

No. _____

In the
Supreme Court of the United States

THE GEO GROUP, INC.,

Petitioner,

v.

BOB FERGUSON, et al.,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Like the pending petition in *GEO Group, Inc. v. Nwauzor*, No. 25-828 (filed Jan. 9, 2026), this petition involves yet another attempt by Washington State to dictate federal immigration detention policy by targeting private companies providing services to the federal government. Petitioner provides services under contract with U.S. Immigration and Customs Enforcement (“ICE”) at the Northwest ICE Processing Center (“NWIPC”) in Tacoma, Washington. Washington disagrees with the federal government’s immigration policies and tried to shut down operations at the NWIPC altogether by passing a law banning private parties from operating detention centers within the state’s borders. After courts halted a similar California ban as blatantly unlawful, Washington tried another tack: It enacted comprehensive regulations micromanaging nearly every aspect of day-to-day operations at the NWIPC—and that facility *alone*. The district court preliminarily enjoined that effort, concluding that it violates the Supremacy Clause’s intergovernmental-immunity doctrine. But the Ninth Circuit vacated, reasoning that Washington’s law can survive because it targets a federal contractor rather than the federal government itself.

The question presented is:

Whether the Supremacy Clause permits a state to enact a law micromanaging the details of how a federal contractor must provide services at a federal detention facility, while exempting the state’s own detention facilities from all those requirements.

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellee below) is The GEO Group, Inc. (NYSE: GEO).

Respondents (defendants-appellants below) are Robert W. Ferguson, in his official capacity as Governor of the State of Washington; and Nick Brown, in his official capacity as the Attorney General of the State of Washington. Governor Ferguson has replaced Governor Jay Inslee as a party to these proceedings pursuant to this Court's Rule 35.3. Attorney General Brown has likewise replaced Attorney General Ferguson as a party to these proceedings pursuant to this Court's Rule 35.3.

CORPORATE DISCLOSURE STATEMENT

The GEO Group, Inc. is a publicly traded company (NYSE: GEO). BlackRock Fund Advisors and The Vanguard Group, Inc. each own 10 percent or more of GEO's stock. GEO has no corporate parent.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 14.1(b)(iii), petitioner states that the following proceedings are directly related to this case:

The GEO Group, Inc. v. Inslee, et al., No. 24-2815 (9th Cir.).

The GEO Group, Inc. v. Inslee, et al., No. 3:23-cv-05626-BHS (W.D. Wash.).

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PETITION FOR WRIT OF CERTIORARI

This petition concerns the State of Washington’s latest salvo in its “crusade against the federal government’s use of federal contractors to enforce immigration policy.” App.39 (Bumatay, J., dissenting from the denial of rehearing en banc). This Court already has pending before it a petition from GEO involving Washington’s unconstitutional efforts to target and regulate federal operations at the Northwest ICE Processing Center (“NWIPC”), *see GEO Group, Inc. v. Nwauzor*, No. 25-828 (filed Jan. 9, 2026) (“*Nwauzor.Pet.*”), and the Court has invited the Solicitor General to file a brief expressing the views of the United States on that petition, *see* Order List at 3 (U.S. May 18, 2026). Washington’s latest effort to target the NWIPC not only underscores the importance of the *Nwauzor* petition, but provides an independent opportunity for the Court to resolve a circuit split about the appropriate legal standard governing state efforts to interfere with federal immigration policy by imposing their own, sometimes-conflicting regulations on federal functions performed by federal contractors.

For two decades, GEO has provided detention, transportation, and food services for the NWIPC, a facility that holds federal immigration detainees. At every turn and across different presidential administrations with very different immigration policies and priorities, Washington has tried to run the NWIPC into the ground. The state first tried to literally wipe the NWIPC off the map, by purporting to ban the facility outright. When that failed, it targeted the NWIPC with an enforcement action that

forced GEO to treat federal immigration detainees who participate in a federal voluntary work program as employees and pay them the state minimum wage (the policy at issue in *Nwauzor*). Now, it has enacted a comprehensive set of rules to govern the day-to-day operations of immigration detention at the NWIPC—and the NWIPC alone.

The state insists that its blatant efforts to dictate and discriminate against federal immigration detention policy are consistent with the Supremacy Clause and our basic constitutional structure because they target a federal contractor rather than the federal government itself. The Ninth Circuit has blessed that (il)logic, reasoning that the immunity from state regulation that attaches under the Supremacy Clause is substantially narrower when the federal government chooses to rely on service providers rather than discharging the same federal functions itself. App.13. In other words, in the Ninth Circuit, when the federal government decides that the optimal way to advance federal objectives is to rely on federal contractors, it must concede control over the distinctly federal functions to the states.

That approach conflicts with the decisions of at least three other circuits, which squarely reject the notion that states may evade the Supremacy Clause by regulating federal contractors rather than the federal government. It contradicts a long line of this Court's cases—stretching all the way back to *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819)—confirming that states have no more leeway to obstruct the execution of federal functions by a private party than they do to obstruct the execution of federal

functions by the federal government itself. And it defies common sense; under the Supremacy Clause and our constitutional structure, the federal government does not need to choose between discharging important federal functions “in-house” or acquiescing to state and local regulation. And a state cannot target federal contractors performing distinctly federal functions like immigration as a form of protest against federal policy.

For all these reasons, the Ninth Circuit’s decision cannot stand. At any given time, some state will view federal immigration policy as too harsh or too lax. The decision below, like the Ninth Circuit’s decision in *Nwauzor* before it, provides a roadmap for states to interfere with the critical federal prerogative to establish a uniform immigration policy. And beyond the immigration context, there are countless areas where the federal government looks to private contractors as the optimal agents for discharging federal functions. The decision below makes the cost of enlisting such private-sector assistance an open door for state interference with core federal functions, including in areas of unique federal interest. That is not a cost the Supremacy Clause tolerates. The Court should grant review and confirm that states cannot demand of federal contractors performing federal functions what they could not demand of the federal government itself.

OPINIONS BELOW

The Ninth Circuit’s opinion is reported at 151 F.4th 1107 and reproduced at App.1-31. The Ninth Circuit’s order denying rehearing en banc and the statements respecting that order are reported at 166

F.4th 1188 and reproduced at App.32-43. The district court’s opinion is reported at 720 F.Supp.3d 1029 and reproduced at App.56-129. The district court’s order denying reconsideration is unreported but available at 2024 WL 1621078 and reproduced at App.44-55.

JURISDICTION

The Ninth Circuit issued its opinion on August 19, 2025, App.1, and denied a timely rehearing petition on February 11, 2026, App.32. Justice Kagan extended the time for filing a petition to July 10, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix.

STATEMENT OF THE CASE

A. Legal Background

1. The Supremacy Clause makes the Constitution and federal statutes “the supreme Law of the Land.” U.S. Const. art. VI, cl.2. This Court has long held that state laws that interfere with the execution of federal functions violate the Supremacy Clause. *See McCulloch*, 17 U.S. at 432-37. That principle, known as intergovernmental immunity, is “almost as old as the Nation” itself, *Dawson v. Steager*, 586 U.S. 171, 173 (2019), and it forbids states from attempting to invert the constitutional order by enacting state laws that “[i] directly regulate or [ii] discriminate against” the federal government or its contractors, *United States v. Washington*, 596 U.S. 832, 835 (2022). That doctrine ensures that states cannot, “by taxation or otherwise,” “retard, impede, burden, or in any manner

control” Congress’s chosen means of carrying federal law into execution. *McCulloch*, 17 U.S. at 436.

There is an obvious temptation, also as old as the Nation itself, for states to interfere with policies that Congress views as national imperatives, but that are locally unpopular in certain quarters. In the early days of the Republic, the First Bank of the United States provided a flash point. See 1 William Graham Sumner, *A History of Banking in All the Leading Nations* 100 (1896) (explaining how states “tried to tax the Bank of the United States out of existence”). In more recent days, federal immigration policy has been the impetus for interference by states that view the prevailing federal policy as either too lax or too unforgiving, depending on the state and the current administration’s enforcement posture. But the through line across the centuries and the varying pressing issues of the day is that states cannot interfere with the federal government’s operations, no matter whether the federal government chooses to execute the federal operations itself or via federal contractors, as “a regulation imposed on one who deals with the Government has as much potential to obstruct governmental functions as a regulation imposed on the Government itself.” *North Dakota v. United States*, 495 U.S. 423, 438 (1990) (plurality op.).

Both Congress and this Court have recognized the special status of federal contractors and the importance of ensuring that they do not face liability under state law for assisting the federal government in discharging federal responsibilities that are nationally important, but locally unpopular. This Court has recognized that the federal government has

the same federal interest “in getting the Government’s work done” when it relies on contractors instead of federal employees. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 505 (1988). Moreover, Congress has expressly provided and continuously expanded a federal forum not just for federal officers, but for those “acting under” them. 28 U.S.C. §1442(a)(1); see *Chevron USA Inc. v. Plaquemines Parish*, 146 S.Ct. 1052, 1057 (2026). As this Court has observed, federal contractors are the quintessential example of those acting under federal officers. See *Watson v. Philip Morris Cos.*, 551 U.S. 142, 153-54 (2007). And the federal forum ensures that federal contractors will get a fair adjudication of their colorable federal defenses, which in many cases stem from the federal contract itself. See *Boyle*, 487 U.S. at 505-09. Consistent with those principles, federal contractors cannot be held liable for executing their obligations when “what was done was within the constitutional power of Congress.” *Yearsley v. W.A. Ross Constr.*, 309 U.S. 18, 20-21 (1940).

2. The federal government has “broad, undoubted power” over “immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 394 (2012). Exercising that distinctly federal power, Congress has mandated that certain aliens be detained pending their immigration proceedings. See 8 U.S.C. §§1225(b), 1226, 1231(a). To facilitate that mandate, Congress directed the executive branch to “arrange for appropriate places of detention,” and authorized the Attorney General to “acquire” or “build” detention facilities if existing federal facilities “are unavailable” or unsuitable. *Id.* §1231(g)(1). Mindful of the cost of building new facilities, Congress instructed agencies

to “consider the availability” of existing detention centers that could be leased “[p]rior to” constructing new facilities. *See id.* §1231(g)(2). Congress also vested the Secretary of Homeland Security with authority to “make contracts, grants, and cooperative agreements” as necessary and proper to carry out his statutory responsibilities. 6 U.S.C. §112(b)(2).

Consistent with those congressional directives, the executive branch has promulgated regulations that allow ICE to contract with private detention facilities to house federal immigration detainees. *See* 48 C.F.R. §3017.204-90; 8 C.F.R. §235.3(e). ICE, in turn, relies on an extensive network of privately owned facilities to house tens of thousands of detainees—roughly 80 percent of all federal immigration detainees. *Oversight of ICE Detention Facilities: Examining ICE Contractors’ Response to COVID-19: Hearing Before the Subcomm. on Border Sec., Facilitation, & Operations of the H. Comm. on Homeland Sec.*, 116th Cong. 1 (2020) (statement of Rep. Kathleen M. Rice). Although those facilities are widely dispersed geographically and operated by a variety of different private service providers, ICE works to ensure a significant degree of uniformity by requiring contractors to agree to operate pursuant to detailed federal regulations that govern virtually all day-to-day conditions of these federal immigration detention centers. *See Oversight of ICE Detention Facilities Hearing Before the Subcomm. on Oversight, Mgmt., & Accountability of the Comm. on Homeland Security*, 116th Cong. 28, 30 (2019) (statement of Diana R. Shaw).

B. Factual & Procedural Background

1. Since 2005, ICE has contracted with GEO to provide detention, transportation, and food services at a facility in Tacoma, Washington, that houses federal immigration detainees “in support of the ICE ERO-Seattle Field Office.” C.A.App.669, 1305. That facility, known as the NWIPC, is the only ICE detention center in Washington, so it plays a critical role in the government’s immigration efforts in the Pacific Northwest. Without it, ICE would be forced either to hold its detainees outside Washington, thus complicating detention, transportation, and immigration-court appearances, or to construct and operate its own detention facility—a lengthy and expensive process. *See GEO Grp., Inc. v. Newsom*, 50 F.4th 745, 752-53 (9th Cir. 2022) (en banc). That explains why the facility has remained open and operational for 21 consecutive years, spanning five presidential administrations of both parties.

The NWIPC’s day-to-day operations are governed by federal standards that apply generally to ICE detention facilities and are carefully designed to “tailor the conditions of immigration detention to its unique purpose.” C.A.App.833. ICE’s 2015 contract with GEO required the company to “perform all services in accordance with ICE 2011 Performance-Based National Detention Standards” (“PBNDs”). C.A.App.671. The detail and length of those federal standards—approximately 500 pages—underscore the distinctly federal nature of immigration detention and the need for uniformity in federal facilities nationwide. The comprehensive rules dictate everything from detainee intake and classification to

food service, sanitation, healthcare, recreation, visitation, and telephone access. *See* C.A.App.832-1116. As the federal contract governing the NWIPC recognizes, compliance with those obligations has “both an indirect and direct effect on the accomplishment of ICE’s mission.” C.A.App.669.

2. Over the past several years, Washington has repeatedly tried to dictate federal immigration policy by targeting operations at the NWIPC. The state’s objectives were laid bare in 2021 in a law purporting to ban any “private detention facility” from operating “within the state.” Wash. Rev. Code §70.395.030(1). That law contained a host of exceptions such that—by design—the only facility it affected was the NWIPC. *See, e.g., id.* §70.395.030(3)(a)-(h) (listing exceptions); App.4-5, 57. GEO challenged that law under the Supremacy Clause. App.62. And after the Ninth Circuit (over a dissent) struck down a materially identical California law because it interfered with “ICE’s contracting decisions,” *Newsom*, 50 F.4th at 749, 761, Washington agreed not to enforce its law against the NWIPC, App.63.

Undeterred, Washington pivoted to less blunderbuss efforts to try to protest and micromanage federal immigration detention policy. The state sought to target a voluntary work program that federal law requires GEO to offer to federal detainees at the NWIPC by claiming the federal program violated state minimum-wage law (from which state detention facilities are conveniently exempt) and unjustly enriched GEO. *See Nwauzor*.Pet.10-12. The state parlayed that unlikely theory into a \$37 million judgment against GEO and an injunction prohibiting

GEO from operating the federal program unless it pays participating detainees the state minimum wage. *Id.* But despite support for GEO from the United States (as an amicus) across the last three presidential administrations, the Ninth Circuit upheld that award over a panel dissent from Judge Bennett and en banc dissents from Judges Bumatay and Collins (joined by five other judges). GEO petitioned this Court to decide “[w]hether the Supremacy Clause allows a state to reclassify federal immigration detainees participating in a federal work program as employees and thereby impose its state minimum-wage law just because a private contractor provides detention services at the federal facility where the detainees are housed.” *Nwauzor*.Pet.i-ii. That petition remains pending after this Court called for the views of the Solicitor General.

This case concerns Washington HB 1470, a law that Washington enacted in 2023 to impose a raft of state-law conditions on detention at private facilities in the state (a universe that not coincidentally consists solely of the NWIPC), backed by new state-law inspection, damages, and penalty regimes. *See* 2023 Wash. Sess. Laws ch. 419 (codified at Wash. Rev. Code §§70.395.040-.080). Section 2 of HB 1470 directs the Washington Department of Health to adopt rules requiring private detention facilities to provide “sanitary, hygienic, and safe conditions for detained persons,” including rules governing personal belongings, sanitation, laundry, hygiene items, food service, air quality, heating and cooling, and infection control. Wash. Rev. Code §70.395.040(1).

Section 4 required private detention centers operating under a contract executed after January 1,

2023, to provide detainees 60 minutes of free phone calls every day, daily in-person visitation with unrestricted physical contact, and free access to televisions with programming in the language of each detainee, *id.* §70.395.060(1), (2)(a)-(p) (2023), along with free weekly mental-health evaluations performed by someone with “[k]nowledge of a detained person’s cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community outreach; and skills in adapting services and treatment to a detained person’s experiences and identifying cultural contexts for individuals,” *id.* §§70.395.060(2)(m), 70.395.020(2) (2023). None of this comports with the federal government’s own detailed regulations, but that was the whole point of HB 1470. Since it could not simply shutter the NWIPC under *Newsom*, Washington decided to try the next best thing—namely, micromanage all its operations in ways that contradict ICE’s own directions to service providers like GEO.

To ensure compliance with Washington’s distinct vision for federal immigration detention, HB 1470 creates a comprehensive state-law inspection and enforcement regime. The law mandates routine, unannounced inspections by the state agencies, Wash. Rev. Code §70.395.050(1)-(2), and authorizes private and public enforcement, *see id.* §§70.395.070, 70.395.080. Specifically, HB 1470 gives detained persons a private action for damages and injunctive relief, *id.* §70.395.070, and authorizes the Washington Attorney General to recover civil penalties of up to \$1,000 per violation per day, with each violation

treated as “a separate and distinct offense,” *id.* §70.395.080(1), (3).

As with its past efforts to countermand federal immigration detention policy, Washington had to work hard to single out the NWIPC for HB 1470’s numerous requirements, exempting a vast array of other places where people are detained, including juvenile facilities, civil-commitment and treatment facilities, quarantine facilities, work-release facilities, extraordinary-medical-placement facilities, residential substance-use-disorder facilities, and tribal facilities. *See id.* §70.395.100. HB 1470 also makes clear that Washington is unwilling to live with these same demands when it comes to its own facilities. The state and *its* agencies are immune from liability for violating the law’s requirements. *See id.* §§70.395.070(4), 70.395.080(6). The predictable and intended result of all those exemptions is a law gerrymandered to effectively regulate only one entity: the NWIPC.

3. GEO filed this suit in July 2023 against Washington officials, seeking a declaration that HB 1470 violates the Supremacy Clause, along with a preliminary and permanent injunction. *See App.5.* GEO argued that HB 1470 violates the Supremacy Clause several times over: It is preempted by federal laws empowering the Secretary of Homeland Security to identify, inspect, and regulate private detention facilities. It directly regulates the federal detention function by controlling the terms of ICE’s detention contract, in violation of the intergovernmental-immunity doctrine. And it discriminates against a federal contractor by exacting burdens not imposed on

comparable state facilities, also in violation of the intergovernmental-immunity doctrine. *See* D.Ct.Dkt.8 at 11-22.

Washington defended its law by arguing that the intergovernmental-immunity doctrine does not apply with full force here because GEO is a federal contractor. The state claimed that HB 1470 “[b]y definition” does not directly regulate the federal government because it is aimed at GEO, “a private company,” D.Ct.Dkt.17 at 10, and insisted that *McCulloch*’s admonition that states cannot “retard, impede, burden, or in any manner control” federal activities, 17 U.S. at 436, no longer remains good law, D.Ct.Dkt.17 at 11-12. As for the anti-discrimination rule, the state claimed that HB 1470 does not discriminate because Washington purportedly imposes similar requirements on residential treatment facilities—defined as “a facility in which twenty-four hour on-site care is provided for the evaluation, stabilization, or treatment of residents for substance use, mental health, co-occurring disorders, or for drug exposed infants,” Wash. Admin. Code §246-337-005(27)—even though those facilities are expressly exempted from HB 1470, Wash. Rev. Code §70.395.030(3), *see* D.Ct.Dkt.17 at 5, 13-16.

The district court granted preliminary relief, agreeing with GEO that HB 1470 impermissibly discriminates. *See* App.87-129. After surveying the “language and history of HB 1470,” the court found that its purpose “is to impose conditions specifically on the NWIPC.” App.91-92. The court held that §2 impermissibly discriminates against the federal government’s contractors because it imposes burdens

on the NWIPC that Washington does not impose on comparable state detention facilities, such as state prisons and state detainment facilities. App.87-101, 124-27. The court rejected the state’s reliance on residential treatment facilities for two reasons: First, it concluded that those healthcare facilities are not similarly situated to the NWIPC; and second, it concluded that §2 does not regulate the NWIPC in the same manner that state law regulates residential treatment facilities. App.94-101. As the court explained, “private immigration detention facilities and residential treatment facilities serve fundamentally different purposes, are authorized to exercise vastly different degrees of control over those who fall under their purview, and operate out of categorically different types of facilities.” App.99.¹

The state appealed. On appeal, the United States filed an amicus brief supporting GEO and the district court’s holding that HB 1470 violates the Supremacy Clause. As it explained, intergovernmental immunity forbids states from “singling out the federal government or federal contractors for unique burdens or otherwise subjecting them to unfavorable treatment,” C.A.U.S.Br.1, and states cannot avoid that rule by defining “private detention facility” in facially neutral terms while exempting every category of state and local contractor that might otherwise be covered, C.A.U.S.Br.8-12. Nor can Washington defeat GEO’s discrimination claim by comparing the NWIPC

¹ The district court rejected GEO’s other arguments and held that it lacked standing to challenge §4’s obligations because the then-existing contract between GEO and ICE had been executed before January 1, 2023. App.75-77.

to residential treatment facilities, which “differ in all crucial respects” from federal immigration detention facilities. C.A.U.S.Br.2, 12-18. The proper comparators, the United States explained, are prisons, jails, and other facilities where people are detained for violating the law, which Congress itself treats as comparable to immigration detention facilities. C.A.U.S.Br.15-16. And as compared to those facilities, HB 1470 plainly imposes discriminatory obligations on GEO. C.A.U.S.Br.15-18.

While that appeal was pending, and after oral argument, Washington amended HB 1470. Those amendments make “several but, in the context of this case, largely nonmaterial changes to HB 1470,” App.5, including some modifications to the inspection provisions and changes to the conditions-of-detention standards for private detention facilities, *see* 2025 Wash. Sess. Laws ch.235, §§1-3, 6 (HB 1232). Like its predecessor statute, the law as amended continues to regulate the ins and outs of detention at the NWIPC. It requires automatic water-temperature regulation “at all plumbing fixtures,” Wash. Rev. Code §70.395.040(1)(i)(iii), and mandates free, confidential telephone service for all detainees, *id.* §70.395.060(2)(b). It also includes open-ended provisions requiring written policies and procedures that assure detainees are protected from (i) “[a]buse,” which encompasses “an act” that “in any way jeopardizes a detained person’s health, welfare, or safety,” and (ii) “[n]eglect,” which includes a “[r]efusal

to acknowledge, hear, or consider a detained person's concerns." *Id.* §70.395.020(1), (5).²

4. The Ninth Circuit vacated the injunction and remanded. App.2. The panel rejected GEO's direct-regulation intergovernmental-immunity argument, relying on Circuit precedent deeming "the scope of a federal contractor's protection from state law under the Supremacy Clause [as] substantially narrower than that of a federal employee or other federal instrumentality." App.13. Although the panel agreed that HB 1470 will "change the way GEO treats [federal immigration] detainees," that did not matter because GEO is a private contractor, and the Ninth Circuit believes that "[a] state has greater ability to regulate a contractor of the federal government than to regulate the government itself." App.13, 17.

Next, the panel rejected the district court's discrimination analysis. The panel conceded that, "as a practical matter, HB 1470 applies only to the NWIPC," while exempting Washington's prisons and jails. App.18. But the panel deemed state prisons and jails the wrong point of comparison, in part because they are state owned, whereas the NWIPC is privately owned. App.36-37. The panel instead agreed with the state that the NWIPC is more like privately owned and operated residential treatment facilities. App.19-22. While those facilities are likewise exempt from HB 1470, the panel nevertheless remanded for the district

² After Washington enacted those amendments, the panel rejected GEO's suggestion of mootness, concluding that "HB 1232's changes have resulted in a law that is 'substantially similar' to HB 1470's initial text, and that this appeal is therefore not moot." App.6.

court to decide whether HB 1470's requirements are sufficiently analogous to various requirements that Washington separately imposes on residential treatment facilities. *See* App.22-26. The panel also rejected GEO's preemption and direct-regulation arguments. App.12-17, 27-30.

5. GEO petitioned for rehearing en banc. As in *Nwauzor*, the Ninth Circuit denied the petition over substantial dissent, this time written by Judge Bumatay and joined by seven other judges. App.32-43. Judge Bumatay recognized that this case is “merely the latest round in the State of Washington’s crusade against the federal government’s use of federal contractors to enforce immigration policy.” App.39. And he explained how *Nwauzor* ensures that it will not be the last, as it is “a ‘dangerous precedent’” that “allow[s] ‘any State [to] impair any federal policy—no matter how central to the federal government—so long as the State regulates federal contractors rather than the federal government itself.’” App.38.

In reality, Judge Bumatay explained, “this case should have been easy.” App.42. The state has “imposed a series of state regulations directed *solely* at the [NWIPC]” that “dictate nearly every facet of how the federal government must treat alien detainees at the Center—from the detainees’ right to use their personal belongings, to the mandatory provision of special diets, to free phone calls, to a right of ‘privacy’ during personal visits, to housekeeping.” App.39. Rather than imposing those rules through “across-the-board state regulations,” the state “exempts *any* of its own facilities—including state and local detention

facilities, jails, and prisons—from both the regulations and their enforcement mechanisms.” App.39. By doing so, “Washington State has told Washington, D.C. ... ‘Rules for thee but not for me[,]’” and then tried to justify its burdensome and discriminatory laws on the theory that it may regulate the NWIPC however it wants because it “is run by a federal contractor” rather than the federal government itself. App.39-40.

As to the panel’s holding about the appropriate comparator to the NWIPC, the dissenting judges agreed that “state jails and prisons” are “obviously” the correct comparator because they, like the NWIPC, “detain those accused or convicted of violating the law, whether immigration or state criminal law,” and because both groups of facilities share “comparable concerns for public safety and ensuring appearances at future proceedings.” App.40-41. Instead of accepting that straightforward conclusion, however, the panel “invent[ed] a new set of rules [for] immigration detention centers run by federal contractors” by focusing “myopically on the smallest subset of inapt comparators”: residential treatment facilities. App.42. Those “private sector *healthcare* facilities,” the dissent argued, are wholly different from the NWIPC and the interests implicated by detention pending immigration proceedings. App.42.

Because “the power to burden is the power to destroy,” and “state destruction of federal operations is something the Supremacy Clause doesn’t permit” even when a law is aimed at private contractors, the dissenting judges concluded that the court should have upheld the injunction against Washington’s discriminatory law. App.43.

REASONS FOR GRANTING THE PETITION

The decision below green lights Washington to enforce a burdensome and discriminatory state law that dictates the day-to-day operations of a federal immigration-detention facility, down to the level of requiring fresh fruits and vegetables to appear on federal detainees' meal trays. The statute imposes no comparable burdens on those housing state and local detainees—for the rather obvious reason that the Washington law is a protest against federal immigration policy, rather than a neutral effort to regulate detention facilities. The Ninth Circuit's approval of that discriminatory targeting of distinctly federal operations is deeply flawed, deepens a pre-existing circuit split, and warrants certiorari both in its own right and as a complement to the pending *Nwauzor* petition.

The circuits are divided about the correct legal standard to apply when deciding whether state regulation of federal contractors violates the intergovernmental-immunity doctrine. The Second, Third, and Fourth Circuits look to the substance of the challenged state regulation and hold that a state law that controls a federal contractor's performance of a federal function carries the same constitutional sting as direct regulation of, or discrimination against, the federal government. The Ninth Circuit has repeatedly held the opposite: Because GEO is a private entity providing services that assist the federal government in carrying out a distinctly federal function, Washington is free to impose restrictions that it could not impose directly on the federal government's own

operations and that it chooses not to impose on its own detention facilities.

