

1 YAAKOV M. ROTH
2 Acting Assistant Attorney General
3 DREW C. ENSIGN
4 Deputy Assistant Attorney General
5 ANTHONY P. NICASTRO
6 Acting Director
7 J. MAX WEINTRAUB
8 Senior Litigation Counsel
9 United States Department of Justice
Civil Division
Office of Immigration Litigation
General Litigation & Appeals Section
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
202-305-7551
jacob.weintraub@usdoj.gov

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 STATE OF WASHINGTON,)
13 Plaintiff,)
14 v.) No. 2:25-cv-00099-RLP
15 ADAMS COUNTY SHERIFF'S OFFICE and) STATEMENT OF INTEREST
16 ADAMS COUNTY,) ON BEHALF OF
17 Defendants.) THE UNITED STATES OF AMERICA
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STATUTORY AUTHORITY TO FILE STATEMENT OF INTEREST

Pursuant to 28 U.S.C. § 517, the United States files the following Statement of Interest in support of Defendants Adams County and Adams County Sheriff's Office against the claims of Plaintiff State of Washington that Defendant has violated RCW 10.93.160, RCW 43.10.315, and RCW 43.17.425.

Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” Under 28 U.S.C. § 518(b), “[w]hen the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.” These statutes provide a mechanism for the United States to submit its views in cases in which the United States is not a party, but nonetheless has a vested interest in the case. *See, e.g., Flatow v. Islamic Republic of Iran*, 305 F.3d 1249, 1252-53 & n.5 (D.C. Cir. 2002).

INTEREST OF THE UNITED STATES

The United States has a substantial interest in, and long history of, working cooperatively with state and local governments on a range of law-enforcement priorities, including immigration. These cooperative efforts are critical to enabling the federal government to identify and remove the hundreds of thousands of individuals who violate immigration laws each year, including many thousands who are convicted of serious crimes.

1 This undertaking fulfills the Executive Branch's responsibility to enforce federal statutes and
2 to protect public safety.

3 Washington's "Keep Washington Working Act" strikes at the heart of this cooperative
4 scheme. The Act, by intent and design, interferes with the federal government's enforcement of
5 federal immigration law. And it violates the Supremacy Clause of the United States
6 Constitution.

7 Washington's attempt to enforce the Act against Defendants represents an important
8 decision by the State to prevent law enforcement agencies ("LEAs") from cooperating with
9 federal immigration enforcement. That enforcement action is unlawful, because the Act itself is
10 unlawful. Under the federal immigration laws, Washington cannot prevent LEAs from
11 choosing to cooperate with the federal government to enforce the law. Its attempt to do so here
12 should be dismissed.

14 The United States takes no position on the merits of any other issue not addressed in the
15 attached Statement of Interest.

16 STATEMENT OF THE CASE

17 I. STATUTORY AND REGULATORY BACKGROUND

19 The federal government "has broad, undoubted power over the subject of immigration
20 and the status of aliens," based in part on the federal government's power to "establish a[]
21 uniform Rule of Naturalization," and in part on the federal government's inherent power as a
22 sovereign to police its borders and exclude or deport removable aliens. *Arizona v. United*
23 *States*, 567 U.S. 387, 394 (2012) (quoting U.S. Const. art. I, § 8, cl. 4); *see also Kleindienst v.*
24 *Mandel*, 408 U.S. 753, 765-66 & n.6 (1972). In exercising those powers, Congress established
25 through the Immigration and Nationality Act ("INA") a cooperative system where state and
26

1 local governments play a role in enforcing the federal immigration laws. *See, e.g.*, 8 U.S.C.
2 § 1101 *et seq.* Indeed, “[c]onsultation between federal and state officials is an important feature
3 of the immigration system.” *Arizona*, 567 U.S. at 411. As the Second Circuit has explained:
4 “Absent any cooperation at all from local officials,” the immigration system—like other
5 federal programs—“may fail or fall short of [its] goals[.]” *New York v. United States*, 179 F.3d
6 29, 35 (2d Cir. 1999).

7 At every turn, the INA’s structure and design reflects a system where the federal
8 government is able to partner with state and local governments regarding immigration. A prime
9 example is the “detainer” scheme Congress has established. Specifically, the INA permits state
10 and local law enforcement officers to cooperate with the federal government by responding to
11 requests for assistance contained in federal “immigration detainers,” including requests issued
12 by U.S. Customs and Border Protection (“CBP”) and ICE, the components of DHS that are
13 responsible for immigration enforcement at the border and in the interior of the country,
14 respectively. *See* 8 U.S.C. §§ 1226, 1357. An immigration detainer provides notice of DHS’s
15 intent to assume custody of a removable alien detained in the custody of another law
16 enforcement agency and seeks state or local cooperation in that effort. *See* 8 U.S.C. §§ 1226,
17 1357(d); 8 C.F.R. § 287.7(a), (d). Further, on January 29, 2025, the President signed into law
18 the Laken Riley Act. *See* Laken Riley Act, Pub L. 119-1. (2025). Among other things, the
19 Laken Riley Act amended 8 U.S.C. § 1226(c) to provide that the “Secretary of Homeland
20 Security shall issue a detainer for an alien described in paragraph (1)(E)[.]” 8 U.S.C.
21 § 1226(c)(3). Acting on its long-recognized authority to arrest and detain noncitizens, DHS
22 promulgated 8 C.F.R. § 287.7, describing detainers and expressing that they are issued
23 pursuant to 8 U.S.C. §§ 1226 and 1357.

