No. 25-828

In the Supreme Court of the United States

THE GEO GROUP, INC.,

PETITIONER,

v.

UGOCHUKWU NWAUZOR, ET AL.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON'S BRIEF IN OPPOSITION

NICHOLAS W. BROWN
Attorney General

NOAH G. PURCELL
Solicitor General

MARSHA CHIEN
Worker Rights Unit Chief
Counsel of Record

LANE M. POLOZOLA
Assistant Attorney General

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6200
Marsha.Chien@atg.wa.gov

QUESTIONS PRESENTED

Washington's Minimum Wage Act (MWA) has never applied to the federal government, but has always applied to private companies whether they contract with the federal government or not. Petitioner The GEO Group chose to contract with the federal government to house immigration detainees at GEO's private facility in Tacoma, Washington. The contract specifies that GEO must comply with all state and local labor laws. And GEO could have complied with the MWA and still earned annual profits of over $16 million from the Tacoma facility. Yet for years, GEO paid immigrant detainees who worked at the facility only $1 to $5 per day, violating the MWA. This conduct would have been equally unlawful if GEO had been operating under a contract with the State or a local government in Washington to house prisoners. No federal statute or regulation limits how much GEO can pay immigration detainees, as the federal government has repeatedly confirmed. Washington and a class of immigrant workers challenged GEO's practice of paying subminimum wages and prevailed in the lower courts.

The questions presented are:

Does Washington State directly regulate the federal government, in violation of intergovernmental immunity, by requiring GEO, a private company, to pay Washington's minimum wage?

Does Washington State discriminate against GEO, in violation of intergovernmental immunity, where GEO is treated exactly the same as it would be if it operated under contract with the State or a local government in Washington?

Does federal law preempt application of Washington's Minimum Wage Act to GEO where no federal statute, appropriation, or regulation restricts how much GEO can pay immigrant detainees for work they perform?

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

State Statutes

Regulations

Rules

Other Authorities

INTRODUCTION

GEO's description of this case bears little resemblance to reality. This case is not about a State interfering with federal immigration policy; it is about a company invoking the Supremacy Clause to protect itself. The decision below presents no conflict with federal policies, this Court's precedent, or decisions of other circuits. The Court should deny certiorari.

Washington's Minimum Wage Act (MWA) is a generally applicable law that has been on the books since long before GEO began operating in Washington. The MWA has never applied to the federal government, but has always applied to private companies even if they contract with the federal government, such as Boeing, Microsoft, and now GEO. The law exempts people detained in public detention facilities, but applies to those detained in private facilities, whether they operate under contract with a city, the State, or the federal government.

GEO owns a private detention facility in Tacoma, Washington. Under a contract with Immigration and Customs Enforcement (ICE), GEO houses 1,575 immigration detainees at this facility. The contract requires GEO to comply with all state and local labor laws. Yet for years, GEO used detainees to perform the lion's share of the cooking and cleaning at the facility, paying them only $1-$5 per day for their work. This violated the MWA.

When Washington and a class of detainees sued GEO for violating the MWA, GEO offered three defenses. The lower courts correctly rejected them all.

First, GEO claimed that the MWA directly regulates the federal government, violating intergovernmental immunity. The MWA, however, does not apply to the federal government at all, it applies only to GEO. "It requires no action by federal officials" and "neither controls federal operations nor dictates the terms of the contract between ICE and GEO." Pet.App.11. This Court has routinely rejected intergovernmental immunity challenges to state laws that merely raised costs for government contractors. Pet.App.12-13. That is all the lower courts did here.

Second, GEO argued that Washington's MWA discriminates against federal contractors, but they are treated the same as others. The MWA covers any private detention facility in Washington, whether it contracts with a city, the State, or the federal government. Pet.App.105-06. There is no discrimination.

Third, GEO claimed that federal law preempts Washington's MWA. But as GEO concedes, no federal statute restricts GEO from paying detainees more than $1 per day. Pet. 31. Indeed, ICE told GEO before this litigation that "there is no maximum" compensation for detainee workers at the Tacoma facility, *see* BIO.App.34a-36a; GEO admitted to the jury that it "has the option to pay more than $1/day to detainee-workers[,]" BIO.App.7a, and GEO paid more than $1/day when it needed more workers, *see* BIO.App.11a-13a. GEO's preemption argument is rooted in its own interests, not statutory text.

GEO claims that in rejecting these arguments, the lower court's analysis deviated from the approach taken by other circuits, but that claim fails the slightest scrutiny. The lead case GEO cites as creating a circuit split, *CoreCivic, Inc. v. Governor of New Jersey*, 145 F.4th 315, 329 (3d Cir. 2025), explicitly aligns itself with the Ninth Circuit's approach to evaluating intergovernmental immunity.

In short, with the hyperbole stripped away, GEO's petition seeks nothing more than fact-bound error correction where there is no error. The Court should deny certiorari.

STATEMENT OF THE CASE

A. Legal Background

1. Washington's Minimum Wage Act is a longstanding state law unrelated to immigration enforcement

Washington's minimum wage statute has been on the books for over a century, and the original law was upheld by this Court in the seminal decision *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 399 (1937) ("The exploitation of a class of workers who are in an unequal position with respect to bargaining power . . . is not only detrimental to their health and well being, but casts a direct burden for their support upon the community.").

The current version of the MWA was first enacted in 1961, long before the federal government began detaining immigrants in private facilities. *See* 1961 Wash. Sess. Laws 2602 (Ex. Sess., ch. 18, § 1). Like the federal minimum wage, it applies regardless

of workers' immigration status. Wash. Rev. Code § 49.46.010(4). *See Lucas v. Jerusalem Cafe, LLC*, 721 F.3d 927, 933-37 (8th Cir. 2013). Its exceptions are narrowly construed to apply only when "plainly and unmistakably consistent with the terms and spirit of the legislation." *Drinkwitz v. Alliant Techsystems, Inc.*, 996 P.2d 582, 587 (Wash. 2000).

2. Washington's Minimum Wage Act has never applied to the federal government, but has always applied to private companies regardless of whether they contract with the federal government

Washington's MWA generally applies to employers doing business in Washington. While the MWA has never applied to the federal government itself, it has always applied to federal contractors, such as Boeing, Microsoft, Amazon, and the countless other Washington employers that contract with the federal government. *See, e.g.*, *Dep't of Lab. & Indus. v. Lanier Brugh*, 147 P.3d 588, 593 (Wash. Ct. App. 2006) (concluding U.S. postal service contractor must comply with state minimum wage overtime requirements).

This approach follows this Court's longstanding intergovernmental immunity rule: while States cannot tax or regulate the federal government, they can apply nondiscriminatory laws to federal contractors. *See, e.g.*, *United States v. Washington*, 596 U.S. 832, 838 (2022) (plurality opinion) (explaining that inter-governmental immunity "prohibit[s] state laws that *either* 'regulat[e] the United States directly *or* discriminat[e] against the

Federal Government or those with whom it deals' (*e.g.*, contractors)" (second and third alterations in original) (quoting *North Dakota v. United States*, 495 U.S. 423, 435 (1990))); *North Dakota*, 495 U.S. at 432 ("Whatever burdens are imposed on the Federal Government by a neutral state law regulating its suppliers 'are but normal incidents of the organization within the same territory of two governments.'" (plurality opinion) (quoting *Helvering v. Gerhardt*, 304 U.S. 405, 422 (1938))); *Penn Dairies, Inc. v. Milk Control Comm'n of Pa.*, 318 U.S. 261, 269-70 (1943) (upholding a state's milk price controls as applied to a federal contractor because even though the regulation "increase[d] the price which the government must pay for milk," it "impose[d] no prohibition on the national government").

Thus, to give one relevant example, Washington's MWA has never applied to the Federal Detention Center in SeaTac, Washington, owned and operated by the federal Bureau of Prisons. The law does, however, apply to private companies that contract with the federal government to provide detention services, such as GEO.

3. Washington's Minimum Wage Act exempts detainees in government-run facilities, but applies to detainees in privately run facilities

Washington's MWA has long exempted "[a]ny resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution." Wash. Rev. Code § 49.46.010(4)(k). And, as just explained, the law does

not apply at all to detained (or non-detained) workers at federal facilities, such as the Bureau of Prisons' Detention Center in SeaTac.

By its plain terms, however, and as conclusively interpreted by the Washington Supreme Court, this subsection only exempts those held in *public* institutions. Pet.App.105 ("The only reasonable interpretation of the subsection (k) exemption is that it applies to any resident, inmate, or patient of a government institution."). Thus, individuals detained in privately run institutions are not thereby exempted. *Id.* (explaining that subsection (k) does not "apply to detainees held in a private detention center"). This is true regardless of whether the private detention center operates under a contract with a government agency. Pet.App.106. And it is true "regardless of whether the private entity that owns and operates the facility contracts with the state or federal government." *Id.* Indeed, the state correctional department has long contracted with outside facilities to operate work release programs for those nearing the end of their criminal sentence, BIO.App.1a-4a, and those state contractors are subject to Washington's MWA. Pet.App.106.

B. Factual Background

1. GEO owns and operates a private detention facility in Washington subject to Washington's Minimum Wage Act

GEO owns and operates a private detention facility in Tacoma, Washington. Pursuant to a contract with ICE, GEO houses up to 1,575 immigrant detainees. BIO.App.5a-7a. While GEO now calls this

facility the "Northwest ICE Processing Center," it is not a federal facility, but instead a GEO-owned and operated facility. BIO.App.5a.

Immigrants at GEO's facility are held while awaiting administrative review of their immigration status, not because they have been charged with or convicted of a crime. BIO.App.5a-7a; CA9.SERWA.139-40. Some detained immigrants lack an immigration status, while many others are lawful permanent residents, recipients of deferred action, or have other lawful status, and are thus eligible to work. CA9.SERWA.137-42. There is no evidence that GEO checked whether any immigrant at the Tacoma facility is eligible to work, let alone whether the "vast majority" are ineligible. *Cf.* Pet. 1.

