

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-CV-02887-JLK-MEH

ALEJANDRO MENOCA,
MARCOS BRAMBILA,
GRISEL XAHUENTITLA,
HUGO HERNANDEZ,
LOURDES ARGUETA,
JESUS GAYTAN,
OLGA ALEXAKLINA,
DAGOBERTO VIZGUERRA, and
DEMETRIO VALERGA,
on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC.,

Defendant.

RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL (ECF 181)

Defendant The GEO Group, Inc. ("GEO"), through undersigned counsel, submits this opposition to Plaintiffs' Motion to Compel (ECF 181). First, GEO does not oppose Plaintiffs' request for a second Rule 30(b)(6) deposition. GEO does dispute that Plaintiffs are entitled to a second 30(b)(6) of GEO as a matter of right, but GEO has agreed to allow a second deposition subject to ongoing conferral on reasonable restrictions and modifications to the topics identified in Plaintiffs' Notice of 30(b)(6) deposition. Second, Plaintiff's motion to compel unrestricted videography and photography for the site inspection is not necessary to prove their claims, and is

unduly burdensome because unrestricted videography and photography compromises the safety and security of the Aurora ICE Processing Center (“APC”) and the public, and it compromises the privacy of the detainees and the staff at the APC. A recent escape of three detainees at the APC, one a suspect in a rape investigation, heightens this concern. In addition, in accordance with the Performance Based National Detention Standards (“PBNDS”), GEO does not have authority to grant Plaintiffs what they seek. ICE has informed GEO that it will not authorize videography or photography within the APC because it poses safety, security, and privacy concerns for the detainees and other personnel within the facility, and imposes an undue burden on GEO and ICE. GEO is contractually required to adhere to the PBNDS. In light of these concerns and the lack of relevance of the underlying video and photographs sought, this Court should deny Plaintiffs’ request for videography and photography during the site inspection.

I. Factual Background

A. Defendant Has Proposed a Resolution to Plaintiffs’ Demand for a Second 30(b)(6) Deposition.

Subsequent to the filing of the instant motion, GEO contacted Plaintiffs with a specific proposal regarding Plaintiffs’ Third Notice of 30(b)(6) deposition. *See* Exhibit (“Ex.”) A (June 19, 2019 Brown email to Plaintiffs’ Counsel). GEO offered to further confer with Plaintiffs regarding the topics to be included a 30(b)(6) notice. *Id.* In the correspondence, GEO offered to produce two witnesses covering a large majority of the topics listed in the 30(b)(6) notice. *Id.* Defendant proposed removal of topics that do not directly relate to the claims and defenses in this case or that require GEO to manufacture data, information or analysis that does not exist. Ex. B (Proposed Revisions attached to June 19, 2019 Brown email to Plaintiffs’ Counsel).

Plaintiffs refused Defendant's attempt to resolve the matter. Ex. A.

Prior to the filing of this motion, the parties met and conferred on two occasions regarding whether a second 30(b)(6) notice was proper – on March 29, 2019 and April 26, 2019. See Declaration of Valerie Brown in Opposition to Motion to Compel (“Brown Decl.”) at ¶ 2. During those conferrals, Counsel for GEO asked Plaintiffs for a basis in the record whereby the parties agreed to a second Rule 30(b)(6) deposition. Brown Decl. at ¶ 3. Plaintiffs took the position that GEO's agreement to a Rule 30(b)(6) deposition was not relevant and that Plaintiffs were entitled to a second Rule 30(b)(6) deposition as a matter of legal right pursuant to the Federal Rules. Brown Decl. at ¶ 4. GEO disagreed with Plaintiffs' position on this legal issue. Brown Decl. at ¶ 5. Importantly, Plaintiffs did not refer to any notation in the record where GEO had agreed to a second 30(b)(6) deposition. Brown Decl. at ¶ 6.

B. GEO Cannot Agree to Videography and Photography During the Site Inspection Because of Legitimate Security and Privacy Concerns.

The dispute over Plaintiffs' request for inspection pursuant to Fed. R. Civ. P. 34(a)(2) is limited to whether Plaintiffs can freely video-record and photograph throughout the APC. Requests to tour the APC and to use recording devices inside of the APC are governed by a number of policies related to GEO's role as a contractor for ICE, including GEO's operable contract for services with ICE which incorporates by reference the 2016 revisions to the 2011 PBNDS. Declaration of Assistant Warden Dawn Ceja in Opposition to Motion to Compel (“Ceja Decl.”) at ¶ 4. With respect to tours, the PBNDS states:

Visitors will abide by the policies and procedures of the facility being visited or toured. Visitors must obtain advance permission from the facility administrator and Field Office Director before taking photographs in or of any facility. Detainees have the right not to be photographed (still, movie or video), and not to

have their voices recorded by the media...If the presence of video, film or audio equipment or related personnel poses a threat to the safety or security of the facility, its staff or its detainees, the Field Office Director may limit or prohibit such access. Prior to the tour, the Field Office Director shall explain the terms and guidelines of the tour to the visitors.

Id. at p. 446. In accordance with its contractual obligations to ICE, GEO also has a policy prohibiting third party digital and video recordings of any kind unless the required notifications are made and approval is obtained. This policy does not restrict GEO's operational security procedures. Ceja Decl. at ¶ 5; and Ex. D (GEO Recording Policy). Specific to video-recording, GEO has not allowed video recording to take place within the APC dating back 15 years. Ceja Decl. at ¶ 13.

GEO and ICE have agreed to Plaintiffs' requested site inspection and are providing the same access that would be allowed during a Congressional delegation tour of APC. GEO does not oppose Plaintiffs' request for a site inspection; rather, GEO's concerns rests solely on the unrestricted videography and photography demanded by Plaintiffs during the site inspection. GEO is concerned about the security and privacy risks posed by allowing unrestricted photography and videography during a site inspection of APC, a secure facility that houses detainees that are assigned varying risk classification levels as set forth in the PBNDS. Ceja Decl. at ¶ 3. Allowing unrestricted videography and photography could create security vulnerabilities for APC, which would jeopardize the safety and security of the detainees and staff at APC. Ceja Decl. at ¶ 8. As stated in the PBNDS, if the presence of video, film or audio equipment poses a threat to the safety or security of the facility, its staff or its detainees, the ICE Field Office Director may limit or prohibit such access. Ex. C, at p. 446. ICE has prohibited

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Plaintiffs from taking photos or video, which GEO is contractually required to follow. *See* Ex. E (Letter from John E. Fabbriatore, Acting Denver Field Office Director dated June 20, 2019).

These concerns are heightened at APC because of the recent rapid increase in the number of detainees housed at APC. In the past six months alone, the population at APC has increased by approximately 600 occupants. Ex. E. This has resulted in staffing concerns which necessitates additional, heightened security measures. *Id.* On June 17, 2019, three detainees escaped from APC, including one detainee who is currently a suspect in a rape case. Ex. E; and Ex. F (The Denver Channel News Article titled “Fort Carson rape suspect among 3 detainees who escaped from Aurora ICE Facility”). This further reinforces the need for heightened security at APC, including the prohibition on videography and photography within the facility by guests. Ex. E. Photography and videography presents a significant risk to operational security, including risk of harm to detainees, facility staff, and the public, as it will allow viewers to potentially exploit any perceived weaknesses in operational security. Ceja Decl. at ¶ 8; and Ex. E. ICE has taken the position that the serious risk of harm to detainees, facility staff, and the general public outweighs any benefit of unrestricted photography and videography at the APC. Ex. E.

In addition to the legitimate security concerns, the use of videography and photography also infringes the privacy rights of detainees, particularly those who have sensitive applications for benefits that are confidential pursuant to statutory provisions. *See* 8 U.S.C. § 1367. This provision prohibits disclosure of any information about a detainee who is the beneficiary of or has an application pending for such relief. *Id.* This provision applies to video and photographs that capture any images of a detainee who is the subject of such relief. *Id.* The detainees that

will be impacted by Plaintiffs' video-recording are not part of the certified class, as the class was certified through October 22, 2014. In addition, detainees at the APC have not consented to being photographed and/or video-recorded in this matter. Ceja Decl. at ¶ 18.

The APC staff also has privacy interests implicated by Plaintiffs' request to video-record and photograph throughout the facility. If the APC staff are publicly identified, they and their families face serious risk of harm. Ceja Decl. at ¶ 19; and Ex. E. Hostility towards ICE and, by extension, the APC staff is readily apparent from the protests and demonstrations that have occurred at the APC. Ex. E.

II. Argument

A. GEO has Agreed to a Second 30(b)(6) Deposition and GEO's Proposed Revisions to Plaintiffs' 30(b)(6) Deposition Notice are Reasonable.

Plaintiffs' Motion to Compel a second 30(b)(6) deposition is mooted by GEO's agreement to produce witnesses to testify on the topics set forth in the current 30(b)(6) Notice. While the parties disagree as to whether Plaintiffs are entitled to a second 30(b)(6) as of right under the Federal Rules without leave of court, the issue can be left for another day.

The only issue remaining with respect to Plaintiffs' Rule 30(b)(6) Notice is the scope of topics set forth in the Notice. Because Plaintiffs have indicated that they intend to continue to pursue the Court's resolution of any issues relating to Plaintiffs' Rule 30(b)(6) Notice, GEO has set forth the basis of its proposed revisions to Plaintiffs' Rule 30(b)(6) Notice below. *See* Ex. B.

GEO acknowledges that the current Rule 30(b)(6) does not expressly contemplate an iterative conferral process on deposition topics. However, that process is arguably required by the conferral requirements in Rule 37(a)(1) and Local Rule 7.1(a), as well as the obligation in

Local Rule 30.1 to schedule depositions in a convenient and cost effective manner. Further, the Rules Advisory Committee has proposed an amendment to Rule 30(b)(6) that would expressly require this type of conferral. Ex. G (Excerpts from 2018 Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence, Request for Comment) at pp. 31-38. The Committee explained, *inter alia*, that “[d]iscussion of the number and description of topics may avoid unnecessary burdens” and that “the discussion may be more productive if the serving party provides a draft of the proposed list of matters for examination, which may then be refined as the parties confer.” *Id.* The Committee further noted that process “will often be iterative” and “a single conference may not suffice.” *Id.* In sum, GEO’s process of redlining Plaintiffs’ 30(b)(6) Notice is consistent with the parties’ existing conferral obligations and the Rule Advisory Committee’s comments on best practices.

The relevant period defined by the Notice extends beyond the class period. The class period in this case is from October 22, 2004 through October 22, 2014 for the Class Member claims pursuant to the Trafficking Victims Protection Act; and October 22, 2011 through October 22, 2014 for the Class Member unjust enrichment claim. *See* ECF No. 146 (Amended Stipulated Discovery and Scheduling Order) at p. 2. Thus, there is no basis for requiring GEO to provide testimony on the topics listed through present day. There are also a number of topics within the Notice that extend beyond the merits issues in this case or pose other concerns identified below, and GEO should not be required to provide testimony on those issues.

Topic Number 2 requests testimony on “GEO’s policies and practices relating to discipline for Class Members’ violation of GEO’s rules or regulations during the relevant period ...” ECF No. 181-10 (Plaintiffs’ Third Notice of Rule 30(b)(6) Deposition). Plaintiffs’ claims in

the instant case relate to the application of the Housing Unit Sanitation Policy (“HUSP”) to Class Members and the Class Members’ participation in the Voluntary Work Program (“VWP”). *See* ECF No. 1 (Complaint). Plaintiffs’ request for testimony in Topic 2 is far broader than these subjects and extends to all rules and regulations regardless of whether those rules and regulations relate to the HUSP or the VWP. *See* ECF No. 181-10. GEO is agreeable to providing testimony on Topic 2 so long as it is limited to those rules and regulations that relate to the HUSP or to the VWP. GEO’s proposed tracked changes to Topic 2 reflect this position. Ex. B.