That outlier approach is deeply flawed. Intergovernmental immunity exists not to protect particular parties, but to protect federal functions from state interference. That interference is every bit as damaging when the federal government chooses to carry out federal functions through a federal contractor. Indeed, the discretionary judgment that certain distinctly federal functions are best discharged by enlisting a private service provider rather than standing up permanent government bureaucracies is itself an important federal decision that should be shielded from state interference. By holding to the contrary, the Ninth Circuit has effectively conditioned the federal government's sovereign prerogative to carry out federal functions through federal contractors on surrendering its right to function free from state interference. That cannot be squared with this Court's precedent or the basic structure of our Constitution.

The question presented is exceptionally important, and this case presents an excellent vehicle to address it. Both the federal government and federal contractors need to know what protection from state interference federal functions retain when the government enlists the aid of private parties to accomplish them. That is especially true in the context at issue here, as 80% of immigration detainees are held in privately owned and operated facilities. The Ninth Circuit's persistent willingness to penalize the federal government for using contractors to facilitate immigration detention threatens to jeopardize the entire federal detention regime.

In short, this Court should grant certiorari to resolve a consequential circuit split, provide much-needed guidance about the scope of intergovernmental immunity and curb the efforts of states to hamstring federal immigration policies they disfavor. In the alternative, the Court should consolidate this petition with the petition in *Nwauzor* and grant both, or hold this petition pending disposition of *Nwauzor*.

I. The Supremacy Clause Forecloses Washington’s Efforts To Regulate The Terms Of Immigration Detention At The NWIPC.

The decision below entrenches a circuit split and dilutes the Supremacy Clause. In conflict with the Second, Third, and Fourth Circuits, the Ninth Circuit deems the federal government entitled to less protection under the intergovernmental-immunity doctrine when it decides to accomplish federal functions through contractors rather than employees. But there is no Supremacy Clause exception for federal functions carried out through federal contractors. The Ninth Circuit’s contrary view has no basis in precedent or first principles, and would perversely punish the federal government for exercising its sovereign prerogative about the best means through which to advance federal interests.

A. The Circuits Are Divided Over How the Intergovernmental-Immunity Doctrine Applies When States Regulate Federal Contractors.

As explained in the *Nwauzor* petition, courts of appeals are sharply divided about what legal standard applies when courts decide whether state regulations of federal contractors performing federal functions

violate intergovernmental immunity. See *Nwauzor*, Pet.20-25. The Second, Third, and Fourth Circuits hold that a state cannot circumvent intergovernmental immunity by regulating federal contractors: If a regulation has the same practical effect—or “the same sting,” *CoreCivic, Inc. v. Governor of N.J.*, 145 F.4th 315, 322 (3d Cir. 2025)—as regulation of the federal government itself, then it is barred. The Ninth Circuit, by contrast, holds that intergovernmental-immunity protection is “substantially narrower” when the federal government uses federal contractors, such that states may regulate contractors in ways that they concededly could not regulate the federal government itself. The Ninth Circuit’s decision here further entrenches that split and underscores the need for this Court’s review.

1. The Second, Third, and Fourth Circuits all hold that states cannot evade intergovernmental immunity by regulating federal contractors instead of regulating the federal government itself. When a private party contracts with the federal government to perform a federal function, those courts afford the contractor the same immunity the federal government would enjoy if it performed the work through its own employees.

The Second Circuit first reached that conclusion in *United States v. Town of Windsor*, 765 F.2d 16 (2d Cir. 1985). There, the Department of Energy contracted with the General Electric Company (“GE”) to manage a nuclear research and training facility in Windsor, Connecticut. *Id.* at 17. At DOE’s direction, GE began construction. *Id.* Nuclear research was about as popular in Connecticut in the 1980s as federal immigration enforcement is in Washington

state today. So when the town learned of that federal work, it ordered GE to cease construction until it obtained certain state-law permits. *Id.* GE refused, prompting litigation. Although Windsor agreed that the Supremacy Clause would forbid it from “demand[ing] compliance with the Code from the [federal] government” itself, it maintained that “it may demand compliance from the Government’s contractors.” *Id.* at 18. The Second Circuit squarely rejected that argument, explaining that “[e]nforcement of the substance of the permit requirement against the contractors would have the same effect as direct enforcement against the Government.” *Id.* at 19. “Either way,” applying state law would frustrate federal objectives. *Id.*

The Third Circuit reached the same conclusion in its recent decision in *CoreCivic, Inc. v. Governor of New Jersey*, 145 F.4th 315 (3d Cir. 2025). That case involved a New Jersey law that barred any “new, expanded, or renewed agreements to detain people for civil immigration purposes” within the state. N.J. Stat. Ann. §30:4-8.15(d). By design, the law forced a private company to cease operating an ICE detention center in New Jersey. *CoreCivic*, 145 F.4th at 319. Although the court found the structure of the law “admittedly clever” because it regulated contractors rather than ICE directly, it saw “the law for what ‘it really is’: a direct regulation on the federal government” that “violates intergovernmental immunity.” *Id.* And like the Second Circuit before it, *see id.* at 326 (citing *Windsor*, 765 F.2d at 19), the court rejected the state’s view that it could evade the Supremacy Clause by regulating federal contractors rather than “the federal government directly,” *id.* at

321-22. Heeding this Court’s admonition to “look through form and behind labels to substance” when “gauging intergovernmental immunity,” *id.* at 322 (quoting *City of Detroit v. Murray Corp.*, 355 U.S. 489, 492 (1958)), the court held the law invalid, as it “carrie[d] the same sting as a law whose text applies expressly to the federal government,” *id.*

The Fourth Circuit, too, has reached the sensible conclusion that states cannot evade the Supremacy Clause by training their sights on federal contractors. *See United States v. Virginia*, 139 F.3d 984 (4th Cir. 1998). Virginia’s law required private investigators to obtain a state license. *Id.* at 985-86. When the Commonwealth threatened to enforce that requirement against private investigators who served as independent contractors for the FBI, the Bureau and one of the contractors sued. *Id.* at 986-87. The Fourth Circuit held that Virginia could not force the FBI’s contractors to obtain state licenses because that would impermissibly burden the federal government’s ability to select and use its chosen agents to carry out federal functions. *See id.* at 989-90.

The common thread among these decisions is that states cannot evade the Supremacy Clause by regulating federal contractors rather than the federal government. As each court has recognized, so long as a state law “carries the same sting” as a law that directly regulates or discriminates against the federal government, *CoreCivic*, 145 F.4th at 322, it makes no difference that a state has accomplished those forbidden ends by regulating federal contractors.

2. Here, as in *Nwauzor*, the Ninth Circuit eschewed that dominant approach in favor of treating

“a federal contractor’s protection from state law” as “substantially narrower” than the federal government’s. App.13; see *Nwauzor v. GEO Grp., Inc.*, 127 F.4th 750, 760-61 (9th Cir. 2025). Thus, in the Ninth Circuit, the federal government’s immunity from state regulation of a federal function does not extend to a federal contractor carrying out the same function at the federal government’s direction.

The decision below repeats *Nwauzor*’s error (both were authored by the same judge) in treating GEO’s status as a federal contractor as dispositive of the direct-regulation claim. The panel agreed that HB 1470 “change[s] the way GEO treats [federal immigration] detainees.” App.17. So if the federal government owned and operated the NWIPC directly instead of enlisting GEO’s services, there is no doubt that HB 1470 would violate intergovernmental immunity by unlawfully regulating immigration detention. But because HB 1470 “imposes obligations on GEO, a federal *contractor*” rather than the federal government, App.15 (emphasis in original), the panel found no Supremacy Clause problem, reasoning that “[a] state has greater ability to regulate a contractor of the federal government than to regulate the government itself.” App.13. The Ninth Circuit’s approach of treating state regulation of a federal function (immigration detention) differently based on the identity of the entity performing that federal function (a federal contractor versus a federal employee) was thus outcome-determinative.

The same legal mistake infects the Ninth Circuit’s analysis of GEO’s discrimination claim. The panel admitted that, if the “appropriate comparator” to the

NWIPC were “Washington’s prisons,” it would have “agree[d] with [the district court’s] decision striking down” HB 1470. App.19-20. But it disagreed that the state’s jails and prisons are the appropriate comparator—in large part because “Washington owns and operates its prisons,” whereas “the federal government neither owns nor operates the NWIPC.” App.21; *see* App.36 (Fletcher, J., respecting denial of rehearing en banc) (treating the fact that “GEO’s facility is privately owned and operated” while “Washington’s prisons and jails are governmentally owned and operated” as one of two “important differences between” them). Put differently, had the federal government chosen to operate the NWIPC directly instead of through a federal contractor, the discrimination claim could have succeeded.

In short, the panel and rehearing decisions below, like the panel and rehearing decisions in *Nwauzor*, rest squarely on the deeply flawed view that discriminatory state regulation of federal functions can be excused so long as the state aims that regulation at federal contractors rather than the federal government. *Nwauzor*.Pet.25-30.

B. The Ninth Circuit’s Decision Is Profoundly Wrong.

The Ninth Circuit is on the short side of this circuit split for a reason: Its outlier view is irreconcilable with this Court’s precedent. As this Court has recognized for centuries, states cannot evade the Supremacy Clause by targeting those who perform critical federal functions under contract in lieu of targeting the federal government itself. Nor can states encroach on a federal field by characterizing

their regulations at a high level of generality to obscure the fact that they are regulating a function assigned to the federal government alone. Indeed, the dichotomy erected by the Ninth Circuit not only fails to protect federal functions from state interference, but interferes directly with the federal government's discretion to decide whether distinctly federal functions—like housing federal detainees awaiting federal process—are best discharged with the assistance of private service providers or by the federal government itself.

1. This Court has long explained that “the federal function must be left free of state regulation” even when “the federal function is carried out by a private contractor.” *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 181 (1988). And rightly so, as regulation of private contractors “obviously implicate[s] the same interest in getting the Government’s work done.” *Boyle*, 487 U.S. at 505. The Court has never retreated from the commonsense notion that states cannot interfere with federal objectives by targeting private contractors who act under the direction of full-time federal officials in discharging federal functions. See *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 44-45 (1867) (the Court has “uniformly denied” state laws that “affec[t] the functions of the Federal government” or “impede or embarrass the ... operations of that government”).

For example, the Court has struck down under the Supremacy Clause laws requiring federal contractors to secure state approval before charging certain rates, see *Pub. Utils. Comm’n v. United States*, 355 U.S. 534, 543-44 (1958), to obtain a state license

before initiating construction projects, *see Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 189-90 (1956) (per curiam), to procure a state-issued driver's permit before delivering the mail, *see Johnson v. Maryland*, 254 U.S. 51, 57 (1920), and to obtain an air-pollution permit before operating a uranium processing facility, *see Hancock v. Train*, 426 U.S. 167, 174 n.23, 180 (1976). The state laws in each instance were nondiscriminatory, yet they were held unconstitutional as applied to the federal contractors because they “interrupt[ed] the acts of the general government itself.” *Johnson*, 254 U.S. at 55.

As Judge Bumatay has persuasively explained, “[w]hen a federal contractor acts on behalf of the federal government to administer a federal function—like the detention of aliens—the contractor is not merely a private business; it steps into the shoes of the federal government for Supremacy Clause purposes.” *Nwauzor v. GEO Grp., Inc.*, 146 F.4th 1280, 1286 (9th Cir. 2025) (Bumatay, J., dissenting from the denial of rehearing en banc). Despite the Ninth Circuit’s repeated insistence to the contrary, there is nothing talismanic about the identity of the entity performing a federal function; what matters under the Supremacy Clause is that the federal government must remain free to exercise its federal functions in the manner that it chooses without state interference, regardless whether it chooses to carry out that federal function via federal employee or federal contractor. *See supra*, pp.26-28. Thus, the fact that ICE has decided to enlist GEO’s assistance rather than own and operate the NWIPC itself is irrelevant. Because Washington cannot permissibly impose HB 1470’s regulations of the conditions of detention on the federal government

itself, it likewise cannot impose them on GEO when the federal government has chosen to carry out its federal immigration detention functions through that federal contractor. The Ninth Circuit’s contrary rule penalizes the United States for exercising its plenary sovereign prerogative to advance federal objectives through private parties.

Of course, not *all* state regulation of federal contractors violates the Supremacy Clause—just as not all regulation of the federal government violates the Supremacy Clause. *See Hancock*, 426 U.S. at 179 (“the Supremacy Clause” does not bar “all state regulation which may touch the activities of the federal government”). Federal employees and contractors alike must follow state laws that do not discriminate based on their federal relationship or interfere with their ability to carry out a federal function. *See, e.g., North Carolina v. Ivory*, 906 F.2d 999, 1000-02 (4th Cir. 1990) (finding a federal postal worker subject to liability under local traffic laws because he did not allege that “anything in the conduct of his federal responsibilities ... justified his violation of these laws”). Hence, federal contractors cannot assert blanket immunity from state regulation just because they are “working for the federal government.” *Hencely v. Fluor Corp.*, 146 S.Ct. 1086, 1098 (2026). And “those who contract to furnish supplies or render services to the government ... do not perform governmental functions” simply because they are federal contractors. *Id.* But when a contractor is enlisted to perform a distinctly governmental—and distinctly federal—function, this Court’s precedent has long taught that it should not

be treated any differently than the federal government itself.

Here, nobody disputes that HB 1470 regulates the federal function of immigration detention. Indeed, the Ninth Circuit acknowledged that the statute “seeks ... to change the way GEO treats [NWIPC] detainees.” App.17. That should have ended the case. The detainees at the NWIPC are not Washington’s detainees or GEO’s detainees. They are *federal* immigration detainees, held pursuant to *federal* authority, in aid of *federal* immigration proceedings, under a *federal* contract, and subject to *federal* detention standards. When Washington attempts to dictate how those detainees must be housed, fed, visited, monitored, supplied, and provided services, Washington is regulating federal immigration detention operations no matter whether those regulations fall on federal contractors or federal employees.

The extent of Washington’s interference with the federal government’s detention policy is difficult to overstate. While the federal government has chosen to enlist private companies to assist with the day-to-day operation of facilities housing some 80% of all federal immigration detainees, that hardly means the federal government is indifferent to how those facilities are operated. To the contrary, ICE has developed some 500 pages of regulations governing the minute details of operating the facilities, and it makes compliance with those regulations a condition of contracting. On many of those details, Washington has very different views from the federal government. For example, although the PBNDS allow detainees to

keep “a reasonable amount of personal property,” there is a comprehensive list of items that “detainees may not retain.” C.A.App.1308-09. HB 1470, by contrast, instructs that detainees shall be allowed to use their “personal belongings to the extent possible.” Wash. Rev. Code §70.395.040(1)(a). And while the PBNDS generally require “pre-clearance approvals” for access to ICE facilities, C.A.App.670, HB 1470 demands that state inspectors receive “free and unimpeded access” to the NWIPC. Wash. Rev. Code §43.70.170.

The scope for conflicting directions from state and federal authorities will only expand now that the Ninth Circuit has given Washington a green light to issue detailed regulations to govern the NWIPC. Those conflicts implicate and violate another aspect of this Court’s Supremacy Clause jurisprudence—namely, that state efforts to intrude into a distinctly federal field like immigration are preempted. *See* C.A.Dkt.75 at 16-21; C.A.Dkt.29 at 50-58. Congress has expressed a preference for contractor detention facilities, which ICE must consider “[p]rior to” constructing a new government-run facility. 8 U.S.C. §1231(g)(2). Congress has also delegated to the Secretary of Homeland Security responsibility to enter “contracts, grants, or cooperative agreements with non-Federal parties.” 28 U.S.C. §530C(a)(4); *see also* 6 U.S.C. §112(b). And in 2019, Congress created the Office of the Immigration Ombudsman to inspect contractor-run facilities and address complaints concerning precisely the issues that HB 1470 purports to address. 6 U.S.C. §205. These provisions and the web of regulations they authorize are sufficient to

occupy the field of immigration detention, in which the federal government has a unique interest.

Ultimately, whether analyzed under the rubric of intergovernmental immunity or of preemption, two things are clear: The Supremacy Clause does not tolerate Washington’s interference with the distinctly federal functions at issue here, and the Ninth Circuit’s decision to authorize that interference because ICE has decided to enlist the aid of federal contractors in carrying out federal functions cannot be squared with this Court’s precedents.

2. The Ninth Circuit’s reasons for rejecting GEO’s discrimination claim fare no better. Just a few Terms ago, this Court reaffirmed—in another case reversing a Ninth Circuit decision sanctioning a Washington law, no less—that states may not “discriminat[e] against the Federal Government or *those with whom it deals*,’ (e.g., *contractors*).” *Washington*, 596 U.S. at 838 (emphases added). States violate that rule when they “trea[t] someone else better than [they] treat[]” the federal government, *Washington v. United States*, 460 U.S. 536, 544-45 (1983), as when they grant themselves favorable tax exemptions that do not apply to federal actors, *see Dawson*, 586 U.S. at 176, or impose novel regulatory obligations uniquely on federal actors, *see Washington*, 596 U.S. at 838-39. And it has long been settled that that rule applies with equal force whether the target of state regulation is the federal government or a party with whom it contracts—as was the case in *Washington*. *See id.*

The Ninth Circuit agreed that HB 1470—owing to all its exemptions and exceptions—applies only to the NWIPC. App.18. But it vacated the injunction

against the relevant provisions anyway, because it deemed residential treatment facilities focused on healthcare a better comparator than state prisons and jails focused on detention. *See* App.19-26. And the panel reached that otherwise entirely dubious conclusion largely because the NWIPC is privately owned whereas the state's jails and prisons are not. App.21, 36. In effect, then, the Ninth Circuit concluded that discrimination against private contractors on the basis of their relationship with the federal government does not count for Supremacy Clause purposes. That conclusion is impossible to reconcile with *Washington*, which made clear that it does not matter whether the target is a federal instrumentality, a federal employee, or a federal contractor; discrimination against any of them is verboten. *See* 596 U.S. at 838.

Regardless, even accepting the Ninth Circuit's dubious assertion that an immigration detention center is more comparable to a residential treatment facility than to a prison or jail, *see* App.19-26, HB 1470 still discriminates against the NWIPC because state law expressly *exempts* those very residential treatment facilities from complying with HB 1470's requirements, *see* Wash. Rev. Code §70.395.030(3). That suffices to foreclose any claim that Washington has treated GEO the same as it treats residential treatment facilities. *See Dawson*, 586 U.S. at 178-79.

II. The Question Presented Is Exceptionally Important, And This Is An Excellent Vehicle To Resolve It.

This case, like *Nwauzor*, presents an important and recurring question about whether states may

control federal operations by regulating the federal contractors through whom the federal government acts. That question is exceptionally important, both to the operation of federal immigration detention facilities (in which 80% of detainees are held by private contractors) and to the performance of federal functions by federal contractors more generally. Federal contractors need to know whether they can rely on the Supremacy Clause protections that shield the federal government, or whether they receive some ill-defined junior-varsity protection. And the federal government needs to know whether it is opening the door to state interference when it enlists private contractors to perform federal functions that third parties can perform with greater flexibility or expertise. The answers to both questions should be clear and uniform.

These questions are not hypothetical. States are increasingly targeting federal contractors to undermine federal immigration policy. California has proposed a 50% gross receipts tax on “private detention facilities” that contract with a federal agency. A.B. 1633, §1, 2025-2026 Reg. Sess. (Cal. 2026) (introduced Jan. 26, 2026). New Jersey has proposed a 50% gross receipts tax on private “carceral” facilities that detain individuals who violate state or federal law. A.4300, 222d Leg., Reg. Sess. (N.J. 2026) (introduced Feb. 19, 2026). Other recently enacted legislation likewise aims at private facilities that hold federal immigration detainees. H.B. 26-1276, 75th Gen. Assemb., 2d Reg. Sess. (Colo. 2026).

The consistent involvement of the United States in GEO’s cases underscores the importance of these

Supremacy Clause issues. As in *Nwauzor*, the United States filed an amicus brief supporting GEO in this case arguing that, by singling out the NWIPC for burdensome regulations, HB 1470 violates the intergovernmental-immunity doctrine. See C.A.U.S.Br.7-18. The federal government's repeated participation in these cases across administrations is unsurprising. While the last two administrations did not agree on immigration policy, they could agree that the Ninth Circuit's approach to the Supremacy Clause impermissibly allows states to interfere with a distinctly federal function.

This is an excellent vehicle to resolve the question presented. The Ninth Circuit held that GEO's status as a federal contractor defeats its direct-regulation claim, App.12-17; that jails and prisons are not appropriate comparators to the NWIPC because it is privately owned and operated, App.19-21; and that state regulation of federal functions is not preempted because—ignoring the distinctly federal nature of the work performed—regulating private businesses is a traditional exercise of the police power, App.28-29. And though this petition arises in a preliminary-injunction posture, there is nothing tentative about the Ninth Circuit's entrenched view that federal contractors performing federal functions are entitled to substantially narrower protection than the federal government itself. App.13; see, e.g., *Nwauzor*, 127 F.4th at 760-61 (applying that standard).

In the alternative, the Court should consolidate this petition with the *Nwauzor* petition and grant certiorari. This case is a clean companion to *Nwauzor*; both involve the same state, the same federal

contractor, the same federal facility, and the same mistaken Ninth Circuit premise that Washington may do indirectly to a federal contractor what it could not do directly to the federal government. At minimum, the Court should hold this petition pending its disposition of *Nwauzor*.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari. In the alternative, it should either consolidate this petition with *GEO Group, Inc. v. Nwauzor*, No. 25-828, and grant certiorari, or hold this petition pending disposition of *Nwauzor*.

Respectfully submitted,

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July 10, 2026

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Appendix A

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 24-2815

THE GEO GROUP, INC.,

Plaintiff-Appellee,

v.

JAY INSLEE, Governor; ROBERT FERGUSON,

Defendants-Appellants.

Argued: Feb. 14, 2025

Filed: Aug. 19, 2025

Before: William A. Fletcher, Ronald M. Gould, and
Jacqueline H. Nguyen, Circuit Judges.

OPINION

W. FLETCHER, Circuit Judge:

Plaintiff-Appellee the GEO Group (“GEO”) owns and operates a private, for-profit detainment facility, the Northwest Immigration and Customs Enforcement Processing Center (“NWIPC”), in Washington State. The NWIPC confines noncitizen civil detainees while their immigration status is determined. GEO obtained a preliminary injunction against the Defendants-Appellants, then-Governor

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Jay Inslee and then-Attorney General Robert Ferguson (together, “Washington”), preventing enforcement of several provisions of House Bill 1470 (“HB 1470”), a Washington law that protects the health and safety of the civil detainees held in the NWIPC. We vacate and remand.

I. Background

GEO operates detainment facilities and private prisons throughout the country under contracts with the federal government. In 2024, GEO had \$2.42 billion in total revenue and a net income of \$31.9 million. *The GEO Group Reports Fourth Quarter and Full Year 2024 Results*, The GEO Group, Inc. (Feb. 27, 2025), <https://investors.geogroup.com/news-releases/news-release-details/geo-group-reports-fourth-quarter-and-full-year-2024-results>.

GEO operates the NWIPC in Tacoma, Washington, under a contract with Immigration and Customs Enforcement (“ICE”). The NWIPC is the only immigration detention facility in Washington. Persons held at the NWIPC are civil detainees, awaiting administrative review of their immigration status. Some detainees lack legal status in the United States. Others are lawful permanent residents, some with work authorization. Detainees are held until they are either deported or released into the United States.

As described in more detail below, the relevant provisions of Washington’s HB 1470, as amended by HB 1232 in May 2025, require the NWIPC to provide nutritious food in a clean and safe facility, authorize inspections related to these requirements, and authorize a monetary penalty for violations. The

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question before us is whether these provisions are consistent with federal law.

A. Predecessors to HB 1470 and HB 1232

In 2020, the Washington legislature passed two related statutes.

First, the legislature passed Senate Bill 6442. S.B. 6442, 66th Leg., Reg. Sess. (Wash. 2020), *enacted as* 2020 Wash. Sess. Laws ch. 318. The statute prohibited Washington’s Department of Corrections (“DOC”) from contracting with private prisons for placement or transfer of state prisoners except in emergencies. Wash. Rev. Code § 72.68.110(1). The legislature passed the statute after finding that “profit motives lead private prisons to cut operational costs, including the provision of food, health care, and rehabilitative services.” 2020 Wash. Sess. Laws ch 318, § 1(2).

Second, the legislature passed House Bill 2576. H.B. 2576, 66th Leg., Reg. Sess. (Wash. 2020), *enacted as* 2020 Wash. Sess. Laws ch. 284. That statute instructed Washington’s Department of Health (“DOH”) to evaluate and report on private detention facilities in Washington State. The statute provided that “all people confined in prisons and detention facilities in Washington deserve basic health care, nutrition, and safety, regardless of whether those people are confined in publicly or privately operated facilities.” *Id.* § 1. DOH finished its report in November 2020. The report noted that “private detention centers are not all the same. Detainee and advocate complaints are almost exclusively associated with the [NWIPC]. This facility is [the] state’s only privately operated, adult immigration detention center.”

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In 2021, based on the findings in the DOH report, the Washington Legislature passed House Bill 1090. H.B. 1090, 67th Leg., Reg. Sess. (Wash. 2021), *enacted as* 2021 Wash. Sess. Laws, ch. 30. The statute prohibited the operation of any “private detention facility within the state.” Wash. Rev. Code § 70.395.030. After our court’s en banc decision in *GEO Group, Inc. v. Newsom*, 50 F.4th 745 (9th Cir. 2022), which invalidated a similar law passed in California, Washington stipulated that it would not enforce HB 1090 against GEO’s operation of the NWIPC. *See GEO Group, Inc. v. Inslee*, 702 F. Supp. 3d 1043, 1046 (W.D. Wash. Nov. 16, 2023).

B. HB 1470

In 2023, in the wake of *Newsom*, the Washington legislature passed House Bill 1470. H.B. 1470, 68th Leg. Reg., Sess. (Wash. 2023), *enacted as* 2023 Wash. Sess. Laws ch. 419. In enacting HB 1470, the Washington legislature found

that all people confined in prisons and detention facilities in Washington deserve basic health care, nutrition, and safety. As held in *United States v. California*, 921 F.3d 865, 886 (9th Cir. 2019), states possess “the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders.” States have broad authority to enforce generally applicable health and safety laws against contractors operating private detention facilities within the state. The [N]inth [C]ircuit reinforced this authority in *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), stating

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“[p]rivate contractors do not stand on the same footing as the federal government, so states can impose many laws on federal contractors that they could not apply to the federal government itself.”

Wash. Rev. Code § 70.395.010. Four sections of HB 1470 are at issue in this appeal.

C. HB 1232

On May 12, 2025, after we heard oral argument in this case, now-Governor Ferguson signed Second Substitute House Bill 1232 (“HB 1232”). *See* Engrossed Second Substitute H.B. 1232, 69th Leg., Reg. Sess. (Wash. 2025). HB 1232 makes several but, in the context of this case, largely nonmaterial changes to HB 1470.

