

No. 25-828

In the Supreme Court of the United States

THE GEO GROUP, INC., PETITIONER

v.

UGOCHUKWU NWAUZOR, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the Supremacy Clause permits a State to apply its minimum-wage statute to alien detainees at private immigration detention facilities operated by federal contractors, where the State exempts its own detainees from that statute.

(I)

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court’s order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

INTRODUCTION

This case is one of several involving “the State of Washington’s crusade against the federal government’s use of federal contractors to enforce immigration policy.” *The GEO Group, Inc. v. Inslee*, 166 F.4th 1188, 1191 (9th Cir. 2026) (Bumatay, J., dissenting from the denial of rehearing en banc), petition for cert. pending, No. 26-71 (filed July 10, 2026). In enforcing the immigration laws, the United States often detains aliens pending their removal or a decision on removal. See 8 U.S.C. 1225(b), 1226(a) and (c), 1231(a). Partly because of “significant fluctuations in the population” of

detained aliens, the government routinely contracts with private entities to house immigration detainees rather than build and operate government-owned detention centers. *The GEO Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022) (en banc).

Here, the State seeks to require petitioner, a federal contractor operating a federal immigration detention facility in Tacoma, Washington, to pay alien detainees who participate in a voluntary work program the State's minimum wage of more than \$17 per hour. That is over one hundred times the maximum compensation of \$1 per day that Congress has appropriated for such programs. Yet the State exempts its own detention facilities from that requirement. By uniquely burdening a facility engaged in federal immigration detention, Washington has predictably caused petitioner to suspend operation of the program at the Tacoma facility.

The court of appeals' decision upholding that intrusion into federal immigration operations warrants this Court's review. As the government has consistently explained across presidential administrations, the decision below contravenes this Court's precedents, conflicts with decisions of other courts of appeals on an important issue of federal constitutional law, and substantially interferes with the implementation of federal immigration policy.

Imposing Washington's minimum-wage requirement on the Tacoma facility doubly offends the Supremacy Clause. First, it violates the intergovernmental immunity doctrine, which forbids state laws that discriminate against the federal government and its contractors or directly regulate federal activities. Detaining aliens pending removal under the federal immigration laws is a uniquely federal activity. And the Tacoma facility is

the *only* detention facility in the State whose detainees are subject to the minimum-wage statute; state-run facilities for other detained individuals are not covered. Applying that statute here puts the federal government to an untenable choice. It must forgo voluntary work programs—despite a seven-decade history establishing the value of such programs in the immigration detention setting. Or it must alternatively forgo the use of contractors to operate immigration detention facilities—despite the additional costs and inefficiencies that would impose on taxpayers and the agency. That is a paradigmatic interference with federal governmental activities that violates the Supremacy Clause under the Court’s longstanding precedent. See *McCulloch v. Maryland*, 4 Wheat. 316 (1819).

Second, and independently, federal law preempts the state minimum-wage requirement by designating the Secretary of Homeland Security as the person with authority to decide what to pay immigration detainees who participate in voluntary work programs, within appropriated limits. 8 U.S.C. 1231(g)(1), 1555(d). Washington’s minimum wage act conflicts with that federal designation by instead arrogating to the State the authority to prescribe immigration detainees’ pay.

Yet the court of appeals saw no constitutional problems. Its decision rested principally on the ground that Washington’s statute regulates private contractors, not the federal government, and would apply equally to detention facilities operated by private entities who contract with the State. That reasoning is not responsive to the preemption problem. And it is plainly wrong with respect to intergovernmental immunity, since it elides the lack of evenhandedness in Washington’s law. The State is legally prohibited from contracting with private

detention facilities. Wash. Rev. Code § 72.68.110(1) (2026). A state law that purports to apply evenhandedly to federal and state operations—while simultaneously ensuring that the state operations will never exist—is not a neutral law. That the state statute purports to regulate the contractor rather than the federal government is immaterial; “what cannot be done directly cannot be done indirectly,” *Cummings v. Missouri*, 4 Wall. 277, 325 (1867), and state laws framed in ostensibly neutral terms can nevertheless violate the Supremacy Clause, e.g., *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 188-190 (1956) (per curiam).