Because GEO is a private company, Washington's MWA covers those who work at its facilities, whether those workers are detainees or not. Pet.App.105. This is true regardless of the reason for the detention and regardless of whether GEO holds detainees under contract with the State or federal government. Pet.App.106-07. For example, if Washington or a local government contracted with GEO to hold inmates at the Tacoma facility, as other States have contracted with GEO to hold state prisoners,[1] those inmates would be covered by Washington's MWA. *Id.*

---

[1] Ariz. Dep't of Corr., Rehabilitation & Reentry, *Central Arizona Correctional and Rehabilitation Facility (CACRF)*, https://corrections.az.gov/central-arizona-correctional-and-rehabilitation-facility-cacrf (last visited Apr. 6, 2026);

2. No federal law requires GEO to operate a work program for immigration detainees

No statute, regulation, or appropriation measure requires GEO to run a work program at its Tacoma facility. Instead, the expectation that GEO operate a work program comes from two sources: an ICE policy manual, known as the Performance Based National Detention Standards (PBNDS),[2] and a contract between ICE and GEO governing operation of the Tacoma facility.

ICE's policy manual sets an expectation that some, but not all, immigration detention facilities will operate voluntary work programs, PBNDS 2011 at 406, and it explicitly contemplates "a range of compliance, from minimal to optimal." *Id.* at i. ICE routinely grants waivers to its policy manual without any clear process or procedures. U.S. Dep't of Homeland Security, Office of the Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* 10 (Jan. 29, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf ("Key officials admitted there are no policies, procedures, guidance documents, or instructions to explain how to review

---

Okla. Dep't of Corr., Facilities, Great Plains Correctional Center, https://oklahoma.gov/doc/facilities.html#accordion-408e288960-item-f147a49c88 (last visited Apr. 6, 2026).

[2] U.S. Immigr. & Customs Enf't, *Performance-Based National Detention Standards 2011* (revised Dec. 2016), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf [hereinafter PBNDS 2011].

waiver requests."). In fact, ICE granted 100% of waivers requested between 2012 and 2018, the most recent year for which data are publicly available.[3] The policy manual sets no cap on how much GEO can pay detainees. PBNDS 2011 at 407.

GEO's contract with ICE to operate the Tacoma facility also contemplates the existence of a voluntary work program. CA9.SERWA.405. That contract specifies that GEO must comply with "all applicable federal, state, and local laws," including "state and local labor laws[.]" BIO.App.23a-28a. If a conflict exists between any of these standards, the contract requires GEO to comply with "the most stringent" law or standard. BIO.App.28a-31a.

3. GEO relies extensively on immigration detainees to operate its Washington facility, thereby increasing its profits

Under its contract with ICE, GEO agreed to provide immigration detainees three meals a day, to launder and change linens regularly, and to ensure the facility is "clean and vermin/pest free." CA9.SERWA.380-81. To meet these basic obligations of its contract, the company employed more than 470 immigrant detainees each day, who worked around the clock performing core functions of running the Tacoma facility. CA9.SERWA.308.

---

[3] *See* ICE Inspections Waiver Master File, https://www.ice.gov/doclib/facilityInspections/2022waivers.xlsx (last visited Apr. 6, 2026).

GEO's reliance on detainees allowed the company to avoid hiring roughly 85 non-detained employees, Pet.App.6, and instead operate the 1,575-person facility with a skeleton crew. In the kitchen, GEO employed only thirteen non-detained staff, and nearly one hundred detainees each day to prepare meals, serve food, and wash dishes. CA9.SERWA.122-23. In the laundry room, one non-detained employee typically supervised twelve to fifteen immigrants processing industrial loads of laundry seven days a week. CA9.SERWA.223, 233. Detainees cleaned the facility's secured common areas, including the kitchen, laundry room, communal bathrooms and showers, and recreational areas. CA9.SERWA.18, 29. In contrast, GEO employed three outside employees as full-time janitors. CA9.NwauzorSER.17, 19-21; CA9.SERWA.22-23, 187-89, 232-33; 308.

By relying so heavily on essentially unpaid labor, GEO was able to maximize profits. "Between 2010 and 2018, GEO's gross profit from managing the [Tacoma facility] ranged between $18.6 million and $23.5 million per year, with general net profit margins of 16 to 19 percent." Pet.App.3. That said, paying detainees Washington's minimum wage would still leave GEO with sizable profits. Just from this one facility, GEO could earn "a profit margin of roughly $16 to $21 million per year while complying with the MWA." Pet.App.15.

4. ICE plays no meaningful role in overseeing GEO's detainee work program, and explicitly allows GEO to pay detainees more than $1 per day, which GEO routinely did

From the day the Tacoma facility opened in 2005, GEO directed and ran all aspects of the work program. GEO identified the work required to operate the facility and assigned immigrants to do that work. CA9.SERWA.6-25; 30-41; 58-68; 314-20; 431. GEO managed the work schedules, set the training requirements, drafted the job descriptions, and provided all the equipment necessary to complete the jobs it identified. CA9.SERWA.6-25; 58-68; 124-26; 283-301; 304-06; 314-20; 431.

ICE played no role in the development or management of the work program. CA9.SERWA.58-69; 314-20. The GEO employee who managed the work program for over fifteen years testified that she never had a conversation with any ICE employee about how the program should operate. BIO.App.16a-17a. And, when immigrants complained to ICE about low wages and abuse in the work program, ICE responded: "This is a GEO issue. You have to report it to GEO." BIO.App.37a-38a.

The ICE policy manual addresses pay rates only by stating that pay must be "at least $1.00 (USD) per day." PBNDS 2011 at 407. At trial, GEO admitted that it "ha[d] the option to pay more than $1/day." BIO.App.7a. Indeed, ICE explicitly told GEO that the

company could pay more. GEO asked about the rate of pay for immigrants, and ICE officials confirmed, in writing, that $1 per day was the floor, and "there is no maximum." BIO.App.35a.

In fact, GEO often did pay detainees more than $1 per day when it suited the company. For example, GEO paid $2 or $5 per day when it needed immigrants to work harder and longer shifts in the kitchen. BIO.App.11a. Yet GEO continued to pay immigrants $1 per day as its regular course because any amount GEO paid beyond that was, in one GEO executive's words, "on GEO's dime." CA9.SERWA.249.

C. Procedural History

After receiving complaints from immigrants paid $1 per day for working night shifts and carrying hot pots and pans for hours, Washington sued GEO and sought an injunction requiring the company to pay the minimum wage for work performed and disgorgement of GEO's unjust enrichment.

GEO moved to dismiss the case on a wide range of grounds.

The district court refused to dismiss the State's claims. Pet.App.130-31. Citing *North Dakota*, 495 U.S. at 435, the court concluded that Washington's MWA did not directly regulate the federal government, and the burden placed on GEO by the MWA was "but [a] normal incident of the organization within the same territory of two governments." *Id.* (alteration in original).

The district court consolidated the case with a private class action. After a three-week trial, a unanimous jury concluded in favor of both plaintiffs,

awarding the private class $17.3 million in unpaid minimum wages. Pet.App.166. After a bench trial, the district court ordered GEO to disgorge $5.9 million in unjust enrichment to the State, *id.*, enjoined GEO from paying less than the minimum wage, and awarded attorneys' fees. WAWD.ECF.669. In response, GEO requested ICE allow it to suspend its work program at the Tacoma facility while its appeal was pending, and ICE granted that request. WAWD.ECF.627-1.

On appeal, the Ninth Circuit certified multiple questions to the Washington Supreme Court, asking (1) whether immigrants at GEO's Tacoma facility are employees under Washington's MWA, and (2) whether state contractors operating private detention facilities are exempt from the MWA. Pet.App.98. In a unanimous decision, the Washington Supreme Court answered yes to the former question, and no to the latter. Pet.App.120. The court concluded that Washington's MWA did not exempt "individuals held in a private institution regardless of whether that institution is operated pursuant to a contract with the federal or state government." Pet.App.107.

After the Washington Supreme Court issued its decision, the Ninth Circuit affirmed the district court. Pet.App.3, 8-34. Regarding direct regulation, the court recognized that when enforcing state law against federal contractors would "'control federal operations,'" it has "'the same effect as direct enforcement against the Government'" and is barred by intergovernmental immunity. Pet.App.10-11 (quoting *Geo Grp., Inc. v. Newsom*, 50 F.4th 745, 760 (9th Cir. 2022) (en banc)). But where a state regulation merely increases a contractor's cost of

doing business, and thereby potentially increases costs to the federal government, that does not "control its operations" and trigger intergovernmental immunity. Pet.App.13 (quoting *Newsom*, 50 F.4th at 755). Applying this distinction, the Ninth Circuit concluded that Washington's MWA did not control federal operations because Washington did not restrict the federal government from using private contractors or detaining immigrants. Pet.App.13.

The Ninth Circuit contrasted Washington's MWA with "impermissible [state] licensing and permitting regimes[.]" Pet.App.14. As the court recognized, those laws "interfere with the government's authority to select its contractors[,]" prevent the federal government from hiring the personnel of its choice, or dictate the terms of a federal contract. *Id.* The court found that Washington's MWA bore no resemblance to such requirements because "there is nothing—either in federal law or in GEO's contract with the federal government—that prevents GEO from paying Washington's minimum wage to its civil detainees who perform work for the benefit of GEO." *Id.* In fact, the court noted that the record showed the opposite: "GEO's contract with ICE explicitly requires it to comply with 'state labor laws and codes.'" *Id.*

The Ninth Circuit next rejected the argument that Washington's MWA discriminates against the federal government or federal contractors. Pet.App.16-25. The court explained that discrimination against the federal government was not at issue because the federal government does not operate the Tacoma facility. Pet.App.16-17. Instead, the relevant question for discrimination

purposes was "whether the MWA treats private facilities operated under contract with the federal government differently from private facilities operated under contract with the state government." Pet.App.17. Relying on the Washington Supreme Court's conclusive interpretation of Washington law, the Ninth Circuit held that there was no differential treatment, because a detention company contracting with either the state or federal government would be subject to Washington's law. *Id.* The court rejected the idea that the proper comparison was between how Washington regulated public detention facilities and how it regulated private ones, like GEO, noting that statutes and case law routinely distinguish between government entities and private companies that contract with those entities. Pet.App.20. Treating GEO as comparable to a governmental institution would "improperly expand" intergovernmental immunity by "provid[ing] to private, for-profit entities the same intergovernmental immunity protection enjoyed by the federal government[.]" Pet.App.22.

