

The Honorable Benjamin H. Settle

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

THE GEO GROUP, INC.,

Plaintiff,

v.

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

Defendants.

NO. 3:23-cv-05626-BHS

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR:
AUGUST 11, 2023 ¹

¹ The State has concurrently filed a Motion to Dismiss, Dkt. #17, which notes on September 1, 2023, and respectfully requests the Court consider GEO's PI motion with the State's motion.

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I. INTRODUCTION

GEO seeks the extraordinary equitable remedy of a preliminary injunction blocking application of Washington Second Substitute House Bill 1470 (HB 1470), but GEO's legal claims are meritless and the equities overwhelmingly favor the State. The Court should deny GEO's request.

On the law, GEO claims that HB 1470 directly regulates and discriminates against the federal government. Nonsense. HB 1470 applies only to private detention facilities. Precedent makes clear that a general health and safety law like HB 1470 is not preempted merely because it applies to a company that contracts with the federal government. And HB 1470 does not discriminate. Private, county, and municipal residential treatment facilities in Washington have long been subject to a wide range of minimum standards: HB 1470 simply applies the same sort of standards to private detention facilities. Far from enacting a discriminatory system, it corrected previously inequitable treatment. Precedent also makes clear that HB 1470 creates no conflict with federal law and impairs no contract of GEO's.

GEO's motion also fails on the equities. GEO has shown no irreparable harm because the primary standards it complains about do not even apply to it yet because of its preexisting contract with Immigration & Customs Enforcement (ICE); rather, they apply only to potential future contracts that have not been written. On the other side of the scale, evidence gathered over more than a decade at GEO's Northwest ICE Processing Center (NWIPC) shows that GEO ignores complaints of abuse by detainees, neglects detainees' medical needs, provides unsafe and insufficient food, disregards detainees' need for personal hygiene, and misuses solitary confinement. Conditions at the NWIPC have been so bad, for so long, that the facility has experienced multiple hunger strikes, sometimes including more than a thousand participants. In light of this history, GEO cannot come before the Court and demand permission, in equity, to continue operating its facility without *any* State oversight. GEO's motion should be denied.

II. BACKGROUND

GEO has a long and well documented history of mistreating civil immigration detainees at the NWIPC and across the country. This history is part of a broader pattern of private detention facilities mistreating detainees, a pattern that led the Washington Legislature to enact HB 1470.

Inspections of GEO detention facilities have repeatedly found a multitude of problems. For example, in 2018, the Department of Homeland Security Office of the Inspector General (OIG) conducted unannounced inspections at four private detention locations—three of them operated by GEO.² The inspections revealed “significant health and safety risks, including nooses in detainee cells, improper and overly restrictive segregation, and inadequate detainee medical care.”³ OIG also found “significant food 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[.]”⁴ Some conditions were serious enough to constitute “immediate risks or egregious violations of the detention standards[.]”⁵ The OIG found these violations flourish because ICE inspections of contract facilities are “too infrequent,” “not consistently thorough,” and lack “follow up on identified deficiencies,” resulting in “deficiencies [that] remain unaddressed for years.”⁶ A more recent inspection of a GEO facility in Georgia “identified violations that compromised the health, safety, and rights of detainees,” including “facilities [that] were unsanitary and dilapidated, with torn mattresses, water leaks and standing water, mold growth and water damage, rundown showers, mold and debris in the ventilation system, insect infestations, lack of access to hot

² U.S. DHS, Off. of the Inspector Gen., *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities* at 2 (June 3, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

³ *Id.* at 3.

⁴ *Id.* at 3-4, 7-8.

⁵ *Id.* at 3 & n.3.

⁶ 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, (July 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>; accord U.S. DHS, Off. of the Inspector Gen., *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (Jan. 29, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

showers, inoperable toilets, an inoperable thermometer display on a kitchen freezer, and an absence of hot meals.”⁷

Multiple reports have long found the same problems specifically at the NWIPC. For example, the Tacoma-Pierce County Health Department has received “multiple complaints about rotten food and maggots in the food at [the NWIPC].”⁸ In its most recent inspection of the NWIPC, DHS OIG found long-expired food on shelves and boxes of meat left open and exposed to the air.⁹ The report also revealed issues with facility medical care, including failures to follow guidelines for screening and preventative care.¹⁰ A former GEO kitchen supervisor testified at a trial that the food served at NWIPC was “substandard quality food in cans[] . . . [s]ometimes . . . mixed with spiders or grasshoppers.”¹¹ Outside experts have repeatedly documented inadequate medical care, insufficient responses to sexual assault, inadequate hygiene facilities, and

⁷ U.S. DHS, Off. of the Inspector Gen., *Violations of ICE Detention Standards at Folkston ICE Processing Center and Folkston Annex* at 4 (June 30, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-07/OIG-22-47-July22.pdf>; see also, e.g., U.S. DHS, Off. of the Inspector Gen., *Violations of ICE Detention Standards at South Texas ICE Processing Center* (Apr. 22, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-04/OIG-22-40-Apr22.pdf> (report of GEO facility “identif[ying] violations of ICE detention standards that compromised the health, safety, and rights of detainees” including detainee mistreatment by staff, denying rights and privileges to detainees in segregation, and failing to respond to inmate grievances); U.S. DHS, Off. of the Inspector Gen., *Management Alert - Immediate Removal of All Detainees from the Torrance County Detention Facility* (Mar. 16, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-05/OIG-22-31-Mar22-mgmtalert.pdf> (recommending “immediate relocation of all detainees” from private facility owned by CoreCivic due to “critical staffing shortages” and “unsanitary conditions in detainee housing units”); U.S. DHS, Off. of the Inspector Gen., *Violations of ICE Detention Standards at Richwood Correctional Center in Monroe, Louisiana* (Feb. 28, 2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-03/OIG-23-18-Mar23.pdf>; U.S. DHS, Off. of the Inspector Gen., *Medical Processes and Communication Protocols Need Improvement at Irwin County Detention Center* (Jan. 3, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-14-Jan22.pdf>; U.S. DHS, Off. of the Inspector Gen., *Violations of ICE Detention Standards at Adams County Correctional Center* (July 14, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-46-Jul21.pdf>.

⁸ Declaration of Marsha Chien, Ex. 1, Univ. of Wash. Ctr. for Human Rights, *Human Rights Conditions in the Northwest Detention Center* at 13 (Mar.-Dec. 2020), <https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/>.

⁹ U.S. DHS, Off. of the Inspector Gen., *Results of an Unannounced Inspection of Northwest ICE Processing Center in Tacoma, Washington* at 9-12 (May 22, 2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-26-May23.pdf>.

¹⁰ *Id.* at 12-13

¹¹ Chien Decl. Ex. 2, Testimony of John Patrick Griffin at 154:2-24 (Oct. 14, 2021).

