The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NO. 3:24-cv-05095-BHS

STATE OF WASHINGTON, DEPARTMENT OF LABOR AND INDUSTRIES,

Plaintiff,

v.

GEO SECURE SERVICES, LLC, THE GEO GROUP, INC.,

Defendants.

NO. 3:24-cv-05029-BHS

STATE OF WASHINGTON, DEPARTMENT OF HEALTH,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

NO. 3:24-cv-05095-BHS
NO. 3:24-cv-05029-BHS

MOTION FOR PRELIMINARY INJUNCTION[1]

NOTE ON MOTION CALENDAR: MARCH 15, 2024

Oral Argument Requested

[1] The Department of Labor and Industries and the Department of Health have filed joint motions to consolidate Case No. 3:24-cv-05095 and Case No. 3:24-cv-05029. This motion for preliminary injunction, and supporting documents, will be filed in both case numbers until the Court decides the motion to consolidate or otherwise instructs the agencies to file under one case number.

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

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ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

I. INTRODUCTION

As a private, for-profit employer doing business in the State of Washington, GEO must comply with state law. Both the Washington Department of Labor & Industries (L&I) and the Washington Department of Health (DOH) have long-held statutory authority to investigate workplaces to ensure worker safety and address public health threats. GEO openly flouts these state laws by refusing both agencies' entry to its private detention facility. To protect Washington workers, residents, and the State's sovereign right to enforce its laws, Plaintiffs now seek a preliminary injunction.

Plaintiffs are likely to succeed on the merits. GEO cannot disregard state law simply because it is a federal contractor. Regardless of whether "an ICE representative" told GEO to prohibit state inspectors from entering the private detention facility, federal contractors do not stand in the same footing as the federal government, and the Supremacy Clause leaves considerable room for states to enforce their generally applicable laws against them. Indeed, GEO has repeatedly acknowledged that state health and safety laws apply to the NWIPC, has historically cooperated with L&I investigations and made corrections to comply with L&I workplace safety regulations, and continues to invite other local health agencies to inspect its facility unannounced on a routine basis.

GEO does not get to pick and choose which state agencies may oversee it or which state laws it follows or when. There is clear, longstanding authority giving both agencies the right to inspect GEO's privately owned facility. *See* RCW 49.17.070; RCW 43.70.170. Plaintiffs request the Court reject GEO's efforts to hold itself above the law and order GEO to comply with both state law and its federal contract and to allow L&I and DOH to conduct general health and safety inspections of its facilities.

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

II. STATEMENT OF FACTS

A. GEO Is a Washington Employer

The GEO Group, Inc. owns and operates the Northwest ICE Processing Center (NWIPC), a private detention facility in Tacoma. *Nwauzor v. The Geo Grp., Inc.*, 540 P.3d 93, 97 (Wash. 2023). GEO's subsidiary, GEO Secure Services, LLC, also employs workers at NWIPC. Range Decl., Ex. 14 ¶ 4. Both employers, referred to as GEO, report hours to L&I for industrial insurance premiums. *Id.*

Since 2004, GEO has contracted with ICE to provide "civil immigration detention management services" at the NWIPC. *Nwauzor*, 540 P.3d at 97. These services include the building, management and administration of the facility, and security services. *Id.* Today, GEO employs almost 300 employees at the NWIPC and the facility can house up to 1,575 detainees. *Id.* at 96; Range Decl., Ex. 14 at 2. In the recent past, GEO employed hundreds of detainee workers every day to ensure a clean and vermin-free facility and to prepare and distribute thousands of meals each day. *See State of Washington v. The Geo Grp., Inc.*, No. 3:17-cv-5806, Dkt. #665 at 11 (W.D. Wash. Dec. 8, 2021). These detainees were employees under Washington's Minimum Wage Act. *Nwauzor*, 540 P.3d at 101.

B. The ICE-GEO Contract and ICE Standards Require GEO to Comply with State Laws

Under its 2015 contract with ICE, GEO is required to "perform in accordance with" specific "statutory, regulatory, policy, and operational" constraints, including the ICE/DHS Performance Based National Detention Standards (PBNDS) and "applicable federal, state facility codes, rules, regulations and policies," as well as "applicable state and local labor laws and codes." Range Decl., Ex. 9 at 43-44.[2]

Specifically, as to workplace safety laws, the contract provides that GEO "shall comply with the requirements of the Occupational Safety and Health Act of 1970 and all codes and

[2] All record pincites are to the exhibit's page numbers.

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LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

regulations associated with 29 CFR 1910 and 1926." *Id.* at 86. The GEO contract further provides "[a] safety program shall be maintained in compliance with all applicable Federal, state and local laws, statutes, regulations and codes." *Id.*

As to public health and safety laws, the contract is equally clear:

> The facility . . . shall be . . . operated[] and maintained in accordance with all applicable federal, state, and local laws, regulations, codes, guidelines, and policies. In the event of a conflict between federal, state, or local codes, regulations or requirements, the most stringent shall apply. In the event there is more than one reference to a safety, health, or environmental requirement in an applicable law, standard, code, regulation or Government policy, the most stringent requirement shall apply.

Id. at 85. In 2017, GEO specifically affirmed its legal obligation to comply with "local, state, or federal law relating to public health or safety" in a certificate of compliance submitted to the City of Tacoma. Range Decl., Ex. 12.

Although GEO may argue the PBNDS standards prevail where there is a conflict, the PBNDS's requirements mirror the contract. They require compliance with "all applicable federal, state, and local safety and sanitation laws," Range Decl., Ex. 10 at 23, and specifically anticipate the presence of state inspectors, *see id.* at 25, 26, 37. For example, the PBNDS require the facility comply with "state and local environmental regulations and requirements" governing garbage, "state regulations" related to the handling of hazardous and infectious waste, and require "a state laboratory" "test samples of drinking and wastewater to ensure compliance with applicable standards." *Id.*

Not only do GEO's contract and the PBNDS require GEO to comply with generally applicable state laws that protect Washington workers and residents, GEO has expressly recognized these legal obligations in the past and complied. *See, e.g.*, Kortokrax Decl., Ex. 1 at 3 ¶ 4. Additionally, the Tacoma-Pierce County Health Department (TPCHD) routinely inspects GEO's workplace without impediment. Range Decl., Ex. 7 ¶¶ 4-6. TPCHD has shared authority to investigate and enforce public health laws. *Id.* ¶ 2; *see also* RCW 43.70.130. TPCHD confirms it "conducts food safety inspections at the [NWIPC] in Tacoma and has done so since 2004."

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LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

Range Decl., Ex. 7 ¶ 4. Further, when TPCHD conducts a food safety inspection at the NWIPC, they do not call ahead or make appointments, as TPCHD requires unannounced inspections. *Id.* ¶ 5. To date, GEO has never required TPCHD staff undergo a background check before entering the building. *Id.* ¶ 6.

