

The Honorable Judge Bryan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UGOCHUKWU GOODLUCK
NWAUZOR and FERNANDO
AGUIRRE-URBINA, individually and on
behalf of all those similarly situated,

Plaintiff and counter-defendant,
v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant and counter-plaintiff.

Case No: 3:17-cv-05769-RJB

**REPLY IN SUPPORT OF GEO'S MOTION
TO DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT**

NOTE ON MOTION CALENDAR:
July 20, 2018

ORAL ARGUMENT REQUESTED

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1 The GEO Group, Inc. (“GEO”) offers this reply supporting its Motion to Dismiss
2 Plaintiffs’ First Amended Complaint (“Motion” or “Mot.”). Plaintiffs have failed to explain why
3 the Court has jurisdiction over this challenge to GEO’s administration of the Voluntary Work
4 Program (“VWP”), a program created and authorized by U.S. Immigration and Customs
5 Enforcement (“ICE”). Plaintiffs also fail to oppose GEO’s other grounds for dismissal.
6

7 **I. THE COURT LACKS SUBJECT MATTER JURISDICTION.**

8 **A. GEO’s *Yearsley* Defense Is Proper Under Rule 12(b)(1).**

9 At the start of their Opposition (“Opp.”) to GEO’s Motion, Plaintiffs argue that this Court
10 must treat GEO’s motion to dismiss for derivative immunity as a motion for summary judgment.
11 Opp., 5-7. Rule 12 requires a court to dismiss any case over which it lacks subject matter
12 jurisdiction. Fed. R. Civ. P. 12(b)(1), (h)(3). While a complaint may show on its face that
13 subject matter jurisdiction is absent, a defendant may adduce facts to do the same. *See, e.g., Tam*
14 *v. United States*, 905 F. Supp. 2d 1221, 1226-27 (W.D. Wash. 2012).
15
16

17 Courts in this district have dismissed claims under Rule 12(b)(1) when the defendant’s
18 evidence showed it was immune from suit. In *Tam*, the court dismissed a claim against the
19 United States Forest Service (“USFS”). There, the plaintiffs alleged that USFS could be sued
20 under the Federal Tort Claims Act (“FTCA”), while USFS claimed it was immune under the
21 FTCA’s discretionary function exemption. *Id.* at 1226-29. To decide the issue, the court relied
22 on not only the statutes and regulations that controlled USFS’s actions but also its own internal
23 documents relating to the claim. *See id.* at 1229; 1232-33 (discussing exhibits detailing the
24 agency’s processes). Because this evidence showed that USFS’s actions fell within the FTCA
25 exemption, the court dismissed the claim under 12(b)(1) on immunity grounds. *Id.* at 1235.
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1 Here, dismissal under *Yearsley* is proper under Rule 12(b)(1) for similar reasons.
 2 Plaintiffs' claim turns entirely on GEO's administration of the VWP at NWDC: they claim that
 3 they were (or are) participants in that program, that GEO pays \$1 per day for such participation,
 4 and that GEO violates the MWA by doing so. In its Motion, GEO explained that these
 5 allegations attack conduct that is directly authorized by ICE's national policies and its contract
 6 for NWDC. Mot., 7-14. Just as the court in *Tam* considered internal agency documents without
 7 converting the motion to dismiss into one for summary judgment, so too here: GEO's Motion
 8 relies on no disputed facts.
 9

