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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

The decision below green-lights a state effort to convert federal immigration detainees participating in a voluntary federal work program into employees entitled to state minimum wage—even as the state exempts detainees in its own work programs from the same law. Respondents try to pass this off as routine state regulation of private employers, but this extraordinary effort to invert the constitutional order violates the Supremacy Clause thrice over: It directly regulates distinctly federal functions, discriminates against federal contractors, and intrudes on Congress' regulation in a field of dominant federal interests. The Ninth Circuit concluded otherwise only by ignoring centuries of precedent and the views of three consecutive presidential administrations, while creating a circuit split in the process.

Respondents try to minimize the split, but other courts measure federal contractors' protections by asking what a state could do to the federal government itself—a standard that the Ninth Circuit admitted this law would fail. Respondents insist that this Court has held contractors categorically entitled to less protection, but the cases they invoke demonstrate only that not all state regulation of federal contractors is verboten. And they try to deny the case's importance, but the United States and six en banc dissenters all begged to differ. The decision has already forced the federal government to halt the program in question at the Northwest ICE Processing Center (NWIPC); the Ninth Circuit has already extended its (il)logic to uphold *another* Washington law discriminating

against federal contractors; and other states are actively considering similar efforts.

In short, the question presented is incredibly important, as three consecutive administrations have attested, while agreeing on little else when it comes to immigration. The Court should grant certiorari.

I. The Supremacy Clause Bars Washington's Effort To Convert Federal Detainees Into Employees.

A. The Decision Below Reinforces a Circuit Split.

The circuits are split over whether a state may evade the Supremacy Clause by regulating a federal contractor rather than the federal government itself. Pet.20-25. Respondents' efforts to paper over that split are unavailing. BIO.13-18; WA.BIO.18-22.[1]

Respondents do not meaningfully dispute that the Ninth Circuit alone treats the Supremacy Clause as providing "substantially narrower" protection when the federal government enlists private contractors to perform distinctly federal functions. Pet.App.10-11.[2]

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[1] This brief cites the Individual Respondents' Brief in Opposition as "BIO," and the State of Washington's Brief in Opposition as "WA.BIO."

[2] Citing *CoreCivic, Inc. v. Governor of New Jersey*, 145 F.4th 315 (3d Cir. 2025), Washington suggests that the Third Circuit follows that rule too. WA.BIO.19-20. But the passage it cites merely explains that this Court no longer invalidates all laws that "impose[] even an indirect or conjectural financial burden on the federal government." 145 F.4th at 323. That has nothing to do with whether the Supremacy Clause applies with the same force to laws that target federal contractors—as evidenced by the fact that *CoreCivic* struck down a law aimed at contractors over

Yet though that "important principle" drove the court's analysis here, WA.BIO.19, it makes just one brief cameo in respondents' 70-plus pages of briefing. And it surfaces only to be quickly dismissed as mere semantics, with any differences among the lower courts purportedly a result of applying the same legal standard to different facts. BIO.18. The cases themselves refute that claim.

Take, for instance, *United States v. Town of Windsor*, 765 F.2d 16 (2d Cir. 1985). Far from holding that the Supremacy Clause provides "substantially narrower" protection when the federal government enlists a contractor to perform the federal function, the Second Circuit held that the town could not "demand compliance" from the federal contractor *because it could not have demanded compliance from the government itself*. *Id.* at 18-19. The contractor thus stood in the federal government's shoes for Supremacy Clause purposes because enforcing the law against it would carry the "same effect" as enforcing it against the government. *Id.* at 19. The Third Circuit likewise employed the "same effect" standard in *CoreCivic, Inc. v. Governor of New Jersey*, 145 F.4th 315, 329 (3d Cir. 2025).[3] The Fourth Circuit, too, has recognized that federal contractors get the same Supremacy Clause protection as the federal

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the dissent's accusation that it had afforded contractors too much protection. *See id.* at 332-42 (Ambro, J., dissenting).

[3] Respondents claim that *CoreCivic* distinguished this case. BIO.17; WA.BIO.20. But the Third Circuit simply noted that different laws "may pose different intergovernmental-immunity questions," while declining to take any position on this case or any other, 145 F.4th at 329.

government when carrying out distinctly federal functions. *See United States v. Virginia*, 139 F.3d 984, 986-87 (4th Cir. 1998).