1 excessive use of solitary confinement.¹² These issues have led to repeated waves of hunger
 2 strikes by detainees at the NWIDC over the last decade.¹³

3 GEO's mistreatment of detainees is part of a broader problem of private detention
 4 facilities failing to properly care for those in their charge, a problem that has prompted both
 5 States and the federal government to take action. Most notably, in 2016 the U.S. Department of
 6 Justice found private prisons "simply do not provide the same level of correctional services,
 7 programs, and resources" as government-operated prisons, and "do not maintain the same level
 8 of safety and security."¹⁴ DOJ thus recommended that its Bureau of Prisons cease renewing
 9 contracts with private prisons.¹⁵ This conclusion followed a report from the DOJ OIG that found
 10 "in most key areas, contract prisons incurred more safety and security incidents per capita than
 11 comparable [Bureau of Prisons] institutions[.]"¹⁶ Consistent with these findings, President Biden
 12 recently directed that federal prisoners no longer be held in privately operated criminal detention
 13 facilities because "profit-based incentives" cause them to "consistently underperform
 14
 15
 16

17 ¹² *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at 21-27, 35; Chien Deel
 18 Ex 3 (¶ 4), Univ. of Wash. Ctr. for Human Rights, *Calls to nowhere: Reports of sexual abuse and assault go*
 19 *unanswered at the NWDC* (May 16, 2022), [https://jsis.washington.edu/humanrights/2022/05/16/nwdc-assault-](https://jsis.washington.edu/humanrights/2022/05/16/nwdc-assault-abuse-reporting/)
 20 [abuse-reporting/](https://jsis.washington.edu/humanrights/2022/05/16/nwdc-assault-abuse-reporting/).

21 ¹³ Nina Shapiro, *The conflict that has plagued the Northwest Detention Center for almost two months*,
 22 *Seattle Weekly* (May 12, 2014), [https://www.seattleweekly.com/news/the-conflict-that-has-plagued-the-northwest-](https://www.seattleweekly.com/news/the-conflict-that-has-plagued-the-northwest-detention-center-for-almost-two/)
 23 [detention-center-for-almost-two/](https://www.seattleweekly.com/news/the-conflict-that-has-plagued-the-northwest-detention-center-for-almost-two/); Mike Carter, *Hunger strike at Tacoma immigration detention center grows*
 24 *to 750, activist says*, *The Seattle Times* (Apr. 13, 2017), [https://www.seattletimes.com/seattle-news/hunger-strike-](https://www.seattletimes.com/seattle-news/hunger-strike-at-tacoma-immigration-detention-center-growing-activist-says/)
 25 [at-tacoma-immigration-detention-center-growing-activist-says/](https://www.seattletimes.com/seattle-news/hunger-strike-at-tacoma-immigration-detention-center-growing-activist-says/); Allison Needles, *Hundreds of ICE detainees*
 26 *refusing to eat food provided at Tacoma detention center*, *Tacoma News Tribune* (Oct. 18, 2019),
<https://www.thenewstribune.com/news/local/article236418528.html>; KUOW Staff, *Hunger strike suspended at*
Tacoma ICE facility, but objections remain, *NPR* (Feb. 6, 2023), [https://www.kuow.org/stories/hunger-strike-ends-](https://www.kuow.org/stories/hunger-strike-ends-at-ice)
[at-ice](https://www.kuow.org/stories/hunger-strike-ends-at-ice); Gemini Gnull, *Detainees at Northwest Detention Center launch a hunger strike*, *Fight Back! News* (June 22,
 2023), <http://www.fightbacknews.org/2023/6/22/detainees-northwest-detention-center-launch-hunger-strike>.

¹⁴ Mem. from Sally Q. Yates, Deputy Att'y Gen., U.S. Dep't of Just., to the Acting Dir. of the Fed. Bureau
 of Prisons, *Reducing our Use of Private Prisons* (Aug. 18 2016), [https://www.justice.gov/archives/opa/file/886311](https://www.justice.gov/archives/opa/file/886311/download)
[/download](https://www.justice.gov/archives/opa/file/886311/download).

¹⁵ *Id.*

¹⁶ U.S. DOJ, Off. of the Inspector Gen., *Review of the Federal Bureau of Prisons' Monitoring of Contract*
Prisons at i (Aug. 2016), <https://www.oversight.gov/sites/default/files/oig-reports/c1606.pdf>.

1 [government-operated] facilities with respect to correctional services, programs, and
2 resources.”¹⁷

3 The Washington Legislature has responded to the crisis of private detention facilities
4 with legislation to ensure humane conditions for persons detained in those facilities. In 2020, the
5 Washington Legislature passed Engrossed Substitute Senate Bill 6442, which banned the
6 Washington State Department of Corrections (DOC) from contracting with private prisons for
7 the transfer or placement of state inmates except in emergency situations. RCW 72.68.110(1);
8 .010. The Legislature enacted ESSB 6442 after finding that “profit motives lead private prisons
9 to cut operational costs, including the provision of food, health care, and rehabilitative services.”
10 2020 Wash. Sess. Laws, ch. 318, § 1(2).

11 While these restrictions applied only to DOC, the Legislature’s concerns extend to *all*
12 individuals confined in private detention. And so, during the same session, the Legislature passed
13 a second bill, directing the Department of Health (DOH) to evaluate and report on state and local
14 authority and practices around private detention facilities. Engrossed Substitute House Bill 2576,
15 66th Leg., Reg. Sess. (Wash. 2020) *enacted as* 2020 Wash. Sess. Laws, ch. 284, § 2. They passed
16 this bill after finding that “all people confined in prisons and detention facilities in Washington
17 deserve basic health care, nutrition, and safety, regardless of whether those people are confined
18 in publicly or privately operated facilities.” *Id.*, § 1. “While public facilities are directly
19 accountable to public institutions,” the Legislature concluded, “private facilities lack this
20 oversight structure.” *Id.*

21 In November 2020, DOH completed its survey of private detention providers in
22 Washington.¹⁸ Its report identified twelve facilities operated by six private entities.¹⁹ One of
23

24 ¹⁷ Exec. Order No. 14,006 on *Reforming Our Incarceration System to Eliminate the Use of Privately*
25 *Operated Criminal Detention Facilities*, 86 Fed. Reg. 7483, 7483 (Jan. 26, 2021).

26 ¹⁸ Chien Decl. Ex. 4, 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).

¹⁹ *Id.* at 1.

1 those facilities contracts with a consortium of local counties; the rest hold contracts with ICE or
 2 the U.S. Department of Health and Human Services.²⁰ The report cited complaints about
 3 “improper detainee living conditions and lacking access to appropriate medical care,” obstacles
 4 to “access[ing] the detainee[s] or their health records,” and a lack of “transparency and
 5 accountability.”²¹ These complaints were “almost exclusively associated with the Northwest ICE
 6 Processing Center,” as opposed to any of the other facilities (whether locally or federally
 7 contracted) that primarily detain youth.²²

8 The following year, the Legislature returned to the problem of private detention, passing
 9 Engrossed House Bill 1090, 67th Leg. Reg. Sess. (Wash. 2021) *enacted as* 2021 Wash. Sess.
 10 Laws, ch. 30, which prohibited the use of private detention facilities in Washington. In passing
 11 EHB 1090, the Legislature found that “people confined in for-profit prisons and detention
 12 facilities have experienced abuses and have been confined in dangerous and unsanitary
 13 conditions.” 2021 Wash. Sess. Laws, ch. 30, § 1(3). The Legislature further found that “[s]afety
 14 risks and abuses in private prisons and detention facilities at the local, state, and federal level
 15 have been consistently documented.” *Id.* The Legislature cited evidence that the profit motive
 16 results in a lack of resources and staff training, and that the private nature of such facilities
 17 frustrates the public’s need for accountability and transparency. *Id.*, §§ 1(2)-(5). Washington is
 18 among an emerging consensus of states who have determined that for-profit incarceration is
 19 inconsistent with the states’ interest in the health, safety, and welfare of detained people.²³
 20 Following passage of EHB 1090, GEO sued to permanently enjoin its enforcement. Following
 21 a Ninth Circuit decision invalidating a similar California statute, the State of Washington agreed
 22 not to enforce EHB 1090 as to GEO, but the lawsuit remains pending before this Court. *See*
 23 Defs.’ Notice and Stipulation of Enforcement Position, *GEO Group v. Inslee*, No. 3:21-cv-

24 ²⁰ *Id.*

25 ²¹ *Id.* at 18.