C. L&I Has Authority to Ensure Safe Workplaces Under RCW 49.17.070, Including GEO

Washington's workplace safety program saves lives and reduces injuries. Blackwood 3d Decl. ¶ 8 (safety "inspection activities make a significant contribution to to reducing workers' compensation claims rates and costs"). Although the federal Occupational Safety and Health Act generally sets occupational standards for the country, 29 U.S.C. § 651, the OSH Act delegates its authority to Washington to enforce workplace safety laws because Washington maintains a "State Plan" that meets or exceeds federal standards. 29 U.S.C. § 667(b), (c); Laws of 1973, ch. 80, § 1. Since 1975, L&I has assumed the federal Occupational Safety and Health Administration (OSHA)'s responsibility for enforcing occupational safety and health standards in Washington State. Blackwood 3d Decl., Ex. 1. And OSHA recently confirmed that L&I's coverage includes enforcement with respect to the employees of federal contractors. *Id.*

As part of the State Plan, the Washington Industrial Safety and Health Act (WISHA) authorizes unannounced inspections of workplaces. RCW 49.17.070. In addition to being required by the OSH Act, *see* 29 U.S.C. § 667(c)(3); 29 C.F.R. § 1956.10(f), unannounced inspections prevent and stop injuries from happening. Blackwood 3d Decl. ¶¶ 11-12. L&I conducts around 5,000 unannounced workplace inspections every year. *Id.* ¶ 13. Unannounced visits show the real working conditions at a workplace. *Id.* ¶ 11. If an employer receives advanced notice about an inspection, they may hide non-compliance with workplace safety regulations and then return to dangerous practices after the inspectors leave. *Id*.

To that end, in 2009 and 2010, L&I conducted unannounced inspections of NWIPC, and it found violations in 2009. Korzenko 3d Decl. ¶ 3, Exs. 2-3. In 2013, GEO entered a nationwide

settlement with the federal Occupational Safety and Health Administration (OSHA) after GEO failed to hire adequate staffing and provide staff with personal protective equipment at one of its facilities. Range Decl., Ex. 13 at 1. As part of its settlement, GEO recognized state workplace safety laws applied to certain GEO facilities, including the NWIPC. Range Decl., Ex. 1 at 10. GEO committed to abate hazards in State Plan jurisdictions like Washington. *Id.* at 3.

Since then, L&I has routinely inspected GEO's workplace at the NWIPC. *See* Korzenko 3d Decl. ¶ 3. Following the inspection in 2010, additional unannounced inspections were performed in 2014, 2020 (twice), 2021, and 2022. *Id.* Although the scope of each inspection differed, L&I was able to enter the secure facility at least once to conduct its unannounced inspection without having to meet any pre-clearance requirement by GEO or ICE. Range Decl., Ex. 3 ¶¶ 4, 8; Korzenko 3d Decl., Ex. 5 at 2-3.

As a result of these inspections, L&I found various serious safety violations concerning GEO's confined space, respirator program, lack of an emergency eyewash, lack of razor disposal program, failure to require masking at the height of COVID, tuberculosis exposure, and lack of an exposure plan. Korzenko 3d Decl. ¶ 4. GEO workers were exposed to unsafe conditions and at least one worker was actually injured when exposed to a used razor. *Id.* ¶ 5. These unsafe practices, without the State's regulatory oversight and collection, could have resulted in the spread of infectious disease to GEO's employees and detainees, with potentially broader and devastating public health and safety ramifications. *Id.*

L&I's inspections have led to citations, settlements, and assessment of fines totaling $88,450. *Id.* ¶ 6. In one 2015 settlement, GEO specifically agreed it was not rendered "immune from future compliance efforts generated by complaints, accident investigations, follow-up inspection protocol, and/or by Division of Occupational Safety and Health's inspection targeting system." Kortokrax Decl., Ex. 1 at 3 ¶ 4.

As part of its routine practice and under its longstanding authority, L&I decided to conduct an unannounced programmed inspection at GEO in December 2023. Range Decl., Ex.

5 at 2 ¶ 3. L&I conducts such inspections when, as here, an employer has a hazardous workplace, i.e., one with a history of serious violations. *Id.*; WAC 296-900-12005(1); Korzenko 3d Decl. ¶ 11.

On December 27, 2023, two L&I inspectors sought entry to GEO's workplace. Range Decl., Ex. 5 at 3. GEO denied the inspectors entry. *Id.* While GEO has sued the State to enjoin enforcement of RCW 70.395.050, which specifically authorizes L&I inspections of private detention facilities, this Court has yet to grant GEO any injunctive relief. Even more, L&I's request for inspection also stemmed from RCW 49.17.170 for which no lawsuit seeking relief is pending. And GEO admits L&I has inspected its workplace before. *See* 3:24-cv-05095-BHS, Dkt. #1-2 at 53.

After GEO refused to allow L&I to inspect its workplace, L&I obtained a warrant for entry from the Pierce County Superior Court on December 29, 2023. Range Decl., Ex. 6. The warrant relied on the authority of RCW 49.17, WAC 296, and RCW 70.395. Range Decl., Ex. 6 at 2. Although GEO has sued to enjoin RCW 70.395, it remains good law. Despite the court-issued warrant, GEO again denied L&I entry to inspect GEO's workplace. Range Decl., Ex. 2 ¶ 5. After L&I moved for contempt, GEO removed this matter to federal court. Range Decl. ¶ 2.[3]

D. DOH Has Authority to Investigate Public Health Threats Under RCW 43.70.170

Since its creation, DOH has held general authority to inspect "any [] place" in Washington. RCW 43.70.170. When the Legislature created DOH in 1989, it authorized DOH to "investigate, examine, sample or inspect" any condition "constituting a threat to the public health" and specified DOH "shall *at all times* have free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities *or any other place*. *Id.* (emphasis added).

Last year, given increasing recognition of the detrimental impacts that private detention facilities inflict on those confined, RCW 70.395.010, the Legislature additionally gave DOH

[3] L&I's motion for remand is pending before this Court. *See* 3:24-cv-05095-BHS, Dkt. #10.

specific authority under RCW 70.395.050 to inspect private detention facilities. Although GEO has sought to enjoin RCW 70.395.050, again, no injunction has issued. Regardless of whether an injunction issues or if the State's motion to dismiss is granted, DOH relies on separate authority to investigate public health threats under RCW 43.70.170.