Respondents are therefore wrong to claim that this case "would have come out the same way" in other circuits. BIO.32. The Ninth Circuit all but admitted that Washington could not apply its minimum-wage law if the voluntary federal program was administered by federal employees rather than federal contractors. *See* Pet.App.11, 16-17. In the Second, Third, and Fourth Circuits, that admission would have been fatal to the state law even as applied to federal contractors, as all of those circuits employ the "[same] shoes" standard advanced by the *dissent* below, Pet.25. That admission was not fatal here only because the Ninth Circuit refuses to afford federal contractors the same protection as the federal government.

B. The Ninth Circuit's Intergovernmental-Immunity Holding Is Profoundly Wrong.

1. Both precedent and first principles confirm that states cannot upend the constitutional order and evade the Supremacy Clause just because the federal government enlists contractors to discharge distinctly federal functions. *See* Pet.26-28. Respondents resist that proposition, insisting that *GEO Group, Inc. v. Menocal*, 146 S.Ct. 774 (2026), suggested otherwise. WA.BIO.23; BIO.20-21. But that case involved only whether the protection afforded federal contractors is better understood as an "immunity" or a "merits defense." *See* 146 S.Ct. at 781-86. In concluding that it was a defense, the Court nowhere weakened Supremacy Clause protection when the federal

government uses contractors to carry out distinctly federal functions. Nor could it have without casting doubt on centuries of precedent holding that "the federal function must be left free of state regulation" even when it "is carried out by a private contractor." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 181 (1988).

Respondents protest that this Court has allowed states to "apply nondiscriminatory laws to companies that contract with the federal government." WA.BIO.24; *see* BIO.20-21. That claim is doubly misguided. Washington's law is discriminatory, *see infra* pp.7-8, and states do not enjoy carte blanche to regulate federal contractors. To be sure, the Supremacy Clause does not altogether bar states from regulating them—as GEO has acknowledged. Pet.27. But what states *cannot* do is directly regulate their performance of a distinctly federal function. After all, it is "the federal function," not just the federal government qua federal government, that "must be left free of state regulation," no matter who carries it out. *Goodyear*, 486 U.S. at 181. By "alter[ing] the terms of a mandatory federal program that governs the relationship with federal immigration detainees," C.A.Dkt.157 at 13, Washington has run afoul of that command.[4]

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[4] This Court's decision in *Hencely v. Fluor Corp.*, 608 U.S. ----, 2026 WL 1083331 (Apr. 22, 2026), does not undermine that conclusion. To be sure, *Hencely* reiterated that "those who contract to furnish supplies or render services to the government … do not perform governmental functions" simply because they are federal contractors. *Id.* at *8. But it did not suggest that federal contractors can *never* perform governmental

None of respondents' cases involves direct regulation of a distinctly federal function. BIO.20-21; WA.BIO.24-27. Several involve nondiscriminatory taxes, which this Court has treated as presenting fewer opportunities for mischief in this context. Taxes and other provisions that "merely 'increase[d] the costs,'" BIO.21, pose less risk to the federal government, especially when their nondiscriminatory nature ensures that federal operations are not being targeted. *See CoreCivic*, 145 F.4th at 322-23. "Regulations … present a wider range of possibilities for interference with federal activities than do taxes." *North Dakota v. United States*, 495 U.S. 423, 454 n.3 (1990) (Brennan, J., concurring in the judgment in part and dissenting in part).

This case well illustrates the greater potential for mischief with regulations, as Washington is directly regulating federal operations at NWIPC. The fact that those regulations target GEO, rather than ICE, does not change the reality that Washington is regulating an inherently governmental and inherently federal function. Washington's law does much more than incidentally increase costs; it has forced the shuttering of the voluntary work program at NWIPC. That lays bare the reality that Washington is directly regulating

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functions. And when a contractor is enlisted to perform a function as distinctly governmental and federal as providing detention services for federal immigration detainees, it should not be treated any differently than the federal government itself. Any other rule would allow states to hamstring the federal government's discretion as to how to best discharge a distinctly federal function. To the extent any courts might read *Hencely* otherwise, that is all the more reason to grant review and prevent interference with distinctly federal functions.

a federal function. The federal government has the prerogative to enlist private contractors to assist in operating NWIPC, and the cost of exercising that prerogative should not be opening the door to state interference.