1 An immigration detainer asks a law enforcement agency, state, or locality to: (1) notify
2 DHS of the alien’s release date from local custody; and (2) detain the alien for up to 48 hours
3 beyond when the individual would otherwise be released on state charges. DHS issues
4 detainers based on its determination that it has probable cause to believe that the individual is
5 removable.¹ Immigration detainer requests ensure the safe transfer of criminals from state to
6 federal custody in a secure environment, rather than requiring federal officials to make more
7 dangerous arrests in public or private places. 8 C.F.R. § 287.7(a), (d); *see also*, “ICE’s 287(g)
8 Program,” <https://www.ice.gov/identify-and-arrest/287g> (last visited Apr. 15, 2025) (“The
9 287(g) Program enhances the safety and security of our nation’s communities by allowing ICE
10 Enforcement and Removal Operations (ERO) to partner with state and local law enforcement
11 agencies to identify and remove criminal aliens who are amenable to removal from the U.S.”).

13 Additionally, federal authorities must “make available” to state and local authorities
14 “investigative resources . . . to determine whether individuals arrested by such authorities for
15 aggravated felonies are aliens[.]” 8 U.S.C. § 1226(d)(1)(A). Likewise, federal officials must
16 also “designate and train officers and employees . . . to serve as a liaison to” state and local
17 officials “with respect to the arrest, conviction, and release of any alien charged with an
18 aggravated felony[.]” *Id.* § 1226(d)(1)(B); *see id.* §§ 1226(c), 1231(a). And state and local
19 officials may “cooperate with the [federal government] in the identification, apprehension,
20 detention, or removal of aliens not lawfully present in the United States.” *Id.* § 1357(g)(10)(B).

22
23 ¹ DHS detainers must be accompanied by a signed administrative warrant of arrest issued
24 pursuant to 8 U.S.C. §§ 1226 or 1231(a). *See Gonzalez*, 975 F.3d at 799 (“a signed
25 administrative arrest warrant issued pursuant to 8 U.S.C. §§ 1226 or 1231(a)—INA provisions
26 concerning the [Secretary]’s authority to perform arrests by warrant and detain certain aliens—
must now accompany a detainer.”); *see also City of El Cenizo v. Texas*, 890 F.3d 164, 187 (5th
Cir. 2018) (noting that a detainer request must be accompanied by an administrative warrant
and “evidences probable cause of removability in every instance”).

Congress, further, has authorized the Department of Homeland Security (“DHS”) to enter into formal cooperative agreements with states and localities. *See* 8 U.S.C. § 1357(g). Under these agreements, appropriately trained and qualified state and local law enforcement officers may perform specified functions of a federal immigration officer in relation to the investigation, apprehension, or detention of aliens. 8 U.S.C. § 1357(g)(1)-(9). State and local officers’ activities under these agreements are “subject to the direction and supervision of the [Secretary of Homeland Security].” 8 U.S.C. § 1357(g)(3). Informally, even in the absence of a written agreement, Congress has established that state and local law enforcement officers may “communicate with the [Secretary] regarding the immigration status of any individual,” or “otherwise . . . cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” 8 U.S.C. § 1357(g)(10); *see also* 8 U.S.C. § 1324(c) (authorizing state and local law enforcement officers to make arrests for violations of the INA’s prohibition against smuggling, transporting, or harboring aliens); 8 U.S.C. § 1252c (affirming state and local officers’ authority to arrest certain felons who have unlawfully returned to the United States). Section 1373 further requires federal officials to “respond to an inquiry” by state or local officials “seeking to verify or ascertain the citizenship or immigration status of any individual within the[ir] jurisdiction.” *Id.* § 1373(c); 8 U.S.C. § 1644; *see also* 6 U.S.C. § 482(b) (requiring information-sharing among federal agencies).

The Supreme Court has also recognized that information sharing among federal, state, and local governments is essential to the effective enforcement of the immigration laws. *See, e.g., Arizona*, 567 U.S. at 412 (noting Congress “has encouraged the sharing of information about possible immigration violations”). Toward that goal, Congress has prevented states and localities from adopting laws or policies that “prohibit[] or in any way restrict” the ability of

1 state and local law enforcement officers to cooperate with federal officials by sending and
2 receiving “information regarding the citizenship or immigration status, lawful or unlawful, of
3 any individual,” or maintaining and exchanging such information. 8 U.S.C. § 1373(a)-(b); *see*
4 *also* 8 U.S.C. § 1644 (similar). Congress enacted these provisions “to prevent any State or local
5 law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or
6 State court that prohibits or in any way restricts any communication between State and local
7 officials” and the former Immigration and Naturalization Service. 3 H.R. Rep. No. 104-725, at
8 383 (1996) (Conf. Rep. to Welfare Reform Act, codified at 8 U.S.C. § 1644). Congress further
9 provided in 8 U.S.C. § 1373 that DHS “shall respond to an inquiry by a Federal, State, or local
10 government agency, seeking to verify or ascertain the citizenship or immigration status of any
11 individual within the jurisdiction of the agency for any purpose authorized by law, by
12 providing the requested verification or status information.” 8 U.S.C. § 1373(c). Section 1373
13 “prohibits state and local governments and officials … from directly restricting the voluntary
14 exchange of immigration information’ with federal immigration authorities’.” *State v. Dep’t of*
15 *Just.*, 951 F.3d 84, 112 (2d Cir. 2020) (quoting *City of New York*, 179 F.3d at 32-33).

18 II. WASHINGTON’S KEEP WASHINGTON WORKING ACT

19 In 2019, Washington enacted the Keep Washington Working Act (“KWW”), which
20 Washington concedes “prohibits state and local law enforcement agencies from engaging or
21 assisting in civil immigration enforcement,” bars them from “detain[ing], or hold[ing]
22 individuals in custody based solely on civil immigration warrants or detainers, or based on
23 detention agreements with federal immigration authorities,” and directs that “they may not
24 facilitate contact between federal authorities and individuals in custody solely for civil
25 immigration enforcement purposes.” ECF No. 1-2 ¶ 4.22.