D. The Present Suit and Appeal

In July 2023, GEO filed a complaint in federal district court against Washington, seeking declaratory and injunctive relief against the enforcement of HB 1470. As relevant to this appeal, GEO challenged Sections 2, 3, 5 and 6 of HB 1470. The district court concluded that it “ha[d] subject-matter jurisdiction to consider GEO’s constitutional challenges to Sections 2, 3, 5, and 6 of HB 1470.” The court held that all of these sections violate the doctrine of intergovernmental immunity and granted a preliminary injunction against their enforcement. Washington timely appealed.

E. Motion by GEO

After the passage of HB 1232, GEO moved in this court for a dismissal of the current appeal and a remand to the district court on the ground that

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changes to HB 1470 wrought by HB 1232 mooted the appeal. Washington opposed the motion on the ground that the changes are relatively minor and that the substance of the appeal remains properly pending in this court.

We agree with GEO that HB 1232 affects some of the issues on appeal. However, we disagree with GEO's conclusion that we should dismiss the appeal as moot. Although "the repeal, amendment, or expiration of challenged legislation is generally enough to render a case moot and appropriate for dismissal," that presumption is rebutted when the legislative change results in a law that is "substantially similar" to the challenged legislation. *Bd. of Trs. Of Glazing Health & Welfare Tr.*, 941 F.3d 1195, 1198 (9th Cir. 2019). We conclude that HB 1232's changes have resulted in a law that is "substantially similar" to HB 1470's initial text, and that this appeal is therefore not moot. *Cf. Teter v. Lopez*, 125 F.4th 1301, 1307 (9th Cir. 2025) (en banc) (finding appeal moot after legislative changes when the defendant "ha[d] ceased to enforce the challenged law because it no longer exist[ed]"). Most of the questions presented to us remain largely unchanged by HB 1232.

We deny GEO's motion in part and grant in part. We decide some questions now. We remand other questions to the district court.

II. Jurisdiction and Standard of Review

We have jurisdiction over interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions[.]" 28 U.S.C. § 1292(a)(1). We

review the grant or denial of a preliminary injunction for abuse of discretion. *See Adidas Am., Inc. v. Skechers USA, Inc.*, 890 F.3d 747, 753 (9th Cir. 2018). We review underlying legal issues de novo “because a district court would necessarily abuse its discretion if it based its ruling on an erroneous view of law.” *Id.* (internal quotation marks omitted) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1204 (9th Cir. 2000)).

III. Preliminary Injunctive Relief

To obtain a preliminary injunction, a plaintiff must establish “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Likelihood of success on the merits is ‘the most important’ factor; if a movant fails to meet this ‘threshold inquiry,’ we need not consider the other factors.” *California v. Azar*, 911 F.3d 558, 575 (2018) (quoting *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)).

IV. Discussion

A. Sections 2, 3, and 6 of HB 1470 and Relevant Provisions of HB 1232

Section 2 of HB 1470 requires Washington’s DOH to “adopt rules as may be necessary to . . . ensure private detention facilities comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons.” Wash. Rev. Code § 70.395.040(1). Section 2 provides that Washington’s Attorney General “may enforce violations of this section on its own initiative or in response to

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complaints or violations.” *Id.* § 70.395.040(2). DOH has not yet adopted regulations under Section 2. HB 1232 modifies Section 2 in minor respects.

Section 3 of HB 1470 provides that DOH “shall . . . [c]onduct routine, unannounced inspections of private detention facilities including, but not limited to, inspection of food services and food handling, sanitation and hygiene, and nutrition[.]” and shall “[c]onduct investigations of complaints received relating to any private detention facility located within the state.” Wash. Rev. Code § 70.395.050(1)(a)-(1)(b) (now § 70.395.05(2)(a)-(2)(b)). Section 3 further provides that Washington’s Department of Labor and Industries “shall conduct routine, unannounced inspections of workplace conditions at private detention facilities, including work undertaken by detained persons.” *Id.* § 70.395.050(4) (now § 70.395.050(5)). The Office of Washington’s Attorney General “may enforce violations of this section on its own initiative or in response to complaints of violations.” *Id.* § 70.395.050(5) (now § 70.395.050(6)). HB 1232 does not affect any of the issues presented to us under Section 3.

Section 6 of HB 1470 provides that “[a]ny person who fails to comply” with HB 1470 “may be subject to a civil penalty in an amount of not more than \$1,000 per violation per day.” *Id.* § 70.395.080(1). Section 4 of HB 1232 provides a “civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a private detention facility” under certain circumstances. H.B. 1232 § 4.

1. Article III Case or Controversy

We first address the question whether GEO's challenges to HR 1470, as amended by HR 1232, constitute a case or controversy within the meaning of Article III. The district court concluded that they do constitute a case or controversy. We agree.

Washington contends that because DOH has not yet adopted implementing rules for Section 2 (now including amendments contained in HB 1232), GEO has not yet suffered an injury in fact. Washington contends that GEO's pre-enforcement challenge to Section 2 and relevant enforcement-related portions of Sections 3 and 6 (and now relevant portions of HB 1232) is therefore unripe under Article III. We regard Washington's contention as equivalent to a contention that GEO lacks Article III standing. We wrote in *Thomas v. Anchorage Equal Rights Commission*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) (internal quotation marks and citations omitted), a pre-enforcement injury case:

Whether the question is viewed as one of standing or ripeness, the Constitution mandates that prior to our exercise of jurisdiction there exist a constitutional case or controversy, that the issues presented are definite and concrete, not hypothetical or abstract. In assuring that this jurisdictional prerequisite is satisfied, we consider whether the plaintiffs face a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement.

See also Newsom, 50 F.4th at 753 ("Whether framed as standing or ripeness, California's injury

requirements ‘boil down to the same question.’” (citation omitted)).

“Pre-enforcement injury is a special subset of injury-in-fact.” *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 487 (9th Cir. 2024). We have “adopt[ed] the Supreme Court’s framework” for determining whether a plaintiff bringing a pre-enforcement challenge has satisfied Article III’s injury-in-fact requirement. *Id.* That test requires the plaintiff to show “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979)).

GEO is already required, pursuant to its contract with the government, to comply with Performance-Based National Detention Standards (“PBNDS”) in its operation of the NWIPC. It contends that Section 2 will impose additional requirements. Before the passage of HB 1232, GEO contended that rules implementing Section 2 will require it to change the existing heating and cooling air conditioning system in the NWIPC; to provide exclusively fresh fruits and vegetables, whereas the PBNDS requires fresh fruits and vegetables only in specific situations; and to provide a list of specified personal toiletries to detainees on a regular basis, whereas the PBNDS does not require the provision of such toiletries. HB 1232 makes clear that the NWIPC is not required to provide exclusively fresh fruits and vegetables; it is now required to provide a “balanced diet, *including* fresh fruits and vegetables.” (Emphasis added.) However,

the heating and cooling, as well as the personal toiletries, issues remain.

We conclude that GEO has alleged sufficient injury in fact to bring a pre-enforcement challenge to Section 2 and relevant enforcement-related provisions of Sections 3 and 6 of HB 1470, as well as relevant provisions of HB 1232. We recognize that DOH has not yet adopted rules implementing Section 2, as amended by HB 1232. But it is clear that DOH intends to adopt such rules, and that, once adopted, DOH intends to enforce them against GEO. GEO contends that there is a likelihood that such rules will require it to make the changes described above. GEO contends that requiring such changes will violate the doctrine of intergovernmental immunity, and, further, that such changes will be preempted by federal law. Because no rules have yet been adopted implementing Section 2, as amended by HB 1232, GEO's pre-enforcement challenge is limited to the question whether GEO has shown a sufficient likelihood that DOH will adopt such rules to justify a preliminary injunction.

2. Challenges to Sections 2, 3, and 6 of HB 1470 and Relevant Provisions of HB 1232

GEO argues, first, that Sections 2, 3, and 6 of HB 1470 are invalid under the doctrine of intergovernmental immunity, and, second, that they are preempted. We apply its argument to relevant provisions of HB 1232 as well. (For convenience from this point on, when we refer to sections of HB 1470 we also refer to relevant provisions contained in HB 1232 unless otherwise indicated.)

a. Intergovernmental Immunity

“[I]ntergovernmental immunity attaches only to state laws that discriminate against the federal government and burden it in some way.” *United States v. California*, 921 F.3d 865, 880 (9th Cir. 2019). Because federal contractors are not the federal government, “states may impose some regulations on federal contractors that they would not be able to impose on the federal government itself.” *Newsom*, 50 F.4th at 760 n.10. “If the immunity of federal contractors is to be expanded beyond its narrow constitutional limits, it is Congress that must take responsibility for the decision, by so expressly providing as respects contracts in a particular form, or contracts under particular programs.” *United States v. New Mexico*, 455 U.S. 720, 737 (1982) (citing *James v. Dravo Contracting Co.*, 302 U.S. 134, 161 (1937)).

“The Constitution’s Supremacy Clause generally immunizes the Federal Government from state laws that [1] directly regulate or [2] discriminate against it.” *United States v. Washington*, 596 U.S. 832, 835 (2022) (bracketed numbers added). We address in turn these two ways in which a state law can be invalid under the intergovernmental immunity doctrine.

i. Direct Regulation

In the portion of its brief arguing that HB 1470 is an impermissible direct regulation, GEO focuses only on the requirements of Section 2. GEO does not make separate arguments directed to the inspection and enforcement provisions in Sections 3 and 6. Based on the manner in which GEO has made its arguments, we conclude that GEO’s objections to Sections 2, 3 and

6 based on direct regulation stand or fall based on its arguments about the validity of Section 2.

The district court held that Section 2 “does not regulate the federal government directly in violation of the intergovernmental immunity doctrine.” We agree.

A state has greater ability to regulate a contractor of the federal government than to regulate the government itself. As we wrote in *Newsom*, “The scope of a federal contractor’s protection from state law under the Supremacy Clause is substantially narrower than that of a federal employee or other federal instrumentality.” *Newsom*, 40 F.4th at 755.

GEO relies on three cases in particular to support its argument that HB 1470 is impermissible direct regulation.

First, GEO relies on our en banc decision in *Newsom*. GEO characterizes AB 32, the California statute at issue in that case, as “similar” to HB 1470. It writes that HB 1470 was adopted “for the express purpose of circumventing this Court’s en banc decision in *Newsom*,” suggesting that *Newsom* requires us to hold that HB 1470 is discriminatory.

It is true that HB 1470 was enacted after it became clear that AB 32 was unconstitutional under our holding in *Newsom*. But it is also true that HB 1470 was specifically designed to avoid the unconstitutional aspects of AB 32. HB 1470 is poles apart from AB 32. AB 32 flatly forbade the operation in California of private detention facilities operating under contract with the federal government. In contrast to AB 32, HB 1470 permits the operation of private detention facilities such as the NWIPC in

Washington. Further, in holding AB 32 invalid in *Newsom*, we emphasized the extraordinary degree of direct control over federal operations authorized by AB 32:

AB 32 would override the federal government's position, pursuant to discretion conferred by Congress, to use private contractors to run its immigration detention facilities. It would give California a "virtual power of review" over ICE's detention decisions, and allow the 'discretion of the federal officers [to] be exercised . . . only if the [state] approves.'

Id. at 751 (citations omitted). No such control is authorized in HB 1470.

Contrary to GEO's argument, *Newsom* supports rather than undermines the decision we reach here. It is undisputed that the purpose and effect of HB 1470 is to protect the health and safety of detainees in the NWIPC. Our opinion in *Newsom* explicitly recognized the authority of a state to protect the health and safety of those within its borders:

States's historic police powers include regulation of health and safety. And these historic powers extend to laws regulating health and safety in federal detention facilities located within a state.

Id. at 766 (citations omitted). *See also California*, 921 F.3d at 886 (states have "the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders").

Second, GEO relies on *Boeing Co. v. Movassaghi*, 768 F.3d 832 (9th Cir. 2014), contending that the facts there are “remarkably similar” to the facts here. In *Movassaghi*, a California statute required a “responsible party” to “take or pay for appropriate removal or remedial action” at a particular site in California that had been heavily polluted. *Id.* at 839. The federal government accepted responsible-party status at that site and recognized that, as the responsible party, it was required under state law to clean up the site. The federal government “actively conduct[ed] the cleanup through its cleanup contractor, Boeing.” *Id.* at 839.

The California statute imposed higher clean up standards and costs on the government than the clean-up standards and costs imposed by federal law. We struck down the California statute, holding that it directly, and therefore impermissibly, regulated the federal government as a responsible party. In *Newsom*, we characterized the statute at issue in *Movassaghi* as “impermissibly interfer[ing] with federal functions by overriding federal contracting decisions” rather than “merely increas[ing] the federal government’s costs.” *Newsom*, 50 F.4th at 760.

The case before us is not controlled by *Movassaghi*. First, and most important, the statute in *Movassaghi* imposed an obligation directly on the federal government. HB 1470 imposes no obligation on the federal government. Instead, it imposes obligations on GEO, a federal *contractor*. Second, unlike the statute in *Movassaghi*, HB 1470 does not “impermissibly” “overrid[e] federal contracting decisions.” *Id.* Many, perhaps all, of the obligations

imposed by Section 2 are already imposed by the federal government itself, through GEO's contract with ICE. The contract explicitly orders GEO to comply with obligations imposed under state law, even when those obligations are more demanding than those imposed under federal law:

All services [at the NWIPC] must comply with . . . all applicable federal, state, and local laws and standards. Should a conflict exist between any of these standards, the most stringent shall apply.

Finally, HB 1470 does not increase the federal government's costs. Under GEO's contract with the government, any increased costs are borne by GEO, not by the government.

Third, after briefing was completed in this appeal GEO brought to our attention *United States v. King County, Washington*, 122 F.4th 740 (9th Cir. 2024), in support of its position. In *King County*, the government had challenged a county executive order that forbade companies at Boeing Field, a small airport just south of Seattle, from providing essential services such as fueling to flights chartered by Immigration and Customs Enforcement ("ICE"). We held that the order violated intergovernmental immunity on two grounds. First, the order "forc[ed] ICE either to stop using Boeing Field or to use government-owned planes there." *Id.* at 756. Second, the order "'singl[ed] out' the federal government and its contractors for unfavorable treatment, . . . 'burdening federal operations, and *only* federal operations.'" *Id.* at 757.

King County is very different from the case before us. First, unlike in *King County*, nothing in Washington law results in the federal government being unable to use contractors in the State. HB 1470 does not seek to shut down the NWIPC; nor does it limit ICE's ability to detain any individual in the NWIPC. Through the passage of HB 1470, Washington seeks only to change the way GEO treats its detainees. Second, unlike in *King County*, Washington has not "singled out" the NWIPC for unfavorable treatment. As we will discuss in a moment, Washington law regulates two types of residential treatment facilities, in which people are held in involuntary civil confinement, in a very similar—perhaps identical—fashion.

In sum, Section 2 does not "require[] ICE to entirely transform its approach to detention in the state or else abandon its [Washington] facilities." *Newsom*, 50 F.4th at 750. It does not give Washington "virtual power of review' over ICE's detention decisions." *Id.* at 751. Nor does it "prevent ICE's contractors from continuing to run detention facilities." *Id.* at 750. We thus conclude that while Section 2 of HB 1470 does regulate GEO, it does not directly regulate the federal government.

ii. Discriminatory Regulation

(a) Sections 2 and 3 of HB 1470 and Relevant Provisions of HB 1232

In the portion of its brief arguing that HB 1470 is an impermissible discriminatory regulation, GEO again focuses on the requirements of Section 2. It does not make a separate argument directed to the inspection or enforcement provisions in Sections 3.

Based on the manner in which GEO has made its arguments, we conclude that GEO's objections to Sections 2 and 3 of HB 1470 based on discriminatory regulation stand or fall based on its arguments about the validity of Section 2. We address Section 6 in a separate subsection.

A state law or regulation impermissibly discriminates against the federal government if it treats a state entity more favorably than it treats a comparable federal entity. *Dawson v. Steager*, 586 U.S. 171, 175-76 (2019). The "important consideration" is whether the state has "singled out contractors who work for the United States for discriminatory treatment." *Washington v. United States*, 460 U.S. 536, 544, 546 (1983). A state law or regulation that burdens only a federal contractor is not impermissibly discriminatory if it "duplicate[s] requirements otherwise mandated under" state law that are imposed on similarly situated state contractors. *California*, 921 F.3d at 873; *see also Washington v. United States*, 460 U.S. at 541 (sales tax that applied only to federal contractors did not violate intergovernmental immunity because "Washington . . . impose[s] a sales tax on all purchases from contractors who do not deal with the Federal Government").

HB 1470 is written in general terms, applying to "for-profit prisons and detention facilities in the state." However, the NWIPC is the only such detention facility in Washington. Thus, as a practical matter, HB 1470 applies only to the NWIPC. The fact that HB 1470 applies only to the NWIPC does not, by itself, mean that it violates the intergovernmental

immunity doctrine. *See Washington*, 460 U.S. at 541-45 (rejecting argument that statute specifically targeting federal contractors was discriminatory solely on that basis); *id.* at 540 (citing *United States v. Mexico*, 455 U.S. 720, 734 (1982) (“[I]mmunity may not be conferred simply because” the law “has an effect on the United States, or even because the Federal Government shoulders the entire economic burden.”)). To determine whether HB 1470 is impermissibly discriminatory, we evaluate how Washington law treats entities that are “similarly situated” to GEO. *Dawson*, 586 U.S. at 177. If Washington law treats similarly situated entities in the same manner HB 1470 treats the NWIPC, HB 1470 is not impermissibly discriminatory.

The key issue in this case is whether the entities to which we should compare the NWIPC are state prisons or civil detention facilities. For the reasons explained below, we conclude that the appropriate comparators are civil detention facilities.

The district court held that Section 2 impermissibly discriminates against the federal government because it “impose[s] various burdens on the NWIPC that do not apply to any similarly situated facility in the State.” The court concluded that the “similarly situated facilit[ies] in the State” are Washington’s state-owned and state-operated prisons rather than private residential treatment facilities and civil commitment facilities (collectively, “civil detention facilities”) in Washington. Using Washington’s prisons as the comparator, the district court concluded that Section 2 is impermissibly discriminatory.

GEO has consistently contended that the entities to which the NWIPC should be compared are Washington's prisons. In agreeing with GEO, the district court relied in substantial part on our decision in *California*. The district court wrote, "[T]he court [in *California*] implicitly reasoned that immigration detention facilities are similarly situated to state and local detention facilities, such as prisons and jails." If the district court had been correct in concluding that the appropriate comparator is Washington's prisons, we would agree with its decision striking down Sections 2 and 3 of HB 1470. However, we disagree with that conclusion.

In *California*, we compared California's treatment of civil immigration detention facilities, on the one hand, to its treatment of California detention facilities that held convicted criminals and those charged with crimes, on the other. We were not asked to compare California's regulation of civil immigration facilities to its regulation of civil detainment facilities. Because we "decide only questions presented by the parties," *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020), and because of the fundamental difference between civil detainees and those charged or convicted with crimes, we decline to hold that our comparison in *California* controls here. Now properly presented with the question, we therefore decide whether the appropriate comparison in this case is to private facilities holding civil detainees or to the public prisons and jails holding convicted criminals and those charged with crimes.

GEO has consistently argued that the appropriate comparator to the NWIPC is Washington's prisons. In

arguing that prisons are the appropriate comparator, GEO asks us to ignore the critical fact that inmates in Washington's prisons have been convicted of crimes, and that the conditions of their confinement are part of a penal regime. By contrast, none of the detainees held in the NWIPC has been convicted of—or even charged with—a crime. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (Immigration detention is “civil, not criminal” and “nonpunitive in purpose and effect.”); *Mahler v. Eby*, 264 U.S. 32, 39 (1924) (“It is well settled that deportation, while it may be burdensome and severe for the alien, is not a punishment.”). All of the detainees in the NWIPC are civil detainees, awaiting determination of their immigration status. As we noted above, some of the detainees will be deported based on that determination. Some will be released into the United States. GEO also asks us to ignore the fact that Washington owns and operates its prisons. By contrast, the federal government neither owns nor operates the NWIPC. Rather, the NWIPC is owned and operated by GEO, a private, for-profit company. Because of the fundamental differences between Washington's prisons, which are state-owned and state-operated facilities that hold and punish convicted criminals, and the NWIPC, which is a privately owned and privately operated detention facility that holds civil detainees, we conclude that the appropriate comparator is not Washington's prisons.

Washington has consistently argued that the entities to which the NWIPC should be compared are privately owned and operated civil detention facilities. Like the civil detainees in the NWIPC, many of the individuals in these facilities are held in involuntary

confinement. *See, e.g.*, Wash. Rev. Code §§ 71.05.010-71.05.950 (Washington’s Involuntary Treatment Act); *id.* § 11.130.330(7) (recognizing that facilities can involuntarily detain individuals consistent with Washington’s Involuntary Treatment Act); *id.* § 10.77.150(4) (allowing courts to grant “conditional release of [a] person to a less restrictive alternative, including residential treatment” facilities); and *id.* §§ 9.94A.660, 9.94A.664 (allowing courts to issue sentences “conditioned on the offender entering and remaining in a residential substance use disorder treatment program,” *id.* § 9.94A.664(1)(a)). Also like the civil detainees in the NWIPC, individuals confined in these facilities are not confined because they have committed crimes, and the conditions of their confinement are not part of any punishment. *See, e.g.*, *Addington v. Texas*, 441 U.S. 418, 428-30 (1979) (explaining the fundamental differences between criminal and civil commitments, including that “[i]n a civil commitment state power is not exercised in a punitive sense”). We therefore agree with Washington that the appropriate comparators to the NWIPC are these civil detention facilities.

Section 2 sets forth required conditions of confinement for detainees held in the NWIPC. As noted above, DOH has not yet adopted rules implementing those requirements. However, even before implementing rules have been adopted by DOH, it is evident that the statutory and contractual requirements imposed on the NWIPC are almost identical to the requirements imposed under Washington law on the two types of civil detention facilities to which we compare them. *See California*,

921 F.3d at 882-84. We describe in turn the required conditions of confinement in these three facilities.

First, Section 2 requires DOH to adopt rules implementing its requirements that the NWIPC (1) maintain a “safe, clean, and comfortable environment that allows a detained person to use the person’s personal belongings to the extent possible”; (2) clean and sanitize living areas “regularly”; (3) “provide laundry facilities”; (4) provide “[b]asic personal hygiene items . . . at no cost”; (5) “provide a nutritious and balanced diet, including fresh fruits and vegetables”; (6) maintain “[s]afe indoor air quality”; (7) have “heating and air conditioning equipment that can be adjusted by room or area”; and (8) operate an “infection control program.” Wash. Rev. Code § 70.395.040.

Second, residential treatment facilities in Washington are “twenty-four hour . . . facilities” that “provid[e] health care services to persons with mental disorders or substance abuse disorders.” Wash. Admin. Code § 246-337-001 (2023). These facilities are required under Washington law to maintain an effective “infection control program,” *id.* § 246-337-060; to serve three nutritious meals per day, with modifications appropriate to medical conditions and religious preferences, *id.* § 246-337-111; to provide laundry facilities that are clean and in good repair, *id.* § 246-337-112; to provide housing that is in good repair, with “heating, ventilation, and air conditioning,” *id.* § 246-337-120; to provide bathing and toilet areas with soap and toilet paper, *id.* § 246-337-124; to provide laundry facilities, *id.* § 246-337-128; to provide heating and air conditioning that can

maintain “interior temperatures between sixty-five degrees Fahrenheit and seventy-eight degrees Fahrenheit year-round,” *id.* § 246-337-135; and to maintain the facility in a clean and sanitary condition, *id.* § 246-337-146.

Third, involuntary civil commitment facilities in Washington are facilities where individuals are confined against their will despite the fact that they have not been convicted of a crime. Such facilities include, for example, mental health hospitals where mentally ill individuals are civilly committed under Washington’s Involuntary Treatment Act. Wash. Rev. Code §§ 71.05.010-71.05.950. These facilities are required under Washington law to “[e]stablish and implement an effective hospital-wide infection control program,” Wash. Admin. Code § 246-322-100 (2024); to provide a safe and clean environment, including a ventilation system and a “heating system operated and maintained to sustain a comfortable temperature,” *id.* § 246-322-120; to provide sleeping rooms with adequate space and bed linens, *id.* § 246-322-140; to provide adequate toilet fixtures and rooms, as well as adequate sink and bathing fixtures, *id.* § 246-322-160; to provide three well-balanced and nourishing meals per day, *id.* § 246-322-230; and to provide laundry and linen services, *id.* § 246-322-240.

We have held that there is no “de minimis exception to the doctrine of intergovernmental immunity.” *California*, 921 F.3d at 883. “Any economic burden that is discriminatorily imposed on the federal government is unlawful.” *Id.* at 883-84 (emphasis in original). With GEO’s challenge in its current posture—before DOH has promulgated any rules

implementing Section 2—the question before us is whether there is a likelihood that DOH will adopt rules under Section 2 that are different from the requirements applicable to the two types of civil detention facilities.

GEO's discrimination argument in its brief is based almost entirely on a comparison of the requirements imposed by Section 2 with the requirements Washington imposes on its prisons. GEO argues only in passing that Section 2 is discriminatory based on a comparison of its requirements to the requirements Washington imposes on the two types of civil detention facilities. The only requirements of Section 2 to which GEO has specifically objected in its brief are three requirements discussed in the portion of its brief dedicated to its argument about Article III case or controversy. Generously construed, GEO's argument is that these three requirements are different from the comparable requirements imposed on the civil detention facilities, and that they are therefore discriminatory.

Though it is a close question, we conclude that the best course of action is not to decide ourselves at this point whether Washington regulates the conditions of confinement at the NWIPC differently from the way it regulates the conditions of confinement in the two civil detention facilities. The best course of action is, rather, to allow the district court to do so in the first instance. That court should make the comparison between the requirements imposed on the NWIPC by Section 2 of HB 1470, as amended by HB 1232, and the requirements imposed by Washington law on the two types of civil detention facilities. Because the

district court concluded that the appropriate comparator is Washington's prisons, it made no attempt to make that comparison with respect to the requirements imposed by Section 2; and, because of its recent enactment, the district court of course could not have included in such a comparison the requirements of HB 1232. We remand to allow the district court to make that comparison.

**(b) Section 6 of HB 1470 and
Section 4 of HB 1232**

As noted above, Section 6 of HB 1470 provides that “[a]ny person who fails to comply” with HB 1470 “may be subject to a civil penalty in an amount of not more than \$1,000 per violation per day.” *Id.* § 70.395.080(1). Section 4 of HB 1232 provides a “civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a private detention facility” under certain circumstances. H.B. 1232 § 4.

For two reasons, Washington argues in its brief that Section 6 is not a discriminatory burden. First, DOH possesses the “authority to impose fines on other facilities for non-compliance with its regulations.” For example, Wash. Admin. Code § 246-322-025(6) (2023) allows “civil fines on a psychiatric hospital . . . of up to \$10,000 per violation.” Second, Washington contends that “other facilities are subject to a much more stringent enforcement mechanism: DOH’s authority to deny or suspend their license or ability to operate at all.” Further, Wash. Admin. Code § 246-337-021(6) (2023) allows DOH to “revoke” a license of a residential treatment facility that “[f]ail[s] to comply” with DOH regulations. Washington therefore argues that the NWIPC is thus “*better off*” than the civil

detention facilities to which we compare it. *See Washington*, 460 U.S. at 541-42 (emphasis in original).