2. Respondents' efforts to defend the Ninth Circuit's nondiscrimination holding are equally unavailing. Their insistence that Washington does not discriminate against federal contractors, BIO.24-26; WA.BIO.27-29, blinks reality. NWIPC is "the *only* detention facility in Washington subject to" Washington's minimum-wage law. Pet.App.39 (emphasis added). That is no coincidence. "The Washington Legislature [has] imposed a series of state regulations directed *solely* at [NWIPC]," while simultaneously "exempt[ing] *any* of its own facilities—including state and local detention facilities, jails, and prisons—from both the regulations and their enforcement mechanisms." *GEO Grp., Inc. v. Inslee*, 166 F.4th 1188, 1191 (9th Cir. 2026) (Bumatay, J., dissenting from the denial of rehearing en banc).

Respondents claim that some state contractors must comply with the minimum-wage law, BIO.24-25; WA.BIO.28-29, but not even the Ninth Circuit took that bait, Pet.App.24. As GEO explained below, there is no evidence that any state contractors *are required* to pay those in their custody minimum wage. C.A.Dkt.91. By imposing that requirement on NWIPC alone, Washington has impermissibly "singl[ed] out the Federal Government for unfavorable treatment"—just as it has done before. *United States v. Washington*, 596 U.S. 832, 839 (2022).

Treating a law that singles out a facility discharging a distinctly federal function for unique treatment because it could theoretically apply to a non-existent facility would make a mockery of the Supremacy Clause. Doing so when the state performs the same basic functions in state-owned facilities while exempting itself from its minimum-wage law is a complete farce and provides a roadmap for mischief. It invites a state that disagrees with current federal policies to identify federal contractors discharging functions that the state does in-house and interfere without constraint. That cannot be the law in a nation bound by the Supremacy Clause, but that is the law of the Ninth Circuit.

C. The Ninth Circuit's Preemption Analysis Is Equally Wrong.

Federal law preempts Washington's attempt to reclassify federal detainees participating in a federal voluntary work program as "employees" subject to Washington's minimum wage. Pet.30-34. Respondents do not deny that federal law and the operative contract permit GEO to pay participants $1/day—a "contractual floor" that Washington has "displace[d]." Pet.App.55 (Bennett, J., dissenting). They instead argue that there is no conflict because federal law does not "'cap'" what GEO may pay. BIO.30-31. That might matter if GEO were asserting impossibility preemption alone. But Washington's effort to convert federal immigration detainees into employees entitled to state minimum wage is not just preempted because it demands the impossible—though it certainly does, *see Ndambi v. CoreCivic, Inc.*, 990 F.3d 369, 371-75 (4th Cir. 2021); Pet.32. It is also

preempted because it disrupts Congress' careful balance in an area over which "[t]he Government of the United States has broad, undoubted power," *Arizona v. United States*, 567 U.S. 387, 394 (2012).

Moreover, respondents' no-cap argument ignores that the federal government will not—and cannot, owing to Congress' determination, Pet.9—reimburse GEO for more than $1/day. Pet.34. GEO operated the voluntary work program at NWIPC because it was required by federal law to do so. C.A.Dkt.157 at 1-2. When the federal government caps reimbursement for a cost at $1/day, that acts "as a powerful practical constraint" on what contractors will pay. Pet.34. The proof of that practical constraint is inescapable, as this litigation forced the federal government to approve suspension of the program at NWIPC. Pet.31-32.

That result was unavoidable for reasons beyond cost. *Contra* BIO.27-28. It is both a crime and a violation of GEO's contract to knowingly employ an unauthorized alien, 8 U.S.C. §1324a, which many detainees participating in the federal voluntary work program are. By trying to convert them into employees, Washington put GEO at risk of violating federal law—just for carrying out its obligations under a federal contract. C.A.Dkt.90 at 1-2; Pet.32. Respondents try to downplay that conflict, noting that *some* detainees may "have work authorization." BIO.31; WA.BIO.36. But many plainly do not, yet Washington forces GEO to treat them all as employees anyway. That would warrant preemption even if Washington were not injecting itself into an area that is supposed to be "left entirely free from local

interference." *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941).