26 ²² *Id.* at 20.

²³ *See, e.g.*, Cal. Penal Code §§ 9500-9505; 730 Ill. Comp. Stat. 141/1-999; Iowa Code § 904.119; Nev.
 Rev. Stat. § 208.280; N.Y. Correct. Law § 121.

1 05313-BHS (W.D. Wash. June 22, 2023), ECF No. 65 (citing *GEO Group, Inc. v. Newsom*, 50
2 F.4th 735, 753 (2022) (en banc)).

3 Most recently, the Legislature passed Second Substitute House Bill 1470 (HB 1470),
4 68th Leg., Reg. Sess. (Wash. 2023) *enacted as* 2023 Wash. Sess. Laws, ch. 419, the law
5 challenged here. HB 1470 does four primary things. *First*, it directs DOH to adopt regulations
6 “to ensure private detention facilities comply with measurable standards providing sanitary,
7 hygienic, and safe conditions for detained persons.” *Id.*, § 2. Section 2 sets out the standards to
8 guide the new rules. These standards are drawn directly from Washington’s regulations
9 governing residential treatment facilities, and include requirements that facilities provide
10 detainees “a safe, clean, and comfortable environment,” that “[l]iving areas . . . must be cleaned
11 and sanitized regularly,” that laundry facilities must be “adequate to meet the needs of detained
12 persons,” that facilities “shall provide a nutritious and balanced diet” and “follow proper food
13 handling and hygiene practices,” and that “[s]afe indoor air quality must be maintained”
14 including comfortable temperatures. *Id.*; see WAC 246-337-075, -111, -112, -128, -135, -060,
15 -129 (setting regulations for residents).

16 *Second*, Section 3 directs DOH to conduct inspections of private detention facilities, both
17 routinely and in response to complaints. *Id.*, § 3. It also requires the Department of Labor and
18 Industries to conduct “inspections of workplace conditions at private detention facilities,
19 including work undertaken by detained persons.” *Id.* In effect, Section 3 extends inspections to
20 private detention facilities that already take place in other facilities.²⁴

21 *Third*, Section 4 establishes standards for new contracts that go into effect after
22 January 1, 2023. *Id.*, § 4. Among other things, Section 4 will require private detention facilities
23 to provide commissary items “at reasonable prices,” to provide telecommunications services,
24 radios, and television access free of charge, and to make in-person visitation available daily.

25 ²⁴ See, e.g., Chien Decl. Ex. 5 (DOH investigation of a residential treatment facility for numerous WAC
26 246-337 violations); Chien Decl. Ex. 6 (Perrin Decl. ¶ 5 (L&I program manager testifying about citations made to
DOC for inmate worker’s exposure to asbestos)).

1 Section 4 also prohibits the use of solitary confinement, and sets requirements for medical care,
 2 mental health evaluations, and responding to complaints of sexual violence and harassment.
 3 Because GEO's contract for the NWIPC went into effect in 2020 and runs until September 2025,
 4 these standards do not apply to GEO.²⁵ And they may never apply—they only will if DHS
 5 chooses to enter into a new contract with GEO once the current contract terminates.

6 *Fourth*, HB 1470 creates monetary penalties for a violation of its standards, and provides
 7 for enforcement by the State and/or aggrieved detainees. HB 1470, §§ 2-6.

8 GEO seeks to enjoin HB 1470 in its entirety.

9 III. LEGAL STANDARD

10 A preliminary injunction is an “extraordinary remedy never awarded as of right.” *Winter*
 11 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). GEO must make a “clear showing” that
 12 (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence
 13 of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the
 14 public interest. *Id.* at 20. GEO's burden here is particularly high, because “any time a State is
 15 enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers
 16 a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (cleaned up).
 17 Because GEO's claims are legally deficient and require dismissal and because GEO cannot
 18 satisfy any of the other *Winter* factors, its motion should be denied.

19 IV. ARGUMENT

20 A. For the Reasons Dismissal Is Appropriate, GEO Is Unlikely to Succeed on the 21 Merits of Its Claims

22 GEO is unlikely to succeed on any of its constitutional attacks against HB 1470. As the
 23 State demonstrated in its concurrently-filed motion to dismiss, GEO lacks standing or a ripe
 24 claim, and none of its claims assert a cognizable legal theory. Defs.' Mot. to Dismiss (MTD) at
 25 pp. 7-9. Not only is GEO unlikely to succeed on the ultimate merits of its claims, but those

26 ²⁵ Dkt. #8 at p. 9.

deficient claims merit dismissal. First, GEO lacks pre-enforcement standing and this case is not prudentially ripe. GEO’s chief concerns are directed against HB 1470, § 4, but Section 4 does not apply to contracts in effect prior to 2023—including GEO’s current contract with ICE, which was modified in 2021 and runs through September 2025. *Compare* HB 1470, § 4, with Dkt. #1 ¶¶ 27, 51. GEO is unable to describe, based on a future contract that does not yet exist, “when, to whom, where, or under what circumstances[.]” it intends to violate Section 4. *Thomas v. Anchorage Equal Rts. Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc). The Court should otherwise decline to exercise jurisdiction because rules when adopted by DOH will narrow the legal issues in this dispute and there may well be actual factual context to decide GEO’s claims down the road. *See Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022); MTD at pp. 8-9.

Second, none of GEO’s claims is cognizable. HB 1470 does not run afoul of the doctrine of intergovernmental immunity because it does not “regulate the United States directly or discriminate against the Federal Government or those with whom it deals.” *United States v. Washington*, 142 S. Ct. 1976, 1984 (2022) (cleaned up); *see* MTD at pp. 9-16. And while the federal government has exclusive power to regulate immigration, HB 1470 is not an obstacle to the enforcement of immigration laws and is thus not preempted. *See* MTD at pp. 16-21; *United States v. California*, 921 F.3d 865, 885-86 (9th Cir. 2019) (upholding state inspections of private immigrant detention centers). GEO’s Contracts Clause claim is meritless too; GEO’s contract expressly accounts for present and future state law as several provisions explicitly require compliance with all applicable state laws. *See* Dkt. #10-1 at 43, 53, 59-60, 86. Moreover, HB 1470 is a reasonable response to numerous findings regarding safety risks and abuses in private detention centers. *See* MTD at pp. 21-24; *Energy Rsrvs. Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412 (1983).

