

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 a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**INDIVIDUAL RESPONDENTS'
BRIEF IN OPPOSITION**

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QUESTIONS PRESENTED

1. Whether applying Washington state's generally applicable minimum-wage law to the wages that GEO, a private company, pays its workers at its Tacoma facility is a direct regulation of the federal government under the doctrine of intergovernmental immunity.

2. Whether, under the doctrine of intergovernmental immunity, Washington's minimum-wage law—which applies equally to private detention contractors for the state and federal government—discriminates against the federal government.

3. Whether federal law preempts the application of Washington's minimum-wage law to GEO's employment of detained workers to operate its Tacoma facility.

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INTRODUCTION

GEO Group frames its petition as presenting a single question about the Supremacy Clause. But, as its table of contents demonstrates, GEO in fact raises three distinct questions: (1) Does the application of Washington’s minimum-wage law to GEO, a private company, somehow directly regulate the federal government in violation of the intergovernmental immunity doctrine? (2) Does Washington’s minimum-wage law discriminate against federal detention contractors, even though it treats state and federal contractors exactly alike? (3) And finally, does federal law preempt the application of Washington’s minimum-wage law to workers detained in GEO’s Washington facility, even though it’s undisputed that there is no federal law that dictates what a company pays its detained workers?

None of these questions warrants certiorari. The standard that applies to each question is well settled by this Court’s precedent, and every court of appeals applies it. GEO tries to manufacture a split as to the first question—whether requiring the company to pay its workers minimum wage directly regulates the federal government. But the cases that GEO cites in support of its argument all apply the same rule that the Ninth Circuit applied here: Nondiscriminatory state regulations may apply to federal contractors, even if they have an incidental impact on the government; but states may not regulate contractors in a way that would control or substantially interfere with the federal government’s own operations. Indeed, the Third Circuit has explicitly recognized that its rule is the same as the Ninth Circuit’s—which, in turn, relied on the same Second and Fourth Circuit precedent that GEO invokes.

GEO cites no court that has accepted its proposed rule: that private contractors receive the “same immunity” as the federal government itself. Pet. 21. That’s unsurprising. Its proposal is flatly inconsistent with this Court’s long-settled precedent. And GEO doesn’t even try to argue that there’s a split on preemption.

GEO’s petition thus amounts to a plea that this Court review the Ninth Circuit’s application of settled law to the facts of this case. But this Court does not ordinarily grant certiorari to engage in factbound error correction—especially where, as here, the lower court’s decision will have little impact beyond the case at hand. The Ninth Circuit considered the application of a single state’s unique minimum-wage law to a single detention facility operating under a contract with ICE that required GEO to obey state law. And the record evidence demonstrated that, whether GEO complied with the law or not, its Tacoma facility would make millions. The lower court’s conclusion that, under these circumstances, GEO must comply with the Washington Minimum Wage Act has little bearing on whether a federal contractor must comply with other laws of other states under other circumstances.

And, in any event, the Ninth Circuit was correct. First, applying Washington’s minimum-wage law to GEO, a private company, does not regulate the federal government, directly or otherwise. At most, *GEO* might need to pay more for labor. But this Court has repeatedly held that laws that do nothing more than increase a contractor’s costs are permissible. Second, Washington’s longstanding, generally applicable minimum-wage law does not discriminate against those who do business with the federal government. As the Washington Supreme

Court has held, the Act applies equally to private detention contractors whether they contract with the state or the federal government. Finally, GEO's preemption argument fares even worse: GEO admits that no federal law limits what private companies operating immigration detention centers pay their workers. Nor has ICE attempted to impose any such limit. State law can't conflict with federal law if no federal law exists.

The petition should be denied.

STATEMENT

A. Factual background

GEO is a for-profit company that owns and operates private detention centers in countries around the world. In 2025 alone, the company took in \$2.6 billion in revenue.¹

GEO's facilities include the facility in this case in Tacoma, Washington. Pet. App. 2. GEO named the facility the Northwest ICE Processing Center. 1-ER-68. But GEO—not ICE—"owns and operates" the facility. Pet. App. 98.²

At its Tacoma facility, GEO contracted to provide "detention management services" for up to 1,575 adults "awaiting resolution of immigration matters." Pet. App. 133. For these services, GEO charged ICE a minimum fee of \$700 million over 10 years. Pet. App. 3.

¹ *The GEO Group Reports Fourth Quarter and Full Year 2025 Results*, GEO Group (Feb. 12, 2026), <https://perma.cc/2XPX-HG3Q>.

² Unless otherwise noted, all internal quotation marks, citations, alterations, brackets, and ellipses have been omitted from quotations throughout this brief. The excerpts of record filed in the court of appeals by GEO, the individual plaintiffs, and the State of Washington are cited, respectively, as ER, NwauzorSER, and SERWA. Other Ninth Circuit filings are identified by ECF number.

Instead of hiring Washington workers, however, GEO sought to maximize profits and reduce labor costs by having much of this work done by people in detention. GEO paid them \$1 a day—well below Washington’s minimum wage. Pet. App. 2; 1-ER-40.

The trial evidence demonstrated that GEO’s detained workers performed work critical to operating the facility, including cleaning, operating the kitchen and laundry, and maintenance. Pet. App. 5-6; *see also, e.g.*, 1-SERWA-58-62, 149, 166-67. GEO estimated that, without this labor, it would have needed to hire “85 additional full-time outside employees.” Pet. App. 6; *see also, e.g.*, 1-SERWA-173 (admitting that, without the detained workers, GEO would have to “hire more officers or have an outside agency come in” to ensure that “the building [is] clean”); 1-SERWA-111-12, 220-21.

Paying its detained workers \$1/day allowed GEO to save “millions of dollars that it would otherwise have spent on payroll.” Pet. App. 2. When asked why the company paid so little, the former GEO employee who had been responsible for overseeing their employment testified: “The more that [GEO] pay[s] them, the less money that [GEO] make[s].” 1-SERWA-49.

The detained workers worked for \$1/day because they felt they had “no choice.” Pet. App. 6. Detained workers testified that they “desperately” needed money for food, toiletries, clothing, phone calls, and medical care. 1-SERWA-150; *see, e.g.*, 1-SERWA-145, 186, 192, 194-95, 231; NwauzorSER-31-33.