Topic Number 3 requests testimony on “Class Members’ participation in the Voluntary Work Program (VWP) during the relevant period...” ECF No. 181-10. GEO proposed limiting this topic to the APC, as class member participation in the VWP at locations other than the APC is not relevant to the claims and defenses in this instant case because the class is limited to the APC. *See* Ex. B. GEO also proposed clarifying language in the subtopics of Topic 3 to make clear that GEO’s testimony regarding ICE’s policies would be specific to GEO’s interpretation and application of those policies because GEO cannot speak for ICE. *Id.* GEO’s other proposed changes within the subtopics enumerated in Topic 3 are clarifying in nature. *Id.*

Topic Number 4 requests testimony on “[t]he costs and benefits to GEO of using detainee labor under the HUSP and VWP...” ECF No. 181-10. GEO proposed adding language to clarify that the testimony would be limited to the class period and to the APC. *See* Ex. B. Testimony outside of the class period concerning the costs and benefits to GEO of using detainee labor under the HUSP and VWP at other facilities is not relevant to the Class Members’ claims in this case. Within Topic 4, GEO proposed striking subtopics (e) through (h). *Id.* Subtopic (e) requests information regarding current staffing at the APC, which is not relevant to the Class

Members' claims in the instant case, particularly given the substantial recent increase in housing capacity at the APC, which would make any testimony regarding the current staffing levels irrelevant to their claims. ECF No. 181-10. Subtopics (f) and (g) request testimony that would require GEO to make assumptions and speculate about the costs associated with using GEO employees and contractors to perform the tasks performed by Class Members pursuant to the HUSP or the VWP. *Id.* For example, because of the speculative nature of this testimony, which would require GEO to make assumptions about factors including but not limited to facility occupancy, rates of pay, staffing requirements and contract negotiation outcomes, it is not an appropriate topic for a 30(b)(6) deposition and is better suited for expert testimony. *Id.* Finally, subtopic (h) is no longer appropriate for testimony as GEO has withdrawn affirmative defense number 20 on which the request for testimony is based. *See* ECF No. 178.

B. GEO's Security and Privacy Interests Outweighs Plaintiffs' Basis for Unrestricted Videography and Photography of the APC.

Under Rule 26, a party may obtain any non-privileged discovery provided that it is relevant to a party's claim or defense and proportional to the needs of the case, "considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). A party may also request entry onto "property possessed or controlled by the responding party" to inspect or photograph that property, provided that it meets the threshold relevance and proportionality standard in Rule 26(b). Fed. R. Civ. P. 34(a).

Because “entry upon a party’s premises may entail greater burdens and risks than mere production of documents, a greater inquiry into the necessity for inspection would seem warranted.” *Voggenthaler v. Maryland Square, LLC*, No. 2:08-CV-01618-RCJ, 2011 WL 112115, at *8 (D. Nev. Jan. 13, 2011). Thus, “the degree to which the proposed inspection will aid in the search for truth must be balanced against the burdens and dangers created by the inspection.” *Selvar v. W. Towboat Co.*, No. C12-349RSL, 2012 WL 5389135, at *2 (W.D. Wash. Nov. 2, 2012). Accordingly, courts have denied inspection requests when the premises are not at issue and less burdensome options are available. *See, e.g., Belcher v. Bassett Furniture Indus., Inc.*, 588 F.2d 904, 909 (4th Cir. 1978) (reversing order requiring inspection in employment case because the information sought could be more easily obtained through other discovery methods); *Selvar*, 2012 WL 5389135, at *3 (granting protective order limiting scope of inspection based on safety risks); *E.E.O.C. v. U.S. Bakery*, No. CIV. 03-64-HA, 2004 WL 1307915, at *3-4 (D. Or. Feb. 4, 2004) (rejecting inspection for employment discrimination claim and noting plaintiff did not need to view work conditions or obtain photos of premises to prove claims).

1. Plaintiffs Have Not Established the Need for Videography and Photography to Prove Their Claims.

Plaintiffs claim that videography is necessary to prove their claims because they will be able to show that the duties that detainees are required to perform under the Housing Unit Sanitation Policy are broader than what is permissible under the PBNDS. *See* ECF No. 181 (Plaintiffs’ Motion to Compel) at pp. 19-20. However, the detainees currently housed at the APC are not part of the certified class, which extends from October 22, 2004 through October

22, 2014 for the TVPA claims, and October 22, 2011 through October 22, 2014 for the unjust enrichment claims. ECF No. 146 at p. 2. Video footage of the current detainees' activities at APC is not relevant to whether those duties were or were not performed by class members during the class period. Similarly, the facility's size, layout and population have changed significantly since 2014. Videotaping the layout and flow of APC, as argued by Plaintiff in their motion, does not prove whether or not those areas are representative or were cleaned by class members during the class period. In addition, with ICE's permission, GEO has already provided pre-expansion renderings of the APC that set forth the composition of the housing units and the layout and flow of the facility generally, while not revealing sensitive information like the placement of closed circuit surveillance or staffing levels and positioning. *See* Ex. H (Facility Rendering produced by GEO, filed under seal). Plaintiffs have not articulated why such renderings fail to address their purported need for documentary evidence of the facility.

Plaintiffs also claim that video footage of the segregation unit is necessary to prove that "labors or services were obtained by means of force; physical restraint; serious harm; or threats of force, physical restraint or serious harm" as part of their claim under the Trafficking Victims Protection Act. ECF No. 181 at pp. 19-20. However, video footage of the segregation unit, which would prove only that segregation units exist, does not prove that labor or services were obtained through means of force; physical restraint; serious harm; or through threats of force, physical restraint, or serious harm.

The cases relied upon by Plaintiffs that address videography and photography during site inspections are distinguishable from the instant case. In *Nourse v. City of Jefferson*, Plaintiffs alleged Fourth Amendment violations related to strip searches at the jail. No. 17 Civ. 807, 2018

WL 6444226 (N.D.N.Y. Dec. 10, 2018) (unpublished). Part of the relief requested by the plaintiffs was for the jail to hold detainees in custody for approximately four hours in the jail booking facility before conducting the strip searches, and the defendant contended that it lacked sufficient space to make such an accommodation. As such, the size and space of the booking facility was directly related to the claims and defenses in the case; whereas here, no similar argument can be made by Plaintiffs. In addition, the request in *Nourse* dealt only with photographs and not with videography, and the portions of the facility the plaintiffs sought to photograph were far narrower than in the instant case. *Id.*

In *Dang ex. rel. Dang, v. Eslinger*, the plaintiff—who was asserting a claim pursuant to 42 U.S.C. § 1983 related to officer neglect—specifically articulated the need for video recordings of the mental health unit at the jail:

A key issue in this case is the observation of [Plaintiff] while he was housed in D-Pod (mental health unit) and the medical unit. [Because] no surveillance video of [Plaintiff] has been produced,... it is imperative that Plaintiff and his experts have an opportunity to view the layout of the “pods” [Plaintiff] was placed in to evaluate the extent and ability that correctional officers could observe [Plaintiff]...

No. 14 Civ. 37, 2015 WL 13655675 at * 3 (M.D. Fla. Jan. 20, 2015) (unpublished) (Smith, Mag. J.). Based on this explanation of the need for recording, which is closely tied to the underlying claims and defenses of the case, the court found that the needs of the discovery were substantial and necessary to proving plaintiff’s claims. In the instant case, Plaintiffs have not articulated the same close nexus between the need for unrestricted videography throughout the APC and the claims they have asserted. The side of the balance representing Plaintiffs’ need for the discovery in the instant case does not weigh as heavily as in *Dang*. In this case, the use of video or

photographs does not make it more or less likely that GEO violated the Trafficking Victims Protection Act or was unjustly enriched.

2. GEO's Privacy and Security Concerns Outweigh Plaintiffs' Need for Videography and Photography.

GEO has an obligation to provide a secure and safe facility for the detainees it houses and for GEO's staff. Ceja Decl. at ¶ 6. Allowing third-party videography and photography in a manner that is not controlled by ICE or GEO could expose or create potential security vulnerabilities at APC. Ceja Decl. at ¶ 7. It would show, among other things, placement of personnel throughout the building, the identity of the detention officers (which could compromise the officers' safety and security off-site), and the mechanisms and locations for entry and egress from areas of the facility. Ceja Decl. at ¶ 9. The substantial increase in the detainee population at the APC, as well as the recent escape of three detainees from the APC further underscores GEO's security concerns and the need for heightened security measures. During the meet and conferrals on this topic, Plaintiffs declined to agree to any constraints on their request to video-record and photograph the facility that could alleviate these concerns. Brown Decl. at ¶ 11. Plaintiffs also failed to provide any explanation as to why the facility rendering and floor plan were insufficient. Brown Decl. at ¶ 12.

With respect to privacy issues, the use of videography and photography also infringes on the privacy rights of detainees, particularly those who have sensitive applications for benefits (for example, applications for asylum) that are confidential pursuant to statutory provisions. *See* 8 U.S.C. § 1367. This provision prohibits disclosure of any information about a detainee who is the beneficiary of or has an application pending for such relief. *Id.* This provision applies to

video and photographs that capture any images of a detainee who is the subject of such relief. *Id.*

The detainees who will be impacted by Plaintiffs' video-recording are not part of the certified class, as the class was certified through October 22, 2014. In addition, detainees at the APC have not consented to being photographed and/or video-recorded in this matter. Ceja Decl. at ¶ 18. It is not possible to separate those detainees with sensitive benefits applications during the tour without interfering with the daily operations of APC. Ceja Decl. at ¶ 16. Given the highly-sensitive nature of the benefits application process, it is not sufficient to simply blur the faces of detainees who are captured in the video, as Plaintiffs suggest. Ceja Decl. at ¶ 17. Moreover, it is reported that blurring or pixelating images is not a sufficient method to maintain privacy. *See* Ex. I (Quartz titled "Nothing Pixelated Will Stay Safe on the Internet."); Ex. E. Given current technology, it is possible to reverse obfuscation of faces and images. *Id.*

Finally, Plaintiffs' reliance on a Yahoo news article as demonstrating widespread publication of photos depicting the APC to justify their video-recording and photography demands is misplaced. The Yahoo news article referenced by Plaintiffs does not contain any photographs of the interior of APC or of detainees housed at APC. ECF No. 181-10. The three interior photographs appearing in the article are from two other GEO-operated detention facilities located in California and Washington State, respectively. Plaintiffs do not describe the process by which these photographs were obtained by the photographers credited on the article. It is possible that the photographs were supplied to the photographers; and it is also possible that the photographs were taken during a media tour but required approval from GEO and ICE prior to their publication. The mere publication of these photos does not undermine GEO's arguments with respect to ensuring the safety and privacy of the detainees and the security of APC, and it

does not support Plaintiffs' position that they are entitled to unrestricted videography and photography during a site inspection.

3. ICE Approval is Required for the Site Inspection and Use of Recording Devices During the Inspection.

Even if GEO did not have legitimate concerns about the security and privacy risks that unrestricted videography and photography pose during a site inspection of the APC, GEO could not authorize use of videography or photography inside the facility without ICE's approval. Ex. C. at pp. 446. GEO is contractually bound by the terms of the PBNDS which require authorization from the Field Office Director for any photography (still, movie or video), and the Field Office Director assigned to the APC has denied GEO's request on Plaintiffs' behalf to video-record and take photographs inside the APC based on the reasons set forth in their correspondence to GEO. Ex. E. If GEO were to allow any photography or videography within the APC without the Field Officer Director approval, it would violate GEO's contract with ICE.

III. **CONCLUSION**

For the reasons set forth above, GEO respectfully requests that the Court deny Plaintiffs' motion to compel and all relief requested, including its request for fees and costs related to filing this motion, in its entirety.

