

No. 25-828

In the Supreme Court of the United States

THE GEO GROUP, INC.,

PETITIONER,

v.

UGOCHUKWU NWAUZOR, ET AL.,

RESPONDENTS.

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

**STATE OF WASHINGTON’S SUPPLEMENTAL BRIEF
IN RESPONSE TO AMICUS BRIEF OF THE
UNITED STATES**

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INTRODUCTION

The federal government’s amicus brief serves more as a friend to its contractor, GEO, than a friend of the Court. Remarkably, the government fails even to cite *Hencely v. Fluor Corp.*, 146 S. Ct. 1086 (2026), which directly addresses key issues in this case in full alignment with the decision below. Similarly, the government misrepresents the facts and Washington law in arguing that Washington discriminates against federal interests. Washington’s Minimum Wage Act (MWA) is a broadly applicable state law that has been on the books for decades, since long before the federal government hired private immigration contractors. The MWA nowhere targets or singles out federal contractors. Indeed, the factual record reflects—and the Washington Supreme Court confirmed—that state contractors operating private detention facilities must comply with the MWA too.

The government’s preemption argument fares no better. As it concedes, no statute or regulation limits what GEO can pay detainees for their work. GEO’s contract with the government required it to comply with state labor laws, and GEO frequently paid detainees more than \$1 per day when it served the company’s interests, eviscerating any argument that federal law prohibits it from doing so. Moreover, *Hencely* rejected exactly the sort of vague “federal interest” argument that GEO and the government make here, untethered from statutory text.

Finally, there is no reason for this Court to reconsider Supremacy Clause questions it addressed last term, especially in this case. The federal government conceded below that no other state’s

minimum wage law is relevantly similar to Washington's, and it is undisputed that (1) GEO's contract required compliance with Washington law; and (2) GEO could comply with Washington's MWA and still earn profits of over \$16 million annually, just from its Tacoma facility. The ruling below has not caused and will not cause the sky to fall. The Court should deny certiorari.

STATEMENT OF THE CASE

The facts of this case are detailed in Washington's Brief in Opposition. But two established facts merit highlighting.

First, GEO's Tacoma facility is not alone. There are at least nine privately-run, state-contracted correctional facilities in Washington housing people incarcerated by the State. *See* BIO.App.2a; *see* Wash. Rev. Code § 72.68.110(2) (allowing the State to contract with private correctional institutions for specified purposes). Washington's MWA applies equally to these state-contracted correctional facilities as it does to GEO's Tacoma facility. *See* Pet.App.107. *See also* BIO.App.4a (state corrections official testifying that State-incarcerated individuals "are hired by and become employees of the contracted [entity and] are paid market wages" for work performed at state-contracted institutions).

Second, Congress did not create the Tacoma facility's work program—GEO did. While Congress in 1950 authorized the federal government to pay "allowances" for work performed, Congress said nothing more about work programs, whether they were required, how they should be run, or what workers must be paid. Nor did Congress speak to

what private companies must pay their workers—which makes sense because private, for-profit, immigration detention did not exist in 1950. Against this congressional silence, the record shows that GEO created, defined, and controlled every single one of the jobs performed in its Tacoma work program and did so according to its own needs—not ICE’s. Wash.BIO.10-11. Although the government now claims that Washington’s MWA makes it “practically impossible” to offer a work program in private immigration facilities, U.S. Amicus Br. 20, it is undisputed that GEO could continue operating the work program, in compliance with the MWA, and still earn profits of over \$16 million annually, just from the Tacoma facility. Pet.App.15. And ICE itself has never demonstrated any interest in the work program at all. In fact, the GEO employee responsible for managing the work program testified that during her fifteen-year tenure, she ran it without *ever* speaking to a single ICE employee about how the work program should operate. BIO.App.16a-17a.

DISCUSSION

The government presses two Supremacy Clause doctrines in an effort to excuse GEO from complying with Washington’s MWA: intergovernmental immunity and preemption. But the Supremacy Clause does not exempt federal contractors from generally applicable state employment laws or strip states of their police powers to protect the health, safety, and welfare of their populations. As this Court recently recognized, the “‘exceptional freedom from legal responsibility’ that sovereign immunity offers is ‘confined’ to the

sovereign entity itself.” *GEO Grp., Inc. v. Menocal*, 607 U.S. 438, 450 (2026) (citation omitted). While the government may wish to avoid a hypothetical future increase in the cost GEO charges for its services, this Court’s precedent makes clear that such concerns cannot justify intruding upon Washington’s sovereign power to protect workers who labor at GEO’s Tacoma facility.

