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FEDERAL ENCLAVES: CRITICAL ISLANDS OF FEDERAL JURISDICTION PROTECTING THE NATIONAL INTEREST

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INTRODUCTION

In June 1783, a mob of unpaid Revolutionary War soldiers swept into Philadelphia to report their mistreatment to the Continental Congress.¹ After the soldiers threatened its members and obstructed the proceedings, the Continental Congress called for the local and state officials to send the militia.² The state, however, was hesitant to act unless the mutinous soldiers harmed members of the Continental Congress or damaged personal property.³ The state deemed the constant insults and threats to the Congress's members as Congress's problem and thus insufficient to mobilize the militia's aid.⁴ As a result, Congress was forced to leave town, and the inability of state officials to protect federal proceedings was not forgotten.⁵ Years after this incident, the Framers of the new Constitution insisted upon a neutral situs for the federal government and the land it owns and operates that would allow it to perform its duties under its own, exclusive control.⁶ The Framers solved this problem by drafting the Enclave Clause, which established federal "enclaves" where neither state action nor inaction could interfere with federal business.⁷ For over 200 years since the adoption of this Clause into the United States Constitution, federal enclaves have provided critical locations for the protection of national defense, military readiness, dispensation of justice, and protection of national interests. Federal enclaves exist and are successful today because the Framers created these islands of federal supremacy to be immune from state

1. Spencer Driscoll, Note, *Utah's Enabling Act and Congress's Enclave Clause Authority: Federalism Implications of a Renewed State Sovereignty Movement*, 2012 BYU L. REV. 999, 999.

2. *Id.*

3. JAMES MADISON, 5 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 93 (Jonathan Elliot ed., Philadelphia, J.B. Lippincott Co. 1836).

4. *Id.*; see also Driscoll, *supra* note 1, at 999.

5. Driscoll, *supra* note 1, at 999–1000.

6. *Id.* at 1000.

7. See U.S. CONST. art I, § 8, cl. 17.

interest and interference. In many ways, federal enclaves are as important today as they were in 1783.

Part I of this paper will focus on what a “federal enclave” is, and where they come from. This discussion will walk through the historical and legal development of federal enclaves, what federal enclaves look like today, and when those federal enclaves become “exclusive” under the federal government’s jurisdiction. Part II of this paper will discuss how courts decide which law to apply on a federal enclave, focusing on the application of state law; the application of federal law; and the importance of the federal enclave doctrine in maintaining the balance between the two. Finally, Part III will discuss Congress and the various federal agencies’ decision to retain exclusive federal jurisdiction over federal enclaves. But more importantly, this paper will offer compelling explanations why federal enclaves remain, why both federal and state governments have been reluctant to disturb them, and why the federal agencies charged with their oversight insist on retaining them. Many of our most critical military installations and federal facilities sit on federal enclaves and can best serve their important federal functions with the exclusive federal jurisdiction they enjoy.

I. FEDERAL ENCLAVES: WHAT ARE THEY AND WHERE DO THEY COME FROM?

A. Overview of the Historical Constitutional and Legal Development of Federal Enclaves

The Enclave Clause of the United States Constitution, located at Article I, § 8, cl. 17, gives Congress the power to “exercise exclusive Legislation . . . over such District . . . as may . . . become the Seat of Government . . . and to exercise like Authority over all Places purchased by the Consent of the Legislature . . . for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.”⁸ With this, the Constitution grants Congress the power to purchase land, with the consent of the state, to establish federal installations under exclusive federal jurisdiction, commonly known as federal enclaves.⁹ Early on, the Supreme Court recounted the history of the early cases interpreting the Enclave Clause and defined the exclusive jurisdiction of the federal government over these areas as follows: “When the title is acquired by purchase by consent

8. *Id.*

9. *See id.*; *see also* 40 U.S.C. § 3112 (codifying the process to acquire exclusive jurisdiction over federally acquired land).

of the Legislatures of the States, the federal jurisdiction is exclusive of all State authority.”¹⁰

B. What Federal Enclaves Look Like Today

The most well-known “federal enclave” is the District of Columbia (Washington, D.C.), which was formed from land purchased from two states, Maryland and Virginia, both of which granted exclusive jurisdiction over that land to the federal government.¹¹ In addition to the District of Columbia, there are many other federal enclaves formed from the purchase of property for federal use together with State consent for exclusive federal jurisdiction on those properties. Today, federal enclaves include some of our most important military installations,¹² national parks,¹³ federal

10. Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 532–38 (1885).

11. *Frequently Asked Questions About Statehood for the People of DC*, STATE OF WASHINGTON, DC, <https://statehood.dc.gov/page/faq> [<https://perma.cc/NQ7B-X6AX>].

12. Fort Belvoir (Virginia); Kirtland Air Force Base (New Mexico); Dover Air Force Base (Delaware); Fort Lee (New Jersey); MacDill Air Force Base (Florida); Fort Knox (Kentucky); Aberdeen Proving Ground (Maryland); Vance Air Force Base (Oklahoma); Barksdale Air Force Base (Louisiana); Langley Air Force Base (Virginia); Buckley Space Force Base (Colorado); Fort Irwin (California); Camp Pendleton (California); Moffett Air Field (California); Fort Meade (Maryland); Marine Corps Air Station Miramar (California); White Sands Missile Range (New Mexico); Walter Reed National Military Medical Center (Maryland); Vandenberg Air Force Base (California); Radford Arsenal (Virginia); Naval Base Ventura County (California); Navy Base Coronado (California); Roosevelt Roads Naval Station (Puerto Rico); Fort Bliss (Texas); Hanscom Air Force Base (Massachusetts); Offutt Air Force Base (Nebraska); Randolph Air Force Base (Texas); Goodfellow Air Force Base (Texas); Maxwell Air Force Base (Alabama); Columbus Air Force Base (Mississippi); Fort Sam Houston Army Base (Texas); Naval Air Station Joint Reserve Base New Orleans (Louisiana); Naval Station Norfolk (Virginia); US Naval Hospital Portsmouth (Virginia); Camp Lejeune (North Carolina); Red River Army Depot (Texas); Keesler Air Force Base (Mississippi); Shaw Air Force Base (South Carolina); Robins Air Force Base (Georgia); Scott Air Force Base (Illinois); Fort Cavazos Army Base, formerly Fort Hood, (Texas); Hickman Air Force Base (Hawaii); Presidio of Monterey (California); Wheeler Army Airfield (Hawaii); Hunters Point Naval Shipyard (California); Joint Base Lewis McChord (Washington); Patrick Air Force Base (Florida); Travis Air Force Base (California); Fort Liberty, formerly Fort Bragg (North Carolina); Tinker Air Force Base (Oklahoma). This list was gathered through published decisions and governmental studies. The actual number of military bases on federal enclaves is likely much larger, since not every federal enclave has been the subject of litigation over its status and a review of the deeds of every federal facility would be improbable. For more information and reading into confirmed military bases on federal enclaves, see GEN. SERVS. ADMIN., INVENTORY REPORT ON JURISDICTIONAL STATUS OF FEDERAL AREAS WITHIN THE STATES 741 (1962), <https://publiclandjurisdiction.com/wp-content/uploads/2020/01/JURISD1.pdf> [<https://perma.cc/QTG3-WYPQ>] (listing various federal enclaves and their jurisdictional status as of 1962).