Dated this 20th day of June, 2019.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: s/ Carolyn P. Short
Carolyn P. Short

Valerie E. Brown
Patrick J. McCabe
Stacy Blank
Holland & Knight LLP
2929 Arch Street, Suite 800
Philadelphia, PA 19104
Telephone: 215.252.9569
Fax: 215.867.6070
Email: Carolyn.Short@hkllaw.com
Email: Valerie.brown@hkllaw.com
Email: Patrick.Mccabe@hkllaw.com
Email: Stacy.Blank@hkllaw.com

Dana Eismeier
Michael Ley
BURNS FIGA & WILL
6400 S. Fiddlers Green Circle, Suite 1000
Greenwood Village, Colorado 80111
Telephone: 303.796.2626
Email: deismeier@bflaw.com
Email: mley@bflaw.com

Attorneys for Defendant The GEO Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify on this 20th day of June, 2019, a true and correct copy of the foregoing **RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL** was e-filed with the Court via CM/ECF system which will send notification of such filing via electronic transmission to the following:

TOWARDS JUSTICE

Alexander Hood, Esq.
David Hollis Seligman, Esq.
Juno E. Turner, Esq.
1410 High Street, Suite 300
Denver, CO 80218
david@towardsjustice.org
alex@towardsjustice.org
juno@towardsjustice.org

OUTTEN & GOLDEN LLP

Rachel W. Dempsey, Esq.
Adam Koshkin, Esq.
One California Street, 12th Floor
San Francisco, CA 94111
rdempsey@outtengolden.com
akoshkin@outtengolden.com

OUTTEN & GOLDEN LLP

P. David Lopez, Esq.
601 Massachusetts Avenue, NW
2nd Floor West Suite
Washington, DC 20001
pdl@outtengolden.com

OUTTEN & GOLDEN, LLP

Ossai Miazad, Esq.
Michael J. Scimone
685 Third Ave., 25th Floor
New York, NY 10017
om@outtengolden.com
mscimone@outtengolden.com

MILSTEIN LAW OFFICE

Brandt Milstein, Esq.
1123 Spruce Street
Boulder, CO 80302
brandt@milsteinlawoffice.com

KELMAN BUESCHER, P.C.

Andrew Turner, Esq.
600 Grant Street, Suite 825
Denver, CO 80203
aturner@laborlawdenver.com

BURNS, FIGA & WILL, P.C.

Dana L. Eismeier, Esq.
Michael Y. Ley, Esq.
6400 S. Fiddlers Green Circle, Suite 1000
Greenwood Village, CO 80111
deismeier@bfwlaw.com
mley@bfwlaw.com

R. ANDREW FREE LAW OFFICE

Robert Andrew Free
414 Union Street, Suite 900
Nashville, TN 37209
Andrew@ImmigrantCivilRights.com

MEYER LAW OFFICE, P.C.

Hans Meyer, Esq.
901 W 10th Avenue, Suite 2A
Denver, CO 80204
hans@themeyerlawoffice.com

Dated this 20th day of June, 2019.

s/ Carolyn P. Short

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**IN THE UNITED STATES DISTRICT COURT
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DEMETRIO VALERGA,
on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC.,

Defendant.

**DECLARATION OF DAWN CEJA IN OPPOSITION TO MOTION TO COMPEL
UNRESTRICTED VIDEOGRAPHY AND PHOTOGRAPHY OF AURORA ICE
PROCESSING CENTER DETENTION CENTER**

I, Dawn Ceja, declare:

1. I am employed by the GEO Group, Inc. (“GEO”) as Assistant Warden – Operations at the Aurora ICE Processing Center (“APC”). I am over 18 years of age and competent to make this declaration. If called to testify as a witness in this matter, I could and would testify truthfully to each of the statements in this declaration.

2. I have worked at the APC since 1995.

3. The APC is a secure facility that houses detainees in the custody of the United States Immigrations and Customs Enforcement (“ICE”) who are assigned varying risk classification levels, including low, medium low, medium high, and high.

4. Requests to tour APC and to use recording devices inside of APC are governed by a number of documents related to GEO’s role as a contractor for the federal government, including GEO’s operable contract for services with ICE which incorporates by reference the 2016 Performance Based National Detention Standards (“PBNDS”).

5. GEO also has a policy prohibiting third party digital and video recordings of any kind unless the required notifications are made and approval is obtained. This policy does not restrict GEO’s operational security procedures.

6. In accordance with GEO’s contract with ICE, GEO has an obligation to provide a secure and safe facility for the detainees it houses as well for employees and other contractors.

7. Third party videography and photography poses security and privacy risks for APC, the detainees housed at APC, and the staff who work at APC.

8. Photography and videography presents a significant risk to operational security, including risk of harm to detainees, facility staff and the public as it will allow viewers to potentially exploit any perceived weaknesses in operational security.

9. Videography and photography could document, among other things, placement of personnel throughout the building, the identity of detention officers (which could compromise the officers’ safety and security off-site), and physical plant layout including the mechanisms and locations for entry and egress from areas of the facility.

10. In the past six months alone, the population at APC has increased by approximately 600 occupants.

11. APC currently houses approximately 1400-1500 detainees of varying risk classification levels (low, medium low, medium high and high).

12. This reinforces the need for heightened security at APC, including the prohibition on videography and photography within the facility by guests.

13. Specific to videography, I am not aware of any instance where GEO has authorized third party video recording during the length of my employment.

14. In addition to the legitimate security concerns, the use of videography and photography also infringes of the privacy rights of detainees, particularly those seeking sensitive benefits, such as asylum, who would be fearful of being recorded or photographed, who are currently housed at APC and who are not members of the certified class.

15. APC houses detainees who have pending sensitive applications for benefits, such as asylum.

16. There is no way to separate those detainees during the tour without interfering with the daily operations of APC.

17. Given the highly-sensitive nature of asylum application process, it is not sufficient to simply blur the faces of detainees who are captured in the video because of the grave safety risk to the individual detainee's if any other identifying characteristic is revealed and the individual's location is exposed.

18. The detainees currently housed at the APC have not consented to being recorded by video or photograph.

19. In addition, the APC staff also have privacy interests implicated by Plaintiffs' request to video-record and photograph throughout the APC. If the APC staff are publicly identified, they and their families face serious risk of harm. Hostility towards ICE and, by extension the APC staff, is readily apparent from the protests and demonstrations that have occurred at the APC.

20. Exhibit D is a true and correct copy of GEO's policy relating to third party digital and video recording.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made as evidence in court and is subject to penalty for perjury.

Dated: June 20, 2019

s/Dawn M. Ceja
Dawn M. Ceja
Assistant Warden
The GEO Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify on this 20th day of June, 2019, a true and correct copy of the foregoing **Declaration of Dawn Ceja in Opposition to Plaintiffs Motion to Compel** was e-filed with the Court via CM/ECF system which will send notification of such filing via electronic transmission to the following:

TOWARDS JUSTICE

Alexander Hood, Esq.
David Hollis Seligman, Esq.
Juno E. Turner, Esq.
1410 High Street, Suite 300
Denver, CO 80218
david@towardsjustice.org
alex@towardsjustice.org
juno@towardsjustice.org

OUTTEN & GOLDEN LLP

Rachel W. Dempsey, Esq.
Adam Koshkin, Esq.
One California Street, 12th Floor
San Francisco, CA 94111
rdempsey@outtengolden.com
akoshkin@outtengolden.com

OUTTEN & GOLDEN LLP

P. David Lopez, Esq.
601 Massachusetts Avenue, NW
2nd Floor West Suite
Washington, DC 20001
pdl@outtengolden.com

OUTTEN & GOLDEN, LLP

Ossai Miazad, Esq.
Michael J. Scimone
685 Third Ave., 25th Floor
New York, NY 10017
om@outtengolden.com
mscimone@outtengolden.com

MILSTEIN LAW OFFICE

Brandt Milstein, Esq.
1123 Spruce Street
Boulder, CO 80302
brandt@milsteinlawoffice.com

KELMAN BUESCHER, P.C.

Andrew Turner, Esq.
600 Grant Street, Suite 825
Denver, CO 80203
aturner@laborlawdenver.com

BURNS, FIGA & WILL, P.C.

Dana L. Eismeier, Esq.
Michael Y. Ley, Esq.
6400 S. Fiddlers Green Circle, Suite 1000
Greenwood Village, CO 80111
deismeier@bflaw.com
mley@bflaw.com

R. ANDREW FREE LAW OFFICE

Robert Andrew Free
414 Union Street, Suite 900
Nashville, TN 37209
Andrew@ImmigrantCivilRights.com

MEYER LAW OFFICE, P.C.

Hans Meyer, Esq.
901 W 10th Avenue, Suite 2A
Denver, CO 80204
hans@themeyerlawoffice.com

Dated this 20th day of June, 2019.

s/ Carolyn P. Short

Carolyn P. Short

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-CV-02887-JLK-MEH

ALEJANDRO MENOCA,
MARCOS BRAMBILA,
GRISEL XAHUENTITLA,
HUGO HERNANDEZ,
LOURDES ARGUETA,
JESUS GAYTAN,
OLGA ALEXAKLINA,
DAGOBERTO VIZGUERRA, and
DEMETRIO VALERGA,
on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC.,

Defendant.

**DECLARATION OF VALERIE BROWN IN OPPOSITION TO MOTION TO COMPEL
UNRESTRICTED VIDEOGRAPHY AND PHOTOGRAPHY OF AURORA ICE
PROCESSING CENTER DETENTION CENTER**

I, Valerie E. Brown, declare:

1. I am one of the attorneys for defendant The GEO Group, Inc. (“GEO”) in this matter. I am over 18 years of age and competent to make this declaration. If called to testify as a witness in this matter, I could and would testify truthfully to each of the statements in this declaration.

2. Prior to Plaintiffs' filing of the instant motion, the parties met and conferred on two occasions – March 29, 2019 and April 26, 2019, regarding whether a second Rule 30(b)(6) deposition was proper.

3. During those conferrals, GEO asked Plaintiffs for a basis in the record whereby the parties agreed to a second Rule 30(b)(6) deposition.

4. Plaintiffs took the position that GEO's agreement to a second Rule 30(b)(6) deposition was not relevant and that Plaintiffs were entitled to a second Rule 30(b)(6) deposition of the same deponent (GEO) as a matter of legal right pursuant to the Federal Rules of Civil Procedure.

5. GEO disagreed with Plaintiffs' position on this legal issue.

6. Plaintiffs did not refer to any notation in the record where GEO had agreed to a second Rule 30(b)(6) deposition.

7. GEO, with permission from ICE, has agreed to Plaintiffs' requested site inspection.

8. ICE has denied GEO's requests to permit Plaintiffs to use videography and photography at the Aurora Detention Center.

9. Subsequent to the filing of the instant motion, GEO contacted Plaintiffs with a specific proposal regarding Plaintiffs' Third Notice of Rule 30(b)(6) deposition. GEO offered to further confer with Plaintiffs regarding the topics to be included in the Rule 30(b)(6) deposition notice. Plaintiffs refused GEO's attempt to resolve the issues related to the Rule 30(b)(6) deposition.

10. The parties conferred on at least two occasions, March 29, 2019 and April 26, 2019 regarding Plaintiffs' request to use videography and photography during the site inspection.

11. During the conferrals, Plaintiffs declined to agree to any constraints on their request to video-record and photograph the facility that would alleviate GEO's security concerns.

12. Plaintiffs did not provide any explanation as to why the facility renderings and floor plans of the facility were insufficient.

Exhibits

13. Attached as Exhibit A is a true and correct copy of email correspondence sent by and between myself on behalf of GEO and Michael Simone and Plaintiffs' Counsel dated June 19, 2019.

14. Attached as Exhibit B is a true and correct copy of the proposed revisions to the Third Rule 30(b)(6) Notice provided by me to GEO Plaintiffs' counsel, and which was attached to the email referenced in Paragraph 13.

15. Attached as Exhibit C is a true and correct copy of an excerpt from the publicly available 2011 Performance Based National Detention Standards (<https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>).

16. Attached as Exhibit E is a true and correct copy of correspondence from John E. Fabbriatore, Acting Denver Field Office Director, dated June 20, 2019.

17. Attached as Exhibit F is a true and correct copy of a news article from The Denver Channel titled "Fort Carson rape suspect among 3 detainees who escaped from Aurora ICE facility."

18. Attached as Exhibit G is a true and correct copy of excerpts from 2018 Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence, Request for Comment.

19. Attached as Exhibit H, which is being filed as a restricted document, are true and correct copies of renderings of the Aurora Detention Center produced by GEO during discovery in this case.

