

No. 25-828

IN THE
Supreme Court of the United States

THE GEO GROUP, INC.,
A FLORIDA CORPORATION,

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

**BRIEF FOR *AMICI CURIAE*
DAY 1 ALLIANCE AND
PROFESSIONAL SERVICES COUNCIL
IN SUPPORT OF THE PETITIONER**

AARON T. MARTIN
Counsel of Record
MARTIN LAW & MEDIATION PLLC
11811 North Tatum Boulevard,
Suite 3031
Phoenix, AZ 85028
(602) 812-2680
aaron@martinlawandmediation.com

Counsel for Amici Curiae

131954



COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	5
I. Contractors Perform Essential Operations for the Government Across a Wide Range of Industries and Contexts.....	5
A. The Ninth Circuit’s decision impedes contractors’ and, by extension, the government’s ability to perform its operations.....	8
B. The Ninth Circuit’s rule incentivizes state governments to target federal contractors and creates further inconsistency for contractors.....	10
C. Preventing states from regulating federal contractors is consistent with related Supremacy Clause cases	12

Table of Contents

	<i>Page</i>
II. The Ninth Circuit’s Contractual Analysis Is Contrary to Basic Interpretive Principles and Causes Additional Confusion for Contractors Nationwide	14
III. Future Conflicts Between Government Contractors and State Regulation are Inevitable in Areas of Uniquely Federal Interest	22
CONCLUSION	27

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Abraham v. Rockwell Int'l Corp.</i> , 326 F.3d 1242 (Fed. Cir. 2003)	18, 19
<i>Alvarado Guevara v. INS</i> , 902 F.2d 394 (5th Cir. 1990)	17, 20
<i>Arizona v. United States</i> , 567 U.S. 387 (2012).....	21, 22
<i>Boutilier v. INS</i> , 387 U.S. 118 (1967).....	23
<i>Correctional Servs. Corp. v. Malesko</i> , 534 U.S. 61 (2001).....	8
<i>EPA v. State Water Resources Control Bd.</i> , 426 U.S. 200 (1976).....	10
<i>Filarsky v. Delia</i> , 566 U.S. 377 (2012).....	3
<i>Gartrell Constr. Inc. v. Aubry</i> , 940 F.2d 437 (9th Cir. 1991).....	20
<i>GEO Group, Inc. v. Newsom</i> , 2025 WL 1285728 (E.D. Cal. May 2, 2025).....	23
<i>Goldwasser v. U.S.</i> , 325 F.2d 722 (U.S. Ct. Cl. 1963)	18

Cited Authorities

	<i>Page</i>
<i>Goodyear Atomic Corp. v. Miller</i> , 486 U.S. 174 (1988)	10, 12, 19, 20
<i>Guevara v. INS</i> , 1992 WL 1029 (Fed. Cir. 1992)	17, 20
<i>Hills Materials Co. v. Rice</i> , 982 F.2d 514 (Fed. Cir. 1992)	17
<i>Hunter v. Wood</i> , 209 U.S. 205 (1908)	12, 13
<i>Johnson v. Yellow Cab Transit Co.</i> , 321 U.S. 383 (1944)	13, 14
<i>Kleindienst v. Mandel</i> , 408 U.S. 753 (1972)	23
<i>Kolbe v. BAC Home Loans Servicing, LP</i> , 738 F.3d 432 (1st Cir. 2013)	15, 16
<i>Landmark Land Co. v. F.D.I.C.</i> , 256 F.3d 1365 (Fed. Cir. 2001)	17, 18
<i>Leslie Miller, Inc. v. State of Arkansas</i> , 352 U.S. 187 (1956)	20
<i>Lockheed Martin IR Imaging Sys., Inc. v. West</i> , 108 F.3d 319 (Fed. Cir. 1997)	16

Cited Authorities

	<i>Page</i>
<i>M&G Polymers USA, LLC v. Tackett</i> , 574 U.S. 427 (2015)	16
<i>Manning v. Gold Belt Falcon, LLC</i> , 681 F.Supp.2d 574 (D. N.J. 2010)	26
<i>Mastrobuono v. Shearson Lehman Hutton, Inc.</i> , 514 U.S. 52 (1995)	19
<i>McCulloch v. Maryland</i> , 17 U.S. (4 Wheat.) 436 (1819)	10
<i>Mitsubishi Motors Corp. v.</i> <i>Soler Chrysler-Plymouth, Inc.</i> , 473 U.S. 614 (1985)	16
<i>Ndambi v. CoreCivic, Inc.</i> , 990 F.3d 369 (4th Cir. 2021)	16, 20
<i>Share Our Selves Corp. v. City of Santa Ana</i> , 2025 WL 1723147 (C.D. Cal. Mar. 24, 2025)	23
<i>Sturges v. Crowninshield</i> , 17 U.S. 122 (1819)	18, 20
<i>Teamsters Indus. Employees Welfare Fund v.</i> <i>Rolls-Royce Motor Cars, Inc.</i> , 989 F.2d 132 (3d Cir. 1993)	17
<i>Tennessee v. Davis</i> , 100 U.S. 257 (1879)	12