GEO maintains that employing detained workers to operate its facility for \$1/day to obtain basic necessities was a “voluntary work program” that GEO established under its contract with ICE to “avoid[] idleness,” rather than for GEO’s own business purposes. Pet. 1. But “ICE

played no role in the development or management” of the work of detained laborers. Pet. App. 5. GEO controlled all aspects of the labor, including deciding which jobs to create; assigning participants to those jobs; training, equipping, and supervising the participants; and kicking workers out of the program for misconduct or poor performance. *See* 1-SERWA-13-14, 30, 44-45, 56-57, 63-64, 98-99, 105, 110, 148-52, 157-58, 160; NwauzorSER-39-40, 46-47. GEO made those employment decisions without consulting ICE. 1-SERWA-38-39. In fact, when there was an attempt to report concerns to ICE, an ICE official said this “is a GEO issue.” 2-SERWA-473; *see* 1-SERWA-191-92.

GEO conceded that ICE did not require it to pay so little. *See* 1-ER-69. GEO’s contract with ICE requires that the company “comply with ... all applicable federal, state, and local laws and standards.” 2-SERWA-375. Expressly included are “[a]pplicable federal, state and local labor laws and codes.” 2-SERWA-367, 405. And “[s]hould a conflict exist between any of these standards, the most stringent shall apply.” 2-SERWA-375. In its contract, GEO also agreed to abide by ICE guidelines known as the Performance-Based National Detention Standards, or PBNDS, which set a *minimum* of “at least \$1.00 (USD) per day” for work performed by individuals in detention. Pet. App. 4 (quoting 3-ER-518).

But, as ICE confirmed, nothing in GEO’s contract with ICE or the PBNDS set any *maximum* wage. 2-SERWA-464. And GEO itself has paid its detained workers more than \$1 a day, when it was in its interest to do so—“without any objection from ICE.” Pet. App. 5; 2-SERWA-464.

B. Procedural background

1. In 2017, a class of current and formerly detained persons brought suit against GEO, alleging that it violated the Washington Minimum Wage Act by paying detained workers only \$1 per day. Pet. App. 6. Around the same time, the State of Washington filed its own action against GEO. *Id.* The federal district court eventually consolidated the cases. *Id.*

At summary judgment, the district court rejected GEO's preemption argument and its claim to be immune from state law. Pet. App. 127-131, 142-145, 187-192. Then, in 2021, after a three-week trial, the jury returned a unanimous verdict in favor of the plaintiffs. Pet. App. 195-96; *see* 3-ER-565-67.

After the jury's verdict, GEO chose to stop employing detained workers pending the appeal. Pet. App. 30; *see* 2-ER-217. GEO now claims (at 34) that it had "no choice" because complying with the minimum-wage law was "cost-prohibitive." But the record evidence demonstrated that, even after paying minimum wage, GEO would have had annual profit margins of \$16 to \$21 million for the Tacoma facility. Pet. App. 15.

2. GEO appealed. Pet. App. 101. As relevant here, GEO raised three arguments. First, GEO contended that Washington's minimum-wage law does not apply to detained workers in private facilities. ECF 18 at 20-30. Second, GEO argued that applying Washington's longstanding, generally applicable minimum-wage law to GEO's Tacoma facility violates the doctrine of intergovernmental immunity. ECF 18 at 30-39. Third, GEO argued that Washington's minimum-wage law is preempted by an appropriation law that expired in 1979. ECF 18 at 39-44.

The Ninth Circuit certified the state-law questions that GEO raised to the Washington Supreme Court: (1) Does Washington’s minimum-wage law apply to GEO’s detained workers at the Tacoma detention facility? And, if so, (2) does the Minimum Wage Act apply equally to work performed by those detained in a private facility operating under contract with the state? Pet. App. 7.

As to the first question, the Washington Supreme Court unanimously held that Washington’s minimum-wage statute applies to GEO’s detained workers. While the law includes an exemption for detained workers in *publicly* operated facilities, the court explained, this exemption does not apply to a “*privately* owned and operated facility.” Pet. App. 101-04 (emphasis added). And as to the second question, the court unanimously held that the Minimum Wage Act applies to all private detention facilities, “regardless of whether the private entity that owns and operates the facility contracts with the state or federal government.” Pet. App. 106.

3. After the Washington Supreme Court’s decision and supplemental briefing, the Ninth Circuit affirmed the district court’s decision. Pet. App. 1-60. The Ninth Circuit held that intergovernmental immunity doesn’t shield GEO from being required to comply with state law and that no federal law preempts Washington’s minimum-wage law. Pet. App. 8.³

As to intergovernmental immunity, the court of appeals explained that the doctrine prohibits state laws that either (1) “directly regulate” the federal government;

³ The Ninth Circuit also held that the *Yearsley* doctrine, which it called “derivative sovereign immunity,” does not shield GEO’s conduct, Pet. App. 31-34, a holding that GEO does not ask this Court to review.

or (2) that “discriminate against it.” *Id.* (quoting *United States v. Washington*, 596 U.S. 832, 835 (2022)). The court held that neither applies here.

a. In finding no direct regulation, the court recognized that state laws may not seek to “control federal operations,” in a way that would effectively amount to “direct enforcement against the Government.” Pet. App. 10 (quoting *Geo Grp., Inc. v. Newsom*, 50 F.4th 745, 760 (9th Cir. 2022) (en banc)). But the court also recognized that “[p]rivate contractors do not stand on the same footing as the federal government.” Pet. App. 11 (quoting *Newsom*, 50 F.4th at 750). The court explained that, in “a long-standing line of cases,” this Court has affirmed the authority of states to regulate private contractors. Pet. App. 13. For example, this Court has upheld state taxes on federal contractors, state workplace safety laws, and other state regulations that merely result in increased costs to the government. *Id.* (compiling cases).