10
 11 Plaintiffs' argument that this Court cannot decide GEO's motion under Rule 12 because
 12 it is "inextricably intertwined" with the merits of the claim is simply wrong. *See* Opp., 6.
 13 GEO's *Yearsley* defense does not require it to dispute any of Plaintiffs' factual allegations—
 14 though GEO has done so—but only to show that *its accused actions were validly authorized by*
 15 *ICE*. Mot., 7-14. That proof requires nothing but a consideration of governing law and the plain
 16 terms of GEO's contract. And because it is well-settled in Washington—as elsewhere—that
 17 contract interpretation is a question of law, *e.g.*, *Paradise Orchards Gen. P'ship v. Fearing*, 94
 18 P.3d 372, 377-78 (Wash. App. 2004), Plaintiffs' claimed "factual disputes" are nothing but legal
 19 questions that can be decided under Rule 12(b)(1). *See Cunningham v. Gen. Dynamics Info.*
 20 *Tech.*, 888 F.3d 640, 643 (4th Cir. 2018) (affirming 12(b)(1) dismissal for derivative immunity).
 21
 22

23 **B. GEO Is Immune From This Suit Under *Yearsley*.**

24 GEO is immune from this suit because all of the actions that Plaintiffs allege violate the
 25 MWA were validly authorized by ICE. To qualify for immunity under *Yearsley*, a government
 26 contractor must show (1) that the accused actions it took were authorized by the federal
 27

1 government, and (2) that such authorization was validly conferred by the federal government.
 2 Mot., 6 (citing *Cunningham*, 888 F.3d at 646). A contractor’s derivative immunity embodies the
 3 simple rule that when a contractor acts with valid authorization, “there is no liability on the part
 4 of the contractor who simply performed as the Government directed.” *Cunningham*, 888 F.3d at
 5 646 (quoting *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 673 (2016)) (quotations omitted).
 6 Instead, a contractor is only liable when it “violates both federal law **and** the Government’s
 7 explicit instructions.” *Id.* at 647 (quoting *Campbell-Ewald*, 136 S. Ct. at 672 (emphasis added)).
 8

9 Here, derivative immunity bars Plaintiffs’ claim, and Plaintiffs failed to show otherwise.
 10 First, GEO’s administration of the VWP at NWDC is expressly authorized by ICE. Under that
 11 contract’s plain terms, GEO must administer a VWP that complies with the PBNDS. ICE-GEO
 12 Contract, ECF 19, 82. The PBNDS dictates that detainees must be paid at least \$1 per day for
 13 participating. PBNDS 5.8.V.K. GEO complies with these provisions exactly: it offers a VWP
 14 to detainees who then receive \$1 per day for participating. Declaration of Ryan Kimble, ECF 97,
 15 ¶¶ 1.12-1.28 (“Kimble Decl.”). ICE regularly reviews GEO’s VWP to ensure that GEO is doing
 16 just that. Kimble Decl., ¶ 1.27. Consequently, GEO meets the first prong of the *Yearsley* test.
 17

18 Second, ICE validly conferred authority to administer the VWP on GEO. In 1950,
 19 Congress authorized appropriations for INS (now ICE) ¹ “**now and hereafter**” for purposes that
 20 included “payment of allowances ... to aliens, while held in custody under the immigration laws,
 21 for work performed.” 8 U.S.C. § 1555(d) (emphasis added). While Congress directed that the
 22 rate of such allowances “**may be** specified [by Congress] from time to time in the appropriation
 23
 24
 25

26
 27 ¹ ICE inherited all INS functions relating to detention and removal as part of the Homeland Security Act of 2002.
 See 6 U.S.C. §§ 251, 551; *Reorganization Plan Modification For The Dep’t Of Homeland Sec.*, H.R. Doc. No. 108-
 32, at 3 (2003). This plainly covers the appropriations powers granted by 8 U.S.C. § 1555(d).