Between April and December 2023, DOH received 277 complaints from detainees at NWIPC, detailing unsafe and unsanitary conditions. Range Decl., Ex. 11 ¶ 6. Some of the complaints indicate the food GEO provides contains burned plastic, metal string, rope, and splinters. *Id.* ¶ 8. Other complaints allege detainee clothing and blankets are rarely changed or laundered, and when laundered, are returned dirtier than before. *Id.* ¶ 9. Accordingly, on November 14, 2023, DOH sought to enter the NWIPC to investigate. *Id.* ¶ 13. However, after initially believing the DOH staff to be from the TPCHD and processing them for entry, GEO's facility manager refused to allow the DOH investigators to enter, citing "active litigation." *Id.* ¶ 14. This happened again on November 27, 2023, and then again on January 16, 2024. *Id.* ¶¶ 16, 22. While GEO eventually claimed a criminal background check was necessary for entry, other agencies, such as the TPCHD, have conducted inspections without background checks. *See id.* ¶ 22; Ex. 7 ¶¶ 4-6. Further, GEO has yet to provide any information to DOH as to how to submit the necessary information for a background check, despite DOH's repeated requests. *Id.*, Ex. 11 ¶ 22.

DOH sued GEO in Thurston County Superior Court, seking injunctive relief to exercise its authority under RCW 43.70.170 and RCW 70.395.050 and inspect the NWIPC. GEO removed the matter to federal court.[4] DOH and L&I have also jointly moved to consolidate their respective cases.

III. ARGUMENT

Following hundreds of complaints about the conditions at the NWIPC and the health of the detainees held there, DOH has attempted to inspect the facility. And L&I acted on its

[4] DOH's motion for remand is pending before this Court. *See* 3:24-cv-05029-BHS, Dkt. #10.

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

authority to protect workers by conducting an unannounced inspection of a hazardous workplace. Despite GEO's contract and the PBNDS requiring it to comply with all applicable state laws—and GEO's repeated explicit and implicit acknowledgment that it must comply with those laws—GEO now refuses the agencies' entry in violation of clear and long-standing state authority to conduct workplace inspections and investigate public health threats. Because GEO's conduct causes irreparable harm by thwarting the state's sovereign right to enforce its laws and protect the health and safety of GEO employees and detainees, L&I and DOH request a preliminary injunction ordering GEO to comply with state law and ensure L&I and DOH obtain entry. It cannot be the rule that a federal contractor can evade compliance with state law when its federal contract requires compliance with state law.

Employees of federal contractors in Washington are entitled to the same protections against dangerous workplace conditions that every other Washington employee enjoys. Likewise, every Washington resident deserves safe and healthy living conditions, including those detained in NWIPC. GEO's willful refusal to allow state inspection endangers the health and safety of employees and detainees, and its purported defenses must be rejected.

Although GEO claims it acts under ICE's authority, the Supremacy Clause does not condone GEO's flagrant disregard of state law. Neither intergovernmental immunity nor preemption permit GEO to block state agencies from conducting routine health and safety inspections of its private facility. In fact, the contract and PBNDS explictly *require* GEO to follow state law and specifically contemplate the presence of state inspectors. GEO cannot hide behind ICE, claiming helplessness, when it is GEO's burden to comply with state law. GEO's workers and Washington residents should not bear the burden of GEO's malfeasance. GEO has managed to comply with Washington law and also with other types of health and safety inspections previously—it must continue to do so now.

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

A. Legal Standard

A plaintiff seeking a preliminary injunction must establish (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm without preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The balance of the equities and public interest factors merge when the government is a party. *Roman v. Wolf*, 977 F.3d 935, 940-41 (9th Cir. 2020).

B. Both Agencies Are Likely to Succeed on the Merits

Because the DOH's and L&I's authority is clear and GEO's claimed defenses lack merit, DOH and L&I will likely succeed.

1. Both agencies have statutory rights to enter GEO's workplace without advance notice

Washington workers have a fundamental right to a safe workplace, enshrined in the Washington Constitution and mandated by WISHA. Wash. Const. art. II, § 35; RCW 49.17.010; *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 475 P.3d 164, 171 (Wash. 2020). In enacting WISHA, the Legislature intended to assure "safe and healthful working conditions for every man and woman working in the state of Washington[.]" RCW 49.17.010. "As a remedial statute, WISHA will be liberally construed to carry out this purpose." *Adkins v. Aluminum Co. of Am.*, 750 P.2d 1257, 1268 (1988).

Under both the federal OSH Act and WISHA, an employer owes to its employees a duty to provide a safe place to work. 29 U.S.C. § 654(1); RCW 49.17.060(1). WISHA requires an employer to "furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees." RCW 49.17.060(1). This duty to provide a safe workplace is non-delegable and cannot be contracted around. *See Ward v. Ceco Corp.*, 699 P.2d 814, 820 (Wash. Ct. Appeal 1985). To satisfy federal requirements, L&I must have a right of entry to workplaces. *See* 29 U.S.C. § 667(c)(3); 29 C.F.R.

§ 1956.10(f). And as discussed above, L&I has clear authority to inspect workplaces unannounced, including both general authority and authority specific to private detention facilities. *Supra* § II.C (citing RCW 70.395.050 and RCW 49.17.170). Even for employers on federal property, Washington has the right to inspect the workplace of federal contractors. *See In re Gen'l Sec. Servs. Corp*. No. 96 W376, 1998 WL 960837 (Wash. Bd. of Indus. Ins. Appeals 1998), *attached to* Range Decl., Ex. 8 at 12-16. The Legislature has made clear that advance notice of L&I inspections is not required. RCW 49.17.070, .190. In fact, prior announcement of an inspection without permission is illegal. RCW 49.17.190(1).

Similarly, to preserve public health, DOH has general authority to inspect all buildings and "any other place" in Washington to investigate "matters injurious to the public health." RCW 43.70.170. Not only does the statute give DOH the general right to investigate or inspect threats to public health, the Legislature additionally authorized DOH to inspect private detention facilities such as the NWIPC under RCW 70.395.

2. GEO's defenses to the application of state public health and safety laws lack merit

In both removal notices, GEO seeks to evade application of Washington law by asserting defenses of: (1) derivative sovereign immunity; (2) intergovernmental immunity; and (3) preemption. All three fail as a matter of law.

a. GEO is not entitled to derivative sovereign immunity

As an initial matter, derivative sovereign immunity provides a federal contractor a defense against damages—not a defense to an injunctive claim to follow the law. *See, e.g., Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 20-21 (1940) (recognizing immunity from tort liability when federal contractor's dikes built according to its federal contract resulted in flooding of plaintiffs' land); *Childs v. San Diego Hous. LLC*, 22 F.4th 1092, 1097-98 (9th Cir. 2022) (explaining derivative sovereign immunity is "a defense to payment of damages" or a "shield from financial liability"); *Woelffer v. Happy States of Am., Inc.*, 626 F. Supp. 499, 506

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

(N.D. Ill. 1985) (denying derivative sovereign immunity defense partly because "declaratory and injunctive relief" has "no impact on the public fisc"). That makes sense because, in our system of dual sovereigns, the federal government cannot authorize its contractors to violate state law absent clear Congressional intent sufficient for preemption to apply. GEO's claim for derivative sovereign immunity thus fails at the threshold.

