

The Department of Homeland Security's Authority to Determine Detention Locations

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The Department of Homeland Security (DHS) may detain [aliens](#) who have violated federal civil immigration laws and who are placed in [removal proceedings](#) or ordered removed. To carry out this function, Congress has [directed](#) the DHS Secretary to “arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.” While DHS owns and operates some detention facilities, the agency [houses most detainees](#) in facilities operated by private entities or state or local governments pursuant to [contracts and intergovernmental service agreements](#). Some of these contracted facilities have [come](#) under [scrutiny](#) in light of [reports](#) about their [alleged conditions and treatment](#) of [detainees](#). Over the years, some [states](#) have [passed laws](#) that [prohibit](#) public or private [entities](#) from operating detention [facilities](#) pursuant to [government contracts](#). These state initiatives have faced [legal challenges](#) raising questions about whether they unconstitutionally intrude on DHS’s detention authority. Conversely, some states have entered into agreements with DHS to authorize the use of their detention facilities, or DHS has purchased or leased property itself to convert into a detention facility, and these actions have at times also been subject to [legal challenge](#). In particular, there may be legal challenges to processes undertaken to prepare and operate a facility such as procuring property, contracting for services, conducting an environmental review, and obtaining any necessary permits. This Legal Sidebar provides a brief overview of DHS’s authority to determine the locations of detention facilities, litigation concerning efforts to restrict or authorize the use of these facilities, and considerations for Congress.

DHS’s Detention Authority

Generally, under [8 U.S.C. § 1226\(a\)](#), the “Attorney General” (some of whose immigration enforcement functions, including those related to detention, [transferred](#) to the [DHS Secretary](#) under the Homeland Security Act of 2002) may, in his discretion, detain an alien pending the outcome of [removal proceedings](#) or release the alien from custody. Some categories of aliens are required to be detained during their proceedings. For example, under [§ 1226\(c\)](#), DHS is required to detain aliens who are believed to be subject to removal under specified criminal or terrorism-related grounds. Following the completion of formal removal proceedings, [§ 1231\(a\)](#) authorizes the detention of aliens subject to final orders of removal pending efforts to effectuate their removal from the United States.

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Under § 1231(g)(1), the DHS Secretary “shall [arrange for appropriate places](#) of detention for aliens detained pending removal or a decision on removal.” While DHS may use federal funds to construct its own detention facilities, § 1231(g)(2) requires the Secretary to “consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for such use.” In addition, § 1103(a)(11)(B) authorizes the Secretary to enter into a “cooperative agreement” with state or local governments “for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention services” for detained aliens. Similarly, 6 U.S.C. § 112(b)(2) authorizes the Secretary to “to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary’s responsibilities.” Federal procurement [regulations](#) authorize the Secretary “to contract for authorized supplies and services” and allow contracts for [detention space](#) for “up to fifteen years’ duration.”

Within DHS, Immigration and Customs Enforcement (ICE) [oversees](#) the detention system (a separate DHS component, [Customs and Border Protection](#) [CBP], is responsible for the initial, [short-term detention](#) of aliens encountered at or near the border). ICE currently uses [more than 200](#) detention facilities in the United States. These facilities are either [dedicated](#) facilities that hold only ICE detainees or [non-dedicated](#) facilities housing ICE detainees and other detained populations (e.g., prisoners awaiting trial or serving short sentences). Of the total number of facilities, ICE owns and operates only a few, which are known as “[service processing centers](#).” Most other facilities are [owned and operated](#) by private companies or state or local governments pursuant to [contracts and intergovernmental service agreements](#). Additionally, ICE sometimes [houses](#) aliens in facilities operated by the Federal Bureau of Prisons.

