

The Honorable Robert J. Bryan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

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

Plaintiffs/Counter-Defendants,

v.

THE GEO GROUP, INC.,

Defendant/Counter-Claimant.

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

**DEFENDANT THE GEO GROUP, INC.'S
REPLY IN SUPPORT OF MOTION TO
EXCLUDE EXPERT TESTIMONY OF
CHRISTOPHER STRAWN**

NOTE ON MOTION CALENDAR:
Date: January 17, 2020

1 Pursuant to Local Rule 16(b)(4) and Federal Rule of Evidence 702, The GEO Group, Inc.
 2 (“GEO”) respectfully submits its reply in support of its motion to exclude the expert testimony of
 3 Christopher Strawn.

4 INTRODUCTION

5 In their response, Plaintiffs claim that “[i]mmigration law underlies the entire case.” ECF
 6 236 at 2. Yet, Plaintiffs' *only* claim is this case is whether detainees are “employees” under
 7 Washington law. RCW 49.46.010; ECF 1. While Plaintiffs argue that “[c]omprehending, for
 8 example, why the Plaintiffs are housed at Defendant’s facility requires a basic knowledge of the
 9 notoriously complex U.S. immigration system,” this is clearly not true. ECF 236 at 2. A
 10 layperson can easily comprehend that some individuals are detained pending immigration
 11 proceedings—without expert testimony. In fact, this is the frequent subject of news articles and
 12 other publications addressing immigration policy in this country. And, *why* individuals are
 13 detained plays no role whatsoever in whether they are considered employees or not. Plaintiffs'
 14 response fails to provide any explanation why this information is relevant at all to their claim
 15 under the Washington Minimum Wage Act. Put simply, the intricacies of the U.S. immigration
 16 system are not relevant to the issues that will be presented at trial. Accordingly, under Federal
 17 Rule of Evidence 702, Mr. Strawn’s testimony should be excluded.

18 ARGUMENT

19 **A. Mr. Strawn’s Testimony is not Relevant.**

20 “[A]n expert’s testimony must ‘logically advance[] a material aspect of the party’s
 21 case.’ *Easton v. Asplundh Tree Experts, Co.*, No. C16-1694RSM, 2017 WL 4005833, at *4
 22 (W.D. Wash. Sept. 12, 2017). “Expert testimony which does not relate to any issue in the case is
 23 not relevant, and, ergo, non-helpful.” *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 591
 24 (1993). Here, Mr. Strawn's summary of the U.S. immigration system is not relevant to whether
 25 individuals are “employees” under RCW 49.46.010.

26 Plaintiffs recently submitted their summary judgment briefing, and in it, they made clear
 27 that their only claim for trial is whether detainees are employees. ECF 221. Their motion for

1 summary judgment relies upon a number of factors, none of which involve a detainee's
2 immigration status or reason underlying detention. *Id.* Indeed, Mr. Strawn's report is not cited,
3 nor is its subject matter referenced. Furthermore, at the recent pretrial conference, Plaintiffs'
4 counsel explained that, to prove their case, they would introduce testimony of GEO employees
5 and detainees. They did not mention the need for any testimony about the contours of the
6 immigration system. Thus, his testimony is clearly not relevant to Plaintiffs' claim.

7 Nevertheless, Plaintiffs provide a *single* reason for why they believe Mr. Strawn's
8 opinions are relevant in this case. They argue that Mr. Strawn's testimony is "necessary to allow
9 the jury to fully understand the evidence," including specifically "why the Plaintiffs are housed
10 at Defendant's facility." ECF 236 at 2. Yet, in spite of this contention, Mr. Strawn's opinion does
11 not do anything to explain *why* individuals are detained. Rather, it presupposes that they are,
12 stating that "[d]etained persons at NWDC await legal proceedings to determine whether they will
13 be deported . . ." Dec. of Barnacle, Ex. 1 at 3. Mr. Strawn in no way explains *why* an individual
14 might be detained. *Id.* Likely, Mr. Strawn intentionally omitted this information, as in many
15 cases, the reason for an individual's detention may involve criminal charges or other background
16 information that is not relevant to whether those individuals are "employees," and would serve
17 only to inflame the jury. Thus, Plaintiffs' proffered reason for Mr. Strawn's testimony is
18 unpersuasive. Even if Mr. Strawn provided information about why individuals are detained, it
19 would not be relevant to whether they are employees under the Washington Minimum Wage
20 Act.

