

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SYLVESTER OWINO, ET AL.,)	<u>17-CV-1112-JLS</u>
PLAINTIFFS,)	
)	
VS.)	SAN DIEGO, CA
)	DECEMBER 19, 2019
CORECIVIC, INC.,)	1:30 P.M.
DEFENDANT.)	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE JANIS L. SAMMARTINO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: FOLEY & LARDNER LLP
BY: EILEEN R. RIDLEY, ESQ.
ALAN R. OUELLETTE, ESQ.
NICHOLAS J. FOX, ESQ.

FOR THE DEFENDANT: STRUCK LOVE BOJANOWSKI & ACEDO, PLC
BY: NICHOLAS D. ACEDO, ESQ.
JACOB B. LEE, ESQ.

COURT REPORTER: FRANK J. RANGUS, OCR
U. S. COURTHOUSE
333 W. BROADWAY, SUITE 420
SAN DIEGO, CA 92101
(619) 318-8590

PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY; TRANSCRIPT
PRODUCED BY COMPUTER.

I N D E X

<u>PROCEEDINGS</u>	<u>PAGE</u>
<i>THE COURT'S TENTATIVE RULING</i>	4
<i>THE COURT'S QUESTIONS:</i>	
TO PLAINTIFFS	8
TO DEFENDANT	22

1 THE DEPUTY CLERK: CALLING MATTER NUMBER TWO,
2 17-CV-1112, OWINO, *ET AL.* VS. CORE CIVIC, INC., FOR A MOTION
3 HEARING.

4 THE COURT: OKAY. GOOD AFTERNOON, COUNSEL.
5 APPEARANCES, PLEASE.

6 MS. RIDLEY: GOOD AFTERNOON, YOUR HONOR.

7 EILEEN RIDLEY, ALAN OUELLETTE, AND NICHOLAS FOX,
8 FOLEY & LARDNER, ON BEHALF OF THE PLAINTIFFS.

9 THE COURT: THANK YOU.

10 MR. ACEDO: GOOD AFTERNOON, YOUR HONOR.

11 NICHOLAS ACEDO AND JACOB LEE ON BEHALF OF CORE CIVIC.

12 THE COURT: OKAY. THANK YOU.

13 THIS IS WHAT WE'RE GOING TO DO THIS AFTERNOON. I'VE
14 GOT A TENTATIVE FOR YOU ON THIS MATTER, AND I'LL READ IT
15 SLOWLY. THEN I HAVE QUITE A FEW QUESTIONS FOR YOU, FOR EACH
16 SIDE, AND I WOULD ASK YOU, AND I'LL SAY THIS A SECOND TIME
17 WHEN WE GET CLOSER TO THE QUESTION, PLEASE JUST ANSWER THE
18 QUESTION. AS COMPETENT LAWYERS, I KNOW THERE'S A DESIRE TO
19 FULLY, YOU KNOW, ROUND OUT CONCEPTS AND WHAT NOT, BUT I REALLY
20 WOULD LIKE DIRECT ANSWERS TO MY QUESTIONS. AT THE CONCLUSION
21 OF THAT, I'LL GIVE EACH SIDE TEN MINUTES, UNINTERRUPTED, TO
22 TELL ME WHATEVER YOU WANT TO TELL ME. BUT I HAVE AREAS OF
23 CONCERN BASED ON WHAT I HAVE READ AND REVIEWED AND HENCE MY
24 QUESTIONS, AND SO I WOULD LIKE THEM SPECIFICALLY ANSWERED. SO
25 LET'S START WITH THE TENTATIVE.

1 WE ARE HERE TODAY ON SEVERAL MOTIONS: (1) PLAINTIFFS
2 AND COUNTER-DEFENDANTS SYLVESTER OWINO AND JONATHAN GOMEZ'S
3 MOTION FOR CLASS CERTIFICATION; (2) PLAINTIFFS' MOTION FOR
4 PARTIAL SUMMARY JUDGMENT; (3) DEFENDANT AND COUNTER-CLAIMANT
5 CORE CIVIC'S MOTION FOR JUDGMENT ON THE PLEADINGS; AND (4)
6 PLAINTIFFS' MOTION TO EXCLUDE EVIDENCE FROM THE COURT'S CLASS
7 CERTIFICATION DECISION. THE COURT HAS PREPARED THE FOLLOWING
8 TENTATIVE RULING ON THESE MOTIONS.

9 FIRST, THE COURT IS INCLINED TO DENY WITHOUT
10 PREJUDICE PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON
11 THE GROUNDS THAT THE ONE-WAY INTERVENTION RULE PRECLUDES THE
12 COURT FROM RULING ON A MERITS-BASED MOTION BEFORE THE CLASS IS
13 CERTIFIED AND NOTIFIED WITHOUT THE CONSENT OF THE DEFENDANT.

14 SECOND, THE COURT IS INCLINED TO DENY DEFENDANT'S
15 MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS ON THE GROUNDS
16 THAT DEFENDANT HAS WAIVED ANY CHALLENGE TO THE COURT'S
17 PERSONAL JURISDICTION OVER IT.

18 THIRD, THE COURT IS INCLINED TO DENY AS MOOT
19 PLAINTIFFS' MOTION TO EXCLUDE ON THE GROUNDS THAT THE UNTIMELY
20 PRODUCED DOCUMENTS ARE NOT NECESSARY TO THE COURT'S
21 DETERMINATION OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION.

22 THIS BRINGS THE COURT TO PLAINTIFFS' MOTION FOR CLASS
23 CERTIFICATION, WHICH PRESENTS SEVERAL ISSUES THE COURT WOULD
24 LIKE TO DISCUSS TODAY.

25 FIRST, THE COURT IS TENTATIVELY INCLINED TO CONCLUDE

1 THAT IT CANNOT CERTIFY THE CALIFORNIA AND NATIONAL BASIC
2 NECESSITIES CLASSES, WHICH WERE NOT ALLEGED IN EITHER
3 COMPLAINT AND APPEAR TO THE COURT TO BE DIFFERENT FROM, RATHER
4 THAN NARROWER VERSIONS OF, THE CLASSES ALLEGED IN THE
5 COMPLAINTS.

6 SECOND, THE COURT IS TENTATIVELY INCLINED TO CONCLUDE
7 THAT, ALTHOUGH PLAINTIFFS HAVE ESTABLISHED ARTICLE III
8 STANDING FOR THEIR CLAIMS FOR MONEY DAMAGES, RESTITUTION,
9 INTEREST, PENALTIES, PUNITIVE DAMAGES, AND FEES AND COSTS,
10 THEY HAVE FAILED TO ESTABLISH ARTICLE III STANDING FOR THEIR
11 CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF. PLAINTIFFS MUST
12 ESTABLISH A SUFFICIENT LIKELIHOOD OF FUTURE HARM, A SHOWING
13 THAT IS LACKING ON THE CURRENT RECORD. FURTHER, BECAUSE
14 PLAINTIFFS APPEAR NEVER TO HAVE HAD STANDING DURING THE
15 PENDENCY OF THIS ACTION, THE COURT IS TENTATIVELY INCLINED TO
16 DISMISS WITHOUT PREJUDICE THE CLAIMS FOR PROSPECTIVE EQUITABLE
17 RELIEF.

18 THIRD, THE COURT IS TENTATIVELY INCLINED TO CONCLUDE
19 THAT THE CLAIMS OF MR. OWINO AND MR. GOMEZ ARE NOT TYPICAL OF
20 THOSE OF THE CALIFORNIA LABOR LAW CLASS AS CURRENTLY DEFINED
21 ON SEVERAL GROUNDS. (A) MR. OWINO AND MR. GOMEZ ARE BOTH
22 FORMER DETAINEES BUT SEEK TO CERTIFY A CLASS COMPRISED OF BOTH
23 FORMER AND CURRENT PARTICIPANTS IN DEFENDANT'S VOLUNTEER WORK
24 PROGRAM. FURTHER, THE CURRENT PARTICIPANTS IN DEFENDANT'S
25 VOLUNTEER WORK PROGRAM DO NOT SHARE MR. OWINO AND MR. GOMEZ'S

1 CLAIMS FOR WAITING TIME PENALTIES. (B) MR. OWINO AND MR.
2 GOMEZ WORKED ONLY AS KITCHEN STAFF, CHEMICAL PORTERS, AND
3 CLEANERS, BUT IT IS UNCLEAR TO THE COURT WHAT OTHER POSITIONS
4 WERE HELD BY PARTICIPANTS IN THEIR VOLUNTEER WORK PROGRAM,
5 WHAT THEIR DUTIES WERE, AND WHAT THEIR SCHEDULES WERE LIKE.
6 AND (C) PLAINTIFFS' WAGE STATEMENT CLAIMS ARE SUBJECT TO A
7 ONE- OR THREE-YEAR STATUTE OF LIMITATIONS DEPENDING ON WHETHER
8 THEY SEEK PENALTIES OR ACTUAL DAMAGES, BUT MR. GOMEZ IS
9 OUTSIDE BOTH LIMITATIONS PERIODS AND MR. OWINO IS OUTSIDE THE
10 PENALTIES LIMITATIONS PERIOD.