1 KWW works as intended. It prohibits local law enforcement agencies “from detaining
2 an individual or holding them in custody solely for the purpose of determining their
3 immigration status or solely based on a civil immigration detainer or warrant.” ECF. No. 1-2
4 ¶4.28 (quoting RCW 10.93.160(7), (8)). As Washington itself puts it, KWW prohibits local
5 law enforcement agencies “from entering into agreements with federal immigration authorities
6 to enforce civil immigration law, or to detain individuals arrested on civil immigration
7 violations.” *Id.* (quoting RCW 10.93.160(11), (12)). Moreover, KWW prohibits local law
8 enforcement agencies “from using their facilities or resources to facilitate civil immigration
9 enforcement, ensuring that those resources remain dedicated to the purpose of enforcing state
10 and local criminal law,” further barring LEAs from granting federal immigration authorities
11 “access to interview an individual in the custody of local law enforcement about a noncriminal
12 matter unless access is required by state or federal law, a court has ordered that such access be
13 granted, or the individual in custody has consented in writing to be interviewed.” *Id.* ¶ 4.29
14 (quoting RCW 43.17.425, RCW 17 43.10.315, and RCW 10.93.160(6)).

16 Washington has brought this suit against Adams County and its Sheriff’s Office for
17 doing exactly what the immigration laws contemplate: Cooperating with the federal
18 government to help enforce federal law—such as by sharing critical information with federal
19 immigration authorities. Washington insists these actions are all proscribed by KWW. But that
20 is no answer, because KWW is itself unlawful, in violation of the Supremacy Clause of the
21 United States Constitution.

1 **ARGUMENT**

2 **WASHINGTON'S KEEP WASHINGTON WORKING ACT**
3 **VIOLATES THE SUPREMACY CLAUSE**

4 Washington asserts KWW is lawful, because it does not “impede” federal officials from
5 accomplishing their work. ECF No. 1-2 ¶¶ 1.2, 1.8. But that is *exactly* what KWW was
6 designed to do. And it has accomplished that end—actively facilitating aliens’ evasion of
7 federal law in Washington. That is unlawful, in violation of the Supremacy Clause. Indeed,
8 KWW contravenes the Supremacy Clause for a host of independent reasons, and virtually at
9 every turn.

10 **A. KWW Unlawfully Regulates the Federal Government.**

11 KWW unlawfully regulates the federal government by preventing federal agents from
12 using their Congressionally authorized tools to effectuate alien detentions and removals.
13 Stemming from the Supremacy Clause, the doctrine of intergovernmental immunity prevents
14 Washington from regulating the activities of the Federal government. *See Mayo v. United*
15 *States*, 319 U.S. 441, 445 (1943) (“[T]he activities of the Federal government are free from
16 regulation by any state.”); *see also McCulloch*, 17 U.S. (4 Wheat.) at 436 (explaining that the
17 states have no power to “in any manner control” the operations of the federal government);
18 *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 190 (1956) (explaining that “the immunity of the
19 instruments of the United States . . . extends to a requirement that they desist from performance
20 until they satisfy a state officer” (quoting *Johnson v. Maryland*, 254 U.S. 51, 57 (1920))). Thus,
21 “even in the absence of a specific federal law, federal officers are immune from state
22 interference with acts ‘necessary and proper’ to the accomplishment of their federal duties.”
23 *United States v. Ferrara*, 847 F. Supp. 964, 968 (D.D.C. 1993), *aff'd* 54 F.2d 825 (D.C. Cir.
24 1995) (citing *Cunningham v. Neagle*, 135 U.S. 1 (1890)).

1 Under those principles, the provisions of KWW that Washington charges Adams
2 County and Adams County Sheriff's Office with violating, as alleged in the Complaint, *see*
3 ECF No. 1-2 ¶ 5.8 (citing RCW 7.24.010, RCW 7.24.080, and RCW 7.24.190), improperly
4 regulate the federal government. Specifically, KWW precludes local law enforcement agencies
5 from honoring ICE detainer requests or from arresting, detaining, or holding individuals in
6 custody "based solely on civil immigration warrants or detainees." ECF No. 1-2 ¶ 4.22 (citing
7 RCW 43.17.420). By refusing to honor civil detainees expressly authorized by Congress and
8 creating a *de facto* requirement that federal immigration authorities obtain a criminal warrant to
9 arrest or take custody of a detained alien, Washington has unlawfully burdened the use of these
10 means for federal immigration officials to carry out their statutory functions. Washington's
11 enforcement of the provisions of KWW at issue here, therefore, effects direct regulation of the
12 federal government. Congress expressly provided that "[o]n a warrant issued by the Attorney
13 General, an alien may be arrested and detained pending a decision on whether the alien is to be
14 removed from the United States." 8 U.S.C. § 1226(a). Further, through the Laken Riley Act,
15 Congress amended 8 U.S.C. § 1226(c) to provide that the "Secretary of Homeland Security
16 shall issue a detainer for an alien described in paragraph (1)(E)[.]" 8 U.S.C. § 1226(c)(3). And
17 the Supreme Court has acknowledged the role that administrative warrants play in the
18 detention and removal process. *See Arizona*, 567 U.S. at 407–08 (noting that the Attorney
19 General has discretion to issue warrants, which are executed by federal officers).