Even if derivative sovereign immunity applied to a claim seeking purely injunctive relief, GEO's contract with ICE defeats this defense. While the Supreme Court has recognized "[g]overnment contractors obtain certain immunity in connection with work which they do pursuant to their contractual undertakings with the United States," "[t]hat immunity, . . . unlike the sovereign's, is not absolute." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 166 (2016). Derivative sovereign immunity only applies if the federal contractor "had no discretion" when following government specifications. *Cabalce v. Thomas E. Blanchard & Associates, Inc.*, 797 F.3d 720, 732 (9th Cir. 2015).

Here, GEO refuses to allow L&I and DOH to enter to conduct their investigations, claiming it followed ICE's specific directives when doing so. But the GEO contract repeatedly and explicitly acknowledges that state law applies at the NWIPC. Range Decl., Ex. 9 at 43-44 (GEO is "expected to be knowledgeable" of all "statutory" and "regulatory" constraints under state and local law, and must "perform in accordance with the most current version of the constraints."); *id.* at 58-59 ([GEO] agrees to accept and provide for the . . . custody, care, and safekeeping of detainees in accordance with the State, and local laws . . . . or court orders applicable to the operations of the facility."); *id.* at 85 ("The facility . . . shall be . . . operated . . . in accordance with all applicable federal, state, and local laws, regulations, codes, guidelines, and policies."). Most explicitly, under the contract heading "Sanitation and Hygienic Living Conditions," the contract requires GEO "comply with all applicable . . . state and local laws, statutes, regulations, and code," and provides where "there is more than one reference to a

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

safety, health, or environment requirement in an applicable law, standard, code, regulation, or ICE policy, the most stringent requirement shall apply." *Id.* at 82.

The PBNDS likewise confirm that state law applies to GEO. *See id.* at 45 (incorporating the PBNDS). They require compliance with "all applicable federal, state, and local safety and sanitation laws," Range Decl., Ex. 10 at 23, and specifically anticipate the presence of state inspectors, *id.* at 23-38. For example, the PBNDS require the facility comply with "state and local environmental regulations and requirements" governing garbage, "state regulations" related to the handling of hazardous and infectious waste, and require "a state laboratory" "test samples of drinking and wastewater to ensure compliance with applicable standards." *Id.* at 25, 26, 37.

Although GEO may assert ICE maintains control over all facility access, that is simply not true. The GEO-ICE contract only recognizes ICE control over "access for *Contractor employees*." Range Decl., Ex. 9 at 69 (emphasis added). It nowhere suggests ICE has control over entry for state inspectors. Indeed, even when listing as a constraint "pre-clearance approvals to access ICE field staff, facilities and information," which refers to ICE's personnel, separate offices, and data, the GEO-ICE contract lists "applicable federal, state facility codes, rules regulations and policies" as a coequal constraint. *Id.* at 44; *see also id.* at 86, 88 (describing ICE's separate administrative offices and ICE's exclusive control over these specific areas).

And GEO's own practices demonstrate it has discretion to allow state inspectors to enter unannounced and without "pre-clearance." Until recently, L&I routinely inspected the NWIPC unannounced. Korzenko 3d Decl. ¶ 3. In April 2020, L&I inspected NWIPC without an ICE background check. Range Decl., Ex. 3 ¶¶ 4, 8; Korzenko 3d Decl., Ex. 5 at 2 ("Permission was granted to proceed on-site . . . a walk-around inspection was performed."); *id.* at 3 (GEO's facility manager and declarant, Bruce Scott, signing and consenting to L&I entering the NWIPC). Likewise, for many years, GEO has invited TPCDH to conduct unannounced inspections without requiring any background check or other pre-clearance condition. Range

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

Decl., Ex. 7 ¶¶ 4-6. GEO has not said an inspection itself would somehow interfere with ICE's activities. That mere entry does not impair GEO's operations is shown by how readily TPCDH enters and GEO cooperates. *Id.*

Although GEO asserts an ICE representative directed GEO to deny entry to state inspectors, it fails to show the ICE representative was "the Contracting Officer," i.e., the only person authorized to modify the terms and conditions of the contract. *See* Range Decl., Ex. 9 at 54, 97. Therefore, the contractual terms demanding GEO to follow state law controls over any alleged directive from an ICE representative. *Cf. Menocal v. GEO Group, Inc.*, 635 F. Supp. 3d 1151, 1159, 1174 (D. Colo. 2022) (rejecting argument that ICE representative's approval of GEO's policies overrode express ICE-GEO contract terms where contract expressly limited representatives' ability to modify the contract).

In short, the GEO contract makes clear that ICE requires its contractors to provide safe environments for its employees and detainees, which is why it requires GEO to follow applicable state and local safety laws in its contract. As GEO has demonstrated discretion in its ability to allow state and local public health officials and safety inspectors to inspect the NWIPC, GEO's current blockade of state inspectors is not protected by derivative sovereign immunity.

b. GEO is not entitled to intergovernmental immunity

GEO's intergovernmental immunity defense also lacks merit. Intergovernmental immunity "prohibit[s] state laws that either regulate the United States directly or discriminate against the Federal Government or those with whom it deals (e.g., contractors)." *United States v. Washington*, 596 U.S. 832, 838 (2022) (quotation omitted) (emphasis omitted). L&I's and DOH's requests to investigate the health and working conditions of GEO's detainees and employees does not regulate the United States directly, nor does the law or the request to inspect discriminate against federal contractors.

(1) DOH and L&I seek to inspect GEO, not the federal government

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

To show direct regulation, GEO must show DOH's and L&I's requests to inspect its facility regulates "the United States itself, or . . . an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities." *United States v. New Mexico*, 455 U.S. 720, 735 (1982). In other words, to resist state regulation, a private company must be "so incorporated into the government structure" that it "must actually 'stand in the Government's shoes.'" *Id.* at 736. In *New Mexico*, for example, the Supreme Court refused to extend immunity to federal contractors who managed federally owned atomic laboratories because the contractors were using the federal property "in furtherance of the contractor's essentially independent commercial enterprise." *Id.* at 740-41, 742; *see also North Dakota v. United States*, 495 U.S. 423, 437 (1990) (where state laws "operate against suppliers, not the Government," direct regulation "[is] not implicated"); *Penn Dairies v. Milk Control Comm'n of Pa.*, 318 U.S. 261, 269 (1943) ("[T]hose who contract to furnish supplies or render services to the government are not [government] agencies and do not perform governmental functions[.]").