Because GEO fails the “threshold inquiry” of “show[ing] . . . likelihood of success on the merits, [the Court] need not consider the remaining three *Winter* elements.” *Garcia v.*

1 *Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc) (citation and internal quotation marks
 2 omitted). The Court should dismiss GEO’s Complaint, deny GEO’s motion for preliminary
 3 relief, reject the additional request for a permanent injunction, and stop there.

4 **B. GEO Cannot Show Irreparable Harm Absent an Injunction**

5 If the Court reaches the second preliminary injunction factor, GEO cannot carry its
 6 burden to demonstrate that “irreparable injury is likely in the absence of an injunction.” *Winter*,
 7 555 U.S. at 22 (emphasis omitted). GEO claims that it will suffer irreparable constitutional and
 8 economic injuries; GEO is wrong on both points.

9 There is no merit to GEO’s suggestion that an alleged violation of the Supremacy
 10 Clause—without more—triggers a presumption of irreparable harm. *Contra* Dkt. #8 at
 11 pp. 29-30. Instead, a plaintiff “must demonstrate some likely irreparable harm in the absence of
 12 a preliminary injunction barring the challenged action, and not simply a constitutional violation.”
 13 *Sierra Club v. Trump*, 379 F. Supp. 3d 883, 925 (N.D. Cal. 2019), *aff’d*, 963 F.3d 874 (9th
 14 Cir. 2020). The case cited by GEO, *American Trucking Ass’n, Inc. v. City of Los Angeles*, 559
 15 F.3d 1046, 1058-59 (9th Cir. 2009), clearly requires that a constitutional violation be “coupled
 16 with . . . damages incurred.” *See also Poder in Action v. City of Phoenix*, 481 F. Supp. 3d 962,
 17 979 (D. Ariz. 2020) (plaintiffs “cannot meet their burden of establishing a likelihood of
 18 irreparable harm simply by noting that they are raising a preemption challenge.”). GEO has
 19 suffered no constitutional violation, which in any event cannot be a standalone basis for
 20 preliminary relief.

21 Turning to GEO’s claim of economic harm, the law requires GEO to demonstrate “a
 22 likelihood of irreparable injury,” and not “just a possibility” of harm. *Winter*, 555 U.S. at 21.
 23 Such a showing must be “grounded in evidence, not in conclusory or speculative allegations of
 24 harm.” *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1133 (9th Cir. 2014). GEO fails to
 25 carry its burden. To support its most dire assertions of economic harm, GEO submits a witness
 26 declaration lamenting that complying with Section 4 of HB 1470—e.g., ending the use of solitary

1 confinement, providing free phone calls to detainees, and providing in-person visits—would
 2 cause GEO to breach its contract with DHS, which could theoretically induce DHS to terminate
 3 its contract, causing GEO to lose up to \$160,000,000 in revenue.²⁶ But even ignoring the obvious
 4 speculation that DHS might *terminate* its contract if GEO were to provide detainees free calls to
 5 stay connected with their families, this argument misrepresents HB 1470.

6 By its terms, Section 4 of HB 1470 “*does not apply* to private detention facilities
 7 operating pursuant to a valid contract that was in effect prior to January 1, 2023.” HB 1470,
 8 § 4(1) (emphasis added). This includes NWIPC, which GEO operates pursuant to a contract
 9 effective September 2020 through September 2025. Thus, the provisions about which GEO
 10 primarily complains are not causing it *any* harm, let alone irreparable harm. And any claim of
 11 future harm—which would be insufficient to support a preliminary injunction in any event—
 12 relies on twofold speculation that: (1) DHS will enter into a new contract with GEO once its
 13 current contract terminates, notwithstanding the federal government’s shift away from private
 14 prisons; and (2) the contract will include requirements that are contrary to Washington law. Such
 15 speculative, future harm does not satisfy GEO’s heavy burden of proving irreparable harm
 16 “sufficient to warrant granting a preliminary injunction.” *Caribbean Marine Servs. Co., Inc. v.*
 17 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988).

18 GEO’s argument that it might have to pay \$3 million to upgrade its HVAC system²⁷
 19 suffers the same essential defect. HB 1470 does not require *GEO* to do anything with its HVAC
 20 system, but instead requires *DOH* to promulgate rules about HVAC systems in private detention
 21 facilities. HB 1470, § 2. DOH’s rulemaking is in its infancy, and likely will not be completed
 22
 23

24 ²⁶ Martin Decl., Dkt. #10 ¶¶ 13-18. Martin also claims that the \$101 million that GEO allegedly spent on
 25 land, the building, and equipment at the NWIPC would “*all . . . be lost* if GEO were no longer able to use its facility
 26 for its intended purposes.” *Id.* ¶ 19 (emphasis added). GEO offers no explanation why HB 1470 would somehow
 reduce the value of these assets to \$0.

²⁷ Shakir Decl., Dkt. #9 ¶ 8.

1 for a year or more.²⁸ And of course, the final form those rules take is yet to be determined; until
 2 they are finalized, any assertion of a conflict requiring GEO to pay money is pure speculation.

3 None of GEO's alleged harms are actual or imminent, and none entitle it to a preliminary
 4 injunction.

5 **C. The Balance of Equities and Public Interest in Ensuring Humane Detention Weigh**
 6 **Heavily Against GEO's Requested Injunction**

7 The final two *Winter* factors—the balance of the equities and the public interest—also
 8 weigh heavily in the State's favor. Where the government is a party, these factors merge. *Drakes*
 9 *Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Here, the equities and public
 10 interest tip sharply in the State's favor.

11 **1. Private prisons harm detainee health, safety, and security**

12 More than 20 years ago, a DOJ study reported that “privately operated [detention]
 13 facilities are often plagued by problems associated with the quest for higher earnings.”²⁹ In the
 14 decades since, researchers consistently have confirmed this finding, with the Washington DOH
 15 recently concluding that “incentivized incarceration” is a “public health issue[.]” with “long-
 16 lasting impacts on the physical and emotional health of individuals and communities.”³⁰ This is
 17 despite the conclusions of financial analysts showing that privatizing detention does not result
 18 in cost savings for taxpayers.³¹

19 Concerns about the health and safety impacts of incentivized incarceration are central to
 20 this Court's inquiry into equity and the public interest. As the Ninth Circuit confirmed, “health
 21 and safety” risks to immigrant detainees are a critical part of the preliminary injunction analysis
 22 in suits involving conditions at private detention facilities. *Roman v. Wolf*, 977 F.3d 935,

23 ²⁸ Declaration of Joseph Laxson ¶¶ 9, 14.

24 ²⁹ James Austin & Garry Coventry, U.S. DOJ, Off. of Just. Programs, Bureau of Just. Assistance, *Emerging*
Issues on Privatized Prisons at 29 (Feb. 2001), <https://www.ojp.gov/pdffiles1/bja/181249.pdf>.

25 ³⁰ *Report to the Legislature: Evaluating State and Local Authority and Practices Regarding Private*
Detention Facilities, *supra* note 18, at 20.