1 Act involved,” Congress has declined to specify any rate for decades. Congress’s decision *not* to
 2 specify a new rate does not undercut Section 1555. Indeed, the inclusion of the phrase “specified
 3 from time to time” clearly signals that Congress did not intend for the rate to be specified in
 4 every appropriation—if a new rate is not specified, it simply carries over.
 5

6 This is exactly how ICE itself has always understood Section 1555. Tracey Valerio, who
 7 served as ICE’s Executive Associate Director until April of this year, used the \$1 rate—
 8 Congress’s most recent—in drafting budgets. *See generally* Valerio Decl. Congress approved
 9 budgets based on this understanding. *Id.* ¶¶ 8-10. Consequently, reading Section 1555(d) to
 10 require rate-setting in every appropriation not only renders the phrase “from time to time”
 11 superfluous and nullifies “may” entirely, it is also completely incompatible with Congress’s
 12 approval of ICE’s budgets well beyond 1980. Thus, ICE validly conferred authority on GEO to
 13 administer the VWP at the rate set by Congress, and *Yearsley*’s second prong is satisfied.
 14
 15

16 This result comports exactly with the Fourth Circuit’s holding in *Cunningham* just a few
 17 months ago. There, as here, the defendant’s contract with the federal government authorized it to
 18 do something that allegedly violated the law. 888 F.3d at 647. But the Fourth Circuit held that
 19 the defendant was immune from suit: the first prong of the *Yearsley* test was satisfied because
 20 the defendant’s federal contract authorized the very practice that formed the basis of the
 21 plaintiff’s complaint, and the second prong was satisfied because the federal government was
 22 statutorily authorized to communicate the information to people like the plaintiff and could
 23 delegate that authority to the defendant. *Id.* Crucially, the Fourth Circuit found it irrelevant that
 24 the contractor could have complied with its contract and with federal law by performing its own
 25 investigation, since the contract did not require it to do so. *Id.* Instead, the “purpose of *Yearsley*
 26
 27

1 immunity is to prevent a government contractor from facing liability for an alleged violation of
 2 law, and thus, it cannot be that an alleged violation of law per se precludes *Yearsley* immunity.”
 3 *Id.* at 648-49. *Yearsley* applied even if performance of the contract did violate federal law; the
 4 crucial fact was that the defendant did not violate **both** federal law **and** its contract. *Id.*
 5

6 So too here. ICE’s contract authorizes GEO to operate a VWP, subject to the condition
 7 that detainees are paid at least \$1 per day, and the limitation that GEO not pay in excess of \$1
 8 per day without ICE approval. ICE’s authority to contract for detention services is undisputed,
 9 and, as explained above, Section 1555(d) gives DHS/ICE discretion to use its funds to pay
 10 allowances to detainees for work performed. ICE has delegated administration of such a
 11 program to GEO at NWDC, and detainees are paid for their participation from ICE’s federal
 12 appropriation through a pass-through trust account. Kimble Decl., ¶ 1.28. Consequently, GEO
 13 meets both prongs of the *Yearsley* immunity test, and the Court lacks subject matter jurisdiction.
 14
 15

16 **1. Plaintiffs Fail To Show That GEO’s Actions Are Unauthorized.**

17 Plaintiffs argue first that GEO’s administration of the VWP is not authorized by ICE
 18 because ICE did not explicitly dictate that GEO should pay **only** \$1 per day. Plaintiffs argue that
 19 GEO “attempts to convert the ‘reimbursement’ rate of \$1 per day per worker that ICE agrees to
 20 pay GEO into a federal authorization for GEO to pay detained immigrants the same amount.”
 21 *Opp.*, 8. Plaintiffs also recite their argument that ICE’s contract merely sets a minimum VWP
 22 payment and does not prevent GEO from paying detainees more than that amount. *Opp.*, 9.
 23

24 These points are irrelevant because *Yearsley* requires a contractor to prove only that its
 25 actions were **authorized** by the federal government. As *Cunningham* makes clear, a federal
 26 contractor that complies with the terms of its contract is immune from suit even if it might have
 27

1 avoided an alleged violation of law by some further action. 888 F.3d at 647 (contractor’s
 2 requirement to “follow applicable laws” did not undercut immunity when it was not directed or
 3 expected to take further steps to comply with federal law). GEO is authorized to administer the
 4 VWP at NWDC under the precise terms that Plaintiffs allege violates state law. ICE-GEO
 5 Contract, 82. Even if that contract merely sets a “floor” and not a ceiling—which it does not—
 6 that “floor” nonetheless authorizes GEO to do exactly what it has done: administer a VWP in
 7 which detainees receive \$1 per day. Valerio Dec. That is all that is needed to satisfy *Yearsley*.
 8