13. Yellowstone (located in portions of Wyoming, Montana, and Idaho), Yosemite (California), and Grand Teton National Parks (Wyoming) are all federal enclaves where there is exclusive or partial federal jurisdiction. In California alone, Yosemite; Kings Canyon; Sequoia; Lava Beds National Monument; Redwood National Park; Whiskeytown National Restoration Area; Point Reyes National Seashore; Pinnacles National Monument; Devil’s Postpile National Monument; and some portions of Golden Gate National Recreational Area, including Muir Woods National Monument, are all located on federal enclaves. ROGER W. HAINES, JR., *FEDERAL ENCLAVE LAW* 70 (2011).

courthouses and federal prisons,¹⁴ public health facilities,¹⁵ nuclear power plants¹⁶ and related nuclear security operations,¹⁷ and many other installations across the country performing important national functions. Federal enclaves exist in all fifty states, and range in size from a single building to 2.2 million acres, like Yellowstone National Park.¹⁸

Military branches operate dozens of military installations on federal enclaves and perform some of their most critical, and secretive, work on federal enclaves. Fort Meade, for example, houses much of the nation's military intelligence apparatus.¹⁹ Some bases, like Fort Bragg (formerly Fort Liberty), are home to the bulk of the nation's special operations and airborne forces.²⁰ White Sands Missile Range was chosen for the first Trinity test of a nuclear weapon in 1945 because of its enclave status—federally-owned with exclusive jurisdiction, remote, and secure—and still serves as a secure and secret missile test site today.²¹ Norfolk Naval Station is the world's largest naval base, housing the Navy's Fleet Forces command.²²

14. Twenty-one of twenty-nine federal prisons in 1969 were federal enclaves. *Id.*

15. The National Institutes of Health facility in Maryland, for example, is located on a federal enclave. *See Evans v. Cornman*, 398 U.S. 419, 424 (1970) (confirming right of federal enclave residents to vote like other citizens of Maryland); *see also* HAINES, JR., *supra* note 13, at 71. Moreover, many military installations sitting on federal enclaves, including Fort Belvoir Fort Sam Houston, contain medical facilities on their premises.

16. The San Onofre Nuclear Plant remains on a federal enclave with partial federal jurisdiction. *See Stiefel v. Bechtel Corp.*, 497 F. Supp. 2d 1138, 1145 (S.D. Cal. 2007).

17. In addition to the operation of nuclear power plants, there are many other security functions related to nuclear capabilities. Sandia National Laboratories in Albuquerque New Mexico serves as a contractor for the U.S. Department of Energy's National Nuclear Security Administration (NNSA), and "deliver[s] essential science and technology to resolve the nation's most challenging security issues" in several strategic areas, including nuclear weapons, national security programs, energy, and global security. *About Sandia*, SANDIA NAT'L LABS., <https://www.sandia.gov/about/> [<https://perma.cc/XX8M-4858>]. Sandia Labs in New Mexico sits on federal enclaves. *See Benavidez v. Sandia Nat'l Lab's*, 212 F. Supp. 3d 1039 (D.N.M. 2016).

18. *See, e.g., Yellowstone*, NAT'L PARK SERV. (2025), <https://www.nps.gov/yell/index.htm> [<https://perma.cc/29PE-V6YB>]; *see also Federal Lands List*, FED. LAND MANGER ENV'T DATABASE, <https://views.cira.colostate.edu/fed/Pub/FederalLands.aspx> [<https://perma.cc/94CP-9VCH>] (providing a list of all federally-owned national parks in the United States).

19. Fort Meade (Maryland) is a United States Army installation on a federal enclave which serves as one of the key defense intelligence locations including United States Cyber Command, the National Security Agency, and Defense Information Systems Agency. *Fort George G. Meade*, U.S. ARMY, <https://home.army.mil/meade/> [<https://perma.cc/C2Z6-N2UR>].

20. *U.S. Army Fort Bragg*, U.S. ARMY, <https://home.army.mil/liberty/> [<https://perma.cc/NK53-A5FC>].

21. White Sands Missile Range (New Mexico) is home to many of the United States' weapon testing and defense programs. *See White Sands Missile Range*, U.S. ARMY, <https://home.army.mil/wsmr/> [<https://perma.cc/CY5B-M7U5>].

22. Naval Station Norfolk (Virginia) is the home port of the U.S. Navy's Fleet Forces Command. It is the world's largest naval station and also a federal enclave. *See Beverly Kidd, Naval Station Norfolk, The World's Largest Naval Base, Rolls out the Red Carpet for Visitors*, WTKR (Apr. 7, 2025, 11:37 AM), <https://www.wtkr.com/positivelyhr/naval-station-norfolk-the-worlds-largest-naval-base-rolls-out-the-red-carpet-for-visitors> [<https://perma.cc/MC57-AGTY>]; *Reporting Aboard*, U.S. FLEET FORCES COMMAND, <https://www.usff.navy.mil/Contact-Us/Reporting-Aboard/#::~:~:text=The%20command%20>

Vandenberg Space Force Base is also a federal enclave, and hosts space launch facilities for DoD, NASA, and other private contractors.²³ Although the military branches have authority to give federal jurisdiction back to the states on all federal enclaves, the military has chosen to preserve these enclaves because of the critical work which continues to be done there.

At least one nuclear power plant, San Onofre Nuclear Generating Station, sits on a federal enclave, and that plant is currently being decommissioned before it is returned to the Navy.²⁴ Other enclaves, like Sandia National Laboratories, perform key national security research and testing relating to the nation's nuclear capabilities.²⁵ There are scores of federal medical facilities doing critical research and caring for veterans which sit on federal enclaves, including the National Institutes of Health²⁶ and Walter Reed National Military Medical Center,²⁷ both located in Maryland. When last counted, the federal government reported twenty-one of twenty-nine federal prisons sit on federal enclaves.²⁸ Some of the country's most beloved national parks, like Yellowstone, Yosemite, and Grand Teton (to name just a few), were established as federal enclaves where they could be preserved and protected under federal supervision.

C. When Does "Exclusive" Federal Jurisdiction over a Federal Enclave Exist?

When and what kind of jurisdiction the federal government will have over newly acquired land is set out in 40 U.S.C. § 3112. The statute provides:

"When the head of a department, agency, or independent establishment of the Government . . . considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or

is%20located%20on,Hampton%20Roads%20in%20Norfolk%2C%20Virginia [https://perma.cc/339R-XPL9].

23. Vandenberg Space Force Base (California) supports launch activities and missile defense testing for not only NASA, but also the Department of Defense and the Air Force. *About Us*, VANDENBERG SPACE FORCE BASE, <https://www.vandenberg.spaceforce.mil/About-Us/> [https://perma.cc/A42L-K4Z5].

24. *San Onofre – Unit 1*, U.S. NUCLEAR REGUL. COMM'N, <https://www.nrc.gov/info-finder/decommissioning/power-reactor/san-onofre-unit-1.html> [https://perma.cc/4HH6-GCFX].

25. *About Sandia*, *supra* note 17.

26. *What We Do*, NAT'L INSTS. OF HEALTH, <https://www.nih.gov/about-nih/what-we-do> [https://perma.cc/637T-7G2M]; *see also* HAINES, JR., *supra* note 13, at 71.

27. *About Us*, WALTER REED NAT'L MIL. MED. CTR., <https://walterreed.tricare.mil/About-Us> [https://perma.cc/9KRA-W6FE]; *see* *Colon v. United States*, 320 F. Supp. 3d 733, 746 (D. Md. 2018) ("[T]he Maryland legislature ceded both Fort Meade and the Walter Reed Medical Center to the United States and that both territories are therefore federal enclaves.").