22 Whereas administrative warrants issue on probable cause that the individual is an alien
23 who is subject to removal (which does not necessarily require that the alien committed a
24 criminal offense, *see, e.g.*, 8 U.S.C. §§ 237(a)(1)(C), (D)), criminal judicial warrants issue on
25 probable cause that a crime has been committed, *see Berger v. State of New York*, 388 U.S. 41,
26

1 55 (1967). Congress allows federal agents to detain illegal aliens under the former standard,
2 but Washington, through the provisions of KWW, prevents federal agents from doing so unless
3 they satisfy the latter, higher standard. These provisions, therefore, foreclose federal
4 immigration officials' use of the congressionally authorized detention method and directly
5 impose a different method, with a different standard, on the federal government for
6 effectuating detentions. Washington has no such power to prevent federal agents from carrying
7 out their duties "until they satisfy a state officer." *See Leslie Miller*, 352 U.S. at 190; *see also*
8 *Arizona*, 567 U.S. at 406 (recognizing that "a conflict in technique can be fully as disruptive to
9 the system Congress erected as conflict in overt policy" (alterations and citation omitted)).
10

11 Washington's denial of ICE officials' access to otherwise public state and local
12 facilities likewise regulates federal functions. Specifically, Washington has conceded in its
13 complaint, by barring federal immigration authorities from interviewing aliens in custody
14 regarding a noncriminal matter (citing RCW 10.93.160(6)(a)); by barring federal officials
15 federal immigration authorities access to aliens in custody without first obtaining the alien's
16 written consent to be interviewed by federal immigration authorities (citing RCW
17 10.93.160(6)(b); and by barring localities from honoring federal immigration warrants or
18 detainers (citing RCW 43.17.420), Washington forces federal immigration officers to engage
19 in difficult and dangerous efforts to rearrest aliens who were previously in local custody.
20

21 Collectively, these effects of Washington's KWW necessarily "'require[] ICE to
22 entirely transform its approach to' its sovereign function of transporting and removing
23 noncitizen detainees." *See United States v. King County*, 122 F.4th 740, 756 (9th Cir. 2024).
24 "Because this impermissibly 'override[s] the federal government's decision, pursuant to
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1 discretion conferred by Congress,” the intergovernmental immunity doctrine’s regulation
2 prohibition bars KWW. *See id.*

3 **B. KWW Unlawfully Discriminates Against the Federal Government.**

4 The doctrine of intergovernmental immunity also prohibits states from discriminating
5 against the Federal government or even just a part of it. *See North Dakota v. United States*, 495
6 U.S. 423, 434–36 (1990). A state law discriminates against the federal government “by
7 singling out the Federal government for unfavorable treatment.” *United States v. Washington*,
8 596 U.S. 832, 839 (2022). And *any* discriminatory burden on the federal government is
9 impermissible. *See Dawson v. Steager*, 586 U.S. 171, 171 (2019).² Although state laws that
10 innocuously “touch[] on an exclusively federal sphere [are] not enough to establish
11 discrimination,” *McHenry Cnty. v. Kwame Raoul*, 44 F.4th 581, 594 (7th Cir. 2022), state laws
12 that uniquely *burden* federal activities violate this nondiscrimination rule. And courts presume
13 that such laws are invalid absent clear congressional authorization for that kind of state
14 regulation. *See Washington*, 596 U.S. at 839; *see also King County*, 122 F.4th at 757 (finding
15 unlawful discrimination where a County Order directed local officials to ensure that operators
16 who leased space from the County’s airport would not service ICE charter flights).

17 The provisions of KWW unlawfully discriminate against the federal government by
18 singling out federal immigration enforcement for unfavorable treatment. Indeed, KWW
19 facially targets federal immigration authorities, denying them access to detainees, state and
20 local facilities, and information absent a criminal warrant. *See ECF. No. 1-2 ¶4.28* (prohibiting
21 local law enforcement agencies “from detaining an individual or holding them in custody

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² The principles of the intergovernmental tax immunity doctrine apply to the general
intergovernmental immunity doctrine. *See North Dakota*, 495 U.S. at 434–39.

1 solely for the purpose of determining their immigration status or solely based on a civil
2 immigration detainer or warrant" (quoting RCW 10.93.160(7), (8); and "from entering into
3 agreements with federal immigration authorities to enforce civil immigration law, or to detain
4 individuals arrested on civil immigration violations" *Id.* (quoting RCW 10.93.160(11), (12)).
5 Moreover, Washington, through KWW, prohibits local law enforcement agencies "from using
6 their facilities or resources to facilitate civil immigration enforcement, ensuring that those
7 resources remain dedicated to the purpose of enforcing state and local criminal law," further
8 barring LEAs from granting federal immigration authorities "access to interview an individual
9 in the custody of local law enforcement about a noncriminal matter unless access is required by
10 state or federal law, a court has ordered that such access be granted, or the individual in
11 custody has consented in writing to be interviewed." *Id.* ¶ 4.29 (quoting RCW 43.17.425, RCW
12 17 43.10.315, and RCW 10.93.160(6)).

14 These provisions therefore treat federal immigration authorities less favorably than the
15 general public and other law enforcement agencies. On their face, the provisions of KWW do
16 not prevent state and local agents from sharing the information that federal immigration
17 authorities seek, including release dates and contact information, with anyone else—including
18 members of the public and other law enforcement agencies. *See, e.g.*, RCW 43.17.425, RCW
19 17 43.10.315, and RCW 10.93.160(6). The prohibitions Washington has imposed, however,
20 apply solely against federal officers and not law enforcement officers from other states or
21 localities. KWW, therefore "treats someone else better than it treats [federal immigration
22 authorities]." *North Dakota*, 495 U.S. at 438 (quoting *Washington v. United States*, 460 U.S.
23 536, 544 (1983)).

