

In the Supreme Court of the United States

THE GEO GROUP, INC.,

Petitioner,

v.

ROBERT W. FERGUSON et al.,

Respondents.

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

BRIEF IN OPPOSITION

NICHOLAS W. BROWN
Attorney General

NOAH G. PURCELL
Solicitor General
Counsel of Record

ELLEN RANGE
ANDREW HUGHES
MINA SHAHIN
Assistant Attorneys General

MARSHA CHIEN
Worker Rights Unit Chief

CRISTINA SEPE
Deputy Solicitor General

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6200
Noah.Purcell@atg.wa.gov

QUESTIONS PRESENTED

For decades, the State of Washington has applied safety and health standards to a wide range of facilities where people are confined, such as private psychiatric hospitals, residential treatment facilities, and chemical dependency hospitals. Starting in 2023, the Washington Legislature extended these same types of standards to private civil detention facilities. The new rules apply to all private civil detention facilities, whether operated under contract with the federal, state, or local government.

GEO owns a private detention facility in Tacoma, Washington, where it holds immigration detainees under a contract with the federal government while the detainees await immigration proceedings. GEO's contract requires it to comply with all state and local health and safety laws.

GEO claims that Washington's law violates intergovernmental immunity by directly regulating and discriminating against the federal government, and is preempted. The court of appeals rejected GEO's direct regulation and preemption arguments, and remanded to the district court to assess GEO's discrimination argument under the proper standard. GEO now seeks certiorari.

The questions presented are:

1. Does Washington State directly regulate the federal government by requiring private companies that operate civil detention facilities to meet certain basic health and safety standards?

2. Should this Court review an interlocutory ruling directing the district court to assess in the first instance whether Washington law discriminates against federal contractors in violation of intergovernmental immunity?

3. Does federal law preempt Washington's public health statutes that fall squarely within historic state police powers where no federal statute expressly or impliedly overrides those powers as to private civil detention facilities?

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INTRODUCTION

GEO asks this Court to grant certiorari based on a theory of federal contractor immunity that this Court has rejected for decades, including twice last Term. No court of appeals has adopted GEO's extreme view, and there is no reason for this Court to revisit its settled approach. The Court should deny certiorari.

GEO is a private company that owns and operates a civil detention facility in Tacoma, Washington. The federal government contracts with GEO to detain people in immigration proceedings. The contract requires GEO to comply with state and local health and safety codes, and GEO had long allowed state and local inspectors into the facility.

That changed in 2023, however, when Washington enacted a law specifically regulating private civil detention facilities. Similar facilities in Washington—such as private psychiatric hospitals and residential treatment facilities—were already subject to similar standards, and the Legislature decided to close a loophole omitting private civil detention facilities from regulation. GEO then sued the State, arguing that the new law violated intergovernmental immunity by directly regulating and discriminating against the federal government and was preempted. The court of appeals rejected GEO's direct regulation and preemption arguments, and remanded to the district court for it to evaluate GEO's discrimination claim.

Seeking review of that interlocutory decision, GEO claims that the court of appeals deviated from precedent of this Court and its sister circuits. Not so.

GEO claims that under this Court’s precedent, any private company contracted to perform a “federal function” is just as immune from State regulation as the federal government itself, but this Court has repeatedly rejected that argument. Most recently, the Court held that, even in “the military context,” “absent a statute to the contrary, States can regulate or tax federal contractors on the same terms as any private company, even where the party asserts an indirect burden on federal activities.” *Hencely v. Fluor Corp.*, 146 S. Ct. 1086, 1098 (2026); *see also GEO Grp., Inc. v. Menocal*, 607 U.S. 438, 450 (2026) (“A private contractor cannot obtain ‘[i]mmunity from suit’ by ‘reason of a contract’ it made with the [federal] Government.” (alteration in original) (citation omitted)). If state laws can apply to companies providing services within overseas military bases, surely they can apply to companies providing services within their own borders.

The court of appeals appropriately recognized this, while also making clear that States cannot use their regulatory power to effectively prohibit federal activities. Pet. App. 17. Indeed, the Ninth Circuit has applied this distinction to invalidate various state and local laws that impermissibly intruded upon federal priorities, but it held that Washington’s law here fell squarely on the permissible side of the line, because it did not interfere with the federal government’s ability to use contractors to detain immigrants, but rather at most indirectly increased the federal government’s costs. *See id.* Other circuits have applied the same test. Indeed, the leading case that GEO claims creates a circuit split in fact cites the Ninth Circuit’s approach

with approval. *See CoreCivic, Inc. v. Governor of New Jersey*, 145 F.4th 315, 323, 327–30 (3d Cir. 2025) (distinguishing between laws “that merely impose an incidental economic burden on the federal government and those that subvert federal operations,” concluding that “[t]he latter trigger immunity; the former do not,” and “align[ing]” its decision “with our sister circuit in adopting this approach”). No circuit has adopted a contrary rule.

GEO argues that this Court should still grant review here because the court of appeals supposedly allowed Washington to discriminate against GEO as a federal contractor, but that is incorrect. The court of appeals simply held that in assessing GEO’s claim of discrimination, the district court should compare Washington’s regulation of GEO with Washington’s regulation of other civil detention facilities, rather than with prisons. GEO cites no contrary case from any circuit, and even if it could, there is no basis to review this interlocutory ruling now. The district court has already applied this direction on remand and held that Washington law is not discriminatory, and GEO’s appeal of that issue is pending before the Ninth Circuit. If this Court wishes to review GEO’s discrimination claim, it should do so on a full record after it is finally resolved in the lower courts.

GEO’s preemption claim is also baseless. GEO cites no federal statute or regulation that can plausibly be read to preempt Washington’s law, and as this Court has repeatedly held, “[t]here is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it.” *Puerto Rico Dep’t of Consumer Affs. v. ISLA Petroleum Corp.*, 485 U.S. 495, 503 (1988).

Finally, there is also no reason to consolidate this petition with *The GEO Group, Inc. v. Nwauzor*, No. 25-828. That case involves a completely different state law, enacted at a different time, applied in a different case, by a different decisionmaker. The Court should simply deny certiorari here.

STATEMENT OF THE CASE

A. Legal Background

Under the Tenth Amendment, “The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.” U.S. Const. amend. X. Among the core undelegated powers is the State’s police power, “defined as the authority to provide for the public health, safety, and morals” of the state’s population. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 569 (1991).