20. Attached as Exhibit I is a news article from Quartz titled “Nothing Pixilated Will Stay Safe on the Internet.”

Dated: June 20, 2019

s/ Valerie E. Brown
Valerie E. Brown

CERTIFICATE OF SERVICE

I hereby certify on this 20th day of June, 2019, a true and correct copy of the foregoing **Declaration of Valerie Brown in Opposition to Plaintiffs Motion to Compel** was e-filed with the Court via CM/ECF system which will send notification of such filing via electronic transmission to the following:

TOWARDS JUSTICE

Alexander Hood, Esq.
David Hollis Seligman, Esq.
Juno E. Turner, Esq.
1410 High Street, Suite 300
Denver, CO 80218
david@towardsjustice.org
alex@towardsjustice.org
juno@towardsjustice.org

OUTTEN & GOLDEN LLP

Rachel W. Dempsey, Esq.
Adam Koshkin, Esq.
One California Street, 12th Floor
San Francisco, CA 94111
rdempsey@outtengolden.com
akoshkin@outtengolden.com

OUTTEN & GOLDEN LLP

P. David Lopez, Esq.
601 Massachusetts Avenue, NW
2nd Floor West Suite
Washington, DC 20001
pdl@outtengolden.com

OUTTEN & GOLDEN, LLP

Ossai Miazad, Esq.
Michael J. Scimone
685 Third Ave., 25th Floor
New York, NY 10017
om@outtengolden.com
mscimone@outtengolden.com

MILSTEIN LAW OFFICE

Brandt Milstein, Esq.
1123 Spruce Street
Boulder, CO 80302
brandt@milsteinlawoffice.com

KELMAN BUESCHER, P.C.

Andrew Turner, Esq.
600 Grant Street, Suite 825
Denver, CO 80203
aturner@laborlawdenver.com

BURNS, FIGA & WILL, P.C.

Dana L. Eismeier, Esq.
Michael Y. Ley, Esq.
6400 S. Fiddlers Green Circle, Suite 1000
Greenwood Village, CO 80111
deismeier@bfwlaw.com
mley@bfwlaw.com

R. ANDREW FREE LAW OFFICE

Robert Andrew Free
414 Union Street, Suite 900
Nashville, TN 37209
Andrew@ImmigrantCivilRights.com

MEYER LAW OFFICE, P.C.

Hans Meyer, Esq.
901 W 10th Avenue, Suite 2A
Denver, CO 80204
hans@themeyerlawoffice.com

Dated this 20th day of June, 2019.

s/ Carolyn P. Short

Carolyn P. Short

Menocal, et al. v. The Geo Group, Inc.
1:14-cv-02887-JLK-MEH

Index of Exhibits to Declarations In Support of
GEO's Response in Opposition to Plaintiff's Motion to Compel

Exhibit	Description
A	Email correspondence sent by and between Valerie Brown on behalf of GEO and Michael Simone and Plaintiffs' Counsel dated June 19, 2019.
B	Proposed revisions to the Third Rule 30(b)(6) Notice provided by Valerie Brown to Plaintiffs' counsel.
C	An excerpt from the publicly available 2011 Performance Based National Detention Standards (https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf).
D	GEO's policy relating to third party digital and video recording.
E	Correspondence from John E. Fabbriatore, Acting Denver Field Office Director dated June 20, 2019.
F	News article from The Denver Channel titled "Fort Carson rape suspect among 3 detainees who escaped from Aurora ICE facility."
G	Excerpts from 2018 Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence, Request for Comment.
H	Renderings of the Aurora Detention Center produced by GEO during discovery in this case.
I	News article from Quartz titled "Nothing Pixilated Will Stay Safe on the Internet."

Exhibit A

From: [Scimone, Michael](#)
To: [Brown, Valerie E \(PHL - X49569\)](#)
Cc: [GeoPlaintiffsCounsel](#); [Short, Carolyn P \(PHL - X49553\)](#); [McCabe, Patrick J \(PHL - X49529\)](#); [deismeier@bflaw.com](#); [mley@bflaw.com](#)
Subject: RE: Further Conferral regarding Pending Motion to Compel
Date: Wednesday, June 19, 2019 10:27:59 PM

[External email]

Valerie,

While we are open to negotiating discovery as a general matter, the timing here is problematic. It has been approximately six weeks since GEO took the position that we were not entitled to any further 30(b)(6) deposition based on its construction of Rule 30, which you told us a month ago was non-negotiable, forcing us to expend time and resources filing a motion to compel. We don't believe attempting to negotiate a compromise based on a different set of objections now, one day before your opposition is due, is proper or productive. It is particularly troubling that this is the second time in three months that GEO altered its position after Plaintiffs filed a Motion to Compel. That is not how the rules are designed to work; this approach wastes the parties' resources and only causes delay.

With respect to your objections – although there is no formal objection process for a Rule 30(b)(6) notice, we don't believe the content of GEO's objections would be proper if there were one. They primarily take the form of boilerplate general objections that do not explain the reasons they apply to the specific topic (even most of the so-called "specific" objections merely recite words like "unduly burdensome" and "vague" without explaining why either objection applies). Courts consistently criticize similar objections as an abuse of discovery in the Rule 34 and 33 context. *See, e.g., Kissing Camels Surgery Center, LLC v. Centura Health Corp.*, No. 12 Civ. 3012, 2016 WL 277721 (D. Colo. Jan. 22, 2016) ("Boilerplate objections are improper."). As for the specific objections we can ascertain, we do not agree to limit the topics to accommodate them at this time. The earlier discussion you refer to in January 2018 was in the context of discovery limited to the named plaintiffs while GEO's 10th Circuit appeal of the Court's class certification order was pending. That is no longer an appropriate limitation at this stage of the proceedings.

With respect to your request for an extension, we cannot agree to it at this time in light of the fact that the close of the discovery period is quickly approaching. The 30(b)(6) notice has been pending for over seven months and we believe that this issue needs to be resolved expeditiously.

Michael



Michael J. Scimone | Counsel
685 Third Ave 25th Floor | New York, NY 10017
T 212-245-1000 | F 646-509-2055
mjscimone@outtengolden.com | [Bio](#)



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Please consider the environment before printing this e-mail.

From: Valerie.Brown@hklaw.com <Valerie.Brown@hklaw.com>

Sent: Wednesday, June 19, 2019 3:52 PM

To: Scimone, Michael <mscimone@outtengolden.com>

Cc: GeoPlaintiffsCounsel <GeoPlaintiffsCounsel@outtengolden.com>; Carolyn.Short@hklaw.com; Patrick.McCabe@hklaw.com; deismeier@bflaw.com; mley@bflaw.com

Subject: Further Conferral regarding Pending Motion to Compel

Michael,

I am writing to touch base with you on the topics covered by the Motion to Compel filed on May 30.

On the 30(b)(6) deposition, we are willing to further confer and agree to a 30(b)(6) deposition but believe there needs to be a limitation on the topics. We would be willing to agree to the topics set out in the attached, which largely reflects the proposal made by GEO counsel to Elizabeth Stork and Juno Turner in January 2018. I am also attaching objections to the topics to supplement the attached redline, which also sets forth our designees for the topics.

While we confer on this topic, are you willing to agree to a one week extension of GEO's time to respond to the Motion?

Thank you,

Valerie Brown | Holland & Knight

Senior Counsel

Holland & Knight LLP

2929 Arch Street, Suite 800 | Philadelphia, PA 19104

Phone 215.252.9569 | Fax 215.867.6070

valerie.brown@hklaw.com | www.hklaw.com

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Exhibit B

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO**

Civil Action No.: 1:14-cv-02887-JLK

ALEJANDRO MENOCA *et al.*,

Plaintiffs,

v.

THE GEO GROUP, INC.,

Defendant.

NOTICE OF F.R.C.P. 30(b)(6) DEPOSITION OF DEFENDANT THE GEO GROUP INC.

TO: Defendant THE GEO GROUP, INC. (“GEO”).

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 30(b)(6), counsel for Plaintiff will take the deposition of Defendant on ~~January 22~~ July __, 2019 at 10:00 a.m., or an agreed-upon time thereafter, at the offices of Towards Justice, 1410 High Street, Denver, CO, on the topics detailed below. GEO shall identify the persons who will speak on its behalf on each topic below at least seven days before the deposition(s). This deposition will be taken before a certified court reporter, will be recorded by stenographic and audiovisual means, may be adjourned from day to day until completed, and may occur over several days if more than one person is necessary to provide the information requested.

As used in this Notice, the term “Defendant” or “GEO” or “You” mean, without limitation, the responding party and any person acting on the responding party’s behalf.

As used in this Notice, the term “ICE” means United States Immigration and Customs Enforcement. The term “Rrelevant Pperiod” means the period from October 22,

2004 through October 22, 2014~~the present~~ for all topics related to the Housing Unit Sanitation Policy and October 22, 2012 through ~~the present~~ October 22, 2014 for all requests related to the VWP.

When You are asked to “identify” an employee or person, You are to provide that person’s full name, current or last job title, and current physical work address if still employed by You; if the person is not still employed by You, provide the last known address, phone numbers, e-mail address or other available contact information.

You are advised that You must designate one or more officers, directors, managing agents, or other persons who will testify on Your behalf regarding the topics listed here.

TOPICS

1. GEO’s application of the “Housing Unit Sanitation Policy” (“HUSP”) to Class Members during the Relevant Period at Aurora Detention Center, including, but not limited to, the following:
 - a. ICE policies and practices relating to the HUSP, including discipline or other consequences for a detainee’s failure to comply with the HUSP.
 - b. GEO policies and practices relating to the HUSP, including discipline or other consequences for a detainee’s failure to comply with the HUSP.
 - c. Written Communications and agreements-contracts with ICE regarding the use of detainee labor to clean the facility.
 - d. Written Communications and agreements-contracts with ICE regarding the use of administrative or disciplinary segregation.
 - e. Policies related to the HUSP, including any changes to those policies.
 - f. The Performance-Based National Detention Standards (PBNDS) and their relationship to the HUSP.
 - g. The ICE Detainee Handbook and its relationship to the HUSP.
 - h. Revisions or changes to the PBNDS, the ICE Detainee Handbook, or GEO’s Detainee Handbook.

- i. Class Members' responsibilities under the HUSP, including the specific cleaning tasks required under the HUSP.
 - j. All locations within the facility cleaned or otherwise maintained by detainees under the HUSP.
 - k. Equipment used by Class Members to perform tasks under the HUSP and any policies and/or practices regarding detainees' use of equipment to perform tasks under the HUSP.
 - l. The frequency and duration of tasks performed by Class Members under the HUSP, as well as any records and/or logs of such tasks and the location of and retention policy for such records and/or logs.¹
 - m. Written ~~C~~ommunications with Class Members regarding the HUSP, including the consequences of not performing work required under the HUSP. This includes GEO's general practices, policies, and procedures regarding communications with detainees concerning the HUSP, and consequences of not performing work required under the HUSP.
 - n. Policies and practices regarding the training and oversight of GEO employees and/or contractors ~~officers~~ in relation to the HUSP.
 - o. GEO employee and/or contractor positions that perform or supervise the cleaning tasks required by the HUSP.
 - p. GEO employee and/or contractor positions that perform or supervise other cleaning tasks that are not required by the HUSP.
 - q. The origins and objectives of the HUSP at the Aurora Detention Facility.
2. GEO's policies and practices relating to discipline for Class Members' violation of GEO's rules or regulations related to the Housing Unit Sanitation Policy during the relevant ~~P~~eriod at Aurora Detention Center, including, but not limited to, the following:
 - a. The origins of the Segregation/Special Management Unit Officer policy. *See, e.g.,* GEO_MEN 00037721.
 - b. The implementation of the Segregation/Special Management Unit policy specific to the Housing Unit Sanitation Policy.

¹ This topic does not contemplate that GEO be required to summarize the specific contents of the records and/or logs covered by this topic.