9
 10 Plaintiffs’ argument that ICE’s contract subjects the VWP to “applicable state and local
 11 labor laws and costs [sic],” Opp., 8, does not change this outcome because it relies on an
 12 impossible construction of ICE’s contract. The provision Plaintiffs cite is not part of the VWP
 13 provision and does thus not establish that any state labor laws *are* applicable to the VWP, and
 14 many other terms of the contract make such a conclusion impossible. In the VWP provision
 15 itself, ICE distinguishes between VWP participants and employees. ICE-GEO Contract, 82.
 16 Since VWP participants are not employees, the MWA is not an “applicable state ... labor law[.]”
 17 with respect *to detainees*, even if it may be applicable to GEO’s employment of corrections
 18 officers, wardens, and the like. ICE’s contract also expressly incorporates the PBNDS, which
 19 subject the VWP only to “state and local *work safety* laws and regulations.” PBNDS, 5.8.II.5
 20 (emphasis added); *see also id.* at 5.8.V.N (identifying specific laws and regulations). The
 21 PBNDS’s inclusion of specific codes shows exactly what laws ICE considers to be “applicable”
 22 to the VWP, and they do *not* include state minimum wage laws. Indeed, the payment of “at least
 23 \$1 per day” is inconsistent with any state minimum wage anywhere and ICE would have notified
 24 GEO it was underpaying if ICE intended minimum wage to apply. *See* Kimble Decl., ¶¶ 1.27.
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1 ICE's contract not only prohibits GEO from employing unauthorized aliens but also
 2 requires GEO's employees to be lawful permanent residents for at least five years. ICE-GEO
 3 Contract, 63. That limitation excludes all detainees from being GEO's employees. *See* GEO's
 4 Mot. to Deny Class Certification, ECF 69, 3-8, Valerio Decl. Thus, there is no reading of the
 5 contract that requires GEO to comply with "state and local labor laws and codes" **with respect to**
 6 **detainees who participate in the VWP**. Violating **both** the contract terms **and** the MWA are
 7 necessary to avoid *Yearsley* immunity. *See Cunningham*, 888 F.3d at 647. Thus, Plaintiffs'
 8 claim is barred.
 9
 10

11 Plaintiffs' attempts to distinguish *Cunningham* also fail. They argue that GEO is not like
 12 the contractor in *Cunningham* because here "the federal government has not set, authorized, or
 13 approved a specific rate of pay for GEO to compensate detained immigrants at the NWDC."
 14 Opp., 10. This claim is simply untrue. ICE requires GEO to administer a VWP that complies
 15 with the PBNDS, which authorizes any pay rate that is "at least \$1 per day." PBNDS 5.8.V.K.
 16 ICE pays \$1 per day in its own facilities, and the cost is linked to ICE's federal appropriation.
 17 Valerio Decl. ¶¶ 8-10. Thus, the federal government **has** authorized the \$1 pay rate at NWDC.
 18 Plaintiffs themselves allege that GEO "pays each detainee worker only \$1 per day." First Am.
 19 Compl., ECF 84, ¶ 4.7. Thus, GEO complies with the federal government's authorization.
 20
 21