Time after time, this Court has affirmed that safeguarding public health is a core State police power. *See, e.g., Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (observing that States have “great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons” (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996))); *Barsky v. Bd. of Regents of Univ. of State of N.Y.*, 347 U.S. 442, 449 (1954) (“[A] state has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there.”); *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (calling it a “settled principle[]” that States enjoy police power to promulgate “legislative enactment[s to] protect the public health and the public safety”). This Court

presumes such laws are valid and not preempted, even where they touch on federal functions. *See Wyeth v. Levine*, 555 U.S. 555, 565 (2009).

Given the States’ dominion over public health, Congress has not passed legislation setting public health standards for private detention facilities. Rather, States bear the responsibility of ensuring that those held within such facilities in their borders have proper access to nutrition, clean drinking water, and sanitary living conditions.

B. Washington Has Long Set Basic Health and Safety Standards for a Wide Range of Congregate Facilities and, in 2023, Extended Those Standards to Private Detention Facilities

For over thirty years, Washington’s Legislature has authorized the Washington State Department of Health to “[s]trictly enforce all laws for the protection of the public health” and set “sanitary and health care standards” at both “state owned or contracted institutions and facilities.” Wash. Rev. Code § 43.70.130(3), (8). Specifically, the Washington Legislature has authorized state health authorities to set health and safety rules for a myriad of facilities implicating public health, from schools to transient accommodations. *See* Wash. Rev. Code § 43.20.050(2)(d). The Department of Health, for example, has set standards for private psychiatric hospitals, residential treatment facilities, and private alcohol and chemical dependency hospitals. *See* Wash. Admin. Code §§ 246-322, -324, -337.

In 2023, following a series of government and academic reports revealing substandard conditions at private detention facilities, Washington’s Legislature enacted Second Substitute House Bill 1470 to set basic standards for private detention facilities. Second Substitute H.B. 1470, 68th Leg., Reg. Sess. (Wash. 2023), *codified at* Wash. Rev. Code ch. 70.395. In so doing, the Legislature acted within the State’s “general authority to ensure the health and welfare of inmates and detainees in facilities within its borders.” Wash. Rev. Code § 70.395.010(1) (citing *United States v. California*, 921 F.3d 865, 886 (9th Cir. 2019)). The Legislature observed that “[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.” *Id.* (quoting *GEO Grp., Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022) (en banc)). This Court has recently reaffirmed this principle twice over. *See Hencely*, 146 S. Ct. at 1098 (explaining while States cannot directly regulate or discriminate against federal officers or agencies, “those who contract to furnish supplies or render services to the government are not such agencies and do not perform governmental functions”) (quoting *Penn Dairies, Inc. v. Milk Control Comm’n of Pa.*, 318 U.S. 261, 269 (1943)); *Menocal*, 607 U.S. at 449 (holding that “the Federal Government’s immunity from a suit (absent a statute providing otherwise) does not extend to those that act in its name” (citation modified)).

In 2025, the Legislature expanded the definition of “private detention facilities” to include both for-profit and non-profit organizations. *See* Engrossed Second Substitute H.B. 1232,

69th Leg., Reg. Sess. (Wash. 2025); Wash. Rev. Code § 70.395.020(6). As a result, the law’s requirements apply to both of the existing private detention facilities in Washington: GEO’s Tacoma facility and Martin Hall Juvenile Detention Facility, a nonprofit that contracts with counties to provide juvenile detention services. *See* Multiple Agency Fiscal Note Summary, Engrossed Second Substitute H.B. 1232, Local Government Fiscal Note at 2–3, <https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=74955> (last visited Sept. 10, 2026).

The law at issue does five primary things.

First, it directs the Washington State Department of Health to adopt regulations “to ensure private detention facilities comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons.” Wash. Rev. Code § 70.395.040. The Legislature directed the Department of Health’s attention to specific areas, such as nutrition, air quality, and laundry services, creating a baseline standard for a healthy environment. *Id.* It drew these standards directly from existing Washington regulations governing psychiatric private detention facilities. *See* Wash. Admin. Code § 246-322-120.

Second, the law directs the Department of Health and Washington State’s Department of Labor and Industries to conduct inspections of private detention facilities, both routinely and in response to complaints. Wash. Rev. Code § 70.395.050. This access is no different from the authorities the Department of Health and Department of Labor and

Industries use to inspect buildings and workplaces under Wash. Rev. Code §§ 43.70.170, 49.17.070; and the mandatory inspections required for other civil commitment centers. *See, e.g.*, Wash. Admin. Code § 246-322-025(1)(d), (3)(b), (c) (requiring the Department of Health to conduct investigations and that licensees cooperate).

Third, the law adds requirements for private detention facilities operating pursuant to contracts in effect after January 1, 2023, which are not relevant in this appeal. Wash. Rev. Code § 70.395.060.

Fourth, the law creates penalties for violating its standards and provides for enforcement by aggrieved detainees, the Department of Health, and the Attorney General. Wash. Rev. Code §§ 70.395.070, .080.

Lastly, the law exempts facilities that are already subject to similar regulations. Wash. Rev. Code § 70.395.100. Those exempted facilities are subject to more comprehensive regulations as well as more stringent enforcement mechanisms elsewhere. *See, e.g.*, Wash. Admin. Code §§ 246-322-150 (setting out required regulations for clinical facilities for civil commitment centers); 246-337-021(6) (authorizing the Department of Health to deny or suspend a residential treatment facility's license).

C. Factual Background

1. GEO operates a private detention facility in Washington subject to Wash. Rev. Code ch. 70.395

While GEO calls its facility in Tacoma, Washington, the “Northwest ICE Processing Center,”

it is not a federal facility, but instead a GEO-owned and GEO-operated facility. Pet. App. 1.

At the time GEO filed this lawsuit, GEO's contract with U.S. Immigration and Customs Enforcement (ICE) had a five-year performance period from September 2020 through September 2025. See Pet. App. 61 (quoting GEO's complaint). Pursuant to this contract, GEO provided "detention, transportation and food services for ICE detainees," as well as "the day-to-day operation of the Facility and all the management and quality control actions required to meet the terms of the Agreement." CA9.ER.669; CA9.ER.745.¹ GEO was required to "ensure that detainees were housed in a safe, secure, and humane manner." CA9.ER.711.