Here, state authority to investigate and inspect does not impose any tax, obligation, or prohibition on the federal government. *See* RCW 49.17.070; RCW 43.70.170; RCW 70.395.010. Nor is GEO a federal agency or instrumentality "so closely connected to the Government" that it "stand[s] in the [federal] Government's shoes." *New Mexico*, 455 U.S. at 735-36. GEO is a private company and its activities are "commercial [and] carried on for profit." *United States v. Boyd*, 378 U.S. 39, 44 (1964). Indeed, the Ninth Circuit already told GEO in no uncertain terms: "Private 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." *Geo Grp., Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022) (en banc).

In *Newsom*, the Ninth Circuit emphasized that federal contractors like GEO must follow generally applicable safety laws. *Id.* at 755. There, the en banc court considered whether California violated the Supremacy Clause by preventing private detention centers like GEOs

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LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
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from operation. *Id.* It held that barring the facility's operation outright did violate the Supremacy Clause, but distinguished the facility-barring law from generally applicable laws: "Absent federal law to the contrary, the Supremacy Clause … leaves considerable room for states to enforce their generally applicable laws against federal contractors." *Id.* The court went further to note "the same principle would appear to hold for many generally applicable health and safety laws." *Id.* at 755 n. 4 (citing *James Stewart & Co. v. Sadrakula*, 309 U.S. 94 (1940), in which the Supreme Court held a state law requiring planking of beams used as walkways on construction projects could be enforced against a federal contractor).

GEO incorrectly cites *M'Culloch v. Maryland*, 17 U.S. 316 (1819), and *Boeing Co. v. Movassaghi*, 768 F.3d 832 (9th Cir. 2014), in its removal notice to argue intergovernmental immunity forbids a state from "substantially interfer[ing]" with any federal activity. The Supreme Court "decisively rejected" this version of intergovernmental immunity nearly a century ago. *See North Dakota*, 495 U.S. at 434-35 (reviewing the history of the doctrine). Now, whatever burdens are imposed on the federal government by a neutral state law regulating its suppliers "are but normal incidents of the organization within the same territory of two governments." *Id.* (cleaned up). In fact, the Supreme Court recently stated "a state law is . . . no longer unconstitutional just because it indirectly increases costs for the federal Government." *United State v. Washington*, 596 U.S. 832, 839 (2022).

And *Boeing* is just a straightforward example of a state directly regulating the federal government itself. In *Boeing*, California passed a law to govern nuclear waste cleanup at a single piece of property. 768 F.3d at 834. Though the property was owned in part by the federal government and in part by Boeing, there was no dispute that the federal government was the party "responsible" for the contamination at the property and for remediating the radioactive waste. *Id.* at 835. Because the California statute displaced federal laws and standards with more stringent state ones, *id.* at 839-40, and compelled those stringent steps be taken by the "responsible party," *id.* at 839, the statute "regulate[d] the federal government directly." *Id.* at

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800 Fifth Avenue, Suite 2000
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(206) 464-7740

842. The state laws at issue here, in contrast, imposes no responsibility whatsoever on the federal government. *See* RCW 43.70.170; RCW 49.17.070; RCW 70.395.050.

(2) DOH's and L&I's request to inspect does not discriminate against GEO

GEO's invocation of the discrimination prong of intergovernmental immunity also lacks merit. In reviewing this prong, courts look to the "letter of the law." *See Dawson v. Steager*, 139 S. Ct. 698, 704 (2019); *United States v. Nye County*, 178 F.3d 1080, 1084 (9th Cir. 1999) (concluding the "wording of [a state law] is significant" when it comes to intergovernmental immunity). 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.'" *Washington*, 596 U.S. at 839.

In its removal notices, GEO narrowly focuses on the recent legislation affecting private detention facilities—but DOH and L&I also rely on RCW 49.17.070 and RCW 43.70.170, which apply to all employers and public health threats in Washington. RCW 49.17.070 grants L&I the authority to inspect public health threats regardless of whether an entity contracts with the federal government, state government, or no government at all. RCW 43.70.170 similarly does not single out the federal government or its contractors and grants DOH the authority to inspect any public health threat anywhere at all times. Therefore, the agencies' requests to inspect treats similarly situated parties equally. That is all the Supremacy Clause requires.

c. The State's health and safety laws are not preempted

Unable to demonstrate it has an immunity defense, GEO seeks refuge in preemption. But neither field preemption or conflict preemption applies here.

Preemption is rooted in the "fundamental principle of the Constitution . . . that Congress has the power to preempt state law." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). However, courts "assume that the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress." *United States v. California*, 921

F.3d 865, 885-86 (9th Cir. 2019) (quotations omitted). The power to regulate employment and public health are within the states' historic police powers, thus a presumption of non-preemption applies. *See id.*; *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1150 (9th Cir. 2004).

Field preemption, specifically, prohibits state regulation of "conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona v. United States*, 567 U.S. 387, 399 (2012). The "scheme of federal regulation may be 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).

GEO's field preemption defense rests on generic federal statutes, authorizing the detention of immigrants and the Secretary of Homeland's ability to make contracts. *See* 3:24-cv-05095-BHS Dkt. #1 at 12 *and* 3:24-cv-05029-BHS Dkt. #1 at 10 (citing 8 U.S.C. § 1231(g)(1); 6 U.S.C. § 112(b)(2); 28 U.S.C. § 530C(a)(4)). Read together, these statutes do not create a scheme "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice*, 331 U.S. at 230. Therefore, this Court may assume the State's workplace safety and general public health laws, RCW 49.17.070 and RCW 43.70.170, are not preempted by the federal laws cited by GEO—as the Ninth Circuit ruled in *California.* 921 F.3d at 885-86.

To save its argument from *California*, GEO suggests the PBNDS establish field preemption. *See* 3:24-cv-05095-BHS Dkt. #1 at 13; 3:24-cv-05029-BHS Dkt. #1 at 10-11. Not so. The Supremacy Clause is only triggered by "the Laws" of the United States, including federal regulations. *See Wyeth v. Levine*, 555 U.S. 555, 576 (2009). But the PBNDS is a published set of standards; not a law or an agency regulation. *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[.]"). As the PBNDS do not have the "force of law" they cannot support preemption. *See Gill v. U.S. Dep't of Justice*, 913 F.3d 1179, 1186 (9th Cir. 2019).