- c. Policies regarding administrative segregation and disciplinary segregation specific to the Housing Unit Sanitation Policy.
 - d. Policies regarding protective custody specific to the Housing Unit Sanitation Policy.
 - e. Policies regarding the use of detainee labor in the Segregation/Special Management Unit specific to the Housing Unit Sanitation Policy.
 - f. Policies and practices related to discipline for violation of the HUSP, and the purpose behind such policies and practices.
 - g. Training and oversight of GEO officers regarding procedures or guidelines related to administrative segregation and disciplinary segregation and/or protective custody.
 - h. Those violations of the Housing Unit Sanitation Policy for which detainees may be subject to administrative or disciplinary segregation.
 - i. Policies and/or practices relating to communications with detainees regarding administrative or disciplinary segregation.
 - ~~j. Policies and/or practices regarding communications with detainees regarding GEO's rules and the consequences for violating GEO's rules.~~
 - ~~k. Policies and/or practices for determining appropriate detainee discipline for a violation of GEO's rules.~~
 - ~~l. Class Members' written complaints regarding the use of administrative or disciplinary segregation as a possible consequence for not complying with the HUSP. This includes GEO's policies, practices and procedures regarding detainee complaints about the use of administrative or disciplinary segregation as a possible consequence for not complying with the HUSP.~~
 - ~~m. The nature of administrative or disciplinary segregation specific to its use for violations of the Housing Unit Sanitation Policy, including the facilities used for segregation and policies and/or procedures applied to those in segregation.~~
 - ~~n. GEO's practices regarding communications with ICE regarding detainee violations of GEO's and/or ICE's rules related to the Housing Unit Sanitation Policy.~~
 - ~~o. GEO's practices regarding communications with ICE regarding the use of administrative and/or disciplinary segregation specific to its use for violations of the Housing Unit Sanitation Policy.~~
3. Class Members' participation in the Voluntary Work Program (VWP) during the Relevant Period at Aurora Detention Center, including, but not limited to, the following:

- a. GEO's written communications with, and general practices regarding communications with, ICE regarding the VWP.
 - b. GEO's agreements contracts with ICE regarding the VWP.
 - c. GEO's application of -ICE's policies and procedures regarding ~~to~~ the VWP at Aurora Detention Center, including the ICE Detainee Handbook and its relationship application to the VWP at Aurora Detention Center.
 - d. GEO's policies and procedures regarding the VWP.
 - ~~e. The origins and objectives of the use of the VWP.~~
 - ~~f. Aurora Detention Center~~ Daily logs or records, including any records reflecting or relating to time Class Members worked, maintained by GEO at the Aurora Detention Center Facility or elsewhere, and the location of and retention policy for such logs or records.
 - ~~g. Written C~~ommunications with Class Members regarding the VWP, and policies and/or practices regarding communications to detainees about the VWP.
 - ~~h. g.~~ Method of determining the pay rate for VWP participants at the Aurora facility ~~and other GEO facilities~~.
 - ~~i. h.~~ Policies and practices regarding supervision of VWP participants, including work hours and breaks.
 - ~~j. i.~~ Job assignments, duties, or tasks assigned to Class Members under the VWP and the corresponding VWP shifts for such assignments, duties or tasks, including the start and end times for such shifts and the number of detainee workers per shift at Aurora Detention Center.
 - ~~k. j.~~ Policies and practices for training VWP participants and any training provided to Class Members related to their VWP participation.
 - ~~l. k.~~ Policies and practices regarding violations of the VWP by detainees or by supervisors, including but not limited to such violations as requiring detainees to work longer than eight hours in a day.
4. The costs and benefits to GEO of using detainee labor under the HUSP and VWP during the Relevant Period at Aurora Detention Center, including, but not limited to, the following:
- a. Maintenance requirements at the Aurora Detention Facility.

- b. GEO's budgets for cleaning and otherwise maintaining the Aurora facility.²
- c. Method of determining S staffing needs for any work performed by paid employees or contractors that overlaps with duties, tasks, or work performed by detainees pursuant to the HUSP.
- d. Method of determining S staffing needs for any work that overlaps with duties, tasks, or work performed by detainees under the VWP.
- ~~e. Current staffing at the Aurora Detention Facility, including janitorial, maintenance, laundry, and kitchen staff, and any other staff whose work overlaps with duties, tasks, or work performed by detainees under the VWP.~~
- ~~f. The cost of using GEO employees and/or contractors to perform cleaning tasks, including the cost of using GEO employees and/or contractors to perform the cleaning tasks required by the HUSP, including any studies conducted that assess or describe such costs.~~
- ~~g. The cost of using GEO employees and/or contractors to perform cleaning tasks, including the cost of using GEO employees and/or contractors to perform the cleaning tasks performed pursuant to the VWP, including any studies conducted that assess or describe such costs.~~
- ~~h.e. The amount and basis for GEO's calculation of the "set off for the benefits that [the plaintiffs] received while in the Aurora Detention Facility" to which GEO claims it is entitled in paragraph 20 of its Answer.~~

² This includes, but it not limited, to the budgets reflected in GEO_MEN_00011426, 14324, 11516, 12991, and 14230.

Exhibit C



Performance-Based National Detention Standards 2011



U.S. Immigration
and Customs
Enforcement

Preface

In keeping with our commitment to transform the immigration detention system, U.S. Immigration and Customs Enforcement (ICE) has revised its detention standards. These new standards, known as the Performance-Based National Detention Standards 2011 (PBNDS 2011), are an important step in detention reform.

ICE is charged with removing aliens who lack lawful status in the United States and focuses its resources on removing criminals, recent border entrants, immigration fugitives, and recidivists. Detention is an important and necessary part of immigration enforcement. Because ICE exercises significant authority when it detains people, ICE must do so in the most humane manner possible with a focus on providing sound conditions and care. ICE detains people for no purpose other than to secure their presence both for immigration proceedings and their removal, with a special focus on those who represent a risk to public safety, or for whom detention is mandatory by law.

The PBNDS 2011 reflect ICE's ongoing effort to tailor the conditions of immigration detention to its unique purpose. The PBNDS 2011 are crafted to improve medical and mental health services, increase access to legal services and religious opportunities, improve communication with detainees with no or

limited English proficiency, improve the process for reporting and responding to complaints, and increase recreation and visitation.

The PBNDS 2011 are also drafted to include a range of compliance, from minimal to optimal. As such, these standards can be implemented widely, while also forecasting our new direction and laying the groundwork for future changes.

In closing, I would like to thank the ICE employees and stakeholders who provided significant input and dedicated many hours to revising these standards. I appreciate the collaboration and support in this important mission - reforming the immigration detention system to ensure it comports with our national expectations. The PBNDS 2011 are an important step in a multiyear process and I look forward to continued collaboration within ICE, with state and local governments, nongovernmental organizations, Congress, and all of our stakeholders as we move forward in reforming our detention system.

John Morton
Director

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Acronyms and Abbreviations

AFOD: Assistant Field Office Director	MDR: Multi-Drug Resistant
BIA: DOJ Board of Immigration Appeals	MOU: Memorandum of Understanding
CBP: DHS Customs and Border Protection	MSDS: Material Safety Data Sheet
CD: Clinical Director	NCCHC: National Commission on Correctional Health Care
CDC: Center for Disease Control, Department of Health and Human Services	NCIC: National Crime Information Center, Federal Bureau of Investigation
CDF: Contract Detention Facility	NIC: DOJ National Institute of Corrections
CMA: Clinical Medical Authority	OIC: Officer in Charge
COR: Contracting Officer's Representative	OIG: DHS Office of the Inspector General
CRCL: DHS Civil Rights and Civil Liberties	OPLA: ICE Office of the Principal Legal Advisor
DHS: Department of Homeland Security	OPR: ICE Office of Professional Responsibility
DOJ: Department of Justice	ORR: Office of Refugee Resettlement, Department of Health and Human Services
DRIL: ICE ERO Detention and Reporting Information Line	OSHA: Occupational Safety and Health Administration, Department of Labor
DSCU: ICE ERO Detention Standards Compliance Unit	PBNDS: Performance-Based National Detention Standards
EOIR: DOJ Executive Office for Immigration Review	PII: Personally Identifiable Information
ERO: ICE Enforcement and Removal Operations	PREA: Prison Rape Elimination Act
FOD: Field Office Director	SAFE: Sexual Assault Forensic Examiner
FSA: Food Service Administrator	SANE: Sexual Assault Nurse Examiner
GAB: Grievance Appeals Board	SART: Sexual Assault Response Team
GO: Grievance Officer	SIR: Significant Incident Report
HSA: Health Services Administrator	SMI: Serious Mental Illness
IAO: ICE Air Operations	SMU: Special Management Unit
IDP: Institution Disciplinary Panel	SPC: Service Processing Center
IGSA: Intergovernmental Service Agreement	SRT: Situation Response Team
IHSC: ICE Health Services Corps	SRT: Special Response Team
JIC: DHS Joint Intake Center	
LEP: Limited English Proficiency	
LOP: Legal Orientation Program	
LPR: Legal Permanent Resident	

1.1 Emergency Plans

I. Purpose and Scope

This detention standard ensures a safe environment for detainees and employees by establishing contingency plans to quickly and effectively respond to emergency situations and to minimize their severity.

This detention standard applies to the following types of facilities housing ICE Enforcement and Removal Operations (ERO) detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

Procedures in italics are specifically required for SPCs and CDFs. IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Each facility shall have in place contingency plans to quickly and effectively respond to emergency situations and to minimize their severity.
2. Staff shall be trained annually, at a minimum, in emergency preparedness and implementation of the facility’s emergency plans.

3. An evacuation plan, in the event of a fire or other major emergency, shall be in place, and the plan shall be approved locally in accordance with this standard and updated annually at a minimum.
4. Events, staff responses and command-related decisions during and immediately after emergency situations shall be accurately recorded and documented.
5. Plans shall include procedures for assisting detainees with special needs during an emergency or evacuation.
6. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

III. Standards Affected

This detention standard replaces “Emergency Plans”

7.2 Interviews and Tours

I. Purpose and Scope

This detention standard ensures that the public and the media are informed of events within the facility’s areas of responsibility through interviews and tours.

This detention standard applies to the following types of facilities housing ICE/ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities. Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. The public and the media shall be informed of operations and events within the facility’s areas of responsibility.
2. The privacy of detainees and staff, including the right of a detainee to not be photographed or recorded, shall be protected.

III. Standards Affected

This detention standard replaces provisions on media visits and tours that were removed from the

detention standard on “Visitation” dated 12/2/2008.

IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ADLF-7D-21, 7F-01.

V. Expected Practices

A. News Media Interviews and Tours

1. General

ICE/ERO supports the provision of public access to non-classified, non-sensitive and non-confidential information about its operations in the interest of transparency. Access will not be denied based on the political or editorial viewpoint of the requestor.

ICE/ERO also has a responsibility to protect the privacy and other rights of detainees, including the right of a detainee to not be photographed or recorded.

By regulating interviews in the detention setting, the facility administrator ensures the secure, orderly and safe operation of the facility. Interviews by reporters, other news media representatives, non-governmental organizations, academics and parties not included in other visitation categories in standard “5.7 Visitation” shall be permitted access to facilities only by special arrangement and with prior approval of the respective ICE/ERO Field Office Director. ICE may designate Public Affairs Officers (PAO) to serve in Field Offices as liaisons with media representatives for some or all requests and communications covered by this standard.

2. Media Representatives

The term “media representative” is intended to refer to persons whose principal employment is to gather, document or report news for any of the following entities:

- a. a newspaper that circulates among the general

public and publishes news of a general interest (e.g., political, religious, commercial or social affairs):

- b. a news magazine with a national circulation sold to the general public by newsstands and mail subscriptions;
- c. a national or international news service;
- d. a radio or television news program of a station licensed by the Federal Communications Commission (FCC); or
- e. other representatives or entities that gather information in accordance with the definition of “representative of the news media” contained in the Freedom of Information Act (5 U.S.C. § 552(a)(4)(A)(ii)) as amended by section 3 of P.L. 110-175.

In addition to those persons listed above, such representatives may include, but are not limited to, individuals reporting for certain electronic media outlets, online media publications and other media freelance journalists or bloggers.

3. Media Visits and Tours

Media representatives may request advance appointments to tour those facilities, according to the following stipulations.

- a. To tour an SPC or CDF, visitors will contact the Field Office Director or the Assistant Field Office Director assigned to the facility. The Chief of Security shall be responsible for implementing the necessary security procedures.
- b. To tour an IGSA facility, visitors will contact the Field Office Director responsible for that area of responsibility, who will in turn notify the facility. Local facilities’ policies and procedures shall govern.