State Restrictions on Immigration Detention

Concerns about the conditions in some detention facilities have [prompted](#) some [states](#) to pass [laws](#) that [restrict](#) the [operation](#) of detention facilities under government contracts, thereby [limiting](#) ICE’s [ability to house](#) aliens in facilities operated by private companies or state or local officials. Some of these state laws have been [legally challenged](#) on the basis that they infringe on DHS’s detention authority in violation of the [Supremacy Clause](#) of the U.S. Constitution.

Under the Supremacy Clause, federal law is “[the supreme Law of the Land](#)” notwithstanding any state law to the contrary. Courts have addressed whether state laws restricting contracted detention facilities violate the Supremacy Clause under two doctrines: (1) intergovernmental immunity and (2) preemption. The doctrine of intergovernmental immunity [provides](#) that states have [no power to control or interfere](#) with the operations of the federal government. A state law [violates](#) this principle if it regulates the federal government directly or discriminates against the federal government or those with whom the federal government deals. The doctrine of [preemption](#) provides that federal law supersedes (or “preempts”) conflicting state laws. Federal law can expressly preempt state law when a federal statute contains [explicit preemptive language](#). Alternatively, federal law can [impliedly preempt](#) state law if the federal law’s structure, purpose, or relevant statutory language show Congress’s preemptive intent. Specifically, implied preemption may occur if the state law regulates a field that Congress has determined to have the [exclusive power to regulate](#) (“field preemption”) or if the state law [conflicts with federal law](#) (“conflict preemption”), either because compliance with both the federal and state law is [impossible](#) or because the state law [creates an obstacle](#) to the accomplishment of the “[full purposes and objectives of Congress](#).”

For example, two federal courts of appeals have relied on the Supremacy Clause and the above doctrines in invalidating state laws that bar private contractors from entering into agreements with the federal government for immigration detention. In *GEO Group, Inc. v. Newsom*, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) in 2022 [held](#) that a California [law](#) prohibiting private detention facilities violated the Supremacy Clause as applied to privately operated immigration detention facilities.

Analyzing California’s law under the intergovernmental immunity doctrine, the Ninth Circuit [distinguished](#) state regulations that merely increase federal government costs from those that control its operations. The court [explained](#) that California’s law violated the Supremacy Clause because it would give the state a “virtual power of review” over ICE’s hiring and contracting decisions. The court also [determined](#) that the law was impliedly preempted because it improperly interfered with Congress’s intent under 8 U.S.C. § 1231(g)(1) to give DHS authority to determine “appropriate places of detention.”

Similarly, in *CoreCivic, Inc. v. Murphy*, the U.S. Court of Appeals for the Third Circuit in 2025 [held](#) that a New Jersey [law](#) prohibiting “immigration detention agreements” violated the Supremacy Clause as applied to privately operated immigration detention facilities. The court [explained](#) that the state law directly regulated the federal government and thus implicated intergovernmental immunity because it “prevents the federal government from choosing how and through whom it will carry out a core federal function” and “[substantially interferes](#) with federal immigration policy.”

In other cases, appellate courts have declined to invalidate state laws that prevent state and local officials from entering into immigration detention agreements, or that regulate private detention facilities in a manner that stops short of prohibiting such facilities. For example, in 2022, the U.S. Court of Appeals for the Seventh Circuit [ruled](#) in *McHenry County v. Kwame Raoul* that an Illinois [law](#) prohibiting state or local officials from contracting with DHS to detain aliens did not violate the Supremacy Clause. The court [held](#) that there was no preemption because federal statutes [do not require](#) state or local entities to assist with federal immigration detention. Instead, the court explained, federal statutes [show only](#) Congress’s general preference that states and local entities enter into [cooperative agreements](#) and make their [facilities available](#). The court also [ruled](#) that there was no intergovernmental immunity violation because the Illinois law “directly regulates only State and local entities and law enforcement—not the federal government.”