Cited Authorities

	<i>Page</i>
<i>The GEO Group, Inc. v. Nwauzor</i> , 127 F.4th 750 (9th Cir. 2025)	9, 14-17, 19, 20-23
<i>United States v. Illinois</i> , 796 F.Supp.3d 494 (N.D. Ill. July 25, 2025)	23, 25
<i>United States v. New Mexico</i> , 455 U.S. 720 (1982)	10
<i>United States v. New York</i> , --- F.Supp.3d ---, 2025 WL 3205011 (N.D.N.Y. Nov. 17, 2025)	23
<i>United States v. Washington</i> , 596 U.S. 832 (2022)	10
<i>Washington Dept. of Health v. GEO Group, Inc.</i> , 2025 WL 2986482 (9th Cir. Oct. 23, 2025)	23
<i>Yeend v. Akima Global Servs., LLC</i> , 2025 WL 959202 (N.D.N.Y. Mar. 31, 2025)	23
 Constitutional Provisions	
U.S. Const. art. I, s. 8, cl. 17	13
U.S. Const. art. VI, cl. 2	10

Cited Authorities

	<i>Page</i>
Statutes, Regulations and Rules	
8 U.S.C. § 1255(c)(8).....	22
8 U.S.C. § 1324a.....	21
8 U.S.C. § 1555(d).....	16
15 U.S.C. § 644(g)(1)(A)(i).....	9
18 U.S.C. § 7.....	13
18 U.S.C. § 13(a).....	13
48 C.F.R. § 1.104	15
48 C.F.R. § 2.101	15
48 C.F.R. § 12.301(b)(4).....	14, 15
48 C.F.R. §§ 52.000 through 52.301.....	15
48 C.F.R. § 52.212-4(q)	14, 15
48 C.F.R. § 52.222-3(b)(3).....	21
48 C.F.R. § 52.222-54	21-22
48 C.F.R. §§ 53.000 through 53.300	15

Cited Authorities

	<i>Page</i>
86 Fed. Reg. 7483.	8
90 Fed. Reg. 8237	8
RESTATEMENT (SECOND) OF CONTRACTS § 203(c).....	18
RESTATEMENT (SECOND) OF CONTRACTS § 203(d)	18
RESTATEMENT (SECOND) OF CONTRACTS § 203, cmt. e ...	18
Sup. Ct. R. 37.6	1

Other Authorities

<i>A Snapshot of Government-Wide Contracting for FY 2022</i> , Gov't Accountability Office (2023), https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2022	5
<i>A Snapshot of Government-Wide Contracting for FY 2024</i> , Gov't Accountability Office (2025), https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2024-interactive-dashboard	5
GM Defense, LLC, <i>A Legacy of Service</i> , https://www.gmdefensellc.com/site/us/en/gm-defense/home/about/history.html	6

Cited Authorities

	<i>Page</i>
James F. Nagle, <i>A History of Government Contracting</i> (3d ed. 2012)	3, 5, 6
Office of Federal Procurement Policy, Policy Letter 11-01 (12 Sep 11).....	7
Stephen L. Schooner & Daniel S. Greenspahn, <i>Too Dependent on Contractors? Minimum Standards for Responsible Governance</i> , 6 J. Cont. Mgmt. 9 (Summer 2008)	6
Selective Service System, Contract No. 90MC0025P0285, CLOUD7WORKS, INC., awarded Sept. 11, 2025	7
Charles R. Shrader, <i>Contractors on the Battlefield</i> 1-2 (1999)	7
Smithsonian Institution, Contract No. 33315925P00520346, AA ART ASSOCIATES, INC., awarded Feb. 10, 2025	7
State Department, Contract No. 19HR9026C0001, MISCELLANEOUS FOREIGN AWARDEES, awarded Jan. 13, 2026	7
U.S. Immigr. & Customs Enft. Performance Based National Detention Standards 2011 § 5.8	21

INTEREST OF *AMICI CURIAE*¹

Day 1 Alliance (D1A) is a trade association representing private sector contractors helping address corrections and detention challenges in the United States. For more than 35 years, D1A members have worked with local, state, and federal governments led by members of both political parties to provide professional, humane, and respectful treatment to incarcerated and detained individuals.

The Professional Services Council (PSC) files this brief in support of the position that the Supremacy Clause preempts state regulations governing how private companies conduct business with federal agencies. PSC is the national trade association for the federal government professional and technology services industry. Many of PSC's more than 400 small, medium, and large member companies directly support the U.S. Government, both domestically and abroad, through contracts with federal agencies. Approximately 40 percent of contracts held by PSC members principally support the Department of Defense, while 60 percent principally provide services to civilian agencies. PSC's members provide a wide range of professional and technology services, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, and scientific, social, and

1. In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, nor did any person other than *amici curiae*, their members, or their counsel, make a monetary contribution that was intended to fund the preparation or submission of this brief. All parties received timely notice of Amici's intent to file this brief.

environmental services. Two-thirds of PSC's members qualify as small businesses. Collectively, PSC's members employ hundreds of thousands of Americans in all 50 States, the District of Columbia, and abroad.

The Amici have an interest in the certainty, predictability, and uniformity of interpretation regarding government contracts throughout the country.

SUMMARY OF ARGUMENT

The federal government has employed contractors to carry out its operations since the founding of the country. Robert Morris, a founding father and *de facto* financier of the Revolutionary War, began laying the groundwork for today's contracting system in 1792. "The first statute embodying Robert Morris's contracting procedure was the Act of February 20, 1792, establishing the Office of Postmaster General." James F. Nagle, *A History of Government Contracting Vol. I* 45 (3d ed. 2012). The Act "required the postmaster general to give 'public notice'" at least six weeks ahead of the contract's effective date, and "to describe the contract requirement . . . and the penalties for non-performance." *Id.*

Since 1792, federal procurement regulations and processes have only grown in breadth and complexity, burgeoning during World War II as the country ramped up manufacturing at an incredible pace and scale. As services have become more specialized, reliance on private contractors has only increased. *See Filarsky v. Delia*, 566 U.S. 377, 390 (2012) (because of the "particular need for specialized knowledge or expertise," the Government must often "look outside its permanent work force to secure the services of private individuals").