II. The Question Presented Is Exceptionally Important, And This Is An Excellent Vehicle.

This case has profound consequences. The federal government has determined that enlisting private contractors to provide services at ICE facilities is integral to discharging the distinctly federal obligation to house immigration detainees. "The majority of people currently in ICE custody are in facilities run by GEO or CoreCivic." Sophie Alexander et al., *Private Prisons Face Competition Under Trump's New Detention Plan*, Bloomberg (Feb. 19, 2026), https://perma.cc/P3YN-ATVP. As the United States has explained throughout this case, across three administrations, applying state minimum-wage law to federal detainees in those facilities "interfere[s] with federal immigration enforcement," D.Ct.Dkt.185 at 1, "disrupts a national program," C.A.Dkt.157 at 3, and "discriminat[es] against the federal government's detention operations," C.A.Dkt.114 at 25.

The BIOs lay that disruption bare. Respondents tout reports that the United States may reduce the role of private contractors and bring more immigration detention in-house. BIO.20. But that just illustrates the problem. If states can penalize the federal government for using contractors to effectuate its immigration policy, *of course* it will be forced to reconsider its use of contractors. The United States made that point in urging rehearing, explaining that the federal government should not be forced to either cease to "contract out its detention operations or

permit its federal contractors to be subjected to disfavored treatment." C.A.Dkt.157 at 17.

Against all that, respondents' claims that the decision below will have "almost no practical effect," BIO.18-19; WA.BIO.38, ring hollow. In fact, it has already spawned more problems—in yet another case involving GEO, Washington, and NWIPC. *See, e.g.*, *GEO Grp., Inc. v. Inslee*, 151 F.4th 1107 (9th Cir. 2025). In "the latest round in the State of Washington's crusade against the federal government's use of federal contractors to enforce immigration policy," Washington seeks to "dictate nearly every facet of how the federal government must treat alien detainees at the Center—from the detainees' right to use their personal belongings, to the mandatory provision of special diets, to free phone calls, to a right of 'privacy' during personal visits, to housekeeping." 166 F.4th at 1191 (Bumatay, J., dissenting from the denial of rehearing en banc). That case well illustrates the greater potential for interference with federal functions via regulation than through nondiscriminatory taxes.

The problem is not limited to Washington and NWIPC. The Ninth Circuit's approach provides a roadmap for any state that does not favor the federal government's immigration policies (and at any given time, some states will view them as either too lax or too harsh). Nor is the problem limited to immigration. All a state need do is identify federal contractors performing a function the state does in-house, and it can then single them out via regulation that only the Ninth Circuit would not classify as discriminatory.

That is no hypothetical. States are increasingly targeting federal contractors to undermine federal immigration policy. California has proposed a 50% gross receipts tax on "private detention facilities" that contract with a federal agency. A.B. 1633, §1, 2025-2026 Reg. Sess. (Cal. 2026) (as introduced Jan. 26, 2026). New Jersey has proposed a 50% gross receipts tax on private "carceral" facilities that detain individuals who violate state or federal law. A. 4300, 222d Leg., Reg. Sess. (N.J. 2026) (introduced Feb. 19, 2026). Other pending legislation likewise aims at private facilities that hold federal immigration detainees. H.B. 26-1276, 75th Gen. Assembly, 2d Reg. Sess. (Colo. 2026) (as introduced).

Contrary to respondents' claims, *see* BIO.27-28, this case presents an excellent vehicle to foreclose these unconstitutional efforts and bring the Ninth Circuit into line. Respondents claim no obstacle to review of the intergovernmental-immunity issues. And while they claim that GEO forfeited aspects of its preemption argument, BIO.27, GEO expressly argued below, as here, that it could not continue to operate the voluntary work program if forced to comply with Washington's minimum-wage law, C.A.Dkt.145-1 at 14-15. Respondents claim that the panel characterized this argument as "not made by GEO," BIO.27 (quoting Pet.App.29-30), but they are mistaken. The panel was referring to the United States' distinct argument that "financial disparities" caused by paying Washington detainees minimum wage "could lead to unrest in detention facilities," Pet.App.29. Regardless, GEO need not raise every conceivable argument for preemption to preserve a preemption defense. *See Yee v. City of Escondido,* 503

U.S. 519, 534-35 (1992). In short, this is an excellent vehicle for further review of issues of exceptional importance, as the United States recognized in urging rehearing.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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