Immigrants at GEO's facility are held while awaiting administrative review of their immigration status, not because they have been charged with or convicted of a crime. Pet. App. 2, 20–21. Some detained immigrants lack an immigration status, while many others are lawful permanent residents, recipients of deferred action, or have other lawful status. *Id.*

¹ The CA9.ER cites are to the State Defendants-Appellants' Excerpts of Record, *The GEO Grp., Inc. v. Inslee*, No. 24-2815 (9th Cir. May 30, 2024), ECF Nos. 8–8-6.

2. ICE relies on state and local health authorities for public health and safety standards and enforcement

By both contract and policy, ICE mandates compliance with state and local laws in virtually all aspects of detainee welfare.

GEO's contract with ICE at the time GEO filed this lawsuit incorporated an ICE policy manual, known as the Performance Based National Detention Standards (ICE Policy Manual). Pet. App. 67; CA9.ER.622, CA9.ER.831–1116.²

ICE prefaces the ICE Policy Manual with its expectation that “future changes” in detention standards will involve “collaboration . . . with state and local governments[.]” CA9.ER.833. It then mandates that contractors comply with state and local public health and safety laws, including safety and sanitation, CA9.ER.854, drinking and wastewater, CA9.ER.856, garbage and refuse, CA9.ER.857, fire safety, CA9.ER.861, hazardous and infectious waste, CA9.ER.868, management and reporting of infectious diseases, CA9.ER.1096, medical housing and pharmaceutical management, CA9.ER.1100–01, autopsies, CA9.ER.1154, and disability accommodations, CA9.ER.1156.

² The ICE Policy Manual can also be accessed at <https://www.ice.gov/detain/detention-management/2011>. GEO has since entered into a new contract with ICE that incorporates a different set of standards called the National Detention Standards. See *GEO Grp., Inc. v. Ferguson*, No. C23-5626 BHS, 2026 WL 1983207, at *8 & n.10 (W.D. Wash. July 9, 2026).

Similarly, both the contract and the ICE Policy Manual repeatedly rely on state and local authorities for standards and enforcement. For example, under the contract's terms for "Sanitation and Hygienic Living Conditions," GEO must "comply with all applicable ICE, federal, state and local laws, statutes, regulations, and codes." CA9.ER.708; *see also* CA9.ER.670 (requiring compliance with "[a]pplicable federal, state facility codes, rules, regulations and policies," "[a]pplicable federal, state, and local labor laws and codes," "[a]pplicable federal, state and local firearm laws, regulations and codes"); CA9.ER.684 (requiring "custody, care, and safekeeping of detainees in accordance with State, and local laws"); CA9.ER.711 (requiring compliance with state law building requirements). The contract also repeatedly makes clear that when faced with conflicting "federal, state, and local laws and standards," "the most stringent shall apply." CA9.ER.678; *see also* CA9.ER.708.

In light of ICE's expectation that GEO comply with state and local public health and safety laws, GEO has routinely submitted to state and local inspections in Washington. For its business license with the City of Tacoma, GEO certified that it complies with "any local, state, or federal law relating to public health or safety." *See* Decl. of Ellen Range at Ex. 3, *Wash. Dep't of Health v. The GEO Grp., Inc.*, No. 3:24-cv-05639-BHS (W.D. Wash. Aug. 16, 2024), ECF No. 8-3. For decades, this has included routine food safety inspections by the Tacoma-Pierce County Health Department. *See* Decl. of Ellen Range at Ex. 3,

The GEO Grp., Inc. v. Ferguson, No. 3:23-cv-05626-BHS (W.D. Wash. June 30, 2026), ECF No. 92-3. Similarly, GEO has a long-standing practice of submitting to unannounced Department of Labor and Industries inspections. Decl. of Ellen Range at Ex. 4 ¶ 3, *Wash. Dep't of Health v. The GEO Grp., Inc.*, No. 3:24-cv-05639-BHS (W.D. Wash. Aug. 16, 2024), ECF No. 8-4.

GEO submits to health and safety inspections of its facilities in other States as well. See Settlement Agreement and Mutual Releases 5, *In the Matter of the Appeal of: the Geo Group, Inc.*, Inspection No. 1609228, <https://perma.cc/G688-58LP> (last visited Sept. 10, 2026) (GEO's security plan "in no way bars, estops, or otherwise limits Cal/OSHA's right to conduct future inspections and/or issue citation(s) at a later time."); Cal. Dep't of Justice, *Immigration Detention in California* (revised May 2025), <https://www.oag.ca.gov/system/files/media/immigration-detention-2025.pdf>; Disability Rights California, *'They Treat Us Like Dogs in Cages': Inside the Adelanto ICE Processing Center* (July 17, 2025), <https://www.disabilityrightscalifornia.org/drc-advocacy/investigations/inside-the-adelanto-ice-processing-center> (touring medical area at a private detention facility owned and operated by GEO); Decl. of Marsha Chien at Ex. 4, *Wash. Dep't of Health v. The GEO Grp., Inc.*, No. 3:24-cv-05639-BHS (W.D. Wash. Mar. 10, 2026), ECF No. 43-1 (attaching Colorado's Department of Public Health and Environment inspection report of a GEO immigration detention facility).

D. Procedural History

In July 2023, GEO—but not the United States—sued the State of Washington to enjoin enforcement of Wash. Rev. Code ch. 70.395. Pet. App. 5. The district court considered each subsection and concluded that challenges to Wash. Rev. Code § 70.395.060, which imposes certain health and safety requirements on private detention facilities, were not ripe because it did not apply to contracts that were in effect prior to January 1, 2023. *See* Pet. App. 75–77. The district court also concluded that Wash. Rev. Code ch. 70.395 did not regulate the federal government and was not preempted. Pet. App. 101–10. Nevertheless, the district court enjoined Wash. Rev. Code §§ 70.395.040, .050, .070, and .080, concluding that these provisions violated the discrimination prong of intergovernmental immunity by imposing requirements on private detention facilities that differed from those applicable to state prisons and jails. Pet. App. 124–29.

The State appealed. While this appeal was pending, new legislation amended Wash. Rev. Code ch. 70.395. *See* Engrossed Second Substitute H.B. 1232, 69th Leg., Reg. Sess. (Wash. 2025). The Ninth Circuit reviewed the law as amended, vacated the preliminary injunction, and granted in part GEO’s motion to remand. *See* Pet. App. 1–31.