28. HAINES, JR., *supra* note 13, at 70; *see infra* note 118.

control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained.”²⁹

It further provides that “[t]he individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.”³⁰ Under the statute, there are two essential components for exclusive jurisdiction to apply to a federal enclave. First, the federal government must “accept or secure . . . from the State” exclusive federal jurisdiction.³¹ In other words, the federal government must request exclusive jurisdiction. As 40 U.S.C. § 3112(b) suggests, state law typically determines how the federal government may request exclusive jurisdiction and the process by which exclusive jurisdiction is granted over an enclave.³² This can be accomplished in a variety of ways depending on the state and the nature of the request. In Texas, for example, the federal government must make a written application to secure exclusive jurisdiction, and it must be “(1) accompanied by proper evidence of the acquisition of the land; (2) authenticated and recorded; and (3) included or have attached an accurate description by metes and bounds of the land for which cession [of exclusive jurisdiction] is sought.”³³ For many years, specifically in times of war, the federal government routinely requested the exercise of exclusive jurisdiction so that federal primary control over those facilities could be maintained.³⁴ The second requirement, which comes from the Constitution itself, is that the state must consent to the exercise of exclusive federal jurisdiction.³⁵ Many states were so willing to have federal investment within their borders that they adopted statutes which automatically granted such consent for every federal purchase.³⁶ Both of

29. 40 U.S.C. § 3112(b).

30. *Id.*

31. *Id.*; see also *Paul v. United States*, 371 U.S. 245, 264 (1963).

32. See 40 U.S.C. § 3112(b) (“The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State *or in another manner prescribed by the laws of the State where the land is situated.*” (emphasis added)).

33. TEX. GOV’T CODE ANN. § 2204.103(b) (West 2023).

34. HAINES, JR., *supra* note 13, at 15.

35. U.S. CONST. art I, § 8, cl. 17; *Paul*, 371 U.S. at 264.

36. See HAINES, JR., *supra* note 13, at 16–17. For example, Colorado has a statute providing that “[e]xclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes, except the service of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such land.” COLO. REV. STAT. ANN. § 3-1-103 (2025). Montana’s statutory code also provides that “exclusive jurisdiction is ceded to the United States over and with respect to any lands within the limits of this state that are acquired by the complete purchase by the United States . . .” MONT. CODE ANN. § 2-1-202 (2025). In these two states, then, exclusive jurisdiction is automatically granted to the federal government for each acquisition ceded.

these elements must be present for the creation of a federal enclave and exercise of exclusive federal jurisdiction.³⁷

Not every property owned by the federal government is a federal enclave. In fact, both the number and size of federal enclaves are quite small compared to the total property holdings of the federal government.³⁸ In 1969, a committee for the U.S. Department of Justice developed a report in an effort to identify land owned by the federal government and categorize the type of jurisdiction the federal government had over each parcel of land.³⁹ The authorities writing on this subject divide the type of jurisdiction exercised based on the federal request and the state consent to federal jurisdiction.⁴⁰ The term “exclusive jurisdiction” applies when the federal government possesses all the authority of the state, and the state has not reserved to itself the right to exercise any authority concurrently with the United States, except the right to serve civil or criminal process on the enclave.⁴¹ The term “partial jurisdiction” applies when that the state has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the rights to serve civil or criminal process in the area.⁴² A common example of “partial jurisdiction” federal enclaves is the exception for taxation where the state reserves the ability to exercise its taxation authority over the ceded land. “Concurrent jurisdiction” occurs when the state has reserved to itself the right to exercise, concurrently with the United States, all the same authority.⁴³ The overwhelming bulk of land owned by the federal government is known as “proprietary,” and the federal government exercises no jurisdiction over that land at all.⁴⁴

Federal enclaves are not necessarily permanent, and exclusive jurisdiction can be returned to the state in several ways. If the property is sold or if the federal use contemplated in the state consent ends, the federal government can return a federal enclave to state jurisdiction by

37. *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1236 (10th Cir. 2012) (“[W]hen ‘the United States acquires with the ‘consent’ of the state legislature land within the borders of that State . . . the jurisdiction of the Federal Government becomes ‘exclusive.’” (quoting *Paul*, 371 U.S. at 264)).

38. The estimate in 1960 found that the federal government exercised exclusive or partial jurisdiction on approximately three percent of all federal property owned. HAINES, JR., *supra* note 13, at 6. By all accounts, that percentage has probably declined over time, as some federal enclaves have been sold or “retroceded.” *Id.* at 7.

39. See U.S. DEP’T OF JUST., *FEDERAL LEGISLATIVE JURISDICTION: REPORT PREPARED FOR U.S. PUBLIC LAND REVIEW COMMISSION JURISDICTION* (1969). The term “federal enclave” in this paper includes both “exclusive jurisdiction” and “partial jurisdiction” because the federal government retains some level of jurisdiction over these lands.

40. *Id.* at 57–58.

41. *Id.* at 57.

42. *Id.* at 57–58.

43. *Id.* at 57.

44. *Id.* at 58.

“retrocession,” the process which the federal government gives jurisdiction back to the state.⁴⁵ Since 1970, Congress has authorized a host of federal agencies to retrocede any federal enclaves under their purview without the need for any further legislation.⁴⁶ Congress has granted this authority to several federal agencies, including Secretaries of the Army, Navy, and Air Force;⁴⁷ the Veterans’ Administration;⁴⁸ the Secretary of the Interior with respect to national parks;⁴⁹ and the Secretary of Agriculture.⁵⁰ As discussed in Part IV, many federal agencies who oversee critical military functions or protect valuable federal assets have the authority to retrocede federal enclaves, but they have chosen to maintain the exclusive federal jurisdiction over those enclaves and that decision is an important aspect of this issue.

II. HOW DO COURTS APPLY FEDERAL AND STATE LAW TO FEDERAL ENCLAVES?

A. *The Federal Enclave Doctrine and Its Exceptions*

In 1885, the Supreme Court of the United States laid out the first structured analysis on how federal and state laws would be applied on federal enclaves in *Chicago, Rock Island & Pacific Railway Co. v. McGlinn*.⁵¹ The case involved the claim for a dead cow killed by a railcar on the Fort Leavenworth military reservation in Kansas.⁵² The plaintiff sought recovery for the livestock under an 1874 Kansas statute that made “every railway company in the State liable to the owner for the full value of cattle killed.”⁵³ The land involved in the incident, however, was ceded to the United States in 1875 and the railroad argued that the Kansas statute “became inoperative” upon cession.⁵⁴ To determine what law applied, the Court imported the “general rule of public law . . . that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country . . . continue in force until abrogated or changed by the new government or sovereign” but “all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new

45. *Id.* at 72–73.

46. HAINES, JR., *supra* note 13, at 53.

47. 10 U.S.C. § 2683(a).

48. 38 U.S.C. § 8112.

49. 16 U.S.C. § 1a-3 (repealed 2014).

50. 7 U.S.C. § 2268.

51. *Chi., Rock Island & Pac. Ry. Co. v. McGlinn*, 114 U.S. 542 (1885).

52. *Id.* at 543.

53. *Id.* at 544.

54. *Id.* at 544–46.

government are at once displaced.”⁵⁵ The Court concluded that the prior Kansas law was not inconsistent with any federal law, had never been changed or abrogated by the federal government, and, therefore, remained enforceable.⁵⁶ From its very inception, the federal enclave doctrine embodied two important principles: the primacy of federal law on federal enclaves and the willingness to apply some state law not inconsistent with federal law.

Since 1885, the Supreme Court has reaffirmed the federal enclave doctrine in several cases and has affirmed its validity as recently as 2019 in *Parker Drilling Management Services, Ltd. v. Newton*: “‘only the [state] law in effect at the time of the transfer of jurisdiction continues in force’ as surrogate federal law.”⁵⁷ “This approach ensures ‘that no area however small will be without a developed legal system for private rights,’ while simultaneously retaining the primacy of federal law and requiring future statutory changes to be made by Congress.”⁵⁸ The federal enclave doctrine has been applied and affirmed by four Circuit Courts of Appeals (Fifth, Eighth, Ninth, and Tenth),⁵⁹ and more than fifty federal district court cases in more than a dozen different districts.⁶⁰ In short, the federal enclave doctrine has been universally accepted by the courts in a variety of jurisdictions.