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800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

Nor does conflict preemption apply. Conflict preemption occurs only in "those situations where conflicts will necessarily arise." *Goldstein v. California*, 412 U.S. 546, 554 (1973). "Tension between federal and state law is not enough to establish conflict preemption." *Incalza v. Fendi N. Am., Inc.*, 479 F.3d 1005, 1010 (9th Cir. 2007). Here, there is no tension and *United States v. California* is again dispositive. In *California*, the Ninth Circuit rejected the United States' preemption arguments against a law authorizing California to inspect private detention facilities, recognizing this law "d[id] not regulate whether or where an immigration detainee may be confined, require that federal detention decisions or removal proceedings conform to state law, or mandate that ICE contractors obtain a state license." 921 F.3d at 885. The Ninth Circuit concluded the law did not "constitute[] an obstacle to the federal government's enforcement of its immigration laws or detention scheme." *Id.* at 886.

The same is true for RCW 49.17.070 and RCW 43.70.170. These laws do not impede the federal government's enforcement of its immigration laws or detention scheme. In fact, the PBNDS suggest the federal government anticipated state inspections as part of furthering their own stated goals of detainee health and safety. *See* Range Decl., Ex. 10 at 25, 26, 37. Not only does the contract repeatedly and expressly reserve room for state laws to apply within contract detention facilities, federal occupational safety provisions expressly state the opposite—state-plans such as Washington's "preempt" federal laws. 29 U.S.C. § 667(b). Lastly, the PBNDS's preface itself makes clear that ICE expects "future changes" in the standards as well as "future collaboration . . . with state and local governments." *See* Range Decl., Ex. 10 at 2. As the State laws do not conflict with the federal immigration laws or detention scheme, this Court should not find preemption. *See California*, 921 F.3d at 885-86.

C. The State Will Suffer Irreparable Harm Without Preliminary Relief

In the absence of a court order, GEO is unilaterally blocking the State's ability to enforce its own laws designed to protect workers and the public health. Courts have recognized that a court injunction against a state law is an irreparable harm. It follows that GEO's cavalier

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LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

refusal to permit inspections in the face of state law, without *any* court authority, prevents the State from enforcing the law and is an irreparable harm. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."); *Valentine v. Collier*, 956 F.3d 797, 803 (5th Cir. 2020) ("The Texas Legislature assigned the prerogatives of prison policy to [the corrections department]. The district court's injunction prevents the State from effectuating the Legislature's choice and hence imposes irreparable injury.") (internal citation omitted).

GEO's conduct in blocking state inspectors also risks irreparable harm to the well-being of GEO's employees and detainees. This safety concern is not abstract. GEO's failure to provide a safe and healthy environment is well-documented. More than 20 years ago, a DOJ study reported that "privately operated [detention] facilities are often plagued by problems associated with the quest for higher earnings."[5] In the decades since, researchers consistently have confirmed this finding, with DOH recently concluding that "incentivized incarceration" is a "public health issue[ ]" with "long-lasting impacts on the physical and emotional health of individuals and communities."[6]

The State previously detailed GEO's many failures in its opposition to GEO's motion to preliminarily enjoin RCW 70.395, and will refer the Court there. Dkt. #18, *GEO Group v. Inslee*, No. 3:23-cv-05626-BHS (W.D. Wash. Aug. 7, 2023). But the following highlights what is at stake here:

- Inspections of GEO detention facilities have repeatedly revealed "significant health and safety risks, including nooses in detainee cells, lengthy, improper, and overly restrictive segregation, and inadequate detainee medical care," "food

[5] James Austin & Garry Coventry, U.S. DOJ, Off. of Just. Programs, Bureau of Just. Assistance, *Emerging Issues on Privatized Prisons* at 30 (Feb. 2001), https://www.ojp.gov/pdffiles1/bja/181249.pdf.

[6] John Wiesman, Sec. of Health, Wash. State. Dep't of Health, *Report to the Legislature: Evaluating State and Local Authority and Practices Regarding Private Detention Facilities* (Nov. 2020), at 20.

safety issues," "detainee bathrooms that were in poor condition, including mold and peeling paint on walls, floors, and showers," and an absence of recreation that risked detainee mental health and welfare[7];

- Inspections from the TPCHD and trial testimony in another case have detailed substandard food, including "multiple complaints about rotten food and maggots in the food at [the NWIPC]" and food "mixed with spiders or grasshoppers," as well as simply not enough food for detainees[8];
- GEO-owned facilities, including NWIPC, have been found to have high rates of sexual assault complaints, which are routinely dismissed or ignored by GEO[9];
- Reports from U.S. House of Representatives Committee on Oversight and Reform, the DHS Office of Civil Rights and Civil Liberties, and the University of Washington, as well as news reports, have all detailed a pattern of insufficient medical care and outright neglect at GEO facilities, including NWIPC[10];

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[7] U.S. DHS, Off. of the Inspector Gen., *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities* at 3-4, 7-8. (June 3, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf.

[8] Univ. of Wash. Ctr. for Human Rights, *Human Rights Conditions in the Northwest Detention Center* (Mar.-Dec. 2020), https://jsis.washington.edu/humanrights/2020/03/27/nwdc-sanitation-of-food-laundry/ - _ftn9/; Declaration of Marsha Chien, Ex. 2, Dkt. #19-1, *GEO Group v. Inslee*, No. 3:23-cv-05626-BHS (W.D. Wash. Aug. 7, 2023); Seattle Univ. School of Law Int'l Human Rights Clinic & OneAmerica, *Voices from Detention: A Report on Human Rights Violations at the Northwest Detention Center in Tacoma, Washington* at 8 (July 2008), https://www.yumpu.com/en/document/read/48836345/voices-from-detention-a-report-on-human-rights-oneamerica.

[9] Letter from Rebecca Merton, National Independent Monitor for CIVIC & Christina Fialho, Co-Founder/Executive Director for CIVIC, to Thomas D. Homan, et al., Director for Office of Detention Policy and Planning, ICE (Apr. 11, 2017), http://www.endisolation.org/wp-content/uploads/2017/05/CIVIC_SexualAssault_Complaint.pdf; Univ. of Wash. Ctr. for Human Rights, *Calls to nowhere: Reports of sexual abuse and assault go unanswered at the NWDC* (May 16, 2022), https://jsis.washington.edu/humanrights/2022/05/16/nwdc-assault-abuse-reporting/.