GEO has made no argument to the contrary. In its responding brief, GEO describes the penalty authorized in Section 6, but it does not argue that it is discriminatory. However, GEO has not yet had an opportunity to make an argument that Section 6, combined with Section 4 of HB 1232, is discriminatory.

The district court struck down Section 6 as a natural corollary of its decision that the requirements of Section 2 were unconstitutional. But that decision was, of course, premised on a comparison to Washington's prisons rather than the private civil detention facilities to which we now hold are the appropriate comparators. We vacate the district court's decision and remand to allow that court to make that comparison in the first instance.

b. Preemption

The district court held that Sections 2, 3 and 6 of HB 1470 are not preempted by federal law. Of course, that court had no opportunity to address HB 1232. However, given the relatively small changes effectuated by HB 1232, we conclude that its preemption analysis would not have been affected.

Federal law preempts state law when Congress has occupied the "field," enacting a "scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Federal law also preempts state law when a party cannot comply with both federal and state law, or when state law poses an "obstacle to the accomplishment and execution of the full purposes

and objectives of Congress.” *Nat’l Fed’n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 724 (9th Cir. 2016) (citation omitted).

There is a presumption against preemption “when a state regulates in an area of historic state power.” *Knox v. Brnovich*, 907 F.3d 1167, 1174 (9th Cir. 2018) (citation omitted). Once triggered, the presumption against preemption applies “even if the law ‘touch[es] on’ an area of significant federal presence.” *Id.* (alteration in original) (quoting *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1104 n.5 (9th Cir. 2016)); *DeCanas v. Bica*, 424 U.S. 351, 355 (1976) (“[T]he Court has never held that every state enactment which in any way deals with [noncitizens] is a regulation of immigration and thus per se preempted by this constitutional power.”); *Puente Ariz.*, 821 F.3d at 1104. To overcome the presumption against preemption, the challenging party must show a “clear and manifest purpose of Congress” to preempt state law. *Arizona v. United States*, 567 U.S. 387, 400 (2012) (internal citations omitted).

i. Field Preemption

GEO points to the constitutional authority of the federal government to regulate immigration and argues that many state-imposed immigration-related measures, including those at issue here, are preempted by federal law. We rejected a similar argument in *California*, where California law authorized inspection, *inter alia*, of federal detention facilities holding noncitizens “for purposes of civil immigration proceedings.” *California*, 921 F.3d at 875. The inspections included review of “conditions of confinement” and “standard of care.” *Id.* at 876. We

noted that the government did not “dispute that California possesses the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders,” and held that the government had failed to “demonstrate *any* intent, let alone ‘clear and manifest,’ that Congress intended to supersede this authority.” *Id.* (emphasis in original); *see also Newsom*, 40 F.4th at 766 (emphasizing a state’s “historic” powers in this domain). Similarly, we see no indication that Congress has demonstrated any intent, let alone a clear and manifest intent, to preempt Sections 2, 3 and 6 of HB 1470 and relevant portions of HB 1232.

ii. Obstacle Preemption

GEO contends in its brief that “HB 1470 presents an unconstitutional obstacle to the accomplishment of the government’s carefully crafted standards for the conditions of alien detention.”

As noted above, to prevail in its argument, GEO must overcome the presumption against preemption. *See California*, 921 F.3d 886. HB 1470 and HB 1232 do not apply to the United States. They apply to GEO. Nothing in Sections 2, 3 and 6 frustrates the federal government’s ability to detain individuals at the NWIPC. Nor do these sections prevent GEO from accomplishing any task that has been required by the federal government—especially when its own contract with ICE contemplates more stringent state requirements in the first place. We therefore conclude that GEO has not established that these statutes constitute obstacle preemption.

B. Section 5

Section 5 of HB 1470 provides to a “detained person” a private cause of action for monetary and injunctive relief for a violation of HB 1470, including the requirements set forth in Section 2. Wash. Rev. Code § 70.395.070. Section 5 provides no cause of action to the Attorney General or Governor. The district court granted a preliminary injunction against the enforcement of Section 5, holding that it violates the doctrine of intergovernmental immunity.

In *Whole Woman’s Health v. Jackson*, 595 U.S. 30 (2021), a provision of a Texas statute, SB 8, allowed private citizens to enforce the law’s prohibition on abortions through the filing of a civil suit. *Id.* Plaintiffs filed suit against several defendants, including the Texas Attorney General, seeking an injunction against enforcement of the statute. *Id.* The Supreme Court held that the Attorney General was not a proper defendant as to SB 8 because “petitioners d[id] not direct this Court to any enforcement authority the attorney general possessed in connection with [SB] 8 that a federal court might enjoin him from exercising.” *Id.* at 43. Like SB 8, Section 5 of HB 1470 does not grant “any enforcement authority” to the Attorney General or the Governor. *See id.* Thus, the Attorney General and the Governor are not proper defendants as to Section 5.

Because Section 5 provides no cause of action against either the Attorney General or Governor, we conclude that the district court erred in reaching the merits of GEO’s challenge to this section. Rather than enjoining enforcement of Section 5 by the Attorney

General and the Governor, the district court should have dismissed this portion of GEO's suit.

CONCLUSION

We vacate the district court's grant of a preliminary injunction against Sections 2, 3, 5 and 6 of HB 1470. We grant in part the motion to remand (Dkt. No. 63) to the district court for further proceedings consistent with this opinion.

VACATED and REMANDED.

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Appendix B

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 24-2815

THE GEO GROUP, INC.,

Plaintiff-Appellee,

v.

JAY INSLEE, Governor; ROBERT FERGUSON,

Defendants-Appellants.

Filed: Feb. 11, 2026

Before: William A. Fletcher, Ronald M. Gould, and
Jacqueline H. Nguyen, Circuit Judges.

ORDER

The panel unanimously voted to deny appellee's petition for panel rehearing. Judge Gould and Judge Nguyen voted to deny the petition for rehearing en banc, and Judge Fletcher so recommended.

The full court has been advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. Judge Eric D. Miller did not participate in the deliberations or vote in this case. The matter failed to receive a majority of

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votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 40.

The petition for panel rehearing and rehearing en banc (Dkt. No. 75) is **DENIED**.

W. FLETCHER, GOULD, and NGUYEN, Circuit Judges, respecting the denial of rehearing en banc:

Our dissenting colleague has unsuccessfully sought en banc rehearing in two cases involving the GEO Group.

The first case involved work performed by civil detainees in deportation proceedings, held by a for-profit corporation, the GEO Group, in its privately owned and operated facility located in Tacoma, Washington. *Nwauzor v. GEO Grp., Inc.*, 127 F.4th 750 (9th Cir. 2025). According to GEO's own estimate, eighty-five full-time employees would have been required to do the work performed by those civil detainees. *Id.* at 758. GEO's contract with the government allowed it to employ civilian detainees, but required it to comply with "all applicable federal, state, and local laws and standards," including "labor laws and codes." *Id.* at 757.

The district court held, consistent with GEO's contract with the government, that GEO was required to comply with Washington's minimum wage law and to pay the state mandated minimum wage to its civil detainees who performed work on its behalf. *Washington v. GEO Grp., Inc.*, No. C17-5806RJB, 2021 WL 5824570, at *3 (W.D. Wash. Dec. 8, 2021). (Our colleague mischaracterizes the district court's holding when he writes that GEO was required to pay an "*inflated* minimum wage." Dissent at 7 (emphasis added)). A different panel of our court affirmed the district court. Our colleague called the opinion en banc, and his en banc call failed. *Nwauzor v. GEO Grp.*, 146 F.4th 1280 (9th Cir. 2025). In his dissent from our denial of en banc rehearing in the case now

at issue, our colleague continues to object to that denial.

The second case is the case now at issue. *GEO Grp. v. Inslee*, 151 F.4th 1107 (9th Cir. 2025). This case involves the conditions of confinement of the civil detainees held by GEO in its Tacoma facility. GEO's privately owned and operated detainment facility holds civilian detainees pending determination of their immigration status. Some of the detainees will eventually be deported because they have no right to be in this country. A smaller number of the detainees will eventually be released back into this country because they have a right to be here. None of the detainees in GEO's facility is being held because he or she has been convicted of, or even charged with, a crime.

The parties agree that Washington may regulate comparable detainment facilities in the same manner. The disputed question is the appropriate comparator. The government contends that GEO may treat its civil detainees in the same manner Washington treats convicted criminals held in its prisons and jails. *Id.* at 1120. Appellants contend that GEO may not treat its civil detainees as if they are convicted criminals. Instead, according to appellants, GEO may treat its civil detainees in the same manner Washington treats civil detainees held in two other types of involuntary confinement—residential treatment facilities for people with “mental disorders or substance abuse disorders,” and involuntary civil commitment facilities that hold individuals, such as mentally ill patients, against their will. *Id.* Our panel concluded unanimously that the appropriate comparators are

these two other types of involuntary civil confinement facilities.

There are two important differences between GEO's civil detention facility and Washington's prisons and jails that make that comparison inappropriate.

First, detainees in GEO's Tacoma facility are not being held because they are serving criminal sentences or are charged with crimes. Our colleague appears to suggest otherwise by including in his dissent a table published by Immigration and Customs Enforcement that purports to show that "most immigration-facility detainees nationwide have either a criminal conviction or a pending criminal charge." Dissent at 10. Any such suggestion is wrong. As we wrote in our opinion, "Detainees at the NWIPC are awaiting administrative review of their immigration status. They are civil detainees. They are not in criminal proceedings." *Nwauzor*, 127 F.4th at 757. Their confinement is not punitive. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (Immigration detention is "civil, not criminal" and "nonpunitive in purpose and effect."). By contrast, individuals in Washington's prisons and many of those held in its jails are there because they have been convicted of crimes. Their conditions of confinement are, by definition and design, punitive. Second, GEO's facility is privately owned and operated. By contrast, Washington's prisons and jails are governmentally owned and operated.

After concluding that the appropriate comparators are not Washington's jails and prisons, but rather the two types of involuntary civil

detainment facilities, we remanded to the district court to make that comparison in the first instance.

Our dissenting colleague contends that it is so obvious that the appropriate comparator is Washington's prisons and jails that this should have been an "easy" case. Dissent at 10. We disagree with him as to the appropriate comparator, but we agree that this is an easy case. We believe that we have decided it correctly. Our court has appropriately declined to rehear the case en banc.

BUMATAY, Circuit Judge, joined by CALLAHAN, BENNETT, R. NELSON, COLLINS, BRESS, VANDYKE, and TUNG, Circuit Judges, dissenting from the denial of rehearing en banc:

We’ve seen this before. Just a few months ago, the Ninth Circuit ignored the Supremacy Clause of the Constitution by permitting the State of Washington to interfere with the federal government’s housing of aliens in removal proceedings simply because the government chose to use federal contractors to run its immigration detention facility. *See Nwauzor v. GEO Grp., Inc.*, 146 F.4th 1280, 1282 (9th Cir. 2025) (Bumatay, J., dissenting from the denial of rehearing en banc). Under the ruling, we let a Washington law force the federal government’s contractors to classify its alien detainees as “employees” under state law and pay them an inflated minimum wage. *Id.* This law violated the Supremacy Clause because, at minimum, it discriminated against the federal government. *See id.* at 1285 (Washington’s law “punishes the federal government for its policy choice to use private contractors and treats the federal government differently from state facilities. That is the very definition of a state affording itself better treatment than it affords the United States.”) (quoting *Nwauzor v. GEO Grp., Inc.*, 127 F.4th 750, 774 (9th Cir. 2025) (Bennett, J., dissenting)). Such a decision was a “dangerous precedent” allowing “any State [to] impair any federal policy—no matter how central to the federal government—so long as the State regulates federal contractors rather than the federal government itself.” *Id.* at 1286.

This case is merely the latest round in the State of Washington’s crusade against the federal government’s use of federal contractors to enforce immigration policy. *See GEO Grp., Inc. v. Inslee*, 151 F.4th 1107, 1111 (9th Cir. 2025). The Washington Legislature imposed a series of state regulations directed *solely* at the Northwest Immigration and Customs Enforcement Processing Center in Tacoma, Washington (“Northwest ICE Center”). *See* Second Substitute House Bill 1470, 68th Leg., Reg. Sess. (Wash. 2023); Second Substitute House Bill 1232, 69th Leg., Reg. Sess. (Wash. 2025). The regulations dictate nearly every facet of how the federal government must treat alien detainees at the Center—from the detainees’ right to use their personal belongings, to the mandatory provision of special diets, to free phone calls, to a right of “privacy” during personal visits, to housekeeping. Wash. Rev. Code §§ 70.395.040(1)(a), (e), 70.395.060(2)(b)-(d). Not only that. Washington claims a right to enforce these regulations through unannounced inspections and hefty penalties. *See* Wash. Rev. Code §§ 70.395.050(2)(a), 70.395.070(1), 70.395.080. The reason Washington claims to get away with this? The Northwest ICE Center is run by a federal contractor—The GEO Group, Inc.

These are no across-the-board state regulations. Instead, to avoid the fiscal and safety burdens of these obligations, Washington exempts *any* of its own facilities—including state and local detention facilities, jails, and prisons—from both the regulations and their enforcement mechanisms. *See* Wash. Rev. Code § 70.395.080(6) (“The state and its agencies are not liable for a violation of this chapter.”). And so, these regulations apply *only* to the Northwest ICE

Center. In effect, what Washington State has told Washington, D.C., is: “Rules for thee but not for me!”

In the normal course, the discriminatory exclusion of Washington’s comparable facilities would doom the law. Whatever else the Supremacy Clause requires, it prohibits States from targeting the federal government and its contractors with burdensome regulation while exempting themselves from its costs. *See United States v. Washington*, 596 U.S. 832, 838 (2022) (The Constitution prohibits state laws that “discriminate against the Federal Government or those with whom it deals (e.g., contractors)” (simplified)). As we’ve said, “*any* discriminatory burden on the federal government is impermissible.” *United States v. California*, 921 F.3d 865, 883 (9th Cir. 2019). In determining whether a State engaged in discrimination, we look to state law’s burdens on appropriate comparators. *See North Dakota v. United States*, 495 U.S. 423, 438 (1990) (“Since a regulation imposed on one who deals with the Government has as much potential to obstruct governmental functions as a regulation imposed on the Government itself, the Court has required that the regulation be one that is imposed on some basis unrelated to the object’s status as a Government contractor or supplier, that is, that it be imposed equally on other similarly situated constituents of the State.”). And we’ve already indicated that the appropriate comparators to federal immigration detention centers are the State’s “prisons and detainment facilities.” *California*, 921 F.3d at 882.

This comparison is obviously right—both immigration detention facilities and state jails and prisons detain those accused or convicted of violating

the law, whether immigration or state criminal law. Both have comparable concerns for public safety and ensuring appearances at future proceedings. Congress has authorized, and in many cases required, the detention of certain aliens in removal proceedings. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii), (b)(2)(A), 1226(a)-(c), 1231(a). Mandatory detention is required for aliens involved in serious criminal activities, such as burglary, theft, assault of a law enforcement officer, or crimes resulting in another’s death or serious bodily injury. *See* 8 U.S.C. § 1226(c)(1)(E). Indeed, according to ICE, most immigration-facility detainees nationwide have either a criminal conviction or a pending criminal charge.¹

Criminality	ICE	Percent ICE	CBP	Percent CBP	Total
Total	57,311	83%	11,679	17%	68,990
Convicted Criminal	16,627	94%	1,102	6%	17,729
Pending Criminal Charges	16,040	90%	1,841	10%	17,881
Other Immigration Violator	24,644	74%	8,736	26%	33,380

So immigration detention serves two security-related goals—“preventing flight” and “protecting the community.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Indeed, “Congress adopted [the detention provisions] against a backdrop of wholesale failure by the INS to deal with increasing rates of criminal activity by aliens.” *Demore v. Kim*, 538 U.S. 510, 518 (2003). So close are the goals of immigration and criminal detention that Congress instructed the

¹ U.S. Immigr. and Customs Enft, Detention FY 2026 YTD (Feb. 2, 2026), https://www.ice.gov/doclib/detention/FY26_detentionStats02022026.xlsx [<https://perma.cc/B3UC-DGAC>].

government to consider using “existing prison[s], jail[s], detention center[s], or other comparable facilit[ies]” before constructing new immigration detention facilities. *See* 8 U.S.C. § 1231(g)(2).

So this case should have been easy. By its own terms, Washington’s new immigration detention regime doesn’t apply to state detention facilities. It thus discriminates against the federal government by “singling out the Federal Government for unfavorable treatment.” *Washington*, 596 U.S. at 839. This is an open-and-shut case of intergovernmental immunity—as the district court concluded. *See GEO Grp., Inc. v. Inslee*, 720 F. Supp. 3d 1029, 1067 (W.D. Wash. 2024).

Unfortunately, we didn’t follow the normal course. Instead, the panel invents a new set of rules when it comes to immigration detention centers run by federal contractors. Rather than looking to the state’s prisons and detention facilities, the panel directs the district court to focus myopically on the smallest subset of inapt comparators—“private residential treatment facilities and civil commitment facilities.” *Inslee*, 151 F.4th at 1119. This is a wholly unfitting comparison. Ignoring the obvious similarities between criminal and immigration detention, the panel wants to look only at private sector *healthcare* facilities, such as mental health and substance abuse treatment centers. While these private institutions sometimes detain patients involuntarily, they simply don’t have the same public safety concerns as immigration detention centers and state prisons and jails. And healthcare facilities involve a focus on medical treatment and rehabilitation that immigration detention facilities

lack. Moreover, although the panel would have us compare the Northwest ICE Center to private treatment facilities, Washington's law exempts state contractors who provide these services. *See* Wash. Rev. Code § 70.395.100. In creating this mismatch, the panel ignores both our circuit precedent and common sense.

As is almost axiomatic, the power to burden is the power to destroy. And state destruction of federal operations is something the Supremacy Clause doesn't permit. But that's the clear intent of Washington's laws. Given this, we should have reviewed this case en banc and affirmed the injunction of the state regulation. Because the Supremacy Clause forbids Washington State's discrimination against federal operations, I respectfully dissent from the denial of rehearing en banc.

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Appendix C

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON**

No. C23-5626

THE GEO GROUP, INC.,

Plaintiff,

v.

JAY INSLEE, in his official capacity as the Governor of
the State of Washington; ROBERT FERGUSON, in his
official capacity as Attorney General of the
State of Washington,

Defendants.

Filed: Apr. 15, 2024

ORDER

This matter is before the Court on the State of Washington's¹ motion for reconsideration, Dkt. 36, of the Court's order, Dkt. 35, granting in part and denying in part the GEO Group Inc's motion for a preliminary injunction, Dkt. 8, and granting in part and denying in part the State's motion to dismiss, Dkt.

¹ The defendants in this matter are Washington's Governor, Jay Inslee, and its Attorney General, Bob Ferguson. Each is sued in his official capacity. Dkt. 1, ¶ 1. For simplicity, the Court refers to these defendants collectively as "the State."

17. Because the State fails to establish a manifest error in the Court's prior order, the motion for reconsideration is denied.

Under this District's local rules, motions for reconsideration are disfavored and will ordinarily be denied absent a showing of (a) manifest error in the ruling, or (b) facts or legal authority which could not have been brought to the Court's attention earlier with reasonable diligence. Local Rules, W.D. Wash., LCR 7(h)(1). The term "manifest error" is "[a]n error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." *Black's Law Dictionary* 622 (9th ed. 2009).

Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Marlyn Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Mere disagreement with a previous order is an insufficient basis for reconsideration, and reconsideration may not be based on evidence and legal arguments that could have been presented at the time of the challenged decision. *Haw. Stevedores, Inc. v. HT & T Co.*, 363 F. Supp. 2d 1253, 1269 (D. Haw. 2005). "Whether or not to grant reconsideration is committed to the sound discretion of the court." *Navajo Nation v. Confederated Tribes &*

Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003).

The State asserts that “the Court erred in looking beyond the text of HB 1470 to conclude the law discriminates against the NWIPC.” Dkt. 36 at 22. In this respect, the State requests the Court to reconsider its ruling that HB 1470 §§ 2, 3, 5, and 6 violate the intergovernmental immunity doctrine. GEO responds that the Court did not err because “a statute that discriminates in favor of the state and against the federal government cannot shield itself from the self-incriminating discriminatory statements contained in its legislative history by asking the Court not to ‘look behind the curtain.’” Dkt. 38 at 7.

Contrary to the State’s assertion otherwise, the Court concluded that HB 1470’s text discriminates against private immigration detention facilities. *See GEO Group, Inc. v. Inslee*, ___ F. Supp. 3d ___, No. C23-5626 BHS, 2024 WL 1012888, at *15 (W.D. Wash. Mar. 8, 2024). The Court explained that, in HB 1470 § 8, “[t]he legislature expressly stated its intent for the requirements imposed by HB 1470 to conform with the Supremacy Clause in light of *Newsom*.” *Id.* Section 8 provides:

States have broad authority to enforce generally applicable health and safety laws against contractors operating private detention facilities within the state. The ninth circuit reinforced this authority in *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), stating “[p]rivate contractors do not stand on the same footing as the federal government, so states can impose many laws

on federal contractors that they could not apply to the federal government itself.”

RCW 70.395.010(1).

The sole issue in *Newsom* was whether a California law, Assembly Bill (AB) 32, prohibiting the operation of private detention facilities was unconstitutional as applied to privately-operated immigration detention facilities. *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750-51 (9th Cir. 2022). The Ninth Circuit held that it was: “Whether analyzed under intergovernmental immunity or preemption, California cannot exert this level of control over the federal government’s detention operations. AB 32 therefore violates the Supremacy Clause.” *Id.* at 751.

This Court accordingly ruled that “[t]he legislature’s express reference to *Newsom*” in HB 1470 § 8 “strongly indicates that the purpose of [HB 1470] is to impose conditions specifically on the NWIPC as the sole private immigration detention facility in the State.” *GEO Group, Inc.*, ___ F. Supp. 3d ___, No. C23-5626 BHS, 2024 WL 1012888, at *15. The Court explained that “[f]urther support for this conclusion is found in HB 1470 § 10, which expressly excludes various facilities from HB 1470’s ambit.” *Id.* This includes any facility that is:

- (1) Providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles who are subject to Title 13 RCW, or similarly applicable federal law;
- (2) Providing evaluation and treatment or forensic services to a person who has been civilly detained or is subject to an order of

commitment by a court pursuant to chapter 10.77, 71.05, 71.09, or 71.34 RCW, or similarly applicable federal law, including facilities regulated under chapters 70.41, 71.12, and 71.24 RCW;

(3) Used for the quarantine or isolation of persons for public health reasons pursuant to RCW 43.20.050, or similarly applicable federal law;

(4) Used for work release under chapter 72.65 RCW, or similarly applicable federal law;

(5) Used for extraordinary medical placement;

(6) Used for residential substance use disorder treatment; or

(7) Owned and operated by federally recognized tribes and contracting with a government.

RCW 70.395.100.

The Court explained that “[t]he exclusion of these facilities from HB 1470’s requirements begs the question: What facilities aside from private immigration detention facilities are subject to HB 1470? The State provides no answer.” *GEO Group, Inc.*, ___ F. Supp. 3d ___, No. C23-5626 BHS, 2024 WL 1012888, at *15. The State *again* provides no answer. It accordingly fails to show a manifest error in the Court’s ruling that HB 1470’s text applies exclusively to private immigration detention facilities.

The State next contends that “the Court erred as a legal matter in relying on *United States v. California*

to conclude state prisons and local jails are the proper comparator.” Dkt. 36 at 4. In that case, the Ninth Circuit held that those provisions of a state law that applied to immigration detention facilities and “duplicate[d] preexisting inspection demands imposed on *state and local detention facilities*” likely did not discriminate against immigration detention facilities.” *United States v. California*, 921 F.3d 865 (9th Cir. 2019) (emphasis added). This Court interpreted the *California* decision as “implicitly reason[ing] that immigration detention facilities are similarly situated to state and local detention facilities, such as prisons and jails.” *GEO Group, Inc.*, ___ F. Supp. 3d ___, No. C23-5626 BHS, 2024 WL 1012888, at *16. The State asserts that this amounts to a manifest error because “[t]he law at issue in *California* authorized inspections of *all* immigration detention facilities, whether publicly or private operated” whereas “HB 1470 does not extend to the Federal Detention Center in SeaTac and would not extend to state and local facilities if they housed immigration detainees (which they don’t).” *Id.*

GEO persuasively responds that this argument is inconsistent with the State’s argument in its motion to dismiss that “HB 1470 was not discriminatory because it replicated ‘existing regulatory requirements for [Department of Corrections] facilities, including the provision of basic personal hygiene items.’” Dkt. 38 at 8 (quoting Dkt. 17 at 23). GEO also asserts that the Court “correctly rejected the Defendants’ alternative contention that HB 1470 was not discriminatory because it largely replicated minimum health and safety standards found in the

Washington Administrative Code applicable to residential treatment facilities.” *Id.*

The State fails to identify a manifest error in the Court’s ruling that privately operated immigration detention facilities are similarly situated to state and local detention facilities for purposes of applying the intergovernmental immunity doctrine. In reaching this conclusion, the Court did not rely solely on *California*, 921 F.3d 865. It also relied on Congress’s express acknowledgment of the similarities between immigration detention facilities and state and local detention facilities in 8 U.S.C. § 1231(g)(1)² and the plain and ordinary meaning of “detention center,”³ which applies equally to immigration detention facilities like the NWIPC and other detention facilities like state prisons or local jails. *See GEO Group, Inc.*, ___ F. Supp. 3d ___, No. C23-5626 BHS, 2024 WL 1012888, at *16-17.

In any event, as explained in that order, “[t]he State does not even attempt to explain how immigration detention facilities like the NWIPC are similarly situated to residential treatment facilities.” *Id.* at 17. In its motion for reconsideration, the State

² This statute directs the Commissioner of Immigration and Naturalization to “consider the availability for purchase or lease of any existing *prison, jail, detention center, or other comparable facility suitable for such use*” “[p]rior to initiating any project for the construction of any new detention facility for the [Immigration and Naturalization] Service.” 8 U.S.C. § 1231(g)(1) (emphasis added).

³ “Detention center” is defined as “[a] place where people are temporarily kept and prevented from escaping, esp[ecially] people who have entered the country illegally or are thought to have committed crimes.” Black’s Law Dictionary (11th ed. 2019).

again does not attempt to explain the similarities between these facilities. Nor can it. *See id.* at 17-18.

The State alternatively moves the Court to clarify its preliminary injunction in three ways. The State first asks the Court to clarify that the preliminary injunction does not apply to HB 1470 § 5, which provides a private right of action to detained persons aggrieved by violations of HB 1470. This section provides:

(1) A detained person aggrieved by a violation of this chapter has a right of action in superior court and may recover for each violation as follows:

(a) Against any person who negligently violates a provision of this chapter, \$1,000, or actual damages, whichever is greater, for each violation;

(b) Against any person who intentionally or recklessly violates a provision of this chapter, \$10,000, or actual damages, whichever is greater, for each violation;

(c) Reasonable attorneys' fees and costs if the detained person is the prevailing party; and

(d) Other relief, including an injunction, as the court may deem appropriate. Injunctive relief may be issued without bond in the discretion of the court, notwithstanding any other requirement imposed by statute.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) For the purposes of this section, “person” means an owner, operator, contractor, subcontractor, or employee of a private detention facility.