Over the same period, courts have interpreted and applied certain limited exceptions to the federal enclave doctrine, which is best summarized in the Tenth Circuit decision *Allison v. Boeing Laser Technical Services*.⁶¹ In *Allison*, a plaintiff sued his employer operating on Kirtland Air Force Base in New Mexico, a federal enclave, for state common and statutory law stemming from retaliatory termination after reporting corporate fraud to the Air Force.⁶² The *Allison* court found the “central principle of federal enclave doctrine is that Congress has exclusive legislative authority over these enclaves” and held the state law causes of action could not be maintained.⁶³

55. *Id.* at 546.

56. *Id.* at 547.

57. *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 612 (2019) (quoting *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 100 (1940)). While this case primarily concerned application of the Outer Continental Shelf Lands Act (OCSLA), the Court noted the federal enclave doctrine was a prime example of how the OCSLA should be applied. *See id.* at 611–12.

58. *Id.* at 612 (quoting *Sadrakula*, 309 U.S. at 100).

59. *Mater v. Holley*, 200 F.2d 123 (5th Cir. 1952); *Lord v. Local Union No. 2088*, 646 F.2d 1057 (5th Cir. 1981); *W. River Elec. Ass’n v. Black Hills Power and Light Co.*, 918 F.2d 713 (8th Cir. 1990); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247 (9th Cir. 2006); *Cooper v. S. Cal. Edison Co.*, 170 F. App’x. 496 (9th Cir. 2006); *S.F. Aesthetics & Laser Med. Inc. v. Presidio Tr.*, 454 F. App’x. 579 (9th Cir. 2011); *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234 (10th Cir. 2012).

60. *See infra* note 1169–115.

61. *Allison*, 689 F.3d at 1234.

62. *Id.* at 1236.

63. *Id.* at 1237, 1243.

The *Allison* court laid out three of the most common exceptions to the doctrine: “1) where Congress has, by statute, provided a different rule; 2) where the state explicitly retained the right to legislate over specific matters at the time of cession; and 3) where minor regulatory changes modify laws existing at the time of cession.”⁶⁴ These three exceptions ensure that despite the displacement of state law on a federal enclave, essential rights and protections remain in place for situations federal law does not cover. The *Allison* court also recognized the willingness of federal courts to apply the state law in existence at the time of cession, as first established by the Court in *McGlenn*. The three specific exceptions and the general rule regarding existing state law are discussed below.

1. Exception One: Congressional Action Invoking State Law

The federal government can decide to apply state laws on federal enclaves and in fact, has adopted specific statutes applying state law on federal enclaves. Through congressional action, state law applies to a variety of civil claims in federal enclaves. For example, 28 U.S.C. § 5001 allows for state law to apply in cases involving some personal injury and wrongful death.⁶⁵ 40 U.S.C. § 3172 also allows the application of state workers’ compensation laws to apply on federal enclaves.⁶⁶ Other examples include 26 U.S.C. § 3305(d), allowing the application of unemployment compensation;⁶⁷ 18 U.S.C. § 2265(a), allowing the enforcement of domestic restraining orders;⁶⁸ and 10 U.S.C. § 2671, allowing fish and game regulation.⁶⁹ The adoption of these federal statutes has led at least one commentator to conclude that “[a]lmost all State civil laws apply on federal enclaves.”⁷⁰

Residents of federal enclaves also have the privileges and responsibilities of state citizenship, including the right to vote in state and local elections; register vehicles; obtain state driver’s licenses; form and dissolve marriages; execute probate of estates; receive state welfare and mental illness benefits; and benefits from the protection provided by state laws governing juvenile delinquency, abused or neglected children, and domestic violence.⁷¹ Congress has also authorized the collection of a wide variety of state taxes

64. *Id.* at 1237.

65. 28 U.S.C. § 5001.

66. 40 U.S.C. § 3172.

67. 26 U.S.C. § 3305(d).

68. 18 U.S.C. § 2265(a).

69. 10 U.S.C. § 2671.

70. HAINES, JR., *supra* note 133, at 165.

71. HAINES, JR., *supra* note 13, at 96.

on enclaves, including fuel taxes;⁷² income, sales, and use taxes;⁷³ and personal property taxes from the lease of enclave property.⁷⁴

One of the most well-known examples of the authorization of state law on federal enclaves is the Assimilative Crimes Act (ACA).⁷⁵ In an effort to alleviate conflicts with the state's interest to prosecute individuals who break their laws, Congress passed the ACA ensuring virtually all state crimes committed on federal enclaves are punishable as federal offenses.⁷⁶ In sum, all who live, work, and do business on federal enclaves have almost all of the rights and privileges under state law and all of the protections under federal law.

In a more recent example, the Nevada Occupational Safety and Health Review Board (NOSH) ruled on whether state authority or federal authority applied to violations issued to a subcontractor at Boulder Beach Motel.⁷⁷ The motel in question is located on Lake Mead National Recreation Area, a federal enclave.⁷⁸ The defendant argued the state of Nevada did not have jurisdiction over subcontractors working on federal facilities.⁷⁹ The Review Board found this case turned on the federal enclave doctrine.⁸⁰ The state put on evidence that there was an agreement between the federal government and NOSH, pursuant to § 18(e) of the Occupational Safety and Health Act of 1970, stating that OSHA retains jurisdiction for “enforcement relating to any contractor(s) and/or subcontractor(s) on any Federal establishment where the state cannot obtain entry including national parks,” but also that the Agreement “provided for concurrent jurisdiction to enforce health and safety regulations where the State could not obtain access to the place of employment even with the use of a warrant.”⁸¹ The Review Board found that while Boulder Beach Motel is located on a federal enclave, “[f]ederal enclaves are not shielded from State law if Congress provides ‘clear and unambiguous language authorization’ for such State regulation.”⁸² Because

72. 4 U.S.C. § 104. While Congress may authorize the collection of state taxes, the state must also reserve the right to do so in its consent to federal jurisdiction. Many states have amended their general consent statutes to include the right to collect state taxes to the extent permitted. HAINES, JR., *supra* note 13, at 28. However, many states have not done so, and the collection of some or all state taxes does not occur because of that choice by the state.

73. 4 U.S.C. §§ 105–08.

74. 10 U.S.C. § 2667(f).

75. 18 U.S.C. § 13(a).

76. The Assimilative Crimes Act, 18 U.S.C. § 13(a), allows the borrowing of state law when there is no applicable federal statute. *See also* Erin Ryan, *Negotiating Federalism*, 52 B.C. L. REV. 1, 37 (2011).

77. Core Contracting Grp., Docket No. LV 21-2123, Inspect. No. 1503677 (Nev. Occupational Safety & Health Rev. Bd. Mar. 29, 2024).

78. *Id.* at 4.

79. *Id.* at 8, 15.

80. *Id.* at 13.

81. *Id.* at 14.