22 Plaintiffs' sole Ninth Circuit case is irrelevant because it predates the Supreme Court's
 23 decision in *Campbell-Ewald*. *See* Opp., 10 (citing *Cabalce v. Thomas E. Blanchard & Assocs.*,
 24 *Inc.*, 797 F.3d 720 (9th Cir. 2015)). In *Campbell-Ewald*, the Supreme Court criticized the Ninth
 25 Circuit's construction of *Yearsley* as too narrow and emphasized that *Yearsley* considers only
 26 whether "the contractor's performance [is] in compliance with all federal directions." 136 S. Ct.
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1 663, 673 n.7. In *Campbell-Ewald*, the Supreme Court agreed that *Yearsley* did not apply because
 2 the plaintiff presented evidence that the defendant *violated* its federal directions. *Id.* at 673-74.
 3 Plaintiffs have not credibly claimed that GEO violated ICE’s directions. And Ninth Circuit case
 4 law predating *Campbell-Ewald* is not good law to the extent it conflicts with *Campbell-Ewald*.
 5

6 *Salim v. Mitchell*, 268 F. Supp. 3d 1132 (E.D. Wash. 2017) is easily distinguishable. The
 7 plaintiffs asserted tort claims against two independent contractors who had helped design an
 8 interrogation program that amounted to torture. *Id.* at 1135-36. The district court found the
 9 *Yearsley* the defense could not be settled on summary judgment because the evidence tended to
 10 show that the *defendants* designed the program and encouraged *the CIA* to adopt it. *Id.* at 1149-
 11 50. Here, the plain terms of GEO’s contract with ICE explicitly authorize—and even require—
 12 GEO to administer the VWP in compliance with ICE’s own PBNDS. Plaintiffs have never
 13 alleged that GEO acts or acted contrary to ICE’s direction; their theory is that following ICE’s
 14 standards violates the MWA. That theory brings their claim squarely within *Yearsley*.
 15
 16

17 **2. Plaintiffs Fail To Show That GEO’s Authorization Was Invalid.**

18 Like their attack on GEO’s authorization to administer the VWP, Plaintiffs’ attack on
 19 ICE’s ability to validly authorize administration of the VWP relies on an impossible reading of
 20 federal law. They argue that ICE cannot have “validly conferred” authorization on GEO to
 21 administer the VWP because Congress kept for itself “the question of how much to pay
 22 [detainees].” *Opp.*, 12-15. They infer that ICE has no discretion to set rate of pay. *Id.* at 13-15.
 23

24 The statutory language could hardly be clearer: “Appropriations now or hereafter
 25 provided for the Immigration and Naturalization Service shall be available for . . . (d) payment of
 26 allowances (at such rate as may be specified from time to time in the appropriation Act involved)
 27

1 to aliens, while held in custody under the immigration laws, for work performed[.]” 8 U.S.C. §
 2 1555(d). Thus, “now and hereafter,” Congress authorizes appropriations to INS (and now ICE)
 3 to be available for payment of allowances for detainee work. Congress “*may*” specify a rate
 4 “*from time to time*” in its appropriation acts. *Id.* (emphasis added). Thus, ICE may and did use
 5 its appropriated to pay allowances to detainees at the most recent rate set by Congress.
 6

7 Congress’s 1980 appropriations bill shows this principle in full force. While Congress
 8 specified an allowance rate in its 1979 appropriation, it did not do so in 1980, instead omitting all
 9 mention of detainee allowances. *Compare* Dep’t of Justice Appropriations Act, 1979, Pub. L.
 10 No. 95-431, 92 Stat. 1021, 1027 (Oct. 10, 1978) (“payment of allowances (at a rate not in excess
 11 of \$1 per day) to aliens”) *with* Dep’t of Justice Appropriations Act, 1980, Pub. L. No. 96-68, 93
 12 Stat. 416 (Sept. 24, 1979). Were Plaintiffs correct that Congress’s decision to not specify a rate
 13 means that ICE has no discretion to spend appropriated funds under Section 1555, then the
 14 language allowing ICE to use its appropriations for the purpose of paying allowances would be
 15 meaningless: since 1980, INS/ICE had authority to use its appropriations to pay allowances to
 16 detainees but could not do so because Congress had not established a rate for them. That is not a
 17 plausible reading of Section 1555 or of Congress’s appropriations acts. Valerio Decl. ¶¶ 4-10.
 18
 19
 20