A. *Hencely* Confirms the Decision Below is Correct

The government relies almost entirely on the dissent from the denial of rehearing to argue that federal contractors “step into the shoes” of the federal government for intergovernmental immunity purposes when the contractor performs a “federal function.” U.S. Amicus Br. 14-16 (citing Pet.App.73-74 (Bumatay, J., dissenting)). It also argues a novel and sweeping application of the preemption doctrine, even though it concedes GEO can readily comply with both federal and state law. *Id.* at 17. But *Hencely* forecloses the government’s expansive views of intergovernmental immunity and preemption.

As to intergovernmental immunity, *Hencely* acknowledged that States “ordinarily cannot ‘directly regulate or discriminate against’ federal officers or agencies[,]” but stated point-blank that companies “who contract to furnish supplies or render services to the government are *not* such agencies and do *not* perform governmental functions.” *Hencely*, 146 S. Ct. at 1098 (citation modified). Instead, this Court reaffirmed its long-standing rule that, “absent a statute to the contrary, States can regulate or

tax federal contractors on the same terms as any private company, even where the party asserts an indirect burden on federal activities.” *Id.* (citing *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 104 (1940) (allowing state labor-law liability against a contractor constructing a federal building); *James v. Dravo Contracting Co.*, 302 U.S. 134, 159-61 (1937) (upholding a tax imposed on a federal contractor even though doing so would burden the federal government by increasing its costs)).

Notably, the federal contractor in *Hencely*, like GEO here, sought to cloak itself in the government’s immunity by arguing that its state tort law liability arose from its performance of a “federal function,” namely, services performed under the military’s command in a foreign combat zone during an active war. But despite a stronger federal nexus than asserted here, this Court rejected the contractor’s argument that it was entitled to the same immunity as the government. This Court noted that Congress knows how to immunize federal contractors. But “without a federal statute, contractors ordinarily have a constitutional defense only when the contractor is being sued precisely for accomplishing what the Federal Government requested.” *Id.* at 1099.

Put another way, a federal contractor’s only recourse from a non-preempted, generally applicable state law is not intergovernmental immunity; it’s a *Yearsley* defense. Yet the government has never argued *Yearsley* here. Nor could it, because the government concedes that ICE’s contract provided GEO discretion to pay more than \$1 per day, meaning that the government did *not* direct GEO to pay only

\$1 per day and violate Washington law. U.S. Amicus Br. 17. Of course, it's the opposite; the ICE contract required GEO to *comply* with “state and local labor laws[.]” BIO.App.27a.

The government's preemption argument also runs headlong into *Hencely*.¹ The government argues that because a federal statute authorizes the Secretary of Homeland Security to “arrange for appropriate places of detention” for immigrant detainees, 8 U.S.C. § 1231(g)(1), all state laws regulating the terms of that detention are preempted. Distilled to its essence, the government argues for field preemption over immigration detention conditions, but does so without coming anywhere close to showing the necessary pervasive federal regulation or dominant federal interest. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). This Court rejected the same sweeping preemption argument in *Hencely*.

The federal contractor in *Hencely* argued for a broad preemption rule: that “all state-law claims against military contractors under military command arising out of combatant activities are preempted

¹ The government also claims that the presumption against preemption is inapplicable in the context of immigration policy. *See* U.S. Amicus Br. 16-17. But it cites a case, *Arizona v. United States*, 567 U.S. 387 (2012), that applied the presumption in exactly that context. In assessing whether federal immigration law preempted Arizona's law, this Court explicitly instructed that courts must “assume that ‘the historic police powers of the States’ are not superseded ‘unless that was the clear and manifest purpose of Congress.’” *Id.* at 400 (citation omitted).

regardless of whether any conflict exists between the military's instruction and state law." 146 S. Ct. at 1091. This Court flatly rejected the argument as "lack[ing] any foundation in the Constitution, federal statutes, or our precedents." *Id.* While acknowledging that the Constitution granted "broad and sweeping war powers" to the federal government and prohibited states from "engag[ing] in War, unless actually invaded[.]" this constitutional grant of authority could not support general preemption of all war-related torts. *Id.* at 1096 (citations omitted). To the contrary, while the uniquely federal "warzone" context made a "good case for Congress to intervene," it did not give "courts a license to bar all such suits on their own authority." *Id.* at 1098.