The Ninth Circuit panel affirmed the district court’s order dismissing GEO’s direct regulation and preemption defenses. Pet. App. 17, 29. The court reasoned that Wash. Rev. Code ch. 70.395 neither gave the State power of review over ICE detention facilities nor prevented ICE from detaining

individuals at GEO's Tacoma facility. Pet. App. 17. Regarding preemption, the Ninth Circuit "[saw] no indication that Congress ha[d] demonstrated any intent, let alone a clear and manifest intent," to preempt the law, including its inspection provision. Pet. App. 29.

As for the intergovernmental immunity discrimination doctrine, the Ninth Circuit did not resolve whether Washington's law violated the Supremacy Clause. Instead, the Ninth Circuit determined that the district court used the wrong comparator in evaluating the standards in Washington's law against those applicable to state prisons or jails. Pet. App. 17–27. The court reasoned that because immigration detention is civil, the proper comparator was civil detention facilities, like residential treatment facilities and civil commitment centers, where individuals are held involuntarily but not for punitive purposes. Pet. App. 21 (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and *Mahler v. Eby*, 264 U.S. 32, 39 (1924)). As such, the Ninth Circuit remanded for the district court to determine "in the first instance" whether Washington regulates the conditions in private detention facilities differently from the way it regulates the conditions in other civil detention facilities. Pet. App. 25.

Last, as to Wash. Rev. Code § 70.395.070, the Ninth Circuit held that the district court erred in reaching the merits because the section provides no cause of action against either the Washington Attorney General or Governor and should be dismissed. Pet. App. 30–31 (citing *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021)).

GEO petitioned for rehearing en banc and requested a stay of the mandate. *See* Pet. App. 32; Appellee’s Mot. to Stay Mandate Pending Pet. for Writ of Cert., *The GEO Grp., Inc. v. Ferguson*, No. 24-2815, (9th Cir. Feb. 16, 2026), ECF No. 79.1. The Ninth Circuit denied both. Pet. App. 33; Text Clerk Order, *The GEO Grp., Inc. v. Ferguson*, No. 24-2815 (9th Cir. Feb. 24, 2026). Although the district court had not yet reached the merits on remand, GEO indicated it would petition this Court for a writ of certiorari.

While GEO sought extensions to file its petition, the case proceeded before the district court. Meanwhile, because the preliminary injunction had been vacated, the Department of Health attempted to inspect GEO’s Tacoma facility under Wash. Rev. Code § 70.395.050. By that point, the Department of Health had received over 3,500 complaints about abhorrent conditions at the facility, including complaints about inedible food, unsanitary conditions, a lack of clean laundry, and assaults. *See* Decl. of Wendy Yomiko “Miko” Nanto in Supp. of Defs.’ Mot. for Prelim. Inj. at ¶ 4, *The GEO Grp., Inc. v. Ferguson*, No. 3:23-cv-05626-BHS, ECF No. 65; *see, e.g., id.* ¶ 6 (describing the large volume of complaints concerning food-related illness). Two people have died while detained inside the Tacoma facility. *See* Freddy Monares, *ICE releases identity of latest death at Tacoma detention center*, KNKX Public Radio (Oct. 30, 2024), <https://www.knkx.org/social-justice/2024-10-30/immigration-customs-enforcement-releases-identity-second-death-tacoma-nw-processing-detention-center>. When GEO refused to allow Department inspectors access, the district court granted the State’s motion for preliminary injunction prohibiting GEO from denying

access to health inspectors. *See GEO Grp., Inc. v. Ferguson*, No. 3:23-cv-05626-BHS, 2026 WL 1983207, at *3 (W.D. Wash. Jul. 9, 2026). In so ruling, the district court held that Wash. Rev. Code § 70.395.050 was not preempted, not discriminatory, did not violate *Yearsley*, and did not directly regulate the federal government. *Id.*

GEO filed an appeal with the Ninth Circuit that was consolidated with GEO’s appeal of a parallel preliminary injunction, which involved a different state law authorizing the Department of Health to inspect public health threats in “any . . . place” in Washington. *See Order, Wash. Dep’t of Health v. The GEO Grp., Inc.*, No. 26-4450 (9th Cir. July 21, 2026), ECF No. 13.1. Briefing on the consolidated appeals is ongoing before the Ninth Circuit. *See* 9th Cir. R. 3-3 (setting expedited schedules for preliminary injunction appeals).

REASONS FOR DENYING THE PETITION

The opinion below is consistent with decisions of sister circuits and this Court. GEO asserts three conflicts, but none withstand scrutiny.

First, GEO claims that this Court and other circuits would deem Washington law to impermissibly regulate the federal government directly. Not so. This Court has repeatedly held, most recently in *Hencely*, that “States can regulate or tax federal contractors on the same terms as any private company, even where the party asserts an indirect burden on federal activities.” 146 S. Ct. at 1098. That is exactly the situation here, and lower courts routinely distinguish between state laws that may cause an incidental economic burden on the federal government and laws

that effectively prohibit or control federal operations. Here, Washington's law does not control or interfere with the federal government's ability to detain immigrants pending review of their status. Indeed, ICE's own standards governing private immigration detention facilities *mandate* compliance with state health and safety laws. At most, Washington's law increases costs for GEO, which may indirectly increase costs for the federal government. That is not "direct regulation" under the precedent of this Court or any circuit.

Next, GEO incorrectly asserts that the holding below conflicts with this Court's precedent about how to assess discrimination against federal contractors. Again, not so. The Ninth Circuit's (interlocutory) holding that Washington's standards governing state private civil detention facilities was the proper comparator in assessing whether Washington's standards governing GEO was discriminatory comports with this Court's precedent recognizing immigration proceedings as civil and nonpunitive.

GEO's final argument, made in passing, is that the Washington statute at issue is preempted by federal law. But GEO cites no federal statute or regulation supposedly preempting Washington's law. As this Court has repeatedly held, "[t]here is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it." *Puerto Rico Dep't of Consumer Affs.*, 485 U.S. at 503. GEO's preemption claim is baseless.

Even if any of GEO's claims had merit, this case is an exceptionally poor vehicle for review. The opinion below is a provisional decision that did not

resolve the constitutionality of Wash. Rev. Code ch. 70.395. Instead, the opinion remanded for the district court to consider the question “in the first instance.” Pet. App. 25. The district court has now done so, and GEO’s appeal of that order is currently pending before the Ninth Circuit. This Court will have an opportunity to review the Ninth Circuit’s decision soon enough; the Court should deny review of this half-baked petition now.