1 Washington cannot plausibly argue that differential treatment of federal immigration
2 authorities is permissible here because the more favorably treated groups are not “similarly
3 situated” to ICE. *See McHenry County*, 44 F.4th at 594). Under that argument, because “only”
4 ICE carries out civil immigration enforcement, there could be no entity “similarly situated” to
5 ICE, and, absent such a comparator, Washington would be free to discriminate with impunity.
6 Singling out functions that only the federal government performs for differential treatment is
7 *ipso facto* evidence of discrimination. Moreover, the provisions of KWW do not single out an
8 exclusively federal function innocuously—they discriminatorily burden the United States in
9 carrying out that function *specifically* because Washington disagrees with federal policy.
10

11 The Court should not read the “similarly situated” language so narrowly as to foreclose
12 membership by others to evade a finding of discrimination. To the contrary, if the only
13 difference justifying the discriminatory treatment is the federal agency’s enforcement of a
14 particular federal law, the discrimination is clear. *See King County*, 122 F.4th at 757–58
15 (rejecting the County’s argument that “significant differences” between ICE and others who
16 chartered flights justified the discriminatory treatment of ICE where the difference was ICE’s
17 role in carrying out deportations); *United States v. California*, 2018 WL 5780003, at *6 (E.D.
18 Cal. Nov. 1, 2018) (rejecting California’s argument that it could discourage conveyances of
19 federal public lands because those lands, unlike private lands, are preserved for the public’s
20 benefit: “This quality of federal public lands, however, is so directly linked to their federal
21 status that it cannot serve as the basis for non-discriminatory differentiation.”); *cf. McHenry*
22 *County*, 44 F.4th at 594 (finding the TRUST Act’s prohibition on state and local officials
23 entering into contracts to house immigration detainees in state or local facilities was
24 nondiscriminatory partly because the provision touched on a federal sphere in an innocuous
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1 way but did not treat anyone else better than the federal government). Here, the federal
2 government suffers the “differential treatment” the *McHenry County* Court found lacking
3 because other law enforcement agencies and the public are given access to government
4 facilities, detainees, and information on more favorable terms than are available to federal
5 immigration authorities. *See, e.g.*, ECF No. 1-2 ¶¶ 4.22 (citing RCW 43.17.420), 4.23 (citing
6 RCW 10.93.160(4); RCW 43.17.425), 4.25 (citing RCW 10.93.160(15)), and 4.28 (citing
7 RCW 10.93.160(7), (11), 12)).

8 More fundamentally, the Court should consider the “similarly situated” language in
9 context. Since *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), the Supreme Court has
10 held that states may not impose taxes directly on the federal government. But states may
11 impose nondiscriminatory taxes that indirectly increase costs for the federal government so
12 long as the tax is “imposed equally on the other similarly situated constituents of the State.”
13 *United States v. Fresno Cnty.*, 429 U.S. 452, 462 (1977). Underlying this principle is the
14 rationale that taxes imposed solely on federal employees “could be escalated by a State so as to
15 destroy the federal function performed by them[.]” *Id.*, 429 U.S. at 464 n.11. But if the tax
16 were also imposed on residents and voters of the state, that would provide a political check
17 against abuse of the taxing power and abate the danger to the federal government. *Id.*; *cf.*
18 *Dawson*, 586 U.S. at 171 (holding that a state statute exempting from state taxation the pension
19 benefits of state and local law enforcement officers, but not the federal pension benefits of a
20 retired federal marshal, violates intergovernmental immunity).

21 In contrast, when the target of the impermissible discrimination is the federal
22 government itself, or even just a part of it, the danger is at its peak. *See Washington*, 596 U.S.
23 at 842 (noting the absence of a “ballot-box safeguard” for laws that discriminate solely against
24

1 the Federal government); *King County*, 122 F.4th at 757–58 (“[B]urdening federal operations,
2 and *only* federal operations . . . violates the anti-discrimination principle[.]” (citation omitted));
3 *cf. Hively v. Ivy Tech Cnty. Coll. of Ind.*, 853 F.3d 339, 346 (7th Cir. 2017) (policy that
4 discriminates against some women constitutes prohibited sex discrimination even if it does not
5 affect every woman). Here too, there is no political check on the unlawful discrimination as
6 long as frustrating the federal government’s enforcement of its immigration law remains
7 popular with voters of the state. Allowing discrimination of this sort to stand would undercut
8 the Supremacy Clause by enabling states to thwart federal policy so long as that policy were
9 implemented by only one federal agency. *See Washington*, 596 U.S. at 841 (explaining that
10 absent the prohibition on discrimination, nothing prevents a state from imposing unduly high
11 costs on the federal government for the benefit of the state’s own citizens).
12

13 Finally, invalidating the discriminatory provisions of Washington’s KWW would not
14 create a back-end anticommandeering problem. Washington cannot seriously contend, initially,
15 that actively discriminating against the federal government is constitutionally protected
16 inaction. Rather, to the extent Washington chooses to permit local law enforcement agencies to
17 give other law enforcement agencies and members of the public access to information,
18 detainees in their custody, and facilities, they cannot withhold the same from the federal
19 government just because Washington disagrees with federal immigration priorities. *See King*
20 *County*, 122 F.4th at 758. Just as there is no “threat of unconstitutional commandeering when
21 ICE uses county highways to transport immigration detainees from one place to another just
22 because the county owns its highways,” *King County*, 122 F.4th at 758, there is no such threat
23 when federal immigration authorities access detainees upon their release from state or local
24 custody (including in the public lobbies of state and local facilities) or when federal
25 custody (including in the public lobbies of state and local facilities) or when federal
26

1 immigration authorities access information already collected by Washington or its local law
2 enforcement agencies.

3 **C. KWW is Conflict Preempted by the Immigration and Nationality Act.**

4 State laws cannot “stand[] as an obstacle to the accomplishment and execution of the
5 full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Thus,
6 state laws are invalid if they “either frustrate[] the purpose of the national legislation or
7 impair[] the efficiency of th[o]se agencies of the federal government to discharge the duties,
8 for the performance of which they were created.” *Davis v. Elmira Sav. Bank*, 161 U.S. 275,
9 283 (1896); *see also Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (“If the
10 purpose of the [federal law] cannot otherwise be accomplished—if its operation within its
11 chosen field else must be frustrated and its provisions be refused their natural effect—the state
12 law must yield[.]” (citation omitted)).