82. *Id.* at 15.

the Agreement provided for concurrent jurisdiction to “enforce occupational health and safety regulations” as contemplated in the facts presented, the state was allowed to exercise jurisdiction on the enclave.⁸³

2. *Exception Two: State Retention of Legislative Power at the Time of Cession*

The second exception applies where a state specifically retains legislation rights at the time of cession.⁸⁴ The most common example of this is where a state retains the right to serve process within the enclave boundaries and this is usually done by a general statute consenting to exclusive jurisdiction. For example, Texas has a general statute on the process of ceding land and exclusive jurisdiction to the United States.⁸⁵ That statute, like many others, provides

“[a] cession of jurisdiction may not be made under this section except on the express condition . . . that this state retains concurrent jurisdiction with the United States over every portion of the land ceded so that all civil or criminal process issued under the authority of this state . . . may be executed by the proper officers of this state on any person amenable to service of process within the limits of the land to be ceded”⁸⁶

Hawaii has retained even broader legislative authority over enclaves. The 1959 Admission Act, which officially annexed Hawaii as a member of the United States, outlined several key issues related to legislative functionality between the United States and the newly formed Hawaiian government.⁸⁷ In choosing what legislative power would apply to land acquired under art. I, § 8, cl. 17, the Act provided:

[A]uthority is reserved in the United States . . . for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of said State, are controlled or owned by the United States and held for Defense or Coast Guard purposes . . . *Provided*, (i) That the State of Hawaii shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions . . . ; (ii) that the

83. *Id.*

84. *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1237 (10th Cir. 2012).

85. TEX. GOV'T. CODE ANN. § 2204.103 (West 2023).

86. *Id.* § 2204.103(c).

87. Admission Act, Pub. L. No. 86-3, 73 Stat 4 (1959).

reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid *shall not operate to prevent such lands from being a part of the State of Hawaii, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority* and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority. . . .⁸⁸

Thus, Hawaii has retained full legislative jurisdiction concurrently with the federal government over all federal enclaves located within its boundaries.⁸⁹ While the application of the federal enclave doctrine typically displaces state law, this second exception exhibits the broad power of states in negotiating the level of legislative authority they wish to retain when ceding land to the United States government.

3. *Exception Three: Minor Regulatory Changes to Existing Statutes at Time of Cession*

The last exception the *Allison* court lists concerns minor regulatory changes to state statutes which were already in place at the time of cession.⁹⁰ This exception is taken directly from the 1963 case *Paul v. United States*.⁹¹ In *Paul*, the United States Supreme Court addressed whether California could enforce price regulations on milk sold on Travis Air Force Base, Castle Air Force Base, and Oakland Army Terminal which were all federally-owned.⁹² As to milk purchased with federally-appropriated funds, the Court found that the regulation ran afoul of federal procurement policies which required federal procurement officers to obtain supplies for federal facilities using mandated factors and therefore barred its application to that effect.⁹³ However, as to milk purchased with non-appropriated funds, the Court applied the federal enclave doctrine and asked “if there were price control of milk at the time of the acquisition and the same basic scheme has been in effect since that time.”⁹⁴ If the price control were not in effect, then the Court posited that the price control would not be “enforceable on a

88. *Id.* § 16(b) (emphasis added).

89. *See Kalaka Nui, Inc. v. Actus Lend Lease, LLC*, No. 08–00308, 2009 WL 1227892, at *3–5 (D. Haw. May 5, 2009) (declining to bar state law claims on federal enclave when Admissions Act allowed Hawaii to exercise concurrent jurisdiction).

90. *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1237 (10th Cir. 2012).

91. *See Paul v. United States*, 371 U.S. 245 (1963).

92. *Id.* at 247.

93. *Id.* at 263.

94. *Id.* at 269.

federal enclave . . . because it was adopted ‘long after the transfer of sovereignty.’”⁹⁵ The Court did not have a sufficient record as to the history of the California price control scheme and remanded the case for the lower court to determine.⁹⁶ The *Allison* court, referring to this as the *Paul* exception, outlined it as a narrow exception.⁹⁷ According to the court, the *Paul* exception only applies when the “‘same basic scheme’ was in place before cession” and the modification to the law constitutes an “application of the program, not a change in its design.”⁹⁸

In a recent 2021 case, the U.S. District Court for the Central District of California applied this third exception to facts arising from Point Mugu Naval Air Station in California.⁹⁹ In *Fierro v. Dyncorp International LLC*, the plaintiff worked at a facility owned and operated by the defendant at Point Mugu, a federal enclave.¹⁰⁰ The plaintiff alleged the defendant violated California Labor Code § 226 by “failing to provide wage statements that accurately identified the applicable rate of pay and hours worked for certain ‘shift premiums.’”¹⁰¹ In response, the defendant-employer filed for summary judgment, arguing the federal enclave doctrine barred the plaintiff’s state labor law claims.¹⁰² The district court found there was no dispute that Point Mugu has been a federal enclave since 1954.¹⁰³ However, the court, sua sponte,¹⁰⁴ saw stark similarities between the facts presented and the facts in *Paul*.¹⁰⁵ It found that California Labor Code § 226 existed since 1943, prior to when Point Mugu became a federal enclave.¹⁰⁶ Further, the wage statement requirement at issue, though implemented after Point Mugu became a federal enclave, was “no more than an incremental change to an existing regulatory regime, akin to the price floor increase in *Paul*.”¹⁰⁷ As a result, the defendant’s summary judgment motion failed.¹⁰⁸

95. *Id.* at 268–69 (quoting *Pac. Coast Dairy v. Dep’t of Agric.*, 318 U.S. 285, 294 (1943)).

96. *Id.* at 269–70.

97. *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1243 (10th Cir. 2012).

98. *Id.*

99. *Fierro v. Dyncorp Int’l LLC*, No. CV 19-07091, 2021 WL 275487 (C.D. Cal. Jan. 27, 2021).

100. *Id.* at *1.

101. *Id.*

102. *Id.*

103. *Id.* at *2.

104. The plaintiff in this case did not argue the third *Allison* exception, but rather that § 226 of the California Code existed before 1954 and that, alone, should be enough to defeat summary judgment. The court did not find the argument persuasive but proceeded to apply the third *Allison* exception. *See id.*

105. *Id.* at *3.

106. *Id.*

107. *Id.*

108. *Id.* at *4.

4. *General Exception: State Laws in Existence at the Time of Cession are Enforceable on Federal Enclaves*

Outside of these three exceptions, there is, of course, the general rule that “in the absence of applicable federal legislation displacing state law, those state laws that existed at the time that the enclave was ceded to the federal government remain in force.”¹⁰⁹ Of course, this is the rule originally established in 1885 in *McGlinn*, where the Court applied the pre-cession Kansas statute holding railway’s liable for livestock.¹¹⁰ This rule acts as a catch-all that, in conjunction with the exceptions listed above, ensures no area goes without any law at all. In practice, then, the courts deciding choice-of-law on federal enclaves consider the claims alleged, whether those claims existed at the time of cession, and apply only those state law claims in existence at the time of cession. In a U.S. District Court for the District of New Mexico case, a plaintiff filed suit against his employer for claims under the New Mexico Human Rights Act, as well as state law causes of action for breach of implied or express contract; breach of good faith and fair dealing; defamation; negligence; and other state law claims.¹¹¹ The court applied the federal enclave doctrine, barring the plaintiff’s claims under the New Mexico Act and many of the state law claims except for negligence, holding that it existed before cession.¹¹² In a U.S. District Court for the Eastern District of Virginia case, a subcontractor sued for work performed under the Javits-Wagner-O’Day Act¹¹³ at Naval Base San Diego alleging various state law causes of action against contractor, commission administering program, and nonprofit agency administering program.¹¹⁴ The court applied the federal enclave doctrine and ruled that all of the plaintiff’s state law claims must be barred except his tortious interference claim, which existed before Naval Base San Diego became a federal enclave.¹¹⁵

B. *Application of Federal Law on Federal Enclaves*

The application of the federal enclave doctrine has ensured that federal law remains supreme on federal enclaves and has sidestepped the

109. *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1237 (10th Cir. 2012).