A. There Is No Circuit Split

Contrary to Petitioner’s claims, not a single circuit holds that a private contractor “‘steps into the shoes of the federal government for Supremacy Clause purposes’” or is entitled to “the same immunity the federal government would enjoy if it performed the work[.]” Pet. 28 (citation omitted), 22. Rather, all of the circuits as to which Petitioner claims a split—the Second, Third, Fourth, and Ninth—follow this Court’s precedent and apply the same test of intergovernmental immunity, differentiating between state laws that may cause an incidental economic burden on the federal government versus licensing and permitting laws that control or severely undercut federal operations.

The Ninth Circuit has recognized this consensus standard and has applied it to invalidate various state regulations of federal contractors. For example, in *Newsom*, the court invalidated a California law that prohibited private immigration detention facilities as an impermissible attempt to directly regulate the federal government. 50 F.4th at 763. And in *United States v. King County*, it held that a local government order explicitly prohibiting

private companies from providing transportation services to ICE for deportations was an attempt to control federal operations. 122 F.4th 740, 756 (9th Cir. 2024). But at the same time, the Ninth Circuit has correctly emphasized that “[t]he 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.” Pet. App. 13 (quoting *Newsom*, 50 F.4th at 755).

The Third Circuit applied these same intergovernmental immunity principles to enjoin a state law that barred private immigration detention facilities. *CoreCivic*, 145 F.4th at 320–28. In reaching its decision, *CoreCivic* used the same rationale as the Ninth Circuit below to distinguish between laws “that merely impose an incidental economic burden on the federal government and those that subvert federal operations,” concluding “[t]he latter trigger immunity; the former do not.” *Compare CoreCivic*, 145 F.4th at 323, *with* Pet. App. 17. And the Third Circuit repeatedly cited the Ninth Circuit’s decision in *Newsom*, explicitly “align[ing]” its decision “with our sister circuit in adopting this approach.” *Id.* at 327.

GEO nevertheless suggests the decision below conflicts with *CoreCivic* because the Ninth Circuit held that a private contractor’s protection from state law is “substantially narrower” than the federal government’s. *See* Pet. 21–25. But *CoreCivic* recognized this principle, too. The Third Circuit observed that there was a time when this Court “stretched” the intergovernmental immunity doctrine to bar regulation of third parties, but this Court “then corrected course, recognizing that such an ‘expansive’

doctrine was unmoored ‘both from [its] constitutional foundations . . . and from the actual workings of our federalism.’ *CoreCivic*, 145 F.4th at 323 (alterations in original) (citation omitted). Because the “modern doctrine” has been “pared . . . back,” the Third Circuit concluded there is a difference between state laws that “at most . . . increased the costs of federal operations” and “imposed no prohibition” on the federal government, on the one hand, and laws that “functionally bar the federal government from doing something,” on the other. *Id.* at 323–24 (citation modified). In fact, the Third Circuit explicitly distinguished its holding in *CoreCivic* from cases involving: “[r]egulations that merely burden contractors without substantially interfering with the federal government’s operations, or those that impose neutral conditions on contracts rather than bans[.]” *Id.* at 329.

The Second Circuit and Fourth Circuit cases GEO cites similarly do not conflict with the decision below. Unlike the present case, those cases involve licenses or permitting schemes that control the federal government. In *United States v. Town of Windsor*, 765 F.2d 16 (2d Cir. 1985), the court enjoined a local law requiring a private contractor to obtain a building permit before the federal government could expand a federal building on federal land used for classified “research and development of shipboard nuclear reactors[.]” *Id.* at 17. The *Windsor* court concluded that enforcing “the permit requirement against the contractors would have the same effect as direct enforcement against the Government” because it would force the federal government to “turn[] over its classified plans and specifications” to a local building

inspector and open “its classified building site for inspections.” *Id.* at 19. Put another way, the permit requirement operated with the “same effect” against the contractors as it would the federal government. *Id.* This is the exact rule the Ninth Circuit applies—even quoting *Windsor* in articulating its standard. *Newsom*, 50 F.4th at 760 (state law may not “control federal operations” through regulation with “the same effect as direct enforcement against the Government”) (quoting *Windsor*, 765 F.2d at 19)).

Moreover, *Windsor* nowhere suggested that any state regulation of federal contractors would violate intergovernmental immunity. The Second Circuit took pains to distinguish the case from situations where the federal government’s interest was “incidental.” *Windsor*, 765 F.2d at 19. For example, the Second Circuit observed that the federal government’s interest in preventing the application of a local building code to a contractor building public housing for private citizens would be “quite limited.” *Id.* at 20. The court also specifically contrasted its holding with situations where the federal government’s own contract with the private contractor required compliance with local codes—as is the case with GEO’s contract requiring it to comply with state laws. *Id.* (citing *Pub. Hous. Admin. v. Bristol Twp.*, 146 F. Supp. 859, 865 (E.D. Pa. 1957)).

GEO’s citation to *United States v. Virginia*, 139 F.3d 984 (4th Cir. 1998)—another licensing case—also fails to support its claim of a circuit split. To begin with, that case is best read as applying a preemption analysis, not intergovernmental immunity. *Id.* at 989 (striking down Virginia law because it “frustrates the objectives of the federal procurement laws”). To the

extent that the opinion discusses intergovernmental immunity at all (in a footnote), the Fourth Circuit recognized a “stark” contrast between state laws that have an “incidental effect . . . on the federal government’s decisional processes[.]” and “the direct interference” that results when states require a state license to work for the federal government. *Id.* at 989 n.7.

The Ninth Circuit’s decision entirely aligns with its sister circuits, and there is no conflict among the circuits requiring this Court’s intervention. Across the circuits, the same standard applies: States may not directly regulate the federal government by trying to control operations but may regulate federal contractors even if doing so indirectly increases costs on the federal government.

B. The Decision Below Aligns With This Court’s Precedent

1. The Ninth Circuit correctly held that Wash. Rev. Code ch. 70.395 does not regulate the federal government

GEO’s primary argument is that private businesses are entitled to the same immunity from state laws as the federal government when the contractor performs a “distinctly federal function[.]” Pet. 2, 27, 29, 32, 35. But that is not the law. States may not regulate “the performance, by federal officers and agencies, of governmental functions.” *Penn Dairies, Inc. v. Milk Control Comm’n of Pa.*, 318 U.S. 261, 269 (1943). But federal contractors do not receive the same immunity, even when performing such “distinctly federal functions,” such as operating

part of an overseas military base. *See, e.g., Hencely*, 146 S. Ct. at 1098–99 (holding that, “absent a statute to the contrary, States can regulate or tax federal contractors on the same terms as any private company, even where the party asserts an indirect burden on federal activities” and even in “the military context”). Without a federal statute providing federal immigration detention contractors immunity, states may regulate GEO as a contractor providing detention services to the federal government. *See id.*; *see also Menocal*, 607 U.S. at 449.

