See* ECF 2-1 at 31-39.

10 First, it is remarkable that the State of California would seek to delay this matter  
11 primarily so that it can avoid litigating in its State capital. There is no basis to seriously entertain  
12 this request that the case be transferred—and under no circumstances is the sort of significant  
13 delay California requests in addressing a motion for preliminary injunction warranted on this  
14 basis. The events leading to this litigation were the enactment of the three unusual and novel  
15 laws by state government bodies that reside in this district, and now the execution of those  
16 harmful laws by State Defendants—the Governor and the Attorney General—both of whom  
17 reside in this district. California’s wish to defend these challenges in another federal judicial  
18 district in San Francisco, where the State capital is not located and where the official Defendants  
19 do not reside, makes no sense. Thus, the Court should enter the schedule requested by the United  
20 States and not delay resolution of the United States’ Motion for Preliminary Injunction based on  
21 the possibility that California may at some point in the future file a meritless motion to transfer.  
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25 There is no cognizable reason to transfer this case as related to litigation brought in  
26 another district by the State of California raising different claims regarding California’s  
27 qualification for Department of Justice grants upon which discretionary conditions were placed  
28

1 seeking various types of cooperation in immigration enforcement. That case is about the  
2 Attorney General’s authority to issue law enforcement grants and the limits on that authority.  
3 This case is about whether three California laws violate the Supremacy Clause. Any overlap  
4 between the cases is minimal, and limited to just certain arguments concerning one of the three  
5 laws challenged here. Indeed, this Court’s Chief Judge has already determined that another case  
6 filed in this district—which involved a Supremacy Clause challenge to one of the three statutes  
7 challenged by the United States here—is not related to this litigation. ECF 12. *A fortiori* a case  
8 filed by California addressing the issuance of federal law enforcement grants is not related to this  
9 Supremacy Clause challenge brought by the United States.  
10

11 Finally, California’s assertion that discovery may be warranted prior to this Court’s  
12 resolution of the pending motion for preliminary injunction is without merit based on the present  
13 record. The United States therefore respectfully submits that the Court should adopt its proposed  
14 schedule as outlined in its statement filed on March 9, 2018. *See* ECF 10.  
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18 **1.** Defendants’ propose that the Court enter a briefing schedule that extends briefing well  
19 into June, 2018, and sets a hearing date no earlier than June 20, 2018, over *one hundred days*  
20 from the date the United States filed its motion, and nearly six months after the January 1  
21 effective date of SB 54 and AB 450. This is not an appropriate schedule for a Court to review a  
22 motion for preliminary injunctive relief where a party has come before it with a serious showing  
23 of irreparable injury. “The function and purpose of a preliminary injunction is to prevent  
24 irreparable injury pending an ultimate determination of the action,” *Marine Cooks & Stewards,*  
25 *AFL v. Panama S. S. Co.*, 268 F.2d 935, 935 (9th Cir. 1959), and “to preserve the relative  
26 positions of the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451  
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1 U.S. 390, 395 (1981); *Fid. & Guar. Life Ins. Co. v. Chiang*, No. 2:14-CV-01837 JAM, 2014 WL  
2 6090559, at \*10 (E.D. Cal. Nov. 13, 2014) (Mendez, J.). Indeed, Congress has expressly  
3 instructed that courts “shall expedite the consideration of . . . any action for temporary or  
4 preliminary injunctive relief.” 28 U.S.C. § 1657(a).

5  
6 The United States continues to suffer ongoing, concrete, and irreparable harm every day  
7 that passes without resolution of the pending motion. *See* ECF 2-1 at 32-39. As we explained in  
8 our motion, criminal aliens are being released at large by California law enforcement officers,  
9 requiring federal officers to risk their safety—and the safety of the public—to conduct at large  
10 apprehensions. *Id.* Lawful businesses in California face a risk of steep civil penalties and  
11 ongoing threats by the Attorney General aimed at chilling cooperation with federal law  
12 enforcement. *Id.* And California is interfering with the operation of immigration detention  
13 facilities in the State, including continuing threats regarding State access to those facilities. *Id.*