This Court acknowledged that its prior precedent recognized "'a few areas, involving 'uniquely federal interests,' [that] are so committed by the Constitution and the laws of the United States to federal control that state law is pre-empted [under rules]' fashioned by federal courts in the absence of congressional action." *Id.* at 1094 (quoting *Boyle v. United Technologies Corp.*, 487 U.S. 500, 504 (1988)). But even in such "rare cases," identification of a uniquely federal interest "does not . . . end the inquiry." *Id.* (quoting *Boyle*, 487 U.S. at 507). Rather, as long as the contractor "'could comply with both its contractual obligations and the state-prescribed duty of care[.]" no one would suggest "'that state law would generally be pre-empted[.]'" *Id.* at 1095-96 (quoting *Boyle*, 487 U.S. at 509); see also *id.* at 1091 ("[S]tate law is generally not preempted when the 'contractor could comply with both its contractual obligations' to

the military and state law—unlike when the state-imposed duty “is *precisely contrary* to the duty imposed by the Government contract.” (emphasis added) (quoting *Boyle*, 487 U.S. at 509)).

Here, the government cannot show that conditions in private immigration detention facilities within States are so committed to the federal government under the Constitution and federal law that there is no room for state regulation. *Id.* at 1094. It barely even tries, instead, relying primarily on 8 U.S.C. § 1231(g)(1), which merely grants the Secretary of Homeland Security authority to “arrange for appropriate places of detention” for immigrant detainees and provides a funding mechanism to “acquire, build, remodel, repair, and operate [such] facilities[.]” The only other federal statute it cites, 8 U.S.C. § 1555, is just a general appropriation statute authorizing “payment allowances” for immigrant detainees. Neither statute says anything about the terms of detention or the amounts that can be paid to detainees, or imposes any other obligation that conflicts with Washington’s law. *See* Wash.BIO.31-32. Certainly, nothing in the Constitution commits the conditions of private immigration facilities to the federal government. But even if private immigration detention was the “rare” issue committed to federal governance, the government admits that GEO can comply with both the federal government’s requirements and state law. U.S. Amicus Br. 17. Under *Hencely*, that concession is fatal to the type of sweeping preemption rule—untethered to an actual statutory conflict—that the government advocates here.

B. Washington’s Minimum Wage Act Does Not Discriminate Against Federal Contractors

Left with little to say after *Hencely*, the government makes discrimination its lead argument. But its discrimination argument is riddled with factual misrepresentations and distortions of law.

Washington’s MWA is a broadly applicable state labor law that has been on the books for decades, since long before private immigration detention facilities even existed. The law applies to GEO because it is a private business—not because GEO is a federal contractor. It is neither a novel requirement nor a targeted one that singles out federal contractors. *Cf. CoreCivic, Inc. v. Governor of New Jersey*, 145 F.4th 315 (3d Cir. 2025) (invalidating New Jersey law that explicitly prohibited “immigration detention agreements”). Precisely the opposite: The MWA is a neutral law with which GEO must comply regardless of whether GEO contracts with the federal, state, or local governments—or no government at all.

In search of a different result, the government suggests that Washington’s MWA was “gerrymander[ed]” to “effectively” apply only to federal contractors, given that the State Department of Corrections is generally prohibited from contracting with private facilities. *See* U.S. Amicus Br. 3, 12. Yet the MWA could not have been “gerrymandered” to achieve this result when it was enacted more than fifty years prior to Washington’s general ban on State use of private prisons. *Compare* 1961 Wash. Sess. Laws 2602 (Ex. Sess., ch.18, § 1) *with* 2020 Wash. Sess. Laws ch. 318, § 2. Even more fundamentally,

GEO's Tacoma facility is not the only private detention facility in Washington subject to the MWA. The State's general prohibition on private correctional institutions exempts certain types of work-release and residential detention facilities for youth and adults. *See* Wash. Rev. Code § 72.68.110(2). As the Washington Supreme Court confirmed in answering certified questions in this case, State-contracted detention facilities must pay Washington's minimum wage. Pet.App.107. So, federal immigration detainees are not the only detainees entitled to Washington's minimum wage. *Contra* U.S. Amicus Br. 11. Just like GEO, state-contracted facilities must pay state inmates Washington's minimum wage—and, unlike GEO, they actually do so in practice. BIO.App.3a (confirming state contractors pay “at least the minimum wage, though sometimes more”).