This Court “decisively rejected” GEO’s absolutist view of intergovernmental immunity nearly a century ago. *See North Dakota v. United States*, 495 U.S. 423, 434–35 (1990) (reviewing the history of the doctrine); *South Carolina v. Baker*, 485 U.S. 505, 520 (1988) (explaining that the theory of “general immunity” for federal contractors “has been thoroughly repudiated by modern intergovernmental immunity caselaw”).

Today, direct regulation intergovernmental immunity extends to federal contractors only if the state law directly controls the federal government or effectively allows the State to prohibit a federal activity. *See Menocal*, 607 U.S. at 449 (“[T]he government does not become the conduit of its immunity in suits against its agents” just because “they do [the government’s] work.” (alterations in original) (citation omitted)); *e.g., CoreCivic*, 145 F.4th at 325; *King County*, 122 F.4th at 757.

This Court recently re-affirmed in *Hencely* that a federal contractor’s protection from state law is “substantially narrower” than the federal

government's protection. *Contra* Pet. 2. *Hencely* involved a military contractor supporting combatant activities who argued that the Federal Tort Claims Act preempted state tort law. 146 S. Ct. at 1091. This Court disagreed with the proposition that a federal contractor is "protected from the consequences of its conduct simply because it was working for the Federal Government and state law is at issue." *Id.* at 1098. Instead, this Court made clear that "[t]here is an implied constitutional immunity of the national government from state taxation and from state regulation . . . of governmental functions[,] . . . [b]ut those who contract to furnish supplies or render services to the government are not such agencies and do not perform governmental functions." *Id.* (quoting *Penn Diaries, Inc.*, 318 U.S. at 269). Thus, "States can regulate or tax federal contractors on the same terms as any private company, even where the party asserts an indirect burden on federal activities," absent a federal statute that would displace it. *Id.* Put another way, the immunity afforded federal contractors is, as the Ninth Circuit correctly held, "substantially narrower" than that afforded the federal government.

When this Court has evaluated state laws that operate against private contractors, the Court has repeatedly upheld laws that merely incidentally increase the federal government's costs. *See, e.g., James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 104–05 (1940) (concluding that a state workplace safety law did not interfere with the national purpose and therefore applied during the construction of a federal post office); *Ry. Mail Ass'n v. Corsi*, 326 U.S. 88, 95–96 (1945) (concluding that a private labor organization comprised of federal postal clerks was

not immune from state civil rights laws because the laws did “not impinge on the federal mail service or the power of the government to conduct it”); *Penn Dairies, Inc.*, 318 U.S. at 270 (upholding a state’s milk price controls as applied to a federal contractor because even though the regulation “increase[d] the price which the government must pay for milk,” it “impose[d] no prohibition on the national government”). Even assuming neutral health and safety standards increased the private contractor’s costs and that those costs were ultimately passed on to the federal government, such burdens would be “but normal incidents of the organization within the same territory of two governments.” *North Dakota*, 495 U.S. at 432 (citation omitted).

None of the cases on which GEO relies say otherwise. Some of GEO’s cases are better understood as preemption cases, not intergovernmental immunity cases. *See, e.g., Pub. Utils. Comm’n of Cal. v. United States*, 355 U.S. 534 (1958); *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956). In any event, the problem in those cases, as this Court has explained, wasn’t that a state law regulated a federal contractor; it was that there was a “clear conflict” between state and federal law. *North Dakota*, 495 U.S. at 435 n.7. These cases also make clear that state law that merely “increase[s] the costs of [an] operation” is not a direct regulation of the federal government. *Pub. Utils. Comm’n of Cal.*, 355 U.S. at 543.

The intergovernmental immunity cases GEO cites merely apply the well-established rule that laws regulating federal agencies, property, or employees directly regulate the federal government. *See*

Goodyear Atomic Corp. v. Miller, 486 U.S. 174, 181 n.2 (1988) (state law regulating nuclear production facility directly regulated the federal government, which federal law required be the “exclusive owner” of the facility at issue (quoting 42 U.S.C. §2061(a)–(b))); *Johnson v. Maryland*, 254 U.S. 51, 57 (1920) (federal postal driver); *Hancock v. Train*, 426 U.S. 167, 172–73 (1976) (federal military base).

GEO nevertheless insists immunity attaches because its private facility is contracted to provide federal immigration detention. Yet a federal contractor “doing government’s work” is not the test. *Menocal*, 607 U.S. at 449 (citation modified). Washington’s public health law does not directly regulate the federal government; rather, it permissibly regulates private detention operators providing detention services for the federal government.

At bottom, Washington’s law does not directly regulate the federal government and it does not control or interfere with the federal government’s prerogative to arrest and detain immigrants. Instead, the duties the law places on operators of private detention facilities, at most, indirectly increase federal costs. *Hencely*, 146 S. Ct. at 1098.

2. The Ninth Circuit faithfully applied this Court’s precedent in remanding GEO’s discrimination claim to the district court

GEO’s discrimination argument also provides no basis for this Court’s review. The Ninth Circuit merely directed the district court how to apply a settled standard in the unique context of private,

non-punitive detention, and remanded for the district court to apply the standard. The district court has yet to do so in any final order, and there is no basis for interlocutory review of the Ninth Circuit’s remand order, particularly because GEO cannot show any error.

Intergovernmental immunity bars states from treating federal contractors worse than “similarly situated” state contractors. *Dawson v. Steager*, 586 U.S. 171, 177 (2019). In this analysis, “what matters” is “the letter of the law” and “how the State has defined the favored class[.]” not speculation about “the intent lurking behind the law[.]” *Id.* A state law violates intergovernmental immunity if it “‘single[s] out’ for less favorable ‘treatment’” the federal government or federal contractors or “if it regulates them unfavorably on some basis related to their governmental ‘status.’” *United States v. Washington*, 596 U.S. 832, 839 (2022) (citations omitted).

Here, the Ninth Circuit faithfully applied this settled law and sent this case back to the district court to determine whether Washington’s statute treats federal contractors worse than similar facilities in Washington. GEO cannot identify any error in this ruling, let alone one warranting this Court’s intervention.

