

The Honorable Robert J. Bryan

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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

Plaintiffs,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant.

No. 17-cv-05769-RJB

Plaintiffs' Opposition to Defendant's
Motion to Exclude Expert Testimony of
Christopher Strawn

Plaintiffs Ugochukwu Goodluck Nwauzor and Fernando Aguirre-Urbina respond to Defendant The GEO Group Inc.'s Motion to Exclude Expert Testimony of Christopher Strawn as follows:

INTRODUCTION

Plaintiffs wish to introduce the testimony of expert Christopher Strawn in order to assist the jury in understanding the complex system of immigration laws, policies, and procedures that has caused them to become detained at Defendant's facility. Mr. Strawn's testimony is both relevant and reliable, and should be admitted under Federal Rule of Evidence 702.

1 A. Mr. Strawn's testimony should be admitted because it is relevant.

2 When assessing relevance, the ultimate question is whether the testimony will "assist
3 the trier of fact to understand the evidence or to determine a fact in issue." *Daubert v. Merrell*
4 *Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 591 (1993) (quoting F.R.E. 702) (internal quotations
5 omitted). "In the Ninth Circuit, '[t]he general test regarding the admissibility of expert
6 testimony is whether the jury can receive 'appreciable help' from such testimony.'" *Easton v.*
7 *Asplundh Tree Experts, Co.*, No. C16-1694-RSM, 2017 WL 4005833, at *4 (W.D. Wash. Sept.
8 12, 2017) (quoting *United States v. Gwaltney*, 790 F.2d 1378, 1381 (9th Cir. 1986)).

9 The Defendant argues that Mr. Strawn's testimony is "irrelevant to the issues that will
10 be before a jury," namely, whether detainees are employees under the Washington Minimum
11 Wage Act. Dkt. #219 at p. 3. Far from being irrelevant, however, Mr. Strawn's testimony is
12 necessary to allow the jury to fully understand the evidence. Immigration law underlies the
13 entire case. Comprehending, for example, why the Plaintiffs are housed at Defendant's facility
14 requires a basic knowledge of the notoriously complex U.S. immigration system. "With only a
15 small degree of hyperbole, the immigration laws have been termed 'second only to the Internal
16 Revenue Code in complexity.' [] A lawyer is often the only person who could thread the
17 labyrinth." *Castro-O'Ryan v. U.S. Dep't of Immigration & Naturalization*, 847 F.2d 1307, 1312
18 (9th Cir. 1987) (citing E. Hull, *Without Justice For All* 107 (1985)). Mr. Strawn's testimony will
19 provide necessary background information which is outside the scope of the general knowledge
20 and experience of an ordinary layperson. As a result, he will provide "appreciable help" to the
21 jury and his testimony should be admitted.¹

22 1 Plaintiffs note that although Defendant now appears to concede that Plaintiffs' ability to
23 become work authorized is irrelevant, it has previously argued otherwise. In Defendant's
24 Motion to Dismiss Plaintiffs' First Amended Complaint, Dkt. #91, GEO argued for conflict
preemption because it said that Washington's Minimum Wage Act conflicts with the

1 B. Mr. Strawn's testimony should be admitted because it is reliable.

2 Federal Rule of Evidence 702 provides that expert testimony is admissible when the
3 witness is "qualified as an expert by knowledge, skill, experience, training, or education." The
4 rule "expressly contemplates that an expert may be qualified on the basis of experience. In
5 certain fields, experience is the predominant, if not sole, basis for a great deal of reliable expert
6 testimony." FRE 702 advisory committee's note to 2000 amendment. Mr. Strawn graduated
7 from Harvard Law School and has been practicing immigration law for approximately 17 years.
8 In addition to his work as a staff attorney at the Northwest Immigrant Rights Project, Mr.
9 Strawn directs the Immigration Law Clinic at the University of Washington School of Law.
10 Dkt. #220-1 p. 1. Mr. Strawn permissibly bases his testimony in large part on this experience.
11 Strawn Dep. 21:17.

12 The Defendant argues on the one hand that Mr. Strawn's testimony is completely
13 irrelevant to the issues in this case, while on the other hand it argues that he is impermissibly
14 rendering legal opinions on ultimate issues. Dkt. #219 p. 4. Defendant is wrong on both counts.
15 Mr. Strawn's testimony provides important background information on the laws, policies, and
16 procedures governing the U.S. immigration system. While it may contain some legal
17 conclusions, these conclusions do not tell the jury how it must decide the ultimate issues of the
18 case. Plaintiffs acknowledge that "when the purpose of [expert] testimony is to direct the jury's
19 understanding of the legal standards *upon which their verdict must be based*, the testimony

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21 execution of the Immigration Reform and Control Act's "comprehensive prohibition on alien
22 employment." Dkt. #91 at p. 23. GEO states that this prohibition "prevents [it] from
23 employing any detainee who lacks work authorization, which plainly includes many, if not
all, detainees at [the Northwest Detention Center]." *Id.* Plaintiffs have no guarantee that the
Defendant will not take up such an argument again in the future. Therefore, Mr. Strawn's
testimony is relevant.