In *GEO Group v. Inslee*, the Ninth Circuit in 2025 [held](#) that provisions of a Washington [law](#) requiring health and safety inspections for private detention facilities did not violate the Supremacy Clause under the intergovernmental immunity doctrine. The court determined that, unlike California’s law, which “[flatly forbade](#)” private detention facilities, the Washington law permitted their operation and [imposed no obligation](#) directly on the federal government nor interfered with its contracting decisions. The court [explained](#) that states have “greater ability to regulate a contractor of the federal government than to regulate the government itself” and have [authority](#) over the health and safety of their residents. The court [determined](#) that there was no indication that Congress intended to preempt that authority or that enforcement of the Washington law would frustrate DHS’s ability to detain aliens.

Similarly, in *Nwauzor v. GEO Group*, the Ninth Circuit in 2025 [held](#) that Washington’s [Minimum Wage Act](#) could be applied to a private immigration detention facility, [reasoning](#) that it did not prevent operation of the facility or interfere with federal contracting decisions. The court [explained](#) that “[f]or purposes of intergovernmental immunity, federal contractors are not equivalent to the federal government” and, for that reason, “states may impose some regulations on federal contractors that they would not be able to impose on the federal government itself.” The court also [held](#) that the law did not discriminate against the federal government because it applied equally to private entities contracting with the state or federal government. Lastly, in the court’s view, the law was [not preempted](#) because it fell “squarely within the states’ historic police powers to establish and require payment of a minimum wage” and there was no indication that Congress intended to preempt applying the state law to private detention facilities. The private contractor, GEO Group, has [asked the Supreme Court to review](#) the Ninth Circuit’s decisions.

Selecting a Location for Immigration Detention

While some states have restricted or imposed certain requirements on immigration detention facilities, other states have entered into agreements with DHS allowing use of their facilities for immigration

detention. In other situations, DHS has purchased or leased property that could potentially be used as a detention facility. These federal actions affecting land use may be subject to requirements under the [National Environmental Policy Act](#) (NEPA), which [requires](#) agencies to identify and evaluate the impacts of “major Federal actions significantly affecting the quality of the human environment” before finalizing certain decisions, as well as federal, state, and local permitting and zoning laws. These efforts may also be subject to litigation.

A case in Florida illustrates some of the legal issues raised in state versus federal construction and operation of immigration detention facilities. In 2025, Florida [constructed](#) a detention facility for the purpose of detaining aliens with a stated intent of being reimbursed by the federal government. Florida developed the facility pursuant to a cooperative agreement under [8 U.S.C. § 1357\(g\)](#), which authorizes the Secretary of DHS to delegate certain immigration enforcement functions to state and local government officials. In *Friends of the Everglades, Inc. v. Noem*, several plaintiffs ([joined](#) later by the Miccosukee Tribe) [sued](#) to block the use of the facility, arguing that Florida exceeded its authority under state law to construct the facility, that DHS violated the Administrative Procedure Act (APA) and NEPA by failing to analyze environmental impacts, and that the facility violated local zoning codes. In 2025, a federal district court [ruled](#) that DHS exercised substantial federal control and responsibility over immigration enforcement and funding activities associated with the facility, and the project therefore constituted a “major federal action” subject to NEPA. (For an overview of NEPA’s requirements, see CRS In Focus IF12560, *National Environmental Policy Act: An Overview*, by Kristen Hite and Heather McPherron [2025].) The court [found](#) that further construction and expansion without conducting the requisite analysis risked irreparable injuries to water, wildlife, the Everglades ecosystem, and the Miccosukee Tribe’s interests. The court [granted](#) the plaintiffs’ motion for a preliminary injunction, prohibiting DHS, Florida, and “any person who is in active concert or participation” with the agency or the state from undertaking additional construction or transfer of additional detainees into the site.