110. *See Chi., Rock Island & Pac. Ry. Co. v. McGlinn*, 114 U.S. 542, 542 (1885).

111. *Marquez v. Nat’l Tech. & Eng’g Sols. of Sandia, LLC*, No. 20-46, 2020 WL 6484996, at *1 (D.N.M. Nov. 4, 2020).

112. *Id.* at *5, *8, *10.

113. The Javits-Wagner-O’Day Act establishes a committee for purchases made from visually impaired individuals. The Act sets up the committees, who’s authorized to make purchases, and the price they may be charged. 41 U.S.C. §§ 8501–8506.

114. *PRIDE Indus. v. VersAbility Res., Inc.*, 670 F. Supp. 3d 323, 330 (E.D. Va. 2023).

115. *Id.* at 335.

cacophony of sometimes unique and sometimes conflicting state laws across the federal enclaves. For example, a California court recently refused to apply California Labor Code provisions requiring payment of travel expenses and itemization of expenses, among other things, which were not required under federal employment law.¹¹⁶ In another case, a disabled plaintiff sued to enforce her Maryland statutory right to bring a service dog to work, but the federal court found that the Maryland statute conflicted with the NIH regulation prohibiting animals on the grounds of NIH, a medical facility, and barred the state statutory claim based on the federal enclave doctrine.¹¹⁷ A patient at Walter Reed National Military Medical Center, a federal enclave, sued under a Maryland statute governing negligent access and distribution of confidential medical information, but the court refused to apply the state statute both because the statute was enacted after cession and because Congress had not authorized the claim against a federal hospital.¹¹⁸ The court rejected application of the New Mexico Human Rights Act under the federal enclave doctrine, and noted that the NMHRA imposes personal liability while Title VII, the corresponding federal statute, does not.¹¹⁹ Some of the specific state statutes and laws rejected on federal enclaves include: California minimum wage and overtime payments,¹²⁰ wrongful termination,¹²¹ labor laws and unfair business practices,¹²² whistleblower laws,¹²³ and race discrimination;¹²⁴ as well as Maryland statutory law regarding service animals on federal enclaves,¹²⁵ negligent

116. *Jimenez v. Haxton Masonry, Inc.*, No. 18-CV-07109, 2020 WL 3035797, at *5 (N.D. Cal. June 5, 2020) (explaining that California Labor Code claims were adopted after cession of the federal enclave and barred by the federal enclave doctrine).

117. *See Fuller-Deets v. Nat'l Insts. of Health*, No. 18-3175, 2020 WL 230894 (D. Md. Jan. 14, 2020) (holding that the NIH campus is a federal enclave, was ceded before the Maryland statute was enacted, and rejected application of the Maryland statute), *aff'd*, 840 F. App'x 755 (4th Cir. 2021).

118. *See Colon v. United States*, 320 F. Supp. 3d 733 (D. Md. 2018) (denying Plaintiff's claims because (1) the MCMRA and the tort of negligent access and disclosure of protected health information are state laws not in existence at the time Fort Meade and the Walter Reed Medical Center were ceded by Maryland to the United States; and (2) Congress did not specifically authorize the enforcement of either of these state laws on either Fort Meade or the Walter Reed Medical Center; and (3) Maryland did not specifically retain jurisdiction over the subject matter covered by these state laws when it ceded Fort Meade and the Walter Reed Medical Center to the United States).

119. *See Kennicott v. Sandia Corp.*, 314 F. Supp. 3d 1142, 1163 (D.N.M. 2018).

120. *See Korndobler v. DNC Parks & Resorts at Sequoia*, No. 1:15-CV-00459, 2015 WL 3797625 (E.D. Cal. June 18, 2015).

121. *See Cook v. S. Cal. Edison*, No. 12-CV-2241, 2013 WL 2896886 (S.D. Cal. June 11, 2013).

122. *See Beltran v. Inter-Con Sec. Sys, Inc.*, No. 2:21-CV-04927, 2021 WL 4170128 (C.D. Cal. Sept. 13, 2021).

123. *Hunter v. ASRC Fed. Data Sols., LLC*, No. 23-CV-02974, 2023 WL 4983668 (N.D. Cal. Aug. 3, 2023).

124. *Carvajal v. Pride Indus., Inc.*, No. 10-CV-2319, 2013 WL 1728273 (S.D. Cal. Apr. 22, 2013).

125. *Fuller-Deets v. Nat'l Insts. of Health*, No. 18-3175, 2020 WL 230894 (D. Md. Jan. 14, 2020), *aff'd*, 840 F. App'x 755 (4th Cir. 2021).

distribution of medical information,¹²⁶ workplace fraud and wages,¹²⁷ sex and age discrimination,¹²⁸ and employment practices for disability;¹²⁹ Puerto Rico's consumer protection laws and regulations enforced by its Department of Consumer Affairs laws,¹³⁰ along with Puerto Rico statutory law on employment discrimination;¹³¹ New Jersey laws on disability discrimination and retaliation,¹³² overtime wages;¹³³ New Mexico laws on employment discrimination and retaliation;¹³⁴ Montana laws on wrongful discharge;¹³⁵ Florida statutory law on wiretapping;¹³⁶ Kentucky law on employment discrimination and civil rights;¹³⁷ South Dakota laws on exclusive rights of electrical service providers;¹³⁸ New York human rights statutes on discrimination and retaliation;¹³⁹ Missouri human rights law and public policy.¹⁴⁰ These courts all enforced the general principle that federal law applied on federal enclaves, especially when the state law imposed some new or different obligation and when state law conflicted with federal law.

C. The Federal Enclave Doctrine Balances Federal Law and State Law on Federal Enclaves

While the federal enclave doctrine provides for the application of state law in necessary circumstances, it also ensures federal law has supremacy on federal enclaves and avoids inconsistent application of newly enacted state laws through the years and across the country. The doctrine was

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126. Colon v. United States, 320 F. Supp. 3d 733 (D. Md. 2018).
 127. Bouthner v. Cleveland Constr. Inc., No. 11-244, 2011 WL 2976868 (D. Md. July 21, 2011).
 128. Weisel v. Kaimetrix, LLC, No. 19-3281, 2020 WL 2112157 (D. Md. May 1, 2020).
 129. Harkum v. Jacobs Tech., Inc., No. 22-479, 2023 WL 2163178 (D. Md. Feb. 22, 2023).
 130. Overseas Mil. Sales Corp. v. Suárez-Meléndez, No. 08-1479, 2009 WL 793612 (D.P.R. Mar. 23, 2009). For the facts of this case, see *Overseas Military Sales Corp. v. Suárez-Meléndez*, No. 08-1479, 2009 WL 497497 (D.P.R. Feb. 26, 2009).
 131. Colon Pagan v. MVM, Inc., No. 07-1015, 2009 WL 10717481 (D.P.R. July 29, 2009).
 132. Morris v. Eberle & BCI, LLC, No. 1:13-06113, 2014 WL 4352872 (D.N.J. Sept. 3, 2014).
 133. Manning v. Gold Belt Falcon, LLC, 681 F. Supp. 2d 574 (D.N.J. 2010).
 134. Perkins v. Chugach Mgmt. Servs., No. 13-1209, 2015 WL 13666993 (D.N.M. Feb. 18, 2015); Benavidez v. Sandia Nat'l Lab'ys, 212 F. Supp. 3d 1039 (D.N.M. 2016); Ochieno v. Sandia Nat'l Lab'ys, No. 18-197, 2019 WL 277751 (D.N.M. Jan. 22, 2019).
 135. Olig v. Xanterra Parks & Resorts, Inc., No. 13-15, 2013 WL 3936904 (D. Mont. July 30, 2013).
 136. United States v. Boling, No. 8:19-CR-518-T-36, 2020 WL 1931328 (M.D. Fla. Apr. 2, 2020).
 137. Pettway v. Logistics Sols. Grp., Inc., No. 3:17-cv-73, 2020 WL 981712 (W.D. Ky. Feb. 28, 2020).
 138. W. River Elec. Ass'n Inc. v. Black Hills Power and Light Co., 918 F.2d 713 (8th Cir. 1990).
 139. Schiappa, Sr. v. Brookhaven Sci. Assocs., LLC, 403 F. Supp. 2d 230 (E.D.N.Y. 2005); Sundaram v. Brookhaven Nat'l Lab'ys, 424 F. Supp. 2d 545 (E.D.N.Y. 2006); Brookhaven Sci. Assocs., LLC v. Donaldson, No. 04 4013, 2007 WL 2319141 (S.D.N.Y. Aug. 9, 2007).
 140. Stuckstede v. NJVC LLC, No. 4:09CV0663, 2009 WL 3754153 (E.D. Mo. Nov. 5, 2009).