The court of appeals’ erroneous decision also conflicts with decisions of other courts of appeals, including a recent Third Circuit decision holding that a New Jersey law purporting to prevent private contractors from housing immigration detainees violates intergovernmental immunity. And the decision below is important, as it threatens to upend the federal government’s immigration-detention policy. Washington has recently “imposed a series of state regulations directed *solely* at” petitioner’s Tacoma facility that purport to “dictate nearly every facet of how the federal government must treat alien detainees.” *Inslee*, 166 F.4th at 1191 (Bumatay, J., dissenting). If left in place, the decision below will encourage more such regulation from Washington and other States hostile to federal immigration policy across the Ninth Circuit. This Court should grant certiorari and reverse.

STATEMENT

1. Petitioner operates a private detention facility in Tacoma, Washington, under contract with United States Immigration and Customs Enforcement (ICE) to house immigration detainees. Pet. App. 2-3. Peti-

tioner offers a voluntary work program under which it usually pays detainee participants \$1 per day to perform various tasks, such as “meal preparation and kitchen sanitation, janitorial work, building repairs, waste management, and laundry.” *Id.* at 5; see *id.* at 5-6.

Congress has long authorized voluntary work programs at immigration-detention facilities. See Act of July 28, 1950, ch. 503, § 6(d), 64 Stat. 381. The executive branch specifically requested that authorization, explaining that such programs for immigration detainees would help to maintain order and improve morale. *Hearing on H.R. 4645 and S. 2864 Before Subcomm. No. 2 of the H. Comm. on the Judiciary*, 81st Cong., 2d Sess. 21-22 (1950) (statement of George M. Miller, U.S. Department of Justice); see S. Rep. No. 1258, 81st Cong., 2d Sess. 2 (1950). Accordingly, Section 5.8 of ICE’s Performance-Based National Detention Standards (PBNDS), which is incorporated by reference into petitioner’s contract with ICE, specifically directs contractors to offer voluntary work programs. Pet. App. 4; see C.A. E.R. 506-520 (excerpts of 2011 PBNDS).

Congress has provided that the government may pay aliens for work performed in such programs “at such rate as may be specified from time to time in the appropriation Act involved.” 8 U.S.C. 1555(d). The congressionally appropriated rate has long been \$1 per day per detainee. See Department of Justice Appropriation Act, 1979, Pub. L. No. 95-431, Tit. II, 92 Stat. 1027 (appropriating “payment of allowances (at a rate not in excess of \$1 per day) to aliens, while held in custody under the immigration laws, for work performed”). Section 5.8 of the PBNDS requires contractors “to compensate detainees at a rate of ‘at least \$1.00 (USD) per day.’” Pet. App. 4 (citation and emphasis omitted); see C.A.

E.R. 516. Given the appropriations limits, ICE itself reimburses petitioner \$1 per day per detainee participant. See Pet. App. 137.

Respondents are the State of Washington and a class of detainees who were detained at the Tacoma facility. Pet. App. 6. They assert that irrespective of the federal reimbursement rate, petitioner must pay detainees who participate in the voluntary work program the state minimum wage, which is currently more than \$17 per hour. *Id.* at 6-7; see Wash. Rev. Code § 49.46.020(2)(b) (2026) (annual inflation-adjusted increases in the minimum wage); Washington State Department of Labor & Industries, *Minimum Wage*, perma.cc/B9VC-96HB.

The district court denied cross-motions for summary judgment. Pet. App. 121-131, 132-149, 170-194. As relevant here, the court found “genuine issues of material fact as to whether [petitioner] and the detainee workers have an employee-employer relationship under the” state minimum-wage statute. *Id.* at 187. The court rejected petitioner’s claim that applying the statute violates principles of intergovernmental immunity, which prohibit state laws that “regulate the United States directly or discriminate against the Federal Government or those with whom it deals.” *Id.* at 188 (citation omitted). The court also rejected petitioner’s “derivative sovereign immunity” defense. *Id.* at 191; cf. *The GEO Group, Inc. v. Menocal*, 607 U.S. 438, 448-449 (2026) (describing the defense).