On appeal, the U.S. Court of Appeals for the Eleventh Circuit in 2026 [vacated](#) the district court’s decision, largely based on its determination that the construction and related activities at issue primarily concerned state as opposed to federal action. The court [held](#) that there was no “final agency action” subject to [judicial review](#) under the APA, [explaining](#) that Florida’s acts of adopting federal detention standards for the facility and entering into a § 1357(g) agreement with DHS [were insufficient](#) to “transform a state or local project into a federal one.” The court also held that there was no [major federal action](#) under NEPA, [reasoning](#) that the facility was not subject to federal control by DHS and its construction did not trigger NEPA because the state retained its authority under state law to make the decisions concerning the project. The court [explained](#) that, even if DHS supervised immigration enforcement operations, this supervision did not show the agency’s control of the *construction* of the facility, which was the subject of the legal challenge. The court further [determined](#) that the injunction ran afoul of § 1252(f)(1), which [prohibits](#) courts from issuing class-wide injunctive relief that prevents the implementation of certain immigration enforcement-related statutes, including those related to detention, because it prevented DHS from exercising its authority to determine the appropriate location for the detention of aliens. While the court’s ruling enabled Florida to resume operation of the facility, the facility has reportedly [closed](#) since then.

In another case, Nebraska in 2025 [entered into an agreement](#) with ICE to convert a state prison into an immigration detention facility. In *Schimek v. Pillen*, various plaintiffs [sued](#) in state district court to block operation of the facility, arguing that the governor lacked authority to repurpose a state public building without legislative approval. In 2025, the court [denied](#) the plaintiffs’ motion for a temporary injunction, ruling that the governor had authority to use the state prison as an immigration detention facility. The court [explained](#) that, under Nebraska law, the governor may enter into contracts with federal officials and delegate the performance of contractual duties to any state agency, including the Department of Correctional Services. The court [determined](#) that the Director of Correctional Services has authority to “establish and administer policies and programs” for, among other things, the custody of “persons

committed to the Department,” which the court construed as including “ICE detained aliens” as specified in the contract. The court subsequently [dismissed](#) the lawsuit in 2026.

Other legal issues may arise where the federal government is the detention facility owner or manager. The acquisition or conversion of property by a federal agency is generally subject to NEPA as well as federal, state, and local permitting and land use requirements. There have been [legal challenges](#) over DHS efforts to convert property acquired in certain states into immigration detention sites. For example, in *Michigan v. DHS*, plaintiffs [alleged](#), among other things, that DHS’s purchase and planned conversion of a warehouse into a detention facility violated 8 U.S.C. § 1231(g) because the warehouse was not an “appropriate place of detention”; the agency violated 31 U.S.C. § 6506(c) by failing to consider state and local viewpoints in program and project planning; and the agency [violated](#) NEPA and the APA in failing to adequately consider environmental impacts (the case is proceeding in the trial court). In June 2026, DHS told the court that it [no longer intends to move forward](#) with the facility. In *Maryland v. Mullin*, Maryland [challenged](#) ICE’s plan to convert a warehouse into a detention facility, [arguing](#) that the agency failed to conduct an adequate environmental review under NEPA. In 2026, a federal district court [imposed](#) a preliminary injunction to block facility modifications that would enable building conversion and expansion for a new detention facility. Here, DHS did not dispute that construction at the facility was subject to NEPA and proceeded to apply [categorical exclusions](#) (CEs) and not conduct a more detailed review of potential impacts. The court [held](#) that DHS failed to satisfy its own [criteria](#) for the application of a CE, and that failure to conduct more detailed environmental analysis under NEPA risked imminent irreparable harm. Finding a preliminary injunction to be in the public interest, the court ordered DHS to cease construction activities during the pendency of the lawsuit. In July 2026, DHS [told the court](#) it will comply with the order although it is proceeding with some temporary construction activities. [Another case](#) is pending in New Jersey.

Considerations for Congress

Some [lawmakers](#), state [officials](#), and advocacy [groups](#) have raised [concerns](#) about the [conditions](#) of [some](#) immigration detention [facilities](#), including [those](#) run by [private contractors](#) and [facilities](#) operated by [state](#) or local [authorities](#). At the same time, some [lawmakers](#), [private contractors](#), and state [officials](#) have expressed [support](#) for expanding immigration detention facilities or [increasing funding](#) for DHS’s enforcement operations.