The Ninth Circuit next held that the State's MWA was not preempted. Pet.App.26-29. GEO argued preemption based on two statutes: (1) 8 U.S.C. § 1555, a statute empowering Congress to appropriate funds for ICE work programs; and (2) an expired 1978 appropriations bill. Pet.App.27-28. (citing Department of Justice Appropriations Act, 1979, Pub. L. No. 95-431, 92 Stat. 1021 (1978)). As to the first, the court explained that the statute imposes no "limit on the amount that may be paid to a detained worker." Pet.App.28. As to the second, the court explained that expired appropriations acts generally have no effect, but even if this one did, nothing in the

act prohibited GEO from paying detainees more than $1 per day. Pet.App.28-29. Indeed, "[t]he government explicitly disagrees with GEO on this point[,]" and GEO itself had routinely paid detainees more than $1 per day. Pet.App.29. The Ninth Circuit also rejected GEO's remaining obstacle preemption arguments as unsupported by the record, Pet.App.28-29, and its derivative sovereign immunity defense because ICE's plain instruction to GEO was to *comply* with state and local labor laws—not violate them. Pet.App.31-34.

Judge Bennett dissented. He rejected the Washington Supreme Court's answers to the certified questions as "hypothetical," Pet.App.40, and concluded that Washington law was discriminatory because the proper comparison was between GEO's facility and "Washington state-run detention facilities[.]" Pet.App.47. He also would have held Washington's MWA preempted based on the theory that it posed an obstacle to achieving Congress's immigration objectives. Pet.App.48-60. He did not adopt GEO's direct regulation argument.

The Ninth Circuit declined to rehear the case en banc. Pet.App.62. This petition followed.

REASONS FOR DENYING THE PETITION

The opinion below carefully applied this Court's precedent and created no split of authority. GEO's contrary arguments are meritless.

GEO's primary argument is that private companies that contract with the federal government are entitled to the same immunity from state laws as the federal government itself, and that the lower

court ignored this rule. Pet. 20, 23, 25-27. But that has not been the law for decades. *See, e.g.*, *Washington*, 596 U.S. at 838-39 (citing *North Dakota*, 495 U.S. at 435). And no circuit has adopted that rule.

Instead, this Court and lower courts have drawn a different line. Although States cannot tax or regulate the federal government, they can apply nondiscriminatory laws to companies that contract with the federal government, even if those laws increase the federal government's costs. *See, e.g.*, *id.*; *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 173-75 (1989). States cannot, however, adopt laws that effectively control the federal government, *e.g.*, by dictating which contractors the federal government can use or requiring state permits before federal contractors can work on a federal project. *See, e.g.*, *Hancock v. Train*, 426 U.S. 167 (1976); *Johnson v. Maryland*, 254 U.S. 51 (1920).

The court below carefully applied this rule, explaining that if Washington tried to prohibit the federal government from using private contractors to detain immigrants, or to interfere in its selection of contractors, intergovernmental immunity would apply. Pet.App.10-14 (citing cases). But it noted that Washington's MWA does no such thing—it does not restrict the federal government's use of contractors at all. *Id.* This was exactly in line with decisions from other circuits. Indeed, the lead case that GEO claims creates a circuit split, *CoreCivic, Inc. v. Governor of New Jersey*, 145 F.4th 315 (3d Cir. 2025), applied the same rule and explained that its ruling created no conflict with this decision. *Id.* at 329.

GEO's fallback argument, that Washington law is discriminatory, is even weaker. Washington's MWA does not apply to the federal government at all. As to private companies, Washington's Supreme Court has held that the law applies in exactly the same way whether a company contracts with the state or federal government. Pet.App.105-06.

GEO's last-ditch argument, preemption, fails utterly. GEO admits that no federal statute or regulation prohibits it from paying immigrant detainees more than $1 per day. GEO claims, however, that federal reimbursement caps "act[] as a practical cap on what federal contractors pay." Pet. 31. But GEO admits that it could—and did—pay more than $1 per day when it served the company's interests, Pet.App.29, and the company could comply with the MWA and still earn an annual profit of over $16 million from its Tacoma facility alone, Pet.App.5. A slight dent in a company's profits cannot possibly suffice to show congressional intent to preempt the longstanding law of a sovereign State. The Court should deny certiorari.

A. There is no Circuit Split

Contrary to the petition's claims, not a single circuit holds that a private contractor "stands in the federal government's shoes" for all purposes or is entitled to "the same immunity the federal government would enjoy if it performed the work[.]" Pet. 21, 25. Rather, all of the circuits as to which Petitioners claim a split—the Second, Third, Fourth, and Ninth—follow this Court's precedent and apply the same test of intergovernmental immunity,

differentiating between generally applicable state laws that merely impose an incidental economic burden on the federal government, versus laws that control federal operations.

There is no daylight between the Third Circuit's decision in *CoreCivic*, and the decision below. The Third Circuit applied the same intergovernmental immunity principles applied by the Ninth Circuit to enjoin a state law that barred private immigration detention facilities, just as the Ninth Circuit had enjoined a similar law. 145 F.4th at 320-28; Pet.App.13 (citing *Newsom*, 50 F.4th at 755 (enjoining California law phasing out private immigration detention facilities)). In reaching its decision, *CoreCivic* used virtually the same language as the Ninth Circuit below to distinguish between laws "that merely impose an incidental economic burden on the federal government and those that subvert federal operations," concluding "[t]he latter trigger immunity; the former do not." *CoreCivic*, 145 F.4th at 323. And the Third Circuit repeatedly cited the Ninth Circuit's decision in *Newsom*, explicitly "align[ing]" its decision "with our sister circuit in adopting this approach." *Id.* at 327.

GEO nevertheless suggests the decision below conflicts with *CoreCivic* because the Ninth Circuit held that a private contractor's protection from state law is "substantially narrower" than the federal government's. Pet. 23-24. But *CoreCivic* recognized this important principle, too. The Third Circuit observed there was a time when this Court "stretched" the intergovernmental immunity doctrine to bar regulation of third parties, but this Court "then corrected course, recognizing that such an 'expansive'

doctrine was unmoored 'both from [its] constitutional foundations . . . and from the actual workings of our federalism." *CoreCivic*, 145 F.4th at 323 (citation omitted). Because the "modern doctrine" has been "pared . . . back," the Third Circuit concluded there is a difference between state laws that "at most . . . increase[d] the costs of federal operations" and "imposed no prohibition" on the federal government, on the one hand, and laws that "functionally bar the federal government from doing something," on the other. *Id.* at 324 (citation modified). In fact, the Third Circuit explicitly distinguished its holding in *CoreCivic* from the issue presented in this case, which it characterized as involving: "[r]egulations that merely burden contractors without substantially interfering with the federal government's operations, or those that impose neutral conditions on contracts rather than bans." *Id.* at 329.

While *CoreCivic*'s reasoning is entirely consistent with the decision below, what is notably different is the presence in that case of evidence—utterly absent here—that New Jersey's law would control federal operations. There, ICE submitted several declarations explaining that New Jersey's law would force the closure of a "'mission critical location'" for ICE's nationwide operations, crippling "'law-enforcement operations in New Jersey and the surrounding region,'" and force it to "release [immigrants] with violent criminal records." *Id.* at 320 (citations omitted); *see, e.g.,* Declaration of Monica S. Burke at 89-106, *CoreCivic, Inc. v. Murphy*, No. 3:23-CV-00967-TJB (D.N.J. July 19, 2023), ECF. No. 37-1 (ICE declaration).

In contrast, there is no indication that GEO paying the minimum wage would impact the federal government at all. GEO did not—and could not—present any evidence of control or subversion in this case. Here, unlike in *CoreCivic*, the federal government remains free to contract with GEO. Indeed, as the court below repeatedly emphasized, GEO's contract with ICE already *required* compliance with state labor laws.

The Second Circuit's decision in *United States v. Town of Windsor*, 765 F.2d 16 (2d Cir. 1985), is no more helpful to GEO. There, the court enjoined a local law requiring a private contractor to obtain a building permit before the federal government could expand a federal building on federal land used for classified "research and development of shipboard nuclear reactors[.]" *Id.* at 17. The *Windsor* court concluded that enforcing "the permit requirement against the contractors would have the same effect as direct enforcement against the Government" because it would force the federal government to "turn[] over its classified plans and specifications" to a local building inspector and open "its classified building site for inspections." *Id.* at 19. Put another way, the permit requirement operated with the "same effect" against the contractors as it would the federal government. *Id.*

Windsor nowhere suggested that *any* state regulation of federal contractors would violate intergovernmental immunity. The Second Circuit took pains to distinguish the case from situations where the federal government's interest was "incidental." *Id.* For example, the Second Circuit

observed that the federal government's interest in preventing the application of a local building code to a contractor building public housing for private citizens would be "quite limited." *Id.* at 20. The court specifically contrasted its holding with situations where the federal government's own contract with the private contractor required compliance with state law as here. *Id.* (citing *Pub. Hous. Admin. v. Bristol Township*, 146 F. Supp. 859, 865 (E.D. Pa. 1957)).

GEO's citation to *United States v. Virginia*, 139 F.3d 984 (4th Cir. 1998)—another licensing case—also fails to support its claim of a circuit split. To begin with, that case is best read as applying a preemption analysis, not intergovernmental immunity. *Id.* at 989 (striking down Virginia law because it "frustrates the objectives of the federal procurement laws"). To the extent that the opinion discusses intergovernmental immunity at all (in a footnote), the Fourth Circuit recognized a "stark" contrast between state laws that have an "incidental effect . . . on the federal government's decisional processes[,]" and "the direct interference" that results when States require a state license to work for the federal government. *Id.* at 989 n.7.

In sum, the Ninth Circuit's decision here entirely aligns with its sister circuits, and there is no conflict requiring this Court's intervention.