14  
15 Without timely resolution of the pending motion, those harms will continue to compound.  
16 *See, e.g., Thermogenesis Corp. v. Origen Biomedical, Inc.*, No. 2:13-CV-02619-MCE, 2014 WL  
17 4930678, at \*3 (E.D. Cal. Sept. 29, 2014) (noting, that once harm is shown, there is a “need for  
18 speedy action to protect the plaintiffs’ rights”). And contrary to Defendants’ assertion that time is  
19 not of the essence because the laws Plaintiff challenges were enacted at various times in late  
20 2017 (ECF 14 at 2), SB 54 and AB 450 went into effect only on January 1, 2018, and the  
21 enforcement threats of the State regarding those laws and AB 103 are ongoing and increasing.  
22 *See* ECF 1 ¶ 47. More importantly, as the Ninth Circuit has explained, it is “prudent rather than  
23 dilatory” to build a strong case for preliminary relief before filing suit. *Arc of California v.*  
24 *Douglas*, 757 F.3d 975, 991 (9th Cir. 2014); *see also Puente Arizona v. Arpaio*, 76 F. Supp. 3d  
25 833, 860 (D. Ariz. 2015) (finding *six-year* delay in filing lawsuit seeking invalidate state action  
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1 under the Supremacy Clause did not mitigate ongoing, irreparable harm that arose during that  
2 time). And that harm cannot be abated by the delay of some *100 days* that Defendants propose.  
3 There is thus no sound reason for such a long delay in preliminary consideration of the harms  
4 identified by the United States and the legal flaws in the three unusual laws that recently went  
5 into effect in California.

6  
7 **2.** There is also no basis to delay consideration of the preliminary injunction motion  
8 based on the possibility that California will move to transfer this case to be heard in San  
9 Francisco. If anything, that request by California to avoid litigating in this Court—located in the  
10 State’s capital city—should be promptly rejected by this Court.

11  
12 The possibility that California may seek to transfer venue *away* from its capital is  
13 particularly perplexing given that “venue is proper inasmuch as Sacramento is the seat of  
14 government for the State of California, Cal. Gov’t Code § 450 and because the named defendants  
15 are being sued in their official capacities as constitutional officers of the State of California, Cal.  
16 Gov’t Code § 1060.” *H. J. Justin & Sons, Inc. v. Brown*, 519 F. Supp. 1383, 1385 (E.D. Cal.  
17 1981), *aff’d in part, rev’d in part sub nom. H.J. Justin & Sons, Inc. v. Deukmejian*, 702 F.2d 758  
18 (9th Cir. 1983). Those named Defendants—Governor Brown and Attorney General Becerra—  
19 can hardly argue that it is more convenient for them and their employees to travel some 90 miles  
20 to San Francisco rather than walk a few city blocks to this courthouse for proceedings. There is  
21 thus unlikely to be any plausible argument for transfer in these circumstances, and the possibility  
22 that Defendants may file such a motion should not delay resolution of Plaintiff’s motion for  
23 preliminary injunction.  
24

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26 California asserts that they might have a viable transfer theory because they filed suit  
27 against the Attorney General in a case they claim is similar. *See Becerra v. Sessions*, No. 17-CV-  
28