Applying that distinction here, the Ninth Circuit explained that Washington’s minimum-wage law “neither controls federal operations nor dictates the terms of the contract between ICE and GEO.” Pet. App. 11. Washington’s law “does not forbid the federal government to use private contractors to confine civil detainees.” Pet. App. 13. “Nor does it impose requirements on private contractors that conflict with any requirement imposed by the federal government.” *Id.* Indeed, neither GEO’s contract nor any other action by federal officials “dictate[d] to GEO a maximum rate” of pay for detained labor. Pet. App. 12. GEO’s compliance with the state law also “requires no action by federal officials.” Pet. App. 11. At most, it might indirectly increase ICE’s costs—although even that was speculative, Pet. App. 15—and a “state law is not

unconstitutional just because it indirectly increases costs for the Federal Government.” Pet. App. 12 (quoting *Newsom*, 50 F.4th at 755 (quoting *Washington*, 596 U.S. at 839)).

b. In finding no discrimination, the Ninth Circuit recognized that a state may not discriminate against “those with whom [the United States] deals,” including federal contractors. Pet. App. 8 (quoting *North Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality op.)). But Washington’s minimum-wage law “treats equally private employers who have contracted with the state and private employers who have contracted with the federal government.” Pet. App. 18.

As authoritatively interpreted by the Washington Supreme Court, the “critical distinction under the statute is between publicly and privately run institutions, not between federal and state institutions.” Pet. App. 17 (citing Pet. App. 106). “[P]rivately run detention facilities” all have to pay the minimum wage, “regardless of ‘whether the institution is operated pursuant to a contract with the federal or state government.’” *Id.* (quoting Pet. App. 107). And workers at publicly run detention facilities—both federal and state—are exempt. Pet. App. 19. The Ninth Circuit therefore rejected GEO’s claim that Washington’s minimum-wage law—which treats state and federal facilities exactly the same—somehow discriminates against the federal government. Pet. App. 20-21.

c. Finally, as to preemption, GEO argued that under two decades-old federal laws addressing appropriations, “the maximum rate of payment for work performed by aliens, while held in custody under the immigration laws, is \$1 per day.” ECF 18 at 40-41.

The Ninth Circuit rejected this argument, explaining that neither of the laws GEO cited set any maximum wage rate for contractors to pay their detained workers. Pet. App. 27-29. And in its petition for certiorari, GEO now concedes the point. Pet. 31.

Judge Bennett dissented, though not as to the majority's rejection of GEO's direct regulation argument. Pet. App. 35-60.

4. The Ninth Circuit denied GEO's petition for rehearing en banc. Pet. App. 61-62. The panel majority issued a statement respecting the denial of rehearing en banc, observing that treating state regulation of GEO as direct regulation of the federal government would be "contrary to long-settled black letter law." Pet. App. 65. Judge Collins authored one dissent, adopting Judge Bennett's reasoning from the panel stage. Pet. App. 96. Judge Bumatay authored a separate dissent, the only writing below to adopt GEO's direct regulation argument. Pet. App. 66-95.

REASONS FOR DENYING THE PETITION

Although the petition purports to present a single question under the Supremacy Clause, Pet. i-ii, GEO in fact seeks review of three holdings by the Ninth Circuit as to three different arguments: (1) direct regulation, Pet. App. 10-16; (2) discrimination, Pet. App. 16-25; and (3) preemption, Pet. App. 26-31.

These are distinct doctrines with different legal standards, and GEO does not identify any reason to review any of them. There is no circuit split—indeed, GEO only attempts to show a split as to the question of direct regulation. But the cases GEO itself cites show (and say) otherwise. That's because all courts apply the same standard: States may not directly regulate the

federal government by seeking to control its operations, but may regulate federal contractors if doing so merely indirectly increases costs on the federal government. That's the standard in the Ninth Circuit too. In contrast, GEO cites no court of appeals to have adopted its view that it has "the same immunity" as the federal government. Pet. 21.

Given the lack of any circuit split, all that GEO is left with is a request for case-specific review of rulings that turn on the particulars of a single state's law, as applied to a single facility, based on the specific facts of this case. These include record facts showing that GEO can pay minimum wage for work necessary to operate the facility while continuing to turn a large profit, as well as the specific language of GEO's contract with ICE, which does not set any maximum wage and which affirmatively requires GEO to comply with state law. And GEO's arguments also improperly ask this Court to disregard the interpretation of Washington's Minimum Wage Act by the State's highest court.

In any event, there is no error here to correct. Applying Washington's minimum-wage law to GEO doesn't directly regulate the federal government—at most, it merely indirectly increases costs (and even that is speculative). Nor is there any discrimination here—as authoritatively interpreted by the State's highest court, Washington's longstanding minimum-wage law applies equally to all private detention contractors, whether they work for the state or federal government. Finally, as to preemption, GEO cannot identify any federal law that preempts Washington's minimum-wage law. Federal law sets no cap on how much a private company like GEO can pay, and GEO's own contract requires the company to comply with state laws like Washington's.

For these reasons, no further review is warranted.

I. Neither of the Ninth Circuit’s splitless and case-specific intergovernmental immunity holdings warrants further review.

The Ninth Circuit applied settled standards for both of its intergovernmental immunity rulings. And notwithstanding GEO’s presentation, the Ninth Circuit’s standard is far from toothless; in recent years that court has repeatedly invalidated state laws involving immigration, including immigration detention, on intergovernmental immunity grounds. It has done so based on the doctrines articulated by this Court as applied to the specific state laws and facts of those cases. GEO may disagree with the outcome in this particular case, but these splitless, fact- and state-specific questions do not warrant this Court’s review.

A. There is no circuit split on the standards that govern intergovernmental immunity.

The Ninth Circuit’s two intergovernmental immunity rulings—that requiring GEO to pay its workers Washington’s minimum wage does not (1) directly regulate the federal government or (2) discriminate against it—are consistent with the uniform approach of other courts of appeals and with this Court’s precedent.

1. As to direct regulation, the Ninth Circuit applied a consensus standard drawing on a long line of this Court’s cases: States may not attempt to control the federal government’s operations, but may regulate federal contractors in ways that only indirectly increase costs on the federal government. GEO does not identify any circuit that has departed from this Court’s teachings to embrace GEO’s view that federal contractors should be afforded “the same immunity” from state law as the

federal government itself whenever they are performing what GEO calls “a federal function.” Pet. 21.