B. The Decision Below Is Correct and Carefully Follows This Court's Precedent

1. GEO is not entitled to intergovernmental immunity

GEO advances an absolutist view of intergovernmental immunity that admits of no daylight between the government and its contractors. While that view held currency in early constitutional jurisprudence, this Court "decisively rejected" it nearly a century ago. *See North Dakota*, 495 U.S. at 434-35. *See also, e.g.*, *GEO Grp. Inc. v. Menocal*, 146 S. Ct. 774 (2026) (holding that "[a] private contractor cannot obtain '[i]mmunity from suit' by 'reason of a contract' it made with the [federal] Government." (quoting *Brady v. Roosevelt S.S. Co.*, 317 U.S. 575, 583 (1943))); *Brady*, 317 U.S. at 580 ("An instrumentality of [the federal] Government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts." (citation omitted)). Today, intergovernmental immunity does not extend fully to federal contractors. Instead, federal contractors are only immune from state laws that have the effect of directly regulating the federal government or are discriminatory. *See, e.g.*, *Washington*, 596 U.S. at 839 ("We later came to understand the doctrine, however, as prohibiting state laws that *either* 'regulat[e] the United States directly *or* discriminat[e] against . . . contractors" (first and second alterations in original). Because Washington's MWA neither regulates the federal government nor discriminates against GEO, it does not violate intergovernmental immunity.

a. Washington's Minimum Wage Act does not regulate the federal government

When this Court has evaluated state laws that regulate companies that contract with the federal government, the Court has upheld laws that merely increase those companies' costs, while rejecting laws that directly control federal operations. This case falls decisively into the first category.

States routinely apply nondiscriminatory laws to companies that contract with the federal government, as even GEO acknowledges. Pet. 27. This Court has repeatedly allowed application of such laws, even where they raise the federal government's costs. *See, e.g.*, *North Dakota*, 495 U.S. at 432 ("Whatever burdens are imposed on the Federal Government by a neutral state law regulating its suppliers 'are but normal incidents of the organization within the same territory of two governments.'" (quoting *Helvering*, 304 U.S. at 422)); *Penn Dairies*, 318 U.S. at 269-70 (upholding a state's milk price controls as applied to a federal contractor because even though the regulation "increase[d] the price which the government must pay for milk," it "impose[d] no prohibition on the national government"); *United States v. Boyd*, 378 U.S. 39, 44 (1964) (refusing to extend intergovernmental immunity to private contractors with construction projects on federal property because contractors remain "distinct," pursuing "private ends," and their actions are "commercial activities carried on for profit"); *James Stewart & Co. v. Sadrakula*, 309 U.S. 94 (1940) (concluding a state workplace safety law did not interfere with the national purpose and therefore applied during the construction of a federal post

office); *Ry. Mail Ass'n v. Corsi*, 326 U.S. 88, 95-96 (1945) (concluding a private labor organization comprised of federal postal clerks was not immune from state civil rights laws because laws did "not impinge on the federal mail service or the power of the government to conduct it").

But when States attempt to prohibit, license, or control federal operations by regulating federal contractors, this Court has found impermissible direct regulation. For example, in *Hancock v. Train*, a state permit requirement gave the State power to forbid a federal installation "to operate." 426 U.S. at 178-80. In *Johnson v. Maryland*, 254 U.S. 51, the State attempted to impose a licensing requirement dictating who could drive a postal truck. And in *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956) (per curiam), though arguably a preemption case, the State attempted to dictate who could serve as a federal contractor.

The court of appeals correctly explained that this case differs dramatically from cases like *Hancock*, *Johnson*, and *Leslie Miller*. Pet.App.14. This case would be analogous to those if, for example, Washington forbade the federal government from using private companies to run immigration detention facilities or otherwise attempted to control the federal government's operations. *Id.* But applying the MWA here "is a far cry" from such cases. Pet.App.13.

Applying Washington's MWA to GEO in no way controls federal operations. ICE is still entirely free to contract with GEO, and GEO is still entirely free to employ immigrant detainees—it simply must pay them Washington's minimum wage. Pet.App.13. GEO

argues extensively about the federal government's interest in *having* private detention facilities, but nowhere explains how Washington's MWA prevents ICE from using such facilities. GEO also extensively discusses the federal interest in a work program (even though no statute or regulation requires such a program), but Washington's MWA neither prohibits a work program nor dictates who can participate or what jobs they can perform. Pet.App.14-15. And ICE's contract with GEO requiring the work program explicitly requires GEO to comply with "state and local labor laws," BIO.App.23a-28a, specifying that if a conflict exists between federal, state, and local standards, GEO must comply with "the most stringent." BIO.App.28a-33a. While GEO suggests that federal law prohibits it from employing immigrants at the Tacoma facility, Washington is not purporting to regulate who qualifies as an "employee" for purposes of federal law, and even if that question was relevant, it is undisputed that some immigrants at the Tacoma facility have authorization to work. CA9.SERWA.141-42.

Ultimately, GEO's argument boils down to the claim that applying Washington's MWA to detainees will increase its costs. But under that theory, applying virtually any state law to federal contractors would impermissibly interfere with federal prerogatives. Indeed, applying Washington labor standards even to GEO's non-detained employees would be impermissible, because it increases GEO's costs. No case supports that absurd proposition. Application of Washington's MWA poses no greater impairment of

federal authority than the liquor regulations in *North Dakota*, the price-fixing controls in *Penn Dairies*, the local building regulations in *Sadrakula*, the civil rights laws in *Ry. Mail Ass'n*, or the taxes in *Boyd*.

As a last-gasp effort to argue direct regulation, GEO claims that applying Washington's MWA here would somehow conflict with the federal officer removal statute. Pet. 28; 28 U.S.C. § 1442(a)(1). But that statute governs only what forum will hear cases against those acting under a federal officer—it does not promise legal immunity on the merits—and this case was undoubtedly litigated in a federal forum.

In short, the courts below correctly rejected GEO's direct regulation argument.

b. Washington's Minimum Wage Act does not discriminate against the federal government or federal contractors

Application of Washington's MWA is also consistent with the discrimination prong of inter-governmental immunity. The MWA does not discriminate against the federal government because it does not apply to the federal government at all, and it does not discriminate against federal contractors because it treats them the same as those who contract with the state or local governments.

Whether a state law discriminates against the federal government and those with whom it deals "depends on how the State has defined the favored class." *Dawson v. Steager*, 586 U.S. 171, 177 (2019). "[I]f [a] State decides to exempt only a narrow

subset of state [employees], the State can comply with [intergovernmental immunity principles] by exempting *only* the comparable class of federal [employees]." *Id.* at 176 (emphasis added). Here, because Washington's MWA exempts only those held in state and locally run institutions, intergovernmental immunity requires only that those held in federally-run institutions likewise be exempt, which they always have been.

GEO first attempts to rebut this conclusion by arguing that the MWA actually applies to "federal detention facilities" because it does not explicitly exempt them. Pet. 29. But state laws are routinely understood to exclude the federal government even without an explicit exemption. *See Penn Dairies*, 318 U.S. at 269 ("[T]here is an implied constitutional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions."). And Washington has always understood that the MWA exempts the federal government itself; for example, Washington has never attempted to apply it to detainees at the Bureau of Prisons Detention Center in SeaTac. GEO cannot demand review here based on an untenable, never adopted interpretation of Washington law.

GEO next argues that Washington discriminates against federal contractors because, GEO claims, Washington would not apply its MWA to detainees in private facilities that contract with the State. Pet. 30. Unfortunately for GEO, the Washington Supreme Court explicitly rejected this argument, holding that any such detainees would be subject to the MWA. Pet.App.106. And as a practical

matter, the state correctional department has long contracted with outside facilities to operate work release programs for those nearing the end of their criminal sentence, BIO.App.1a-4a, and Washington also maintains extensive contracts with private companies for civil commitment services. CA9.DktEntry.89. These state contractors, like GEO, are subject to Washington's MWA. Pet.App.106. That they have not violated the MWA does not mean the law only "hypothetically" applies.

More broadly, it cannot be that federal contractors are immune anytime a state exempts government entities. Washington and other states routinely exempt themselves from their own tax laws, *see, e.g.*, Wash. Rev. Code § 84.36.010(1) (property tax); Wash. Admin. Code § 458-20-189(3)(b) (business and occupation taxes), but that does not make federal contractors, like GEO, Boeing, or Amazon exempt from state taxes. *See, e.g.*, *United States v. Nye County*, 178 F.3d 1080, 1088 (9th Cir. 1999) (upholding a state tax law's exemption for state institutions). Washington's decision to exempt government entities (including the federal government) from regulation in no way requires it to exempt private entities as well.

At bottom, GEO's argument is that the MWA is discriminatory because it would not apply if the Tacoma facility were run by the government. But that is exactly the point. The MWA applies to GEO because it is a private business—not because it is a federal contractor.

2. No federal law preempts Washington's Minimum Wage Act

GEO's atextual preemption theory is a direct assault on the Constitution's balance of powers between the federal government and States. "The preemption of state laws represents 'a serious intrusion into state sovereignty.'" *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 773 (2019) (plurality opinion of Gorsuch, J.) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 488 (1996)). Here, GEO claims that federal law preempts Washington's MWA as to detainee workers at GEO's facility even though there is no federal statute that conflicts with it or whose purpose would be disrupted by its application to GEO. The Ninth Circuit correctly applied this Court's precedent in rejecting GEO's extreme preemption argument, and GEO never even alleges that the Ninth Circuit's analysis created any conflict with other courts.

As this Court well knows, preemption claims fall into three categories: express, field, and conflict preemption. *Arizona v. United States*, 567 U.S. 387, 399 (2012). GEO never argues field preemption, and GEO admits that express preemption is inapplicable, conceding that "nothing in . . . federal law expressly precludes GEO from paying detainees more" than $1 per day. Pet. 31. Thus, GEO's only preemption argument is conflict preemption.

To determine whether a conflict exists, the Ninth Circuit was required to consider whether "'compliance with both federal and state regulations is a physical impossibility'" (impossibility preemption), or whether "the challenged state law 'stands as an obstacle to the accomplishment and

execution of the full purposes and objectives of Congress'" (obstacle preemption). *Arizona*, 567 U.S. at 399 (citations omitted). That is precisely what the Ninth Circuit did, *see* Pet.App.26, and GEO's disagreement with that court's application of established law does not make this case cert worthy. *See* Rule 10.

The Ninth Circuit was right in any event. Of these two flavors of conflict preemption, GEO all but concedes the first when it acknowledges, as it must, that it is possible for it to comply with both federal and state law. Pet. 31 ("To be sure, nothing in th[e] contract or federal law expressly precludes GEO from paying detainees more."); *accord* BIO.App.5a-8a. Indeed, ICE told GEO before this litigation that "there is no maximum" compensation for detainee workers at the Tacoma facility, *see* BIO.App.34a-36a; the federal government made clear that nothing prohibits GEO from paying more to detainee workers, *see* CA9.DktEntry.157 at 10; GEO itself admitted to the jury that it "has the option to pay more than $1/day to detainee-workers for work performed[,]" BIO.App.6a-7a; and GEO did so when it benefitted the company, *see* BIO.App.11a-13a. GEO undeniably *can* comply with Washington's MWA and federal law.