Yet the speed and efficiency that contractors often bring to government operations is threatened when contractors are subject to state laws and regulations. Contractors can only budget accurately with clear contract parameters. When the application of state law changes contractors' obligations and economic calculus, contractors' operations are put in jeopardy. Some contractors may be able to

absorb these additional expenses, but many cannot. And no contractor, unlike the government itself, can rely on additional appropriations.

Washington State's actions strike at the heart of these principles. By classifying immigration detainees as "employees" and requiring GEO Group to pay them minimum wage, even though these same detainees are not authorized to legally work in the United States, the state has made it more burdensome, if not impossible, for the contractor to carry out parts of its government contract—including parts specifically intended by Congress. This kind of confusion creates a patchwork of inconsistent laws for contractors.

If left in place, the nationwide effects of such action are clear. Contractors will lose the ability to budget accurately, to allocate resources efficiently, and to pursue opportunities confidently because the regulatory landscape may shift even after receiving a contract. Those challenges will lead contractors to either not pursue contracts that could be subject to such regulation—or to only pursue opportunities in states that appear less likely to regulate federal contractors—which will prevent the federal government from being able to perform its operations in certain parts of the country. The Ninth Circuit's decision should be reversed.

ARGUMENT

I. Contractors Perform Essential Operations for the Government Across a Wide Range of Industries and Contexts.

Private contractors provide products and services to the federal government to carry out every aspect of its operations. Nagle, *A History of Government Contracting Vol. II* 184 (“The privatization has affected all aspects of government”). And the move toward using private contractors is not a political one—“The operative rule of thumb for Republican and Democratic Administrations alike has been to turn performance over to the private sector whenever possible.” *Id.* In fiscal year 2024 alone, the federal government committed approximately \$755 billion to service and product contracts. *See A Snapshot of Government-Wide Contracting for FY 2024*, Gov’t Accountability Office (2025), <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2024-interactive-dashboard>. This amount was up significantly from the 2022 total of \$694 billion. *A Snapshot of Government-Wide Contracting for FY 2022*, Gov’t Accountability Office (2023), <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2022>.

Many federal contractors are household names: Boeing, GE, Pfizer, AT&T. American corporations have a long history of sharing their expertise with the government. And the government has sought them out, in part, because contractors can respond more quickly and nimbly than the government itself. Contractors also have expertise that the government does not.

For example, when the government needed to ramp up manufacturing during World War II, it did not build government factories—it looked to the private sector. Automobile and appliance manufacturers adapted their existing facilities and manufacturing capabilities to meet that need quickly and efficiently. General Motors was so invested in the war effort that “[b]etween February 10, 1942 and September 9, 1945, not a single passenger car for civilian use left the assembly line at any GM plant.” GM Defense, LLC, *A Legacy of Service*, <https://www.gmdefensellc.com/site/us/en/gm-defense/home/about/history.html>.

When President Kennedy called on the country to put Americans on the moon, NASA employed Grumman to build the lunar module. Nagle, *A History of Government Contracting Vol. II* 137. Instead of building out its own capabilities, the federal government has repeatedly made the policy choice to have contractors perform its operations.²

Only a few government activities—“inherently governmental functions”—cannot be performed by contractors: command of military forces and combat; determination of budget policy, guidance and strategy; selection or non-selection for Federal employment; the

2. Stephen L. Schooner & Daniel S. Greenspahn, *Too Dependent on Contractors? Minimum Standards for Responsible Governance*, 6 J. Cont. Mgmt. 9, 12 (Summer 2008) (“[T]he government today relies upon contractors for increasingly critical and sensitive defense-related tasks, and turns more and more to contractors for healthcare, education, welfare, and prison management[,] . . . disaster relief, border security, port security, and policing, [and] . . . military and foreign operations.”).

direction and control of Federal employees; procurement activities such as: determining requirements and pricing, approving contract documents, contract award and termination, voting on source selection and performance evaluation boards, and administering contracts. Office of Federal Procurement Policy, Policy Letter 11-01 (12 Sep 11).

The most visible government contractors are from the national defense,³ energy, or transportation industries, but the reality is that a complex web of contractors performs a variety of governmental functions—cooking services at the U.S. Embassy in Croatia (\$45.1k),⁴ database management for the Selective Service System (\$1.8MM),⁵ and custom framing services for the Smithsonian (\$21.3k)⁶ are but a few examples of contractors on which the government relies. There are thousands more in a variety of industries across the country.

Compared to others, the corrections industry has seen a significant increase in the use of federal contractors in recent years, for traditional prisons, detention centers,

3. Charles R. Shrader, *Contractors on the Battlefield* 1-2 (1999) (“Since 1775, American armies have always been accompanied on the battlefield, both at home and abroad, by civilian contractors.”).