1 04701 (N.D. Cal. 2018). But the cases are not related in the legal sense. *Becerra* concerns the  
2 issuance of Department of Justice grants, and whether California may qualify for them under  
3 federal law for while pursuing various sanctuary state policies (including SB 54 and several other  
4 state laws that are not at issue here). *See Id.*, Amended Complaint, ¶ 1 (challenging possibility  
5 that Department of Justice will “withhold \$28.3 million in law enforcement funding to California  
6 and its political subdivisions pursuant to the Edward Byrne Memorial Justice Assistance Grant  
7 (“JAG”) program”). In particular, California alleges that grant conditions imposed by the  
8 Department of Justice in administering a grant program are invalid under various statutory and  
9 constitutional provisions—including the Administrative Procedure Act and the Spending Clause.  
10 The Supremacy Clause is not the basis for any claim or a defense in that case.  
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12  
13 This case, on the other hand, does not concern Justice Department grants at all, but  
14 instead whether three California laws are invalid under the Supremacy Clause. Only one of the  
15 three California laws being challenged here overlaps with the laws at issue in the *Becerra* case—  
16 SB 54—and there the law is at issue in the context of whether that law precludes California from  
17 qualifying for a Justice Department grant based that has been conditioned on compliance with 8  
18 U.S.C. § 1373 a condition for receiving the grant. Moreover, in *Becerra*, California asks the  
19 Court to hold that it qualifies for a Justice Department grant even though it enacted *seven* laws  
20 addressing law enforcement information sharing—among them SB 54.<sup>1</sup> Importantly, the United  
21 States has not challenged six of those laws here, but it is challenging two other California laws—  
22 AB 450 and AB 103—that have no relevance to the other litigation. The claims are largely  
23 distinct and not related in the legal sense.  
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27 <sup>1</sup> In *Becerra*, the Attorney General argues that California’s challenges to all *seven* of these laws  
28 is not justiciable. *See* Motion to Dismiss, ECF 77, at 19-24, *Becerra v. Sessions*, No. 17-CV-  
04701 (N.D. Cal. 2018).

1 Given the lack of any overlapping claims between this case and *Becerra*, the possibility  
2 that Defendants might file a motion to transfer venue should not delay resolution of the motion  
3 for preliminary injunction. Absent any meaningful overlap in the underlying claims in *Becerra*  
4 and this case, it is difficult to see how 28 U.S.C. 1404(a)'s purpose of "prevent[ing] the waste of  
5 time, energy and money" and "protect[ing] litigants, witnesses and the public against  
6 unnecessary inconvenience and expense," *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964), will  
7 be served. Such a motion would be particularly inappropriate here, given that "the court affords  
8 plaintiff's choice of forum great weight," especially where "the operative facts have [] occurred  
9 within the forum and the forum has [an] interest in the parties or subject matter." *DeFazio v.*  
10 *Hollister Employee Share Ownership Tr.*, 406 F. Supp. 2d 1085, 1088 (E.D. Cal. 2005) (citing  
11 *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987) *cert. denied*, 485 U.S. 993 (1988)). That is  
12 clearly the case here, given that the United States challenges the constitutionality of three  
13 California laws conceived, debated, promulgated, and signed into law *in this district* and  
14 enforced *from this district* in buildings less than a mile from this courthouse.  
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18 **3.** That Defendants believe they *may* move for discovery related to the motion for  
19 preliminary injunction also presents no reason for delaying resolution of the pending motion for  
20 preliminary injunction. "Generally, Federal Rule of Civil Procedure 26(d) provides that  
21 discovery shall not commence until *after* the conference required by Rule 26(f)." *TGI Friday's*  
22 *Inc. v. Stripes Restaurants, Inc.*, No. 1:15-CV-00592-AWI, 2015 WL 2341991, at \*2 (E.D. Cal.  
23 May 13, 2015) (emphasis added). "[E]xpedited discovery is not automatically granted merely  
24 because a party seeks a preliminary injunction." *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d  
25 1063, 1066 (C.D. Cal. 2009) (collecting cases). Rather, "a showing of good cause" must be  
26 made. *TGI Friday's*, 2015 WL 2341991, at \*2 (citing *Am. LegalNet*, 673 F. Supp. 2d at 1066).  
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1 And generally such discovery is afforded to the *plaintiff*—not the defendant—where necessary to  
2 demonstrate irreparable harm. *See, e.g., id.* (collecting cases); *Matson & Isom Tech. Consulting*  
3 *v. Dell Inc.*, No. CIV S-08-0683 MCEEFB, 2008 WL 3863447, at \*2 (E.D. Cal. Aug. 19, 2008)  
4 (similar); *cf. TGI Friday's*, 2015 WL 2341991, at \*2 (E.D. Cal. May 13, 2015) (“the lack of  
5 discovery in this action is more prejudicial to Plaintiff than Defendants, since Plaintiff carries the  
6 burden of proof on its motion”).