Constrained by reality and its own concessions, GEO makes the more nebulous argument that Washington's MWA presents an obstacle to achieving Congress's objectives. As this Court has emphasized, however, such claims of implied preemption must be carefully scrutinized to avoid devolving into judicial policy making. "Implied preemption analysis does not justify a 'freewheeling judicial inquiry into whether a state statute is in tension with federal objectives,'"

and "a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act." *Chamber of Com. of U.S. of Am. v. Whiting*, 563 U.S. 582, 607 (2011) (citation omitted). *See also, e.g.*, *Va. Uranium, Inc.*, 587 U.S. at 767 ("Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to 'a constitutional text or a federal statute' that does the displacing or conflicts with state law." (quoting *Puerto Rico Dep't of Consumer Affs. v. ISLA Petroleum Corp.*, 485 U.S. 495, 503 (1988))).

GEO first seeks a preemptive hook in 8 U.S.C. § 1555(d), but that law says nothing about work programs run by private contractors, which did not exist in 1950 when it was enacted. Rather, it simply provides that "[a]ppropriations now or hereafter provided for the Immigration and Naturalization Service shall be available for . . . payment of allowances (at such rate as may be specified from time to time in the appropriation Act involved) to aliens, while held in custody under the immigration laws, for work performed[.]" *Id.* All this statute did is provide that appropriations could be made available for payments to detained immigrant workers at a rate specified in future appropriations. It does not require work programs in immigration detention centers, and it says nothing about wages that must be paid by private contractors under state laws or whether longstanding state employment laws are displaced.

Even less relevant is GEO's citation to a 1978 appropriations act, which capped the "payment of allowances" to $1 per day for that fiscal year. But this act expired at the close of fiscal year 1979. *See* Pub. L. No. 95–431, 92 Stat. 1021, 1021 (1978) ("An Act making appropriations . . . for the fiscal year ending September 30, 1979"). As the Ninth Circuit correctly explained, expired appropriations bills generally have no effect, Pet.App. 28, but even if this one did, nothing in the bill prohibited GEO from paying detainees more than $1 per day. Pet.App.28-29. Indeed, "[t]he government explicitly disagrees with GEO on this point," and GEO itself had routinely paid detainees more than $1 per day. Pet.App.29.

Finding no support in statutory text, GEO instead seeks to infer congressional intent from ICE's contract with GEO. Pet. 31 (arguing that "congressional policies were translated into the terms of GEO's contract with ICE"). This contract-based argument suffers from at least two fatal flaws.

First, it violates this Court's core command that "the purpose of *Congress* is the ultimate touchstone in every pre-emption case." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (emphasis added) (quoting *Medtronic*, 518 U.S. at 485). As this Court has made clear, "'[t]here is no federal preemption *in vacuo*,' without a constitutional text, federal statute, or treaty made under the authority of the United States." *Kansas v. Garcia*, 589 U.S. 191, 202 (2020) (quoting *Puerto Rico Dep't of Consumer Affs.*, 485 U.S. at 503). Rather, "any 'evidence of pre-emptive purpose,' whether express or

implied, must . . . be 'sought in the text and structure of the statute at issue.'" *Va. Uranium, Inc.*, 587 U.S. at 778 (source alteration accepted) (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)).

Second, even if the Court looked to GEO's contract as a possible source of preemptive effect, the contract required GEO to comply with state and local laws and to follow the most stringent of any conflicting standards. *See* BIO.App.23a-33a.

GEO's next refrain is that "practical constraints" and its voluntary post-litigation suspension of the work program demonstrate congressional intent to supersede Washington law. But what GEO chose to do after losing at trial does not show that *Congress* intended, more than half a century ago, to intrude upon Washington's sovereign authority to regulate the minimum wage within its borders. If anything, it confirms that the work program is not mandatory and that there is no conflict between Washington's MWA and federal law.

GEO also suggests that requiring it to pay workers the minimum wage might cause GEO to charge the federal government more, and that such an outcome might be an obstacle to operation of a work program or detention centers generally. But speculation that labor costs for contractors may increase in certain states, and in turn that prices charged to the federal government may rise, cannot possibly justify intruding upon a state's sovereignty and preempting longstanding state laws. This is the

precise lesson from *North Dakota*, 495 U.S. at 432, and *Penn Dairies*, 318 U.S. at 269-70—the Supremacy Clause does not prohibit state laws that merely risk increasing the federal government's costs.

Next, GEO tries to identify a conflict with Congressional purpose by looking to the federal Fair Labor Standards Act (FLSA). But FLSA explicitly says that it does not preempt state minimum wage laws. 29 U.S.C. § 218(a). While GEO cites three cases addressing FLSA's applicability to detainees, those cases simply hold that immigrant detainees are not employees under FLSA; none suggests that FLSA preempts application of state wage laws to detainees working for private contractors. *See Alvarado Guevara v. INS*, 902 F.2d 394, 396 (5th Cir. 1990); *Alvarado Guevara v. INS*, No. 90-1476, 1992 WL 1029, at *2 (Fed. Cir. Jan. 6, 1992) (unpublished); *see also Ndambi v. CoreCivic, Inc.*, 990 F.3d 369, 371 n.1 (4th Cir. 2021) (interpreting FLSA and identical state law).

To the extent GEO means to suggest that the Immigration Reform and Control Act (IRCA) indicates Congress's intent to bar states from requiring payment of a minimum wage to immigrant detainees who perform work, GEO is again wrong. IRCA merely prohibits employers from hiring ineligible employees. *See* 8 U.S.C. § 1324a. It says nothing about whether those employees should be paid the minimum wage if employers hire them anyway. Indeed, every circuit to have reached the question has recognized a worker's right to the minimum wage regardless of immigration status. *See, e.g.*, *Lucas*, 721 F.3d at 933-37; *Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299, 1307 (11th

Cir. 2013). Even if IRCA were relevant, some detainees at GEO's facility have work authorization. Pet.App.3.

Unable to show any flaw in the merits of the Ninth Circuit's preemption holding, GEO accuses the Ninth Circuit of improperly relying on the presumption against preemption. But the result would be the same whether the presumption applies or not, because there is no federal statute that creates *any* conflict with Washington's MWA, as explained above.

In any event, GEO's argument that the Ninth Circuit erred by applying the presumption here because this case involves "the uniquely and exclusively national area of immigration[,]" Pet. 33, flies in the face of this Court's precedent. This Court has applied the presumption even where a state passes a law explicitly aimed at regulating immigration. *See, e.g.*, *Arizona*, 567 U.S. at 393, 400 (applying rule that "courts should assume that 'the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress" even though state law's explicit purpose was to "discourage and deter the unlawful entry and presence of aliens" (citation modified)). It has applied the presumption even in a case where a state passed a law explicitly targeting the employment of unauthorized immigrants. *DeCanas v. Bica*, 424 U.S. 351, 357 (1976). And in *Whiting*, this Court distinguished a state law regulating employment of unauthorized immigrants from cases "involv[ing] uniquely federal areas of regulation." 563 U.S. at 604.

This case is far easier than those, because Washington has not enacted a law targeted at immigration or exclusively regulating immigrant labor.

Ultimately, GEO's preemption argument cannot succeed because "'[t]here is no federal preemption *in vacuo*,' without a constitutional text, federal statute, or treaty made under the authority of the United States." *Kansas*, 589 U.S. at 202 (citation omitted).

C. The Question Presented Is Narrow and Unimportant

This case does not present an "important question of federal law," that needs to be resolved by this Court, Rule 10, much less an "exceptionally important" question. Pet. 35.

While GEO portrays this case as posing broad questions about the proper intergovernmental immunity test, the Ninth Circuit's analysis was entirely consistent with this Court's rulings, as well as those of other circuits. Thus, GEO merely seeks review of the Ninth Circuit's application of settled law to the facts here. And those facts are unique, not only because of the extensive trial testimony showing no impact on ICE here, but also because no "other state" has minimum wage laws relevantly similar to Washington's, as the federal government acknowledged below. CA9.DktEntry.157 at 10, 11 n.12. This case thus presents the narrow question of whether GEO will have to comply with Washington's MWA—nothing more.

GEO invokes the prospect of widespread consequences and States run amok, but this argument fails on multiple levels. First, the federal government has for decades navigated the procurement of services from businesses in all fifty states with different laws governing taxes, minimum wages, and workplace safety. Second, while GEO complains of unworkable consequences for the federal government, the government's own contract with GEO required compliance with state and local laws. BIO.App.23a-28a. Third, since the verdict in this case five years ago, there has been no flood of State lawsuits against GEO for wage violations elsewhere. And finally, GEO's claims of seismic ramifications ring hollow given that GEO could have complied with Washington's MWA and still earned at least $16 million in annual profits from its Tacoma facility. Pet.App.15. Nothing about the minor consequences of this case for GEO calls for this Court's intervention.

CONCLUSION

The Court should deny the petition.

RESPECTFULLY SUBMITTED.

NICHOLAS W. BROWN
Attorney General

NOAH G. PURCELL
Solicitor General

MARSHA CHIEN
Worker Rights Unit Chief
Counsel of Record

LANE M. POLOZOLA
Assistant Attorney General

1125 Washington Street SE
Olympia, WA 98504-0100
Marsha.Chien@atg.wa.gov
360-753-6200

April 10, 2026

APPENDIX

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, v. THE GEO GROUP, INC., Defendant.	CIVIL ACTION NO. 3:17-cv-05806-RJB DECLARATION OF THEODORE LEWIS IN SUPPORT OF STATE OF WASHINGTON'S RESPONSE TO THE COURT'S PROPOSED ORDER GRANTING SUMMARY JUDGMENT OF DISMISSAL (ECF NO. 306)

Under penalty of perjury under the laws of the United States of America, I, Theodore Lewis, certify that the below is true and correct:

1. My name is Theodore Lewis. I am over the age of 18 and competent to testify in this matter.

2. I am the Work Release Administrator for the Washington State Department of Corrections (DOC). I have worked in this role since October 1,

2015. My job duties include the administration, management, and oversight of the Washington State DOC work release programs.