Following a jury trial, the district court awarded more than \$17 million in back pay to the detainee class and, following a bench trial, awarded nearly \$6 million in unjust enrichment to the State. See Pet. App. 2-3. The court also permanently enjoined petitioner “from continuing operation of the voluntary work program as

it has been operated without paying detainee workers the minimum wage.” *Id.* at 167. Petitioner then suspended the voluntary work program. *Id.* at 7.

2. After hearing oral argument, the court of appeals certified three questions to the Supreme Court of Washington, including (as relevant here) whether immigration detainees are “employees” within the meaning of the Washington minimum-wage statute and whether the statute’s exemption for a “resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment, or rehabilitative institution” applies. Pet. App. 16 (citation and emphasis omitted); see *id.* at 7, 98. The state supreme court accepted the certification and concluded that the detainees are “employees” under the minimum-wage statute and that the exemption does not apply. *Id.* at 97-120.

Among other things, the state supreme court explained that although it had previously adopted an “economic dependence” test to determine whether a worker is an “employee” for purposes of the minimum-wage statute, it would not apply that test here in part because applying that test would result in the detainees’ not being considered employees, which would contravene the goal of giving the minimum-wage laws “broader coverage.” Pet. App. 116. The court also explained that because the exemption applies only to “persons detained in ‘state, county, or municipal’ institutions,” it “does not apply to detained workers in private detention facilities regardless of whether the private entity that owns and operates the facility contracts with the state or federal government.” *Id.* at 105-106.

3. A divided panel of the court of appeals affirmed. Pet. App. 1-60.

a. The court of appeals first rejected petitioner's intergovernmental-immunity argument. Pet. App. 10-25. The court held that application of the minimum-wage statute did not directly regulate federal governmental activities because petitioner "is a private for-profit employer," not the federal government itself. *Id.* at 11; see *id.* at 11-15. The court further held that applying the statute did not discriminate against the federal government because it would equally require private detention facilities in contract with the State to pay detainees the statutory rate (even though no such facilities exist). *Id.* at 16-25.

The court of appeals then rejected petitioner's preemption argument. Pet. App. 26-31. Invoking a presumption against preemption, the court held that petitioner had not shown a "clear and manifest purpose of Congress" to preempt the minimum-wage statute here. *Id.* at 27 (citation omitted). The court rejected reliance on the statutes appropriating only \$1 per day for alien detainees participating in work programs, stating that those statutes do "not forbid [petitioner] from paying more than \$1.00 per day," but "merely provide[] that the government w[ill] not reimburse payments in excess of that amount." *Id.* at 29.

b. Judge Bennett dissented on intergovernmental-immunity grounds. Pet. App. 35-60. In his view, the minimum-wage statute is discriminatory because it "expressly exempts 'any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution'" from its ambit, but "does not include federal facilities in its list of exemptions." *Id.* at 38 (brackets and citation omitted). Judge Bennett also observed that because the State had acknowledged that "if the federal government operated

the [facility], [Washington] could not dictate the wages paid to detainees,” the statute effectively “forc[es] a federal contractor to pay more just because it is a federal contractor” or “forc[es] the federal government to change how it operates the [facility].” *Id.* at 41 n.4.

4. The court of appeals denied rehearing en banc. Pet. App. 61-96. Seven judges would have granted rehearing en banc. Judge Bennett voted to grant rehearing. *Id.* at 62. Judge Collins, joined by Judges Nelson and Bress, dissented from the denial of rehearing “[f]or substantially the reasons set forth in Judge Bennett’s panel dissent.” *Id.* at 96. Judge Bumatay, joined by Judges Callahan and VanDyke, explained that “[o]n top of the reasons laid out in th[at] dissent,” applying the minimum-wage law here “interfere[s] with the performance of a federal operation” and thus directly regulates the federal government. *Id.* at 72; see *id.* at 66-95.