21 The only possible interpretation of these laws is that Congress has the ability to revise the
 22 authorized allowance rate at its discretion, which it may exercise “from time to time.” Here, that
 23 rate is “not in excess of \$1 per day.” *See* 92 Stat. 1021, 1027. GEO is specifically instructed not
 24 to exceed the \$1 per day threshold without ICE’s consent. ICE-GEO Contract, 16. Thus, ICE
 25 has validly conferred on GEO the authority to administer the VWP at a rate of \$1 per day.
 26

27 Finally, to the extent Plaintiffs allege that their claim can survive *Yearsley* because VWP

1 payments are different at other facilities, that argument fails. *See* Opp., 5 n.3, Exhs. A-C.
 2 *Yearsley* applies when a defendant’s accused conduct complied with the government’s direction.
 3 *Campbell-Ewald*, 136 S. Ct. at 673 & n.7; *Cunningham*, 888 F.3d at 647 (noting that a contractor
 4 is not immune when it “violates both federal law *and* the Government’s explicit instructions”)
 5 (emphasis added). Assuming *arguendo* that Plaintiffs’ evidence shows that VWPs may work
 6 differently at other facilities, such differences show only that ICE exercises discretion when it
 7 authorizes VWPs. But ICE’s decision to authorize other practices at other facilities simply has
 8 no bearing on whether GEO is immune from this suit arising from the VWP at NWDC.
 9
 10

11 **II. GEO’S REMAINING ARGUMENTS DESERVE CONSIDERATION.**

12 Plaintiffs do not meaningfully respond to any of the remaining arguments GEO raised in
 13 its Motion. *See* Opp., 15-17. Instead, they argue that the Court’s rulings on a superseded
 14 complaint are “law of the case” and attempt to incorporate prior briefs. *Id.* The first contention
 15 is plainly wrong, and the second is inappropriate. GEO was entitled to move to dismiss on all
 16 grounds that apply to this case, and it is entitled to the Court’s consideration of each.
 17

18 **A. GEO’s Defenses Are Not Barred By Law Of The Case.**

19 An amended complaint supersedes the original complaint. *Barnes v. Sea Hawaii Rafting,*
 20 *LLC*, 889 F.3d 517, 531 (9th Cir. 2018). Here, this Court has issued no order that the FAC has
 21 stated a claim on which relief may be granted. *See, e.g., Janis v. United States*, 2011 WL
 22 4738315, at *2 (E.D. Cal. Oct. 6, 2011) (amended complaint mooted prior allegations and thus
 23 any rulings as to whether a claim had been stated). Absent an express entry of a final judgment,
 24 all orders of a district court are “subject to reopening at the discretion of the district judge.” *Cf.*
 25 *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 12 (1983); Fed. R. Civ. P.
 26
 27

1 54(b). The Court's interlocutory orders do not become law of the case, and the Court can decide
 2 the novel issues presented here on different grounds. *See, e.g., Rezek v. City of Tustin*, 2014 WL
 3 3347860, at *2 (C.D. Cal. July 3, 2014). GEO's dismissal arguments deserve consideration here.
 4

5 **B. Plaintiffs' Claim Is Preempted.**

6 In its prior Order, this Court held that Plaintiffs' claim could continue because Congress
 7 had not occupied the field of detainee *wages*. Order, ECF 28, at 9. The proper field of
 8 regulation is detainee *employment*, Mot. 14-16, which Congress regulates. 8 U.S.C. § 1324a.
 9 IRCA's regulations show that work authorization terminates when removal proceedings are
 10 instituted and that lawful permanent resident status terminates when a final removal order issues.
 11 8 C.F.R. §§ 274a.14, 1001.1(p). Thus, detainees at NWDC are categorically unauthorized to
 12 work. That result, coupled with Congress's explicit authorization of allowances—not wages—to
 13 detainees, 8 U.S.C. § 1555(d), shows that Congress has occupied the field of detainee
 14 *employment* and left no room for state law to establish an employment relationship here.
 15
 16