(4) The state and its agencies are not liable for a violation of this chapter.

RCW 70.395.070.

The State contends that “Section 5 does not give enforcement authority to Attorney General Ferguson or Governor Inslee—the two Defendants in this action. Meaning, there is nothing in Section 5 Defendants can be enjoined from exercising.” Dkt. 36 at 5.

GEO responds that, under HB 1470 § 6, “the attorney general has the authority to bring actions for penalties for any ‘failure to comply’ with [HB 1470], including a failure to comply with HB 1470 Section 5.” Dkt. 38 at 11. GEO further asserts that, even if the State “ha[s] no impact on the operation of HB 1470 Section 5 so that no injunction was necessary, the portion of this Court’s Order holding that HB 1470 Section 5 violates the intergovernmental immunity doctrine must stand, whether or not any injunction is entered against state officials or agencies.” *Id.*

The Court agrees that neither the Governor nor the Attorney General have enforcement authority under HB 1470 § 5. That section provides a private right of action for detained persons aggrieved by a violation of HB 1470. Nevertheless, GEO correctly asserts that, because the Court ruled that Section 5 is unconstitutional, detained persons will be effectively unable to sustain any claim brought pursuant to Section 5 unless and until that ruling is reversed. Additionally, because the Court also ruled that HB

1470 §§ 2, 3 (RCW 70.395.040-.050) are unconstitutional, detained persons will be unable to sustain any claim alleging a violation of those sections under HB 1470 § 5.

The State next asks the Court to clarify that the preliminary injunction binds only the Governor and the Attorney General, not the Department of Health (DOH) or the Department of Labor and Industries (L&I). Dkt. 36 at 6. The State reiterates that “GEO only brought suit against Governor Inslee and Attorney General Ferguson—it has not named other state agencies such as” DOH and L&I. *Id.* It contends that the reason for such a clarification “is to adhere to the principle that ‘a federal court exercising its equitable authority may enjoin named defendants from taking specified unlawful actions. But . . . no court may ‘lawfully enjoin the world at large’ or purport to enjoin challenged ‘laws themselves[.]’” *Id.* (quoting *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 44 (2021)).

GEO responds that, “[w]hen an action challenging a state statute is brought against the governor and attorney general of the state in their official capacities, it is an action against the state and its agencies.” Dkt. 38 at 12. It cites to Federal Rule of Civil Procedure 65(d)(2), which provides that an injunction binds not only the parties but also their “officers, agents, servants, employees, and attorneys; and . . . other persons who are in active concert or participation with” them.

As GEO persuasively asserts, DOH and L&I are bound by the preliminary injunction under Fed. R. Civ. P. 65(d)(2) because “[b]oth the secretary of health

and the director of labor and industries are appointed by and serve at the pleasure of the governor.” Dkt. 38 at 12; *see also American Civil Liberties Union v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999) (affirming a preliminary injunction under Fed. R. Civ. P. 65(d) that bound a state’s district attorneys in an action against the state’s governor and attorney general). Therefore, DOH and L&I are properly bound by the preliminary injunction.

The State finally asks the Court to clarify that “DOH may continue to prepare for rulemaking under Section 2, short of adopting and enforcing those rules.” Dkt. 36 at 7. The State asserts that “[t]his preparation includes complying with requirements imposed by other laws,” including a law that “requires DOH to conduct environmental justice assessments when considering significant agency action.” *Id.* GEO responds that “GEO does not read this Court’s Order as enjoining rulemaking activities ‘short of adopting and enforcing those rules,’ or conducting environmental justice assessment[s].” Dkt. 38 at 14. GEO accordingly “does not believe any modification or clarification is necessary.” *Id.* The Court agrees that its order does not enjoin DOH from conducting rulemaking activities or environmental justice assessments.

Therefore, it is hereby ORDERED that the State’s motion for reconsideration, Dkt. 36, is DENIED. In light of this order, the Court again encourages the

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parties to consult and agree on a resolution to this case.

Dated this 15th day of April, 2024.

[handwritten: signature]

BENJAMIN H. SETTLE

United States District
Judge

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Appendix D

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON**

No. C23-5626

THE GEO GROUP, INC.,
Plaintiff,

v.

JAY INSLEE, in his official capacity as the Governor of
the State of Washington; ROBERT FERGUSON, in his
official capacity as Attorney General of the
State of Washington,
Defendants.

Filed: Mar. 8, 2024

ORDER

This matter is before the Court on the GEO Group, Inc.'s motion for preliminary injunction, Dkt. 8, and the State of Washington's¹ motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Dkt. 17.

¹ The defendants in this matter are Washington's Governor, Jay Inslee, and its Attorney General, Bob Ferguson. Each is sued in his official capacity. Dkt. 1, ¶ 1. For simplicity, the Court refers to these defendants collectively as "the State."

In 2023, the Washington legislature enacted House Bill (HB) 1470, which imposes numerous requirements on private detention facilities within the State. Although HB

1470 defines “private detention facility” broadly, its history and text make clear that it applies to only the Northwest ICE² Processing Center (NWIPC)—the sole immigration detention facility in Washington. GEO, which contracts with ICE to operate the NWIPC, claims that HB 1470 violates the Supremacy Clause and Contract Clause of the United States Constitution.

The primary issue in this case is whether HB 1470 violates the Supremacy Clause by imposing additional burdens exclusively on GEO as the operator of an immigration detention facility. The Supremacy Clause prohibits such discriminatory regulation, and instead requires state laws that regulate federal contractors to be applied equally on similarly situated constituents of the State.

Most of GEO’s arguments are directed at HB 1470 § 4, which imposes numerous requirements on the conditions of confinement at private detention facilities. This section prohibits the use of solitary confinement; requires an immediate response to sexual violence and harassment grievances by “culturally competent professionals”; mandates that mental health evaluations occur weekly; requires that each sleeping room have access to windows, natural light, and natural air circulation; and mandates, at no cost to detainees, access to televisions,

² Immigration and Customs Enforcement.

telecommunications services, handheld radios, computers, and internet.

HB 1470 § 4 does not apply to private detention facilities that operate pursuant to a contract that was in effect prior to January 1, 2023. GEO and ICE last modified their contract before that date; they agreed in January 2021 for their contract to run through September 2025. Therefore, HB 1470 § 4 does not currently apply to the NWIPC. And it may never. GEO fails to establish that ICE *will* extend its contract for GEO to operate the NWIPC beyond September 2025. GEO also fails to establish what the terms of any such hypothetical contract would be. The Court is therefore unable to discern whether HB 1470 § 4 will ever be enforced against GEO as the operator of the NWIPC. GEO's challenges to HB 1470 § 4 are, in turn, not constitutionally ripe and the Court lacks subject-matter jurisdiction to consider them.

The Court does, however, have subject-matter jurisdiction to consider GEO's constitutional challenges to Sections 2, 3, 5, and 6 of HB 1470. These sections impose various burdens on the NWIPC that do not apply to any similarly situated facility in the State. For instance, HB 1470 § 2 requires the Washington Department of Health (DOH) to adopt various rules to ensure that private detention facilities comply with measurable standards providing, sanitary, hygienic, and safe conditions to detained persons. It also authorizes the Washington attorney general to enforce violations of these rules.

The State claims that HB 1470 § 2 does not impermissibly discriminate against GEO in violation of the Supremacy Clause because it simply replicates

standards that already apply to residential treatment facilities. The Court disagrees. The Supremacy Clause requires federal contractors to be treated the same as similarly situated constituents of the State. Because residential treatment facilities are not sufficiently similar to private immigration detention facilities like the NWIPC, HB 1470 § 2 impermissibly discriminates against GEO in violation of the Supremacy Clause.

HB 1470 § 3 requires DOH and the Department of Labor & Industries (L&I) to conduct routine, unannounced inspections of private detention facilities. It also requires DOH to adopt rules to ensure that private detention facilities allow for regular inspections and comply with standards providing for sanitary, hygienic, and safe conditions of confinement. It finally authorizes the Washington attorney general to enforce violations of the rules adopted by DOH. Because the State fails to identify any other state law that imposes burdens of this sort on similarly situated facilities, HB 1470 § 3 also impermissibly discriminates against GEO in violation of the Supremacy Clause.

Finally, HB 1470 §§ 5, 6 subject the NWIPC to substantial economic burdens for failing to comply with HB 1470's mandates. Section 5 creates a private right of action for detained persons aggrieved by violations of HB 1470, authorizing them to recover at least \$1,000 per violation against any person who negligently violates this law, and at least \$10,000 per violation against any person who intentionally or recklessly violates this law. It also authorizes detained persons to recover reasonable attorney fees and costs and to obtain other appropriate relief, including

injunctive relief. Section 6 authorizes DOH to impose civil penalties on the operators of private detention facilities who fail to comply with HB 1470 in the amount of \$1,000 per violation per day. It also authorizes the Washington attorney general to bring an action to recover any civil penalties that are not paid to DOH within 15 days of receipt of notice of the penalty.

The State again fails to identify any other state laws that impose burdens of this sort on facilities that are similarly situated to the NWIPC. Accordingly, HB 1470 §§ 5, 6 also impermissibly discriminate against GEO in violation of the Supremacy Clause.

Because GEO sufficiently establishes that Sections 2, 3, 5, and 6 of HB 1470 impermissibly discriminate against it in violation of the Supremacy Clause, GEO is entitled to an order preliminarily enjoining the enforcement of these sections against it as the operator of the NWIPC. To the extent GEO claims that any of these sections violate the Constitution in any other manner, those claims are not plausible and they are dismissed with prejudice.

I. BACKGROUND

“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.” *Arizona v. United States* (*Arizona II*), 567 U.S. 387, 394 (2012); *see also* U.S. Const. art I, § 8, cl. 4 (granting Congress the power to “establish a uniform Rule of Naturalization”). “Congress exercises its authority to regulate the entry, presence, and removal of noncitizens through the Immigration and Nationality Act (INA) and other related laws, and ‘has specified which aliens may be removed from the

United States and the procedures for doing so.” *United States v. California*, 921 F.3d 865, 973 (9th Cir. 2019) (quoting *Arizona II*, 567 U.S. at 396).

To this end, “[t]he Attorney General shall arrange for appropriate places for detention for aliens detained pending removal or a decision on removal,” which includes the “purchase or lease of [an] existing prison, jail, detention center, or other comparable facility suitable for such use.” 8 U.S.C. § 1231(g); *see also id.* § 1103(a)(11) (permitting agreements with states and localities “for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention”). These statutes authorize the “use of both federal facilities *and* nonfederal facilities with which the federal government contracts.” *California*, 921 F.3d at 882 n.7 (citing 8 U.S.C. §§ 1231(g), 1103(a)(11)).

The Department of Homeland Security (DHS), through ICE, contracted with GEO to operate the NWIPC—a privately-operated immigration detention facility in Tacoma, Washington. ICE and GEO executed the contract “on September 24, 2015, effective September 28, 2015, for a base period of one year.” Dkt. 1, ¶ 50. “To extend beyond that period, the contract originally had nine options of one year each and one half-year option.” *Id.* ICE and GEO exercised those options several times. *Id.* ¶ 51. On January 29, 2021, ICE and GEO modified the contract by “removing remaining unexercised option years, and establishing instead a five-year performance period running from September 28, 2020, through September 27, 2025.” *Id.*

This is not the first time Washington has sought to regulate the use of private immigration facilities in the State, and it is not the first time GEO has sued to enjoin such efforts. In 2021, the Washington legislature passed Engrossed House Bill (EHB) 1090 (codified as RCW 70.395.030), which generally provides that “no person, business, or state or local governmental entity shall operate a private detention facility within the state or utilize a contract with a private detention facility within the state.” RCW 70.395.030(1). There are exceptions to this prohibition, *see* RCW 70.395.030(3)(a)-(h), but none apply to private immigration detention facilities like the NWIPC.

GEO sued the State in this Court, claiming that EHB 1090, as applied to GEO as the operator of the NWIPC, violated the Supremacy Clause and Contract Clause of the United States Constitution. *See* Dkt. 1, ¶¶ 63-89 in *GEO Group Inc. v. Inslee, et al.*, No. 3:21-cv-05313-BHS. The parties stipulated to stay that proceeding until after the Ninth Circuit resolved a similar case involving a similar California statute, *Geo Group, Inc. v. Newsom*, 50 F.4th 745 (9th Cir. 2022) (en banc). In *Newsom*, GEO and the United States sought to enjoin the enforcement of Assembly Bill (AB) 32, which provides that “a person shall not operate a private detention facility within [California].” Cal. Penal Code § 9501. The Ninth Circuit held that AB 32 is unconstitutional as applied to privately-operated immigration detention facilities: “Whether analyzed under intergovernmental immunity or preemption, California cannot exert this level of control over the federal government’s detention operations. AB 32

therefore violates the Supremacy Clause.” *Newsom*, 50 F.4th at 751.

After the Ninth Circuit decided *Newsom*, the State conceded, in the prior case before this Court, that EHB 1090 is unconstitutional as applied to GEO as the operator of the NWIPC. *See GEO Group, Inc. v. Inslee*, __ F. Supp. 3d __, No. 21-cv-05313-BHS, 2023 WL 7919947 (W.D. Wash. Nov. 16, 2023).

In 2023, and in response to *Newsom*, the Washington legislature enacted HB 1470, which amended chapter 70.395 RCW to impose numerous requirements on “private detention facilities.”³

HB 1470 § 2 (codified as RCW 70.395.040) requires DOH to adopt various rules “to ensure private detention facilities comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons.” RCW 70.395.040(1). Section 2 also mandates that DOH impose by rule numerous standards on private detention facilities. These standards provide, among other things, that private detention facilities must:

- Allow the use of personal belongings to the extent possible;
- Clean and sanitize living areas regularly;
- Provide laundry facilities and certain laundry services;

³ Chapter 70.395 RCW defines “private detention facility” as “a detention facility that is operated by a private, nongovernmental for-profit entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity.” RCW 70.395.020(7).

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- Provide basic personal hygiene items regularly at no cost;
- Provide a nutritious and balanced diet accounting for dietary needs;
- Maintain safe indoor air quality;
- Install heating and air conditioning equipment that can be adjusted by room or area; and
- Implement and maintain a program to prevent the transmission of infections and communicable diseases.

RCW 70.395.040(1)(a)-(h).

Section 2 finally authorizes the Washington attorney general to enforce violations of this section. RCW 70.395.040(2).

HB 1470 § 3 (codified as RCW 70.395.050) requires DOH and L&I to conduct routine, unannounced inspections of private detention facilities. RCW 70.395.050(1), (4). It also requires DOH to “adopt rules as may be necessary to effectuate the intent and purposes of this section in order to ensure private detention facilities allow regular inspections and comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons.” RCW 70.395.050(3). It finally authorizes the Washington attorney general to enforce violations of this section. RCW 70.395.050(5).

HB 1470 § 4 (codified as RCW 70.395.060) imposes various requirements on private detention facilities. This section “does not apply to private detention facilities operating pursuant to a valid contract that was in effect prior to January 1, 2023, for

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the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.” RCW 70.395.060(1). The standards enumerated under Section 4 provide, among other things, that private detention facilities must:

- Prohibit the use of solitary confinement
- Respond to sexual violence and harassment grievances immediately with “culturally competent professionals”;
- Conduct weekly mental health evaluations;
- Provide requested medical care without delay;
- Allow for daily in-person visitation;
- Allow detained persons to invite persons to the facility to provide legal education;
- Ensure that a law library is available and accessible;
- Issue certain clothing and footwear to detained persons upon their admission;
- Provide, at no cost to detainees, access to televisions, telecommunications services, handheld radios, computers, and internet;
- Ensure that food items are available at a reasonable cost;
- Ensure that each room used for sleeping has access to a window, natural light, and natural air circulation; and
- Ensure that the facility is equipped to respond to natural and human-made emergencies, including earthquakes,

lahar threats, tsunami, and industrial accidents.

RCW 70.395.060(2)(a)-(p).

Section 4 also authorizes the Washington attorney general to enforce violations of this section. RCW 70.395.060(3).

HB 1470 § 5 (codified as RCW 70.395.070) creates a right of action for detained persons aggrieved by a violation of chapter 70.395 RCW. For each violation, detained persons may recover “[a]gainst any person who negligently violates a provision of this chapter, \$1,000, or actual damages, whichever is greater”; “[a]gainst any person who intentionally or recklessly violates a provision of this chapter, \$10,000, or actual damages, whichever is greater”; reasonable attorney fees and costs; and other appropriate relief, including injunctive relief. RCW 70.395.070(1)(a)-(d).

HB 1470 § 6 (codified as RCW 70.395.080) authorizes DOH to impose civil penalties on the operator of a private detention facility who fails to comply with chapter 70.395 RCW “in an amount of not more than \$1,000 per violation per day.” RCW 70.395.080(1). Section 6 also authorizes the Washington attorney general to bring an action to recover any civil penalties that are not paid to DOH within 15 days of receipt of notice of the penalty. RCW 70.395.080(4).

Finally, HB 1470 § 10 (codified as RCW 70.395.100) excludes various facilities from HB 1470’s requirements. These facilities include those that:

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- Provide rehabilitative, counseling, treatment, mental health, education, or medical services to juveniles;
- Provide evaluation and treatment or forensic services to a person who has been civilly detained or is subject to an order of commitment by a court;
- Are used for the quarantine or isolation of persons for public health reasons;
- Are used for work release;
- Are used for extraordinary medical placement;
- Are used for residential substance use disorder treatment; or
- Are owned and operated by federally recognized tribes and contracting with a government.

RCW 70.395.100(1)-(7).

After Governor Inslee signed HB 1470 into law, GEO sued, asserting that, as applied to GEO as the operator of the NWIPC, HB 1470 violates the Supremacy Clause and the Contract Clause of the United States Constitution. Dkt. 1 at 27-28. GEO alleges that its contract with ICE already requires it to comply with ICE's 2011 Performance Based National Detention Standards (PBNDS). *Id.* ¶ 53. GEO claims that the "PBNDS were implemented at the direction of Congress," "are approximately 500 pages in length," and "include detailed standards governing" the operation of immigration detention facilities. *Id.* ¶¶ 54, 56. GEO claims that "[n]umerous operating requirements contained within HB 1470 are

inconsistent with or directly conflict with explicit contractual requirements for the operation of the NWIPC in accordance with the requirements of ICE's PBNDS." *Id.* ¶ 62.

GEO's complaint broadly asserts that HB 1470 is unconstitutional under the Supremacy Clause for four reasons: (1) it regulates the federal government directly, violating the intergovernmental immunity doctrine, *id.* ¶¶ 67-73; (2) it discriminates against GEO as a contractor of the federal government, violating the intergovernmental immunity doctrine, *id.* ¶¶ 74-83; (3) it is field preempted, *id.* ¶¶ 84-95; and (4) it is conflict preempted, *id.* ¶¶ 96-99. GEO also claims that HB 1470 violates the Contract Clause. *Id.* ¶¶ 100-107.

GEO promptly moved to preliminarily enjoin the enforcement of HB 1470 in its entirety against it as the operator of the NWIPC. Dkt. 8. The State opposes an injunction, Dkt. 18, and moves to dismiss GEO's claims for lack of subject-matter jurisdiction and for failure to state a plausible claim. Dkt. 17. GEO opposes the motion to dismiss, Dkt. 25-1, and maintains that the Court should preliminarily enjoin the enforcement of HB 1470. Dkt. 22.

II. DISCUSSION

A. The Court lacks subject-matter jurisdiction over GEO's challenges to HB 1470 § 4.

GEO primarily argues HB 1470 § 4 violates the Supremacy Clause and Contract Clause as applied to the NWIPC. The Court therefore begins by addressing these claims.

HB 1470 § 4 imposes numerous requirements on private detention facilities regarding a broad range of subjects:

(2) A private detention facility operating pursuant to a contract or agreement with a federal, state, or local government shall comply with the following:

(a) A detained person, upon admission to a private detention facility, must be issued new clothing and new footwear for both indoor and outdoor use and for protection against cold and heat. Clothing issued must be regularly laundered and replaced at no cost once no longer hygienic or serviceable;

(b) Any food items in the commissary must be available at reasonable prices taking into account the income and financial circumstances of detained persons;

(c) Telecommunications services must be provided free of charge to detained persons and any communication, whether initiated or received through such a service, must be free of charge to the detained person initiating or receiving the communication. Each detained person must be eligible to use these telecommunications services for at least 60 minutes on each day of the person's detention. Private detention facilities must not use the provision of telecommunications services or any other communication service to supplant in-person contact visits any detained person may be eligible to receive;

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- (d) In-person visitation must be available daily. Visitation rooms must allow for the presence of children and personal contact between visiting persons and detained persons may not be restricted. A detained person may receive reading and writing materials during visitation;
- (e) Solitary confinement is prohibited;
- (f) Televisions must be available and accessible to a detained person at no cost. The private detention facility shall make every effort to make television programming available in the language of the detained person;
- (g) Handheld radios must be provided to a detained person at no cost;
- (h) A detained person may invite persons to the private detention facility to provide legal education, know your rights presentations, and other similar programming;
- (i) Computer and internet access must be available and accessible to a detained person at no cost;
- (j) A law library must be available and accessible;
- (k) Communication from the private detention facility to a detained person, either in writing or verbally, must be delivered in the primary language of the detained person;
- (l) Sexual violence and harassment grievances must be responded to immediately by culturally competent professionals on-site

and reported to local law enforcement in the county where the private detention facility is located;

(m) Mental health evaluations should occur at intake and periodically, at least once a week. Culturally competent mental health therapy must be available and free;

(n) Requested medical care and attention must be provided without delay, including the provision of requested medical accommodations;

(o) Rooms used by a detained person for sleeping must have access to windows, natural light, and natural air circulation. Subject to safety limitations, sleeping rooms must include adjustable curtains, shades, blinds, or the equivalent installed at the windows for visual privacy and that are shatterproof, screened, or of the security type as determined by the private detention facility needs; and

(p) A private detention facility must be equipped to respond to natural and human-made emergencies, including earthquakes, lahar threats, tsunami, and industrial accidents. A private detention facility must be earthquake resistant. A private detention facility shall develop emergency operation and continuity of operations plans and provide those plans to the local emergency management department. A private detention facility must stock all necessary personal protective equipment in case of

disease outbreaks consistent with large numbers of people detained in close contact to one another.

RCW 70.395.060(2)(a)-(p).

Section 4 also provides that “[t]he office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations.” RCW 70.395.060(3).

Notably, however, Section 4 “does not apply to private detention facilities operating pursuant to a valid contract that was in effect prior to January 1, 2023, for the duration of that contract, not to include any extensions of modifications made to, or authorized by, that contract.” RCW 70.395.060(1).

GEO asserts that HB 1470 § 4 violates the Supremacy Clause in four ways: (1) it improperly regulates the federal government directly by purporting to replace the standards imposed by the PBNDS, Dkt. 25-1 at 14-15; (2) it impermissibly discriminates against GEO as the operator of the NWIPC because no other similarly situated facility is subject to Section 4’s requirements, *id.* at 17-20; it is field preempted because the PBNDS governs the operation of private immigration detention facilities, *id.* at 20-24; and (4) it is conflict preempted because Section 4 conflicts with the PBNDS. *Id.* at 24-27. GEO also contends that Section 4 violates the Contract Clause because it would require GEO to breach its preexisting contract with ICE and is not drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose. *Id.* at 27-29.

The State moves to dismiss these claims for lack of subject-matter jurisdiction. Dkt. 17 at 15-16. It

argues that HB 1470 § 4 does not apply to the NWIPC because GEO and ICE last modified their contract before January 1, 2023, to run through September 2025. *Id.* at 15. The State contends that GEO is therefore unable to establish, “based on a future contract that does not yet exist,” constitutional standing to challenge HB 1470 § 4 or that any such challenge is constitutionally ripe. *Id.* at 15-16.

GEO responds that, because the PBNDS is “Congressionally mandated in every ICE detention contract, the inconsistencies and conflicts between the PBNDS and HB 1470 § 4 are inevitable in any future contracts.” Dkt. 25-1 at 11 n.2. GEO also argues that ICE could unilaterally modify the contract before it expires in September 2025. Dkt. 22 at 13. GEO asserts that “the federal government can make unilateral modifications at any time to initiate administrative changes, issue change orders, and make changes authorized by other contract clauses.” *Id.* at 12 (citing 48 C.F.R. § 43.103). GEO also contends that “various routing or annual ‘modifications made to, or authorized by’ a contract may be necessary to comply with applicable federal statutes and regulations.” Dkt. 22 at 12 (citing 48 C.F.R. §§ 52.222-43, 52.204-12, 52.222-41).

The State’s reply does not address whether a potential modification to the current contract could subject the NWIPC to enforcement under HB 1470 § 4. The State instead asserts that “GEO makes no argument (nor can it) that any hypothetical injuries concerning a future contract are ‘certainly impending.’” Dkt. 26 at 6 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013)). The State also

stresses that, at this juncture, the Court cannot determine whether HB 1470 § 4 conflicts with “a hypothetical future contract.” *Id.* at 7.

A claim must be dismissed under Rule 12(b)(1) if it does not present a “case or controversy” within the meaning of Article III of the Constitution. “Whether the question is viewed as one of standing or ripeness, the Constitution mandates that prior to our exercise of jurisdiction there exist a constitutional ‘case or controversy,’ that the issues presented are ‘definite and concrete, not hypothetical or abstract.’” *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) (quoting *Railway Mail Ass’n v. Corsi*, 326 U.S. 88, 93 (1945)). “Concrete legal issues require more than mere ‘hypothetical threat[s]’ and where we can ‘only speculate’ as to the specific activities in which a party seeks to engage, we must dismiss a claim as nonjusticiable.” *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 838-39 (9th Cir. 2014). To this end, “[t]he ripeness doctrine seeks to identify those matters that are premature for judicial review because the injury at issue is speculative, or may never occur.” *Id.* at 838. Constitutional ripeness “overlaps with, and is often indistinguishable from, the ‘injury in fact prong’ of our standing analysis.” *Id.* (quoting *Thomas*, 220 F.3d at 1138).

Courts consider three factors to determine whether a pre-enforcement challenge to a law is justiciable: (1) “whether the plaintiff [has] articulated a ‘concrete plan’ to violate the law in question”; (2) “whether the prosecuting authorities have communicated a specific warning or threat to initiate

proceedings”; and (3) “the history of past prosecution or enforcement under the challenged [law].” *Thomas*, 220 F.3d at 1139.

Weighing these factors, the Court concludes that GEO’s challenges to HB 1470 § 4 are not ripe. Most importantly, because Section 4 does not—and may never—apply to the NWIPC, GEO has not articulated a concrete plan to violate it. Under its own terms, Section 4 “does not apply to private detention facilities operating pursuant to a valid contract that was in effect prior to January 1, 2023, for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.” RCW 70.395.060(1). GEO and ICE last modified their contract nearly two years before that date on January 29, 2021, “establishing . . . a five-year performance period running from September 28, 2020, through September 27, 2025.” Dkt. 1, ¶ 51. GEO does not plausibly allege that ICE *will* extend the current contract beyond that date or enter into a new contract effective upon the current contract’s expiration. GEO in fact fails to address this question at all.