DISCUSSION

The petition for a writ of certiorari should be granted. The court of appeals erred in holding that the Washington minimum-wage statute could be constitutionally applied to private contractors running immigration detention facilities on behalf of the federal government. As the United States has explained in multiple amicus briefs in the lower courts across multiple presidential administrations, application of the Washington statute both violates principles of intergovernmental immunity and is preempted. The decision below also conflicts with the Third Circuit’s decision in *Core-Civic, Inc. v. Governor of New Jersey*, 145 F.4th 315 (2025), which held that a similar state law that purported to regulate only private parties, not the federal government itself, could not constitutionally be applied to federal governmental contractors running immigra-

tion detention facilities. *Id.* at 319; see *id.* at 320-329. If left to stand, the decision below would substantially interfere with federal immigration enforcement, as it would either greatly hamper the use of contractors for detention activities or effectively eliminate voluntary work programs, despite their proven desirability for maintaining good order. This Court’s review is amply warranted.

A. The Decision Below Is Wrong

Applying the state minimum-wage statute in these circumstances is both foreclosed by principles of intergovernmental immunity and preempted.

1. *The Washington statute violates intergovernmental immunity*

Applying the Washington minimum-wage statute here violates principles of intergovernmental immunity. Intergovernmental immunity “prohibit[s] state laws that *either* ‘regulate the United States directly or discriminate against the Federal Government or those with whom it deals’ (*e.g.*, contractors).” *United States v. Washington*, 596 U.S. 832, 838 (2022) (brackets and citation omitted). The statute here impermissibly does both.

a. Applying the state minimum-wage statute to immigration detainees impermissibly discriminates against the federal government and its contractors. A “state law discriminates against the Federal Government or its contractors if it ‘singles them out’ for less favorable ‘treatment,’ or if it regulates them unfavorably on some basis related to their governmental ‘status.’” *Washington*, 596 U.S. at 839 (brackets and citations omitted).

Washington law on its face singles out federal contractors for less favorable treatment. The minimum-wage law applies only to “employees,” Wash. Rev. Code § 49.46.020 (2026), and Washington expressly provides that for purposes of that law, an “employee” “shall not include * * * [a]ny resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution.” § 49.46.010(4)(k). An immigration detainee is a resident or inmate of a federal detention institution, yet is not included in that exemption. “The [statute] thus facially treats the federal government differently because it does not include federal facilities in its list of exemptions.” Pet. App. 38 (Bennett, J., dissenting). Indeed, Washington operates many labor programs within its own correctional or detention facilities, in which participants earn substantially less than the state minimum wage. See *ibid.*; see also, *e.g.*, State of Washington Department of Corrections, *Class III Work Programs*, Policy Doc. No. 700.100, at 3 (Oct. 6, 2023) (compensation “will not exceed \$40 per week”), perma.cc/88RM-DUJW. But Washington does not extend that same allowance to federal immigration detainees. That is a straightforward case of discriminatory treatment.

In addition, the State appears to agree that it could not apply its minimum-wage law to federal immigration detainees participating in voluntary work programs at facilities operated by ICE itself. See Pet. App. 11; *id.* at 41 n.4 (Bennett, J., dissenting); *id.* at 73 (Bumatay, J., dissenting). Thus, the *only* detainees in the State of Washington who must be paid the minimum wage for participating in voluntary work programs are federal detainees in facilities owned and operated by a private contractor. In fact, the State has acknowledged that pe-

petitioner's Tacoma facility is the only detention facility in Washington that would be subject to the minimum-wage law. *Id.* at 39 (Bennett, J., dissenting) (citing oral argument). Applying the minimum-wage law in these circumstances thus "has the clear effect of targeting only the federal government" and its contractors, and thereby effectively "punishes the federal government for its policy choice to use private contractors." *Id.* at 39-40 (Bennett, J., dissenting).

The court of appeals reasoned that the minimum-wage statute is nondiscriminatory because it also would apply to voluntary work programs in private detention facilities under contract with the State. Pet. App. 19; see *id.* at 106 (state supreme court decision). But such facilities are illegal under Washington law: with exceptions not relevant here, "the secretary [of corrections] is prohibited from utilizing a contract with a private correctional entity." Wash. Rev. Code § 72.68.110(1) (2026). A law that purports to apply evenhandedly to federal and state operations while simultaneously ensuring that the state operations will never exist is not a neutral law. Cf. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 351-353 (1977) (putatively neutral statute carefully drawn to carve out in-state products was in fact discriminatory). Courts need not "exhibit a naiveté from which ordinary citizens are free," *Department of Commerce v. New York*, 588 U.S. 752, 785 (2019) (citation omitted), and Washington cannot gerrymander its way out of a constitutional violation by touting its treatment of a nonexistent category.