14 Pursuant to its “broad, undoubted power over the subject of immigration and the status
15 of aliens,” *Arizona*, 567 U.S. at 394, Congress enacted the INA. The INA established a
16 “comprehensive federal statutory scheme for regulation of immigration and naturalization[.]”
17 *Chamber of Com. v. Whiting*, 563 U.S. 582, 587 (2011). To effectuate that scheme, the INA
18 defines categories of aliens who may not be admitted to the United States; makes unlawful
19 entry and reentry federal offenses; specifies which aliens may be removed from the United
20 States and the procedures for such removal; and vests federal immigration officials with
21 significant discretion, among other things. *See Arizona*, 567 U.S. at 396; *see also Galvan v.*
22 *Press*, 347 U.S. 522, 531 (1954) (“Policies pertaining to the entry of aliens and their right to
23 remain here are . . . entrusted exclusively to Congress . . .”); *Truax v. Raich*, 239 U.S. 33, 42
24 (1915) (“The authority to control immigration—to admit or exclude aliens—is vested solely in
25

1 the Federal Government"); *see also Hines*, 312 U.S. at 68 ("[T]he power to restrict, limit,
2 regulate, and register aliens as a distinct group is not an equal and continuously existing
3 concurrent power of state and nation, but that whatever power a state may have is subordinate
4 to supreme national law.").

5 Because Congress found that "deportable criminal aliens who are not detained continue
6 to engage in crime and fail to appear for their removal hearings in large numbers," *Nielsen v.*
7 *Preap*, 586 U.S. 392, 398 (2019) (citation omitted), Congress requires federal immigration
8 agents to detain criminal illegal aliens immediately upon their release from state or local
9 custody, pending their removal from the United States. *See, e.g.*, 8 U.S.C. §§ 1226(a), (c),
10 1231(a). The provisions of KWW "frustrate[] the purpose of the INA" and "impair[] the
11 efficiency of "federal immigration authorities "to discharge the duties, for the performance of
12 which they were created." *See Elmira Sav. Bank*, 161 U.S. at 283. Its provisions prohibit local
13 law enforcement agencies "from detaining an individual or holding them in custody . . . for the
14 purpose of determining their immigration status or solely based on a civil immigration detainer
15 or warrant" and "from entering into agreements with federal immigration authorities to enforce
16 civil immigration law, or to detain individuals arrested on civil immigration violations." ECF.
17 No. 1-2 ¶4.28 (quoting RCW 10.93.160(7), (8), (11), (12)). Accordingly, the INA conflict
18 preempts the relevant provisions of KWW.

21 **D. 8 U.S.C. § 1373 Expressly Preempts KWW's Restrictions on Information
22 Sharing.**

23 Independent of conflict preemption, the United States has also stated a claim of express
24 preemption of KWW's restrictions on information sharing by 8 U.S.C. § 1373(a). Express
25 preemption occurs when Congress explicitly precludes state or local regulation in a particular
26

1 area. *See, e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (finding
2 express preemption where the federal law provided that “[N]o State . . . shall enact or enforce
3 any law . . . relating to rates, routes, or services of any air carrier” (49 U.S.C.
4 App. § 1305(a)(1) (1988 ed.)).

5 Section 1373(a)’s preemptive language provides that a “[s]tate . . . or local government
6 entity or official may not prohibit, or in any way restrict, any government entity or official
7 from sending to, or receiving from, [federal immigration officials] information regarding the
8 citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. § 1373(a).
9 That provision makes clear Congress’s intent that states not stand in the way of the federal
10 government’s regulation of aliens, thereby codifying the constitutional principles outlined
11 above. *See also Murphy v. NCAA*, 584 U.S. 453, 478 (2018) (explaining that “it is a mistake to
12 be confused by the way in which a preemption provision is phrased,” because “language might
13 appear to operate directly on the States” but in substance merely prevent the states from
14 obstructing federal regulation of private parties); *see id.* (discussing 49 U.S.C. app.
15 § 1305(a)(1) (1988)).

16 This type of information-sharing law does not implicate the Tenth Amendment’s
17 anticommandeering principle. In *Printz*, although the Court held that local law enforcement
18 officers could not be required to perform background checks to validate the legality of gun
19 sales under federal law, it distinguished statutes that “require only the provision of information
20 to the Federal government,” as they “do not involve . . . the forced participation of the States’
21 executive in the actual administration of a federal program.” *Printz v. United States*, 521 U.S.
22 898, 918 (1997). The Supreme Court’s Tenth Amendment cases are therefore not properly read
23 to invalidate reporting requirements, such as the requirement for “state and local law
24

1 enforcement agencies to report cases of missing children to the Department of Justice.” *Id.* at
2 936 (O’Connor, J., concurring) (citing 42 U.S.C. § 5779(a), transferred to 34 U.S.C. § 41307);
3 *see Reno v. Condon*, 528 U.S. 141, 151 (2000) (Constitution does not prohibit federal
4 enactments that “do[] not require the States in their sovereign capacity to regulate their own
5 citizens,” but instead “regulate[] the States as the owners of data bases”). Invalidating the
6 unconstitutional restrictions on information sharing, thereby giving state officers the choice to
7 communicate with federal agents, would therefore not violate the Tenth Amendment.
8