The decisions that GEO identifies from the Second, Third, and Fourth Circuits do not conflict with the Ninth Circuit’s standard. To the contrary, the Ninth Circuit’s standard expressly draws on the Second and Fourth Circuit cases GEO cites, while the Third Circuit case GEO cites explicitly recognized that its approach was aligned with the Ninth Circuit’s. GEO therefore fails to demonstrate that this case would have come out any differently had it arisen in those other circuits (or anywhere else).

Ninth Circuit. The Ninth Circuit applies the standard that this Court developed in “a long-standing line of cases,” which recognize that unlike the federal government itself—which cannot be regulated at all—federal contractors do not share the same immunity. Pet. App. 13. Instead, “courts distinguish regulations that merely increase the federal government’s costs from those that would control its operations.” Pet. App. 11, 13 (citing *South Carolina v. Baker*, 485 U.S. 505, 523 (1988); *United States v. New Mexico*, 455 U.S. 720 (1982); *Penn Dairies v. Milk Control Comm’n*, 318 U.S. 261 (1943); *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 104 (1940)). The Ninth Circuit’s standard reflects the caselaw of other circuits too—in articulating its standard, the en banc Ninth Circuit quoted the Second and Fourth Circuits. *Newsom*, 50 F.4th at 760-61 (quoting *United States v. Town of Windsor*, 765 F.2d 16, 19 (2d Cir. 1985); *United States v. Virginia*, 139 F.3d 984, 989 n.7 (4th Cir. 1998)).

The Ninth Circuit has therefore held that state regulations are barred that would effectively amount to “direct enforcement against the Government.” Pet. App.

10. However, state laws are permissible if they at most “indirectly increase[] costs for the Federal Government” by increasing costs for a private contractor. Pet. App. 12 (quoting *Newsom*, 50 F.4th at 755 (quoting *Washington*, 596 U.S. at 839)).

In applying this standard, the Ninth Circuit has recently invalidated various state regulations of federal contractors. In *Newsom*, the court invalidated a California law that prohibited private immigration detention facilities in the State as an impermissible attempt to directly regulate the federal government. 50 F.4th at 757-58. And in *United States v. King County*, it held that a local government order explicitly prohibiting private companies from providing transportation services to ICE for deportations was an attempt to control federal government operations. 122 F.4th 740, 756 (9th Cir. 2024). Applying that standard to the facts of this case, however, the court below concluded that requiring GEO to pay its detained workers Washington minimum wage does not directly regulate the federal government. Pet. App. 13-16.

2. That standard is no different from the cases GEO has cobbled together. According to GEO, in the Second, Third, and Fourth Circuits, “[w]hen a private party contracts with the federal government to perform a federal function, those courts afford the contractor the same immunity the federal government would enjoy if it performed the work through its own employees.” Pet. 20-21. But the decisions GEO cites say no such thing.

Second Circuit. The Second Circuit’s decision in *United States v. Town of Windsor*, is entirely consistent with the standard that the Ninth Circuit applied below. 765 F.2d 16 (2d Cir. 1985). In that case, a Connecticut town sought to halt the expansion of a federal nuclear facility on federally owned lands, arguing that the

contractor needed to comply with a state permitting requirement. *Id.* at 17-18. This would have “result[ed] in the Government’s turning over its classified plans” to the town’s building inspector and “opening its classified building site for [the town’s] inspections.” *Id.* at 19.

The contractors were managing and expanding a laboratory developing “shipboard nuclear reactors” and “training ... naval personnel,” *id.* at 17—what GEO would call quintessential “federal functions.” Pet. 3. Yet the federal government conceded—as it had to, given this Court’s precedent—that its contractors were “not alter egos of the Government.” *Windsor*, 765 F.2d at 17, 19. State law, therefore, *could* regulate the contractors in certain ways. *Id.* at 19. It’s just that the specific permitting requirement couldn’t apply to those specific contractors under the facts of that case. That’s because doing so would have had far more than merely an “incidental” effect on the government; it would have had “the same effect as direct enforcement against the Government” itself: requiring it to disclose classified information and halting the expansion of the nuclear research facility. *Id.*

That’s precisely the same rule the Ninth Circuit applies—in fact, it quoted *Windsor* in articulating its standard. *Newsom*, 50 F.4th at 760 (state law may not “control federal operations” through regulation with “the same effect as direct enforcement against the Government”). And there’s little doubt that the Ninth Circuit would come to the same conclusion as *Windsor* on the same facts. *See* Pet. App. 10 (quoting *Newsom* quoting *Windsor*). Indeed, where state law has had the effect of controlling federal operations, the Ninth Circuit has held that it may not be applied. *See supra* 13-14.

Thus, in the Second Circuit, states may regulate federal contractors—even those performing what GEO would call federal functions—as long as the state does not control the federal government’s operations. *Windsor*, 765 F.2d at 19-20. That’s exactly the case here.

Third Circuit. GEO fares even worse trying to demonstrate a split with the Third Circuit, which has expressly recognized that its approach is the same as the Ninth Circuit’s. In *CoreCivic, Inc. v. Governor of New Jersey*, the Third Circuit addressed a New Jersey law that sought to “forbid new contracts for civil immigration detention.” 145 F.4th 315, 319-20 (3d Cir. 2025). The Ninth Circuit had recently considered a similar law in *Newsom* and held that, rather than “merely increas[ing] the federal government’s costs,” the law “impermissibly interfered with federal functions” by preventing ICE from selecting contractors of its choosing. 50 F.4th at 760.

The Third Circuit, citing the Ninth Circuit’s decision in *Newsom*, adopted the same rule in the same terms—expressly “align[ing]” itself “with [its] sister circuit.” *CoreCivic*, 145 F.4th at 327. Judge Bibas explained that over time, this Court’s direct-regulation precedent “narrowed the doctrine’s applicability to third parties” such as federal contractors. *Id.* at 323. Today, “the modern doctrine distinguishes between laws that merely impose an incidental economic burden on the federal government and those that subvert federal operations.” *Id.* (citing *Newsom*, 50 F.4th at 755).