26 ³¹ Austin & Coventry, *supra* note 29, at 27; Memo from Yates to Acting Dir. of the Fed. Bureau of Prisons,
supra note 14, at 1 (concluding private prison use by federal government from 1980 to 2016 “d[id] not save
 substantially on costs”).

942-44 (9th Cir. 2020). 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 (citation and internal quotation marks omitted); *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[.]”).

a. Private detention increases the risk of physical danger to detainees

In 2001, a DOJ report found private prisons are responsible for “a significantly higher rate” of “critical incidents” like inmate assaults when compared with publicly run institutions.³² This may be due to the “significantly lower staffing level[s]” and training requirements in private institutions, along with higher rates of staff turnover.³³ Since research and litigation began spotlighting safety outcomes in private prisons, there have been repeated findings that assault, rape, use of force by staff, and other violence occurs at markedly higher rates in private institutions.³⁴ And when inmates report violence, their complaints are sometimes ignored or mocked.³⁵

³² Austin & Coventry, *supra* note 29, at xi.

³³ *Id.* *See also* Curtis R. Blakely & Vic W. Bumphus, *Private and Public Sector Prisons—A Comparison of Select Characteristics*, 68 Fed. Probation J. at 4-5 (June 2004), https://www.uscourts.gov/sites/default/files/fed_probation_june_2004.pdf (reporting data that private sector prisons require 25% less pre-serving training and “experienced officer turnover rates approaching three times that of the public sector[.]”).

³⁴ Blakely & Bumphus, *supra* note 33, at 4-5 (reporting “the private sector experienced more than twice the number of assaults against inmates than did the public sector” even though private prisons generally incarcerate less-serious offenders); *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons*, *supra* note 16, at 44 (“In a majority of the categories we examined, we found that contract prisons incurred more safety and security incidents per capita than comparable BOP institutions,” and “more frequent incidents of” “uses of force” and “lockdowns”).

³⁵ Timothy Williams, *Inside a Private Prison: Blood, Suicide, and Poorly Paid Guards*, *The N.Y. Times* (Apr. 3, 2018), <https://www.nytimes.com/2018/04/03/us/mississippi-private-prison-abuse.html>.

1 In recent years, complaints of widespread sexual violence at private immigrant detention
 2 facilities have proliferated.³⁶ According to one report, the five immigrant detention facilities with
 3 the most sexual assault complaints were *all* privately owned—three by GEO, including NWIPC
 4 at number four.³⁷ And despite—or perhaps because of—the high rate of complaints at NWIPC,
 5 a 2022 University of Washington Center for Human Rights report showed that complaints of
 6 sexual harassment and abuse at NWIPC are routinely dismissed or outright ignored.³⁸

7 Shielding GEO from *any* State oversight of its facilities, including its efforts to address
 8 violence and sexual assault, plainly undermines equity and the public interest.

9 **b. Private detention leads to medical neglect**

10 As with physical and sexual violence, allegations of medical neglect inside private
 11 detention centers have been rampant. The U.S. House of Representatives Committee on
 12 Oversight and Reform issued a report chronicling multiple instances where private detention
 13 providers—including GEO—failed to take detainee health complaints seriously or permit timely
 14 access to medical care.³⁹ The year-long study showed that contractors made detainees wait days
 15 or weeks to visit the medical clinic, failed to notice that detainees were unconscious in their
 16

17 ³⁶ See, e.g., Zeba Warsi, ‘*Immensely Invisible: Women Fighting ICE’s Inaction on Sexual Abuses*, Futuro
 18 Investigates (July 21, 2023), <https://futuroinvestigates.org/investigative-stories/immensely-invisible/immensely-invisible-women-fighting-ices-inaction-on-sexual-abuses/#Private%20Prison%20Companies:%20An%20Added%20Setback%20for%20Accountability>; Bobbi-Jeanne Misick, *New complaint alleges sex assault, medical neglect, abuse of detainee at Louisiana ICE facility*, New Orleans Public Radio (Apr. 10, 2023),
 19 <https://www.wvno.org/immigration/2023-04-10/new-complaint-alleges-sex-assault-medical-neglect-abuse-of-detainee-at-louisiana-ice-facility>; Emily Wu Pearson, *Doctor at South Georgia immigration detention center abused women, investigation finds*, WABE (Nov. 16, 2022), <https://www.wabe.org/doctor-at-south-georgia-immigration-detention-center-abused-women-investigation-finds/>; Lomi Kriel, *ICE guards “systematically” sexually assault detainees in an El Paso detention center, lawyers say*, The Texas Tribune (Aug. 14, 2020, updated Jan. 12, 2021),
 20 <https://www.texastribune.org/2020/08/14/texas-immigrant-detention-ice-el-paso-sexual-abuse/>.

21 ³⁷ Letter from Rebecca Merton, National Independent Monitor for CIVIC & Christina
 22 Fialho, Co-Founder/Executive Director for CIVIC, to Thomas D. Homan, et al., Director for Office
 23 of Detention Policy and Planning, ICE (Apr. 11, 2017), http://www.endisolation.org/wp-content/uploads/2017/05/CIVIC_SexualAssault_Complaint.pdf.

24 ³⁸ *Calls to nowhere: Reports of sexual abuse and assault go unanswered at the NWDC*, *supra* note 12.

25 ³⁹ U.S. H.R., Comm. on Oversight and Reform and Subcomm. on Civil Rights and Civil Liberties, *The*
 26 *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>.

1 living quarters, placed sick detainees in solitary confinement where their conditions worsened,
 2 and failed to distribute prescribed medications.⁴⁰ The delay and denial of care had devastating
 3 results, including permanent hearing loss, permanent paralysis, and death.⁴¹

4 Even when immigration detainees are granted permission to visit the health clinic, the
 5 outcomes are poor. In 2019, the DHS Office for Civil Rights and Civil Liberties reported
 6 receiving numerous complaints that ICE’s Health Service Corps, which provides medical care
 7 inside contract detention facilities, “has systematically provided inadequate medical and mental
 8 health care and oversight to immigration detainees in facilities throughout the U.S.”⁴² These
 9 complaints included forcible medications as a form of behavior control, misdiagnosis of medical
 10 and mental health conditions, serious medication errors, inadequate treatment and monitoring of
 11 detainees in withdrawal from substance use, lack of psychiatric monitoring leading to mental
 12 health deterioration, and inadequate care of multiple detainees who later died in custody.⁴³

13 Similar issues have long plagued medical care at NWIPC. Whistleblowers within DHS
 14 have documented a detainee health care system that is “severely dysfunctional,” resulting in
 15 “preventable harm and death to detainees[.]”⁴⁴ Medical documents, detainee interviews, and
 16 court records reveal “a multitude of complaints about insufficient medical care, including tumors
 17 that grew exponentially while in custody, the denial of surgery for hernias, several-month delays
 18 on the stocking of medical devices such as catheters, . . . and forced isolation of people with
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 20
 21

22 ⁴⁰ *Id.*

23 ⁴¹ *Id.*

24 ⁴² 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://www.aila.org/infonet/dhs-crcl-memo-ice-inadequate-medical-mental-care>.