3. Washington's work release institutions serve as a bridge between life in prison and life in the community for Washington inmates nearing the end of their sentence. In short, work release facilities are separate and apart from Washington state prisons. They exist to provide participating inmates the opportunity to engage in paid employment or vocational training programs in the community while remaining under DOC supervision at an appropriate facility when not at their job or other pre-approved activity. Allowing state inmates to participate in work release programs is authorized under RCW 72.65.020, which allows DOC to confine inmates outside of state correctional institutions and instead in certain other partial confinement institutions, including "any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners."

4. Washington currently has twelve (12) work release institutions as part of its program. Of those, three (3) are fully state-run operations. The remainder are run with assistance from non-profit organizations, including The Transition House, Inc., Progress House Association, Community Work Training Association, and A Beginning Alliance. DOC does not use for-profit contractors in the operation any of its work release facilities, or any other correctional institutions in Washington. For the nine Washington work release facilities where non-profits are involved in operations, DOC contracts with the outside

organizations to provide security and specific, limited services. DOC itself maintains operational control and manages the institutions and programming – including the work release programs.

5. Individuals that are allowed to participate in DOC work release programs focus on transition, including the finding and retaining of employment, education, training, treatment, re-connecting with family members, developing life skills, and becoming productive members of the community. The purpose of work release is to provide incarcerated individuals opportunities for self-improvement, while assisting them in creating a safe and productive lifestyle that can be sustained upon release. Work release is available only to incarcerated individuals 12 months prior to their earned release date. Participating individuals must have a record of good behavior and be assigned to "Minimum 1" custody level; also, there must be available bed space at a work release institution.

6. Once assigned to work release, participating individuals must search for and/or retain employment or another approved programming opportunity in the community. Participants in the state work/training release program do not work for the DOC facility or non-profit where they are assigned to reside, nor do they work within the institution itself generally. Instead, they seek and obtain paid employment with outside employers or engage in educational or vocational training during their time in the program. Participants in the program earn market rate wages (*i.e.*, at least the minimum wage, though sometimes more) and pay taxes. Employment may only be accepted upon approval by community

corrections officers who verify that the employer is paying taxable wages, has a Tax Identification Number, and is a legal place of employment. In rare circumstances participants may work at these facilities where they have the opportunity to work in specific jobs, like food service, within the work release facility itself, but in those cases, participants are hired by and become employees of the contracted non-profit service agency, are paid market wages, and pay taxes.

7. In my experience, work release participants are employed by a wide range of employers. The most common positions are entry level jobs, though it is not uncommon to see participants working skilled labor jobs, welding, computer science, or even as clerks for attorneys.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 27th day of September 2019 in Tumwater, Washington.

Theodore Lewis

* * * * *

ER-68–70—Excerpts of Pretrial Order (October Trial)

[ER-68]

III. ADMITTED FACTS

The following facts are admitted by the parties:

1. GEO owns and operates the Northwest ICE Processing Center ("NWIPC"), which was known from 2005 to 2019 as the Northwest Detention Center ("NWDC"). It is located at 1623 East J Street, Tacoma, Washington.

2. Since October of 2005, GEO has contracted with U.S. Customs and Immigration Enforcement ("ICE") within the U.S. Department of Homeland Security ("DHS") to provide civil immigration detention management services at the Center for adults held in administrative custody as they await immigration status review by ICE and the federal judiciary.

3. GEO has expanded the capacity of the Center twice. The Center initially had the capacity to house between 500 to 800 individuals. In July 2006, GEO expanded the Center to house up to 1,000 individuals. In October 2009, GEO expanded the Center a second time so that it now has the capacity to house up to 1,575 individuals.

4. Pursuant to the Center contract between GEO and ICE, GEO provides detention services to ICE including, but not limited to: the building, management and administration, security, clean and vermin free facilities, food service with three nutritious meals per day, clean uniforms and bedding, and barbershop/grooming services.

5. Pursuant to the Center contract between GEO and ICE, GEO is required to "perform in accordance with" specific "statutory, regulatory, policy, and operational" constraints, including the ICE/DHS Performance Based National Detention Standards as well as "all applicable federal, state, and local laws."

6. The Performance Based National Detention Standards, and its predecessor the National Detention Standards, is a set of standards developed by ICE to ensure that all entities it contracts with provide safe and secure facilities.

7. Performance Based National Detention Standard 5.8 requires that GEO offer detained persons an opportunity to work in a Voluntary Work Program.

[ER-69]

8. Since October of 2005, GEO has offered detainees positions in its Voluntary Work Program.

9. On any given day, there could be as many as 470 positions for detainees in the Voluntary Work Program at the Center.

10. While detained, detainees do not have the opportunity to leave the Center or work outside of the Center, unless explicitly authorized by ICE.

11. GEO does not review whether detainee-workers have work authorization when reviewing their requests/applications to positions in the Voluntary Work Program.

12. GEO maintains job descriptions for Voluntary Work Program positions.

13. Positions that are available to detainees in the Voluntary Work Program are varied, including in the kitchen, in the laundry room, cleaning of common areas, and cutting hair in the barber shop.

14. GEO provides detainees in Voluntary Work Program positions with all equipment, materials, supplies, uniforms, and personal protective equipment necessary to their Voluntary Work Program position.

15. GEO has the option to pay more than $1/day to detainee-workers for work performed in the VWP at the Center.

16. GEO has never paid detainees in the Voluntary Work Program the state minimum wage.

17. GEO has paid and continues to pay detainees in VWP positions $1 per day.

18. The Performance Based National Detention Standard 5.8 states: "Detainees shall receive monetary compensation for work completed in accordance with the facility's standard policy. The compensation is at least $1.00 (USD) per day."

19. GEO employs non-detainee employees, including two or three janitors, at the Center.

[ER-70]

20. Washington's hourly minimum wage from 2005 to the present year has gone from $7.35 on January 1, 2005 to $13.69 on January 1, 2021.

21. The Minimum Wage Act applies to all employment relationships that are not convered by a statutory exemption regardless of the profitability of the employer.

22. Mr. Nwauzor is a citizen of Nigeria, and was granted asylum in the United States in January 2017.

23. Mr. Nwauzor was held at the Center as a civil immigration detainee from approximately June 2016 until January 2017.

24. Mr. Nwauzor held a Voluntary Work Program position during his detention at the Center.

25. Mr. Nwauzor obtained lawful permanent residence status, commonly known as a "green card," in July 2018.

* * * * *

* * * * *

1-SERWA-3; 6; 37–39—Excerpts of Verbatim Report of Proceedings Before The Honorable Robert J. Bryan, United States District Court Judge, October 13, 2021 – Jury Trial (Certified Trial Transcript)

[SERWA-3]

MS. CHIEN: The State of Washington would like to call Ms. Alisha Singleton.

THE COURT: Step to the lecturn. You can remove your mask to be sworn. If you will raise your right hand. Do you swear or affirm that your testimony in this cause will be the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

THE COURT: Thank you, be seated here. Let me ask you to speak right into the mic and keep your voice up.

DIRECT EXAMINATION

BY MS. CHIEN:

Q Can you state your name for the record?

A Alisha Singleton.

Q Did you used to work for GEO?

A Yes.

Q Make sure you talk into the microphone.

How long did you work for GEO?

A Almost 20 years.

Q When did you start working at GEO?

A September of 2001.

* * * * *

[SERWA-6]

Q Let's go back to when you were working at GEO. What where your job responsibilities as classification officer?

A Classification officer, I was responsible for classifying incoming detainees when they arrived into the facility. I was responsible for reviewing thema t increments throughout their time within the facility, as well as periodic times if incidents or additional information came in. I was responsible for the voluntary work program.

Q I want to focus on your job duties related to the voluntary work program.

What where your responsibilities on a day-to-day basis over the detainee work program?

A On a day-to-day basis, the responsibilities were receiving requests from the detainee population requesting work, either general work or in specific areas. Responsibility also was creating work rosters to send to the work areas where the detainees were, detainee removals from the job, departing the facility, as well as worker pay, collecting rosters and inputting worker pay.

Q Were you a GEO classification officer until your last day of employment?

A Yes.

Q So you managed GEO's detainee work program for 15 years or so?

A Yes.

[SERWA-37]

* * * * *

Q I would like to move to pay. How much did detainee workers get paid?

A A dollar per day.

Q Has GEO sometimes paid detainee workers more than a dollar per day at the center?

A On occasion.

Q What have they paid?

A The most I have seen is up to five dollars a day.

Q Has GEO considered paying more than a dollar per day as the general standard?

A No.

Q I am handing you -- I am not handing you, I am showing you Exhibit 69. Do you recognize this?

[SERWA-38]

A Yes.

Q What is this?

A It is Department head meeting minutes.

Q Do you see that your name is on this meeting minutes list?

A Yes. I was present.

Q Are they -- are these meeting minutes typically kept in the regular course of business?

A Yes.

MS. CHIEN: I would like to offer Exhibit 69 into evidence.

MS. ARANGO: No objection.

THE COURT: 69 may be admitted.

(Exhibit 69 was admitted.)

Q Can you tell me what date this meeting occurred?

A June 14, 2011.

Q I would like to scroll down -- I would like to look at No. 7. If we could do a callout for No. 7. It says, "We are looking for incentives that are allowed by the policy standard or contract to compensate kitchen and laundry workers beyond a dollar per day." Did I read that correctly?

A Yes.

Q So did GEO consider paying more than a dollar per day, as a regular course?

A No, that was something I addressed in the meeting.

Q Can you tell me more?

[SERWA-39]

A I had requested, if that could be addressed, was getting them compensated more than a dollar per day.

Q Why were you interested in them getting paid more than a dollar per day?

MS. ARANGO: Objection, relevance.

THE COURT: She may answer.

THE WITNESS: The two areas specifically listed in there are two of the areas in the facility that have the longest shifts and require the most amount of work. The result of that, it was harder to maintain workers oftentimes, because it was only for a dollar a day, when they can go work in another part of the facility for --

Q You wanted an incentive to work; is that right?

A Yeah.

Q I would like to turn back to Exhibit 115, which we have already admitted, and you testified was a batch summary. I would like to turn to page 3, which is Bates stamp 101449. Do you see the transaction amount listed for Mr. Arturo Murillo Camacho?