Unsurprisingly, applying the same standard as the Ninth Circuit, the Third Circuit reached the same conclusion: A state ban on immigration detention contracts is a “direct regulation of the federal government” because, by prohibiting the government’s ability to contract for private detention outright, it

“substantially interfer[es] with a core federal function.”
Id. at 319, 326-28.

Nothing about that reasoning suggests that the Third Circuit would reach a different result when confronted with a case like this one. To the contrary, *CoreCivic* expressly distinguished this case, describing the state law at issue here as “merely burden[ing] contractors *without* substantially interfering with the federal government’s operations.” *Id.* at 329 (emphasis added) (citing *Nwauzor v. GEO Grp., Inc.*, 127 F.4th 750, 756-67, 771 (9th Cir. 2025)). GEO nowhere acknowledges that portion of *CoreCivic*, which directly refutes GEO’s claimed circuit conflict.

Fourth Circuit. In *United States v. Virginia*, the Fourth Circuit barred the application of a Virginia licensing and registration statute to FBI contractors. 139 F.3d at 985-86. Applying the Virginia law to government contractors, the court explained, would grant “the State’s licensing board a virtual power of review over the federal determination” that a contractor was sufficiently “responsible.” *Id.* at 987-90 (quoting *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 190 (1956)).

Neither the standard nor the outcome would have been any different in the Ninth Circuit. The panel below was unequivocal: “[S]tate licensing requirements [may not] conflict with the federal government’s requirements and thereby interfere with the government’s authority to select its contractors.” Pet. App. 14 (citing, *e.g.*, *Leslie Miller*, 352 U.S. at 188). It merely held that, on the facts here, Washington’s minimum-wage law didn’t do anything of the sort, as ICE remains entirely free to contract with whomever it pleases. *Id.* When state laws have “prevent[ed] ICE from hiring the personnel of its choice,” however, the Ninth Circuit has not hesitated to

invalidate them—and in doing so citing *Virginia* for the distinction between such laws and those that merely increase costs. *Newsom*, 50 F.4th at 757, 760-761.

In sum, none of these courts apply a different standard from the Ninth Circuit. Like the Second, Third, and Fourth Circuits, the Ninth Circuit asks whether the state law “would have the same effect as direct enforcement against the Government.” *Windsor*, 765 F.2d at 19. In doing so, the Ninth Circuit—like other circuits—also “look[s] through form and behind labels to substance.” *CoreCivic*, 145 F.4th at 322. And the Ninth Circuit also doesn’t allow states to give themselves “a virtual power of review” over federal contracting decisions. *Virginia*, 139 F.3d at 989. GEO disagrees with the Ninth Circuit’s application of this standard to the facts of this case, but that is not the basis for a grant of certiorari. *See* S. Ct. R. 10.

3. In passing, GEO suggests (at 23) that these same cases demonstrate a circuit split on how to determine whether a state law discriminates against the federal government. But the only mention of discrimination in any of these cases is the Third Circuit in *CoreCivic*, which explained that it was *not* addressing discrimination. Pet. App. 20-23; *see* 145 F.4th at 321, 324. So no split there either.

B. The Ninth Circuit’s intergovernmental immunity rulings will have no impact outside of this case.

Even setting aside the lack of any circuit conflict, the Ninth Circuit’s intergovernmental immunity rulings are limited to a single state’s law as applied to a single facility based on the specific record in this case. Indeed, they will have almost no practical effect at all. GEO has not identified any other state with a law similar to

Washington’s—nor are we aware of any—which means the issues here are unlikely to ever recur.

According to GEO itself (at 19), work programs “continue[] unabated” at other immigration detention centers around the country. Not only that, but as the panel correctly observed, even the effects *in Washington* will not be particularly significant: There is only one private immigration detention center in Washington, and the record evidence showed that GEO could pay its detained workers minimum wage and still make a large profit from its Tacoma facility. Pet. App. 15. That reality is a stark contrast to GEO’s warnings of “havoc.” Pet. 37.

GEO also dramatically overstates the scope of the Ninth Circuit’s ruling. It is simply not the case that under the Ninth’s Circuit’s standard, states are free to “impair any federal policy ... so long as the State regulates federal contractors rather than the federal government itself.” Pet. 36. Applying the same standards as the panel did below, the Ninth Circuit has struck down state laws that directly regulate ICE or discriminate against federal contractors in the immigration context. *See King Cnty.*, 122 F.4th at 756-759; *Newsom*, 50 F.4th at 757; *United States v. California*, 921 F.3d 865, 882-83 (9th Cir. 2019).

And the decision below is narrower still, as it rested on the specific language of GEO’s contract here. The Ninth Circuit reasoned that applying the state minimum-wage law to GEO’s work program did not “directly regulate” federal operations in part because the contract *required* GEO to follow state law and set no maximum rate of pay for detained workers. Pet. App. 14-16. And, if the costs to GEO of complying with the minimum-wage law truly threaten federal operations—contrary to all the evidence in the record, Pet. App. 15—ICE and GEO could

renegotiate their contract. But that is a matter for GEO's executives and ICE's contracting officers, not this Court.

ICE's detention practices are also in flux in ways that further reduce the likelihood that the issues here will arise again. According to recent reporting, ICE is acquiring warehouses across the country to operate its own detention facilities and "plans to shrink its network ... to just 34 government-owned sites," replacing "the current patchwork of local jails and privately run prisons." Sophie Alexander et al., *Private Prisons Face Competition Under Trump's New Detention Plan*, Bloomberg, Feb. 19, 2026, <https://perma.cc/P3YN-ATVP>. Those developments suggest that questions about privately owned immigration detention facilities will matter less—and perhaps not at all—in the near future.

C. The Ninth Circuit's intergovernmental immunity holdings were correct.

Given that the circuits unanimously apply this Court's well-established caselaw, and that the decision below will have no effect beyond the parties, GEO's petition boils down to a request for factbound error correction. That is not a sufficient basis for certiorari, and in any event, GEO does not identify any error.

1. Start with direct regulation. The court of appeals was correct that requiring GEO to abide by Washington's longstanding minimum-wage law does not directly regulate the federal government.