Visitors will abide by the policies and procedures of the facility being visited or toured. Visitors must obtain advance permission from the facility administrator and Field Office Director before taking

photographs in or of any facility. Detainees have the right not to be photographed (still, movie or video), and not to have their voices recorded by the media. Thus, the facility administrator shall advise both visitors and detainees that use of any detainee’s name, identifiable photo or recorded voice requires that individual’s prior permission. Such permission will be recorded by the visitor’s completion of a signed release from the detainee before photographing or recording the detainee’s voice. The original form shall be filed in the detainee’s A-file with a copy placed in the facility’s detention file.

If the presence of video, film or audio equipment or related personnel poses a threat to the safety or security of the facility, its staff or its detainees, the Field Office Director may limit or prohibit such access. Prior to the tour, the Field Office Director shall explain the terms and guidelines of the tour to the visitors.

During and after an emergency, or when indications exist that extra security measures may be needed due to a possible disturbance in the facility, the Field Office Director may suspend visits for an appropriate period.

4. Personal Interviews

A media representative or member of the public, including non-governmental organizations and academics, planning to conduct a personal interview at a facility shall submit a written request to the responsible Field Office Director, preferably 48 hours prior to, and no less than 24 hours prior to, the time slot requested. The Field Office Director may waive the 24-hour rule if convinced of the need for urgency.

Through facility staff, the Field Office Director shall inform the detainee of the interview request. Before the Field Office Director considers the interview request, the detainee must then indicate his/her willingness to be interviewed by signing a consent form. The original written consent shall be filed in the detainee’s A-file, and a copy shall be placed in the

facility's detention file.

"Appendix 7.2.A: Detainee Interview Release Form" provides a sample news interview authorization form that may be used. The original of the form shall be filed in the detainee's A-file with a copy in the facility's detention file. Detainees should not be pressured or coerced out of granting the interview request, nor should the facility in any way retaliate against a detainee for lawful communication with a member of the media or a member of the public.

ICE/ERO shall normally act in writing within 48 hours of the written request. Possible reasons for disapproval may include, but are not limited to, the following situations.

- a. The news media representative or news organization he/she represents or the visitor does not agree to the conditions established by this policy or has previously failed to abide by them.
- b. The Field Office Director finds it probable that the proposed interview may endanger the health or safety of the interviewer, cause serious unrest within the facility or disturb the orderly and secure operation of the facility.
- c. The detainee is involved in a pending court action and the court with jurisdiction over the matter has issued a gag rule or the Field Office Director, after consultation with the respective ICE Office of Chief Counsel, thinks the proposed interview could affect the outcome of the court case.

If the requesting party believes the request was unfairly or erroneously denied, the requesting party may contact ICE/ERO headquarters.

Interviews shall take place during normal business hours in a location determined by the facility administrator. The facility administrator shall provide a location conducive to the interviewing activity, consistent with the safety, security and good order of the facility. The Field Office Director may limit the number of interviews with a particular detainee to a reasonable number per month. Further,

if interviews are imposing a serious strain on staff or facility resources, the Field Office Director may restrict the time allotted for interviews.

For facility safety and security, ICE/ERO reserves the right to monitor, but not participate in, detainee interviews.

A media representative interested in touring the facility and photographing or recording any other detainees in conjunction with an individual interview must follow all applicable requirements and procedures, and shall indicate this interest at the time of his/her request for an interview.

5. Press Pools

A press pool may be established when the PAO, Field Office Director and facility administrator determine that the volume of interview requests warrants such action.

In such an event, the Field Office Director shall notify all media representatives with pending or requested interviews, tours or visits that, effective immediately and until further notice, all media representatives must comply with the press pool guidelines established by the Field Office Director.

All material generated from such a press pool must be made available to all news media, without right of first publication or broadcast.

The press pool shall comprise one member each from the following groups:

- a. a television outlet (for video);
- b. a radio network outlet;
- c. a print outlet; and
- d. a still photographer.

Each group shall choose its representative for the press pool. The Field Office Director shall, upon request, provide the media information about a detainee, provided such information is a matter of public record and not protected by privacy laws, Department of Homeland Security policy, or

ICE/ERO policy. Security and safety concerns for staff and detainees require that specific removal-related data remain confidential.

6. Special Conditions for Media Representatives

To be approved to interview or visit a detainee or tour an ICE facility, the media representative must certify that he/she is familiar with and accepts the rules and regulations governing media conduct. He/she must at all times comply with those rules and regulations.

Media representatives shall collect information only from a primary source(s), and shall neither solicit nor use personal information from one detainee about another who is unwilling to be interviewed.

A media request may not delay or otherwise interfere with the admission, in-processing, or departure of any detainee. Routine processing of ICE detainees shall take precedence over media interviews.

B. Non-Governmental Organization (NGO) and Other Agency Stakeholder Facility Tours, Visitation, or Tours with Visitation

ICE detention facilities will maintain an open and transparent approach to immigration detention through managed access of stakeholders participating in approved tours, visits, or tours with visitation. All tours and visits requests shall be governed by this standard and other applicable ICE policies or procedures on NGO and/or stakeholder access to detention facilities.

All requests by NGOs and other stakeholders (which include, but are not limited to, community service organizations, intergovernmental entities, faith-based organizations, members of academia, and legal groups (e.g., pro bono legal service provider groups)) for tours, visits, or tours with visits must be submitted in writing to the local ICE/ERO Field Office supervising the facility or the ICE Office of

State, Local and Tribal Coordination (OSLTC). Tour requests should not be directed to the facility.

All requests shall be forwarded to the Field Office for review. When deciding whether to approve or deny the request, the Field Office Director, or his or her designee, will take into consideration safety and security, and the availability of personnel to staff the tour, visitation, or tour with visitation. All tour or visit participants will be expected to submit personal information required by applicable ICE policies, so the Field Office can perform background checks as necessary.

When requesting visitation or a tour with visitation, stakeholders may pre-identify any detainee with whom they may wish to speak by providing ICE with a list of specific detainees in advance. Stakeholders are not required to pre-identify a detainee(s) with whom they may wish to meet during their tour and/or visit. In order to meet with detainees who have not been pre-identified, stakeholders shall provide to ICE a sign-up sheet.

All stakeholders shall provide ICE a completed tour/visitation notification flyer and a signed ICE Stakeholder Visitor Code of Conduct.

If the tour/visit is approved, the facility shall post both the ICE sign-up sheet and the ICE stakeholder tour/visit notification flyer at least 48 hours in advance of the tour or visitation in appropriate locations (e.g., message boards, housing areas). The facility staff may also make appropriate oral announcements to detainees about the upcoming tour/visit (e.g., announcement during meal times). The facility staff is not required to inform a detainee’s attorney that a stakeholder will tour/visit the facility or for overseeing the content of the consent form or ensuring that the detainee and the stakeholder have completed it.

On the day of the visitation, the facility staff shall give the NGO or stakeholder access to pre-identified detainees and/or to detainees who have signed up in advance to speak with the stakeholder. The facility


staff shall arrange for the visitation to occur in a pre-determined common area or space.

The facility staff may maintain a physical presence in the meeting room to maintain safety and security.

To ensure security and avoid any disruptions in daily operations, all NGOs and other stakeholders touring and/or conducting visitation with detainees shall maintain proper and appropriate decorum, adhere to applicable ICE and facility standards, and may be asked to sign a code of conduct form.

This Standard does not apply to (1) Legal Orientation Program or Know Your Rights presentation providers; (2) law firms, organizations, or sole attorney practitioner providing or seeking to provide legal representation; and (3) health care practitioners with a request from a detainee's counsel to conduct an examination relevant to the detainee's case.

Exhibit D

	<p align="center">CORPORATE POLICY & PROCEDURE MANUAL</p> <p>CHAPTER: 01 - General Administration</p> <p>TITLE: 1.2.7 Recordings Prohibited</p>	<p><u>NUMBER:</u> 1.2.7</p> <p><u>SUPERSEDES:</u> 4/1/13</p> <p><u>EFFECTIVE:</u> 7/31/17</p>
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POLICY

Due to institutional security as well as the confidentiality and privacy afforded employees, clients, and individuals receiving contracted services, GEO Group, Inc. (GEO) prohibits third party digital and video recordings of any kind unless the required notifications are made and approval is obtained. This policy does not restrict GEO’s operational security procedures.

GUIDELINES

- A. There are to be no electronic recordings of any kind made at facilities and other locations unless there has been prior approval given by the Legal Department or the CEO.
- B. This prohibition does not apply to GEO’s routine surveillance which includes recording use of force incidents, and all interaction with individuals receiving contracted services anywhere on GEO property; recording for instruction/training; recording of any out-briefing or evaluation resulting from an audit; recording of administrative meetings; or where lawfully required during a governmental investigation.



APPROVED: _____
Corporate Policy Director

7/31/17

EFFECTIVE: _____

POLICY OWNER: Louis Carrillo, Vice President, Corporate Counsel

Exhibit E

12445 E. Caley Avenue
Centennial, CO 80111



**U.S. Immigration
and Customs
Enforcement**

June 20, 2019

Via Email

jchoate@geogroup.com

RE: *Menocal, et al. v. The GEO Group*, 1:14-cv-02887

Dear Warden Choate:

I write to clarify the position of U.S. Immigration and Customs Enforcement (ICE) regarding Plaintiffs' request for inspection of the Aurora Contract Detention Facility, also known as the Denver Contract Detention Facility (DCDF). It is my understanding that Plaintiffs are requesting to inspect: (1) all facilities used for administrative or disciplinary segregation of immigration detainees; (2) all housing units occupied by any Class Member, including both individual cells and common areas; (3) all areas, including but not limited to The GEO Group's (GEO) on-site medical facility, laundry room, dining area, kitchen, law library, barbershop, intake area, solitary confinement unit, warehouses, any exterior or outdoor areas, and ICE and GEO offices, including, but not limited to, conference rooms and break rooms, where any Class Member performed work, including cleaning, pursuant to the Housing Unit Sanitation Policy; (4) all areas in which GEO stores or stored records and/or electronically-stored information; (5) all areas, including but not limited to GEO's on-site medical facility, laundry room, dining area, kitchen, law library, barbershop, intake area, solitary confinement unit, warehouses, any exterior or outdoor areas, and ICE and GEO offices, including, but not limited to, conference rooms and break rooms where any Class Member performed work pursuant to the Voluntary Work Program. It is also my understanding that Plaintiffs are requesting to photograph and/or video-record the DCDF.

GEO's current contract at the DCDF incorporated the latest version of the ICE 2011 Performance-Based National Detention Standards, 2016 revision (PBNDS 2011) on February 14, 2017. ICE has not received a subpoena from Plaintiffs for entry into the DCDF. However, as demonstrated below, the PBNDS 2011 provides guidance that addresses several of Plaintiffs' requests.

Scheduling a Tour of the DCDF

ICE regularly provides tours of its detention facilities to advocacy and non-governmental organizations, members of Congress, the media, and other members of the public subject to the limitations outlined in agency policy and the agency's detention standards, including the PBNDS 2011. As stated in the PBNDS 2011, ICE and its Enforcement and Removal Operations (ERO) division support the provision of public access to non-classified, non-sensitive and non-confidential information about operations in the interest of transparency. PBNDS 2011 Standard 7.2., part V.A.1. Under the PBNDS, all requests for tours must be submitted in writing to the local ICE/ERO Field Office supervising the facility. PBNDS 2011 7.2.V.B. In reviewing the request, the ICE Field Office Director, or his or her designee, takes into consideration safety and security, and the availability of ICE/ERO personnel to staff the tour. *Id.* All tour participants are expected to submit personal information required by applicable ICE policies, so the Field Office can perform background checks as necessary. *Id.*

As stated above, ICE/ERO maintains an open and transparent approach to immigration detention through managed access of public participation in approved tours. Regarding Plaintiffs' request to visit the DCDF, ICE/ERO has advised Plaintiffs that it has no objection to providing Plaintiffs with a tour of the requested five areas of the DCDF outlined above. Plaintiffs can communicate with the local ICE Community Relations Officer to coordinate the tour, including the date, time, and background steps prior to the tour.