11 FOURTH, THE COURT IS TENTATIVELY INCLINED TO CONCLUDE
12 THAT COMMON ISSUES DO NOT PREDOMINATE AS TO THE CALIFORNIA
13 LABOR LAW CLASS. ALTHOUGH THE COURT IS INCLINED TO CONCLUDE
14 THAT PLAINTIFFS HAVE ESTABLISHED A UNIFORM POLICY NOT TO PAY A
15 MINIMUM WAGE OR OVERTIME TO DETAINEES IN THE VOLUNTEER WORK
16 PROGRAM, IT IS INCLINED TO CONCLUDE THAT PLAINTIFFS HAVE NOT
17 MADE SUCH A SHOWING AS TO MEAL AND REST PERIODS. THE COURT IS
18 ALSO CONCERNED WITH THE ABILITY TO ADJUDICATE THESE CLAIMS ON
19 A CLASS-WIDE BASIS GIVEN THE APPARENT ABSENCE OF ANY
20 TIMEKEEPING RECORDS.

21 IN LIGHT OF THESE ISSUES, THE COURT IS TENTATIVELY
22 INCLINED TO DISMISS PLAINTIFFS' CLAIMS FOR PROSPECTIVE
23 EQUITABLE RELIEF AND TO DENY CERTIFICATION AS TO THE BASIC
24 NECESSITIES AND CALIFORNIA LABOR LAW CLASSES, BUT TO GRANT
25 CERTIFICATION AS TO THE CALIFORNIA AND NATIONAL FORCED LABOR

1 CLASSES. THAT SAID, THE COURT IS UNCLEAR WHETHER IT IS
2 POSSIBLE TO CERTIFY THE CALIFORNIA LABOR LAW CLASS AS TO SOME
3 OF PLAINTIFFS' CLAIMS AND FOR CERTAIN POSITIONS HELD BY MR.
4 OWINO AND MR. GOMEZ. ACCORDINGLY, THE COURT HAS A NUMBER OF
5 QUESTIONS FOR EACH SIDE, FOCUSING PARTICULARLY ON CLASS
6 CERTIFICATION AND CERTIFICATION OF THE CALIFORNIA LABOR LAW
7 CLASS.

8 SO THAT CONCLUDES THE COURT'S TENTATIVE.

9 NOW, COUNSEL, I WOULD NOTE I RECEIVED A LATE FILING
10 ON NEWLY FILED AUTHORITY FROM THE CASE IN THE CENTRAL DISTRICT
11 INVOLVING GEO, AND I GOT THIS VERY LATE YESTERDAY ONLY BECAUSE
12 I HAVE SUCH A VIGILANT STAFF. NORMALLY, IT WOULDN'T HAVE COME
13 TO ME UNTIL SOMETIME TODAY, OR MAYBE EVEN TOMORROW. I'VE
14 LOOKED AT IT VERY, VERY QUICKLY, AND SO I WILL SPEND FURTHER
15 TIME WITH THAT IF IT'S RELEVANT. I MEAN, I'VE LOOKED AT IT
16 ENOUGH TO KNOW THAT THE STANDING ISSUE, WHAT I CONSIDER TO BE
17 STANDING ISSUES RELEVANT TO HIS CASE, BUT I DON'T KNOW IF IT'S
18 RELEVANT. BUT I'LL TAKE A LOOK AT THAT AND DETERMINE THAT,
19 AND YOU CAN TELL ME WHAT, IF ANYTHING (PAUSE) -- I DON'T THINK
20 IT WARRANTS ANYTHING ADDITIONAL FROM EITHER SIDE, IF YOU'RE
21 PREPARED TO ADDRESS IT, BUT IT'S A DISTRICT COURT CASE. YOU
22 KNOW, IT IS WHAT IT IS. SO I JUST RAISE THAT FOR WHAT IT'S
23 WORTH. I DO HAVE IT.

24 SO I WOULD LIKE TO START WITH PLAINTIFF. IF YOU'D
25 COME TO THE PODIUM, COUNSEL, AND I REITERATE THAT IF WE COULD

1 JUST FOCUS JUST ON THE QUESTION.

2 MS. RIDLEY: I UNDERSTAND.

3 THE COURT: I KNOW THAT'S HARD. IT'S HARD FOR
4 LAWYERS, BUT IT WOULD BE MOST HELPFUL IF WE COULD.

5 LET ME START WITH THIS. LET'S SUPPOSE, COUNSEL, I
6 STUCK WITH THE TENTATIVE. WHAT I'M GOING TO DO AT THE END OF
7 THIS, I'M GOING TO TAKE IT UNDER SUBMISSION. I'M GOING TO GO
8 BACK THROUGH EVERYTHING. I'M GOING TO SPEND TIME WITH JUDGE
9 BERNAL'S STATEMENT OF DECISION. I'M GOING TO CONSIDER
10 EVERYTHING THAT'S SAID HERE. SO IT WILL BE SOME TIME, AND
11 THEN YOU'LL GET A REASONED STATEMENT. BUT'S LET'S SUPPOSE,
12 AFTER ALL OF THAT, I ADOPT THE TENTATIVE RULING. WHERE WOULD
13 WE GO FROM HERE, AND WOULD PLAINTIFFS INTEND TO FILE A RENEWED
14 MOTION OR SEEK LEAVE TO AMEND THEIR COMPLAINT?

15 MS. RIDLEY: DIRECTLY ANSWERING THE QUESTION, I THINK
16 WE MIGHT CONSIDER A RENEWED MOTION AND TO AMEND TO INCLUDE MR.
17 GEH AS A REPRESENTATIVE PLAINTIFF, YOUR HONOR.

18 THE COURT: OKAY. OKAY, I APPRECIATE THAT.

19 CAN THE COURT ALLOW PLAINTIFFS TO AMEND THEIR
20 COMPLAINT TO SUBSTITUTE A NEW CLASS REPRESENTATIVE WHO IS A
21 CURRENT DETAINEE OF DEFENDANT AND WOULD THEREFORE HAVE ARTICLE
22 III STANDING TO ASSERT CLAIMS FOR PROSPECTIVE EQUITABLE
23 RELIEF?

24 MS. RIDLEY: WE BELIEVE THAT THE COURT MAY DO THAT,
25 IN PARTICULAR, IF THE COURT BELIEVES THAT THERE ARE SOME

1 PREDOMINATING LEGAL ISSUES AND THAT THE NAMING OF THAT NEW
2 PARTY WOULD RECTIFY ANY JURISDICTIONAL ISSUES WITH REGARD TO
3 THE STANDING OR OTHER ISSUES WITH THE REPRESENTATIVE
4 PLAINTIFFS, AND WE'VE CITED AUTHORITY IN THAT REGARD. I WOULD
5 NOTE IN PARTICULAR THE ISSUE OF FOLKS WHO ARE RIGHT NOW
6 DETAINED AND THE ACCESS TO THEM HAS BEEN A PROBLEM IN THAT
7 DEFENDANTS HAVE NOT PROVIDED US THE ACCESS WITH REGARD TO
8 CURRENT DETAINEES.

9 THE COURT: OKAY. DOES DEFENDANT MAINTAIN RECORDS OF
10 THE HOURS WORKED BY DETAINEES OR ANY BREAKS THAT THEY TOOK?
11 AND IF THEY DO, WOULD YOU CITE WITH SPECIFICITY IN THE RECORD
12 WHERE THOSE ARE? AND IF NOT, HOW WOULD THE COURT GO ABOUT
13 ADJUDICATING THE CLAIMS OF THE CALIFORNIA LABOR LAW CLASS ON A
14 CLASS-WIDE BASIS, PARTICULARLY THE CLAIMS FOR UNPAID OVERTIME,
15 MISSED REST AND MEAL BREAKS?

16 MS. RIDLEY: YOUR HONOR, THE DEFENDANTS HAVE RECORDS
17 WITH REGARD TO THE WORK BEING DONE BY THE DETAINEES. SOME
18 HAVE SOME INDICATION OF THE AMOUNT OF TIME THAT THE DETAINEES
19 WORKED, BUT --

20 THE COURT: BUT WHERE IN THE RECORD DO I HAVE THAT?

21 MS. RIDLEY: I BELIEVE, YOUR HONOR, IT IS IN THE
22 REPORTS WITH REGARD TO THE ACCOUNTS AND THE PAYMENTS, THE OMS,
23 ETC., REPORTS. NOW, I WILL ALSO SAY, BECAUSE IT'S ONE OF THE
24 CLAIMS THAT WE HAVE, IS THAT IT IS OUR POSITION, OBVIOUSLY,
25 THAT WE BELIEVE THAT THE VOLUNTARY WORKERS ARE EMPLOYEES AND

1 THAT WAGE STATEMENTS AND THE LIKE WERE NOT, IN FACT, ROUTINELY
2 CREATED. THAT IS PART OF THE PROBLEM, IS THAT THEY DID NOT
3 FOLLOW CALIFORNIA LAW AND, IN OUR BELIEF, SHOULDN'T BE
4 BENEFITED BY FAILING TO PROVIDE THOSE RECORDS OR MAINTAINING
5 THOSE RECORDS.

6 THE COURT: OKAY. SO, CAN YOU BE MORE SPECIFIC AS TO
7 WHERE THIS IS IN OUR RECORD? AND IF YOU NEED TO FIND IT AND
8 THEN COME BACK AND TELL ME, THAT'S FINE, BUT IT WOULD BE VERY,
9 VERY HELPFUL TO THE COURT.

10 MS. RIDLEY: WE CAN DO THAT, YOUR HONOR.

11 THE COURT: IT SEEMED TO ME, IN THE VERY QUICK REVIEW
12 OF JUDGE BERNAL'S ORDER, THERE WAS BETTER RECORD-KEEPING BY
13 GEO.