GEO instead argues that ICE *could* modify the contract before September 27, 2025. Dkt. 22 at 13. But whether ICE *will* do so is merely speculative. So is any claim that a hypothetical modification would subject the NWIPC to enforcement under HB 1470 § 4. GEO assumes that any modification whatsoever to its existing contract with ICE would subject the *entire* contract to enforcement under Section 4. But Section 4 makes clear that only the extensions or modifications themselves could be subject to enforcement under this section. *See* RCW

70.395.060(1) (“This section does not apply to private detention facilities operating pursuant to a valid contract that was in effect prior to January 1, 2023, for the duration of that contract, *not to include any extensions or modifications made to, or authorized by, that contract.*” (Emphasis added)). GEO does not plausibly allege that ICE will modify the existing contract in a manner that will subject the NWIPC to enforcement under Section 4. Because GEO does not plausibly “establish a plan” to violate this section “that is more than hypothetical,” its challenges to HB 1470 § 4 are not constitutionally ripe. *Protectmarriage.com*, 752 F.3d at 839 (internal quotation marks omitted).

GEO similarly fails to show that the State “has communicated a specific warning or threat to initiate proceedings under” HB 1470 § 4. *Protectmarriage.com*, 752 F.3d at 839 (internal quotation marks omitted). To the contrary, the State concedes that Section 4 “may never apply” to the NWIPC and that Section 4 “only will if DHS chooses to enter into a new contract with GEO once the current contract ends.” Dkt. 17 at 14. Any threat of enforcement of Section 4 is therefore merely speculative and contingent upon future events that may never occur.

Finally, because the State has never enforced HB 1470 § 4 against the NWIPC, the history and past prosecution of Section 4 weighs against finding that GEO’s challenges are justiciable.

For these reasons, GEO’s challenges to HB 1470 § 4 are not constitutionally ripe, and the Court lacks

subject-matter jurisdiction over them.⁴ The State's 12(b)(1) motion to dismiss these claims is accordingly **GRANTED**. Because GEO does not explain how it could cure this deficiency through further amendment, its claims asserting that HB 1470 § 4 violates the Supremacy Clause and Contract Clause are **DISMISSED without prejudice but without leave to amend**.

B. HB 1470 § 2.

HB 1470 § 2 requires DOH to adopt certain rules addressing sanitation, hygiene, and safety at private detention facilities: "The department of health shall adopt rules as may be necessary to effectuate the intent and purposes of this section in order to ensure private detention facilities comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons." RCW 70.395.040(1).

These rules must include:

- (a) A detained person should have a safe, clean, and comfortable environment that allows a detained person to use the person's personal belongings to the extent possible;
- (b) Living areas, including areas used for sleeping, recreation, dining, telecommunications, visitation, and bathrooms, must be cleaned and sanitized regularly;

⁴ Because GEO's challenges to HB 1470 § 4 are not constitutionally ripe, the Court does not address whether they are prudentially ripe.

(c) A private detention facility must provide laundry facilities, equipment, handling, and processes for linen and laundered items that are clean and in good repair, adequate to meet the needs of detained persons, and maintained according to the manufacturer's instructions. Laundry and linen must be handled, cleaned, and stored according to acceptable methods of infection control including preventing contamination from other sources. Separate areas for handling clean laundry and soiled laundry must be provided and laundry rooms and areas must be ventilated to the exterior;

(d) Basic personal hygiene items must be provided to a detained person regularly at no cost;

(e) A private detention facility shall provide a nutritious and balanced diet, including fresh fruits and vegetables, and shall recognize a detained person's need for a special diet. A private detention facility must follow proper food handling and hygiene practices. A private detention facility must provide at least three meals per day, at no cost, and at reasonable hours;

(f) Safe indoor air quality must be maintained;

(g) The private detention facility must have both heating and air conditioning equipment that can be adjusted by room or area. Rooms used by a detained person must be able to maintain interior temperatures between 65

degrees Fahrenheit and 78 degrees Fahrenheit year-round. Excessive odors and moisture must be prevented in the building; and

(h) A private detention facility must implement and maintain an infection control program that prevents the transmission of infections and communicable disease among detained persons, staff, and visitors.

RCW 70.395.040(1)(a)-(h).

Section 2 finally authorizes the Washington attorney general to enforce violations of this section. RCW 70.395.040(2).

GEO contends that HB 1470 § 2 violates the Supremacy Clause in four ways: (1) it discriminates against it in violation of the intergovernmental immunity doctrine because it applies solely to GEO as the operator of the NWIPC and the State does not identify any other statute that subjects similarly situated facilities to the burdens imposed by this section, Dkt. 25-1 at 15, 19-20; (2) it regulates the federal government directly in violation of the intergovernmental immunity doctrine by purporting to replace standards that GEO is already subject to under the PBNDS, *id.* at 11-14; (3) it is field preempted because the PBNDS already addresses the manner in which GEO must operate the NWIPC, *id.* at 21-22; and (4) it is conflict preempted because it conflicts with the PBNDS and presents an obstacle to Congress's objective of imposing a uniform set of standards on immigration detention facilities. *Id.* at 24. GEO also asserts that Section 2 violates the Contract Clause because its preexisting contract

requires GEO to strictly adhere to the PBNDS and Section 2 conflicts with the PBNDS. *Id.* at 27-28.

The State asserts that these claims are not constitutionally or prudentially ripe because DOH has not yet promulgated any rules pursuant to HB 1470 § 2. Dkt. 17 at 15-16. The State also contends Section 2's text applies broadly to private detention facilities and does not discriminate against GEO as the operator of a private immigration detention facility. Dkt. 17 at 21. The State also claims that Section 2 does not impermissibly discriminate against GEO because the standards enumerated under this section are the same as the standards that apply to residential treatment facilities. *Id.* at 23. The State next argues that Section 2 does not regulate the federal government directly because GEO is a private company, not the federal government, and is therefore subject to state health and safety laws. *Id.* at 20-21. The State further contends that GEO's preemption claims fail because the PBNDS is not a federal law. *Id.* at 25, 29. The State finally asserts that GEO's Contract Clause claim fails because no provision of HB 1470, including Section 2, substantially impairs GEO's contractual relationship with ICE and the law is appropriately and reasonably tailored to advance a significant and legitimate public purpose. *Id.* at 29-30, 31-32.

The issues are addressed in turn.

1. GEO's challenges to HB 1470 § 2 are constitutionally ripe.

The State moves under Rule 12(b)(1) to dismiss GEO's challenges to HB 1470 § 2 for lack of subject-matter jurisdiction. Dkt. 17 at 15. The State contends

that these claims are not constitutionally ripe because “DOH has just begun the rulemaking process, but has not yet proposed rules or received comments and testimony from the public and various interest groups, including GEO, on the substance of those rules.” Dkt. 17 at 15. The State claims that “GEO couldn’t possibly run afoul of the rules under Section 2 where none have yet been adopted.” *Id.* Therefore, the State asserts, “GEO cannot meet its burden of establishing standing because it cannot show that harm is ‘certainly impending.’” *Id.* at 15-16 (quoting *Clapper*, 568 U.S. at 410).

GEO responds that it faces an immediate risk of enforcement under HB 1470 § 2 “regardless of how long it takes State agencies to promulgate *additional* rules.” Dkt. 25-1 at 9. It also asserts that Section 2 “provides unequivocal mandates imposing specific requirements and requires no speculation regarding rulemaking.” *Id.* GEO further argues that Section 2 “clearly provide[s] [t]he office of the attorney general’ immediate authority to ‘enforce violations of this section on its own initiative or in response to complaints or violations.’” *Id.* (quoting RCW 70.395.040(2)). GEO finally contends that HB 1470 § 5 (RCW 70.395.070) “creates an immediate right of action for detained persons” to enforce violations of HB 1470 § 2 “and specifies available money damages, injunctive relief, and the recovery of attorneys’ fees and costs.” *Id.* For these reasons, GEO asserts, “[n]o further rulemaking is required to subject GEO to an immediate risk of enforcement, and any contrary suggestion is wholly without merit.” *Id.*

GEO appears to assume that either the Washington attorney general or detained persons may seek to enforce HB 1470 § 2 *before* DOH adopts any rules pursuant to this section. The Court disagrees. The plain language of Section 2 imposes requirements on only *DOH*, not private detention facilities. *See Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 405 (2016) (“If the meaning of the statute is plain on its face, then we must give effect to that meaning as an expression of legislative intent.”). Section 2 provides that “[t]he *department of health* shall adopt rules as may be necessary . . . to ensure private detention facilities comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons” and “[t]he *department of health rules* shall include” the standards set forth under subsection (1)(a)-(h). RCW 70.395.040(1) (emphasis added). Thus, HB 1470 § 2 does not impose any requirements directly on private detention facilities. It instead requires DOH to adopt certain rules applicable to private detention facilities. The attorney general cannot enforce violations of Section 2 before DOH adopts any such rules.

Nevertheless, “[w]here the inevitability of the operation of a statute against certain individuals is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect.” *Blanchette v. Conn. Gen. Ons. Corps.*, 419 U.S. 102, 143 (1974). Put differently, “[o]ne does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough.” *Id.* (internal quotation marks omitted) (quoting *Pennsylvania v. West Virginia*, 262

U.S. 553, 593 (1923)). Because DOH is statutorily required to adopt rules imposing on private detention facilities the standards set forth under HB 1470 § 2, GEO's challenges those specific standards are constitutionally ripe.⁵

For these reasons, the State's Rule 12(b)(1) motion to dismiss GEO's challenges to HB 1470 § 2 is **DENIED**.

2. GEO's challenges to HB 1470 § 2 are prudentially ripe.

The State further asserts that GEO's challenges to HB 1470 § 2 are not prudentially ripe. Dkt. 17 at 16-17. It argues that "[t]here is ample time for GEO to provide comment to forthcoming proposed rules, and any final rules adopted will narrow the legal issues involved in this dispute." *Id.* at 17. It also claims that GEO will not "be harmed if judicial resolution is postponed" because "GEO has not shown a credible threat of enforcement to justify pre-enforcement judicial review." *Id.* GEO argues that these claims are prudentially ripe for the same reasons that they are constitutionally ripe. Dkt. 25-1 at 9-11.

⁵ Neither party addresses whether the first sentence of RCW 70.395.040(1) authorizes DOH to promulgate rules beyond those specifically listed under subsection (1)(a)-(h), or whether DOH's authority to promulgate any rules under this statute is contingent upon its ability to promulgate rules imposing the standards specifically required under subsection (1)(a)-(h). The Court therefore expresses no opinion as to whether the first sentence of RCW 70.395.040(1) authorizes DOH to promulgate rules beyond those specifically required under subsection (1)(a)-(h).

Even when a court has subject-matter jurisdiction over a claim, it should decline to exercise that jurisdiction if the claim is not prudentially ripe. *See Thomas*, 220 F.3d at 1141. “In evaluating the prudential aspects of ripeness, [the court’s] analysis is guided by two overarching considerations: ‘the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.’” *Id.* (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). “[R]ipeness will prevent review if the systemic interest in postponing adjudication due to lack of fitness outweighs the hardship on the parties created by postponement.” *Municipality of Anchorage v. United States*, 980 F.2d 1320, 1323 (9th Cir. 1992) (quoting *Chavez v. Director, OWCP*, 961 F.2d 1409, 1414 (9th Cir. 1992)). When a plaintiff’s claims are fit for review, courts need not consider the hardship to the parties in delaying review. *Skyline Wesleyan Church v. California Dep’t of Managed Health Care*, 968 F.3d 738, 753 (9th Cir. 2020) (citing *Oklevueha Native Am. Church of Hawaii, Inc. v. Holder*, 676 F.3d 829, 838 (9th Cir. 2012)).

GEO’s challenges to HB 1470 § 2 satisfy the concerns of prudential ripeness. They are fit for decision because they are primarily legal. As explained, Section 2 requires DOH to adopt by rule various standards that, once adopted, will apply to the NWIPC.⁶ These standards are sufficiently clear and

⁶ To the extent GEO seeks to challenge DOH’s authority—if any such authority exists—to adopt rules in addition to those specifically required under RCW 70.395.040(1)(a)-(h), further factual development is needed before any such challenge would be prudentially ripe. For this reason, too, the Court declines to

definite to determine whether they violate either the Supremacy Clause or the Contract Clause without any further factual development or rulemaking on DOH's part. *See Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 479 (2001) (concluding that an issue was fit for decision when it was "purely one of statutory interpretation that would not 'benefit from further factual development of the issues presented'" (quoting *Ohio Forestry Assn., Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998))). For this reason alone, GEO's challenges to HB 1470 § 2 are prudentially ripe.

There is also no benefit to either party in delaying review of GEO's challenges to HB 1470 § 2. The Court's consideration of these claims will resolve any dispute regarding the constitutionality of these standards *before* DOH expends resources to undertake and complete a rulemaking process.

The harm resulting to GEO from withholding review is also sufficiently definite and impending to render GEO's claims prudentially ripe. GEO alleges that compliance with rules imposing the standards enumerated under HB 1470 § 2 "would necessitate significant physical modifications to the NWIPC, including the wholesale redesign of the HVAC⁷ system and extensive physical modifications to the building structure currently estimated to cost GEO in excess of \$3,000,000." Dkt. 1, ¶ 65. Once such rules are adopted, the Washington attorney general may seek to enforce violations of those rules, *see* RCW 70.395.040(2), DOH

consider any challenge to the first sentence of RCW 70.395.040(1).

⁷ Heating, ventilation, and air conditioning.

may impose civil penalties on GEO in the amount of \$1,000 per violation per day, *see* RCW 70.395.080, and detained persons aggrieved by a violation may obtain monetary damages for the violation, including attorney fees and costs, and other appropriate relief, including injunctive relief. *See* RCW 70.395.070.

Because there is no reason to delay review of GEO's challenges to HB 1470 § 2, the State's motion to dismiss these claims for lack of prudential ripeness is **DENIED**.

3. HB 1470 § 2 discriminates against GEO in violation of the intergovernmental immunity doctrine.

Having determined that GEO's challenges to HB 1470 §2 are constitutionally and prudentially ripe, the Court considers whether GEO plausibly claims that this section discriminates against it in violation of the intergovernmental immunity doctrine.

a. Federal Rule of Civil Procedure 12(b)(6) Standard.

Dismissal under Federal Rule of Civil Procedure 12(b)(6) may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although courts must accept as true the complaint's well-pleaded facts,

conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6) motion to dismiss. *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). This requires a plaintiff to plead “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

When granting a Rule 12(b)(6) motion to dismiss, “a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990). However, when the facts are not in dispute and the sole issue is whether there is liability as a matter of substantive law, courts may deny leave to amend. *Albrecht v. Lund*, 845 F.2d 193, 195-96 (9th Cir. 1988).

b. The Intergovernmental Immunity Doctrine.

The Supremacy Clause provides: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.” U.S. Const., art. VI. “The

doctrine of intergovernmental immunity is derived from the Supremacy Clause, . . . which mandates that “the activities of the Federal Government are free from regulation by any state.” *California*, 921 F.3d at 878 (quoting *Boeing Co. v. Movassaghi*, 768 F.3d 832, 839 (9th Cir. 2014)). This doctrine arises from the well-settled principle that “the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government.” *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436, 4 L. Ed. 579 (1819)); accord *North Dakota v. United States*, 495 U.S. 423, 437-38 (1990) (plurality opinion) (“The nondiscrimination rule finds its reason in the principle that the States may not directly obstruct the activities of the Federal Government.”).

Under this doctrine, “state laws are invalid if they “regulate[] the United States directly or discriminate[] against the Federal Government or those with whom it deals.”” *California*, 921 F.3d at 878 (quoting *Boeing*, 768 F.3d at 839). “When the state law is discriminatory, a private entity with which the federal government deals can assert immunity.” *Boeing*, 768 F.3d at 842. “Since the advent of the doctrine, intergovernmental immunity has attached where a state’s discrimination negatively affected federal activities in some way. It is not implicated when a state merely references or even singles out federal activities in an otherwise innocuous enactment.” *California*, 921 F.3d at 881. Accordingly, “intergovernmental immunity attaches . . . to state

laws that discriminate against the federal government and burden it in some way.” *Id.* at 880.

A state law “does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them.” *California*, 921 F.3d at 881 (quoting *Washington v. United States*, 460 U.S. 536, 544-45 (1983)). Therefore, to avoid violating the intergovernmental immunity doctrine, the state law must “be imposed equally on other *similarly situated* constituents of the State.” *North Dakota*, 495 U.S. at 438 (plurality opinion) (emphasis added).

The Ninth Circuit has declined to “recognize a de minimis exception to the doctrine of intergovernmental immunity.” *California*, 921 F.3d at 883. It instead stresses: “Any economic burden that is discriminatorily imposed on the federal government is unlawful.” *Id.* at 883-84. Therefore, those provisions of a state law that impose an additional economic burden exclusively on the federal government—however slight—violate the Supremacy Clause. *Id.* at 884.

c. HB 1470 applies exclusively to private immigration detention facilities.

The State argues that HB 1470 in its entirety applies broadly to “private detention facilities” and, therefore, none of its provisions impermissibly discriminate against GEO as the operator of a private *immigration* detention facility. Although the State does not dispute that the NWIPC is, as a practical matter, the only private detention facility that is actually subject to HB 1470, it asserts that “intergovernmental immunity does not turn on the

happenstance of whether another private detention facility presently exists, but on the statutory language itself.” Dkt. 17 at 21. According to the State, “HB 1470 is written broadly” and, by its own terms, applies to “‘private, nongovernmental for-profit entit[ies]’ that ‘operat[e] pursuant to a contract or agreement with a federal, state, or local governmental entity.’” *Id.* (quoting RCW 70.395.020(7)). The State argues that, when assessing whether a state law impermissibly discriminates against the federal activities, the letter of the law is determinative. Dkt. 17 at 21. Therefore, the State contends, HB 1470 applies broadly to private detention facilities and does not discriminate against GEO as the operator of a private immigration detention facility.

GEO responds that “the legislative history and express language of HB 1470 plainly demonstrate that it was crafted and specifically amended to impose unique burdens on a single facility—the federal NWIPC—while expressly exempting any similarly situated Washington State facilities or those of state contractors.” Dkt. 25-1 at 15. Therefore, GEO asserts, HB 1470 applies solely to the NWIPC. *Id.* at 17.

There is no doubt that the wording of a state law is significant when determining whether it impermissibly discriminates against federal activities. But it is not always determinative. When determining whether a state law discriminates in violation of the Supremacy Clause, “look[ing] solely at the apparent neutrality on the face of the [statute] would . . . elevate form over substance, which must be avoided.” *United States v. Hynes*, 759 F. Supp. 1303, 1306 (N.D. Ill. 1991), *rev’d in part on other grounds*,

20 F.3d 1437 (7th Cir. 1994) (citing *Washington*, 460 U.S. at 544). In other words, “[t]he important consideration . . . is not whether the State differentiates in determining what entity shall bear the legal incidence of the [state law], but whether the [state law] is discriminatory *with regard to the . . . burdens that result.*” *Washington*, 460 U.S. at 544 (emphasis added).

The language and history of HB 1470 demonstrate that it was enacted to apply solely to private immigration detention facilities. The Washington legislature enacted HB 1470 *after* the Ninth Circuit decided *Newsom*, 50 F.4th 745. That decision, which held that a California law prohibiting the use of private detention facilities in that state, made clear that Washington’s similar prohibition of private detention facilities under EHB 1090 was unconstitutional as applied to private immigration detention facilities. *See GEO Group*, __ F. Supp. 3d __, No. 21-cv-05313-BHS, 2023 WL 7919947.

The legislature expressly stated its intent for the requirements imposed by HB 1470 to conform with the Supremacy Clause in light of *Newsom*:

States have broad authority to enforce generally applicable health and safety laws against contractors operating private detention facilities within the state. The ninth circuit reinforced this authority in *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), stating “[p]rivate contractors do not stand on the same footing as the federal government, so states can impose many laws

on federal contractors that they could not apply to the federal government itself.”

HB 1470 § 8 (codified as RCW 70.395.010(1)).

The legislature’s express reference to *Newsom* strongly indicates that the purpose of this bill is to impose conditions specifically on the NWIPC as the sole private immigration detention facility in the State. Further support for this conclusion is found in HB 1470 § 10, which expressly excludes various facilities from HB 1470’s ambit:

RCW 70.395.040 through 70.395.080 do not apply to a facility that is:

- (1) Providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles who are subject to Title 13 RCW, or similarly applicable federal law;
- (2) Providing evaluation and treatment or forensic services to a person who has been civilly detained or is subject to an order of commitment by a court pursuant to chapter 10.77, 71.05, 71.09, or 71.34 RCW, or similarly applicable federal law, including facilities regulated under chapters 70.41, 71.12, and 71.24 RCW;
- (3) Used for the quarantine or isolation of persons for public health reasons pursuant to RCW 43.20.050, or similarly applicable federal law;
- (4) Used for work release under chapter 72.65 RCW, or similarly applicable federal law;

- (5) Used for extraordinary medical placement;
- (6) Used for residential substance use disorder treatment; or
- (7) Owned and operated by federally recognized tribes and contracting with a government.

RCW 70.395.100.

The exclusion of these facilities from HB 1470's requirements begs the question: What facilities aside from private immigration detention facilities are subject to HB 1470? The State provides no answer.

The State instead asserts that HB 1470 does not discriminate against private immigration detention facilities because EHB 1090—which is unconstitutional as applied to those facilities—“already subjects state and local governments to a more stringent standard than the federal government by prohibiting them from hiring private detention facilities altogether.” Dkt. 17 at 22. The State essentially argues that, following *Newsom*, it can impose any burdens it wants on private immigration detention facilities short of prohibiting them altogether because EHB 1090 already prohibits some other kinds of detention facilities.⁸ The Court rejects

⁸ EHB 1090 does not prohibit *all* facilities that may fall under chapter 70.395 RCW's definition of “private detention facility.” In addition to being unconstitutional as applied to private immigration detention facilities, EHB 1090 expressly excludes from its ambit the same facilities that HB 1470 excludes from its requirements. *Compare* RCW 70.395.030 *with* RCW 70.395.100. EHB 1090 also expressly excludes any “facility used to house persons pursuant to 18 U.S.C. Sec. 4013,” which authorizes

this argument. The Supremacy Clause requires state laws imposed on federal contractors to “be imposed equally on other similarly situated constituents of the State.” *North Dakota*, 495 U.S. at 438 (plurality opinion). Private immigration detention facilities are similarly situated to state prisons and local jails, *see California*, 921 F.3d at 884, which EHB 1090 plainly does *not* prohibit. EHB 1090’s prohibition of certain other kinds of detention facilities does not authorize the State to impose additional burdens on private immigration detention facilities that are not imposed on other similarly situated facilities.

In sum, the statutory language of HB 1470 and its history indicate that it was designed to apply to only the NWIPC and any other private immigration detention facility that may eventually exist in Washington. The Court accordingly rejects the State’s argument that HB 1470 does not discriminate against GEO as the operator of the NWIPC simply because chapter 70.395 RCW defines the term “private detention facility” broadly.

d. HB 1470 § 2 impermissibly discriminates against GEO.

The State asserts that HB 1470 § 2 does not impermissibly discriminate against GEO because the standards listed under this section are “drawn directly from Title 246 of the Washington Administrative Code, which sets minimum health and safety standards for ‘twenty-four hour private, county or municipal residential treatment facilities.’” Dkt. 17 at

appropriations for federal detention by the United States Marshals Service. RCW 70.395.030(3)(g).

23 (quoting WAC 246-337-001). The State also contends that “[o]ther provisions replicate existing regulatory requirements for [Department of Corrections] facilities, including the provision of basic personal hygiene items.” *Id.* (citing WAC 137-55-030).

GEO responds that “the State does not and cannot identify any State [laws] that subject other similarly situated facilities to” the standards that DOH is required to adopt by rule under HB 1470 § 2. Dkt. 25-1 at 19. GEO contends that residential treatment facilities are not similarly situated to immigration detention facilities and that “it is more appropriate to compare the burdens imposed on ICE detention facilities with burdens applied to state ‘prisons and detainment facilities.’” Dkt. 25-1 at 19 n.8 (quoting *California*, 921 F.3d at 882).

The Court is not convinced that HB 1470 § 2 treats private immigration detention facilities in the same manner that chapter 246-337 WAC treats residential treatment facilities. That regulatory chapter “implements chapter 71.12 RCW and sets the minimum health and safety standards for licensure and operations of twenty-four hour private, county or municipal residential treatment facilities . . . providing health care services to persons with mental disorders or substance use disorders.” WAC 246-337-001(1). HB 1470 expressly excludes from its ambit any facility “regulated under chapter[] . . . 71.12 . . . RCW.” RCW 70.395.100(2). It also does not apply to any facility “[u]sed for residential substance use disorder treatment.” RCW 70.395.100(6). Therefore, the State’s suggestion HB 1470 § 2 treats private

immigration detention facilities the same as residential treatment facilities is simply wrong.

In any event, because residential treatment facilities are not similarly situated to immigration detention facilities, HB 1470 § 2 plainly discriminates against GEO in violation of the intergovernmental immunity doctrine. A state law “does not discriminate against the Federal Government and those with whom it deals” in violation of the intergovernmental immunity doctrine “unless it treats someone else better than it treats them.” *California*, 921 F.3d at 881 (*Washington*, 460 U.S. at 544-45). To avoid such unlawful discrimination, the state law must “be imposed equally on other *similarly situated* constituents of the State.” *North Dakota*, 495 U.S. at 438 (plurality opinion) (emphasis added). In *California*, the Ninth Circuit held that those provisions of a state law that applied to immigration detention facilities and “duplicate[d] preexisting inspection demands imposed on *state and local detention facilities*” likely did not discriminate against immigration detention facilities. *California*, 921 F.3d at 884 (emphasis added). In so doing, the court implicitly reasoned that immigration detention facilities are similarly situated to state and local detention facilities, such as prisons and jails.

This makes sense. Congress expressly acknowledged the similarities between immigration detention facilities and state and local detention facilities when it directed the Commissioner of Immigration and Naturalization to “consider the availability for purchase or lease of any existing *prison, jail, detention center, or other comparable*

facility suitable for such use” “[p]rior to initiating any project for the construction of any new detention facility for the [Immigration and Naturalization] Service.” 8 U.S.C. § 1231(g)(1) (emphasis added). This congressional mandate is consistent with the plain and ordinary meaning of “detention center,” which applies equally to immigration detention facilities like the NWIPC and other detention facilities like prisons or jails. *See* Black’s Law Dictionary (11th ed. 2019) (defining “detention center” as “[a] place where people are temporarily kept and prevented from escaping, esp[ecially] people who have entered the country illegally or are thought to have committed crimes”).