21 In a footnote, Plaintiffs make a conclusory argument that Mr. Strawn's testimony is
22 relevant to whether, as a matter of law, GEO could hire detainees. This misstates Mr. Strawn's
23 testimony. Mr. Strawn provides no opinion about whether detainees are eligible to work for
24 GEO, a federal contractor. Nor does Mr. Strawn offer any opinion about what effect obtaining a
25 work permit would have on a detainee's ability to work while confined. *See* Dec. of Barnacle,
26 Ex. 1, at 6. In fact, Mr. Strawn instead states that "very few detainees ever apply for work
27 authorization while detained because they are not able to work outside the NWDC." *Id.* Indeed,

1 Mr. Strawn's report does not support Plaintiffs' statement that GEO could lawfully hire detainees
2 as employees. *Id.* Thus, Mr. Strawn's report is wholly irrelevant and should be excluded.

3 **B. Mr. Strawn's Testimony Will Confuse a Jury.**

4 Instructing the jury as to the law is in the "distinct and exclusive province of the Court."
5 *Nationwide Transp. Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *see also*
6 *Davis v. Mason County*, 927 F.2d 1473 (9th Cir. 1991). In purporting to be a legal authority on
7 whether immigrants may be "work authorized," Mr. Strawn's testimony is likely to confuse a
8 jury tasked with determining whether detainees are considered "employees" under Washington
9 law. Certainly, testimony from an attorney that various individuals could be work authorized,
10 and therefore an employee generally, is likely to mislead a jury. *Hufnagel v. McGraw-Hill*
11 *Companies, Inc.*, No. 2:12-CV-0579-SAB, 2014 WL 12527209, at *6 (E.D. Wash. July 24,
12 2014) ("[T]he district court should exclude otherwise admissible expert testimony if it would
13 confuse or mislead the jury").

14 Further, Mr. Strawn's analysis is not related at all to Washington law, but instead
15 focuses on federal laws. As federal employment laws have not been raised in this case, the
16 jury will not be instructed on any differences between federal law and Washington law, or on
17 federal law at all. And, providing the jury with expert testimony that various individuals are
18 or could be "work authorized" under federal law will likely confuse the issues. Indeed, a jury
19 could easily interpret "work authorized" to be a synonymous with being an "employee"
20 under Washington law. This is particularly true where, as here, the expert is an attorney who
21 the jury may believe will provide an authoritative interpretation of the law. *Specht v. Jensen*,
22 853 F.2d 805, 808–09 (10th Cir. 1988) ("While other experts may aid a jury by rendering
23 opinions on ultimate issues, our system reserves to the trial judge the role of adjudicating
24 the law for the benefit of the jury."). Accordingly, Mr. Strawn's opinions should be
25 excluded because they would serve no purpose other than to confuse the jury.

26 ///

27 ///

1 **C. Mr. Strawn Must Produce Facts that Form the Basis for His Opinion.**

2 In his own words, Mr. Strawn was asked to provide an opinion about “specifically my
3 experiences at the Northwest Detention Center.” Dec. of Barnacle, Ex. 1, Strawn 18:13-14. The
4 basis for this testimony was “having represented people throughout my career.” *Id.*

5 Accordingly, insofar as Mr. Strawn based his opinions upon his experiences with
6 individual clients, and those opinions will be admissible at trial, he should be compelled to
7 disclose the identities of those clients and the relevant proceedings which support his
8 conclusions. Fed. R. Civ. P. 26(2)(B)(ii). GEO does not seek privileged information¹ from Mr.
9 Strawn. Instead, it seeks facts underlying his opinions and credibility. GEO is not aware of any
10 basis, and Plaintiffs have not provided any, for withholding this information. Indeed, because
11 GEO does not seek privileged information, this is no different than asking other experts to list
12 prior projects for which they have worked, prior employment, or other prior experience
13 underlying their purported expertise. Indeed, without this information, GEO will be limited in
14 its ability to cross-examine Mr. Strawn about the underlying basis for his opinions.