14 MS. RIDLEY: SO, YOUR HONOR, WE HAVE EXHIBIT 8, FOR
15 EXAMPLE, WHICH IS THE --

16 THE COURT: EIGHT?

17 MS. RIDLEY: EIGHT.

18 THE COURT: THANK YOU. OKAY.

19 MS. RIDLEY: WHICH IS THE RESIDENT WORK ASSIGNMENT.
20 WE HAVE REMOVAL FROM WORK DETAIL REFERENCES FOR EXHIBIT 10.
21 THEIR OWN RECORDS AND MANUALS HAVE, ESSENTIALLY, LINKS TO THE
22 AMOUNT OF TIME AND THE STATEMENT THAT PEOPLE AREN'T SUPPOSED
23 TO WORK OVER EIGHT HOURS AND THE LIKE. THOSE ARE IN THE
24 MANUALS, YOUR HONOR, THAT WE PRESENTED TO THE COURT.

25 THE COURT: OKAY. DOES DEFENDANT -- AND YOU MAY HAVE

1 JUST ANSWERED THIS -- HAVE ANY POLICIES THAT OUTLINE THE
2 NUMBER OF HOURS REQUIRED TO BE WORKED PER SHIFT FOR THE
3 VARIOUS POSITIONS HELD THROUGH THE VOLUNTEER WORK PROGRAM, AND
4 YOU'RE SAYING THOSE WOULD BE IN THE LINKS TO THE MANUAL?

5 MS. RIDLEY: THAT'S EXACTLY RIGHT, YOUR HONOR.

6 THE COURT: OKAY. AND IS THE SAME TRUE FOR MEAL AND
7 REST BREAKS?

8 MS. RIDLEY: THEY DO NOT REFERENCE MEAL AND REST
9 BREAKS DIRECTLY. THAT IS, AGAIN, PART OF THE ISSUE, IS THAT,
10 NOTWITHSTANDING WORKING, THEY'RE NOT PROVIDING THE MEAL AND
11 REST BREAKS IN QUESTION, AND I WOULD NOTE THAT THE RECORDS
12 REFLECT THAT DEFENDANT ADMITS THAT THEY DON'T MAINTAIN TYPICAL
13 EMPLOYMENT RECORDS AND THE LIKE.

14 THE COURT: AND IF THERE ARE POLICIES, ARE THOSE
15 UNIFORM THROUGHOUT DEFENDANT'S FACILITIES?

16 MS. RIDLEY: THE ANSWER IS YES, YOUR HONOR, AND IT'S
17 IMPORTANT THAT DEFENDANT'S PERSON MOST KNOWLEDGEABLE THAT WAS
18 DEPOSED, MR. ELLIS, AND I BELIEVE HIS TRANSCRIPT IS EXHIBIT 3
19 BEFORE THE COURT, HE TESTIFIED THAT, IN FACT, THESE POLICIES
20 WERE, IN FACT, STANDARD, THAT THE FACILITIES DO NOT HAVE THE
21 OPTION OF OPTING OUT OF THEM.

22 THE COURT: OKAY. NOW, GIVEN THAT MR. OWINO WORKED
23 IN THE KITCHEN AND HE WORKED ALSO AS A CHEMICAL PORTER AND
24 CLEANER AND MR. GOMEZ WORKED AS A CLEANER, ARE THEIR CLAIMS
25 TYPICAL OF EVERYONE IN THE VOLUNTEER WORK PROGRAM WHO HELD

1 OTHER POSITIONS?

2 MS. RIDLEY: THE ANSWER IS YES, YOUR HONOR, AND IF I
3 CAN EXPAND ON THAT A LITTLE BIT.

4 THE COURT: SURE. GO AHEAD.

5 MS. RIDLEY: I'M TRYING TO FOLLOW YOUR HONOR'S
6 REQUEST TO ACTUALLY ANSWER THE QUESTION.

7 THE COURT: AND YOU ARE DOING MUCH BETTER THAN MOST,
8 MA'AM. SO GO AHEAD AND ELABORATE ON THIS.

9 MS. RIDLEY: ALL RIGHT. SO THE ANSWER IS YES,
10 BECAUSE THE OVERARCHING QUESTION IS, ARE THESE STANDARD
11 POLICIES THAT CORE CIVIC HAS, ARE THEY -- IS THERE ANY
12 IMPLEMENTATION IN THE ESTABLISHMENT OF THE VOLUNTARY WORK
13 PROGRAM CONCOMITANT WITH THE WORKERS, REGARDLESS OF THEIR
14 POSITION, BEING EMPLOYEES? AND IF THEY ARE EMPLOYEES AS A
15 MATTER OF LAW, HAS DEFENDANT BEEN COMPLIANT WITH THE
16 APPLICABLE LABOR CODE PROVISIONS? IT IS NOT DETERMINATIVE IF
17 PERSON ONE IS IN THE KITCHEN AND PERSON TWO IS A PORTER,
18 BECAUSE THE QUESTION IS, ARE THEY EMPLOYEES AND WERE THEY --
19 ASSUMING QUESTION ONE IS ANSWERED YES LEGALLY -- WERE THEY
20 TREATED AS EMPLOYEES COMPLIANT WITH THE LAW? SO THE
21 NOMENCLATURE OF WHAT THEY DID IS NOT DETERMINATIVE OF THOSE
22 KEY QUESTIONS.

23 THE COURT: OKAY. SO THERE WOULD BE NO REASON TO
24 NARROW THE CLASS TO ENCOMPASS ONLY THOSE POSITIONS HELD BY THE
25 NAMED PLAINTIFFS.

1 MS. RIDLEY: THAT'S EXACTLY RIGHT, YOUR HONOR --

2 THE COURT: OKAY.

3 MS. RIDLEY: -- BECAUSE THERE WAS NO -- FOR EXAMPLE,
4 THERE'S NO EVIDENCE TO SUGGEST THAT THOSE POLICIES SOMEHOW
5 WERE APPLIED DIFFERENTLY IF YOU WERE A HOUSEKEEPER OR A PORTER
6 VS. A KITCHEN WORKER.

7 THE COURT: SO YOU WOULDN'T THINK THERE WOULD BE A
8 NEED TO AMEND THE COMPLAINT TO ADD ADDITIONAL CLASS
9 REPRESENTATIVES FOR THAT REASON.

10 MS. RIDLEY: THAT'S EXACTLY RIGHT.

11 THE COURT: OKAY.

12 MS. RIDLEY: THAT'S EXACTLY RIGHT, AND IN FACT THE
13 POLICIES AS WRITTEN DON'T CHANGE OR DEFINE DIFFERENCES BASED
14 ON THE WORK ACTIVITY INVOLVED; JUST THE FACT THAT THEY'RE IN
15 THE PROGRAM, THE POLICIES APPLY.

16 THE COURT: OKAY. NOW, YOU'RE SEEKING TO CERTIFY THE
17 CALIFORNIA LABOR CLASS ENCOMPASSING BOTH FORMER AND CURRENT
18 PARTICIPANTS IN THE VOLUNTEER WORK PROGRAM, BUT THE NINTH
19 CAUSE OF ACTION FOR FAILURE TO PAY COMPENSATION UPON
20 TERMINATION APPLIES ONLY TO FORMER PARTICIPANTS. WHAT DOES
21 THAT DO TO THE CLASS?

22 MS. RIDLEY: AT MOST, I THINK IT WOULD NARROW THE
23 CLASS JUST TO THE, TO THOSE WHO ARE FORMER.

24 THE COURT: OKAY. TURNING TO THE STATUTE OF
25 LIMITATIONS -- GO AHEAD. DO YOU WANT TO SAY SOMETHING ELSE?

1 GO AHEAD.

2 MS. RIDLEY: NO. I WAS JUST THINKING ABOUT A GLASS
3 OF WATER BECAUSE I'M HOT.

4 THE COURT: GET ONE. IT'S TERRIBLY WARM IN HERE.

5 MS. RIDLEY: THANK YOU, YOUR HONOR.

6 THE COURT: SURE. OF COURSE.

7 MS. RIDLEY: IT'S SOMEWHAT IRONIC BECAUSE I WAS
8 TALKING ABOUT HOW COOLER IT WAS DOWN HERE THAN I ANTICIPATED,
9 SO.

10 THE COURT: NOT IN THIS COURTROOM, I DON'T THINK.

11 MS. RIDLEY: THANK YOU, YOUR HONOR.

12 THE COURT: OF COURSE. I WANT TO TURN TO THE STATUTE
13 OF LIMITATIONS. THERE ARE TWO STATUTES OF LIMITATIONS FOR
14 PLAINTIFFS' WAGE STATEMENT CLAIMS: A THREE-YEAR LIMITATIONS
15 PERIOD FOR CLAIMS FOR ACTUAL DAMAGES AND ONE-YEAR PERIOD FOR
16 PENALTIES. GIVEN THE DATE OF THIS ACTION, THE DATE THIS
17 ACTION WAS INITIATED AND THE DATES THAT MR. OWINO AND MR.
18 GOMEZ CEASED PARTICIPATING IN THE VOLUNTEER WORK PROGRAM, IT
19 APPEARS TO THE COURT -- AND CORRECT ME IF I'M WRONG -- THAT
20 NEITHER MR. OWINO NOR MR. GOMEZ, NEITHER ONE IS WITHIN THE
21 LIMITATIONS PERIOD FOR PENALTIES, BUT MR. GOMEZ IS, AND MR.
22 GOMEZ IS ALSO OUTSIDE THE LIMITATIONS PERIOD FOR ACTUAL
23 DAMAGES. SO, WHAT ARE THE IMPLICATIONS OF THAT, COUNSEL, FOR
24 CERTIFICATION OF THE CALIFORNIA LABOR LAW CLASS?