1 cannot be allowed. In no instance can a witness be permitted to define *the law of the case.*”
2 *Specht v. Jensen*, 853 F.2d 805, 810 (10th Cir. 1988) (emphasis added). Mr. Strawn’s testimony
3 does not speak to the legal standards governing Washington’s Minimum Wage Act. He does not
4 provide an expert opinion regarding whether the Plaintiffs are employees of GEO. His
5 testimony is instructive rather than prescriptive, and should be permitted to assist the jury.

6 In addition, the legal conclusions reached by Mr. Strawn are permissible because they
7 educate the jury regarding general principles of immigration law. “[A] witness may refer to the
8 law in expressing an opinion without that reference rendering the testimony inadmissible.
9 Indeed, a witness may properly be called upon to aid the jury in understanding the facts in
10 evidence even though reference to those facts is couched in legal terms.” *Specht*, 853 F.2d at
11 809. When assessing reliability in the context of “the venerable practice of using expert
12 testimony to educate the factfinder on general principles . . . Rule 702 simply requires that: (1)
13 the expert be qualified; (2) the testimony address a subject matter on which the factfinder can
14 be assisted by an expert; (3) the testimony be reliable; and (4) the testimony ‘fit’ the facts of the
15 case.” FRE 702 advisory committee’s note to 2000 amendment. “The expert’s testimony must
16 be grounded in an accepted body of learning or experience in the expert’s field, and the expert
17 must explain how the conclusion is so grounded.” *Id.* (citing American College of Trial
18 Lawyers, *Standards and Procedures for Determining the Admissibility of Expert Testimony*
19 *after Daubert*, 157 F.R.D. 571, 579 (1994)).

20 Transactional Records Access Clearinghouse (“TRAC”) data is reasonably relied upon
21 by experts in the field of immigration law. For example, TRAC’s data is cited by Circuit Courts
22 in numerous published opinions. *See C.J.L.G. v. Barr*, 923 F.3d 622, 630 (9th Cir. 2019); *Islas -*
23 *Veloz v. Whitaker*, 914 F.3d 1249, 1252 (9th Cir. 2019); *Genego v. Barr*, 922 F.3d 499, 502 n.2

1 (2d Cir. 2019); *Hu v. Holder*, 579 F.3d 155, 159 (2d Cir. 2009); *L.D.G. v. Holder*, 744 F.3d
2 1022, 1032 (7th Cir. 2014); *J. E. F.M. by & through Ekblad v. Whitaker*, 908 F.3d 1157, 1165
3 n.9 (9th Cir. 2018); *Galarza v. Szalczyk*, 745 F.3d 634, 646 n.1 (3d Cir. 2014); *Enying Li v.*
4 *Holder*, 738 F.3d 1160, 1171 (9th Cir. 2013); *Guerrero-Sanchez v. Warden York Cty. Prison*,
5 905 F.3d 208, 226 n.14 (3d Cir. 2018); *United States v. Castro-Verdugo*, 750 F.3d 1065, 1074
6 (9th Cir. 2014). While the TRAC data may have limitations, just like any other data, this does
7 not make it an inappropriate source for Mr. Strawn to consult in order to provide general
8 information about the immigration system to the jury. Any limitations simply go to the weight
9 that the jury may give his testimony, not to its admissibility.

10 Finally, GEO will have ample opportunity to cross-examine Mr. Strawn about his
11 knowledge and experience, and he should not be required to disclose the names of the clients
12 from which he has drawn his experience. Such information is both protected, *see* Wash. Rule of
13 Professional Conduct 1.6, and irrelevant to the expertise of the witness.

14 CONCLUSION

15 Because Mr. Strawn's testimony is both relevant to provide the jury with an overview of
16 U.S. immigration law, and reliable due to his years of experience representing noncitizen
17 clients at the very facility that is the subject of this litigation, this Court should deny
18 Defendant's motion to exclude his expert testimony.

1 Respectfully submitted this 13th day of January, 2020.

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Certificate of Service

I certify that on January 13, 2020, I electronically filed the foregoing document, together with all attachments, with the Clerk of the Court for the Western District of Washington using the CM/ECF system, which will send notification of such filing to the following:

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