To start, GEO’s cry of error founders on the narrowness of the Ninth Circuit’s ruling. The court below did not rule on the merits of GEO’s challenge to Washington’s law. Instead, as the Ninth Circuit put it, “[t]he parties agree that Washington may regulate comparable detainment facilities in the same manner,” and the sole “disputed question is the

appropriate comparator.” Pet. App. 35; *see also* Pet. App. 19. GEO thought the appropriate comparator for its civil detention facility was state prisons, while the State argued—and the Ninth Circuit agreed—that the proper comparator was other civil detention facilities. Pet. App. 20–22; *see also* Pet. App. 35. The Ninth Circuit then remanded to the district court to conduct the discrimination analysis using the civil comparator in the first instance. Pet. App. 25.

Petitioners say little about why this was supposedly error. They cite not a single case from this Court or any other circuit suggesting that the proper comparator for civil detention facilities must be state prisons. Moreover, they ignore the primary distinction undergirding the Ninth Circuit’s reasoning: that immigration detention is civil, while prison is punitive. As the court below noted, “*none* of the detainees held . . . has been convicted of—or even charged with—a crime.” Pet. App. 21 (emphasis added). Instead, “[a]ll of the[m] . . . are civil detainees, awaiting determination of their immigration status.” *Id.*; *see also* *Zadvydas*, 533 U.S. at 690 (explaining that immigration detention is “civil, not criminal” and “nonpunitive in purpose and effect.”); *Mahler*, 264 U.S. at 39 (“It is well settled that deportation, while it may be burdensome and severe for the alien, is not a punishment.”). Thus, the Ninth Circuit rightly concluded the proper comparators were other facilities in which individuals were involuntarily committed for civil purposes—including civil commitment and residential treatment facilities. Pet. App. 21–22; *see also* *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 816 (1989) (noting that there

is no impermissible discrimination when “significant differences” justify a difference in treatment). On this critical point, GEO offers no response.

GEO’s limited arguments cannot fill the gap. Their primary argument is to criticize the Ninth Circuit for emphasizing that private detention facilities are private while Washington’s prisons are state-owned. Pet. 33. But this is hardly improper—the Supremacy Clause does not require states to treat private contractors the same way they treat government agencies, whether they be state, federal, or local. *See United States v. Lewis County*, 175 F.3d 671, 676 (9th Cir. 1999) (rejecting intergovernmental immunity argument where county tax exempted state-owned land but applied to privately owned land), *cert. denied*, 528 U.S. 1018 (1999). And, contrary to GEO’s claim, this distinction does not turn on any “relationship with the federal government” at all. Pet. 33.

Under Washington’s law, private detention facilities are regulated the same way regardless of who they contract with. In fact, at least one state contractor is subject to the law as amended. *See* Multiple Agency Fiscal Note Summary, Engrossed Second Substitute H.B. 1232, Local Government Fiscal Note at 2–3, <https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=74955> (last visited Sept. 10, 2026). Moreover, the regulation governing civil commitment and residential treatment facilities—the regulations to which Washington’s law must be compared—apply to a whole bevy of private facilities, regardless of whether they contract with

the federal government. *See* Wash. Admin. Code § 246-337-001 (“set[ting] the minimum health and safety standards for . . . private, county or municipal residential treatment facilities (RTF) providing health care services to persons with mental disorders or substance use disorders”); *id.* § 246-322 (same for “private psychiatric and alcoholism hospitals”). In short, GEO cannot point to a single comparable facility that is treated more favorably than its Tacoma facility.

Nor, finally, is GEO correct that Washington’s law facially discriminates by “expressly exempt[ing] . . . residential treatment facilities from complying with [the law’s] requirements.” Pet. 33 (emphasis omitted). The only reason residential treatment facilities are excluded from Wash. Rev. Code ch. 70.395 is that they are already subject to the same sorts of regulations via other provisions of Washington’s code. *See, e.g.,* Wash. Rev. Code § 70.395.100(1), (2), (6); Wash. Admin. Code §§ 246-337, -322; *id.* § 110-445. Prior to the passage of HB 1470, all civil detention facilities in Washington were subject to State regulation and oversight except private detention facilities. HB 1470 merely closed this loophole. It applied the same health and safety regulations to private detention facilities that have long applied to residential treatment facilities, mental health hospitals, and other congregate facilities in Washington. In fact, those other facilities are *also* subject to state licensing requirements, so arguably the law treats GEO more favorably than others.

Bringing GEO’s Tacoma facility in line with how the State regulates other secure civil facilities was an act of parity, not discrimination. Because

GEO cannot show that the law “‘single[s them] out’ for less favorable ‘treatment’” or “regulates them unfavorably on some basis related to their governmental ‘status,’” they cannot show the Ninth Circuit erred. *Washington*, 596 U.S. at 839 (alteration in original) (first quoting *Washington v. United States*, 460 U.S. 536, 546 (1983); then quoting *North Dakota*, 495 U.S. at 438).

3. The Ninth Circuit correctly held that Wash. Rev. Code ch. 70.395 is not preempted

GEO is on even shakier ground when it pivots—ever so briefly—to preemption. Pet. 31–32. As this Court has held, “[t]here is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it.” *Puerto Rico Dep’t of Consumer Affs.*, 485 U.S. at 503. ICE standards and contracts cannot preempt state law, so GEO resorts to scattershot federal laws that authorize the Department of Homeland Security’s predecessor to enter into contracts. *See* Pet. 31. But Washington’s law does not interfere with the federal government’s ability to use private contractors any more than any regulation of a private business. Certainly, 8 U.S.C. § 1231(g)(2) requires DHS to purchase or lease existing prisons, jails, or other comparable facilities, before building a new one. But nothing there indicates “a preference” for private contractors, as GEO argues. Pet. 31. Even if it did, Washington’s law would not override such a “preference.” GEO’s reliance on 6 U.S.C. § 205 is similarly misplaced. The ombudsman it created has already been shuttered and Section 205 evinces no intent whatsoever to displace states’ historic police power to ensure the health and safety

of people who reside within their borders. *See* Rebecca Beitsch, *DHS closes office of immigration detention watchdog*, The Hill (May 5, 2026), <https://thehill.com/homenews/5864182-oido-dhs-watchdog-closure/>.