This Court has long made clear that a company that contracts with the federal government does not somehow become the government. Pet. App. 13 (citing cases). Thus, private contractors don't enjoy the same immunity as the federal government, even when they "act in its name." *Geo Grp., Inc. v. Menocal*, 146 S. Ct. 774, 784 (2026); see

also Pet. App. 20-21 (compiling cases). Contrary to GEO's contention (at 30), the Court has adhered to this principle even when a federal contractor is performing functions that only the federal government could authorize. For example, even in the "sensitive area" of operating a federal nuclear facility, this Court held that contractors were not "instrumentalities of the United States" and thus did not "enjoy governmental immunity." *United States v. Boyd*, 378 U.S. 39, 48 (1964); see also, e.g., *New Mexico*, 455 U.S. at 723-24 (operation of government-owned Los Alamos facility); *James v. Gravo Contracting, Co.*, 302 U.S. 134, 137-39 (1937) (contractor hired by the federal government to build dams on navigable waters).

Indeed, just this term, this Court reiterated—in a case against GEO—that the government does not become "the conduit of its immunity in suits against its agents just because they do the government's work." *Menocal*, 146 S. Ct. at 784. Private contractors therefore remain subject to nondiscriminatory state regulation, as long as that regulation does not amount to a "direct regulation" of the federal government itself. *Washington*, 596 U.S. at 838-39. And it is firmly established in this Court's precedent across a number of contexts that state law that merely "increase[s] the costs of [an] operation" is not a direct regulation of the federal government. *Pub. Utils. Comm'n of Cal. v. United States*, 355 U.S. 534, 543 (1958); see also, e.g., *Washington*, 596 U.S. at 835; *Penn Dairies*, 318 U.S. at 270; *James Stewart*, 309 U.S. at 104; *South Carolina v. Baker*, 485 U.S. 505, 523 (1988). That includes state labor laws. See, e.g., *James Stewart*, 309 U.S. at 104.

In the face of years of this Court's cases rejecting its argument (at 25) that a private contractor "steps into the shoes of the federal government," GEO plucks language out of context from *Goodyear Atomic Corp. v. Miller* for

the broad principle that a “federal function must be left free of state regulation’ even when ‘the federal function is carried out by a private contractor.’” Pet. 26 (quoting 486 U.S. 174, 181 (1988)). This creative quoting omits key context: “[A] *federally owned facility* performing a federal function is shielded from *direct* state regulation, even though the federal function is carried out by a private contractor.” *Goodyear*, 486 U.S. at 181 (emphasis added); *see also id.* at 180 n.1 (noting “the fundamental distinction between state regulation of private facilities and state regulation of federal facilities”). *Goodyear* also noted the distinction between “direct state regulation of the operation of the [federally owned] facility” and application of a state workers’ compensation law to a private contractor. *Id.* at 181-82.

Similarly, GEO is wrong to rely (at 26) on *McCulloch v. Maryland* and *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824). In relevant part, both cases held that states could not tax the operations of the Second Bank of the United States because it was an instrumentality of the federal government. *See Osborn*, 22 U.S. (9 Wheat.) at 859-60. GEO is not and does not claim to be a federal instrumentality—nor could it, *see, e.g., Boyd*, 378 U.S. at 48. And, in addressing a hypothetical about contractors, *Osborn* noted the difference between regulations that merely increase costs and regulations that would impose state control over federal operations. *Newsom*, 50 F.4th at 755-56 (citing *Osborn*, 22 U.S. (9 Wheat.) at 867).

In any event, intergovernmental immunity doctrine has “evolved” over time. *Washington*, 596 U.S. at 838-39. Although early cases prohibited state laws that “increase[d] the cost to the Federal Government of performing its functions” by “impos[ing] costs on federal

contractors,” the law has long been clear that “a state law is ... no longer unconstitutional just because it indirectly increases costs for the Federal Government.” *Id.* (compiling cases); *see also, e.g., New Mexico*, 455 U.S. at 731-32.⁴

Requiring GEO to comply with Washington’s minimum-wage law is the paradigmatic example of a regulation that does nothing more than increase a contractor’s costs. Without citation, GEO claims that the Ninth Circuit “assumed” that Washington law would “interfere with a[] federal function,” but blessed that result. Pet. 27. To the contrary, the Ninth Circuit explained that the law does *not* interfere in any way with any federal function. Pet. App. 11–16. The law doesn’t control anything about immigration detention. Nor does it “impose requirements on private contractors that conflict with any requirement imposed by the federal government.” Pet. App. 13. It merely requires that GEO pay its workers state minimum wage.

“There is nothing—either in federal law or in GEO’s contract with the federal government—that prevents GEO from” doing so. Pet. App. 14. And “[i]ndeed, ... GEO’s contract with ICE explicitly requires it to comply with ‘state labor laws and codes.’” *Id.* It is not even clear that any increased costs for GEO would be passed along to ICE, Pet. App. 15—but even if they were,

⁴ GEO also makes a passing reference to 28 U.S.C. § 1442(a)(1), which governs the removal to federal court of suits against federal officers and certain contractors working under them. But Congress’s legislative decisions about when federal contractors should have access to a federal forum have no bearing on the constitutional question of when states may regulate those contractors.

“indirectly increas[ing] costs” is not direct regulation. *Washington*, 596 U.S. at 839.

Ultimately, even GEO cannot sustain its argument to the contrary, eventually conceding that states *can* regulate private contractors like GEO, as long as they don’t “interfere” with federal operations. Pet. 27. But the Ninth Circuit already prohibits “interfering with or controlling the operations of the Federal Government.” *Newsom*, 50 F.4th at 754; Pet. App. 9, 14. So ultimately, GEO is just lodging a factual dispute with the Ninth Circuit’s conclusion about the practical results of requiring it to adhere to Washington’s minimum-wage law. But GEO failed entirely to build a factual record to support that argument—and all the record evidence shows that it would have no such impact. Pet. App. 15.

All told, the Ninth Circuit did not err in straightforwardly applying this Court’s precedent and rejecting GEO’s proposed rule that this Court has already rejected time and again.

2. GEO’s argument about discrimination fares no better. The Ninth Circuit merely applied a settled standard to a *sui generis* state law as authoritatively interpreted by the State’s highest court.