There is further evidence of discrimination here. In rejecting petitioner's argument that immigration detainees are not "employees" in the first place (thus eliminating the need to analyze the statutory exemptions),

the state supreme court abandoned the economic-dependence test it had long used to determine whether a worker is an “employee” for purposes of the minimum-wage law. Pet. App. 115-116. And as Judge Bennett observed, the state labor agency has issued guidance “suggest[ing] that even were there a privately operated state-run detention facility, those private operators would be exempt from the” minimum-wage statute. *Id.* at 39. Both of those suggest that application of the minimum-wage statute in this case reflects a novel reinterpretation of state law to target federal immigration operations. Cf., e.g., *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 56 (2015) (finding state law discriminatory where state courts adopted an interpretation that they would not adopt “in any context other than” the disfavored one).

Compounding the problem, the court of appeals misapprehended the relevant inquiry for determining whether the state law is discriminatory. The “relevant question isn’t whether the [Tacoma facility] is similarly situated to other private employers covered by the [minimum-wage statute]; the relevant question is whether it is similarly situated to those who are *exempt* from the” statute. Pet. App. 41 (Bennett, J., dissenting) (emphasis added; brackets and citation omitted); see *Dawson v. Steager*, 586 U.S. 171, 178 (2019); cf. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). There is no persuasive basis to distinguish privately operated detention facilities under contract with the federal government from the state- or locally operated detention facilities that are exempt from the statute. See Pet. App. 42 (Bennett, J., dissenting). Indeed, private persons generally cannot detain other private persons; such detention—and in particular *immigration* detention—

is a traditionally federal governmental function, making the court’s comparison of petitioner to other private employers even less apposite. Cf. *CoreCivic*, 145 F.4th at 325 (“Only the federal government has the power to decide whether, how, and why to hold aliens for violating immigration law. It alone has the power to make these contracts in the first place.”).

b. Even if the minimum-wage statute were viewed as nondiscriminatory, applying it here would still violate principles of intergovernmental immunity because such application would directly regulate the United States. This Court has long recognized that even state laws of general applicability can violate intergovernmental immunity. *E.g.*, *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 188-190 (1956) (per curiam); *Public Utilities Commission v. United States*, 355 U.S. 534, 544 (1958).

It is undisputed that if the federal government directly operated the Tacoma detention center, intergovernmental immunity would preclude application of the minimum-wage statute to detainee participants in the voluntary work program. See Pet. App. 11; *id.* at 41 n.4 (Bennett, J., dissenting); *id.* at 73 (Bumatay, J., dissenting). But the State does not acquire greater authority to regulate the terms on which alien detainees participate in that federal program simply because the government chooses to detain the aliens in contractor-operated facilities. As Judge Bumatay explained, “[w]hen a federal contractor acts on behalf of the federal government to administer a federal function—like the detention of aliens—the contractor is not merely a private business; it steps into the shoes of the federal government for Supremacy Clause purposes.” *Id.* at 73-74.

Despite the private operation of the Tacoma facility, the federal immigration detainees there remain in the custody of the United States, and the United States is exercising its sovereign authority to permit them to participate in the voluntary work program, subject to the uniform nationwide conditions imposed by Congress and the executive branch. In attempting to “define the employment status of federal detainees” and “dictate terms about their employment status,” the Washington statute thus directly regulates federal governmental activities, notwithstanding the fact that petitioner (rather than ICE) operates the Tacoma facility on behalf of the federal government. Pet. App. 73 (Bumatay, J., dissenting); see *id.* at 86-90.