4. State Department, Contract No. 19HR9026C0001, MISCELLANEOUS FOREIGN AWARDEES, awarded Jan. 13, 2026.

5. Selective Service System, Contract No. 90MC0025P0285, CLOUD7WORKS, INC., awarded Sept. 11, 2025.

6. Smithsonian Institution, Contract No. 33315925P00520346, AA ART ASSOCIATES, INC., awarded Feb. 10, 2025.

and ancillary services. *See Correctional Servs. Corp. v. Malesko*, 534 U.S. 61, 63 n.1 (2001) (“The BOP has since 1981 relied exclusively on contracts with private institutions and state and local governments for the operation of halfway house facilities to help federal prisoners reintegrate into society. The BOP contracts not only with for-profit entities like CSC, but also with charitable organizations like Volunteers for America (which operates facilities in Indiana, Louisiana, Maryland, Minnesota, New York, and Texas), the Salvation Army (Arkansas, Florida, Illinois, North Carolina, Tennessee, and Texas), Progress House Association (Oregon), Triangle Center (Illinois), and Catholic Social Services (Pennsylvania).”).⁷ And federal detention facilities are growing in number.

These contractors perform essential government functions that carry out the policies that Congress and government agencies adopted. These contractors must be able to operate free from unnecessary and unwarranted state interference.

A. The Ninth Circuit’s decision impedes contractors’ and, by extension, the government’s ability to perform its operations.

Recognizing that it cannot regulate the federal government directly, Washington “now tries indirectly by attacking ICE’s work program at the facility.” Pet. App.

7. On January 26, 2021, Executive Order No. 14,006 directed the Department of Justice to “not renew” contracts with “privately operated criminal detention facilities.” *See* 86 Fed. Reg. 7483. But on January 20, 2025, Executive Order No. 14,148 revoked that prior order. *See* 90 Fed. Reg. 8237.

69 (Bumatay, J., dissenting). By increasing GEO Group's cost of operating by 1500%, Washington brought about "a mandatory restructuring of ICE's program." *Id.* 71 (Bumatay, J., dissenting). Now that Washington succeeded in regulating part of the facility's operation, there is "a roadmap for states to circumvent the Supremacy Clause and Congress's authority and force the federal government to meet a higher standard than the state imposes on itself." *The GEO Group, Inc. v. Nwauzor*, 127 F.4th 750, 778 (9th Cir. 2025) (Bennett, J., dissenting).

By converting federal detainees participating in a voluntary work program into "employees" entitled to a minimum hourly wage, the Ninth Circuit has opened the floodgates for states to restrict contractors whose work on behalf of the federal government the state does not like. There are state legislators, no doubt, who will target federal contractors. And other state and local regulations may inadvertently apply to contractors under the Ninth Circuit's rationale.

Such regulations hit small businesses and individual contractors the hardest. The federal government uses special programs to help small businesses win at least 23% of all federal contracting dollars each year. 15 U.S.C. § 644(g)(1)(A)(i). Small businesses are likely to suffer the most from the imposition of state regulations that would inhibit their work or make it prohibitively expensive. The options for businesses will be to barely make a profit because of increased costs, or avoid government contracts altogether. Neither is a viable long-term option, and both threaten the government's ability to carry out its operations.

The Supremacy Clause (U.S. Const. art. VI, cl. 2) protects the federal government when a state attempts to “retard, impede, burden, or in any manner control” federal operations. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 436 (1819); *United States v. Washington*, 596 U.S. 832, 838 (2022) (Supremacy Clause “prohibit[s] States from interfering with or controlling the operations of the Federal Government”). Yet that is exactly what Washington has done, and what other states now feel free to do, with the blessing of the Ninth Circuit’s opinion.

To be sure, *some* regulation of contractors carrying out federal operations is allowed when the regulation is tangential to the main purpose or activity of those operations. *See, e.g., United States v. New Mexico*, 455 U.S. 720, 733–34 (1982) (state’s ability to tax contractor). But such regulation can only go so far. For contractors who operate detention centers and similar entities, “the activities of federal installations are shielded by the Supremacy Clause from direct state regulation unless Congress provides ‘clear and unambiguous’ authorization for such regulation.” *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 180 (1988) (quoting *EPA v. State Water Resources Control Bd.*, 426 U.S. 200, 211 (1976)). Congress did not clearly and unambiguously authorize Washington to impose its minimum wage law on federal detainees.

B. The Ninth Circuit’s rule incentivizes state governments to target federal contractors and creates further inconsistency for contractors.

If state and local governments can regulate federal contractors and activities they do not like, the opportunities to do so are endless: cities may enact strict noise ordinances

surrounding contractors' manufacturing facilities, preventing the development or testing of weapons or jets. Similar to what Washington did, state wage-and-hour laws could frustrate contractors' ability to carry out contracts with NASA. NASA uses numerous private companies to build spacecraft, satellites, and conduct launches. Labor laws that require break times and maximum work periods do not account for the flexibility and availability required of contractors to launch within a window with optimal weather conditions and other external factors. NASA cannot be forced to wait to launch because the contractor's team is on a mandatory lunch break or could not extend their workday. During the Apollo 13 mission, NASA employees and Grumman contractors worked around the clock to bring the crew home.

Not only will contractors face additional regulation from states, the modern nature of work exacerbates the problem. Many individual contractors perform their work remotely. The National Gallery of Art, for example, contracts with individuals to write explanations of pieces in its collection. But many contractors work remotely and could live in any state. If New York passes a law requiring freelancers to create a corporate entity to operate, will the National Gallery's contractors living there have to comply? The Ninth Circuit's rule is not limited to contractors who run a physical facility in Washington State. And when the rule is broadened, contractors' confusion from conflicting and inconsistent rulings will only multiply.

