

Non-Cooperation Policy Case Law Updates



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United States v. California

921 F.3d 865 (9th Cir. 2019)

United States v. California

Preemption

- ❖ No express preemption: “Federal law provides states and localities the *option*, not the *requirement*, of assisting federal immigration authorities.”
- ❖ No obstacle preemption: “SB 54 may well frustrate the federal government’s immigration enforcement efforts. However, . . . that frustration is permissible, because California has the right, pursuant to the anticommandeering rule, to refrain from assisting with federal efforts.”

Intergovernmental Immunity

- ❖ No intergovernmental immunity problem: “A finding that SB 54 violates the doctrine of intergovernmental immunity would imply that California cannot choose to discriminate against federal immigration authorities by refusing to assist their enforcement efforts—a result that would be inconsistent with the Tenth Amendment and the anticommandeering rule.”

Other Cases

United States v. Illinois
(No. 25-1285, N.D. Ill.)

United States v. City of Rochester
(No. 25-6226, W.D.N.Y.)

United States v. Colorado
(No. 25-1391, D. Colo.)

United States v. City of N.Y.
(No. 25-4084, E.D.N.Y.)

Illinois v. FEMA
--- F. Supp. 3d ---
(D.R.I. Sept. 24, 2025)

Illinois v. FEMA

Threshold Issues

- ❖ The case was not “moot” due to voluntary cessation doctrine
- ❖ The case was “ripe” for review because the promulgation of the Standard Terms and Conditions and the decision to attach them to grant programs were final agency actions

Arbitrary and Capricious

- ❖ DHS did not consider the authorizing statutes, the underlying purpose of the programs such as public safety, alternative methods of achieving its goals, reliance interests, and the like

Spending Clause

- ❖ Conditions must be unambiguous, must have a legitimate nexus to the federal interest in the particular program, and must not be coercive. The grant conditions fail at each stage of that analysis.

Other Cases

San Francisco v. Trump
(No. 25-1350, N.D. Cal.
No. 25-3889, 9th Cir.)

King County v. Turner
(No. 25-814, W.D. Wash.
No. 25-3664, 9th Cir.)

Santa Clara v. Noem
(No. 25-8330, N.D. Cal.)

Illinois v. Noem
(No. 25-495, D.R.I.)

Questions

