



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW, Rm. 7231
Washington, DC 20530

Tel: (202) 514-8100

July 8, 2022

VIA CM/ECF

Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
James R. Browning Courthouse
95 7th St.
San Francisco, CA 94103

RE: *United States of America v. Newsom*, No. 20-56304
(en banc oral argument held on June 21, 2022)

Dear Ms. Dwyer:

We write in response to amicus Immigrant Defense Advocates' June 27, 2022 letter. Amicus notes that the United States represented at argument that "the federal government relies exclusively on private detention facilities in California" when ICE "also detains immigrants in Yuba County Jail, under an active Intergovernmental Services Agreement [(IGSA)]." As the district court observed below (ER15), ICE does have such an IGSA with Yuba County Jail. The United States incorrectly stated on appeal that "ICE currently uses only privately owned and operated detention centers" in California (Opening Br. 5), and we apologize for this inadvertent error.

To the extent amicus suggests that IGSA's provide a viable alternative to contracts with private immigration detention facilities in California, however, that is incorrect. The district court stated that Yuba County Jail has a "capacity of 220 beds." ER15. We are informed by ICE that Yuba County Jail is the only facility in California with which ICE has an active IGSA it uses to house noncitizens.¹ Even accepting the 220 figure and assuming that all those beds were occupied by ICE detainees, that would still form only a small fraction of the thousands of noncitizens that ICE houses on average daily within the state. *See* ER81 (ICE declaration).

¹ *See* ICE, *Detention Facilities*, <https://perma.cc/J6A8-SNHN>.

Moreover, ICE cannot expand its use of IGSA's to house noncitizens in California due to the operation of SB 29, under which cities, counties, and local law enforcement agencies in California cannot enter into new contracts with ICE to "house or detain ... noncitizens for purposes of civil immigration custody." Cal. Civ. Code § 1670.9(a). And the law prohibits entities with existing civil-immigration-detention IGSA's as of January 2018 from renewing or modifying such contracts "in a manner that would expand the maximum number of contract beds that may be utilized." *Id.* § 1670.9(b).

In sum, while we regret the error, it does not affect the application to AB 32 of longstanding principles of intergovernmental immunity and preemption.

Sincerely,

MARK B. STERN
DANIEL TENNY

/s/ McKaye L. Neumeister
McKAYE L. NEUMEISTER
Attorneys
Civil Division, Appellate Staff
U.S. Department of Justice
950 Pennsylvania Avenue NW
Room 7231
Washington, DC 20530
(202) 514-8100

cc: Counsel of Record (via CM/ECF)