C. Preventing states from regulating federal contractors is consistent with related Supremacy Clause cases.

The Supremacy Clause requires that Congress provide a clear exemption to allow state regulation. *Goodyear Atomic*, 486 U.S. at 181 (“the federal function must be left free of state regulation” even when “the federal function is carried out by a private contractor”). That straightforward principle makes sense and should be upheld because it harmonizes with other related areas of constitutional jurisprudence applying the Supremacy Clause.

Individual federal actors may invoke the Supremacy Clause when they act consistent with a federal law in the face of a contrary state statute or regulation. *See Tennessee v. Davis*, 100 U.S. 257, 263, 267 (1879) (because the government “can act only through its officers and agents,” those agents should be protected when “acting . . . within the scope of their authority” and “warranted by the Federal authority they possess”). In *Hunter v. Wood*, James Wood was a ticketing agent for the Southern Railway Company in North Carolina. 209 U.S. 205, 205-06 (1908). North Carolina passed a law setting maximum railroad rates. The railroad company obtained an injunction against the state law, which was being actively litigated. While the injunction was pending, Wood sold tickets and charged prices consistent with the higher federal rate. Wood was prosecuted and convicted under the state law. *Id.* at 207.

After he was jailed, Wood applied for a writ of habeas corpus and argued that his prosecution was improper because he was following a federal court mandate. The

Court recognized that when Wood “sold the railroad tickets at the usual price,” he was “compl[ying] with the conditions contained in the injunction.” *Id.* at 210. And because Wood obeyed the federal injunction, his prosecution under state law directly conflicted with the federal court’s authority and was prohibited under the Supremacy Clause.

The same logic applies to “federal enclaves,” 18 U.S.C. § 7, under the Assimilative Crimes Act (ACA). 18 U.S.C. § 13(a). Federal enclaves are areas of specific federal jurisdiction originally established under the Constitution. U.S. Const. art. I, s. 8, cl. 17. Common federal enclaves include military installations, federal buildings, and national parks.

Because federal criminal law was not developed at the time, the ACA allows for the application of state criminal laws within federal enclaves, and will subject actors to criminal prosecution for activities prohibited by a state criminal statute. But, as this Court has consistently held, a state criminal statute will not apply within a federal enclave if the application of that statute would contravene federal law or policy.

In *Johnson v. Yellow Cab Transit Co.*, Oklahoma officials seized a shipment of liquor destined for Fort Sill, an Army base geographically contained within the state. 321 U.S. 383 (1944). Oklahoma was a dry state and officials believed that transporting liquor violated the ACA, which “adopts all of the various penal statutes of Oklahoma relating to liquor and makes them the federal law applicable to the Fort Sill Reservation.” *Id.* at 388-89. The carrier sought injunctive relief to retrieve the

shipment because “power to govern Fort Sill is in the United States” and “the seized liquors were not to be sold, delivered or otherwise disposed of in Oklahoma proper.” *Id.* at 386. The Court held that the carrier could not be charged criminally or the shipment seized because the alcohol was allowed at Fort Sill—indeed, the Officers’ Club had specifically ordered it, *id.* at 388—and a state criminal law may only be assimilated when it is “not inconsistent with federal policies.” *Id.* at 390.

Because *Nwauzor* contradicts the federal policy of maintaining a voluntary work program for detainees as part of federal immigration policy, as well as the federal policy against employing those who lack legal authority to work in the United States, it contradicts a long history of related Supremacy Clause cases.

II. The Ninth Circuit’s Contractual Analysis Is Contrary to Basic Interpretive Principles and Causes Additional Confusion for Contractors Nationwide.

The Ninth Circuit’s analysis “charted a roadmap for states to circumvent the Supremacy Clause and Congress’s authority,” 127 F.4th at 778 (Bennett, J., dissenting), by relying on a standard contract clause that required GEO to comply with “all applicable federal, state, and local laws and standards.” *Id.* at 757, 761, 770-71. The same generic language appears in virtually *every* federal contract. *See, e.g.*, 48 C.F.R. § 52.212-4(q); 48 C.F.R. § 12.301(b)(4). If *Nwauzor* stands, boilerplate language that contradicts the federal government’s intent and more specific contract provisions can be read to authorize wide-ranging state regulation of and discrimination against

federal contractors. The Court should grant the Petition because the Ninth Circuit misapplied basic contract-interpretation principles when parsing a uniform clause that affects thousands of federal contracts and contractors nationwide. *See, e.g., Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 436-37 (1st Cir. 2013) (contract clause the federal government required for millions of mortgages should be given “uniform meaning”).

Federal agencies spend hundreds of billions of dollars to contract with businesses in every state of the nation. Most of those federal contracts are subject to the Federal Acquisition Regulation (FAR), which applies to “all acquisitions as defined in part 2 of the FAR, except where expressly excluded.” 48 C.F.R. § 1.104. FAR broadly defines an “acquisition” to include any federal contract used to acquire “supplies or services (including construction)” with “appropriated funds.” 48 C.F.R. § 2.101. FAR prescribes a bevy of uniform contract clauses and forms for different types of federal contracts. *See* 48 C.F.R. §§ 52.000 through 52.301, §§ 53.000 through 53.300.