originally adopted by the United States Supreme Court in 1885 and continues to this day.¹⁴¹

III. FEDERAL ENCLAVES REMAIN RELEVANT AND ESSENTIAL TODAY

A. Rationales Expressed in Favor of Exclusive Federal Jurisdiction on Federal Enclaves

As discussed above, the federal enclaves that exist today generally remain so for varying reasons. In 1961, a committee composed of federal legislators and state governmental officials convened to discuss private property on federal enclaves.¹⁴² Their report expressed a key and essential reason for the importance of exclusive jurisdiction on federal enclaves: “Exclusive Federal legislative jurisdiction serves to immunize the income, transactions, activities and properties of private persons located in areas subject to such jurisdiction from State and local taxation.”¹⁴³ The 1969 committee report to the Public Land Commission stated Congress’s goal was to “achieve a uniformity in Federal jurisdiction over Federal properties.”¹⁴⁴ The Department of Defense, in an issuance on Real Property Management, has stated the importance of federal enclaves and maintaining exclusive jurisdiction is to have “a single uniform Federal legislative jurisdiction throughout the installation,” barring compelling reasons otherwise.¹⁴⁵

B. Congress and Federal Agencies’ Decision not to Retrocede Exclusive Jurisdiction

To this day, Congress has decided not to “retrocede” jurisdiction more broadly on federal enclaves. As we have seen, Congress has delegated retrocession authority to the military branches, the Veterans Administration, and certain other key federal agencies, and those agencies collectively and individually have also been reluctant to retrocede federal enclaves more broadly. The military branches have had the authority to retrocede federal

141. See *Chi., Rock Island & Pac. Ry. Co. v. McGlinn*, 114 U.S. 542, 546 (1885).

142. See ADVISORY COMM’N ON INTERGOVERNMENTAL RELS., COMMISSION REPORT: STATE AND LOCAL TAXATION OF PRIVATELY OWNED PROPERTY LOCATED ON FEDERAL AREAS (1961) [hereinafter 1961 TAX REPORT].

143. *Id.* at 9.

144. U.S. DEP’T OF JUST., *supra* note 39, at 48.

145. Dean W. Korsak, *Optimizing Military Installation Jurisdiction*, 81 A.F. L. REV. 133, 155 (2020) (quoting DEP’T OF DEF., DODI 4165.70, INSTRUCTION: REAL PROPERTY MANAGEMENT ¶ 6.11.1 (2005)).

enclaves since 1970, and only done so sparingly.¹⁴⁶ This rare exercise of retrocession is remarkable since the military branches retain far more property in exclusive and partial jurisdiction than the federal government as a whole.¹⁴⁷ Therefore, the rare retrocession of that exclusive jurisdiction is even more striking in the case of land for military installations. Even after being granted the authority to retrocede federal enclaves, the Air Force has continued to acquire property for military installations and has insisted upon exclusive federal jurisdiction, and the States have consented.¹⁴⁸ Finally, in some instances, the States have refused state or concurrent jurisdiction. In one case, California expressly refused the retrocession of jurisdiction over the San Onofre Nuclear Plant, and that plant remains on a federal enclave.¹⁴⁹ While the decisions to retain and protect federal enclave status vary from enclave to enclave and from agency to agency, several common explanations have emerged.

The primary reason for a preference for federal enclave status expressed in all the surveys harkens back to one of the foundational principles necessitating federal enclaves in the first place—state interference with federal functions on a federal facility. Federal officials have expressed the need for exclusive federal jurisdiction to establish clear lines of authority on their facility and avoid state interference with that authority. Federal immunity and supremacy, they said, is the primary benefit to the federal enclave. This is particularly true on large military bases, like Fort Bragg¹⁵⁰ and Fort Cavazos,¹⁵¹ which operate like small cities. Although federal

146. For example, between 1957 and 1969, the Navy only retroceded two sites, portions of the U.S. Naval Station and Long Beach and U.S. Naval Hospital at Portsmouth, Virginia. U.S. DEP'T OF JUST., *supra* note 39, at 115–16.

147. For example, the 1969 Report estimated that for 188 Army installations totaling 1,112,972 acres, 553,373 acres were held in exclusive jurisdiction and 78,966 in partial jurisdiction, or 56% of the acreage on those 188 installations. *Id.* at 102.

148. The Air Force acquired Hanscom Field in Massachusetts, Kirtland Air Force Base in New Mexico, and Offutt Air Force Base in Nebraska and has insisted on exclusive federal jurisdiction in each. *Id.* at 123–24.

149. HAINES, JR., *supra* note 13, at 153; *see also* Stiefel v. Bechtel Corp., 497 F. Supp. 2d 1138, 1145 (S.D. Cal. 2007) (confirming federal enclave status of San Onofre Nuclear Plant).

150. Fort Bragg (formerly Fort Liberty) is the “the Home of the Airborne and Special Operations” (U.S. Army Special Forces Command, 82nd Airborne, XVIII Airborne Corp, Joint Special Operations Command, among others), with approximately 57,000 military personnel, 11,000 civilian employees and 23,000 family members making it one of the largest military complexes in the world. James Bartlinski, Dir. & Denise Wald, Collections Manager, U.S. Army Airborne & Special Operations Museum, The Positive Impact of the United States Army Airborne and Special Operations Museum on the Surrounding Civilian Community (June 4–6, 2019), <https://www.nps.gov/articles/000/impacts-of-the-united-states-army-airborne-and-special-operations-museum-on-the-surrounding-community.htm> [<https://perma.cc/H792-86MJ>].