The State does not even attempt to explain how immigration detention facilities like the NWIPC are similarly situated to residential treatment facilities. Nor can it. Immigration detention facilities and residential treatment facilities serve entirely different purposes. Whereas immigration detention facilities function to temporarily keep and prevent people suspected of illegally entering into or residing in the country from escaping, *see* 8 U.S.C. § 1226; *see also* BLACK’S, *supra*, residential treatment facilities serve to provide “twenty-four hour on-site care” “for the evaluation, stabilization, or treatment of residents for substances use, mental health, co-occurring disorders, or for drug exposed infants.” RCW 71.12.455(7). There is no requirement that a person be suspected of having engaged in illegal activity to reside at a residential treatment facility.

And unlike immigration detention facilities, residential treatment facilities are generally voluntary, meaning that they require a resident’s

consent to house that resident. *See* WAC 246-337-095(9)(c) (stating that the licensee of a residential treatment facility *must* “[i]nclude . . . in each health care record . . . [a] [r]esident’s consent for health care provided by the [residential treatment facility], unless the resident is admitted under an involuntary court order”); *see also* RCW 11.130.330(7) (“[N]o care setting which provides nursing or other care may detain a person within such facility against their will” except as provided by a court “order issued in accordance with the involuntary treatment provisions of chapter 10.77, 71.05, and 72.23 RCW”). Immigration detention facilities do not require a court order to initially detain aliens. *See* 8 U.S.C. § 1226(a) (“On a warrant issued by the *Attorney General*, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” (Emphasis added)).

Also, the types of facilities that are used as immigration detention facilities differ significantly from those that are used for residential treatment facilities. Again, an immigration detention facility may operate out of an “existing prison, jail, detention center, or other comparable facility suitable for such use.” 8 U.S.C. § 1231(g)(1). By contrast, a residential treatment facility is defined as “an *establishment* in which twenty-four hour on-site care is provided for the evaluation, stabilization, or treatment of residents for substance use, mental health, co-occurring disorders, or for drug exposed infants.” RCW 71.12.455(7). “Establishment,” in turn, is defined as “[e]very private or county or municipal hospital, including public hospital districts, sanatoriums, homes, psychiatric hospitals, residential treatment facilities, or other

places receiving or caring for any person with mental illness, mentally incompetent person, or chemically dependent person” and, “[b]eginning January 1, 2019, facilities providing pediatric transitional care services.” RCW 71.12.455(3)(a), (b). None of these facilities are similar to prisons, detention centers, or jails.

In short, private immigration detention facilities and residential treatment facilities serve fundamentally different purposes, are authorized to exercise vastly different degrees of control over those who fall under their purview, and operate out of categorically different types of facilities. The State fails to demonstrate why these materially different facilities should be regarded as similarly situated for purposes of applying the intergovernmental immunity doctrine. Accordingly, to the extent that any of the standards listed under HB 1470 § 2 replicate those that apply to residential treatment facilities, HB 1470 § 2 impermissibly discriminates against GEO as the operator of the NWIPC.

The Court also rejects the State’s argument that “[o]ther provisions” of HB 1470 § 2 “replicate existing regulatory requirements for [Department of Corrections] facilities, including the provision of basic personal hygiene items.” Dkt. 17 at 23. In support of this assertion, the State cites to only one regulation, WAC 137-55-030. *See* Dkt. 17 at 23. This regulation generally provides “[a]ll offenders incarcerated within the department of corrections facilities shall be responsible for the acquisition and replenishment of personal hygiene items after the initial issuance of those items at the reception center.” WAC 137-55-

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030(1). It further provides that the Department of Corrections shall *initially* provide every offender with several personal hygiene items upon that offender's arrival at a detention center:

(2) Initial issuance of personal hygiene items shall include the department's issuance of the following items to individual offenders:

- (a) Bath soap;
- (b) Toothbrush;
- (c) Toothpaste;
- (d) Razor - One each;
- (e) Comb or hair pick - One each;
- (f) Shampoo - Thirty-day supply (optional issuance for offenders in the reception center only);
- (g) Deodorant - Thirty-day supply (optional issuance for offenders in the reception center only); and
- (h) State issued sanitary napkins will be made available to female offenders on an as needed basis without charge.

WAC 137-55-030(2).

No standard enumerated under HB 1470 § 2 requires detainees to be responsible for the acquisition and replenishment of personal hygiene items after the initial issuance of those items. This section instead provides that "[b]asic personal hygiene items must be provided to a detained person *regularly* at no cost." RCW 70.395.040(1)(d) (emphasis added)). This standard is stricter than the standards imposed on the Department of Corrections under WAC 137-55-030. It

accordingly discriminates against GEO as the operator of the NWIPC in violation of the intergovernmental immunity doctrine.

GEO therefore states a plausible claim that HB 1470 § 2 violates the Supremacy Clause by discriminating against it in violation of the intergovernmental immunity doctrine. The State's 12(b)(6) motion to dismiss this claim is **DENIED**.

4. HB 1470 § 2 does not regulate the federal government directly in violation of the intergovernmental immunity doctrine.

The State asserts that GEO fails to state a plausible claim that HB 1470 § 2 impermissibly regulates the federal government directly. Dkt. 17 at 17-21. The State contends that “the constitutional prohibition on direct regulation of the federal government is limited to just that—direct regulation of the federal government.” *Id.* at 20. The State asserts that, “[b]ecause GEO is a private company and HB 1470 is a generally applicable health and safety law that regulates private entities, *not* the federal government, GEO’s direct regulation claim should be dismissed.” *Id.* at 20-21.

GEO responds that “[t]he Ninth Circuit’s decision in *Boeing* compels a finding that HB 1470 constitutes an impermissible direct regulation of federal activities.” Dkt. 25-1 at 13 (citing *Boeing*, 768 F.3d 832). This is so, GEO contends, because it “mandat[es] the ways in which [GEO] renders services that the federal government hired [GEO] to perform.” Dkt. 25-1 at 11 (quoting *Boeing*, 768 F.3d at 840). GEO specifically asserts that “HB 1470 purports to replace the congressionally mandated PBNDS in GEO’s

federal contract with standards developed by the State.” *Id.* at 14. GEO therefore claims that HB 1470 § 2 directly regulates federal activities by “attempt[ing] to override federal decisions regarding the appropriate standards applicable to federal immigration detention and regulates not only GEO but the terms of the federal contract itself.” *Id.*

A state law regulates the activities of the federal government directly in violation of the intergovernmental immunity doctrine if it “falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being [regulated] is concerned.” *United States v. New Mexico*, 455 U.S. 720, 721 (1982). “[T]he activities of federal installations are shielded by the Supremacy Clause from direct state regulation unless Congress provides “clear and unambiguous” authorization for such regulation.” *Boeing*, 768 F.3d at 840 (quoting *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 180 (1988)).

In *Boeing*, the Ninth Circuit addressed whether a California law, Senate Bill (SB) 990, directly regulated the activities of the federal government in violation of the Supremacy Clause. 768 F.3d at 839-42. SB 990 imposed standards on the cleanup of radioactive contamination caused by the activities of the federal Department of Energy (DOE), the National Aeronautics and Space Association (NASA), and Boeing, which, as a DOE and NASA contractor, contributed to the contamination. *Id.* at 836.

Through the Atomic Energy Act, Congress established that DOE was “responsible for establishing a comprehensive health, safety, and environmental program for managing DOE’s nuclear facilities nationwide.” *Boeing*, 768 F.3d at 836 (citing 42 U.S.C. §§ 2121(a)(3), 2201). DOE “implemented that authority by issuing orders that set health and safety limits for radioactive releases and cleanup and site-closure procedures.” *Id.* DOE then hired Boeing to clean up the radioactive contamination. *Boeing*, 768 F.3d at 836. SB 990 imposed cleanup standards that were stricter than and conflicted with the standards adopted by DOE. *Id.* at 836-38.

The Ninth Circuit held that “SB 990 regulates the federal government directly in violation of the Supremacy Clause.” *Boeing*, 768 F.3d at 842. It explained that SB 990 “regulates [DOE]’s cleanup activities directly” because it “authorizes California’s Department of Toxic Substances Control . . . ‘to compel a responsible party or parties to take or pay for appropriate removal or remedial action.’” *Id.* (quoting Cal. Health & Safety Code § 25359.20(a)). Under SB 990, “DOE is a ‘responsible party’ with respect to radioactive contamination” because “[a]ll of the contamination [at issue] is the result of federal activity or is indistinguishable from contamination caused by federal activity.” *Boeing*, 768 F.3d at 839. The court further reasoned that “SB 990 affects nearly all of DOE’s decisions with respect to the cleanup” and, in turn, “directly interferes with the functions of the federal government.” *Id.* at 839-40. The court explained that SB 990 “replaces the federal cleanup standards that Boeing has to meet to discharge its contractual obligations to DOE with the standards

chosen by the state” and “overrides federal decisions as to necessary decontamination measures.” *Id.* at 840. For all these reasons, SB 990 regulated the federal government directly in violation of the intergovernmental immunity doctrine.

HB 1470 § 2 does nothing of the sort. Whereas the federal cleanup standards in *Boeing* were adopted by DOE pursuant to an act of Congress, the PBNDS is *not* congressionally mandated. *See Owino v. CoreCivic, Inc.*, No. 17-CV-1112 JLS (NLS), 2018 WL 2193644, at *18 n.10 (S.D. Cal. May 14, 2018) (“The ICE PBNDS is a federal agency publication and cannot provide congressional intent.”). In support of its assertion that the PBNDS is “congressionally mandated,” GEO cites to a joint explanatory statement and a house report which direct ICE to report on its progress in implementing the PBNDS. *See* Dkt. 25-1 at 23 (citing 163 Cong. Rec. H3812 (2017); H.R. Rep. No. 114-668, at 35 (2016)). Neither of these documents establish the intent of Congress. *See American Civil Liberties Union v. F.C.C.*, 823 F.2d 1554, 1569 (D.C. Cir. 1987) (“Even if the pertinent passage from the House Report is seen as speaking with complete clarity, the fact remains that committee reports, even authoritative committee reports, are not law.” (Footnote omitted)). Therefore, HB 1470 § 2 does not directly regulate federal activities in violation of the Supremacy Clause. *See City of Arcata*, 629 F.3d at 991 (under the intergovernmental immunity doctrine, “the states have no power . . . to retard, impede, burden, or in any manner control, the operations of *the constitutional laws enacted by congress*” (emphasis added) (internal quotation marks omitted)).

In any event, neither the joint explanatory statement nor the house report state that immigration detention facilities must strictly adhere to the PBNDS. The joint explanatory statement provides: “Within 45 days after the enactment of [the Department of Homeland Security Appropriations Act, 2017], ICE shall report on its progress in implementing the 2011 [PBNDS], including the 2016 revisions.” 163 Cong. Rec. H3812 (2017). The house report similarly states: “Within 45 days after the date of enactment of this Act, ICE shall report on its progress in implementing the 2011 [PBNDS] . . . , including a list of facilities that are not yet in compliance; [and] a schedule for bringing facilities into compliance.” H.R. Rep. No. 114-668, at 35 (2016). At most, these documents indicate a desire for immigration detention facilities to be “in compliance” with the PBNDS. They do not state that immigration detention facilities must strictly adhere to the PBNDS when a state law imposes more rigorous requirements.

Nor does the contract between ICE and GEO require GEO to operate the NWIPC in strict adherence with the PBNDS. Under a section entitled “Performance Work Statement,” the contract provides that “[t]he Contractor shall perform all services in accordance with,” among other things, the “ICE 2011 Performance-Based National Detention Standards (PBNDS).”⁹ Dkt. 10-1 at 46. However, the contract also provides that “[a]ll services must comply with the Performance Work Statement (PWS) and all

⁹ The contract between GEO and ICE is incorporated into the complaint by reference. See *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

applicable federal, state, and local laws and standards. *Should a conflict exist between any of these standards, the most stringent shall apply.*¹⁰ *Id.* at 53 (emphasis added). GEO is therefore not required to adhere to the PBNDS when an “applicable”¹¹ state law imposes more stringent standards than the PBNDS.

¹⁰ GEO argues that the emphasized sentence in the following paragraph from the Performance Work Statement means that it must adhere to the PBNDS whenever a state law conflicts with the PBNDS:

The Contractor shall perform all services in accordance with ICE 2011 Performance-Based National Detention Standards (PBNDS) . . . optimal and enhanced recreation, Prison Rape Elimination Act (PREA), American Correctional Association [sic] (ACA), Standards for Adult Local Detention Facilities (ALDF), and Standards Supplement, Standards for Health Services in Jails, latest edition, National Commission on Correctional Health Care (NCCCHC), and state and local laws on firearms at all times. Some ACA standards are augmented by ICE policy and/or procedure. *In cases where other standards conflict with DHS/ICE Policy or Standards, DHS/ICE Policy and Standards prevail.* ICE and third party inspectors will conduct periodic and unscheduled audits and inspections of the facility to ensure compliance with the aforementioned standards.

Dkt. 10-1 at 46 (emphasis added). Read in context, the emphasized sentence provides merely that, when the standards specifically listed in this paragraph conflict with DHS/ICE policy or procedures, the DHS/ICE policy or procedures prevail. It does not mean that the PBNDS controls whenever a state law conflicts with it.

¹¹ When examining similar language in a different federal contract, the Ninth Circuit held that a state law is not “applicable” if it violates the Constitution. *Gartrell Const. Inc. v. Aubry*, 940 F.2d 437, 440 (9th Cir. 1991) (citing *Leslie Miller, Inc.*

GEO accordingly fails to state a plausible claim that HB 1470 § 2 directly regulates against federal activities in violation of the intergovernmental immunity doctrine. The State's motion to dismiss is this claim is **GRANTED** and, because GEO cannot cure the deficiencies with this claim through further amendment, this claim is **DISMISSED with prejudice**.

5. HB 1470 § 2 is not field preempted.

The State asserts that, because “the federal law that permits contracts for immigration detention purposes do not demonstrate *any* intent to supersede a state's general authority to ensure the health and welfare of inmates and detainees” and HB 1470 § 2 “does not actively frustrate the federal government's ability to discharge its operations, GEO's field preemption claim should be dismissed.” Dkt. 17 at 25. The State also contends that the PBNDS cannot serve as the basis for a field preemption claim because “the Supremacy Clause is only triggered by ‘the Laws’ of the United States, and [the] PBNDS does not have ‘the force of law.’” *Id.*

GEO responds that HB 1470 § 2 is field preempted because it “would require a wholesale rewriting of ICE's federal contract and the replacement of the congressionally mandated PBNDS with the often inconsistent and conflicting State requirements that would govern virtually every aspect of GEO's contract performance.” Dkt. 25-1 at 21. GEO

v. Arkansas, 352 U.S. 187 (1956)). Accordingly, this contract language does not foreclose GEO's claims that HB 1470 § 2 violates the Constitution in some other manner.

also asserts that “Congress reached its own conclusion regarding how to best ensure the health and safety of federal detainees when it *explicitly directed* that contracts or agreements for immigration detention pending removal should incorporate and comply with the PBNDS.” *Id.* at 22 (citing 163 Cong. Rec. H3812 (2017); H.R. Rep. No. 114-668, at 35 (2016)).

“Field preemption occurs when *federal law* occupies a ‘field’ of regulation ‘so comprehensively that it has left no room for supplementary state legislation.” *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 479 (2018) (emphasis added) (quoting *R.J. Reynolds Tobacco Co. v. Durham County*, 479 U.S. 130, 140 (1986)). “In other words, courts will infer that Congress intended ‘to displace state law altogether’ when Congress enacts ‘a framework of regulation so pervasive that Congress left no room for the States to supplement it or whether there is a federal interest so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.” *Knox v. Brnovich*, 907 F.3d 1167, 1174 (9th Cir. 2018) (quoting *Arizona II*, 567 U.S. at 399).

As explained, the PBNDS is merely an agency publication and does not indicate the intent of Congress. Therefore, the PBNDS is not a federal law and, for this reason alone, it cannot serve as the basis for a field preemption claim. *See Murphy*, 584 U.S. at 479; *Knox*, 907 F.3d at 1174.

GEO therefore fails to state a plausible claim that HB 1470 § 2 is field preempted. The State’s motion to dismiss this claim is **GRANTED** and, because GEO cannot cure the deficiencies with this claim through

further amendment, the claim is **DISMISSED with prejudice.**

6. HB 1470 § 2 is not conflict preempted.

The State asserts that HB 1470 § 2 is not conflict preempted because “[t]he PBNDS does not have the force of law and cannot preempt state law” and, even if it did, the standards that DOH is required to adopt by rule under HB 1470 § 2 do “not make compliance with the PBNDS impossible.” Dkt. 17 at 29.

GEO responds that the standards enumerated under HB 1470 § 2 “are preempted because they create conflicts with GEO’s contractual obligations to ICE under the Congressionally mandated PBNDS and present an obstacle to the Congressional objective of implementing a uniform set of requirements for federal immigration detention.” Dkt. 25-1 at 24.

“Under the doctrine of conflict preemption, ‘state laws are preempted when they conflict with federal law. This includes cases where compliance with both federal and state regulations is a physical impossibility, and those instances where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *California*, 921 F.3d at 878-79 (some internal quotation marks omitted) (quoting *Arizona II*, 567 U.S. at 399). “In the absence of irreconcilability, there is no conflict preemption.” *California*, 921 F.3d at 882. “The latter instances constitute so-called ‘obstacle preemption,’ which ‘attaches to any state law, regardless of whether it specifically targets the federal government, but only if it imposes an obstructive, not-insignificant burden on federal activities.’” *California*, 921 F.3d at 879- 80.

Because the PBNDS is not a federal law, any conflict between it and HB 1470 § 2 does not support a conflict preemption claim. *See California*, 921 F.3d at 878-79. Separately, GEO does not explain how HB 1470 § 2 imposes an obstructive, not-insignificant burden on federal activities. *See id.* at 879-80. Although GEO alleges that compliance with Section 2 would require physical modifications to the NWIPC costing “in excess of \$3,000,000,” Dkt. 1, ¶ 65, GEO does not plausibly allege that any such modifications would obstruct federal activities.

Accordingly, GEO fails to state a plausible claim that HB 1470 § 2 is conflict preempted. The State’s motion to dismiss this claim is **GRANTED** and, because GEO cannot cure the deficiencies with this claim through further amendment, the claim is **DISMISSED with prejudice**.

7. HB 1470 § 2 does not violate the Contract Clause.

The State contends that no provision of HB 1470 violates the Contract Clause because the law does not substantially impair GEO’s contractual relationship with ICE and, even if it did, the law is appropriately and reasonably tailored to advance a significant and legitimate public purpose. Dkt. 17 at 29-30, 31-32.

GEO responds that its preexisting contract with ICE requires GEO to strictly adhere to the PBDNS and HB 1470 § 2 conflicts with the PBNDS. Dkt. 25-1 at 19, 27-28. GEO also contends that HB 1470 in its entirety is not drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose. *Id.* at 28-29.

The Contract Clause provides: “No state shall . . . pass any . . . Law impairing the Obligation of Contracts.” U.S. Const., art. I, § 10, cl. 1. “[N]ot all laws affecting pre-existing contracts violate the Clause” and, “[t]o determine when such a law crosses the constitutional line, [courts] . . . appl[y] a two-step test.” *Sveen v. Melin*, 584 U.S. 811, 819 (2018). “The threshold issue is whether the state law has ‘operated as a substantial impairment of a contractual relationship.’” *Id.* (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978)). “In answering that question, [courts] . . . consider[] the extent to which the law undermines the contractual bargain, interferes with a party’s reasonable expectations, and prevents the party from safeguarding or reinstating his rights.” *Sveen*, 584 U.S. at 819. “If such factors show a substantial impairment, the inquiry turns to . . . whether the state law is drawn in an ‘appropriate’ and ‘reasonable’ way to advance ‘a significant and legitimate public purpose.’” *Id.* (quoting *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-412 (1983)).

HB 1470 § 2 does not substantially impair the contractual relationship between GEO and ICE. As explained, the contract does not require GEO to strictly adhere to the PBNDS. For this reason alone, Section 2 does not impair GEO’s contractual relationship with ICE. And although GEO alleges that compliance with Section 2 would require it to incur more than \$3,000,000 in costs to physically modify the NWIPC, *see* Dkt. 1, ¶ 65, GEO does not plausibly allege that such costs would substantially impair its contractual relationship with ICE.

GEO accordingly fails to state a plausible claim that HB 1470 § 2 violates the Contract Clause. The State's motion to dismiss this claim is **GRANTED** and, because GEO cannot cure the deficiencies with this claim through further amendment, the claim is **DISMISSED with prejudice**.

C. HB 1470 § 3.

HB 1470 § 3 generally requires DOH to conduct routine, unannounced inspections of private detention facilities:

- (1) The department of health shall:
 - (a) Conduct routine, unannounced inspections of private detention facilities including, but not limited to, inspection of food service and food handling, sanitation and hygiene, and nutrition as provided in (c) of this subsection;
 - (b) Conduct investigations of complaints received relating to any private detention facility located within the state;
 - (c) Regularly review the list of food items provided to detained persons to ensure the specific nutrition and calorie needs of each detained person are met, including any needs related to medical requirements, food allergies, or religious dietary restrictions;
 - (d) Test water used for drinking and bathing and air quality every six months at private detention facilities both inside and outside of the facility; and
 - (e) Post inspection results on its website and in a conspicuous place viewable by detained

persons and visitors to private detention facilities. Results should be posted in English and in languages spoken by detainees, to the extent practicable.

(2) The department of health may delegate food safety inspections to the local health jurisdiction, where the local health jurisdiction is in the county where the private detention facility is located, to conduct inspections pursuant to regulations.

RCW 70.395.050(1)-(2).

Section 3 also mandates that DOH impose certain rules on private detention facilities: “The department of health shall adopt rules as may be necessary to effectuate the intent and purposes of this section in order to ensure private detention facilities allow regular inspections and comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons.” RCW 70.395.050(3).

Section 3 further requires L&I to “conduct routine, unannounced inspections of workplace conditions at private detention facilities, including work undertaken by detained persons.” RCW 70.395.050(4).

Section 3 finally authorizes the Washington attorney general to enforce violations this section: “The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations.” RCW 70.395.050(5).

Although GEO’s complaint broadly alleges that HB 1470 in its entirety violates the Constitution in

numerous ways, it does not clearly allege how HB 1470 § 3 itself violates the Constitution. The State assumes that GEO challenges Section 3 under the discrimination prong of the intergovernmental immunity doctrine. *See* Dkt. 17 at 24. In response, GEO does not clearly address how Section 3 alone impermissibly discriminates against it, but instead broadly asserts that the State fails to identify any other law that subjects similarly situated facilities to HB 1470's numerous requirements. Dkt. 25-1 at 19. Because GEO does not articulate any other theory as to how HB 1470 § 3 itself violates the Constitution, the Court, like the State, assumes that GEO asserts that this section is unconstitutional because it impermissibly discriminates against it.

The State asserts that GEO's challenge to HB 1470 § 3 is not constitutionally or prudentially ripe because GEO has not alleged a specific threat of enforcement of this section. Dkt. 17 at 16. GEO responds its challenge to this section is ripe because DOH has already attempted to inspect the NWIPC. Dkt. 15-1 at 9-11.

The State also contends that HB 1470 § 3 does not impermissibly discriminate against GEO because it merely authorizes DOH and L&I to conduct inspections related to food and worker safety, and other statutes already authorize these agencies to conduct inspections of this sort at state and local detention facilities. Dkt. 17 at 24. GEO asserts that no statute exists that subjects similarly situated facilities to the requirements that HB 1470 imposes on the NWIPC. Dkt. 25-1 at 19.

The issues are addressed in turn.

1. GEO’s claim that HB 1470 § 3 impermissibly discriminates against it is constitutionally and prudentially ripe.

The State moves under Rule 12(b)(1) to dismiss GEO’s challenge to HB 1470 § 3 for lack of subject-matter jurisdiction. Dkt. 17 at 16. The State argues that GEO’s challenge to HB 1470 § 3 is not constitutionally ripe because GEO has not alleged a specific threat of enforcement of this section. *Id.* The State also asserts that this claim is not prudentially ripe for the same reason. *Id.* at 17.

GEO responds that this claim is both constitutionally and prudentially ripe because DOH has already undertaken efforts to conduct inspections of the NWIPC. Dkt. 25-1 at 9-11.

“Ripeness ‘is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.’” *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022) (quoting *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1094 n.2 (9th Cir. 2003)). Regardless of whether a claim is examined for constitutional ripeness or prudential ripeness, “[t]he ‘basic rationale’ of the ripeness requirement is ‘to prevent the courts, through avoidance of *premature* adjudication, from entangling themselves in abstract disagreements.’” *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993) (emphasis added) (quoting *Abbott Labs.*, 387 U.S. at 149).

Both DOH and L&I have already attempted to conduct inspections pursuant to HB 1470 § 3 (codified as RCW 70.395.050). *See* Dkt. 1-1 in *State of*

Washington Dep't of Health v. The GEO Group Inc., No. 3:24-cv-05029-BHS (complaint filed by DOH in Thurston County Superior Court seeking an injunction preventing GEO from refusing DOH access to the NWIPC to conduct inspections under chapter 70.395 RCW); Dkt. 1-3 in *Dep't of Labor and Indus. of the State of Washington v. Geo Secure Services, LLC, et al.*, No. 3:24-cv-05095-BHS (complaint filed by L&I in Pierce County Superior Court seeking to enforce a warrant to conduct inspections of the NWIPC under chapter 70.395 RCW).¹² Considering these enforcement efforts by DOH and L&I, GEO's challenge to HB 1470 § 3 is ripe.

Accordingly, the State's 12(b)(1) motion to dismiss GEO's challenge to HB 1470 § 3 is **DENIED**.

2. HB 1470 § 3 discriminates against GEO in violation of the intergovernmental immunity doctrine

The State asserts that HB 1470 § 3 does not violate the intergovernmental immunity doctrine because it merely “authorizes DOH and L&I to conduct unannounced inspections related to food and worker safety” and “[b]oth DOH and L&I already conduct inspections of state and local correctional and detention facilities and other workplaces.” Dkt. 17 at 24 (citing RCW 43.70.170; RCW 49.17.070; WAC 296-900-12005).

Although GEO does not clearly explain how HB 1470 § 3 itself discriminates against it, GEO asserts that “the State does not and cannot identify any State

¹² The Court takes judicial notice of these documents. *See* Fed. R. Civ. P. 201(b)-(c).

statutes, regulations, or policies that subject other similarly situated facilities to [the] numerous requirements in HB 1470.” Dkt. 25-1 at 19. GEO also contends that the laws cited by the state “address the same *broad topics* as certain sections of HB 1470 *but do not include the same requirements.*” *Id.*

There are several flaws with the State’s argument that HB 1470 § 3 simply authorizes DOH and L&I to conduct inspections that these agencies already conduct at other facilities. First, HB 1470 § 3 does not simply “authorize” DOH and L&I to conduct certain inspections. It instead *mandates* that both DOH and L&I conduct *routine*, unannounced inspections of private detention facilities. *See* RCW 70.395.050(1)(a) (“The department of health *shall*: (a) Conduct *routine*, unannounced inspections of private detention facilities.” (Emphasis added)); RCW 70.395.050(4) (“The department of labor and industries *shall* conduct *routine*, unannounced inspections of workplace conditions at private detention facilities.” (Emphasis added)).