25 ⁴³ *Id.* at 2-7.

26 ⁴⁴ Ken Klippenstein, *ICE Detainee Deaths Were Preventable: Document*, TYT (June 3, 2019), <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[.]”).

1 mental health issues.”⁴⁵ In only six weeks, DOH received over 30 complaints from NWIPC
2 detainees, including regarding lack of medical attention.⁴⁶

3 UW’s review of more than 3,500 pages of grievances spanning six years revealed that
4 “allegations of medical neglect” were the most common type of complaint regarding detention
5 conditions.⁴⁷ While reviewers did not have access to the medical records or circumstances
6 underlying the grievances, their review showed “detained people at [the NWIPC] routinely
7 report[ed] that when seeking access to medical care, their concerns are ignored, either because
8 GEO guards deny them permission to visit the medical clinic” or because “the medical staff
9 belittles their concerns.”⁴⁸ People detained at NWIPC reported long waits for care, even for acute
10 conditions like cancer, injuries requiring surgery, and liver failure.⁴⁹

11 Finally, when detainees complained about insufficient medical care, their concerns often
12 are labeled “not a grievance.”⁵⁰ A lack of access to detainee medical care at NWIPC—coupled
13 with an inability to raise complaints about medical issues—is a dangerous mix that runs contrary
14 to equity and the public interest.

15 **c. Unsafe and insufficient food are major problems in private detention**

16 Private detention facilities have, for years, been plagued with serious problems related to
17 inadequate and unsafe food. For example, during unannounced inspections at three GEO
18 immigration detention centers in 2018, DHS inspectors found “[f]ood [s]ervice [i]ssues at [a]ll
19 [f]acilities [that] [e]ndanger [d]etainee [h]ealth and [w]elfare[.]”⁵¹ Inspectors labeled some
20 conditions “egregious,” and cited GEO for “unwrapped and unlabeled” meat, “chicken [that]
21

22 ⁴⁵ Melissa Hellmann, *Incarcerated and Infirm: How Northwest Detention Center Is Failing Sick Inmates*,
23 *Seattle Weekly* (Oct. 10, 2018), <https://www.seattleweekly.com/news/incarcerated-and-infirm-how-northwest-detention-center-is-failing-sick-inmates/>.

24 ⁴⁶ Declaration of Wendy Yomiko “Miko” Nanto ¶¶ 7-8.

25 ⁴⁷ *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at 17-32.

26 ⁴⁸ *Id.* at 22.

⁴⁹ *Id.* at 22-27.

⁵⁰ *Id.* at 22.

⁵¹ *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, *supra* note 2, at 3.

1 smelled foul and appeared to be spoiled,” and “food in the freezer [that] was expired.”⁵² At
 2 NWIPC specifically, there have been multiple waves of food poisoning, including one in 2007
 3 that sickened about 300 detainees.⁵³ In recent years, the Tacoma-Pierce County Health
 4 Department has received “multiple complaints about rotten food and maggots in the food at [the
 5 NWIPC].”⁵⁴ In its most recent inspection of the NWIPC, DHS OIG found long-expired food on
 6 shelves and boxes of meat left open and exposed to the air.⁵⁵

7 Other evidence shows that individuals held in private detention frequently go hungry. In
 8 a report summarizing nearly fifty interviews of NWIPC detainees conducted by the Seattle
 9 University School of Law, “[a]bout 80% of the detainees interviewed stated they received an
 10 insufficient quantity of food and were often hungry after meals.”⁵⁶ As a former GEO Kitchen
 11 Supervisor testified at a June 2021 trial involving conditions at the NWIPC, GEO budgets
 12 97 cents per detainee, per meal.⁵⁷ When asked whether GEO was able to prepare and serve
 13 adequate meals within that budget, the witness conceded, “I would say, in my experience, no,”
 14 and further admitted that “[m]y understanding is that [the detainees] seemed to be pretty
 15 hungry.”⁵⁸

16 The food is also poor quality. The same Kitchen Supervisor described menu items as
 17 “low-grade products,” “cheap products,” and “spongy meats.”⁵⁹ He testified that “80 percent of
 18 the products that were served either was beans [or] soy-based meats” like “soy-based beef
 19 granules, soy-based Salisbury steak, soy-based burger patties.”⁶⁰ The Kitchen Supervisor later

20 ⁵² *Id.* at 4.

21 ⁵³ Chien Decl. Ex. 5, Seattle Univ. School of Law Int’l Human Rights Clinic & OneAmerica, *Voices from*
 22 *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>.

23 ⁵⁴ *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at 13.

24 ⁵⁵ *Results of an Unannounced Inspection of Northwest ICE Processing Center in Tacoma, Washington*,
supra note 9, at 9-11.

25 ⁵⁶ *Voices from Detention*, *supra* note 53, at 8.

26 ⁵⁷ Chien Decl. Ex. 6, Testimony of John Patrick Griffin at 41:2-10, 63:4-19 (June 3, 2021).

⁵⁸ *Id.* at 63:22, 62:23-25.

⁵⁹ *Id.* at 83:2-15, 85:16-18.

⁶⁰ *Id.* at 82:13-84:12, 87:14.

described ingredients including “substandard quality food in cans[] . . . [s]ometimes . . . mixed with spiders or grasshoppers[]” and a product called “[p]ink chicken,” a “50-pound block” of unidentifiable “chicken pieces.”⁶¹ According to the Seattle University report, unless a specialized diet has been approved, “detainees do not receive fresh fruit and only rarely receive fresh vegetables.”⁶² Sometimes the canned vegetables have bugs like “grasshoppers” in them, and it is the job of the kitchen staff to “make sure [detainees] didn’t get one of those.”⁶³ Detainee complaints received by DOH indicate that the food tastes of “burned plastic” and contains “metal string” and “splinters.”⁶⁴ Detainee interviews describe the food as “bad, watery, tasteless, rotten, poor quality, low quantity, overcooked, repetitive, and cold. A few detainees who previously spent time incarcerated mentioned that the food was much better and more plentiful in prison.”⁶⁵ Other detainees reported that the food “appears rotten, has been served on dirty trays, and contains bugs.”⁶⁶ These findings are consistent with national findings that, because “[p]rivate providers have a business incentive to keep costs as low as possible,” the end result is “lower-quality food.”⁶⁷

National media reports document allegations that private detention contractors “deliberately skimp on essentials, even food, to coerce detainees to labor for pennies an hour to supplement meager rations.”⁶⁸ Indeed, the lack of quality food in NWIPC was key to coercing detainees into providing low-cost labor for GEO. Before they discontinued the practice in response to a successful lawsuit by the State of Washington, NWIPC operated a work program

⁶¹ Griffin testimony, *supra* note 11, at 154:2-24.

⁶² *Voices from Detention*, *supra* note 53, at 50; *see also* Griffin Testimony, *supra* note 11, at 173:24-174:1 (detainees did “not often” receive fresh foods).

⁶³ Griffin testimony, *supra* note 57, at 83:11-16.

⁶⁴ Nanto Decl. ¶ 9.

⁶⁵ *Voices from Detention*, *supra* note 53, at 50.