Previously, in 2019, DHS’s Office of Inspector General (OIG) [reported](#) that some facilities did not comply with ICE’s [detention standards](#). The report [found](#), for example, food contamination, unsanitary conditions, inadequate clothing, and lack of visitation and recreation. Reportedly, DHS’s Office for Civil Rights and Civil Liberties [made separate findings](#) that some facilities inspected between 2017 and 2019 had inadequate medical care; unsafe and unsanitary conditions; and incidents involving harassment, discrimination, staff misconduct, and improper use of force. Since then, the OIG has [issued](#) periodic [reports](#) about [the conditions](#) of [some](#) facilities. Amid these concerns, some [Members of Congress](#) have [visited](#) or [attempted to visit](#) some [facilities](#) for [oversight](#) purposes, and there is [ongoing litigation](#) on whether DHS can limit or require prior notice for such visits.

In its fiscal year 2027 budget report, ICE has [reported](#) that every detention facility that was subject to an annual inspection complied with the agency’s detention standards. Private [contractors](#) that [house](#) ICE detainees have previously argued that they comply with these standards and work with ICE to address any issues raised during inspections.

Legislation has been introduced in [response to concerns](#) about some immigration detention facilities. For example, the Dignity for Detained Immigrants Act ([S. 3702](#) and [H.R. 6397](#)) would prohibit DHS from contracting with “any public or private for-profit entity that owns or operates a detention facility.” DHS would be required to terminate any contract with those entities and to own and operate all detention

facilities. The bill would also require DHS to establish detention standards by regulation and conduct annual inspections of facilities. The Stop Inhumane Conditions in ICE Detention Act of 2026 ([H.R. 7347](#)) would require a detention facility (including those owned by private contractors) to establish systems to document the health conditions of detainees and for detainees to report health concerns and would prohibit DHS from limiting or requiring prior notice for entry by Members of Congress and staff into a detention facility. The Humanitarian Standards for Individuals in ICE and CBP Custody Act ([H.R. 7335](#)) would require medical screenings and access to food, water, sanitation, hygiene, and nutrition for detainees, and it would require inspections of facilities. The Governor’s Right to Inspect Act of 2026 ([S. 4786](#)) would authorize state governors and other public health officials to inspect facilities. Other proposed legislation, such as [S.Amdt.4747 to S.1383](#), would prohibit detention center expansion unless expressly authorized by Congress, in which case it would also require compliance with environmental laws, including NEPA.

Conversely, Congress has considered legislation that would facilitate the expansion of detention facilities, including through increased funding for immigration enforcement and detention operations. Such legislation has included, for example, the Secure America Act ([Pub. L. No. 119-98](#)), which was enacted on June 10, 2026, and the One Big Beautiful Bill Act ([Pub. L. No. 119-21](#)), which was enacted on July 4, 2025. As courts address legal challenges relating to DHS’s ability to determine the locations of detention facilities and enter into contracts with public or private entities to detain aliens, Congress may consider these or other legislative proposals concerning DHS’s detention authority.

With respect to environmental reviews and permitting, Congress could consider whether or when NEPA and federal permitting laws apply to the acquisition, construction, or conversion of an immigration detention facility. For example, Congress could consider [a provision like the one in Pub. L. No. 109-13](#) that allowed DHS to waive legal requirements necessary for the expeditious construction of certain barriers and roads along the U.S. border. Alternatively, Congress could clarify that NEPA and other permitting laws apply to the construction or conversion of an immigration detention facility, or apply in a specific manner such as creating a CE under NEPA for certain activities associated with the construction and operation of a federal facility. Congress could also take no action, resulting in current laws applying as they normally would to a federal facility, such as DHS being subject to existing categorical exclusions under NEPA and otherwise required to prepare more detailed environmental analysis.

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