A Yeah, five dollars.

Q Is that an example of what you are talking about that a detainee worker might have been paid five dollars per day?

A Yes.

* * * * *

[SERWA-41]

* * * * *

Q I would like to turn to page 23. Do you see Mr. Murrillo's name again?

A Yes.

Q In the dinner out-count sheet?

A Yes.

Q Does this confirm Mr. Murillo worked in the kitchen for breakfast, lunch and dinner that day?

A Correct.

MS. ARANGO: Objection, Your Honor, this is not what the documents are reflecting. I would --

THE COURT: Keep your voice up, counsel. Sometimes when I don't react, it is because I didn't hear.

MS. ARANGO: Okay, Your Honor. I apologize. I would

* * * * *

[SERWA-42]

* * * * *

that the facility operates in compliance with all applicable standards;" is that right?

A Yes.

Q Who was the facility administrator?

A That is going to be our warden, currently Bruce Scott.

Q That's a GEO employee?

A Yes.

Q Do you see the sub "warden" for "facility administrator"? Can you tell me what the difference might be, if any?

A There is no difference, just over time the names changed.

Q They changed the name from warden to facility administrator?

A Correct.

Q GEO established the procedures for informing detainee workers about their responsibilities and reporting procedures; is that right?

A Yeah.

Q Let's talk about ICE's role in managing the detainee program, if any. What role did ICE play in the detainee work program?

A Not in the detainee work program.

Q Did they require a detainee work program?

A Yes.

Q So they required the detainee work program; is that right? In the actual day-to-day management they played no role, is

[SERWA-43]

that what I am understanding?

A Correct.

Q Did GEO have policies regarding the work program?

A Yes.

Q Were those policies mirrored off the ICE standards?

A Yes.

Q Who decided where GEO -- who decided where detainee workers would work in the facility?

A GEO management.

Q Did ICE or the ICE standards require GEO to assign workers to the Grey Mile?

A No.

Q Did anything in the ICE standards require GEO to assign workers to the kitchen?

A No.

Q The laundry?

A No.

Q Let's talk about the training of detainee workers. Did ICE train detainee workers?

A No.

Q Let's talk about supervision. Did ICE supervise the detainee workers?

A No.

Q Earlier you testified GEO staff would sometimes tell you they needed more detainee workers; is that right?

[SERWA-44]

A Yeah.

Q That happened most often in the kitchen; is that right?

A Correct.

Q Did you have to ask ICE before you assigned additional detainee workers to the kitchen?

A No.

Q What is the only parameter that ICE had about the work program?

A The only restriction that they had was that high custody detainees could not work outside their living unit.

Q By "high custody," you mean those detainees that had a criminal history; is that right?

A Pretty much the highest level of criminal history.

Q There are certain people in the center who have no criminal history; is that right?

A Correct.

Q Let me make sure I am clear. You worked as a classification officer for 15 years. Did you ever work with an ICE official to manage the work program?

A No.

Q Did you communicate with an ICE official about how many detainees to assign to any given job?

A No.

Q Did you ever communicate with an ICE official about the types of job detainees would be assigned to work at the

[SERWA-45]

center?

A No.

Q Did you ever communicate with an ICE official about how much detainees should be paid?

A No.

Q Who was the only person you have had a conversation with about detainee pay, about how much GEO should pay detainee workers?

A My direct supervisor.

Q That is the associate warden, the associate facility administrator?

A Correct.

Q Is that Mr. McHatton?

A At one point, yes.

Q We talked about the waiting list that people have, and detainee workers requesting jobs. Did detainee workers ever not work the jobs assigned?

A Yes.

Q Tell me some examples.

A Sometimes they were sick. Sometimes they just didn't want to. Sometimes they quit.

Q Were there times when there were large numbers of detainee workers that didn't want to work?

A Yes.

Q How did that impact GEO's operation?

[SERWA-46]

A Primarily in areas like the kitchen, then it made it difficult to be able to get the meals out as

required, when you don't have enough people to assist.

Q What would GEO do if there were not enough detainee workers in the kitchen?

A Those would be the instances where, depending on the why or how long it was occurring, where they would then do up to dollars five a day, on occasion.

Q Would they reassign other GEO staff to the kitchen?

A No.

Q Would GEO staff have to pay -- work overtime, possibly?

A No.

Q Are you aware of times where there weren't enough detainee workers to staff the kitchen?

A Yes.

Q Can you give me some examples of times?

A Yeah. We have had several instances where that has occurred. We had instances where, for example, the chickenpox outbreak, a lot of the facility was quarantined, per se, so they could not leave their living units, which limited our options for workers.

Q If there were not enough detainee workers, would GEO staff sometimes step in and work in the kitchen?

A No.

Q How much was GEO staff paid when they -- I'm sorry.

* * * * *

[SERWA-47]

A Yes.

Q I would like to turn to the first page, in case I didn't ask you what date that was. What date did this meeting occur?

A May 1, 2012.

Q I am going to show you Exhibit 14 and ask if you recognize it.

A Yes.

Q What is it?

A Memorandum submitted to my -- the associate warden regarding the voluntary work program.

MS. CHIEN: I would like to offer to admit Exhibit 14 into evidence.

MS. ARANGO: Objection. I still do not believe the predicate was laid.

MS. CHIEN: She testified she wrote this memo.

THE COURT: Exhibit 14 may be admitted.

(Exhibit 14 was admitted.)

Q Can you tell me what date this memo was written?

A April 12th, 2012.

Q What was this memo about?

A Voluntary work program, PBNDS standards for 2011.

Q Do you see where it says, "Compensation is now at least a dollar, however, it doesn't say we don't have the option to pay more if we like"?

[SERWA-48]

A Yes.

Q Why were you interested in telling the facility leadership that the pay was flexible, that you have the option to pay more if you like?

A Because that was one of the noted changes with the new standards in comparison to the previous ones.

Q You were interested in paying more than a dollar per day?

A Yeah.

Q How would paying detainee workers more have impacted your job as a classification officer?

A It would make it less time consuming, because there would potentially be less turnover, because now there would be more incentive to work.

Q Did GEO change the pay rate, based on the PBNDS standard, saying the pay could be at least a dollar per day.

A No.

Q When you left in 2021, what did GEO pay its detainee workers?

A A dollar a day.

Q Regardless if they worked in the kitchen or in the pod?

A Correct.

Q That is true even though the ICE detention standards allowed GEO to pay more than a dollar per day?

A Correct.

Q You testified earlier that GEO did actually pay more than

[SERWA-49]

a dollar per day in special circumstances; is that right?

A Yes.

Q What were the special circumstances?

A Work shortages in the kitchen.

Q When there were shortages in the kitchen. So after there were no shortages, like maybe the chickenpox is over, what would you do in terms of the pay in the work program?

A Go back to the standard one dollar per day.

Q Why didn't GEO pay five dollars per day as the standard?

A The more that they pay them, the less money that they make.

* * * * *

2-SERWA-366–67; 375–76—Excerpts of Contract between ICE and GEO (Trial Exhibit 129)

[SERWA-366]

SECTION C – DESCRIPTION / SPECIFICATION

PERFORMANCE WORK STATEMENT

I. INTRODUCTION

A. Objective

The objective of this contract is to obtain a facility for the detention, transportation and food services for ICE detainees located in the Seattle, WA area in support of the ICE ERO-Seattle Field Office. The contractor shall furnish the facility and services inclusive of a trained and qualified management staff, supervision, manpower, relief officer(s), uniforms, equipment, vehicles, and supplies (which includes firearms, ammunition, body restraints, non-lethal devices, body armor, radios and cellular telephones) to provide support seven (7) days a week, twenty-four (24) hours per day.

ICE is anticipating a one (1) year base period with nine (9) one-year and one (1) six month optional periods, and a 60 day transition period.

B. Background

The United States Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is responsible for the detention, health, welfare, transportation, and deportation of detainees in removal proceedings, and those subject to final order of removal from the United States. ICE houses

detainees in Contractor-owned, Contractor-operated detention facilities, and other federal, state, local, and private facilities.

C. Mission

The mission of the ICE Enforcement and Removal Operations (ERO) Program is to identify, arrest, and remove aliens, who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of our immigration laws and border control efforts. ERO upholds America's immigration laws at, within and beyond our borders through efficient enforcement and removal operations.

ERO currently maintains and operates various databases used to process cases located by Federal, state and local law enforcement agencies. ERO functions are directly reliant upon these activities. In implementing its mission, ERO is responsible for carrying out all orders for the required departure of detainees handed down in removal proceedings, or prior thereto, and arranging for detention of detainees when such detention becomes necessary.

D. Partnership Philosophy

A major intent of this acquisition is to create a "partnership" between ICE and the Contractor. ICE intends to structure the contract in a manner that ensures the Contractor's goals and objectives are in alignment with those of ICE. Superior performance on the Contractor's part will have both an indirect and direct effect on the accomplishment of ICE's mission. Within the context of the ICE/Contractor partnership, ICE does not use the terms "partner"

and "partnership" as legal terms. The ICE/Contractor partnership will reflect the attributes of an open, collaborative, customer-oriented, and professional relationship. In addition to meeting the program objectives, the contractor is encouraged to:

1. Consistently take steps to understand ICE's crucial national security mission, its business issues and opportunities, and its responsibilities under Section 287(g), Immigration and Nationality Act.
2. Work collaboratively with other Federal, state and local law enforcement organizations, contractors, government agencies, and business partners to ensure success; and
3. Under a performance-based contract, performance measures and metrics will be used extensively to monitor contractor performance.