9 Moreover, unlike in *Murphy*, 584 U.S. at 458, where the federal statutory provision at
10 issue did not “impose any federal restrictions on private actors,” but instead sought to prohibit
11 states from authorizing sports gambling schemes, *id.* at 480, here, the federal government and
12 Washington both seek to regulate private individuals. The issue is therefore not whether the
13 federal government has commandeered a state, but whether the state’s scheme is preempted
14 insofar as it poses an obstacle to the effectuation of the federal scheme. And it is precisely
15 when two regulatory schemes collide in this fashion that the Supremacy Clause prohibits the
16 State from using its authority to create an obstacle to the functioning of the federal scheme. *See*
17 *Hodel v. Va. Surface Mining & Reclamation Ass’n*, 452 U.S. 264, 289–90 (1981) (stating that it
18 “is incorrect” to “assume that the Tenth Amendment limits congressional power to preempt or
19 displace state regulation of private activities . . .”).
20

21 Indeed, given its exclusive authority over immigration, Congress could have provided
22 that it would immediately remove aliens regardless of pending state criminal prosecutions.
23 Instead, Congress allows states to enforce their criminal laws against aliens before deportation.
24 But if states choose to do so, they cannot, for example, terminate custody or refuse to
25 communicate or cooperate in a way that frustrates the federal government in assuming custody
26

1 for the purpose of removing the alien. Allowing state criminal custody to continue while
2 requiring that states take the steps necessary to effect an orderly transfer to federal officers at
3 the end of such custody does not in any sense “commandeer” the state into enforcing federal
4 law, but, rather, merely places conditions on the state’s exercise of its own regulatory
5 authority. *See Hodel*, 452 U.S. at 290–91 (“We fail to see why the Surface Mining Act should
6 become constitutionally suspect simply because Congress chose to allow the States a
7 regulatory role.”). So long as Congress has expressly or implicitly preempted a state from
8 interfering with federal regulation of private parties, it is not impermissibly regulating the state
9 directly.

10
11 Unlike the “commandeering” cases where the Supreme Court was concerned about
12 political accountability, the federal government here is not requiring Washington and its
13 localities to enforce federal law; it does not expect them to arrest particular aliens or extend the
14 custody of those who would otherwise be released. *See Printz v. United States*, 521 U.S. at 926
15 (citing *New York v. United States*, 505 U.S. 144, 188 (1992)); *see also Murphy*, 584 U.S. at
16 473. Instead, it is the federal government that seeks to assume custody, and only of those aliens
17 that Washington and its localities have already decided, for their own reasons, to take into
18 custody pursuant to state and local criminal law. When ICE shows up at a Washington or local
19 facility to take an alien into federal custody, there is no question of whom to blame. The
20 federal government bears sole responsibility for the actions it takes with respect to private
21 individuals pursuant to its regulatory authority. *Cf.* 8 U.S.C. § 1226(f) (allowing states to sue
22 the federal government for decisions or failures with respect to the detention of aliens that
23 cause harm to a state or its residents).

1 Ultimately, the Court must understand the Tenth Amendment in the context of the
2 Constitution as a whole. Limits on the sovereign powers of the states “are an essential part of
3 the Framers’ conception of national identity and Union.” *California v. Superior Ct. of*
4 *California, San Bernardino Cnty.*, 482 U.S. 400, 405 (1987). Writing on the Extradition
5 Clause, for instance the Supreme Court noted its “obvious objective” “that no State should
6 become a safe haven for the fugitives from a sister State’s criminal justice system.” *Id.* at 406.
7 That Clause provides that one state may demand that another state return fugitives to its
8 custody. *See* U.S. Const. art. IV, § 2; *see also Kentucky v. Dennison*, 65 U.S. 66, 100 (1860)
9 (“[I]t is manifest that the statesmen who framed the Constitution were fully sensible, that from
10 the complex character of the Government, it must fail unless the States mutually supported
11 each other and the General Government[.]”). If one state could demand that another state
12 release a criminal into its custody without offending the Constitution, it follows that the United
13 States can do the same.

15 So long as Section 1373 is constitutional—as it is—there is no doubt KWW violates it.
16 The statutory text, structure, and purpose of Section 1373 confirm that “information regarding
17 citizenship or immigration status” also covers aliens’ contact information and release dates. By
18 its terms, Section 1373(a) applies to any “information *regarding* [an individual’s] citizenship
19 or immigration status[.]” 8 U.S.C. § 1373(a) (emphasis added). As the Supreme Court has
20 explained, statutory terms like “regarding” or “related to” have “a broadening effect, ensuring
21 that the scope of a provision covers not only its subject but also matters relating to that
22 subject.” *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717–18 (2018) (citing
23 authorities); *see also United States v. California*, 314 F. Supp. 3d 1077, 1104 (E.D. Cal. 2018)
24 (determining that the phrase “information regarding” should be read to “serve[] a purpose even
25

1 when the statute is read narrowly.”), *aff’d in part, rev’d in part and remanded*, 921 F.3d 865
2 (9th Cir. 2019).

3 Reading the term “regarding” to have such a “broadening effect,” *Lamar*, 584 U.S. at
4 717, is especially appropriate in this statutory context, because 8 U.S.C. § 1373(c), which
5 establishes federal officials’ duty to share information with states, does not include the term in
6 requiring federal officials to provide “the citizenship or immigration status of any individual”
7 to states. Congress’ inclusion of “regarding” in Section 1373(a), juxtaposed with its omission
8 of such a term in an otherwise-parallel provision of the same statute, indicates that “Congress
9 intended a difference in meaning.” *Loughrin v. United States*, 573 U.S. 351, 358 (2014).