⁶⁶ *Id.*

⁶⁷ Natalie Delgadillo, *Maggots With a Side of Dirt? What Privatization Does to Prison Food*, *Governing.com* (Jan. 26, 2018), <https://www.governing.com/archive/gov-private-food-service-prisons-aramark-trinity-ohio-michigan.html>.

⁶⁸ Michelle Conlin & Kristina Cooke, *\$11 toothpaste: Immigrants pay big for basics at private ICE lock-ups*, *Reuters* (Jan. 18, 2019), <https://www.reuters.com/article/us-usa-immigration-detention-idUSKCN1PC0DJ>.

1 in which detainees worked shifts doing janitorial, kitchen, laundry, and other work for just \$1
 2 per day. *See, e.g., Washington v. GEO Grp. Inc.*, 283 F. Supp. 3d 967, 972 (W.D. Wash. 2017).
 3 At trial in that suit, witnesses testified that they worked to avoid going hungry.⁶⁹ There was also
 4 testimony that detainees are forced to work even when they are sick, and that GEO supervisors
 5 mistreat detainee workers.⁷⁰ And, when detainees have refused to work at the NWIPC, there
 6 have been severe consequences: UW’s review of ICE records shows that solitary confinement is
 7 used to discipline detainees for “work stoppage and strike.”⁷¹

8 The insufficient and poor-quality food has resulted in repeated, lengthy hunger strikes at
 9 the NWIPC, sometimes lasting for months and involving up to 1,200 detainees.⁷² Equity and the
 10 public interest are not served by stripping the State’s oversight of GEO’s business model of
 11 profiting by serving food so bad and so paltry that detainees are willing to starve themselves to
 12 call attention to the issue.

13 **d. Private prisons do not provide sufficient hygiene supplies or clean**
 14 **clothes**

15 Private prisons also provide insufficient access to personal hygiene items and clean
 16 laundry. National reports detail that private facilities often provide minimal or no soap, shampoo,
 17 toilet paper, or deodorant.⁷³ Instead of being provided by the facility, these items must be
 18 purchased from the commissary at inflated prices, like \$11.02 for a four-ounce tube of
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22 ⁶⁹ Chien Decl. Ex. 7, Testimony of Orlando Marquez at 175:3-22 (June 4, 2021); Chien Decl. Ex. 8,
 Testimony of Maria Gomez Sotelo at 78:15-24 (Oct. 19, 2021).

23 ⁷⁰ Marquez testimony, *supra* note 69, at 173:6-175:12 (detainee not granted permission “to go back to my
 cell [from his work shift] because I was feeling bad, dizzy and with a headache” and that kitchen supervisors
 24 engaged in “abuse . . . yelling and . . . poor treatment”); Chien Decl. Ex. 9, Testimony of Maria Nayra Gomez
 Sotelo at 70:3-22 (June 7, 2021) (detainee’s testimony that she worked to buy food for herself and “some elderly
 ladies” in her housing unit because “[t]he food that they would give us was not enough”).

25 ⁷¹ *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at 46.

26 ⁷² Shapiro, *supra* note 13; Carter, *supra* note 13; Needles, *supra* note 13; KUOW Staff, *supra* note 13;
 Gnull, *supra* note 13.

⁷³ Conlin & Cooke, *supra* note 68.

toothpaste.⁷⁴ In cases where toilet paper has run out, detained people have been told to “improvise” or “use [their] fingers.”⁷⁵

Access to clean laundry has also been a persistent problem at the NWIPC, leading to hunger strikes in 2014 and 2017, and the filing of hundreds of grievances.⁷⁶ Detainees complained that their clothes are washed in the same machines as the dirty mop heads used to wash the floors, with the result that clothes come back from the laundry gray and foul-smelling.⁷⁷ UW documented multiple grievances related to women’s underwear, with detainees begging for clean panties instead of “old yellow stained disgusting panties” or “yellow or brown used panties” that are “filthy” and “disgusting and unsanitary.”⁷⁸ The response has been to mark such complaints as “[n]ot a grievance.”⁷⁹ A lack of concern for the hygiene of detained people is inconsistent with the public interest or principles of equity.

e. Private detention leads to improper use of solitary confinement

Misuse of solitary confinement is also a significant issue in private detention centers. Studies examining the potential harms associated with isolated confinement have found higher rates of acute psychiatric harms, including hyperresponsivity, panic attacks, difficulty with concentration and memory, paranoia, and delirium.⁸⁰ The DOJ reported that contract prisons were “improperly housing new inmates in Special Housing Units (SHU), which are normally used for disciplinary or administrative segregation,” despite the fact that the “inmates had not

⁷⁴ *Id.*; Angélica Cházaro & Dan Berger, *Guest: What’s behind the hunger strike at Northwest Detention Center*, The Seattle Times (Mar. 19, 2014), <https://www.seattletimes.com/opinion/guest-whatsquos-behind-the-hunger-strike-at-northwest-detention-center/>.

⁷⁵ Conlin & Cooke, *supra* note 68, at 56.

⁷⁶ *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at 14-16.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See, e.g., Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. of Law & Policy 325, 335-36 (Jan. 2006), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy; Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. of the Am. Acad. of Psychiatry & the Law 104, 104 (Mar. 2010), <http://jaapl.org/content/jaapl/38/1/104.full.pdf> (“Solitary confinement . . . can be as clinically distressing as physical torture.”).

engaged in any of the behaviors . . . that would justify being placed in such administrative or disciplinary segregation.”⁸¹ DHS has likewise documented “[i]nnappropriate [s]egregation [p]ractices” at contract immigrant detention facilities that “infringe on detainee rights.”⁸² Inspectors found that contractors—including GEO—placed detainees in disciplinary segregation when the standards did not permit it, overly restrained and strip-searched detainees during their time in solitary confinement, and did not offer detainees “any recreation or showers while in segregation.”⁸³

In 2020, UW’s Center for Human Rights made specific findings about the prevalence of solitary confinement at the NWIPC. Researchers discovered that NWIPC “held people in solitary confinement, on average, *longer than any other ICE dedicated facility in the nation*.”⁸⁴ The average length of stay in solitary confinement at NWIPC is more than double the national average.⁸⁵ The study further concluded that, “[i]n violation of ICE’s own rules, solitary confinement is frequently used [by GEO] on detained people who are mentally ill and others who exercise their First Amendment rights[.]” like speaking out about poor conditions at NWIPC.⁸⁶ One detainee complained to DOH that they were held in isolation for two weeks for not answering a GEO staff’s question.⁸⁷ ICE recently admonished GEO for multiple violations of federal standards related to solitary confinement, including because GEO’s warden had

⁸¹ *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons*, *supra* note 16, at ii-iii.

⁸² *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, *supra* note 2, at 5-7.

⁸³ *Id.*; see also Hannah Rappleye et al., *Thousands of Immigrants Suffer in Solitary Confinement in U.S. Detention Centers*, NBC News (May 20, 2019), <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881> (reviewing government documents that “paint a disturbing portrait of a system where detainees are sometimes forced into extended periods of isolation for reasons that have nothing to do with violating any rules,” and where “[s]olitary confinement was being used as the first resort, not the last resort”); U.S. DHS, Off. of the Inspector Gen., *ICE Needs to Improve Its Oversight of Segregation Use in Detention Facilities* (Oct. 13, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-10/OIG-22-01-Oct21.pdf> (concluding that “ICE did not . . . maintain evidence showing it considered alternatives to segregation for 72 percent of segregation placements[.]” or “record 13 percent of the segregation placements as required[.]”).