25 MS. RIDLEY: WELL, YOUR HONOR, I WANT TO NOTE THAT WE

1 ALSO BROUGHT IN CONNECTION WITH THOSE CLAIMS A UCL CLAIM.

2 THE COURT: RIGHT. YOU DID.

3 MS. RIDLEY: THAT EXTENDS THROUGH THE FOUR YEARS, THE
4 STATUTE OF LIMITATIONS, INCLUDING THOSE STATUTORY DAMAGES, AND
5 SO THEY WOULD BE WELL WITHIN THOSE PROVISIONS, YOUR HONOR.

6 THE COURT: OKAY.

7 MS. RIDLEY: AND THAT, THAT IS NOT UNCOMMON IN
8 EMPLOYMENT CLAIMS.

9 THE COURT: OKAY. SO YOU DON'T THINK IT IMPACTS IT
10 AT ALL, THEN.

11 MS. RIDLEY: I DON'T, YOUR HONOR.

12 THE COURT: OKAY. GIVEN THE CONCERNS THAT THE COURT
13 OUTLINED IN ITS TENTATIVE, IS THERE A WAY TO NARROW THE
14 CALIFORNIA LABOR LAW CLASS SUCH THAT THE COURT CAN GRANT
15 CERTIFICATION AS TO SOME OF PLAINTIFFS' CLAIMS OR TO SOME OF
16 THE POSITIONS, BUT I THINK YOU'RE GOING TO SAY WE DON'T NEED
17 TO GO BY POSITIONS, HELD BY DETAINEES PARTICIPATING IN THE
18 VOLUNTEER WORK PROGRAM, OR DO YOU THINK THERE'S A NEED FOR
19 SUBCLASSES?

20 MS. RIDLEY: THERE MAY BE A NEED FOR SUBCLASSES, YOUR
21 HONOR. I (PAUSE) -- LET ME START WITH THE BEGINNING. I WOULD
22 NOT LIMIT THE CLASS TO POSITIONS FOR THE REASONS I PREVIOUSLY
23 STATED.

24 THE COURT: OKAY.

25 MS. RIDLEY: SO THAT'S STAGE ONE.

1 STAGE TWO, HAVING HEARD THE COURT'S TENTATIVE
2 *VIS-A-VIS* THE PROSPECTIVE INJUNCTIVE AND EQUITABLE RELIEF, IT
3 MAY BE NARROWED TO NOT INCLUDE THOSE CLAIMS. THAT HAVING --
4 ALTHOUGH I HAVE SOME ARGUMENTS REGARDING THAT, BUT I'LL
5 RESERVE THAT. YOU POTENTIALLY COULD HAVE SOME SUBCLASSES,
6 ALTHOUGH, AGAIN, I THINK SOME BASIC CLASSES ARE APPROPRIATELY
7 DESCRIBED, FOR EXAMPLE. BASED ON OUR THEORY THAT THERE'S A
8 GENERALIZED POLICY THAT MAKES EVERYBODY AN EMPLOYEE REGARDLESS
9 OF POSITION, I THINK THERE ARE CLASSES, FOR EXAMPLE, REGARDING
10 MINIMUM WAGE, THAT IT DOESN'T NEED TO BE NARROWED ANY FURTHER.
11 I THINK THERE ARE CLASSES ABOUT THE FAILURE TO PROVIDE WAGE
12 STATEMENTS. IT DOESN'T NEED TO BE NARROWED ANY FURTHER.

13 AND I THINK WE WENT THROUGH THOSE CLASSES, YOUR
14 HONOR, IN OUR OPENING BRIEF ON PAGE 17, AND THIS IS ON PAGE
15 17, LINES 13 THROUGH 19. SO IT'S THE MINIMUM WAGE MANDATED BY
16 LABOR CODE 1194, 1197, AND WAGE ORDER 5-2001; OVERTIME WAGES
17 UNDER LABOR CODE 204, 510, 1194, AND THE WAGE ORDER 5-2001;
18 PROVISION OF WAGE STATEMENTS UNDER LABOR CODE 226; AND THEN
19 THERE'S THE FINAL PROVIDING MEAL AND REST PERIODS. TO THE
20 EXTENT THAT THE EVIDENCE SHOWS THAT NO MEAL AND REST PERIODS
21 WERE PROVIDED, AGAIN, THE FACT THAT NONE WERE PROVIDED, I
22 DON'T THINK YOU HAVE TO NARROW THAT ANY MORE.

23 THE COURT: OKAY.

24 MS. RIDLEY: AND I'M SORRY. JUST TO BE CLEAR, THAT'S
25 UNDER CALIFORNIA LABOR CODE 226.7, 512, AND AGAIN THE WAGE

1 ORDER.

2 THE COURT: OKAY. THANK YOU.

3 CAN I CERTIFY THE BASIC NECESSITIES CLASS WHEN THERE
4 ARE NO ALLEGATIONS IN THE OPERATIVE COMPLAINT REGARDING
5 DETAINEES BEING FORCED TO WORK TO PURCHASE BASIC NECESSITIES
6 IN THE COMMISSARY?

7 MS. RIDLEY: THE ANSWER IS, YOUR HONOR, YES, YOU CAN.
8 WE ACTUALLY DO BELIEVE IT'S NARROW AND IT'S NOT DIFFERENT, AND
9 IF I MAY BE ABLE TO EXPAND.

10 THE COURT: PLEASE.

11 MS. RIDLEY: SO, WHEN WE'RE TALKING ABOUT THE FORCED
12 LABOR, PART OF REVIEWING THAT ISSUE, WHICH I UNDERSTAND THE
13 COURT IS TENTATIVELY INCLINED TO GRANT, ONE HAS TO LOOK AT THE
14 CIRCUMSTANCES OF THE SITUATION REGARDING THE LABOR. IN THIS
15 CASE, THAT CIRCUMSTANCE DEALS WITH TWO ITEMS. ONE IS THE
16 THREAT OF DISCIPLINE, WHICH WE'VE DISCUSSED. THE SECOND IS
17 THE CIRCUMSTANCE OF WE HAVE INVOLUNTARILY DETAINED PEOPLE WHO
18 ARE NOT CRIMINALLY CHARGED, WHO ARE IN A SITUATION WHERE WE
19 BELIEVE THE EVIDENCE SHOWS THEY ARE BEING DEPRIVED OF CERTAIN
20 NECESSITIES, AND IN ORDER TO BE ABLE TO REPLENISH THEM, THEY
21 NEED TO PURCHASE THEM IN A COMMISSARY. IN ORDER TO DO THAT,
22 THEY NEED MONEY, AND FOR A GREAT MANY OF THEM THAT COMES FROM
23 HAVING, BEING FORCED INTO THIS WORK SITUATION, AND HAVING NO
24 OTHER MEANS OF REMUNERATION OR LITTLE MEANS OF REMUNERATION
25 OTHER THAN THAT PROGRAM, IT IS PART OF THE NATURE OF THE

1 FORCED CONDITIONS THAT A REASONABLE PERSON IN THEIR SITUATION
2 WOULD FEEL COMPELLED TO DO THE WORK. SO IT IS, IN FACT, PART
3 AND PARCEL OF, ALTHOUGH SOMEWHAT NARROW OF, THE CLAIMS
4 REGARDING THE FORCED WORK CLASSES.

5 THE COURT: OKAY. DO YOU CONTEND, COUNSEL, THAT
6 SPOKEO CHANGED THE LAW SUCH THAT PLAINTIFFS NO LONGER NEED TO
7 DEMONSTRATE A SUFFICIENT LIKELIHOOD OF FUTURE HARM TO
8 ESTABLISH ARTICLE III STANDING FOR PROSPECTIVE EQUITABLE
9 RELIEF?

10 MS. RIDLEY: I THINK IT CHANGED THE LAW, YOUR HONOR,
11 SUCH THAT IN CERTAIN INSTANCES WHERE YOU HAD CLAIMS THAT, IN
12 FACT, YOU DON'T -- IT'S A BROADER STANCE, AND, IN FACT, IT'S A
13 CLAIM SUCH AS THIS ONE. SO, FOR EXAMPLE, FIRST OF ALL, WE
14 HAVE, WE BELIEVE, THE REPRESENTATIVE PLAINTIFFS AND THE
15 PUTATIVE PLAINTIFFS HAVE ACTUAL INJURY-IN-FACT FOR ALL THE
16 REASONS WE DISCUSSED WITH REGARD TO BOTH THE LABOR CODE AND
17 THE FORCED LABOR, BUT IN ADDITION TO THAT THE ISSUES HERE, WE
18 BELIEVE, DO FOCUS ON A REAL THREAT OF FUTURE HARM. FOR
19 EXAMPLE -- OR CONTINUED HARM, BECAUSE WHAT WE HAVE HERE IS A
20 THREAT THAT THEY, IN FACT, MAY BE DETERRED AGAIN AND DETAINED
21 IN THESE FACILITIES, AND THAT'S NOT AN IDLE ONE. I MEAN, I
22 WOULD NOTE THAT MR. GOMEZ, EVEN THOUGH HE HAD GREEN CARD
23 STATUS, WAS DETAINED IN ONE OF THESE FACILITIES FOR OVER A
24 YEAR.