One common uniform contract clause in nearly all federal contracts requires federal contractors to comply with “applicable” federal, state, and local laws. *See* 48 C.F.R. § 52.212-4(q); 48 C.F.R. § 12.301(b)(4). In *Nwauzor*, the court interpreted that boilerplate language to allow substantial state interference with federal contractors, creating uncertainty over conflicting legal obligations that the Supremacy Clause was designed to eliminate. Because *Nwauzor* interpreted the FAR’s uniform contract language, the opinion’s impact extends to nearly all federal contractors, not just GEO or those operating federal detention centers.

The Ninth Circuit’s decision that a boilerplate contract clause controlled over the parties’ intent and conflicting specific provisions departed from well-established contract-interpretation principles. General “rules of contract interpretation apply to contracts to which the government is a party.” *Lockheed Martin IR Imaging Sys., Inc. v. West*, 108 F.3d 319, 322 (Fed. Cir. 1997). Contract provisions are considered as a whole and interpreted reasonably so “that no contract provision is made inconsistent, superfluous, or redundant.” *Id.* But ultimately, “the parties’ intentions control.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985); *M&G Polymers USA, LLC v. Tackett*, 574 U.S. 427 (2015) (same); see *Kolbe*, 738 F.3d at 442 (“When dealing with uniform contract language imposed by the United States, it is the meaning of the United States that controls.”).

In *Nwauzor*, the United States repeatedly made its intent clear: “the federal government has never understood any contract for operation of the Voluntary Work Program to require payments under a State’s minimum wage laws.” 127 F.4th at 780 (Bennett, J., dissenting, *quoting* DOJ Amicus Br. at 18). Instead, Congress legislated that federal detainees may receive a minimum *allowance* of \$1 per day for work performed. *Id.* at 779 (Bennett, J., dissenting, *citing* 8 U.S.C. § 1555(d)). For the last four decades, Congress could have increased that rate or enacted a different policy, but has maintained the same \$1 per day standard. *Id.* Relatedly, courts have recognized that Congress did not intend minimum-wage laws to apply to federal detainees. See *Ndambi v. CoreCivic, Inc.*, 990 F.3d 369, 375 (4th Cir. 2021) (refusing to apply the FLSA to federal immigration detainees and explaining that the “FLSA was a congressional creation, and its expansion is a

matter for Congress as well”); *Alvarado Guevara v. INS*, 902 F.2d 394, 396 (5th Cir. 1990) (finding federal detainees “are not within the group that Congress sought to protect in enacting the FLSA”); *Guevara v. INS*, 1992 WL 1029, *1-2 (Fed. Cir. 1992) (“Congress provided that under certain circumstances aliens who are lawfully detained pending disposition may be paid for their volunteer labor” at a rate that “is a matter of legislative discretion”). The government’s longstanding policy and conduct regarding payments to federal detainees demonstrate its expressed intent in *Nwauzor*. See *Teamsters Indus. Employees Welfare Fund v. Rolls-Royce Motor Cars, Inc.*, 989 F.2d 132, 137 (3d Cir. 1993) (parties’ intent may be gleaned from their past dealings and course of conduct). And after courts gifted federal detainees a much higher rate under Washington law—despite the government’s opposition and the detainees’ inability to lawfully work in the United States—the federal government registered its disapproval by authorizing GEO to shut down the voluntary work program in Washington. See *Nwauzor*, 127 F.4th at 769 (“We are aware that, with the permission of the government, GEO has suspended the VWP at the NWIPC during the pendency of this litigation.”). Nevertheless, the Ninth Circuit interpreted the FAR contract clause in a manner that directly contradicted the federal government’s intent and established policies.

The federal government’s intent is also revealed through other contract-interpretation principles, such as preferring specific provisions over general provisions. “Where specific and general terms in a contract are in conflict, those which relate to a particular matter control over the more general language.” *Hills Materials Co. v. Rice*, 982 F.2d 514, 517 (Fed. Cir. 1992); see also *Landmark*

Land Co. v. F.D.I.C., 256 F.3d 1365, 1376 (Fed. Cir. 2001) (“It is well established that when interpreting a contract, a specific provision will dominate a general provision.”); RESTATEMENT (SECOND) OF CONTRACTS § 203(c) (“specific terms and exact terms are given greater weight than general language”). That is because “the specific or exact term is more likely to express the meaning of the parties with respect to the situation than the general language,” and the specific should “be read as an exception or qualification of the general.” RESTATEMENT (SECOND) OF CONTRACTS § 203, cmt. e; *cf. Sturges v. Crowninshield*, 17 U.S. 122, 202 (1819) (“It would be dangerous in the extreme to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operation.”). For the same reason, “separately negotiated or added terms are given greater weight than standardized terms or other terms not separately negotiated.” RESTATEMENT (SECOND) OF CONTRACTS § 203(d).

Courts regularly apply the same principles to resolve contract disputes between the federal government and its contractors. In *Landmark Land*, a general contractual duty to cooperate could not impose an obligation disclaimed by another provision’s express language. 256 F.3d at 1376-77. In another case, the contract’s specific “disallowance” provision controlled over a general “allowability” clause to determine whether a contractor could recover certain costs. *Abraham v. Rockwell Int’l Corp.*, 326 F.3d 1242, 1251 (Fed. Cir. 2003). As another example, a specific clause directly related to the contract’s subject matter controlled over a more general provision found in a form used for many government contracts. *Goldwasser v. U.S.*, 325 F.2d 722, 723 (U.S. Ct. Cl. 1963).