[10] U.S. H.R., Comm. on Oversight and Reform and Subcomm. on Civil Rights and Civil Liberties, *The Trump Administration's Mistreatment of Detained Immigrants: Deaths and Deficient Medical Care by For-Profit Detention Contractors* at 12-27, 30-31 (Sept. 2020), https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf; Mem. from Cameron Quinn & Marc Pachon, DHS Office for Civil Rights and Civil Liberties, to Ronald Vitiello, Acting Dir. of ICE (Mar. 20, 2019), https://s3.documentcloud.org/documents/6575024/ICE-Whistleblower-Report.pdf; *Human Rights Conditions in the Northwest Detention Center*, https://jsis.washington.edu/humanrights/2020/12/16/nwdc-covid/; Ken Klippenstein, *ICE Detainee Deaths Were Preventable: Document*, TYT (June 3, 2019),

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800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

- Hundreds of grievances about a lack of access to clean laundry, including clothes returning gray and foul-smelling and inmates being provided "old yellow stained disgusting panties" or "yellow or brown used panties" that are "filthy" and "disgusting and unsanitary"[11]; and
- Reports of improper use of solitary confinement, with NWIPC holding "people in solitary confinement, on average, *longer than any other ICE dedicated facility in the nation*."[12]

And of course, Plaintiffs here have documented the 277 complaints they've received directly from detainees at NWIPC. *See* Range Decl., Ex. 11 ¶ 6. These complaints mirror the well-documented issues at NWIPC, including the "lack of attention to medical needs," "low-quality" food "contaminated [with] foreign objects including burned plastic, metal string, rope, and splinters," a lack of clean laundry or basic hygiene products, dirty bathrooms with blocked toilets, and prolonged and inappropriate use of isolation and other punishments. *Id.* ¶¶ 7-10. For its part, L&I has inspected the NWIPC several times, has found safety violations many times, and continues to investigate GEO because the NWIPC is an identified hazardous workplace. *See* Range Decl., Ex. 5 at 2 ¶ 3; Korzenko 3d Decl. ¶ 11; *see also* WAC 296-900-12005(1)(a). Prior inspections have identified confined space violations, respirator program violations, lack of an emergency eyewash, TB exposure, and lack of an exposure plan. Korzenko 3d Decl. ¶ 4. Safety violations like these can lead to worker injuries. *Id.* ¶ 5. L&I investigates workplaces without an accident or complaint occurring before the inspection because a preventative approach reduces injuries and death. Blackwood 3d Decl. ¶¶ 11-12.

DHS's Office of Inspector General has found that violations like these flourish because ICE inspections of contract facilities are "too infrequent," "not consistently thorough," and

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https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbTKvQKNCv2E9bu7h (memo to Mathew Albence, Deputy Dir. of ICE (Dec. 3, 2018), alerting ICE leadership to dozens of incidents, including a "[d]elay in referral to higher level of care at Tacoma Facility which lead to a ruptured appendix[ ]").

[11] Rights, *Human Rights Conditions in the Northwest Detention Center*, *supra* n.8.

[12] *Id.* at https://jsis.washington.edu/humanrights/2020/11/30/nwdc-solitary/ (emphasis added).

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800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

lack "follow up on identified deficiencies," resulting in "deficiencies [that] remain unaddressed for years."[13] As the ICE-GEO contract, Washington law, and past practice all make clear, state inspections are a necessary complement to ICE inspections to ensure that unsafe and unsanitary conditions do not fester. By unlawfully blocking DOH and L&I inspectors from doing their jobs and ensuring the health and safety of Washington residents and employees, GEO is causing irreparable harm to Washingtonians.

D. The Balance of Equities Tips in the State's Favor and an Injunction Is in the Public Interest

The final two *Winter* factors—the balance of the equities and the public interest—also tip sharply in the State's favor.

Concerns about the health and safety impacts of incentivized incarceration are central to the inquiry into equity and the public interest. As the Ninth Circuit confirmed, "health and safety" risks to immigrant detainees are a critical part of the preliminary injunction analysis in suits involving conditions at private detention facilities. *Roman*, 977 F.3d at 942-44. That is because "adverse effects on the health and welfare of the immigrant as well as general population" are inconsistent with the "equities and public interest[.]" *City & County of San Francisco v. U.S. Citizenship & Immigr. Servs.*, 981 F.3d 742, 762 (9th Cir. 2020). Indeed, evidence of "egregious conditions in facilities housing civil detainees" should weigh significantly in the analysis. *California*, 921 F.3d at 894 (cleaned up); *see also Roman*, 977 F.3d at 944 (concluding "that the equities and public interest tipped in . . . favor" of immigrant detainees challenging facility's failure to implement COVID protocols, "particularly in light of the lack of criminal records of many of the detainees and the alternative means available to prevent them from absconding if they were released, such as electronic monitoring[ ]"). Moreover, Washington's Legislature has specifically declared it is "in the public interest for the

[13] U.S. DHS, Off. of the Inspector Gen., *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* at 4, (June 26, 2018), https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf.

welfare of the people of the state of Washington . . . to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington." RCW 49.17.010.

So as detailed above, L&I and DOH inspections are necessary to ensure that Washington workers and residents enjoy healthy and safe conditions. Blackwood 3d Decl. ¶ 8 (detailing evidence that inspections improve occupational health and safety outcomes); Ling Li & Perry Singleton, *The Effect of Workplace Safety Inspections on Worker Safety* (2017) (finding that inspections provide a 20 percent in increased safety outcomes for workers).[14] This is especially true given federal OSHA's suspension of its federal enforcement authority in Washington State. *See* Blackwood 3d Decl., Ex. 1. And to ensure L&I's inspections achieve their intended purpose, it is critical that they be unannounced. Blackwood 3d Decl. ¶¶ 11-12.

Blocking access to GEO's facility also runs counter to the public's interest in accountability. Improved public oversight and accountability further the public interest. *See, e.g.*, *Valentine v. Collier*, 978 F.3d 154, 166 (5th Cir. 2020) ("the public interest favors having politically accountable officials . . . determine how to allocate resources[ ]" in the prison context); *Conn. State Police Union v. Rovella*, 494 F. Supp. 3d 210, 224-25, 230 (D. Conn. 2020) (observing that public interest and equity supported "the state's salutary efforts to enhance transparency and promote accountability in law enforcement[ ]"). But the Legislature has found "that private prisons and detention centers are less accountable for what happens inside those facilities than state-run facilities." RCW 70.395.010(5).

Inspections by L&I and DOH benefit transparency and accountability by allowing more daylight into NWIPC. GEO's recordkeeping has been glaringly poor, making it difficult for regulators to confirm detainees are safe and well. For example, "a comparison of internal and external data reveals that as many as 86% of [NWIPC] solitary placements during a one year

[14] Available at: https://surface.syr.edu/cgi/viewcontent.cgi?article=1233&context=cpr.