Intergovernmental immunity bars states from treating federal contractors worse than “similarly situated” state contractors. *Dawson v. Steager*, 586 U.S. 171, 177 (2019). In this analysis, “[w]hat matters” is “the letter of the law” and “how the State has defined the favored class,” not speculation about “the intent lurking behind the law.” *Id.*

As the Washington Supreme Court held, the state’s Minimum Wage Act treats state and federal private

contractors exactly alike: Both must pay detained workers minimum wage. Pet. App. 106.

GEO's contention to the contrary asks this Court to disregard the Washington Supreme Court's authoritative interpretation of state law as "dictum." Pet. 30.⁵ But it wasn't. It was the direct answer to a certified question: whether the minimum-wage law "applies to detained workers in a private detention facility that operates under a contract with the state government rather than with the federal government." Pet. App. 105-06. And in any event, a federal court is not free "to disregard the considered opinion of the Washington Supreme Court" about Washington law. Pet. App. 24. GEO's discrimination argument essentially seeks review of the Washington Supreme Court's interpretation of state law, but that is not how our federal system works. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

GEO claims that in practice, there are no private detention facilities that contract with Washington state. That's incorrect. There are privately operated detention facilities in Washington. *See* ECF 89; *see also* RCW § 72.68.110(2)(a). And Washington law is clear that those contractors must pay their workers—including those detained in the facility—minimum wage.

Unable to show any discrimination between state and federal contractors, GEO briefly reprises its assertion

⁵ While Washington's law sometimes expressly refers to state government, that language just reflects the longstanding principle that state law can never apply to the federal government (unlike the state government), thus requiring no formal exception. And in any event, "the Washington Supreme Court made clear ... that the [Washington minimum-wage law] treats equally the employees of state and federal *government* institutions" by exempting them both. Pet. App. 19 (emphasis added); Pet. App. 104-05.

that it should be given the same immunity to which the federal government itself is entitled. Pet. 29. But, again, this Court has repeatedly held that federal contractors are *not* entitled to the same immunity as the federal government. *See, e.g., Washington*, 596 U.S. at 839. As long as state and federal *contractors* are treated alike, treating private contractors differently from the government itself isn't discriminatory—it's been blessed by this Court time and again. *See supra* 20-21.

II. The Ninth Circuit's splitless and case-specific preemption holding does not warrant further review either.

GEO's challenge to the Ninth Circuit's preemption ruling is, if anything, an even worse candidate for this Court's review. GEO doesn't attempt to come up with a circuit split. The importance of this question is just as limited as intergovernmental immunity to a single facility in a single state, as well as the specific contract and record here. And on top of that, GEO has now abandoned the argument it raised below, instead pivoting to a new and highly factual argument that is contradicted by all the actual record evidence.

A. The preemption question presented is splitless and unimportant—and even if it weren't, this case would be a poor vehicle.

1. There is no circuit split as to preemption, and GEO does not even try to identify one. Pet. 20-23.

2. The Ninth Circuit's preemption holding is unimportant for the same reasons as its other holdings: This case involves the application of a specific state law to a specific facility, GEO identifies no similar law anywhere else in the country, there's not even any other facility in Washington that could be affected, and changes in ICE

detention policies may further prevent this issue from ever arising again. *See supra* 19. And in holding that Washington’s minimum-wage law wasn’t preempted, the Ninth Circuit again relied on the fact that (as even the government acknowledged) ICE set no maximum cap for GEO’s payments to its detained workers. Pet. App. 29; *see also* Pet. App. 3-4, 11-12, 14, 32-34. GEO and ICE are free to renegotiate their contract. *See supra* 19.

3. This case is also an inappropriate vehicle to address any question of preemption for multiple reasons.

Start with the fact that GEO never raised the preemption argument it now presses. Below, GEO argued that a federal appropriations law from 1978 continues to set a binding “maximum rate of pay.” Pet. App. 28-29. In its petition to this Court, however, GEO now acknowledges that this isn’t true. Pet. 31. Instead, GEO argues that, as a practical matter, Washington’s law impedes GEO’s ability to employ people in detention because it would cost too much. Pet. 34. But as the Ninth Circuit noted, this argument was “not made by GEO” below, only in an amicus brief. Pet. App. 29-30. As a result, it is forfeited. *See United States v. Jones*, 565 U.S. 400, 413 (2012).

Forfeiture aside, GEO’s factual argument about practical effects is not presented because GEO never built a factual record to support it (nor could it). GEO points to no record evidence that paying at least minimum wage, like every other private company in Washington, would somehow imperil its ability to operate the Tacoma facility or fulfill its contract with ICE. *See, e.g., Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982) (“The existence of a hypothetical or potential conflict is insufficient to warrant the pre-emption of the state statute.”). To the contrary, the record here demonstrates

the opposite. Pet. App. 15 (noting that even if it paid minimum wage, GEO would still have had annual profit margins of \$16 to \$21 million for the Tacoma facility during the relevant period).

Thus, for the same reasons as above—and a few more—this case does not warrant this Court’s review.

B. The Ninth Circuit did not err in holding that no federal law preempts Washington’s minimum-wage law as to the Tacoma facility.

Even if this Court were to entertain GEO’s request for splitless error correction, there is once again no error to correct. The court of appeals correctly held that no federal law preempts the application of Washington’s minimum-wage law to GEO. Pet. App. 26-31. “There is no federal preemption *in vacuo*.” *Kansas v. Garcia*, 589 U.S. 191, 202 (2020). State law may be preempted only where there is “a constitutional text, federal statute, or treaty” that displaces it. *Id.* It’s not enough to “invok[e] some brooding federal interest” or “a freewheeling judicial inquiry into whether” state law “is in tension with federal objectives.” *Id.* at 202, 208. And there’s no federal law that displaces the application of Washington’s minimum-wage law to detained workers hired by private companies.

1. GEO argued below that a long-expired 1978 appropriation set a binding “maximum rate of pay.” Pet. App. 29. As the Ninth Circuit explained and GEO has now conceded (at 31, 34), that’s incorrect. Pet. App. 29.

