



# The Plot Thickens: Trump Administration Sues California Over New Immigration Laws, Including AB 450

Insights

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The ever-escalating dispute between the Trump Administration and the State of California over immigration policy is starting to resemble a Shakespearean drama.

U.S. Attorney General Jeff Sessions, speaking at an appearance before law enforcement groups in Sacramento yesterday morning, announced the filing of a lawsuit against the state of California seeking to invalidate three recent pieces of immigration-related legislation enacted by the California Legislature and signed into law by Governor Jerry Brown.

SB 54 enacted a statewide version of a so-called “sanctuary” law, which limits the ability of local law enforcement to cooperate with federal immigration authorities. AB 103 enacted provisions that require the state Attorney General to inspect the activities of federal immigration agents.

For employers, the most significant legislation at issue is AB 450, which, among other things, prohibits California employers from granting voluntary access to immigration authorities without a warrant, and requires employers to provide certain notices to employees before and after immigration enforcement activity at the workplace.

The federal lawsuit seeks to invalidate these new laws, and asks the federal court to grant an injunction preventing their enforcement while the litigation is pending.

## **Preemption? Or No Preemption? That Is The Question.**

The lawsuit filed by the U.S. Department of Justice argues that the state laws, including AB 450, are preempted by the Supremacy Clause of the United States Constitution, which makes enforcement of the nation’s immigration laws the exclusive purview of the federal government.

In an interesting twist, the Trump administration is relying on prior precedent from a 2012 legal challenge filed by the Obama-era Department of Justice which aimed to overturn legislation enacted in Arizona (SB 1070) that sought to regulate aspects of immigration enforcement. The Obama administration argued that because immigration was a federal concern, certain parts of Arizona’s efforts to regulate aspects of immigration enforcement were preempted by federal law and invalid. The Supreme Court ultimately agreed with the DOJ and struck down most of the Arizona law as unconstitutional.

Ironically, the Trump administration will be raising largely the same legal challenges and pointing to the Supreme Court's ruling in the Arizona case to invalidate California's new laws. Many legal scholars had predicted that the ruling in the Arizona case could prove problematic by those seeking to defend the California laws.

### **The War of Words Continues**

There was pointed rhetoric on both sides of the debate following announcement of the federal lawsuit. During his announcement, Sessions stated, "California, it absolutely appears to me, is using every power it has – powers it doesn't have – to frustrate federal law enforcement. So you can be sure I'm going to use every power I have to stop them."

The response from state elected officials was immediate and equally aggressive. Governor Jerry Brown called the lawsuit a "political stunt" and said, "At a time of unprecedented political turmoil, Jeff Sessions has come to California to further divide and polarize America." And California Attorney General Xavier Becerra vowed to vigorously defend the new laws, stating, "Like all men and women who wear the badge in California, I took an oath to uphold the law. That means all of the laws, including AB 450."

### **What's Next?**

Will this legal challenge get traction in the courts? Or is all this "much ado about nothing?"

For now, AB 450 is still the law of the land in California and will continue to be enforced by the state Attorney General and the Labor Commissioner. Because the Trump administration is seeking an injunction to prevent enforcement of the law while the lawsuit is pending, it is possible that the federal court could put the new laws on hold. But that hasn't happened yet. We'll keep you posted on any court action that impacts the applicability of AB 450.

A more immediate question for California employers may be whether the Trump administration continues to increase workplace immigration enforcement activity in response to the new California laws. Recent weeks have seen a flurry of activity by ICE across California, and this escalation in the confrontation may lead to further actions that impact California employers and workers. If you have not yet reviewed and adopted our firm's five-step plan to avoid trouble, you should do so now.

In any event, it's likely that this legal battle will play out over months, if not years. Meaning this little drama will occupy California's employers for the foreseeable future.

### ***Related People***





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