The government tries to malign the Washington Supreme Court's analysis, U.S. Amicus Br. 12-13, but “this Court does not sit to review” “a question of state law[.]” *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 474 (1989). “[State] courts have the final authority to interpret and, where they see fit, to reinterpret that State's legislation.” *Garner v. Louisiana*, 368 U.S. 157, 169 (1961). When this Court *does* evaluate state court decisions, it only assesses whether they comport with federal law. *See, e.g., DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 54 (2015).

Regardless, nothing about the Washington Supreme Court's interpretation discriminated against the government. Statutory interpretation of any law, including the MWA, always begins with the statute's text, not state agency guidance or a holding from

a different case considering a different question. Because the Washington Supreme Court concluded that the MWA's text unambiguously includes state contractors operating detention facilities, there was no need to conduct the economic-dependency test. Pet.App.17.

Tacitly recognizing that Washington's MWA applies to federal and state contractors alike, the government pivots and argues that the exemption for state owned and operated facilities renders it discriminatory. U.S. Amicus Br. 11. But the State has always acknowledged that the MWA likewise exempts federally owned and operated facilities, like the Federal Detention Center in SeaTac. Wash.BIO.4-5. There is no basis for extending the scope of immunity beyond the scope of the MWA's exemption for *government-run* institutions. *See Dawson v. Steager*, 139 S. Ct. 698, 705 (2019) ("If [a] State decides to exempt only a narrow subset of state [employees], the State can comply with [intergovernmental immunity principles] by exempting *only* the comparable class of federal [employees]." (emphasis added)). Rather, this Court repeatedly distinguishes between a government, on the one hand, and private contractors, on the other. *See Hencely*, 146 S. Ct. at 1098 (recognizing "those who contract to furnish supplies or render services to the government . . . do not perform governmental functions"); *Menocal*, 607 U.S. at 449-50 ("[T]he general rule [is] that sovereign immunity is not transferrable to agents, including contractors, of a government.").

The discrimination prong of intergovernmental immunity does not render a private business immune when a state law regulates federal contractors "on the

same terms as any private company[.]” *Hencely*, 146 S. Ct. at 1098. This Court has rejected overbroad claims of intergovernmental immunity when private companies seek special exemptions from state law based on their relationship with the federal government. *See Washington v. United States*, 460 U.S. 536, 545 (1983) (upholding state tax law where “[t]he tax on federal contractors is part of the same structure, and imposed at the same rate, as the tax on the transactions of private landowners and contractors”); *Menocal*, 607 U.S. at 450 (“[T]he government does not become the conduit of its immunity in suits against its agents” just because “they do [the government’s] work.” (alterations in original) (citation omitted)). Washington’s MWA not only applies to private detention employers on its face, but applies to federal and state detention contractors in reality. It does not discriminate against GEO.

C. Review Is Not Warranted

Just last term, this Court rejected the overarching argument made by GEO and the government here. The petition thus seeks review of the Ninth Circuit’s correct application of settled law to the facts here. And those facts are unique, not only because of the extensive trial testimony showing no impact on ICE operations here, but also because, as the government acknowledged below, no “other state” has minimum wage laws relevantly similar to Washington’s. CA9.DktEntry.157 at 10, 11 n.12. The government’s claims of seismic disruptions from the ruling below also ring hollow where, as here, GEO could comply with Washington law and still make immense profits. There is no reason for this Court to use this case to reconsider the same federal contractor

immunity questions squarely addressed in *Hencely*. If state laws can apply to companies providing services within overseas military bases, surely they can apply to companies doing business within a State's own borders.

CONCLUSION

The Court should deny the petition.

RESPECTFULLY SUBMITTED.

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