The following constraints comprise the statutory, regulatory, policy and operational considerations that will impact the contractor. The contractor is expected to become familiar with all constraints affecting the work

[SERWA-367]

to be performed. These constraints may change over time; the contractor is expected to be knowledgeable of any changes to the constraints and perform in accordance with the most current version of the constraints. Constraints include, but are not limited to:

a) Memoranda of Understanding between ICE and individual law enforcement jurisdictions that may apply

b) Department of Homeland Security Management Directive (MD) 11042.1 – Safeguarding Sensitive but Unclassified (For Official Use Only) Information

c) Department of Homeland Security Instruction Handbook 121-01-007, The Department of Homeland Security Personnel and Suitability Program

d) Other applicable Executive Orders and Management Directives

e) Post Orders

f) General Directives

g) American Correctional Association (ACA) Standards for Adult Detention Facilities (most current edition) and the most recent copy of the supplement issued every two years. A copy is obtainable for purchase through the Internet website http://www.aca.org/ACE_Prod_IMIS/ACA_Member/Standards___Accreditation/Standards/Purchase/ACA_Member/Standards_and_Accreditation/Standards_Books___Merchandise.aspx?hkey=9afcadb3-623d-4933-825d-32458db12f83

h) ICE/DHS Officer's Handbook (current and future editions, as issued)

i) A Guide to Proper Conduct and Relationships with Aliens and the General Public

j) The ICE/DHS Performance Base Detention Standards – A copy is obtainable on the ICE Internet website

k) All rules and regulations governing usage of firearms, public buildings and grounds

l) All regulations provided to the Contractor through the COR

m) The Patriot Act of 2001

n) The Illegal Immigration Reform and Immigrant Responsibility Act (IIAIRA), P. L. 104-208

o) Federal Acquisition Regulations (FAR) and Department of Homeland Security Acquisition Regulations (HSAR)

p) Applicable federal, state facility codes, rules, regulations and policies

q) Applicable federal, state and local labor laws and codes

r) Applicable federal, state and local firearm laws, regulations and codes

s) Alignment with external sources (e.g. state and local law enforcement organizations)

t) Pre-clearance approvals are required for access to ICE field staff, facilities and information

u) Pre-employment suitability clearance is required for contract employees before any access is granted to ICE field staff, facilities and information

v) All applicable environmental requirements, including Executive Orders and Management Directives

w) Existing lease agreements

x) DHS Non-Disclosure Agreement Requirements

y) Organizational Conflict of Interest Provisions

Accomplishments of some ACA standards are augmented by DHS/ICE policy and/or procedure. In these instances, the PWS identifies and provides direction for the enhanced requirements. In cases where other standards conflict with DHS/ICE policy or standards, DHS/ICE policy and standards prevail.

* * * * *

[SERWA-375]

90. PERFORMANCE WORK STATEMENT (PWS): That portion of the contract, which describes the services to be performed under the contract.

91. STRIP SEARCH: An examination of a detainee's naked body for weapons, contraband, and physical abnormalities. This also includes a thorough search of all of the individual's clothing while not being worn.

92. SUITABILITY CHECK: Security clearance process for Contractor and all Contractor Employees to determine favorable suitability to work on a Government contract.

93. TOUR OF DUTY: No more than 12 hours in any 24-hour period with a minimum of eight hours off between shifts, except as directed by state or local law.

94. TRAINING: An organized, planned, and evaluated activity designed to achieve specific learning objectives. Training may occur on site, at an academy of training center, at an institution of higher learning, through contract service, at professional meetings or through closely supervised on-the-job training. Meetings of professional associations are considered training when there is clear evidence of the above elements. All trainers must be certified and certification shall be approved by the COR or ICE-designated employee.

95. TRANSPORTATION COSTS: All materials, equipment and labor necessary to respond to requests by designated officials for secure movement of detainees from place to place necessary for processing, hearings, interviews, etc.

96. TRANSPORTATION SERVICE COST: An all-inclusive or burdened rate. Cost includes but is not limited to labor, equipment, material, supplies, and other related costs necessary to respond to requests by designated officials for movement of detainees from place to place necessary to respond to requests by designated officials for movement of detainees from place to place necessary for processing, court hearings, interviews, doctor's appointments, ICE Air/airports, and transporting in-between detention facilities (counties, state and federal).

97. TRAVEL COST: Cost inclusive of lodging and meals and incidental expenses (MI&E) for Transportation Officers exceeding the standard working hours. Cost is based on actual charges per occurrence, not to exceed the allowable Federal Travel Regulation rates/costs in effect on the dates of travel.

98. WEAPONS: This includes but is not limited to firearms, ammunition, knives, slappers, billy clubs, electronic defense modules, chemical weapons (mace), and nightsticks.

Ambiguities

All services must comply with the Performance Work Statement (PWS) and all applicable federal, state, and local laws and standards. Should a conflict exist between any of these standards, the most stringent shall apply. If the Contractor is unable to determine

which standard is more stringent, the Contracting Officer (CO) shall determine the appropriate standard.

The COR does not have authority to modify the stated terms of the contract, or to approve any action that would result in additional charges to the Government. The CO will make all modifications in writing.

G. Hold Harmless

The Contractor shall protect, defend, indemnify, save, and hold harmless the United States Government and its employees or agents, from and against any and all claims, demands, expenses, causes of action, judgments and liability arising out of, or in connection with, any negligent acts or omissions of the Contractor, its agents, sub-contractors, employees, assignees, or anyone for whom the Contractor may be responsible. The contractor shall also be liable for any and all costs, expenses and attorney's fees incurred as a result of any such claim, demand, cause of action, judgment, or liability, including those costs, expenses, and attorneys' fees incurred by the United States Government and its employees or agents. The Contractor's liability shall not be limited by any provision of limits of insurance set forth in the resulting contract.

In awarding the contract, the Government does not assume any liability to third parties, nor will the Government reimburse the Contractor for its liabilities to third parties, with respect to loss due to death,

[SERWA-376]

bodily injury, or damage to property resulting in any way from the performance of the contract or any subcontract under this contract.

The Contractor shall be responsible for all litigation, including the cost of litigation, brought against it, its employees or agents for alleged acts or omissions. The CO shall be notified in writing of all litigation pertaining to this contract and provided copies of any pleadings filed or said litigation within five working days of the filing. The Contractor shall cooperate with Government legal staff and/or the United States Attorney regarding any requests pertaining to federal or Contractor litigation.

Policy and procedures shall be developed which ensure a positive relationship is maintained with all levels of the federal judiciary. The Contractor's procedures shall ensure a tracking system is established which mandates that all judicial inquiries and program recommendations are responded to in a timely and accurate manner. All judicial inquiries and Contractor responses, specifically related to a detainee, shall be made part of the detainee's file.

The Contractor shall notify the COR when a member of the United States Congress or any media outlet requests information or makes a request to visit the facility, per the ICE PBNDS on News Media Interviews and Tours. The Contractor shall coordinate all public information related issues with the COR or ICE-designated employee. All press statements and releases shall be cleared, in advance, with the ICE Office of Public Affairs.

The Contractor shall endure employees agree to use appropriate disclaimers clearly stating the employees' opinions do not necessarily reflect the position of the United States Government in any public presentations they make or articles they write that relate to any aspect of contract performance or the facility operations.

* * * * *

SERWA-464–65—Email from Bill McHatton to Lowell Clark (October Trial Exhibit 364)

[SERWA-464]

Message

From: Bill McHatton [/O=EXCHANGELABS /OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6549 970805214B118E9285EBD94AA8E4-BILL MCHATT]

Sent: 8/30/2014 5:30:48 PM

To: Lowell Clark [/o=ExchnageLabs/ou= Exchange Administrative Group (FYDIBOHF23 SPDLT)/CN=Recipients/cn=ef67fd9964c441048c81e6 34da7eb1c8-Lowell Clar]

Subject: Fwd: Voluntary Work Program

FYI, even Charles supported our attempt to give detainees $2.00 for two jobs.

Bill McHatton
Assistant Warden, Security
The GEO Group, Inc. ®
Northwest Detention Center
1623 East J Street
Tacoma, Washington 98421
Tel: 253 396 1611 • Fax: 253 396 1250
bmchatton@geogroup.com
www.geogroup.com

you are not the intended recipient or the person responsible for delivering the email to the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of this email is strictly prohibited. If you have received this email in error, please immediately notify by replying to this email.

--------- Forwarded message ---------

From: **Howard, Charles L** <Charles.L.Howard@ice.dhs.gov>

Date: Wed, Aug 27, 2014 at 8:01 AM

Subject: Voluntary Work Program

To: "Gronewold, James G" <James.G.Gronewold@ice.dhs.gov>, "Bill McHatton (bmchatton@geogroup.com)" <bmchatton@geogroup.com>, "rkimble@geogroup.com" <rkimble@geogroup.com>, "Conway, Edith B" <Edith.B.Conway@ice.dhs.gov>

Cc: "Asher, Nathalie R" <Nathalie.R.Asher@ice.dhs.gov>

Good morning all,

Geo posed the question yesterday at it relates to difference in pay for those workers providing a service in the Food Service area at night. According to the standard there is a minimum compensation of a $1.00 however; there is no maximum.

5.8 Voluntary Work Program

[SERWA-465]

K. Compensation

Detainees shall receive monetary compensation for work completed in accordance with the facility's standard policy.

The compensation is at least $1.00 (USD) per day. The facility shall have an established system that ensures detainees receive the pay owed them before being transferred or released.

Thanks and hope this helps,

Charles L. Howard
U.S. Immigration and Customs Enforcement
ICE ERO DMD DMU
Detention Services Manager-DSM
Telephone # 253-779-6082 Office
202-489-9847 Cell

SERWA-473—Detainee Kite #2,193,425, sent to ICE 9/30/2017, received by ICE, and closed 10/3/2017 (October trial exhibit 607)

ICE / Immigration - #2,193,425

From: ORLANDO MARQUEZ-ZAVALZA ([redacted], NA)

Housing Area: G3

Assigned To: ICE

Urgent: No

Date Submitted: 09/30/2017 8:40 PM

Date Received: 10/03/2017 2:28 PM

Status: **CLOSED**

Request

Original Request...

buenas noches quiero reportar a la servidora carter yo hable con ella que si me dejaba salir a mi celda porque me sentia mal mareo y dolor de cabeza a la 7;45pm me ignoro y se fue yo tengo depresion y paralisis facial estoy agusto trabajando pero a veces me forzan cuando ya estoy ocupado en un trabajo me mandan a otro y les dije que yo solo tenia 2 manos gracias pr su compresion y su tiempo

Translated version using machine translation...

good night I report to the servant carter I talk with her if you would let me go to my cell because I felt bad dizziness and headache to the 7; 45 pm me I

ignore and went I have depression and facial paralysis I am comfortable working but sometimes I force when already est Oy occupied a job send me to another and I told them I only had 2 hands thanks pr its compression and his time

Response by **Lt. T. Epplett** on **10/03.2017** at **2:31 PM**

This is a GEO issue. You have to report it to GEO.