⁸⁴ *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at 35.

⁸⁵ *Id.* at 36-37.

⁸⁶ *Id.* at 33, 36-39.

⁸⁷ Nanto Decl. ¶ 12.

1 managed to visit the solitary confinement unit just once in the two weeks prior to the inspection,
2 instead of the daily visit required by federal standards.⁸⁸

3 Given the significant risks to detainee safety at the NWIPC consistently and for many
4 years, equity and the public interest weigh against enjoining HB 1470.

5 **2. Equity and the public interest favor improved transparency, accountability,**
6 **and oversight of detention facilities**

7 Enjoining HB 1470 would also run counter to the public’s interest in accountability.
8 Improved public oversight and accountability further the public interest. *See, e.g., Valentine v.*
9 *Collier*, 978 F.3d 154, 166 (5th Cir. 2020) (“the public interest favors having politically
10 accountable officials . . . determine how to allocate resources[.]” in the prison context); *Conn.*
11 *State Police Union v. Rovella*, 494 F. Supp. 3d 210, 224-25, 230 (D. Conn. 2020) (denying
12 preliminary injunction because public interest and equity supported “the state’s salutary efforts
13 to enhance transparency and promote accountability in law enforcement[.]”); *Nat’l Head Start*
14 *Ass’n v. Dep’t of Health & Hum. Servs.*, 297 F. Supp. 2d 242, 251 (D.D.C. 2004) (denying
15 temporary restraining order where granting it would thwart “[t]he public[’s] . . . strong interest
16 in the effective and transparent administration of [taxpayer-funded] programs[.]”). But the
17 Legislature has found “that private prisons and detention centers are less accountable for what
18 happens inside those facilities than state-run facilities.” RCW 70.395.010(5).

19 HB 1470 benefits transparency and accountability by allowing more daylight into
20 detention facilities—including at the NWIPC. GEO’s recordkeeping has been glaringly poor,
21 making it difficult for regulators to confirm that detainees are safe and well. For example, “a
22 comparison of internal and external data reveals that as many as 86% of [NWIPC] solitary
23 placements during a one year period were neither logged in ICE’s monitoring system nor
24

25 ⁸⁸ U.S. DHS, U.S. ICE, Off. of Pro. Resp., Inspections & Det. Oversight Div., *Office of Detention*
26 *Oversight Compliance Inspection: Tacoma ICE Processing Center* at 9-10 (June 22-25, 2020),
https://www.ice.gov/doclib/foia/odo-compliance-inspections/tacomaIceProcessingCntrTacomaWA_Jun22-25_2020.pdf.

1 reported to the public.”⁸⁹ GEO also has a poor record of documenting and responding to detainee
 2 grievances, even though the NWIPC “had the highest grievance volume of the facilities [ICE]
 3 inspected” in 2019.⁹⁰ GEO itself will not even turn over grievances or other records about its
 4 operations—it “decline[s] to respond to FOIA requests, citing its status as a private company.”⁹¹
 5 Of course, the DHS Inspector General has access to GEO’s records, and that office concluded
 6 that GEO violates ICE’s requirements for “maintain[ing] grievance logs,” that almost half of
 7 detainee grievances received no response during the mandatory five-day response window, and
 8 that almost a third went unaddressed far longer.⁹²

9 But the DHS Inspector General’s visit to the NWIPC is a rare event, and ICE itself
 10 inspects only “[a]bout once every three years.”⁹³ More often, inspections are conducted by one
 11 of ICE’s contract inspectors. The DHS Inspector General itself is skeptical of ICE’s contract
 12 inspectors, and cited “examples of inspectors contracted by ICE submitting false information
 13 that made detention facilities look like they were following regulations when they weren’t,”
 14 private facilities “failing to notify ICE about alleged or proven sexual assaults,” and contract
 15 staff “conducting strip searches with no reasonable suspicion.”⁹⁴ Indeed, ICE’s own employees
 16 express the view that inspections conducted by private contractors are “useless” and “very, very,
 17 very difficult to fail.”⁹⁵

20 ⁸⁹ *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at 33.

21 ⁹⁰ U.S. DHS, Off. of the Inspector Gen., *Capping Report: Observations of Unannounced Inspections of*
 22 *ICE Facilities in 2019* at 8 (July 1, 2020), [https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-45-](https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-45-Jul20.pdf)
 23 [Jul20.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-45-Jul20.pdf).

24 ⁹¹ *Human Rights Conditions in the Northwest Detention Center*, *supra* note 8, at 37.

25 ⁹² *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019*, *supra* note 90,
 26 at 7-8.

⁹³ *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or*
 27 *Systemic Improvements*, *supra* note 6, at 3.

⁹⁴ Bob Ortega, *Migrants describe hunger and solitary confinement at for-profit detention center*, CNN
 28 Investigates (July 11, 2018), [https://www.cnn.com/2018/07/11/us/northwest-immigrant-detention-center-geo-](https://www.cnn.com/2018/07/11/us/northwest-immigrant-detention-center-geo-group-invs/index.html)
 29 [group-invs/index.html](https://www.cnn.com/2018/07/11/us/northwest-immigrant-detention-center-geo-group-invs/index.html).

⁹⁵ *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or*
 30 *Systemic Improvements*, *supra* note 6, at 7-8 & n.12.

1 Taken together, the poor recordkeeping, lack of records access, and unreliable
 2 inspections mean that lawmakers, state and local regulators, and the public are in the dark about
 3 what goes on inside private detention facilities. HB 1470 furthers the public interest by
 4 increasing facility accountability.

5 **3. GEO's asserted interests cannot overcome the State's interests in health,**
 6 **welfare, and transparency**

7 GEO's central argument is that an alleged constitutional violation is enough to merit
 8 relief—full stop. Dkt. #8 at p. 31. But the Ninth Circuit has rejected “general pronouncements
 9 that a Supremacy Clause violation alone constitutes a sufficient harm to warrant an injunction.”
 10 *California*, 921 F.3d at 894.

11 What GEO is *really* trying to avoid is the potential cost in being held to account to meet
 12 basic standards of humane confinement. But those alleged costs are enormously speculative, and
 13 in any event when “[f]aced with . . . a conflict between financial concerns and preventable
 14 human suffering, [courts] have little difficulty concluding that the balance of hardships tips
 15 decidedly in . . . favor” of avoiding “physical and emotional suffering.” *Lopez v. Heckler*, 713
 16 F.2d 1432, 1437 (9th Cir. 1983).

17 **V. CONCLUSION**

18 The Court should deny GEO's Motion for Preliminary Injunction.

19 DATED this 7th day of August 2023.

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9 I certify that this memorandum contains 8,373
10 words, in compliance with the Local Civil Rules.
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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 7th day of August 2023, at Olympia, Washington.

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