The court of appeals thought that the Washington statute did not “interfere with or dictate federal decisions” because nothing “prevents [petitioner] from paying Washington’s minimum wage to its civil detainees” and, even if such payment increased petitioner’s (and thus the government’s) costs, petitioner “could still profit substantially from operating the” Tacoma facility. Pet. App. 14-15. That is both wrong and irrelevant. It is wrong because, as this case illustrates, Washington’s minimum wage is in fact so prohibitively high that it has resulted in the suspension of the voluntary work program at the Tacoma facility, which obviously “interferes with” Congress and ICE’s earlier decision to operate the program for the benefit of that facility. And it is irrelevant because the Supremacy Clause prohibits *any* direct state regulation of federal activities without the federal government’s consent, regardless of whether the regulatory burden is (in the State’s view) minor or tolerable.

2. *The Washington statute is preempted*

Federal law also preempts application of the state minimum-wage statute. Even where a federal statute does not contain an express preemption clause, federal law can preempt state laws that “conflict with federal law” or “stand as ‘an obstacle to the accomplishment and execution of the full purposes’ of” the federal law. *Kansas v. Garcia*, 589 U.S. 191, 210-211 (2020) (citation omitted). The Washington minimum-wage statute here does both and the court of appeals erred in holding otherwise.

As a threshold matter, the court of appeals erred in applying a presumption against preemption, which the court viewed as requiring petitioner to “show a ‘clear and manifest purpose of Congress’ to preempt state law,” Pet. App. 27 (citation omitted); see *id.* at 26-27. “[A]n ‘assumption’ of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence.” *United States v. Locke*, 529 U.S. 89, 108 (2000); see *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 13-15 (2013). The detention of aliens pending removal or a decision on removal fits the bill; such aliens are in the federal government’s custody pursuant to the federal government’s broad authority over immigration. See, e.g., *Arizona v. United States*, 567 U.S. 387, 395 (2012); *Reno v. Flores*, 507 U.S. 292, 305-306 (1993). That authority is uniquely federal in nature: “Immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws.” *Arizona*, 567 U.S. at 395. If anything, the court should have applied “a presumption for preemption.” Pet. App. 56 (Bennett, J., dissenting).

But even if the presumption against preemption applied, that presumption has been overcome here. Congress authorized the Secretary of Homeland Security (formerly the Attorney General) to “arrange for appropriate places of detention” of aliens, 8 U.S.C. 1231(g)(1), which includes the authority to contract for detention, 6 U.S.C. 112(b)(2); see *The GEO Group, Inc. v. Newsom*, 50 F.4th 745, 751, 757 n.6 (9th Cir. 2022) (en banc); cf. *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019). In addition, even though most detained aliens are not authorized to work as a general matter, see 8 U.S.C. 1324a(h)(3), Congress has long authorized voluntary work programs at immigration detention facilities to help maintain order and improve morale. See 8 U.S.C. 1555(d); p. 5, *supra*. ICE thus generally requires private contractors to offer voluntary work programs at privately operated immigration detention centers to promote “safety, security, and good order of the facility,” requires them to compensate detainees at a rate of “at least” \$1 per day, and reimburses them \$1 per day. PBNDS § 5.8(I) and (V)(K); see § 5.8(V)(A); Pet. App. 137.

Application of the Washington minimum-wage statute conflicts with that federal statutory scheme. To be sure, federal law does not prohibit petitioner from choosing to pay detainees more than \$1 per day, and thus it is not impossible for petitioner to comply with both the state statute and federal law (including the PBNDS and its contract with ICE). The conflict, rather, is at a more fundamental level: the “who decides” level. Congress has made clear that the Secretary “shall arrange for appropriate places of detention for aliens detained pending removal,” including by contracting with private detention centers and setting the terms of the detention in that contract. 8 U.S.C.

1231(g)(1). Congress also has made clear that the Secretary is bound only by the limits that Congress itself sets, including (as relevant here) that the Secretary may pay or authorize payment to detainees participating in voluntary work programs no more than Congress itself has appropriated for that purpose (which is \$1 per day). 8 U.S.C. 1555(d).