But in *Nwauzor*, the Ninth Circuit followed the *opposite* approach and elevated the general over the specific. GEO's contract and the federal government's Performance Based National Detention Standards (PBNDS) contain specific provisions detailing the requirements for a voluntary work program, classifying the detainees as non-employees, and setting the standards for payments to detainees. *See Nwauzor*, 127 F.4th at 757-58. Yet the Ninth Circuit's analysis concluded that a boilerplate provision regarding compliance with applicable state law was dispositive, which undermined the federal policies and purposes in the more specific provisions. *Id.* at 770-71. The resulting harm was not merely theoretical; it altered the effect of GEO's contract, which made it more difficult to perform, and directly led to federal detainees losing access to the voluntary work program at its facility. *Id.* at 780 (Bennett, J., dissenting). The Ninth Circuit disregarded standard contract-interpretation principles, including seeking to "interpret provisions of a contract so as to make them consistent." *Abraham*, 326 F.3d at 1251; *see also Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995) (contract "should be read to give effect to all its provisions and to render them consistent with each other").

Finally, the *Nwauzor* analysis failed to appreciate that the FAR's general contract clause was not an invitation to make every state or local law "applicable" to the federal government or its contractors. Preemption and immunity precepts render many otherwise valid state and local laws unconstitutional as applied to the federal government or its contractors. The federal government *may* expressly authorize states to apply laws that might otherwise not apply. *Goodyear Atomic*, 486 U.S. 174 (statute expressly

authorized states to apply worker's compensation schemes to injuries that occurred at federal facilities). But absent such express authorization, states generally cannot apply laws that would violate the Supremacy Clause to frustrate federal policies. *See id.* State laws that require contractors to obtain a state license before performing construction work, for example, do not apply to federal contractors working on federal projects. *Leslie Miller, Inc. v. State of Arkansas*, 352 U.S. 187, 189-90 (1956); *Gartrell Constr. Inc. v. Aubry*, 940 F.2d 437 (9th Cir. 1991); *cf. Sturges*, 17 U.S. at 131 (a contract may incorporate valid state laws, but not laws that are void as unconstitutional and thus nonbinding).

In *Nwauzor*, the Ninth Circuit determined GEO's general contractual duty to comply with "applicable" state and local laws entitled detainees at a federal detention center to a "minimum wage" as "employees" under Washington's laws. But unlike *Goodyear Atomic*, the federal government has not expressly legislated that states can apply their minimum wage laws to federal detainees. The opposite is true. GEO's contract with the federal government expressly prohibits employment of "illegal or undocumented aliens" and mandates that GEO may only employ U.S. citizens and lawful permanent residents who have work authorization. *Nwauzor*, 127 F.4th at 780 (Bennett, J., dissenting).

Further, multiple courts have determined that Congress did not intend the federal minimum wage and other provisions of the FLSA to apply to federal detainees. *Ndambi*, 990 F.3d at 375; *Alvarado Guevara*, 902 F.2d at 396; *Guevara*, 1992 WL 1029, *1-2. And "the federal government has never understood any contract

for operation of the Voluntary Work Program to require payments under a State’s minimum wage laws.” *Nwauzor*, 127 F.4th at 780 (Bennett, J., dissenting, *quoting* DOJ Amicus Br. at 18). The Ninth Circuit’s opinion overreached by using boilerplate contract language requiring compliance with “applicable” state law to override the federal government’s intent that states could not impose incompatible laws seeking to regulate the operation of federal detention centers.

The *Nwauzor* opinion now places GEO and similar contractors in an untenable position. The PBNDS mandate that contractors provide voluntary work programs for detainees. *See Nwauzor*, 127 F.4th at 758. But under both federal law and their federal contracts, GEO and other contractors cannot *employ* the federal detainees. *Id.* at 757. Yet the Ninth Circuit decided that, at least in Washington, contractors must pay federal detainees as “employees” in contravention of federal law, federal policy, and federal contractual requirements. Predictably, the conundrum resulted in federal detainees losing “access to a voluntary program that provides meaningful benefits.” *Nwauzor*, 127 F.4th at 780 (Bennett, J., dissenting); U.S. Immigr. & Customs Enft. *Performance Based National Detention Standards 2011* § 5.8, at 405 (work program decreases idleness, reduces disciplinary issues, and generally boosts morale).

Neither the federal government nor its contractors can legally “employ” detainees who are not lawfully in the United States. *See, e.g., Arizona v. United States*, 567 U.S. 387, 404 (2012), *citing* 8 U.S.C. § 1324a; *see* 48 C.F.R. § 52.222-3(b)(3) (only detainees who are “authorized to work at paid employment” may be employed); *see* 48

C.F.R. § 52.222-54 (requiring contractor to verify work eligibility). Allowing states to classify detainees as a federal contractor’s “employees” under state law could also affect the detainees’ ability to obtain lawful permanent residence. *Arizona*, 567 U.S. at 405, *citing* 8 U.S.C. § 1255(c)(8) (withholding permanent-resident status from a non-citizen “who was employed while the alien was an unauthorized alien”). One can imagine a multitude of other forms of mischief: could state laws entitle such “employees” to smoke breaks, paid sick and vacation days, retirement contributions, workers’ compensation, or any other variety of benefits or rights that would not only violate federal law and policy but be utterly unworkable in practice? At the very least, the Ninth Circuit’s decision expands the existing inconsistency across the nation with “dramatic distinctions in the allowances applicable to detainees based on the happenstance of the location of their detention and the operator of their detention facility.” *Nwauzor*, 127 F.4th at 780 (Bennett, J., dissenting, *quoting* DOJ Amicus Br. at 14-16). The Supremacy Clause was designed to preclude states from frustrating federal policies and avoiding this exact kind of inconsistency across the United States.