15 **CONCLUSION**

16 For the foregoing reasons, this Court should grant GEO’s motion to exclude Mr.
17 Strawn’s testimony.

18 ///

19 ///

20 ///

21 ///

22 ///

23 _____
24 ¹ GEO notes that there is a question about whether Mr. Strawn is permitted to claim any privilege at all. “Under
25 Washington law, a stipulation that an attorney’s testimony may be offered at trial waives the attorney-client
26 privilege with respect to that attorney.” *Seattle Nw. Sec. Corp. v. SDG Holding Co.*, 61 Wash. App. 725, 743,
27 812 P.2d 488, 499 (1991); *see also Kammerer v. W. Gear Corp.*, 96 Wash. 2d 416, 420, 635 P.2d 708, 711
(1981)(“[O]ffering an attorney’s testimony concerning matters learned in the course of his employment waives
the attorney-client privilege.”). “[S]uch a waiver cannot be delayed until the trial itself.” *Kammerer*, 96 Wash.
2d at 420.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Respectfully submitted, this 16th day of January, 2020.

By: s/ Colin L. Barnacle

AKERMAN LLP

Colin L. Barnacle (Admitted *pro hac vice*)
Christopher J. Eby (Admitted *pro hac vice*)
Ashley E. Calhoun (Admitted *pro hac vice*)
Adrienne Scheffey (Admitted *pro hac vice*)
Allison N. Angel (Admitted *pro hac vice*)
1900 Sixteenth Street, Suite 1700
Denver, Colorado 80202
Telephone: (303) 260-7712
Facsimile: (303) 260-7714
Email: colin.barnacle@akerman.com
Email: christopher.eby@akerman.com
Email: ashley.calhoun@akerman.com
Email: adrienne.scheffey@akerman.com
Email: allison.angel@akerman.com

By: s/ Joan K. Mell

III BRANCHES LAW, PLLC

Joan K. Mell, WSBA #21319
1019 Regents Boulevard, Suite 204
Fircrest, Washington 98466
Telephone: (253) 566-2510
Facsimile: (281) 664-4643
Email: joan@3brancheslaw.com

Attorneys for Defendant The GEO Group, Inc.

1 **PROOF OF SERVICE**

2 I hereby certify on the 16th day of January, 2020, pursuant to Federal Rule of Civil
3 Procedure 5(b), I electronically filed and served the foregoing **DEFENDANT THE GEO**
4 **GROUP, INC.’S REPLY IN SUPPORT OF MOTION TO EXCLUDE EXPERT**
5 **TESTIMONY OF CHRISTOPHER STRAWN** via the Court’s CM/ECF system on the
6 following:

7 **SCHROETER GOLDMARK & BENDER**

8 Adam J. Berger, WSBA #20714
9 Lindsay L. Halm, WSBA #37141
10 Jamal N. Whitehead, WSBA #39818
11 Rebecca J. Roe, WSBA #7560
12 810 Third Avenue, Suite 500
13 Seattle, Washington 98104
Telephone: (206) 622-8000
Facsimile: (206) 682-2305
Email: hberger@sgb-law.com
Email: halm@sgb-law.com
Email: whitehead@sgb-law.com
Email: roe@sgb-law.com

14 **THE LAW OFFICE OF R. ANDREW FREE**

15 Andrew Free (Admitted *Pro Hac Vice*)
16 P.O. Box 90568
17 Nashville, Tennessee 37209
Telephone: (844) 321-3221
Facsimile: (615) 829-8959
Email: andrew@immigrantcivilrights.com

18 **OPEN SKY LAW PLLC**

19 Devin T. Theriot-Orr, WSBA #33995
20 20415 72nd Avenue S, Suite 100
21 Kent, Washington 98032
Telephone: (206) 962-5052
Facsimile: (206) 681-9663
Email: devin@openskylaw.com

22 **MENTER IMMIGRATION LAW, PLLC**

23 Meena Menter, WSBA #31870
24 8201 164th Avenue NE, Suite 200
25 Redmond, Washington 98052
Telephone: (206) 419-7332
Email: meena@meenamenter.com

26 *Attorneys for Plaintiffs*

27 *s/ Nick Mangels*

Nick Mangels