Sections 1231(g)(1) and 1555(d) thus answer the “who decides” question: *the Secretary* decides in the first instance what to pay detainees, within the limits set by Congress (\$1 per day). The Secretary also decides whether to authorize private contractors to pay more if they wish—as the Secretary has in fact authorized (and as petitioner has on occasion done). See Pet. App. 5. When it comes to determining how much immigration detainees will be compensated for participation in a voluntary work program, the statutory text and structure contemplate roles for the Secretary, private contractors, and Congress—but not for States. Washington’s minimum-wage statute, however, seeks to mandate a higher rate of compensation. In arrogating that decisional authority to the State, the statute conflicts with Congress’s judgment.

At a minimum, the Washington statute poses “an obstacle to the accomplishment and execution of the full purposes” of the federal statutory scheme. *Garcia*, 589 U.S. at 211 (citation omitted). As noted, Congress authorized voluntary work programs to promote good order in immigration detention facilities, a purpose reflected in the PBNDS as well. Yet positions in such programs are not guaranteed and might not be available to all detainees. See PBNDS § 5.8(V)(D) (requiring contractors to “develop site-specific rules for selecting work detail volunteers”). And just as the supply of po-

sitions is limited, the rate of compensation obviously will affect the demand as well. The federal scheme thus strikes a careful balance that the Washington minimum-wage statute upends.

That disruptive effect is particularly evident here, where the more than hundredfold increase in detainee compensation caused petitioner and the government to agree to suspend the voluntary work program at the Tacoma facility altogether. At a minimum, the court of appeals' holding "will result in vast discrepancies in ICE's ability to contract with contractors throughout the country," given the variation not only in minimum-wage rates, but also in the applicability of state minimum-wage laws to federal immigration detention facilities. Pet. App. 58 (Bennett, J., dissenting). That variation will further frustrate and impede the executive branch's ability to establish and maintain voluntary work programs at immigration detention facilities.

B. The Decision Below Warrants Review

1. The decision below conflicts with decisions of other circuits, in particular the Third Circuit's decision in *CoreCivic, supra*. That case involved a New Jersey statute prohibiting "the state, its local governments, and private parties from making, renewing, or extending any contract to detain people for civil immigration violations." 145 F.4th at 320. The Third Circuit held that the statute violates principles of intergovernmental immunity. *Id.* at 320-329. Although the New Jersey statute's "text does not apply to the federal government," the court explained that it directly regulates the federal government because it "ban[s] contracts that only the federal government can make." *Id.* at 325. The *CoreCivic* court further explained that the New Jersey statute "substantially interferes with federal immigra-

tion policy” by precluding the government from using private contractors to operate detention facilities. *Id.* at 327.

Just like the New Jersey statute at issue in *CoreCivic*, the Washington statute here regulates an activity that *only* the federal government engages in: detaining aliens pending removal or a decision on removal under the federal immigration laws. Cf. *Arizona*, 567 U.S. at 409 (holding that a state law authorizing state officers to detain aliens was preempted). And like the New Jersey statute, the Washington statute substantially interferes with federal immigration policy by making it practically impossible to offer voluntary work programs in private immigration detention facilities in that State, even though Congress and the executive branch have determined that such programs are valuable in the detention setting. The decision below upholding the Washington statute is thus irreconcilable with the Third Circuit’s decision in *CoreCivic*.

Respondents argue (see State Br. in Opp. 19; Nwauzor Br. in Opp. 16-17) that *CoreCivic* “expressly distinguished this case.” But *CoreCivic* simply observed that state regulations that “burden contractors without substantially interfering with the federal government’s operations * * * may pose different intergovernmental-immunity questions.” 145 F.4th at 329. And while *CoreCivic* cited the panel decision in this case as an example of a decision that *purports* to involve such a state law, nothing in the Third Circuit’s decision expresses any view about whether the panel here was *correct* about that assertion.