III. Future Conflicts Between Government Contractors and State Regulation are Inevitable in Areas of Uniquely Federal Interest.

Cases upholding principles of sovereign immunity have never limited their holdings to activities that are “inherently governmental functions.” But the threat to federal operations becomes particularly acute related to military combat operations, budget policy, and the like. Indeed, immigration enforcement and detention is

an inherently governmental function. *See Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (recognizing Congress’s “plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden”) (quoting *Boutilier v. INS*, 387 U.S. 118, 123 (1967)).

Multiple courts have already cited *Nwauzor* as support for the proposition that state laws can regulate or discriminate against the federal government and its contractors, including federal detention centers. *See United States v. New York*, ___ F.Supp.3d ___, 2025 WL 3205011, *17 (N.D.N.Y. Nov. 17, 2025) (New York policies that prohibit state cooperation and information sharing with federal immigration authorities); *Washington Dept. of Health v. GEO Group, Inc.*, 2025 WL 2986482, *2 (9th Cir. Oct. 23, 2025) (Washington state inspections of federal detention centers); *United States v. Illinois*, 796 F.Supp.3d 494, 533-34 (N.D. Ill. July 25, 2025) (Illinois’ “sanctuary” policies that prohibit state and local cooperation with federal immigration authorities); *GEO Group, Inc. v. Newsom*, 2025 WL 1285728, *7 n. 6 (E.D. Cal. May 2, 2025) (California law permitting inspections of federal detention centers); *Yeend v. Akima Global Servs., LLC*, 2025 WL 959202, *8-10 (N.D.N.Y. Mar. 31, 2025) (New York state labor laws applicable to federal detainees); *Share Our Selves Corp. v. City of Santa Ana*, 2025 WL 1723147, *13 (C.D. Cal. Mar. 24, 2025) (California permitting regulation applied to federally qualified health center).

And states have proposed additional legislation that could use *Nwauzor*’s rationale to regulate contractors:

California

SB 942 (introduced January 29, 2026) (asserts that federal immigration detention contractors are subject to state licensing, consumer protection, and health and safety authority, and California can require federal immigration detention facilities to meet or exceed standards in federal contracts).

AB 1633 (introduced January 26, 2026) (Effective January 1, 2027, requires federal immigration detention contractors to pay 50% gross receipts tax for California operations).

SB 941 (introduced January 28, 2026) (requires that the sale price of an article offered for sale in a commissary at a private detention facility not exceed a 35% markup above the amount paid to a vendor for that article).

AB 1261 (introduced April 23, 2025; effective January 1, 2026) (requires unaccompanied immigrant youth to be appointed legal counsel).

Colorado

SB 26-005 (2026) Lawmakers are introducing a package of bills to regulate ICE operations, including restricting information sharing, increasing oversight of detention facilities, and allowing lawsuits against federal officers for alleged rights violations.

Delaware

HB 182 (introduced 2025) (prohibits local law enforcement from entering into agreements to enforce federal immigration violations).

Illinois

The Keep Illinois Families Together Act (2025 and 2026) (prohibits 287(g) agreements, banning contracts to house individuals for federal civil immigration violations, and restricting local law enforcement from inquiring about citizenship status).⁸

Maryland

HB 1222 (introduced 2025) (requires federal immigration officials to present a valid judicial warrant to enter non-public areas of state or local government facilities).

Massachusetts

Executive Order No. 650 (signed January 29, 2026) (prohibits state agencies from entering 287(g) agreements and bars using state facilities for immigration enforcement).

New Mexico

New Mexico: HB 9 (signed February 7, 2026) (prohibits government entities from signing

8. *United States v. Illinois*, 796 F.Supp.3d at 533-34.

contracts to detain people for immigration violations and terminates existing ones)

Washington

SB 6286 (Introduced January 28, 2026)
(allows Washington Department of Health to fine any private detention facility that bars DOH from entry to conduct an inspection. The fine structure begins at \$1,000 per day and increases up to \$15,000 per day until access is granted to DOH to allow for an inspection as permitted by state law).

Conflicts between the federal government and states are inevitable in areas Congress has occupied, and where the federal government has a uniquely federal interest, which is why contractors need clear rules that apply nationwide. *Nwauzor* has only created confusion and a further split in the courts of appeals. Cf. *Manning v. Gold Belt Falcon, LLC*, 681 F.Supp.2d 574, 575 (D. N.J. 2010) (refusing to apply New Jersey minimum wage laws to “Citizens on the Battlefield (‘COB’) role players” who were employed “to assist in military training exercises at Fort Dix”). The current cultural climate surrounding immigration will only increase the frequency and intensity of those conflicts.

CONCLUSION

The Ninth Circuit’s opinion should be reversed. Allowing states to define federal detainees as “employees” conflicts with federal policy and impermissibly regulates a federal program and policy. The negative effects of the decision are already being felt across the country, and contractors in all categories require clarity to maintain the important role that they have played in supporting the government’s operations for the last 250 years.

Dated: February 12, 2026

Respectfully submitted,

AARON T. MARTIN
Counsel of Record
MARTIN LAW & MEDIATION PLLC
11811 North Tatum Boulevard,
Suite 3031
Phoenix, AZ 85028
(602) 812-2680
aaron@martinlawandmediation.com

Counsel for Amici Curiae