25 SO THERE IS NO INDICATION THAT EITHER REPRESENTATIVE

1 PLAINTIFF, MR. OWINO OR MR. GOMEZ, ARE NOT POTENTIALLY GOING
2 TO BE PLACED BACK INTO THESE DETENTION FACILITIES, AND THAT IS
3 A REAL RISK OF HARM IN THE FUTURE. AND IF THAT'S THE CASE AND
4 NOTHING, THERE'S NO POTENTIAL CLAIM FOR PROSPECTIVE INJUNCTIVE
5 RELIEF, THEY WILL BE PLACED BACK AGAIN INTO A SITUATION WHERE
6 THE CALIFORNIA LABOR CODE IS NOT BEING FOLLOWED. THEY ARE, IN
7 FACT, ESSENTIALLY, EMPLOYEES BEING FORCED TO WORK, AND THEY'RE
8 IN A FORCED LABOR CONTEXT.

9 I'LL NOTE, AND I THINK IT'S REALLY VERY INTERESTING,
10 IS THAT THE CALIFORNIA TVPA PRESUMES THAT -- IT HAS A STATUTE
11 OF LIMITATIONS THAT STEMS FROM THE TIME THE PERSON'S FREED,
12 BUT IT PRESUMES INJUNCTIVE RELIEF. IN OTHER WORDS, IT DOESN'T
13 SEE A HURDLE HERE FOR THE TYPE OF CLAIM AND THE FACT THAT THE
14 PERSON MAY BE, IN FACT, RELEASED. AND IF YOU LOOK AT THE
15 HERNANDEZ CASE, WHICH WE CITED, THIS TRANSITORY ISSUE OF
16 POTENTIALLY BEING RELEASED AND POTENTIALLY COMING BACK AGAIN,
17 THAT DOESN'T DESTROY THE POTENTIAL FOR STANDING OR CERT.

18 AND SO WE WOULD CONTEND IN THIS PARTICULAR
19 CIRCUMSTANCE -- AND I KNOW THE COURT CITED TO NORDSTROM, BUT
20 NORDSTROM WAS SOMETHING DIFFERENT. NORDSTROM WAS AN
21 EMPLOYMENT SITUATION WHERE PEOPLE WERE VOLUNTARILY BEING
22 EMPLOYED AND THAT EMPLOYMENT EVENTUALLY TERMINATED. THESE
23 FOLKS DON'T HAVE THAT SORT OF VOLUNTARY CIRCUMSTANCE, AND I
24 THINK THAT'S A QUALITATIVELY AND IMPORTANT DIFFERENCE BETWEEN
25 THE CIRCUMSTANCES THAT WE'RE DEALING WITH, AS WELL AS, OR

1 COMPARED TO WHAT WAS IN NORDSTROM.

2 THE COURT: OKAY. YOU'VE ASKED FOR LEAVE TO AMEND TO
3 ADD ADDITIONAL ALLEGATIONS SUPPORTING BOTH YOUR NAMED
4 PLAINTIFFS' LIKELIHOOD OF FUTURE HARM. CORRECT?

5 MS. RIDLEY: WE DID.

6 THE COURT: AND SO I GUESS -- SHOULD I TAKE THAT AS
7 CONCEDING TO A CERTAIN EXTENT THAT THE FIRST OPERATIVE, THE
8 OPERATIVE FIRST AMENDED COMPLAINT DOESN'T CONTAIN SUCH FACTS?

9 MS. RIDLEY: NO, YOUR HONOR. IT'S -- FRANKLY, IT'S
10 SORT OF IN THE KIN OF THE SAME STATEMENT THAT THE COURT SAID,
11 LAWYERS WANT TO EXPAND BECAUSE THEY WANT TO BE GOOD LAWYERS.
12 FRANKLY, WE'RE TRYING TO COVER ALL GROUNDS AS WE'RE SUPPOSED
13 TO AS LAWYERS.

14 THE COURT: ALL RIGHT. NOW, YOU MENTIONED ADDING
15 ANOTHER FORMER DETAINEE, MR. GEH?

16 MS. RIDLEY: GEH. G-E-H FOR THE RECORD.

17 THE COURT: G-E-H. I KNOW HOW HE SPELLS IT. I'M
18 JUST NOT SURE HOW HE PRONOUNCES IT.

19 MS. RIDLEY: I'M WITH YOU. I UNDERSTAND.

20 THE COURT: HOW WOULD HE HAVE STANDING TO SEEK
21 PROSPECTIVE INJUNCTIVE RELIEF ON BEHALF OF CURRENT DETAINEES?

22 MS. RIDLEY: WELL, HE WOULD BE -- WELL, HE WAS
23 DETAINED AT THE TIME OF THE LAWSUIT, SO HE WOULD RELATE BACK
24 AND SO WOULD BE ABLE TO DO IT.

25 THE COURT: OKAY. GIVEN THE DEADLINE TO AMEND THE

1 PLEADINGS HAS PASSED, YOU WOULD NEED TO ESTABLISH GOOD CAUSE
2 TO MODIFY THE SCHEDULING ORDER AND TO BE GRANTED LEAVE TO
3 AMEND. WHAT FACTS WOULD SUPPORT THAT FINDING, AND WHY HAVEN'T
4 YOU SOUGHT THAT RELIEF BEFORE NOW?

5 MS. RIDLEY: SO THE FACTS WOULD BE -- AGAIN, I WOULD
6 COMMEND TO THE COURT THE REALITY OF THE DIFFICULTY OF BEING
7 EVEN ABLE TO TALK TO DETAINED PEOPLE IN THESE FACILITIES.

8 THE COURT: OKAY.

9 MS. RIDLEY: LIKE IT OR NOT, THE DEFENDANTS ACTUALLY
10 PUT QUITE A BIT OF HURDLES TO BEING ABLE TO DO SO. EVEN WHEN
11 WE VISITED, WE COULDN'T SPEAK TO ANY OF THE DETAINEES, AND
12 THEIR POSITION WAS THOSE DETAINEES HAD TO ASK TO TALK TO US,
13 WHICH, OF COURSE, COULDN'T HAPPEN BECAUSE THEY WOULDN'T
14 NECESSARILY KNOW, FRANKLY, WHAT WE WERE DOING AND WHY WE WERE
15 THERE.

16 THE COURT: TRUE.

17 MS. RIDLEY: SO THERE WAS A SIGNIFICANT HURDLE TO
18 BEING ABLE TO DO SO, AND NOTABLY WE HAVE BEEN DILIGENT IN
19 TRYING TO FIND AND ADD FOLKS. MR. GEH, FRANKLY, WAS ONLY
20 RECENTLY, YOU KNOW, FREED, AND SO WERE ABLE TO TALK TO HIM.
21 BUT THERE HAS BEEN A SIGNIFICANT THRESHOLD DIFFICULTY IN EVEN
22 TALKING WITH FOLKS WHO WOULD BE POTENTIAL NAMED PLAINTIFFS,
23 ALTHOUGH THEY'RE CERTAINLY WITHIN THE POTENTIAL PUTATIVE
24 CLASS. SO THAT, YOUR HONOR, HAS BEEN A MAJOR BLOCK WITH
25 REGARD TO ADDING.

1 I WOULD NOTE THAT THE COURT'S FOCUS ON THE POTENTIAL
2 CLASS AND WHAT TYPICALLY COURTS DO IN ORDER TO PROTECT THE
3 INTERESTS OF THE CLASS, BECAUSE IT'S DIFFERENT THAN YOUR
4 TYPICAL, YOU KNOW, SINGLE-PLAINTIFF SITUATION, IS THAT, TO THE
5 EXTENT THE COURT UNDERSTANDS OR BELIEVES THAT THERE IS A
6 PUTATIVE CLASS, TO THE EXTENT WE'VE BEEN THWARTED FROM TALKING
7 TO THEM TO BE ABLE TO ADD THEM, I THINK THAT IS A SIGNIFICANT
8 FACT TO CONSIDER AS TO WHY THERE'S GOOD CAUSE TO AMEND. AND I
9 WOULD FURTHER NOTE THAT IT WOULD BE AN AMENDING WITH REGARD TO
10 A PARTY, BUT IT WOULDN'T BE SUBSTANTIALLY CHANGING THE NATURE
11 OF THE CASE IN AND OF THE ALLEGATIONS BEING PRESENTED, YOUR
12 HONOR.

13 THE COURT: OKAY. I APPRECIATE THAT ANSWER. THANK
14 YOU. THOSE ARE THE ONLY QUESTIONS I HAVE FOR YOU RIGHT NOW,
15 AND YOU'LL HAVE SOME TIME AFTER I SPEAK WITH DEFENSE COUNSEL
16 TO TELL ME WHATEVER YOU'D LIKE TO TELL ME UNINTERRUPTED,
17 COUNSEL.

18 MS. RIDLEY: OKAY. FAIR ENOUGH.

19 THE COURT: THANK YOU.

20 MS. RIDLEY: THANK YOU, YOUR HONOR.

21 THE COURT: GOOD AFTERNOON, COUNSEL.

22 MR. ACEDO: GOOD AFTERNOON, YOUR HONOR.

23 THE COURT: WE'RE GOING TO GO BACK THROUGH SOME OF
24 THE SAME QUESTIONS THAT I ASKED OPPOSING COUNSEL, AND THAT IS,
25 I TOLD YOU WHAT I'M GOING TO DO AT THE CONCLUSION OF THIS

1 HEARING. I WOULDN'T WASTE ANYBODY'S TIME IF WHAT I TOLD YOU
2 WASN'T CAPABLE OF BEING MODIFIED BASED ON THE ARGUMENTS HERE
3 AND THE ANSWERS TO MY QUESTIONS. BUT IF I WERE TO ADOPT THE
4 TENTATIVE, WHAT'S YOUR VIEW OF WHERE WE WOULD GO FROM HERE?
5 NOW, PLAINTIFF HAS TOLD US THEY WOULD PROBABLY SEEK TO AMEND
6 THE COMPLAINT. WOULD YOU OBJECT? WHAT DO YOU THINK?