Instead, GEO now advances a convoluted argument that Washington’s minimum wage law conflicts with “congressional policies” lurking behind the 1978 appropriation law and an earlier statute, both addressing appropriations for ICE’s predecessor agency, the Immigration and Naturalization Service—neither of

which so much as mentions private detention contractors. Pet. 30-31. GEO claims that these two laws limit how much ICE can reimburse private contractors, which in turn operates “as a de facto cap” on how much GEO can pay. Pet. 9, 31. None of this is correct.

First, GEO misreads the statutes, neither of which caps reimbursement. The first statute, enacted in 1950 (before the advent of privately operated immigration detention facilities), states that “[a]ppropriations ... provided for the Immigration and Naturalization Service shall be available for payment of” expenses ranging from the “hire of privately owned horses” to “citizenship textbooks” to “unforeseen emergencies.” 8 U.S.C. § 1555. Among the expenses for which the INS could use its appropriations are “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.* § 1555(d) (emphasis added).

By its text, section 1555 imposes only one limitation on payments to workers in immigration detention: If the agency pays allowances out of an appropriation, those allowances should be paid at the rate specified “in *the* appropriation Act involved”—if any such rate is specified at all. *Id.* (emphasis added). As the Ninth Circuit explained, section 1555 does not “impose any limit” on the amount ICE may pay—and it does not apply to private companies at all. Pet. App. 28.

The second statute, passed in 1978, appropriated funds to the INS for the 1979 fiscal year, providing that it could use the money for a host of expenses it might incur that year, ranging from “attendance at firearms matches” to the “payment of allowances (at a rate not in excess of \$1 per day) to aliens.” Department of Justice

Appropriation Act, 1979, Pub. L. No. 95-431, Tit. II, 92 Stat. 1021, 1027 (1978). And as Justice Story long ago explained, appropriations acts are presumed not “to have a general and permanent application,” “unless it is expressed in the most clear and positive terms, and where the language admits of no other reasonable interpretation.” *Minis v. United States*, 40 U.S. 423, 445 (1841); *see also Maine Cmty. Health Options v. United States*, 590 U.S. 296, 316 (2020). GEO points to no such clear expression here. Pet. App. 29.

Thus, there’s no “cap” on ICE’s use of *current* appropriations. And whatever GEO may speculate about implicit congressional policy considerations in setting \$1/day as a rate for a defunct agency in fiscal year 1979, Pet. 31, any such intent is no longer reflected in federal law after that year. That’s enough to dispense with GEO’s argument.⁶

Second, even overlooking that fatal flaw, GEO’s “practical constraint” argument still doesn’t work. GEO’s argument seems to be that Congress has expressed a “clear judgment that voluntary work programs should be an option for all immigration detainees,” but GEO can’t afford to pay detained workers at its Tacoma facility Washington’s minimum wage. Pet. 32. That’s wrong twice over: GEO can’t identify anything in “the text and structure” of any statute, *Garcia*, 589 U.S. at 208, that

⁶ As to the idea that Washington’s minimum-wage law is preempted because it “displace[s] the contractual floor” in GEO’s contract with ICE, Pet. 31, the contract itself contemplates that any such floor can be superseded: It calls for the application of state labor laws and provides that “the most stringent” standard applies, 2-SERWA-375; Pet. App. 32-33. And even where an actual federal law *does* set “a floor,” that isn’t enough to preempt state laws that go above that floor. *Wyeth v. Levine*, 555 U.S. 555, 577-78 (2009).

expresses this supposedly “clear judgment.” And even if it could, there’s no evidence that it would be “cost-prohibitive” for GEO to do so. Pet. 34. To the contrary, even after paying minimum wage, GEO would “retain a profit margin of roughly \$16 to \$21 million per year” from its Washington facility. Pet. App. 15. And GEO has to hire *someone* to do the day-to-day work of operating its facility, who would also have to be paid (at least) minimum wage.⁷

GEO’s only supposed evidence is that the company chose to stop hiring detained workers at its Washington facility. ECF 88. But a company cannot manufacture preemption simply by choosing to stop operating a program. Again, some federal law must do the preempting.

2. GEO also asserts that Washington’s law runs afoul of “federal policies concerning the eligibility of immigrants for lawful employment.” Pet. 32. This is wrong several times over. Washington law doesn’t mandate that GEO hire these workers. Some of these detained workers *do* have work authorization. Pet. App. 3. Whether workers are paid state minimum wage doesn’t change eligibility for employment under federal law. And federal minimum wage law itself applies to non-citizens “working without authorization.” *Lucas v. Jerusalem Cafe, LLC*, 721 F.3d 927, 934 (8th Cir. 2013) (noting consensus in caselaw).

⁷ GEO asserts that there is some DHS regulation requiring “the opportunity to participate in voluntary work programs.” Pet. 30. But it cites no such regulation. And ICE’s PBNDS, which is not a regulation, expressly exempts certain kinds of facilities and classifications of people in detention from the work program. 2011 PBNDS § 5.8(V)(A), 3-ER-517. In any event, as above, GEO can’t show Washington’s law would interfere with any such requirement.

GEO's reference (at 32) to a few lower court cases holding that the federal Fair Labor Standards Act exempts some detained workers is irrelevant for similar reasons. Even if some workers are excluded from the FLSA, states may still require private employers to pay those workers the state minimum wage. *See* 29 U.S.C. § 218(a) (disclaiming preemption of state minimum-wage laws).

3. GEO also contends (at 32-33) that the Ninth Circuit should not have applied a presumption against preemption of Washington's exercise of its "historic police powers ... to regulate wages." Pet. App. 26. In GEO's telling (at 33), any such presumption is inapplicable in the context of "immigration detainees." However, courts don't presume that Congress "oust[ed] state authority to regulate the employment relationship" even of noncitizens unless a federal statute evinces "the clear and manifest purpose" of doing so. *DeCanas v. Bica*, 424 U.S. 351, 356-57 (1976); *accord Arizona v. United States*, 567 U.S. 387, 400 (2012). In any event, the presumption against preemption makes no difference here. GEO's preemption arguments fail on their own terms for all the reasons described above.

In sum, GEO is asking for little more than factbound error-correction of a decision that is not only correct, but that would have come out the same way in any other circuit.

CONCLUSION

The petition for a writ of certiorari should be denied.

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