ICE Security Concerns Presented by Photography and/or Video-Recording

As stated in the PBNDS 2011, if the presence of video, film or audio equipment poses a threat to the safety or security of the facility, its staff or its detainees, the Field Office Director may limit or prohibit such access. PBNDS 7.2.V.A.3. The limitation on photo and video equipment is based on serious operational security and law enforcement concerns that aim to limit risk of harm to persons (including detainees, facility staff, and the public) and property; introduction of contraband, including drugs, weapons, and/or escape tools into the facility; and detainee escape from the facility, among other concerns. The DCDF is a secure facility with a secure control center that is staffed continuously. The front entrance is a controlled access point for entry of both individuals and vehicles. Security officers are posted immediately adjacent to housing units and other areas of the facility to permit officers to see or hear and respond to emergency situations. Facility staff observe, supervise and control movement of detainees from one area to another.

Permitting photography and video-recording of the DCDF could essentially provide a blueprint of the facility, including its layout, secure entrances and exits, the secure control center, and the positioning of staff and staffing level of the various areas of the facility. Photography and video-recording presents a significant risk to operational security, including risk of harm to

detainees, facility staff, and the public, as it will allow viewers to potentially exploit any perceived weaknesses in operational security.

Although ICE/ERO may have previously considered possible options to accommodate photography and/or video-recording, ICE/ERO currently cannot make any accommodations in this regard. First, the Denver Field Office is under new leadership, which has reassessed and reinforced certain aspects of operational security. Second, the DCDF previously held approximately 400-500 immigration detainees and now houses approximately 1,400 detainees. There has been an increase of 600 immigration detention beds at the DCDF in the last 18 months alone. This significant increase requires additional, heightened security measures. Finally, on June 16, 2019, as widely reported in the media, three detainees (including one who is currently a suspect in a rape case) escaped from the DCDF. As a result of these operational security and law enforcement concerns, ICE/ERO has determined that it cannot permit photography or video-recording in the DCDF.

Given the serious risk of harm to detainees, facility staff, and the general public, ICE believes that any benefit of photography and video-recording is outweighed by the security concerns outlined above. ICE further believes that, even with a protective order in this case, the subsequent possible harm following an inadvertent release of photos and/or videos dwarfs any value from photography and video-recording.

Detainee and Staff Privacy Concerns Presented by Photography and/or Video-Recording

As stated in the PBNDS, limitations on photography and video-recording protect the privacy of detainees and facility staff, including the right of a detainee not to be photographed or recorded. PBNDS 2011 7.2.II.2.

Detainees have the right not to be photographed (still, movie or video) and not to have their voices recorded. PBNDS 2011 7.2.III.3. ICE/ERO has a responsibility to protect these rights, which it takes seriously. PBNDS 2011 7.2.V.A.1. Detainees at the DCDF have not consented to being photographed and/or video-recorded in this matter. Additionally, detainees at the DCDF have significant personal safety interests in maintaining their privacy. Detainees may have sensitive applications for benefits that are confidential pursuant to statutory provisions. 8 U.S.C. § 1367 protects several categories of confidential information that prohibit disclosure of **any** information which relates to an alien who is the beneficiary of an application for relief under the Violence Against Women Act (VAWA); trafficking Victims (T Visa) and; victims of crimes (U Visa), among other categories of individuals. *See* U.S.C. 8 §1367(a)(2). This provision prohibits disclosure of any information about a detainee who is the beneficiary of or has an

application pending for such relief. This provision not only applies to documents regarding a detainee, but would also include photographs and/or video that capture any images of a detainee who is the subject of such relief. Penalties for violating this provision include disciplinary action and civil money penalties for each violation. *See* 8 C.F.R. §1367(c). Additionally, detainees may also be at risk of gang or other organized violence if their identities and locations are exposed.

ICE staff also have major privacy interests which are implicated by Plaintiffs' request for photography and/or video-recording. If ICE staff are publicly identified (whether by face, uniform, vehicle license plate, or other method of identification), they and their families face serious risk of harm. It is clear that there is hostility to ICE in the local community, as the DCDF is regularly the subject of protests and demonstrations. Further, there have been instances where ICE employees are followed when driving home in their personal vehicles, harassed, and otherwise targeted for public abuse. In the summer of 2018, hackers posted the personal information of approximately 9,000 ICE employees online.

Additionally, it is reported that blurring or pixelating images, if considered as an alternative, are not legitimate methods of maintaining privacy. It is further reported that, given the state of current technology, individuals and computers are able to reverse obfuscation of faces and images. As a result, ICE does not believe that the blurring of photographs of detainees or ICE staff mitigates these privacy concerns.

Thank you in advance for your cooperation in this matter. Should you have any questions or concerns regarding the above, please do not hesitate to contact me.

Sincerely



John E. Fabricatore
Acting Denver Field Office Director
Enforcement and Removal Operations
U.S Immigration and Customs Enforcement

CC:

Valerie Brown
Holland & Knight
2929 Arch Street, Suite 800
Philadelphia, PA 19104
Email: Valerie.Brown@hklaw.com

Juno Turner
Ossai Miazad
Elizabeth Stork
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, New York 10017
E-Mail: jturner@outtengolden.com
E-Mail: om@outtengolden.com
E-Mail: estork@outtengolden.com

David Lopez
Outten & Golden LLP
601 Massachusetts Avenue NW
Second Floor West Suite
Washington, D.C. 20001
E-Mail: pdl@outtengolden.com

Rachel Dempsey
Adam Koshkin
Outten & Golden LLP
One California Street, 12th Floor
San Francisco, CA 94111
E-Mail: rdempsey@outtengolden.com
E-Mail: akoskin@outtengolden.com

Alexander Hood
David Seligman
Andrew Schmidt
Towards Justice
1410 High St., Suite 300
Denver, CO 80218
(720) 441-2236
E-Mail: alex@towardsjustice.org
E-Mail: david@towardsjustice.org
E-Mail: andy@towardsjustice.org

R. Andrew Free
Law Office of R. Andrew Free
P.O. Box 90568
Nashville, TN 37209
T: (844) 321-3221
E-Mail:
Andrew@ImmigrantCivilRights.com

Brandt Milstein
Milstein Law Office
595 Canyon Boulevard
Boulder, CO 80302
(303) 440-8780
E-Mail: brandt@milsteinlawoffice.com

Andrew Turner
The Kelman Buescher Firm
600 Grant St., Suite 450
Denver, CO 80203
(303) 333-7751
E-Mail: aturner@laborlawdenver.com

Hans Meyer
Meyer Law Office, P.C.
P.O. Box 40394
Denver, CO 80204
(303) 831-0817
E-Mail: hans@themeyerlawoffice.com

Exhibit F

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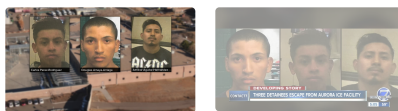


Fort Carson rape suspect among 3 detainees who escaped from Aurora ICE facility

Posted: 2:47 PM, Jun 17, 2019 **Updated:** 8:26 PM, Jun 17, 2019



By: Robert Garrison , Jace Larson



DENVER — A suspect in a Fort Carson rape case has been identified as one of three detainees who escaped from the immigration detention facility in Aurora, Immigration and Customs Enforcement officials announced Monday.

Amilcar Aguilar-Hernandez, 23, from El Salvador, has a criminal conviction for felony trespassing; and he is currently a suspect in a rape case in Fort Carson, read an ICE statement.

The other two detainees — Douglas Amaya-Arriaga, 18, and Carlos Perez-Rodriguez, 18 — are from Honduras and have no criminal history, the agency said.

The three men escaped from the immigration [detention facility in Aurora around noon Sunday](#) . ICE officials said the detainees escaped by scaling a 15-foot chain link fence and then a wall in the recreation area.

The three federal fugitives remain at large, the statement read.

The Contact7 Investigators learned, and confirmed with Aurora police, that employees from ICE called the Aurora Police Department at 12:12 p.m. Sunday about the escape. Police officers did not respond to search for the escapees until 12:47.

An APD spokesman told Contact7 that officers in the department were tied up on a situation where 15 people were reported to be fighting. At that scene, a police officer was injured, the spokesman said. Other officers were assisting in a different call about a possible structure fire at the time ICE called about the escapees.

Aurora Police searched the area near the holding facility, located at 3130 North Oakland Street, but did not respond to the facility's address, Contact7 learned. A spokesman from the Aurora Police Department did not dispute this.

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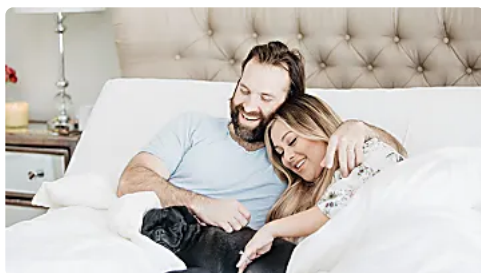
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6/20/2019

Fort Carson rape suspect among 3 detainees who escaped from Aurora ICE facility



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6/20/2019

Fort Carson rape suspect among 3 detainees who escaped from Aurora ICE facility

Exhibit G

Excerpt from the May 11, 2018 Report of the Advisory Committee on Civil Rules
(revised August 2, 2018)

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

DAVID G. CAMPBELL
CHAIR

REBECCA A. WOMELDORF
SECRETARY

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BANKRUPTCY RULES

JOHN D. BATES
CIVIL RULES

DONALD W. MOLLOY
CRIMINAL RULES

DEBRA ANN LIVINGSTON
EVIDENCE RULES

MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. John D. Bates, Chair
Advisory Committee on Civil Rules

RE: Report of the Advisory Committee on Civil Rules

DATE: May 11, 2018 (revised August 2, 2018)

Introduction

The Civil Rules Advisory Committee met in Philadelphia, Pennsylvania, on April 10, 2018. * * * * *

Part I of this Report submits a recommendation to publish for comment a proposal to improve the procedure for taking depositions of an organization under Rule 30(b)(6). A Subcommittee has been working on this subject for two years.

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I. Action Item

Rule 30(b)(6): Duty to Confer

The Advisory Committee on Civil Rules proposes that the preliminary draft of an amendment to Rule 30(b)(6), with accompanying Committee Note, be published for public comment. The proposed amendment and Note are presented below.

**Excerpt from the May 11, 2018 Report of the Advisory Committee on Civil Rules
(revised August 2, 2018)**

The preliminary draft was developed by the Advisory Committee's Rule 30(b)(6) Subcommittee, which was formed in April 2016 in response to a number of submissions proposing consideration of a variety of changes to the rule. Initially, the Subcommittee considered several changes that were introduced to the Standing Committee during its January 2017 meeting. After further consideration, that list of possible rule changes was pared back to six specific possible amendment ideas.

The Subcommittee then invited comment on these items. Over 100 comments were submitted, many of them very detailed and thoughtful. At the Standing Committee's June 2017 meeting, an interim report on the invitation for comment was made. The agenda book for the Standing Committee's January 2018 meeting included a detailed summary of those comments.

After receiving this commentary, the Subcommittee resumed discussion of ways to deal with Rule 30(b)(6) issues. Eventually it concluded that the most productive method of improving practice under the rule would be to require the parties to confer in good faith about the matters for examination. Much of the commentary it had received indicated that such conferences often provide a method for avoiding and resolving problems. Requiring the parties to confer therefore holds promise as a way to address the difficulties cited by those who urged amending the rule.

At its November 2017 meeting, the Advisory Committee discussed this proposal. That discussion suggested that the rule should make it clear that the requirement to confer in good faith is bilateral — it applies to the responding organization as well as to the noticing party — and also raised the possibility that the rule require that the parties confer about the identity of the witnesses to testify. The Subcommittee met by conference call after that meeting to address concerns raised by the Advisory Committee.

At the Standing Committee's January 2018 meeting, there was discussion of the evolving Rule 30(b)(6) proposal to require the parties to confer, including the possibility (raised during the Advisory Committee meeting) that the identity of the witnesses be added to the list of topics for discussion. There was also discussion of the possibility of providing in the rule that additional matters be mandatory topics for discussion.

After the Standing Committee's meeting, the Subcommittee again met by conference call. * * * * * The Subcommittee worried that adding topics to the mandatory list for discussion might generate disputes rather than avoid them. Another concern was that adding to the list of mandatory topics could build in delay. The eventual resolution was not to expand the list of mandatory topics beyond the number and description of the matters for examination and the identity of the designated witnesses.