Unable to identify a direct, irreconcilable conflict with a federal statute, GEO suggests that immigration detention is one of the rare areas of “unique [federal] interest” in which preemption applies absent a direct conflict with a federal statute. Pet. 32. Yet absent congressional action, even in rare areas of “uniquely federal interest,” this Court’s precedents require “a significant conflict . . . between an identifiable federal policy or interest and the operation of state law.” *Hencely*, 146 S. Ct. at 1094–95 (alterations in original) (quoting *Boyle v. United Technologies Corp.*, 487 U.S. 500, 507 (1988)). Public health is a uniquely state interest—not a federal one. *See supra* pp. 4–5.

GEO points to the 500-odd pages of federal standards contained in the ICE Policy Manual, misleadingly referring to the standards as “500 pages of *regulations*.” Pet. 30 (emphasis added). But the ICE standards never underwent rulemaking and do not have “the force of law” necessary to preempt state law. *See Wyeth v. Levine*, 555 U.S. 555, 576 (2009).

In any event, GEO only identifies two purported incongruities between state law and the standards—one, regarding the personal belongings immigrants may keep in detention, and two, regarding whether ICE pre-approvals are necessary for state inspections. The former is a speculative conflict, at best, because Washington’s Department of Health is undergoing rulemaking and may

easily determine that access to “personal belongings to the extent possible,” *see* Wash. Rev. Code § 70.395.040(1)(a), does not include items that ICE specifically prohibits. The latter is not a conflict at all, but a misrepresentation. GEO’s contract delineates between ICE administrative offices, where ICE retains control, and the rest of GEO’s Tacoma facility, where GEO “shall operate and control all designated points of access and egress,” *see* CA9.ER.704. A quick glance at the contract makes clear that ICE pre-approval is required only for ICE’s administrative offices, *see* CA9.ER.712 (“Contractor access to Government required space must be pre-approved by the [Contracting Officer Representative].”), not for the areas where immigrants are detained. Nothing in the contract precludes state inspectors from being able to conduct “routine, unannounced inspections[.]” *see* Wash. Rev. Code § 70.395.050.³ In other words, there is no conflict, let alone a “significant” one.

C. This Case Is a Poor Vehicle for This Court to Consider the Issue Presented

Even if the question presented merited this Court’s review, this case would be a poor vehicle for review for several reasons.

³ GEO suggests HB 1470 requires “free and unimpeded access” to its Tacoma facility. Pet. 31 (citing Wash. Rev. Code § 43.70.170). But GEO confuses HB 1470, codified at Wash. Rev. Code ch. 70.395, with Wash. Rev. Code § 43.70.170, a long-standing state law that authorizes state health inspectors to investigate “any . . . place” in Washington for public health threats, which was not at issue in the opinion below.

The order below merely held that in determining whether Washington’s law regarding private detention facilities impermissibly discriminated against federal contractors, the proper comparator was other civil detention facilities—not prisons. *See* Pet. App. 19–22. The Ninth Circuit thus vacated the district court’s preliminary injunction and remanded the case back to the district court to apply the right comparator “in the first instance.” Pet. App. 25. GEO seeks review of a modest, interlocutory ruling and fails to show it is a “compelling” case that warrants certiorari. *See* Rule 10.

But there is more. Proceedings have resumed below, with factual and procedural developments that GEO’s petition ignores.

Following the Ninth Circuit’s remand to the district court, the Governor and Attorney General moved for a preliminary injunction to allow state health inspectors access to GEO’s facility. Applying the Ninth Circuit’s opinion, the district court rejected GEO’s preemption and intergovernmental immunity defenses, holding that Congress has not demonstrated any intent to preempt state law. *Ferguson*, 2026 WL 1983207, at *11–12. The district court also carefully compared Wash. Rev. Code §§ 70.395.040–.050 against regulations applicable to residential treatment centers and private commitment centers. Observing that residential treatment centers and private commitment centers must also maintain an infection control program, serve nutritious meals, and ensure clean laundry services, the district court concluded that “[t]he requirements imposed on GEO are substantially similar to those imposed on other

civil detention facilities in Washington.” *Id.* at *11. GEO has sought a stay of that injunction pending appeal, and the parties are currently briefing GEO’s appeal of the preliminary injunction to the Ninth Circuit. This means that GEO may soon come before this Court again to seek review on the proceedings that are ongoing in the courts below.

Also following remand, GEO entered into a new contract with ICE, which incorporates a different set of detention standards, and under the new contract, argues that it cannot comply with the state’s law. *See id.* at *4, *8. While the Governor and Attorney General have argued that a contract cannot excuse GEO from following non-preempted state law, *see id.* at *4, and that existing state law should be read into contracts, the import of this new contract is at issue in the current proceedings below. *See Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 435 (1934) (“Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.”).

The new appeal, set on an expedited preliminary injunction schedule, is before the Ninth Circuit. Those proceedings account for the new procedural and factual developments, including the new contract and different detention standards, making the case GEO petitions a particularly poor vehicle for review.

D. This Court Should Not Consolidate This Petition with *Nwauzor*

Finally, this Court should reject GEO's alternative suggestion to consolidate this petition with *The GEO Group, Inc. v. Nwauzor*, No. 25-828. While this case involves the same facility owned and operated by GEO, the similarities with *Nwauzor* end there. *Contra* Pet. 35–36. This case, on health and safety standards for private detention facilities—compared against civil detention facilities—is back at the Ninth Circuit on an interlocutory appeal following the district court's recent order on remand. GEO's petition in *Nwauzor* is about GEO violating Washington's longstanding, generally applicable minimum wage law by paying civil detainees \$1 per day to work at GEO's facility and followed a full jury trial. *Nwauzor* does not involve the Department of Health's rulemaking authority nor state agencies' abilities to inspect private detention facilities at all. Given the substantive differences between the state laws and the cases' procedural postures, the Court should not consolidate this petition with *Nwauzor*. Nor is there a need to hold this petition pending its disposition of *Nwauzor* because a more complete order from the Ninth Circuit is forthcoming.

CONCLUSION

This Court should deny the petition.

RESPECTFULLY SUBMITTED.

NICHOLAS W. BROWN

Attorney General

NOAH G. PURCELL

Solicitor General

Counsel of Record

ELLEN RANGE

ANDREW HUGHES

MINA SHAHIN

Assistant Attorneys General

MARSHA CHIEN

Worker Rights Unit Chief

CRISTINA SEPE

Deputy Solicitor General

1125 Washington Street SE

Olympia, WA 98504-0100

360-753-6200

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