7 MR. ACEDO: YES, YOUR HONOR, WE WOULD OBJECT. WE
8 THINK IT'S TOO LATE. AND, FRANKLY, I THINK IT'S HYPOCRITICAL
9 THAT IN THEIR BRIEFING OPPOSING OUR PERSONAL JURISDICTION
10 DEFENSE THEY'VE ARGUED THAT WE'VE WAIVED IT AND IT'S TOO LATE,
11 BUT HERE WE ARE IN ORAL ARGUMENT AND THEY'RE ASKING YOU TO
12 AMEND THE COMPLAINT AND ADD ALL OF THESE ALLEGATIONS. SO, I
13 MEAN, THE EQUITIES HAVE TO GO BOTH WAYS.

14 I MEAN, IF THEY'RE GOING TO ARGUE THAT WE'VE WAIVED
15 THE DEFENSE, EVEN THOUGH THAT'S SOMETHING THAT WAS, IN FACT,
16 IN OUR ANSWER TO THEIR AMENDED COMPLAINT, THEN I THINK IT
17 WORKS BOTH WAYS. I THINK IT IS TOO LATE AND THE DEADLINE TO
18 AMEND THE COMPLAINT HAS PASSED, AND THE FACT THAT THIS IS
19 COMING IN RESPONSE TO OUR BRIEFING, WHICH TRIGGERED YOUR ORDER
20 ON STANDING, WHICH IS TRIGGERING YOUR QUESTIONS TODAY, I THINK
21 THAT THAT IS DEFINITELY WELL BEYOND ANY REASONABLE DEADLINE OR
22 REQUEST TO AMEND THE COMPLAINT.

23 THE COURT: WHAT ABOUT A RENEWED MOTION?

24 MR. ACEDO: A RENEWED MOTION FOR?

25 THE COURT: FOR ANYTHING IN THIS THAT'S TURNED DOWN

1 HERE. IF I ADOPT THE TENTATIVE, WHERE WOULD WE GO FROM HERE,
2 COUNSEL, IN YOUR VIEW?

3 MR. ACEDO: WELL, IT LOOKS LIKE IF YOU ADOPT IT AND
4 WE KEEP THOSE FORCED LABOR CLAIMS, IT WOULD JUST PROCEED ONLY
5 ON THOSE CLAIMS.

6 THE COURT: OKAY. LET ME SEE HERE. DO YOU WANT TO
7 COMMENT -- SOME OF THESE QUESTIONS ARE MORE GEARED FOR
8 PLAINTIFF. BUT IF I ALLOW THE PLAINTIFFS TO AMEND THEIR
9 COMPLAINT TO SUBSTITUTE A NEW CLASS REPRESENTATIVE WHO'S A
10 CURRENT DETAINEE AND WOULD HAVE ARTICLE III STANDING TO ASSERT
11 CLAIMS FOR PROSPECTIVE EQUITABLE RELIEF, WHY DON'T YOU COMMENT
12 ON THAT?

13 MR. ACEDO: SURE. I DON'T THINK THAT THAT'S ALLOWED
14 IN THIS CASE, AND HERE IS WHY. THERE WAS A JURISDICTIONAL
15 DEFECT FROM THE OUTSET. YOU CAN'T CURE THAT JURISDICTIONAL
16 DEFECT WITH AN AMENDMENT TO EVEN BRING IN A NEW CLASS REP THAT
17 HAS CURRENT STANDING. YOU SIMPLY CAN'T DO THAT. IF ANOTHER
18 DETAINEE HAS CURRENT STANDING, THAT DETAINEE CAN FILE THEIR
19 OWN SEPARATE LAWSUIT, BUT WE CANNOT BRING THAT DETAINEE INTO
20 THIS. THIS LAWSUIT IS ALREADY DEAD FOR LACK OF JURISDICTION,
21 AND THAT CANNOT BE CURED.

22 THE COURT: ONE THING THAT I WANTED TO DISCUSS IS
23 RECORD-KEEPING AND MAINTENANCE OF RECORDS OF HOURS WORKED BY
24 DETAINEES, BREAK PERIODS, MEAL BREAKS. DID YOUR CLIENT KEEP
25 ANY? WHERE ARE THEY IN MY RECORD THAT'S BEFORE THE COURT?

1 AND IF I DON'T HAVE RECORDS, HOW WOULD I GO ABOUT ADJUDICATING
2 THE CLAIMS ON A CLASS-WIDE BASIS, ESPECIALLY FOR OVERTIME AND
3 MISSED BREAKS --

4 MR. ACEDO: SURE.

5 THE COURT: -- AND MEALS?

6 MR. ACEDO: BECAUSE THE DETAINEES ARE NOT EMPLOYEES
7 AND THEY'VE NEVER BEEN FOUND TO BE EMPLOYEES, CORE CIVIC DOES
8 NOT KEEP THOSE RECORDS IN THE REGULAR COURSE OF BUSINESS.
9 THEY DON'T KEEP PRECISE RECORDS OF WHEN THEY PUNCH IN AND
10 PUNCH OUT, WHEN THEY TAKE THEIR BREAKS, AND FOR HOW LONG
11 THEY'VE TAKEN THEIR BREAKS, BECAUSE THE COMPENSATION UNDER THE
12 VOLUNTARY WORK PROGRAM IS \$1 PER DAY. SO, IF THEY WORK DURING
13 THE DAY, THEN THAT'S ALL THAT IS RECORDED. BUT MY
14 UNDERSTANDING --

15 THE COURT: WAIT A SECOND. SLOW DOWN FOR A MINUTE.
16 IF THEY WORK ANY PART OF THE DAY, WHAT DO THEY GET?

17 MR. ACEDO: JUST THE ONE -- IF THEY WORK ONE HOUR OR
18 EIGHT HOURS, IT'S \$1 PER DAY, OR, DEPENDING ON THE JOB, I
19 BELIEVE IT COULD BE A DOLLAR-FIFTY OR \$2, DEPENDING ON THE
20 JOB. BUT WHETHER IT'S ONE HOUR OR EIGHT HOURS, IT'S THE SAME
21 COMPENSATION.

22 THE COURT: YOU'RE FAMILIAR WITH THE CASE IN THE
23 CENTRAL DISTRICT INVOLVING GEO?

24 MR. ACEDO: I'M AWARE OF IT. THAT'S RIGHT. I'M NOT
25 AWARE OF THE INS AND OUTS OF THE ORDER THAT CAME OUT THREE

1 WEEKS AGO THAT THEY NOTICED YESTERDAY.

2 THE COURT: I'M JUST CURIOUS BECAUSE THE ORDER
3 REFERENCES RECORD-KEEPING AND WHAT NOT. I WAS JUST CURIOUS
4 WHAT YOUR RECORDS LOOK LIKE AS OPPOSED TO THEIR RECORDS. I
5 MEAN, IT SOUNDED AS THOUGH THEY HAD RECORDS OF A DIFFERENT
6 SORT, AND I'M JUST CURIOUS.

7 MR. ACEDO: YES, AND THEY MAY BE. AGAIN, CORE CIVIC
8 DOES NOT KEEP THOSE DETAILED RECORDS IN THE REGULAR COURSE OF
9 BUSINESS. THERE MAY BE INSTANCES --

10 THE COURT: AND YOU DON'T KEEP THOSE RECORDS BECAUSE?

11 MR. ACEDO: IT'S UNNECESSARY, BECAUSE IT DOESN'T
12 MATTER IF -- IT DOESN'T MATTER HOW MANY HOURS THEY WORK IN A
13 DAY AS LONG AS IT'S LESS THAN EIGHT HOURS. THEY'RE ONLY
14 GETTING COMPENSATED ONE OR \$2 PER DAY. YOU WOULD PRESUMABLY
15 KEEP THOSE KINDS OF RECORDS IF YOU WERE GETTING PAID BY THE
16 HOUR SO YOU CAN KEEP TRACK OF HOW MANY HOURS THAT YOU WERE
17 PAID, BUT THEY DON'T. THEY DON'T GET PAID BY THE HOUR. THEY
18 GET PAID BY THE DAY, AND I WILL SAY THERE MAY BE --

19 THE COURT: SO THERE WAS NO NEED FOR YOU TO PROVIDE
20 MEAL AND REST BREAKS?

21 MR. ACEDO: OH, WE DO PROVIDE THEM. THE DECLARATIONS
22 THAT WE SUBMITTED --

23 THE COURT: BUT HOW WOULD WE KNOW THAT?

24 MR. ACEDO: WE HAVE DECLARATIONS FROM OUR STAFF, FROM
25 THE OFFICIALS THAT PROVIDE THEM, THAT THAT IS THE PRACTICE AT

1 THE FACILITIES, THAT THEY GET BREAKS. THEY GET REST BREAKS.
2 THEY GET MEAL BREAKS. A LOT OF THESE JOBS, THE PORTER JOB,
3 THOSE ARE JUST, YOU KNOW, ONCE EVERY TWO OR THREE HOURS, AND
4 IT JUST TAKES AN HOUR OR TWO. THE KITCHEN JOBS ARE A LITTLE
5 BIT MORE TIME. THE OUTSIDE JOBS, THERE ARE DIFFERENT HOURS,
6 DIFFERENT TIMES. THEY'RE CONDUCTED IN DIFFERENT AREAS OF THE
7 FACILITIES.