The Subcommittee also considered adding a reference to Rule 30(b)(6) in the Rule 26(f) conference list of topics. There was considerable sentiment on the Subcommittee not to introduce this topic at the early point when the Rule 26(f) conference is to occur because, in most cases, it is too early for the parties to be specific about such depositions. Nonetheless, the consensus was to present the possibility of publishing a possible change to Rule 26(f) to the full Advisory Committee, in case that seemed desirable should public comment strongly favor such a change. The Subcommittee would not recommend that course, however.

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At its April 2018 meeting, the Advisory Committee considered the Subcommittee’s recommendation that a Rule 30(b)(6) preliminary draft be published for comment. The discussion considered the addition of the identity of the witness or witnesses to the list of topics for conferring and the risk that some might interpret that as requiring that the organization obtain the noticing party’s approval of the organization’s selection of its witness. The proposed amendment, however, carries forward the present rule text stating that the named organization must designate the persons to testify on its behalf. The Committee Note affirms that the choice of the designees is ultimately the choice of the organization. The Advisory Committee resolved to retain the identity of the witnesses as a topic for discussion.

A different concern voiced at the Advisory Committee’s meeting was that the draft, as then written, might be interpreted to suggest that a single conference would satisfy the requirement to confer, which could prove particularly problematical with the addition of the identity of the witnesses as a required topic. Instead, it is likely that the process of conferring will be iterative. To reflect that reality, the rule text was amended to add the phrase “and continuing as necessary” to the rule. This addition recognizes that often a single interaction will not suffice to satisfy the obligation to confer in good faith. With that change, the Advisory Committee voted to recommend publication of the preliminary draft rule presented below for public comment.

Regarding the possibility of publishing a draft amendment to Rule 26(f), there was no support on the Advisory Committee for doing so, and accordingly that idea is not part of this recommendation to the Standing Committee.

After the Advisory Committee’s meeting, a revised Committee Note reflecting the addition the Advisory Committee made to the rule was circulated to the Advisory Committee, which voted on it by email. With refinements to that Note, the Advisory Committee brings forward the following preliminary draft with the proposal that it be published for public comment.

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Rule 30. Depositions by Oral Examination

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(b) Notice of the Deposition; Other Formal Requirements.

* * * * *

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must ~~then~~ designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, and continuing as necessary, the serving party and the

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organization must confer in good faith about the number and description of the matters for examination and the identity of each person the organization will designate to testify. A subpoena must advise a nonparty organization of its duty to make this designation and to confer with the serving party. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

* * * * *

Draft Committee Note

Rule 30(b)(6) is amended to respond to problems that have emerged in some cases. Particular concerns have included overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses. This amendment directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served, and to continue conferring as necessary, regarding the number and description of matters for examination and the identity of persons who will testify. At the same time, it may be productive to discuss other matters, such as having the serving party identify in advance of the deposition the documents it intends to use during the deposition, thereby facilitating deposition preparation. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate one or more witnesses to testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).

Candid exchanges about discovery goals and organizational information structure may reduce the difficulty of identifying the right person to testify and the materials needed to prepare that person. Discussion of the number and description of topics may avoid unnecessary burdens. Although the named organization ultimately has the right to select its designees, discussion about the identity of persons to be designated to testify may avoid later disputes. It may be productive also to discuss “process” issues, such as the timing and location of the deposition.

The amended rule directs that the parties confer either before or promptly after the notice or subpoena is served. If they begin to confer before service, the discussion may be more productive if the serving party provides a draft of the proposed list of matters for examination, which may then be refined as the parties confer. The rule recognizes that the process of conferring will often be iterative, and that a single conference may not suffice. For example, the organization may be in a position to discuss the identity of the person or persons to testify only after the matters for examination have been delineated. The obligation is to confer in good faith, consistent with Rule 1, and the amendment does not require the parties to reach agreement. The duty to confer continues if needed to fulfill the requirement of good faith. But the conference process must be completed a reasonable time before the deposition is scheduled to occur.

When the need for a Rule 30(b)(6) deposition is known early in the case, the Rule 26(f) conference may provide an occasion for beginning discussion of these topics. In appropriate cases, it may also be helpful to include reference to Rule 30(b)(6) depositions in the discovery plan submitted to the court under Rule 26(f)(3) and in the matters considered at a pretrial conference under Rule 16.

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**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE¹**

1 **Rule 30. Depositions by Oral Examination**

2 * * * * *

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5 * * * * *

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13 ~~then~~ designate one or more officers, directors, or
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¹ New material is underlined in red; matter to be omitted is lined through.

2 FEDERAL RULES OF CIVIL PROCEDURE

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16 the matters on which each person designated will
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18 subpoena is served, and continuing as necessary,
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21 description of the matters for examination and
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23 designate to testify. A subpoena must advise a
24 nonparty organization of its duty to make this
25 designation and to confer with the serving party.
26 The persons designated must testify about
27 information known or reasonably available to the
28 organization. This paragraph (6) does not
29 preclude a deposition by any other procedure
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31 * * * * *

FEDERAL RULES OF CIVIL PROCEDURE

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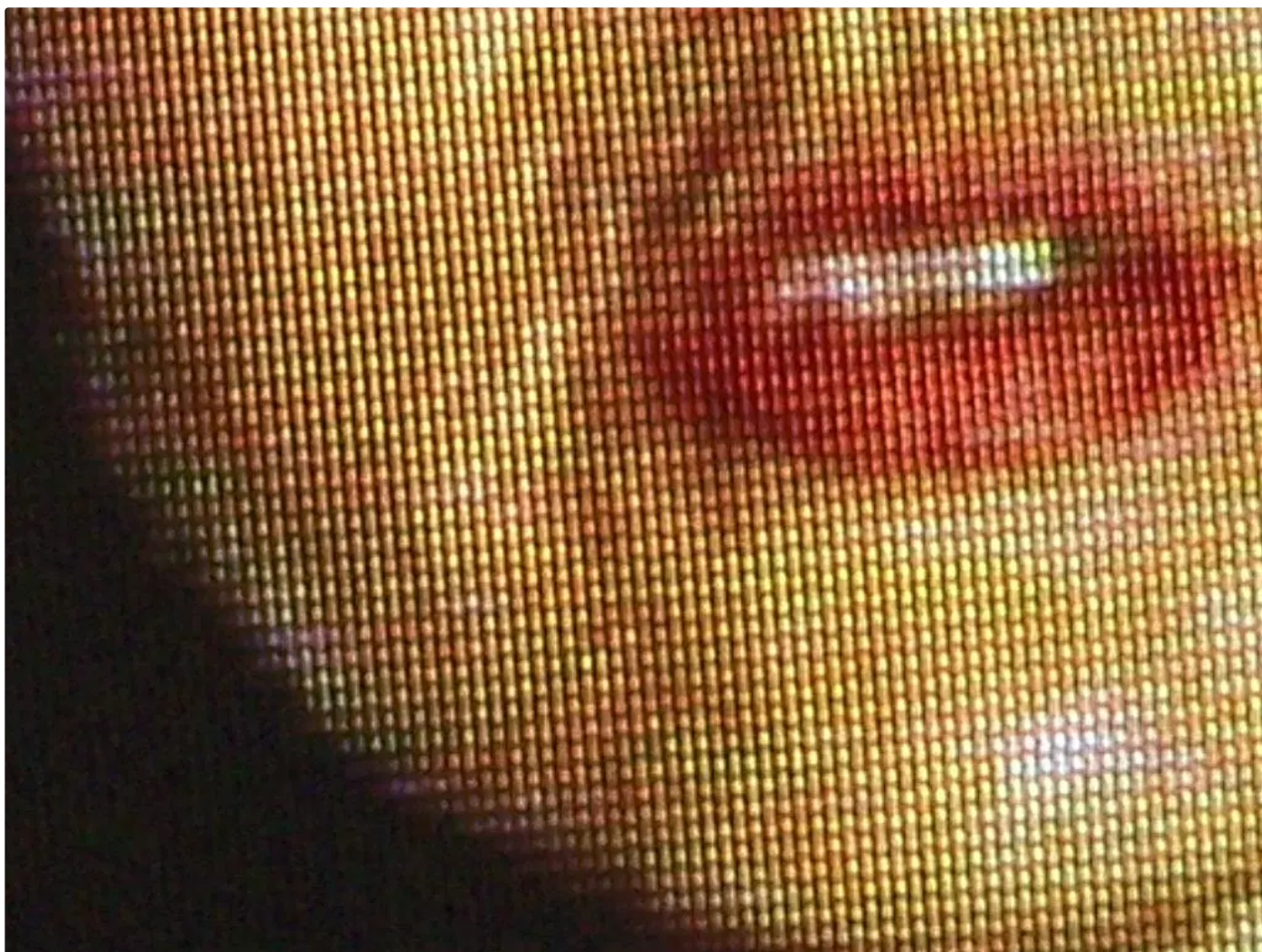
Exhibit I

QUARTZ

BLURRED LINES

Nothing pixelated will stay safe on the internet

By Dave Gershgorn • September 12, 2016



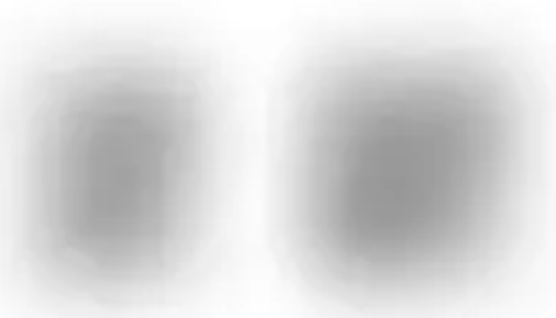
STEVEN STRAITON / CC BY 2.0

Blurring personal information isn't good enough anymore.

It's becoming much easier to crack internet privacy measures, especially blurred or pixelated images. Those methods make it tough for people to see sensitive information such as obscured license plate numbers or censored faces, but researchers from University of Texas at Austin and Cornell University say that the practice is wildly insecure in the age of machine learning.

Using simple deep learning tools, the three-person team was able to identify obfuscated faces and numbers with alarming accuracy. On an industry standard dataset where humans had a 0.19% chance of identifying a face, the algorithm had 71% accuracy (or 83% if allowed to guess five times). The algorithm doesn't produce a deblurred image—it simply identifies what it sees in the obscured photo, based on information it already knows. The approach works with blurred and pixelated images, as well as P3, a type of JPEG encryption pitched as a secure way to hide information.

Specialized tools for seeing through blur and pixelation have been popping up throughout this year, like the Max Planck Institute's work on identifying people in blurred Facebook photos. What distinguishes the UT and Cornell research is its simplicity. The attack uses Torch (an open-source deep learning library), Torch templates for neural networks, and standard open-source data.



Even photos obscured by YouTube's blur feature (center, right) can be recognized.

MCPHERSON ET AL.

“We’re using this off-the-shelf, poor man’s approach,” says Vitaly Shmatikov, co-author of the paper and professor at Cornell. “Just take a bunch of training data, throw some neural networks on it, throw standard image recognition algorithms on it, and even with this approach...we can obtain pretty good results.”

Shmatikov acknowledges that the Max Planck Institute's work is more nuanced, taking into account contextual clues about identity. But he says that his simpler approach shows how weak these privacy methods really are. (He doesn't mention that his method also is 18% more accurate in a comparable test.)

To build the attacks that identified faces in YouTube videos, researchers took publicly-available pictures and blurred the faces with YouTube's video tool. They then fed the algorithm both sets of images, so it could learn how to correlate blur patterns to the unobscured faces. When given different images of the same people, the algorithm could determine their identity with 57% accuracy, or 85% percent when given five chances.

"It's pretty simple stuff," says Richard McPherson, co-author and a visiting student at Cornell Tech. "The only real restriction is having a data set you could train these machine learning techniques on. But that's available."

Training data could be as simple as images on Facebook or a staff directory on a website. For numbers and letters (even handwritten), the training data is publicly available online.

Companies like YouTube that recommend blurring should make it clear that their privacy measures only protect information from humans, not machines or determined adversaries, say McPherson and Shmatikov.

"In security and privacy, people do not fully appreciate the power of machine learning," says Shmatikov. "Until somebody shows how even off-the-shelf technology can be used for privacy breaches, people in security and privacy aren't going to realize it."