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LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

period were neither logged in ICE's monitoring system nor reported to the public."[15] GEO also has a poor record of documenting and responding to detainee grievances, even though the NWIPC "had the highest grievance volume of the facilities [ICE] inspected" in 2019.[16]

But the DHS Inspector General's visit to the NWIPC is a rare event, and ICE itself inspects only "[a]bout once every three years."[17] More often, inspections are conducted by one of ICE's contract inspectors. The DHS Inspector General itself is skeptical of ICE's contract inspectors, and cited "examples of inspectors contracted by ICE submitting false information that made detention facilities look like they were following regulations when they weren't[,]" private facilities "failing to notify ICE about alleged or proven sexual assaults[,]" and contract staff "conducting strip searches with no reasonable suspicion."[18] Indeed, ICE's own employees opine that inspections conducted by private contractors are "useless" and "very, very, very difficult to fail."[19]

Given this poor track record, L&I inspections also serve as an important protection for the state's limited industrial insurance funds, because they lower the rates of industrial injuries. Blackwood 3d Decl. ¶ 8. Not only do injuries represent suffering and health detriments to workers, they result in benefits paid for time off work, treatment, and permanent disability. RCW 51.32.060, .080, .090; RCW 51.36.010. As the state insures GEO, L&I must be able to inspect GEO to lower the risk of high claims. *See* Range Decl., Ex. 14 ¶ 4; RCW 51.14.010.

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[15] *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at https://jsis.washington.edu/humanrights/2020/11/30/nwdc-solitary/.

[16] U.S. DHS, Off. of the Inspector Gen., *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019* at 8 (July 1, 2020), https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-45-Jul20.pdf.

[17] *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, *supra* note 13, at 3.

[18] Bob Ortega, *Migrants describe hunger and solitary confinement at for-profit detention center*, CNN Investigates (July 11, 2018), https://www.cnn.com/2018/07/11/us/northwest-immigrant-detention-center-geo-group-invs/index.html.

[19] *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, *supra* note 13, at 7-8 & n.12.

Taken together, the poor recordkeeping, lack of records access, and unreliable inspections mean that lawmakers, state and local regulators, and the public are in the dark about what goes on inside private detention facilities. L&I and DOH inspections further the public interest by increasing facility accountability. GEO's efforts to shield its activities from scrutiny undermine the health and safety of Washingtonians and the public's interest in transparency. The public interest and equities tip sharply in favor of Plaintiffs' requested injunction.

E. GEO Violated RCW 49.17.070 and RCW 43.70.170 so This Court Should Enforce Entry

Under RCW 49.17.070(5)'s provision that allows an inspection without advance notice, GEO cannot obstruct L&I's inspection. GEO has a non-delegable duty to ensure workplace safety. RCW 49.17.060(1); *Ward*, 699 P.2d at 820. L&I obtained a warrant to investigate as authorized by RCW 49.17.075. This warrant should be enforced. Because GEO must follow state law in its conduct as a Washington employer and to protect public health under RCW 43.70.170, it must cooperate with L&I and DOH and allow it access to the NWIPC. GEO's contract with ICE provides for enforcement by state officials of state safety and health laws. GEO must comply with its own contract and comply with state law.

IV. CONCLUSION

Plaintiffs ask the Court require GEO to allow entry and cooperate with both L&I and DOH's inspections.

DATED this 29th day of February, 2024.

I certify that this memorandum contains 8,374 words, in compliance with the Local Civil Rules.

ROBERT W. FERGUSON
Attorney General

/s/ Ellen Range
ELLEN RANGE, WSBA 51334
Assistant Attorney General
7141 Cleanwater Drive SW
Olympia, WA 98501-0111

(360) 586-6314
Ellen.Range@atg.wa.gov

Attorney for Department of Labor and Industries and Department of Health

ANASTASIA SANDSTROM, WSBA 24163
Senior Counsel
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 464-7740
Anastasia.Sandtrom@atg.wa.gov

Attorney for Department of Labor and Industries

MARSHA CHIEN, WSBA 47020
CRISTINA SEPE, WSBA 53609
Deputy Solicitors General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200
Marsha.Chien@atg.wa.gov
Cristina.Sepe@atg.wa.gov

ANDREW HUGHES, WSBA 49515
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744
Andrew.Hughes@atg.wa.gov

LISA KELLEY CHRISTENSEN, WSBA 21240
Assistant Attorney General
7141 Cleanwater Drive SW
Olympia, WA 98501-6503
(360) 586-7879
Lisa.Kelley@atg.wa.gov

Attorneys for Department of Health

CERTIFICATE OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 29th day of February 2024 at Tumwater, Washington.

/s/ Ellen Range
ELLEN RANGE, WSBA No. 51334
Assistant Attorney General

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NO. 3:24-cv-05095-BHS

STATE OF WASHINGTON, DEPARTMENT OF LABOR AND INDUSTRIES,

Plaintiff,

v.

GEO SECURE SERVICES, LLC, THE GEO GROUP, INC.,

Defendants.

NO. 3:24-cv-05029-BHS

STATE OF WASHINGTON, DEPARTMENT OF HEALTH,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

NO. 3:24-cv-05095-BHS
NO. 3:24-cv-05029-BHS

[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740

This matter comes before the Court on Plaintiffs Department of Labor & Industries' and Department of Health's Motion for Preliminary Injunction. The Court has considered the parties' briefing, the relevant portions of the record, and the applicable law.

The Court, finding itself fully informed, hereby GRANTS Plaintiffs' Motion for Preliminary Injunction. The Court hereby ORDERS The GEO Group, Inc. and GEO Secure Services, LLC, and their officers, agents, and employees, to allow entry and cooperate with both the Department of Labor & Industries' and the Department of Health's inspections of the Northwest ICE Processing Center. This preliminary injunction shall take effect immediately and shall remain in effect pending trial in this action or further order of this Court.

IT IS SO ORDERED this _____ day of _____ 2024.

THE HONORABLE BENJAMIN H. SETTLE
UNITED STATES DISTRICT COURT JUDGE

Presented by:

ROBERT W. FERGUSON
Attorney General

/s/ Ellen Range
ELLEN RANGE, WSBA 51334
Assistant Attorney General
7141 Cleanwater Drive SW
Olympia, WA 98501-0111
(360) 586-6314
Ellen.Range@atg.wa.gov

Attorney for Department of Labor and Industries and Department of Health

ANASTASIA SANDSTROM, WSBA No. 24163
Senior Counsel
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 464-7740
Anastasia.Sandstrom@atg.wa.gov

Attorney for Department of Labor and Industries

MARSHA CHIEN, WSBA 47020
CRISTINA SEPE, WSBA 53609

Deputy Solicitors General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200
Marsha.Chien@atg.wa.gov
Cristina.Sepe@atg.wa.gov

ANDREW HUGHES, WSBA 49515
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744
Andrew.Hughes@atg.wa.gov

LISA KELLEY CHRISTENSEN, WSBA 21240
Assistant Attorney General
7141 Cleanwater Drive SW
Olympia, WA 98501-6503
(360) 586-7879
Lisa.Kelley@atg.wa.gov

Attorneys for Department of Health

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I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 29th day of February 2024 at Tumwater, Washington.

/s/ Ellen Range
ELLEN RANGE, WSBA No. 51334
Assistant Attorney General

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7740