8 THE COURT: I MEAN, WHAT'S THE IMPACT OF THE NATURE
9 OF THE RECORDS THAT YOU DO HAVE ON CLASS CERTIFICATION?

10 MR. ACEDO: WELL, I THINK IT MAKES IT VERY DIFFICULT,
11 AS YOU POINTED OUT. I MEAN, IF WE DON'T HAVE THE RECORD --
12 AND THERE MAY BE INSTANCES WHERE THERE WAS A RECORD KEPT HERE
13 AND THERE AT THIS FACILITY OR THAT FACILITY THAT WAS THAT
14 SPECIFIC. ALL I CAN SAY IS, IN THE COURSE OF DISCOVERY, WHAT
15 WE'VE GATHERED AND PRODUCED HAVE NOT BEEN THAT DETAILED. IT
16 WILL JUST SHOW THAT THEY WORKED ON A PARTICULAR DAY. BUT AS
17 YOU MENTIONED, THAT MAKES IT EXTREMELY DIFFICULT TO LITIGATE
18 ANY SINGLE CASE, MUCH LESS A CASE ON A CLASS-WIDE BASIS WHERE
19 THERE'S THOUSANDS OF DETAINEES THAT ARE ALL COMING IN, SAYING,
20 I DIDN'T GET A BREAK ON THIS DAY, I DIDN'T GET A BREAK ON THIS
21 DAY AND I WORKED MORE THAN EIGHT HOURS. YOU'RE GOING TO HAVE
22 TO HAVE, LITERALLY, THOUSANDS OF MINI-TRIALS TO DRILL DOWN ON
23 EVERY SINGLE DAY, EVER SINGLE SHIFT THAT EVERY SINGLE DETAINEE
24 WORKED TO FIGURE THAT OUT. YOU CAN'T DO THAT ON A CLASS-WIDE
25 BASIS FOR ANY OF THESE CLAIMS.

1 THE COURT: WELL, WHERE IN THE RECORD DO I HAVE
2 REFERENCES TO WHAT RECORDS YOU DO HAVE? I MEAN (PAUSE) --

3 MR. ACEDO: I DON'T HAVE THAT.

4 THE COURT: -- COUNSEL CITED ME TO EXHIBITS 8, 10,
5 LINKS TO THE MANUAL. WHO ELSE SHOULD I BE GOING TO TO GET ALL
6 THIS?

7 MR. ACEDO: I CAN GET THE EXACT EXHIBITS WHEN I SIT
8 DOWN, YOUR HONOR. I LOOKED AT EXHIBIT 8. I THINK THAT'S THE
9 DEPOSITION TRANSCRIPT, BUT I'M NOT SURE WHERE IN THE RECORD IT
10 IS. BUT WHAT IS IN THE RECORD REFLECTS WHAT IS, HOW THEY
11 TYPICALLY KEEP TRACK OF THIS.

12 THE COURT: AND YOU'RE SUGGESTING THAT THE BEST
13 EVIDENCE IS DECLARATIONS FROM YOUR EMPLOYEES.

14 MR. ACEDO: THAT'S CORRECT, AND --

15 THE COURT: WHAT ABOUT DECLARATIONS FROM THE
16 DETAINEES THEMSELVES?

17 MR. ACEDO: SURE, AND THEY'VE GOT FOUR OUT OF ABOUT
18 8,000 DETAINEES. THEY'VE GOT DECLARATIONS FROM FOUR OF THEM,
19 AND THAT WOULD BE COMPETING EVIDENCE THAT THEY DIDN'T GET A
20 BREAK AND THEY WORKED THIS MANY HOURS, AND WE WOULD SAY, WELL,
21 THIS IS WHAT THE POLICY IS. BUT GOING BACK TO WHETHER THAT'S
22 THE MOST EFFICIENT AND SUPERIOR WAY TO LITIGATE AN ACTION --

23 THE COURT: WELL, WE KNOW THAT IF THIS DOESN'T HAPPEN
24 ON A CLASS BASIS, IT DOESN'T HAPPEN. RIGHT, COUNSEL?

25 MR. ACEDO: WELL, THAT'S NOT NECESSARILY --

1 THE COURT: THESE DETAINEES ARE NOT IN A POSITION TO
2 TAKE ANY ACTION. THEY'RE NOT GOING TO TAKE CORE CIVIC OR GEO
3 OR ANY OF THE OTHER PRIVATE FACILITIES TO SMALL CLAIMS COURT
4 OR BRING THEM INTO A CIVIL COURTROOM, ARE THEY?

5 MR. ACEDO: WELL, I --

6 THE COURT: IT'S NOT LIKELY TO HAPPEN.

7 MR. ACEDO: ALL OF THEM? NOT LIKELY. BUT YOU'RE
8 PRESUMING THAT THEY ACTUALLY HAVE A CAUSE OF ACTION --

9 THE COURT: NO, NO.

10 MR. ACEDO: -- THEY FELT COMPELLED TO WORK.

11 THE COURT: YOU'RE SAYING IT'S NOT A SUPERIOR WAY OF
12 DOING THIS, AND I'M SAYING IT MAY BE THE ONLY WAY TO CONSIDER
13 DOING THIS. I DON'T KNOW. I DON'T KNOW. THESE CASES -- WE
14 DON'T HAVE ANY GUIDANCE FROM THE CIRCUIT, BECAUSE THESE CASES
15 ARE JUST NOW BEING BROUGHT. CORRECT?

16 MR. ACEDO: RIGHT. THESE ARE RECENT CASES.

17 THE COURT: THESE ARE RECENT CASES. THESE ARE NEW
18 CASES. I DON'T KNOW IF THERE'S ANY CASES FURTHER ALONG THAN
19 THE CASE THAT WAS CITED TO ME OUT OF THE CENTRAL DISTRICT. DO
20 YOU KNOW OF ANY?

21 MR. ACEDO: WELL, THAT ARE THIS FAR ALONG? NO. THE
22 MEDI-CAL CASE IS FURTHER ALONG THAN THIS CASE. THE NOVOA CASE
23 WAS JUST CERTIFIED, AND THEN THIS IS THE NEXT ONE IN LINE.
24 THAT'S MY UNDERSTANDING. BUT I AGREE, YOUR HONOR, THAT THIS
25 IS A TOUGH ISSUE. IT'S A NEW ISSUE. IT'S A NOVEL ISSUE.

1 SUPERIORITY, YOU HAVE TO LOOK AT VARIOUS THINGS. THE FACT
2 THAT ALL 8,000 CLASS MEMBERS MAY NOT BRING THEIR INDIVIDUAL
3 SUITS, THAT'S ONE THING TO CONSIDER, AND THAT LIKELY WOULD BE
4 TRUE THAT THEY WOULDN'T DO THAT, BUT THEN YOU'VE GOT TO LOOK
5 AT THE OTHER SIDE OF THE COIN. IS THIS REALLY -- IS THE
6 ALTERNATIVE THE ONLY ALTERNATIVE, WHICH IS TO HAVE A CLASS
7 ACTION? BECAUSE AT THE END OF THE DAY WE'LL END UP BACK HERE
8 IN THIS COURTROOM AND WE'RE TRYING TO LITIGATE EACH OF THESE
9 INDIVIDUAL CLAIMS WHERE THERE JUST ISN'T THE PROOF, THERE'S NO
10 PLAN IN PLACE, THE DIFFICULTIES TO DO THAT.

11 SO WE CAN CERTIFY IT AND SAY, WELL, THE ONLY
12 ALTERNATIVE IS THIS, BUT AT THE END OF THE DAY WE END UP BACK
13 HERE, AND IT'S JUST NOT FEASIBLE. IT'S JUST NOT EFFICIENT OR
14 ECONOMICAL. AND IF IT REALLY MEANT THAT MUCH TO THE
15 DETAINEES, IF THEY, IN FACT, BELIEVE THAT THEY WERE COMPELLED
16 TO WORK OR FORCED TO WORK, OR IF THEY BELIEVE THAT THEY WERE
17 REALLY EMPLOYEES UNDER CALIFORNIA LAW, SOMETHING THAT'S NEVER
18 BEEN HELD IN THIS STATE, THEN THEY CAN PURSUE THEIR ACTION FOR
19 WHATEVER NUMBER OF HOURS THEY BELIEVE THAT THEY WORKED.

20 THE COURT: OKAY. SO LET ME GO BACK TO MY QUESTION.
21 THE NUMBER OF HOURS THAT ARE REQUIRED TO BE WORKED ARE IN THE
22 MANUALS, AND YOU CAN LOOK, DIRECT ME IF THERE'S ANYTHING YOU
23 WANT ME TO LOOK AT, BECAUSE I WAS DIRECTED TO EXHIBIT 8,
24 EXHIBIT 10, THE MANUALS AND LINKS IN THE MANUALS THAT GO TO
25 THE HOURS AND WHAT NOT. SO YOU WOULD AGREE WITH THAT.