The State does not identify any other statute that subjects any other facility—let alone a similarly situated facility—to mandatory, routine, and unannounced inspections. The statutes cited by the State merely *authorize* DOH and L&I to conduct certain inspections; they do not *require* these agencies to conduct inspections and they do not mandate that these inspections occur *regularly*.¹³ *See* RCW

¹³ The regulation cited by the State simply lists the types of “unprogrammed” inspections that L&I conducts under the Washington Industrial Safety and Health Act. *See* WAC 296-900-12005(2). This regulation is of no consequence to GEO’s claim

43.70.170 (“The secretary [of health] . . . *may* investigate, examine, sample or inspect any article or condition constituting a threat to the public health.” (Emphasis added)); RCW 49.17.070 (“[T]he director [of the department of labor and industries] . . . is *authorized* . . . [t]o inspect, survey, and investigate . . . any such workplace.” (Emphasis added)).¹⁴ For this reason alone, HB 1470 § 3 imposes stricter requirements on GEO as the operator of the NWIPC than either of these statutes impose on other facilities.

Second, unlike HB 1470 § 3, RCW 49.17.070 requires L&I to obtain consent before it may enter a worksite to conduct investigations, unless an exception to the warrant requirements of the federal and state constitutions applies. *See* RCW 49.17.070(3) (stating that L&I “*shall obtain consent* from the owner, manager, operator, or his or her on-site person in charge of the worksite when entering any worksite located on private property to carry out his or her duties under this chapter” (Emphasis added)); *see also* RCW 49.17.070(4) (“This section does not prohibit” L&I “from taking action consistent with a recognized exception to the warrant requirements of the federal

that HB 1470 § 3 discriminates against it in violation of the intergovernmental immunity doctrine.

¹⁴ Whether RCW 43.70.170 and RCW 49.17.070 themselves apply to GEO as the operator of the NWIPC is subject to dispute in two other cases pending before this Court: *State of Washington Dep’t of Health v. The GEO Group Inc.*, No. 3:24-cv-05029-BHS and *Dep’t of Labor and Indus. of the State of Washington v. Geo Secure Services, LLC, et al.*, No. 3:24-cv-05095-BHS. The Court expresses no opinion in this order as to whether those statutes are constitutional as applied to GEO as the operator of the NWIPC.

and state Constitutions”). Because HB 1470 § 3 does not contain any such requirement, it impermissibly discriminates against GEO.

Third, the State wrongly asserts that HB 1470 § 3 provides for only *inspections* related to food and worker safety. *See* Dkt. 17 at 13, 24. In addition to requiring inspections, Section 3 states that “the department of health *shall adopt rules* as may be necessary to effectuate the intent and purposes of this section in order to ensure private detention facilities allow regular inspections and comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons.” RCW 70.395.050(3) (emphasis added). Section 3 further states that “[t]he office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations.” RCW 70.395.050(5).

The State does not identify any other statute that *requires* DOH to adopt rules that apply solely to a similarly situated facility. The statute cited by the State authorizing DOH to investigate threats to the public health does not require DOH to adopt any rules. *See* RCW 43.70.170. Moreover, the statute that grants DOH its general authority to promulgate rules—RCW 43.70.040—provides that this authority is discretionary, not mandatory. *See* RCW 43.70.040(1) (“In addition to any other powers granted the secretary [of health], the secretary *may* . . . adopt . . . rules.” (Emphasis added)). The State also fails to identify any other statute that authorizes the Washington attorney general to enforce violations by a similarly situated facility of any rules adopted by DOH. In these respects, GEO plausibly alleges that

HB 1470 § 3 places burdens on the NWIPC that are not placed on any other similarly situated facility. For these reasons, too, GEO plausibly claims that HB 1470 § 3 discriminates against it in violation of the intergovernmental immunity doctrine.

Finally, HB 1470 § 3 grants DOH broader authority to inspect than does RCW 43.70.170. To be sure, the investigation of “food service and food handling” and “sanitation and hygiene” under HB 1470 § 3 might, under certain circumstances, also be authorized under RCW 43.70.170 as an investigation of an “article or condition constituting a threat to the public health.” However, the Court is not convinced that inspections “to ensure the specific nutrition and calorie needs of each detained person are met, including any needs related to medical requirements, food allergies, or religious dietary restrictions,” RCW 70.395.050, would also be authorized under RCW 43.70.170 as inspections of conditions constituting “a threat to the *public* health.” (Emphasis added). In this respect, GEO plausibly alleges that the types of inspections required under HB 1470 § 3 place additional burdens on the NWIPC that do not apply to any similarly situated facility.¹⁵

¹⁵ The Court notes that HB 1470 § 3 also requires DOH to post inspection results “in a conspicuous place viewable by detained persons and visitors to private detention facilities.” RCW 70.395.050(1)(e). The State does not identify any statute that imposes a similar requirement on any similarly situated facility. However, the record is unclear as to how this particular requirement would burden GEO as the operator of the NWIPC. In any event, DOH’s authority to post inspection results under HB 1470 § 3 is clearly contingent upon its authority to conduct

For all these reasons, GEO plausibly claims that HB 1470 § 3 discriminates against it in violation of the intergovernmental immunity doctrine. The State's motion to dismiss this claim is **DENIED**.

D. HB 1470 §§ 5, 6 violate the intergovernmental immunity doctrine.

HB 1470 §§ 5, 6 subject private immigration detention facilities to severe financial burdens for violating HB 1470's requirements. HB 1470 § 5 creates a right of action for detained persons aggrieved by violations of chapter 70.395 RCW:

(1) A detained person aggrieved by a violation of this chapter has a right of action in superior court and may recover for each violation as follows:

(a) Against any person who negligently violates a provision of this chapter, \$1,000, or actual damages, whichever is greater, for each violation;

(b) Against any person who intentionally or recklessly violates a provision of this chapter, \$10,000, or actual damages, whichever is greater, for each violation;

(c) Reasonable attorneys' fees and costs if the detained person is the prevailing party; and

(d) Other relief, including an injunction, as the court may deem appropriate. Injunctive relief may be issued without bond in the

inspections under this section, which GEO plausibly alleges to violate the Supremacy Clause.

discretion of the court, notwithstanding any other requirement imposed by statute.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) For the purposes of this section, “person” means an owner, operator, contractor, subcontractor, or employee of a private detention facility.

RCW 70.395.070(1)-(3).

Section 5 also provides that “[t]he state and its agencies are not liable for a violation of this chapter.” RCW 70.395.070(4).

HB 1470 § 6 similarly authorizes DOH to impose substantial civil penalties on operators of private detention facilities that fail to comply with chapter 70.395 RCW:

(1) Any person who fails to comply with this chapter may be subject to a civil penalty in an amount of not more than \$1,000 per violation per day.

(2) Subject to the availability of amounts appropriated for this specific purpose, the secretary of the department of health may adopt by rule a penalty matrix that establishes procedures for civil penalties assessed under this chapter.

(3) Each violation is a separate and distinct offense. The department of health shall impose the civil penalty in accordance with chapter 34.05 RCW. Moneys collected under

this section must be deposited into the state general fund.

RCW 70.395.080(1)-(3).

Section 6 also authorizes the Washington attorney general to sue to recover penalties that are not paid within 15 days of receipt of notice of the penalty. RCW 70.395.080(4).

Finally, Section 6, like Section 5, provides that “[t]he state and its agencies are not liable for a violation of this chapter.” RCW 70.395.080(6).

The parties’ analysis of HB 1470 §§ 5, 6 addresses only whether these sections discriminate against GEO in violation of the intergovernmental immunity doctrine. The Court accordingly limits its review of these sections to that issue.

GEO argues that HB 1470 §§ 5, 6 discriminate against it in violation of the intergovernmental immunity doctrine by subjecting it to severe economic burdens that are not imposed on any similarly situated facility. Dkt. 8 at 22-23; Dkt. 25-1 at 18. GEO asserts that the discriminatory effect of Sections 5 and 6 is apparent from the express exclusion of the State and its agencies from their ambit. Dkt. 8 at 22-23; Dkt. 25-1 at 18.

The State acknowledges that state and local state facilities, including state and local detention facilities, are not subject to HB 1470 §§ 5, 6. Dkt. 26 at 11. It nevertheless asserts that “[t]he discrimination prong” of the intergovernmental immunity doctrine “only prohibits states from treating federal contractors ‘unfavorably on some basis related to their governmental “status”’” *Id.* (quoting *United States v.*

Washington, 596 U.S. 832, 839 (2022)). The State also asserts that the Supremacy Clause “does not require states to treat federal contractors the same as the state itself.” Dkt. 26 at 11.

The State misses the point. When the Supreme Court says that the Supremacy Clause requires a state law “be one that is imposed on some basis unrelated to the object’s status as a Government contractor,” it means “*that it be imposed equally on other similarly situated constituents of the State.*” *North Dakota*, 495 U.S. at 438 (plurality opinion) (emphasis added). HB 1470 §§ 5, 6 exclude state and local detention facilities from their ambit. The State also fails to identify any other statute that subjects similarly situated facilities to the burdens imposed by these sections.

For these reasons alone, GEO plausibly alleges that HB 1470 §§ 5, 6 violate the intergovernmental immunity doctrine. *See California*, 921 F.3d at 881; *North Dakota*, 495 U.S. at 438 (plurality opinion). The State’s motion to dismiss these claims is **DENIED**.

E. The State is preliminarily enjoined from enforcing Sections 2, 3, 5, and 6 of HB 1470.

GEO moves to preliminarily enjoin the State from enforcing HB 1470 in its entirety against it as the operator of the NWIPC. Dkt. 8 at 31. GEO asserts that it is likely to succeed on the merits of all of its claims, *id.* at 17-29, that it is likely to suffer irreparable harm absent an injunction in the form of a constitutional violation and damages, *id.* at 29-30, and that the balance of the equities and the public interest favor GEO because there is no legitimate interest in allowing the State to violate the Constitution. *Id.* at 31.

The State responds that GEO is unlikely to succeed on any of its claims for the same reasons articulated in its motion to dismiss. Dkt. 18 at 17-19. It contends that GEO fails to establish irreparable harm because it cannot show that compliance with any of HB 1470's requirements will likely result in economic harm. *Id.* at 19-21. It also asserts that the balance of the equities and the public interest favor the State because of the State's interest in ensuring the health, safety, and security of detainees. *Id.* at 21-33.

To obtain preliminary injunctive relief, a plaintiff must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of such relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "Where, as here, the government opposes a preliminary injunction, the third and fourth factors merge into one inquiry." *Porretti v. Dzurenda*, 11 F.4th 1037, 1047 (9th Cir. 2021).

To the extent that GEO moves to preliminarily enjoin the enforcement of HB 1470 § 4, the Court lacks subject-matter jurisdiction over GEO's challenges to that section and the motion is accordingly **DENIED**.

To the extent GEO moves to preliminarily enjoin the enforcement of HB 1470 §§ 2, 3, 5, 6, GEO is entitled to relief. For the same reasons that GEO states plausible claims that these sections discriminate against it in violation of the intergovernmental immunity doctrine, GEO establishes a likelihood of success on the merits. And because these statutes violate the constitution, GEO

establishes a likelihood of irreparable harm in the absence of a preliminary injunction. *See United States v. Arizona (Arizona I)*, 641 F.3d 339, 366 (9th Cir. 2011), *rev'd in part on other grounds*, 567 U.S. 387 (2012) (“[A]n alleged constitutional infringement will often alone constitute irreparable harm.” (quoting *Assoc. Gen. Contractors v. Coal. For Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)). GEO has also sufficiently demonstrated that compliance with RCW 70.395.040(1)(g), which provides that heating and air conditioning must be adjustable by room, would alone require GEO to expend more than \$3,000,000 in modifications to the HVAC system and building structure. Dkt. 9, ¶ 8.

Because GEO establishes that HB 1470 §§ 2, 3, 5, 6 violate the Supremacy Clause, the balance of the equities favors GEO and an injunction is in the public interest. *See Ariz. Dream Act Coal., v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (“[B]y establishing a likelihood that Defendants’ policy violates the U.S. Constitution, Plaintiffs have also established that both the public interest and the balance of the equities favor a preliminary injunction.”); *Arizona I*, 641 F.3d at 366, *aff’d in part, rev’d on other grounds*, 567 U.S. 387 (“[I]t is *clear that it would not be equitable or in the public’s interest to allow the state . . . to violate the requirements of federal law, especially when there are no adequate remedies available* In such circumstances, the interest of preserving the Supremacy Clause is paramount.” (quoting *Cal. Pharmacists Ass’n v. Maxwell-Jolly*, 563 F.3d 847, 852-53 (9th Cir. 2009))).

The Court will not permit the State to enforce unconstitutional laws so that it can seek to address the public policy concerns that gave rise to those laws. There is no dispute that Washington “has an interest in administering its police power to ‘protect the public health and the public safety.’” *Montana Med. Ass’n v. Knudsen*, 591 F. Supp. 3d 905, 917 (D. Mont. 2022) (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)). However, it is beyond dispute that “[t]he mode or manner in which those results are to be accomplished is . . . subject . . . to the condition that no rule prescribed by a state . . . shall contravene the Constitution of the United States.” *Montana Med. Ass’n*, 591 F. Supp. 3d at 917 (quoting *Jacobson*, 197 U.S. at 25).

For these reasons, GEO’s motion to preliminarily enjoin the enforcement of Sections 2, 3, 5, and 6 of HB 1470 (RCW 70.395.040, .050, .070, and .080, respectively) against GEO as the operator of the NWIPC is **GRANTED**. To the extent that GEO seeks to preliminarily enjoin the enforcement of Section 4 of HB 1470 (RCW 70.395.060), the Court lacks subject-matter jurisdiction over GEO’s challenges to that section and the motion is accordingly **DENIED**.

* * *

GEO briefly asserts at the end of its motion for a preliminary injunction that, “because the legal questions in this case require no further factual development, permanent injunctive relief is likewise appropriate.” Dkt. 8 at 31. Because GEO has not properly moved for a permanent injunction, the Court declines to enter a permanent injunction at this time.

The Court encourages the parties to consult and agree on a resolution to this case in light of this order.

III. ORDER

For the reasons set forth above, the State's motion to dismiss, Dkt. 17, is **GRANTED in part** and **DENIED in part** as follows:

- The motion is **GRANTED** insofar as it seeks to dismiss, under Federal Rule of Civil Procedure 12(b)(1), GEO's claims challenging Section 4 of HB 1470 (RCW 70.395.060). Because the Court lacks subject-matter jurisdiction over those claims, they are **DISMISSED without prejudice but without leave to amend**.
- The motion is **GRANTED** insofar as it seeks to dismiss, under Federal Rule of Civil Procedure 12(b)(6), GEO's claims that Section 2 of HB 1470 (RCW 70.395.040) regulates federal activities directly in violation of the intergovernmental immunity doctrine, is field preempted, is conflict preempted, and violates the Contract Clause. Because those claims are not plausible and cannot be cured through further amendment, they are **DISMISSED with prejudice**.
- The motion is **DENIED** insofar as it seeks to dismiss GEO's claims that Sections 2, 3, 5, and 6 of HB 1470 (RCW 70.395.040, .050, .070, and .080, respectively) discriminate against GEO in violation of the intergovernmental immunity doctrine. These claims are *not* dismissed.

GEO's motion for a preliminary injunction, Dkt. 8, is **GRANTED in part** and **DENIED in part** as follows:

- The motion is **GRANTED** insofar as it seeks to enjoin the enforcement of Sections 2, 3, 5, and 6 of HB 1470 (codified as RCW 70.395.040, .050, .070, and .080) against GEO as the operator of the NWIPC. The State and its agencies are preliminarily enjoined from enforcing these sections against GEO as the operator of the NWIPC. •
- The motion is **DENIED** insofar as it seeks to enjoin the enforcement of Section 4 of HB 1470 (codified as RCW 70.395.060) against GEO as the operator of the NWIPC.

IT IS SO ORDERED.

Dated this 8th day of March, 2024.

[handwritten: signature]
BENJAMIN H. SETTLE
United States District
Judge

Appendix E

**RELEVANT CONTITUTIONAL AND
STATUTORY PROVISIONS**

U.S. Const. art. VI, cl.2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Wash. Rev. Stat. §70.395.020. Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Abuse” means an act by any individual which injures, exploits, or in any way jeopardizes a detained person’s health, welfare, or safety, including, but not limited to:

(a) Physically damaging or potentially damaging nonaccidental acts;

(b) Emotionally damaging verbal behavior and harassment or other actions which may result in emotional or behavioral problems; and

(c) Sexual abuse, exploitation, and mistreatment through inappropriate touching, inappropriate remarks, or encouraging participation in pornography or prostitution.

(2) “Detained person” means a person confined in a private detention facility.

(3) “Detention facility” means any facility in which persons are incarcerated or otherwise involuntarily confined for purposes including prior to trial or sentencing, fulfilling the terms of a sentence imposed by a court, or for other judicial or administrative processes or proceedings.

(4) “Dietitian” means an individual certified under chapter 18.138 RCW.

(5) “Neglect” means conduct which results in deprivation of care necessary to maintain a detained person’s minimum physical and mental health including, but not limited to:

- (a) Physical and material deprivation;
- (b) Lack of medical care;
- (c) Inadequate food, clothing or cleanliness;
- (d) Refusal to acknowledge, hear, or consider a detained person's concerns;
- (e) Lack of social interaction and physical activity;
- (f) Lack of personal care; and
- (g) Lack of supervision appropriate for the detained person's level of functioning.

(6) “Private detention facility” means a detention facility that is operated by a private, nongovernmental entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity.

Wash. Rev. Stat. §70.395.040. Standards for sanitation, hygiene, and safety--Enforcement

(1) The department of health shall adopt rules as may be necessary to effectuate the intent and

purposes of this section in order to ensure private detention facilities comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons. The department of health rules shall include that:

- (a) A detained person should have a safe, clean, and comfortable environment that allows a detained person to use the person's personal belongings to the extent possible;
- (b) Living areas, including areas used for sleeping, recreation, dining, telecommunications, visitation, and bathrooms, must be cleaned and sanitized regularly;
- (c) A private detention facility must provide laundry facilities, equipment, handling, and processes for linen and laundered items that are clean and in good repair, adequate to meet the needs of detained persons, and maintained according to the manufacturer's instructions. Laundry and linen must be handled, cleaned, and stored according to acceptable methods of infection control including preventing contamination from other sources. Separate areas for handling clean laundry and soiled laundry must be provided and laundry rooms and areas must be ventilated to the exterior;
- (d) Basic personal hygiene items must be provided to a detained person regularly at no cost;
- (e) A private detention facility shall provide a nutritious and balanced diet, including fresh fruits and vegetables, and shall recognize a detained person's need for a special diet. A private detention facility must follow proper food

handling and hygiene practices. A private detention facility must provide at least three meals per day, at no cost, and at reasonable hours;

(f) Safe indoor air quality must be maintained;

(g) The private detention facility must have both heating and air conditioning equipment that can be adjusted by room or area. Rooms used by a detained person must be able to maintain interior temperatures between 65 degrees Fahrenheit and 78 degrees Fahrenheit year-round. Excessive odors and moisture must be prevented in the building;

(h) A private detention facility must implement and maintain an infection control program that prevents the transmission of infections and communicable disease among detained persons, staff, and visitors; and

(i) A private detention facility must provide:

(i) Ready access and equipment to accommodate detained persons with physical and mental disabilities;

(ii) Adequate lighting in all areas;

(iii) An adequate supply of hot and cold running water under pressure meeting the standards in chapters 246-290 and 246-291 WAC, with devices to prevent backflow into the potable water supply system, and water temperature not exceeding 120 degrees Fahrenheit automatically regulated at all plumbing fixtures used by detained persons;

(iv) Written policies, procedures, and schedules for maintenance and housekeeping functions;

(v) Housekeeping and service facilities on each floor, including:

(A) One or more service sinks, designed for filling and emptying mop buckets;

(B) Housekeeping closets that are equipped with shelving, ventilated to the out-of-doors, and kept locked; and

(C) A utility service area designed and equipped for washing, disinfecting, storing, and housing medical and nursing supplies and equipment; and

(vi) Equipment and facilities to collect and dispose of all sewage, garbage, refuse, and liquid waste in a safe and sanitary manner.

(2) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations.

Wash. Rev. Stat. §70.395.060. Requirements

(1) This section does not apply to private detention facilities operating pursuant to a valid contract that was in effect prior to January 1, 2023, for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.

(2) A private detention facility operating pursuant to a contract or agreement with a federal, state, or local government shall comply with the following:

(a) The private detention facility shall:

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- (i) Comply with food service rules under chapters 246-215 and 246-217 WAC;
- (ii) Designate an individual responsible for managing and supervising food services 24 hours per day, including:
 - (A) Incorporating ongoing recommendations of a dietitian;
 - (B) Serving at least three meals a day at regular intervals with 15 or fewer hours between the evening meal and breakfast, unless the facility provides a nutritious snack between the evening meal and breakfast;
 - (C) Providing well-balanced meals and nourishments that meet the current recommendations published in recommended dietary allowances by the national research council, 10th edition, 1989, adjusted for the detained person's age, sex, and activities unless contraindicated;
 - (D) Making nourishing snacks available as needed for detained persons, and posted as part of the menu;
 - (E) Preparing and serving therapeutic diets according to written medical orders;
 - (F) Preparing and serving meals under the supervision of food service staff;
 - (G) Maintaining a current diet manual, approved in writing by the dietitian and medical staff, for use in planning and preparing therapeutic diets; and

(H) Ensuring all menus: Are written at least one week in advance; indicate the date, day of week, month, and year; include all foods and snacks served that contribute to nutritional requirements; provide a variety of foods; are approved in writing by the dietitian; are posted in a location easily accessible to detained persons at the facility; and are retained for one year;

(iii) Substitute foods, when necessary, of comparable nutrient value and record changes on the menu;

(iv) Allow sufficient time for detained persons to consume meals;

(v) Ensure staff from dietary and food services are present in the facility during all meal times; and

(vi) Keep policies and procedures pertaining to food storage, preparation, and cleaning food service equipment and work areas in the food service area for easy reference by dietary staff at all times;

(b) The private detention facility shall provide a readily available telephone for detained persons to make and receive confidential calls, and make a nonpay telephone or equivalent communication device readily accessible on each floor occupied by a detained person for emergency use;

(c) The private detention facility shall provide a visiting area allowing privacy for detained persons and visitors;

(d) The private detention facility shall develop and implement the written policies and procedures consistent with assuring the rights of detained persons, protecting against abuse and neglect, and reporting suspected incidents, and post those policies and procedures in a prominent place for detained persons at the facility to read;

(e) The private detention facility shall employ sufficient, qualified staff to:

(i) Provide adequate services to detained persons;

(ii) Maintain the facility free of safety hazards; and

(iii) Implement fire and disaster plans;

(f) The private detention facility shall provide and document orientation and appropriate training for all staff, including:

(i) Organization of the facility;

(ii) Physical layout of facility, including buildings, departments, exits, and services;

(iii) Fire and disaster plans, including monthly drills;

(iv) Infection control;

(v) Specific duties and responsibilities;

(vi) Policies, procedures, and equipment necessary to perform duties;

(vii) Policies related to the rights of detained persons and protecting against abuse and neglect;

- (viii) Managing the behavior of detained persons; and
- (ix) Appropriate training for expected duties; and
- (g) The private detention facility shall establish and implement an effective facility-wide infection control program including, at a minimum, the following:
 - (i) Written policies and procedures describing:
 - (A) Types of surveillance used to monitor rates of infections originating at the facility;
 - (B) Systems to collect and analyze data; and
 - (C) Activities to prevent and control infections;
 - (ii) A review process to determine if staff and detained person infections originated at the facility;
 - (iii) A procedure for reviewing and approving infection control aspects of policies and procedures used in each area of the facility;
 - (iv) A procedure to monitor the physical environment of the facility for situations which may contribute to the spread of infectious diseases; and
 - (v) Provisions for:
 - (A) Providing consultation regarding care practices, equipment, and supplies which may influence the risk of infection;

(B) Providing consultation regarding appropriate procedures and products for cleaning, disinfecting, and sterilizing;

(C) Providing infection control information for orientation and in-service education for staff providing direct care;

(D) Making recommendations, consistent with federal, state, and local laws and rules, for methods of safe and sanitary disposal of sewage, solid and liquid wastes, and infectious wastes, including safe management of sharps;

(E) Identifying specific precautions to prevent transmission of infections; and

(F) Coordinating employee activities to control exposure and transmission of infections to or from employees and others performing services.

(3) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations.

Wash. Rev. Stat. §70.395.070.
Violations—Right of action

(1) A detained person aggrieved by a violation of this chapter has a right of action in superior court and may recover for each violation as follows:

(a) Against any person who negligently violates a provision of this chapter, \$1,000, or actual damages, whichever is greater, for each violation;

(b) Against any person who intentionally or recklessly violates a provision of this chapter, \$10,000, or actual damages, whichever is greater, for each violation;

(c) Reasonable attorneys' fees and costs if the detained person is the prevailing party; and

(d) Other relief, including an injunction, as the court may deem appropriate. Injunctive relief may be issued without bond in the discretion of the court, notwithstanding any other requirement imposed by statute.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) For the purposes of this section, "person" means an owner, operator, contractor, subcontractor, or employee of a private detention facility.

(4) The state and its agencies are not liable for a violation of this chapter.

Wash. Rev. Stat. §70.395.080.

Violations—Civil Penalties

(1) Any person who fails to comply with this chapter may be subject to a civil penalty in an amount of not more than \$1,000 per violation per day.

(2) Subject to the availability of amounts appropriated for this specific purpose, the secretary of the department of health may adopt by rule a penalty matrix that establishes procedures for civil penalties assessed under this chapter.

(3) Each violation is a separate and distinct offense. The department of health shall impose the civil

penalty in accordance with chapter 34.05 RCW. Moneys collected under this section must be deposited into the state general fund.

(4) If the civil penalty is not paid to the department of health within 15 days after receipt of notice, the office of the attorney general may bring an action to recover the penalty in the name of the state of Washington in the superior court of Thurston county or in the county where the private detention facility is located. In all such actions, the procedure and rules of evidence are the same as in ordinary civil actions. All penalties recovered by the attorney general under this chapter must be paid into the Washington state attorney general humane detention account created in RCW 70.395.090.

(5) For the purposes of this section, “person” means an owner, operator, contractor, subcontractor, or employee of a private detention facility.

(6) The state and its agencies are not liable for a violation of this chapter.

Wash. Rev. Stat. §70.395.100. Facilities excluded

RCW 70.395.040 through 70.395.080 do not apply to a private detention facility that is:

- (1) Providing counseling, treatment, mental health, educational, or medical services to juveniles under chapter 74.15 RCW;
- (2) Providing evaluation and treatment or forensic services to a person who has been civilly detained or is subject to an order of commitment by a court pursuant to chapter 10.77, 71.05, 71.09, or 71.34 RCW, or similarly applicable federal law,

including facilities regulated under chapters 70.41, 71.12, and 71.24 RCW;

(3) Used for the quarantine or isolation of persons for public health reasons pursuant to RCW 43.20.050, or similarly applicable federal law;

(4) Used for work release under chapter 72.65 RCW, or similarly applicable federal law;

(5) Used for extraordinary medical placement;

(6) Used for residential substance use disorder treatment; or

(7) Owned and operated by federally recognized tribes and contracting with a government.