10
11 And, while the applicable context of “regarding” is important, “[p]roper interpretation
12 [of language in a statute] considers not only the specific context in which the language is used,
13 but the overall structure of the statute as a whole, as well as its history and purpose.” *City of*
14 *Chicago v. Barr*, 961 F.3d 882, 898–99 (7th Cir. 2020). The legislative history of Section 1373
15 provides additional insight into the meaning of “regarding” here. *See Arizona*, 567 U.S. at 405
16 (considering legislative history as part of a conflict-preemption analysis). Congress enacted
17 Section 1373 to ensure that state and local officials can “communicate with [federal
18 immigration authorities] regarding *the presence, whereabouts, or activities of illegal aliens*,”
19 not merely their legal classification. H.R. Rep. No. 104-725, at 383 (1996) (emphasis added);
20 *see also* S. Rep. No. 104-249, at 19–20 (1996) (“The acquisition, maintenance, and exchange
21 of immigration-related information by State and local agencies is . . . of considerable assistance
22 to . . . achieving of the purposes and objectives of the [INA].”).

23 Furthermore, the detention and removal provisions of the INA establish a clear
24 relationship between an alien’s release date and his or her immigration status. 8 U.S.C.
25

1 § 1231(a)(4)(A) (providing that a convicted alien in state criminal custody who is subject to a
2 final removal order may not be removed until “released from imprisonment”). The release date
3 thus dictates when such an alien must be detained and removed from the United States—a
4 matter directly related to (and thus “regarding”) the alien’s “immigration status.” Accordingly,
5 Section 1373(a) expressly preempts the Sanctuary Policies’ restrictions on sharing information
6 about a detainee’s upcoming release from custody.

7 Contact information, including current addresses, also directly bears on an alien’s
8 immigration status. Aliens must “notify the [Secretary of Homeland Security] in writing of
9 each change of address and new address within ten days from the date of such change[.]”
10 8 U.S.C. § 1305. Failure to comply with that provision is itself grounds for mandatory
11 detention and removal, unless excused. *See* 8 U.S.C. § 1306. An alien’s current address reveals
12 whether the alien has complied with the notification requirement, which in turn dictates
13 whether the alien is subject to detention and removal. Contact information, like release-date
14 information, is therefore also directly related to the alien’s immigration status.

16 Against that backdrop, Washington’s restrictions on information sharing are expressly
17 preempted by Section 1373. KWW states that local law enforcement agents are not permitted
18 to “share nonpublicly available information about an individual with federal immigration
19 authorities for civil immigration enforcement purpose.” ECF No. 1-2 ¶ 4.23 (citing RCW
20 10.93.160(4)(b), (5); RCW 43.17.425; Laws of 2019, ch. 440, § 8). Nor can Washington point
21 to its purported savings clause to avert the conflict. *See id.* (noting that KWW permits local law
22 enforcement agents to undertake those activities “as required to do so by state or federal law,
23 including 8 U.S.C. § 1373”). Section 1373 does not require states and local governments to
24 share and maintain that information, however, but only prohibits restrictions on those activities.
25

1 Washington has therefore prohibited the sharing of information that federal law expressly
2 contemplates states will share, and so the relevant provisions of KWW are expressly
3 preempted.

4 **CONCLUSION**

5 The Supremacy Clause prohibits Washington from obstructing the federal
6 government's ability to enforce laws that Congress has enacted or to take actions entrusted to it
7 by the Constitution and from enacting legislation that place its local law enforcement officers
8 in the position of becoming obstacles to the execution of federal immigration laws. Moreover,
9 Washington's KWW impermissibly regulates and discriminates against the federal
10 government. Finally, Congress has expressly preempted the provisions of KWW that
11 Washington claims Adams County and Adams County Sheriff's Office violate.

12 Accordingly, the provisions of KWW that Washington is trying to enforce against
13 Adams County and its Sheriff's Office are themselves unlawful—void ab initio under the
14 Supremacy Clause. This Court should ultimately find for the Defendants.

15 Dated: April 18, 2025

16 Respectfully Submitted,

17 YAAKOV M. ROTH
18 Acting Assistant Attorney General
19 Civil Division

20 /s/ J. Max Weintraub
21 J. MAX WEINTRAUB (VSB No. 36188)
22 Senior Litigation Counsel
23 United States Department of Justice
24 Civil Division

25 DREW C ENSIGN
26 Deputy Assistant Attorney General

27 Office of Immigration Litigation
28 General Litigation & Appeals Section
29 P.O. Box 878, Ben Franklin Station
30 Washington, DC 20044
31 Phone: (202) 305-7551
32 Email: jacob.weintraub@usdoj.gov

33 ANTHONY P. NICASTRO
34 Acting Director
35 General Litigation & Appeals Section

36 Attorneys for the United States

37 Washington v. Adams County
38 2:25-cv-00099-RLP

39 U.S. DEPARTMENT OF JUSTICE
40 P.O. Box 878, Ben Franklin Station
41 Washington, DC 20044

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that he is an employee of the United States
3 Department of Justice and is a person of such age and discretion as to be competent to serve
4 papers.

5 That on April 18, 2025, he electronically filed the foregoing with the Clerk of Court
6 using the CM/ECF system, which will send notification of such filing to the attorney(s) of the
7 Parties:

8
9 Emily Crystal Nelson
10 Washington State Office of the Attorney General
11 800 5th Avenue
12 Suite 2000
13 Seattle, WA 98104

14
15 Benjamin Michael Seel
16 Washington State Office of the Attorney General
17 800 5th Avenue
18 Suite 2000
19 Seattle, WA 98104

20
21 Joel B. Ard
22 ARD LAW GROUP PLLC
23 P.O. Box 281
24 Kingston, WA 98346

25
26
19 /s/ J. Max Weintraub
20 J. MAX WEINTRAUB
21 Senior Litigation Counsel
22 United States Department of Justice
23 Civil Division
24 Office of Immigration Litigation
25 General Litigation & Appeals Section
26 P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Phone: (202) 305-7551
Email: jacob.weintraub@usdoj.gov