151. Fort Cavazos (formerly Fort Hood) is the headquarters of III Armored Corp, First Army Division West, 1st Cavalry Division, 3rd Cavalry Regiment, among others and, as of 2023, houses nearly 40,000 soldiers and 5,000 civilian employees covering an area of 214,000 acres. *See U.S. Army Fort Cavazos*, U.S. ARMY, <https://home.army.mil/cavazos/> [<https://perma.cc/6S95-TLDX>]; *Fort Cavazos*:

officials did recognize that many federal functions were arguably immune from state interference, “the delay, expense, and effort involved in establishing such immunity are, in fact, almost as much interference as would be actual control by the State.”¹⁵² Federal officials also wanted freedom from “indirect interference” with the agency’s employees, suppliers, contractors or concessionaires.¹⁵³ Federal officials reported “uniformity of administration” over the federal enclave allowed installation commanders better relations with the surrounding community because it vests the installation commander with authority that state or local officials might claim.¹⁵⁴ In the first survey of federal enclaves, the Army, Navy, Air Force, Veterans Administration, National Park Service, and Civil Aeronautics Administration all wanted exclusive federal jurisdiction over the federal enclaves they managed, and the number one reason given was freedom from state interference.¹⁵⁵ The subsequent surveys confirmed that installation leaders remain concerned that local authorities might impede their operations under anything other than exclusive or partial federal jurisdiction.¹⁵⁶ Current U.S. Department of Defense policy remains that branches with authority over federal enclaves “should seek to have a single uniform Federal legislative jurisdiction throughout the installation unless there are compelling reasons to retain differing jurisdictions.”¹⁵⁷

Security is a critical concern for these federal enclaves. Many federal enclaves serve as military installations or federal facilities (like prisons or courthouses) where security is a major concern. Federal enclaves also provide unmatched security for critical federal and military operations. Many presidents have been hospitalized and treated at Walter Reed National Military Medical Center because it is a federal enclave and secured by federal military forces.¹⁵⁸ The first nuclear testing of an atom bomb occurred on a federal enclave, White Sands Missile Range, because the federal government could ensure the security and secrecy of that test, and that same

Economic Impact, 2023, TEX. COMPTROLLER, <https://comptroller.texas.gov/economy/economic-data/military/2023/fort-cavazos.php> [<https://perma.cc/P26L-CSQS>].

152. INTERDEPARTMENTAL COMM. FOR THE STUDY OF JURISDICTION OVER FED. AREAS WITHIN THE STATES, JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, PART I: THE FACTS AND COMMITTEE RECOMMENDATIONS 40 (1956).

153. *Id.* at 43.

154. *Id.* at 48.

155. *Id.* at 58.

156. U.S. DEP’T OF JUST., *supra* note 39, at 139.

157. DEP’T OF DEF., DODI 4165.70, INSTRUCTION: REAL PROPERTY MANAGEMENT ¶ 6.11.1 (2005).

158. *About Us*, WALTER REED MIL. MED. CTR., <https://walterreed.tricare.mil/About-Us> [<https://perma.cc/9KRA-W6FE>]; *see supra* note 27.

location is used today for the same national defense functions.¹⁵⁹ Today, the national security apparatus still functions and relies heavily on the security provided by military forces on those federal enclaves at places like Fort Meade, White Sands Missile Range, Sandia National Laboratories, and others. That is why when asked whether they wanted or needed federal enclaves, federal entities such as the Army, Navy, Air Force, and the Veterans Administration stated their preferences for continued exclusive federal jurisdiction on these sites.¹⁶⁰ If anything, the importance of undertaking federal intelligence operations in secure, federally controlled locations is more important than ever. The safety and integrity of the military installation is a core military priority. Such installations include some of the most prominent and key military installations in the country.¹⁶¹ The military branches desired exclusive federal jurisdiction so that they, and they alone, are responsible for security at their bases. As one of the reasons for the acquisition of Offutt Air Force Base in Nebraska and its inclusion as a federal enclave, the Air Force stated that it wanted “to immunize the highly sensitive Strategic Air Command facilities from any possible outside interference . . .”¹⁶² Another military facility, the Submarine Support Facility in San Diego, stated that losing exclusive jurisdiction would “degrade security requirements presently established.”¹⁶³ Likewise, California’s rejection of concurrent jurisdiction over the San Onofre Nuclear Power plant likely stemmed from California’s desire not to be responsible for security (and now de-commissioning) at that critical site. In the most recent survey, the terms “classified,” “security” and “complete and unquestioned control” recur as justifications for the exclusive jurisdiction preferences.¹⁶⁴

Finally, federal authorities are also reluctant to retrocede exclusive jurisdiction because they are concerned about the tax effects on residents of the federal enclave, their contractors, concessionaires, and all others doing business on the federal enclave. As discussed above, Congress has authorized the collection of a wide variety of state taxes on enclaves,

159. White Sands Missile Range, federal enclave, was the test site of the world’s first atomic bomb in 1945. Since then, White Sands continues as the premier military test range in America, earning its title as “Birthplace of America’s Missile and Space Activity.” *White Sands Missile Range: About*, U.S. ARMY, <https://home.army.mil/wsmr/about> [<https://perma.cc/N4BF-BQ6N>].

160. U.S. DEP’T OF JUST., *supra* note 39, at 124.

161. *See supra* note 12.

162. U.S. DEP’T OF JUST., *supra* note 39, at 124 (internal quotation marks omitted). The Air Force also listed “to achieve uniformity of jurisdiction” with the remainder of the base, and to preclude the “taxation of high-cost contractor-owned property” with resultant increased costs to the government. *Id.*

163. *Id.* at 117.

164. *Id.* at 108.

including fuel taxes;¹⁶⁵ income, sales and use taxes;¹⁶⁶ and personal property taxes from leased property on federal enclaves.¹⁶⁷ However, taxation on federal enclaves is complicated by the fact that, in many cases, either the federal government, the States, or both have not consented to apply some or all state taxation authority on the enclave. When that happens, the State has not given itself the power to tax, the federal government has not consented, and the courts cannot do that for them.¹⁶⁸ As a result, wholesale transfer or alteration of the jurisdictional status of all federal enclaves would result in the application of new state taxes on goods, services, and property not previously taxed. Many contractors, concessionaires, and public-private partnerships operating on federal enclaves today have formed their agreements based on the state taxation scheme in effect. Any new expansion of state taxation on federal enclaves endangers the purpose and viability of those contracts and operations. The military branches were particularly concerned that the increased taxes on contractors would be passed on to the federal government in one way or another.¹⁶⁹ Any new expansion of state taxation on federal enclaves endangers the purpose and viability of those contracts and operations. For these reasons, the federal government's concerns about the dramatic expansion of state taxation on federal enclaves are warranted.

While it is difficult to discern any particular reason for Congress's, federal agencies', and the States' reluctance to retrocede federal jurisdiction to the states on federal reasons, the foregoing remain powerful justifications today.

CONCLUSION

The Constitution specifically created federal enclaves and endowed them with exclusive federal jurisdiction so that they play the critical role in national defense that they do today. Since 1885, the federal courts have uniformly protected the exercise of exclusive federal jurisdiction on federal enclaves. Today, the critical work of national defense, military readiness, federal incarceration, and justice—to name a few—continue because the work is done on federal enclaves and because there is exclusive federal jurisdiction. Congress and several key federal agencies, including the Army,

165. 4 U.S.C. § 104.

166. 4 U.S.C. §§ 105–108.

167. 10 U.S.C. § 2667(e).

168. See *Gen. Dynamics Land Sys., Inc. v. Tracy*, 700 N.E.2d 1242, 1246 (Ohio 1998) (“Ohio has not reserved the power to tax personal property on a federal enclave; it has reserved only the power to serve process in civil and criminal matters.”); *Russell v. Se. Hous., LLC*, 162 So. 3d 262, 273 (Fla. Dist. Ct. App. 2015) (finding that “the United States has not consented to taxation”).

169. U.S. DEP’T OF JUST., *supra* note 39, at 121.

Navy, and Air Force, have the authority to retrocede jurisdiction over federal enclaves back to the States but have refused to do so. In fact, current DoD policy promotes exclusive federal legislative jurisdiction on federal enclaves. Those agencies cite state interference, the ability to control security, and state taxation ultimately paid by the federal government as reasons for the preservation of enclaves. Given that many sensitive military installations and federal facilities are located on federal enclaves, the preservation of these enclaves is necessary. The Framers designed the enclave to do just what it has done for over 200 years—preserve and protect the ability of the federal government to perform its constitutionally-endowed functions.