Respondents also observe (see State Br. in Opp. 19; Nwauzor Br. in Opp. 16) that *CoreCivic* “aligned” itself with the Ninth Circuit’s decision in *Newsom*, which held

that a California statute banning private detention facilities was both preempted and violated principles of intergovernmental immunity. 50 F.4th at 759-763. But as petitioner and the government explained below, the panel decision here also is inconsistent with *Newsom*—which likely contributed to the votes of seven judges of the Ninth Circuit to grant rehearing en banc. Indeed, the panel opinion here, which Chief Judge Murguia joined, echoes many of the points made in her *Newsom* dissent. Compare Pet. App. 1-34, with *Newsom*, 50 F.4th at 763-769 (Murguia, J., dissenting). And given the denial of rehearing en banc (over multiple dissents) in this case, the Ninth Circuit has made clear that it will not resolve those conflicts on its own.

As petitioner explains (Pet. 21-23), the decision below also is in tension with the Second Circuit’s decision in *United States v. Town of Windsor*, 765 F.2d 16 (1985), and the Fourth Circuit’s decision in *United States v. Virginia*, 139 F.3d 984 (1998). *Windsor* held that a municipality could not enforce a construction permit requirement against a federal contractor precisely *because* that requirement could not be enforced “directly against the Government.” 765 F.2d at 20. And *Virginia* held that state registration and licensing requirements for private investigators could not be imposed on private investigators working solely for the FBI because such application would “frustrate[] the objectives” of federal law and give “the state licensing board ‘a virtual power of review over the federal’” government’s operations. 139 F.3d at 989. The decision below defies both of those rationales. It allows Washington’s minimum-wage statute to be applied to petitioner notwithstanding that it cannot be applied to the federal government, and that application frustrates the objectives of the volun-

tary work program and effectively gives the State a power of review over (at least some of) the conditions of federal immigration detention.

2. The question presented involves an issue of exceptional importance. The federal government has long relied on private contractors to fulfill its responsibilities, see Pet. App. 75-79 (Bumatay, J., dissenting) (describing the history of governmental contracting since the Founding), especially for immigration detention, see *id.* at 68; Pet. 7-8. The decision below threatens to upend that reliance in the largest regional circuit, which also happens to play an outsized role in immigration law. And those effects are likely to be felt nationwide, given that the largest private contractors (like petitioner and CoreCivic) also operate nationwide and thus are repeat players in negotiating contracts with the federal government. ICE, in turn, would either have to amend the PBNDS (in which the “N” stands for “national”) to be circuit-specific or simply acquiesce to the Ninth Circuit’s rule nationwide.

Moreover, state minimum wages vary drastically across the country. For instance, while Washington’s is \$17.13 per hour and automatically increases each year, see Wash. Rev. Code § 49.46.020(2)(b) (2026), Georgia’s remains at \$5.15, see Ga. Code Ann. § 34-4-3 (2026). That nonuniformity alone is a strong reason for this Court’s review, as it directly affects the viability of voluntary work programs. In States with relatively high minimum wages (like Washington’s), private contractors may insist (as petitioner has done) that they not be required to offer a voluntary work program as a condition of continuing to provide much-needed immigration detention services to the federal government. That in turn would undermine what Congress more than 70

years ago recognized was a critically important tool for maintaining good order in immigration detention facilities. Such a massive and disruptive upheaval of immigration detention operations warrants this Court's review.

3. Finally, this case is an ideal vehicle in which to address the question presented. There are no disputed facts, as the final judgments below were entered following jury and bench trials. Nor are there any lingering or open questions of state law, as the state supreme court definitively interpreted the minimum-wage statute in answering the court of appeals' certified questions in this case. And the issue has received a thorough airing in the lower courts, with comprehensive opinions joined by multiple judges on all sides—including Judge Bennett's panel dissent, Pet. App. 35-60; see *id.* at 96 (Collins, J., dissenting "[f]or substantially the reasons set forth in Judge Bennett's panel dissent"), Judge Bumatay's dissent from the denial of rehearing, *id.* at 66-95, and Judge Bibas's opinion for the Third Circuit in *CoreCivic*, 145 F.4th at 319-329. Cf. *e.g.*, Pet. App. 1-34 (panel majority opinion); *id.* at 63-65 (Murguia, C.J., respecting the denial of rehearing); *CoreCivic*, 145 F.4th at 329-345 (Ambro, J., dissenting). No further percolation is needed.

CONCLUSION

The petition for a writ of certiorari should be granted.
Respectfully submitted.

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