17 This Court also held that conflict preemption was premature because it relied on factual
 18 determinations regarding detainees' work authorization. Order, 12. However, applying state
 19 wage law here would raise an unavoidable conflict with or obstacle to IRCA because detainees
 20 are *all* without work authorization. Mot. 16-18. Plaintiffs do not allege or show otherwise.
 21

22 **C. Plaintiffs Have Stated No Claim Under The MWA.**

23 This Court previously held that the MWA can apply to federal immigration detainees
 24 because the MWA includes no express exemption that covers them. Order, 13-14. GEO's
 25 Motion explains that the MWA's existing exemptions for people detained in state facilities,
 26 coupled with the State's failure to take any action to enforce the MWA against GEO regarding
 27

1 the VWP, show that the MWA, like the FLSA, was not intended to apply here. Mot. 18-20.

2 **D. ICE Is Indispensable To This Case.**

3 The Court previously held that ICE was not a required party to this case because the case
4 could “arguably” result in “harmony between GEO’s contractual obligation and complying with
5 the MWA.” Joinder Order, ECF 67, 3-8. But if this Court finds that detainees at NWDC are
6 GEO’s employees, then GEO likely cannot comply with its duty to administer the VWP and its
7 prohibitions on employing detainees or unauthorized aliens. *Compare* ICE-GEO Contract, 82
8 (VWP required) *with id.* at 63 (employing aliens prohibited).² Similarly, GEO’s contract
9 mandates that “Detainees shall not be used to perform the responsibilities or duties of an
10 employee of the Contractor.” *Id.* at 82. If detainees become GEO’s employees by participating
11 in the VWP, compliance with this requirement is rendered impossible. The Court held that this
12 problem “appear[ed] to be beyond the issues raised by the Complaint,” Joinder Order, 8, which,
13 respectfully, does not explain how a judgment in Plaintiffs’ favor can avoid subjecting GEO to
14 inconsistent obligations. Finally, the Court held that even were ICE a required party, the case
15 could continue justly without joining it. *Id.* at 9-10. But this case is just like *EEOC v. Peabody*
16 *Western Coal Co.*, 610 F.3d 1070 (9th Cir. 2010), in which the Ninth Circuit dismissed a claim
17 against a private lessee when plaintiffs sought damages for its compliance with a provision in its
18 lease that the federal government had required. Mot. 24. Plaintiffs’ claim is no different.

23 **CONCLUSION**

24 The Court should grant GEO’s Motion and dismiss this case with prejudice.

26
27 ² This is consistent with the federal prohibition on ICE both from using appropriated funds to pay, and from hiring,
non-citizens as federal employees, without granting a specific exception. *See* Exec. Order No. 11935, 41 Fed. Reg.
37,301 (Sept. 2, 1976); DHS Management Directive 3120.2, *Employment of Non-Citizens* (Mar. 22, 2004).

1 Dated: July 20, 2018

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22 GEO GROUP, INC.**

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28 NWAUZOR et al. v. THE GEO GROUP, INC.
ECF CASE NO. 3-17-cv-05769
REPLY IN SUPPORT OF GEO'S MOTION TO DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT

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CERTIFICATE OF SERVICE

I, Joseph Fonseca, hereby certify as follows:

I am over the age of 18, a resident of Pierce County, and not a party to the above action. On July 20, 2018, I electronically filed the above GEO’s Reply In Support of Its Motion to Dismiss Plaintiffs’ First Amended Complaint, with the Clerk of the Court using the CM/ECF system and served via Email to the following:

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I certify under penalty of perjury under the laws of the State of Washington that the above information is true and correct.

DATED this 20th day of July, 2018 at Fircrest, Washington.



Joseph Fonseca, Paralegal

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