8 It is for this reason that even if a showing of good cause is made the movant must  
9 demonstrate “an adequate showing that [the movant] will be irreparably harmed by delaying the  
10 broad-based discovery requested until after the initial conference between the parties pursuant to  
11 Rule 26.” *Am. LegalNet*, 673 F. Supp. 2d at 1066 (collecting cases); *ForceX, Inc. v. Tech.*  
12 *Fusion, LLC*, No. 4:11-cv-88, 2011 WL 2560110, at \*4-5 (E.D. Va. June 27, 2011) (courts  
13 assess “whether the requesting party has shown a likelihood of irreparable harm without access  
14 to expedited discovery”); *Lewis v. Alamance Cnty. Dep’t of Soc. Servs.*, No. 1:15-cv-298, 2015  
15 WL 2124211, at \*1 (M.D.N.C. May 6, 2015). Indeed, “discovery is not necessary for Defendants  
16 to get fair notice of the evidence Plaintiff will be relying on in support of its motion. Plaintiff’s  
17 evidence was submitted with the motion.” *TGI Friday's*, 2015 WL 2341991, at \*2. And even if  
18 such a showing is made, such discovery requests must be “narrowly tailored to obtain  
19 information relevant to a preliminary injunction determination.” *Am. LegalNet*, 673 F. Supp. 2d  
20 at 1066 (collecting cases).

21 With these standards in mind, Defendants are unlikely to make any plausible showing  
22 they are entitled to any discovery at this stage of proceedings. Defendants assert a single basis  
23 for discovery in their proposed schedule: that because one of Plaintiff’s declarants, Thomas  
24 Homan, discusses in part “events that allegedly took place before the effective date of [AB 450,  
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1 AB 103, and SB 54],” Defendants “require discovery to discern how these events, . . . could  
2 possibly be germane to the question of whether the Court should issue a preliminary injunction.”  
3 ECF 14 at 5. But that is hardly an argument for discovery. Rather, it appears to be a legal  
4 argument as to the relevance of portions of Mr. Homan’s declaration, which requires no  
5 discovery at all, and therefore provides no basis for Defendants’ requested delay.<sup>2</sup> Should  
6 Defendants in fact demonstrate good cause for limited, relevant, and proportional discovery  
7 necessary for resolution of the pending motion, and that they will be irreparably harmed in this  
8 motion without access to this discovery, Plaintiff is more than willing to confer with Defendants  
9 at that time. But the Court should not assume a colorable claim for “expedited discovery on  
10 speculation alone.” *Kava Holdings, LLC v. Rubin*, No. 216CV06955PSGGJSX, 2016 WL  
11 6652706, at \*3 (C.D. Cal. Nov. 10, 2016). There is thus no colorable reason to delay resolution  
12 of the pending motion for injunctive relief given the clear showing by the United States of  
13 ongoing, concrete, irreparable harm to its interests. *See TGI Friday’s*, 2015 WL 2341991, at \*2  
14 (“The Court will not delay resolution of Plaintiffs motion when Defendants fail to articulate  
15 exactly what they would be looking for during discovery and how it is relevant to the motion”  
16 and where “Defendants’ request for expedited discovery appears to be based on the speculative  
17 hope that their requests uncover something that may be relevant to the motion for preliminary  
18 injunction.”).

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22 For these reasons, the United States requests that this Court order the parties to complete  
23 briefing of the pending motion for preliminary injunction and enter the briefing schedule  
24 proposed in its filing. *See* ECF 10.  
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27  
28 <sup>2</sup> Mr. Homan’s declaration addresses many issues, including events that both precede and post-date the effective date of the challenged laws in this case, in order to provide an overarching survey of the impacts of these laws on the United States and an overview of how immigration enforcement works generally. *See* ECF 2-2.

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3 DATED: March 12, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2018, I electronically transmitted the attached document to the Clerk’s Office using the U.S. District Court for the Eastern District of California’s Electronic Document Filing System (ECF) which will serve a copy of this document on all counsel of record.

/s/ Erez Reuveni  
EREZ REUVENI  
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