1 MR. ACEDO: THE MANUAL SIMPLY SAYS THAT YOU CAN WORK
2 NO MORE THAN EIGHT HOURS IN A DAY OR 40 HOURS IN A WEEK.
3 THERE IS NO -- THAT I'VE SEEN -- LIST OF HOW MANY HOURS EVERY
4 OTHER JOB IS OR HOW LONG THEY ARE. ALL WE HAVE ARE THE
5 (PAUSE) --

6 THE COURT: I'M SORRY. DOES IT HAVE REST AND MEAL
7 BREAKS SPELLED OUT IN ADDITION TO THE HOURS YOU CAN WORK?

8 MR. ACEDO: NOT IN A WRITTEN POLICY, NO, YOUR HONOR.

9 THE COURT: NOT IN A WRITTEN POLICY. SO MEAL AND
10 REST BREAKS ARE DETERMINED BY WHOM?

11 MR. ACEDO: WELL, THE OFFICER, WHOEVER, THE STAFF
12 MEMBER, WHOEVER IS SUPERVISING THE KITCHEN, WHICH, BY THE WAY,
13 IS -- IN OMD, THAT'S RUN BY A VENDOR NAMED TRINITY, OR IF
14 IT'S THE PORTERS OR THE OUTSIDE WORKERS, THEY'RE ALL SORT OF
15 SUPERVISED BY AN OFFICIAL. THEY REGULATE THAT INTERNALLY.
16 THEY KNOW WHO'S ON A SHIFT AND HOW LONG THE SHIFT IS AND WHEN
17 THEY START AND WHEN THEY STOP.

18 THE COURT: BUT HOW DO THEY KNOW WHAT TO DO? I MEAN,
19 THEY'VE JUST GOT A POLICY THAT TELLS THEM YOU'RE ENTITLED TO A
20 MEAL BREAK AFTER SO MANY HOURS, YOU'RE ENTITLED TO A REST
21 BREAK AFTER SO MUCH TIME. I MEAN, HOW DO THESE FOLKS KNOW
22 THAT? THE NUMBER OF HOURS TOTAL IS SET BY YOUR COMPANY'S
23 POLICY, AND I TAKE IT THAT'S UNIFORM THROUGHOUT THE SYSTEM,
24 YOUR COMPANY, CORE CIVIC.

25 MR. ACEDO: THAT'S THE STANDARD, YES.

1 THE COURT: RIGHT.

2 MR. ACEDO: YES, YOUR HONOR, AND MY UNDERSTANDING IS
3 THAT ICE DOESN'T REQUIRE MEAL BREAKS, REST BREAKS BEING
4 SPELLED OUT, EITHER, I PRESUME, BECAUSE THAT'S ONLY NECESSARY
5 WHEN YOU'RE DEALING WITH AN EMPLOYER-EMPLOYEE RELATIONSHIP.
6 IF THAT WERE THE CASE, I'M SURE THERE WOULD BE, IT WOULD BE
7 SPELLED OUT IN POLICIES, HANDBOOKS, ORDERS. BUT THIS HAS
8 NEVER BEEN A THING, SO THERE AREN'T THOSE TYPES OF WRITINGS.

9 THE COURT: SO YOUR POSITION WOULD BE, NUMBER ONE,
10 THEY'RE NOT EMPLOYEES. NUMBER TWO, YOU'RE FOLLOWING THE
11 GUIDELINES SET OUT BY THE GOVERNMENT WHEN THEY CONTRACT WITH
12 YOU TO DO THIS, AND IF IT'S NOT SET OUT, THEN YOU DON'T HAVE
13 TO DO IT.

14 MR. ACEDO: WELL --

15 THE COURT: BUT MAYBE, MAYBE SOME SUPERVISOR WOULD
16 EXTEND A MEAL BREAK OR A REST BREAK AS APPROPRIATE.

17 MR. ACEDO: WELL, THEY WOULD. HERE'S AN EXAMPLE.
18 LIKE THE KITCHEN WORKERS, THEY TYPICALLY WORK FIVE-AND-A-HALF
19 TO SIX HOURS A DAY. THEY HAVE TO GET UP BEFORE THE INMATES
20 WAKE UP AND HAVE BREAKFAST PREPARED, AND THEN WHEN EVERYBODY
21 HAS -- THE DETAINEES -- I'M SORRY -- THE DETAINEES HAVE
22 BREAKFAST, THEY GO ON THEIR WAY. THE BATHROOM AND KITCHEN
23 WORKERS HAVE THEIR MEAL, AND THEN AFTER THAT, THEN THEY CLEAN
24 UP, AND THEN THEY GET READY FOR THE NEXT SHIFT. THE NEXT
25 SHIFT COMES ON.

1 SO IT JUST NATURALLY WORKS OUT. THOSE DETAINEES NEED
2 TO EAT MEALS JUST LIKE EVERYONE ELSE. THE WAY THAT IT'S
3 STRUCTURED IS, THEY PREPARE THE MEAL. THEY SERVE THE MEAL.
4 THEY CLEAN UP. THEY EAT. SO IT'S BUILT INTO THEIR SHIFT.
5 THESE OTHER CHORES THAT TAKE AN HOUR, 30 MINUTES HERE, TWO,
6 TWO-AND-A-HALF HOURS, THE MAILROOM, FOR EXAMPLE, THERE'S A LOT
7 OF STANDING AROUND. YOU KNOW, YOU FINISH YOUR TASK. THEY
8 KNOW HOW LONG IT TAKES. ALL RIGHT, YOU KNOW, THERE'S NOTHING
9 TO DO.

10 THIS ISN'T A SITUATION WHERE, YOU KNOW, YOU CAN GO TO
11 JACK-IN-THE-BOX OR MCDONALD'S ON YOUR WAY OR GO RUN AND DO A
12 AN ERRAND. I MEAN, THAT'S WHY YOU NEED TO HAVE -- YOU KNOW,
13 THESE ARE THE POLICIES. YOU GET A 15-MINUTE BREAK EVERY SO
14 MANY HOURS, SO YOU'RE ON NOTICE AND YOU CAN PLAN FOR THAT.
15 BUT HERE, BECAUSE YOU'RE ON BREAK, YOU KNOW, THEY TURN AROUND
16 AND WALK BACK TO THEIR LIVING POD. THAT'S IT. AND THEN THEY
17 KNOW THEY'VE GOT TO COME BACK AND CLEAN DURING THE NEXT SHIFT.

18 THE COURT: OKAY. WELL, LET ME MOVE ON. MR. OWINO
19 WORKED IN THE KITCHEN AND AS A CHEMICAL PORTER AND CLEANER.
20 MR. GOMEZ WAS A CLEANER. ARE THESE CLAIMS TYPICAL OF THOSE IN
21 THE VOLUNTEER WORK PROGRAM WHO HELD OTHER POSITIONS? ARE
22 THEIR CLAIMS TYPICAL?

23 MR. ACEDO: I DO THINK THAT THE DIFFERENCES IN THE
24 JOB DESCRIPTION DOES MATTER, FOR A COUPLE OF REASONS. ONE,
25 EVERY JOB IS A DIFFERENT TASK. IF YOU'RE SWEEPING THE FLOOR

1 OR DOING THE LAUNDRY, THOSE THINGS TAKE DIFFERENT AMOUNTS OF
2 TIME. SO, LIKE THE KITCHEN WORKERS, IT'S FIVE-AND-A-HALF TO
3 SIX HOURS A SHIFT. IF YOU ARE JUST CLEANING UP A LIVING POD,
4 THAT'S 30 MINUTES. SO I THINK IT DOES MATTER. IF YOU'RE JUST
5 A PORTER, YOU'RE NEVER GOING TO WORK 40 HOURS IN A WEEK OR
6 EIGHT HOURS IN A DAY.

7 THE COURT: DO I HAVE IN THE RECORD A BREAKDOWN OF
8 THE DIFFERENT JOBS AND THE HOURS THAT IT REQUIRES AND THE KIND
9 OF SCHEDULE, THE APPROXIMATE SCHEDULE THAT DETAINEES WOULD BE,
10 UH (PAUSE) --

11 MR. ACEDO: YES. THE ANSWER IS YES.

12 THE COURT: CAN YOU TELL ME WHERE THAT IS? (PAUSE)
13 WE CAN COME BACK TO IT IF WE NEED TO.

14 MR. ACEDO: THE NAME JUST ESCAPES ME, YOUR HONOR.
15 HE'S THE (PAUSE) -- OKAY. THAT'S EXHIBIT (PAUSE) -- TOPASNA
16 IS HIS LAST NAME. IT LOOKS LIKE HIS DECLARATION IS EXHIBIT
17 17.

18 THE COURT: OKAY. WELL, THAT'S HELPFUL.

19 SO YOU WOULD TAKE THE POSITION THAT I WOULD NEED TO
20 NARROW THE CALIFORNIA LABOR LAW CLASS TO INCLUDE ONLY THOSE
21 POSITIONS THAT MR. OWINO AND MR. GOMEZ HELD.

22 MR. ACEDO: WELL, AT A, AT A --

23 THE COURT: OR, OR PLAINTIFFS COULD AMEND THE
24 COMPLAINT, BUT THAT'S ANOTHER WHOLE ISSUE OVER THERE AS TO
25 WHETHER OR NOT THAT WOULD BE PERMITTED, TO ADD MORE REPS. BUT

1 YOU THINK IT'S DONE BY THE JOB.

2 MR. ACEDO: I THINK THAT CERTAINLY INFLUENCES THE
3 TYPICALITY FACTOR, AND WHEN YOU'RE LOOKING AT THE CLASS
4 DEFINITIONS, THEY DIDN'T BREAK IT OUT LIKE THAT. WHAT'S
5 BEFORE YOU, YOUR HONOR, ARE THOSE CLASS DEFINITIONS, AND THEY
6 JUST -- THEY DON'T DISTINGUISH IT, JUST AS DETAINEES, AND FOR
7 THAT REASON WE SHOULDN'T BE GETTING INTO SUBCLASSING IT OR
8 AMENDING IT OUT. SO THE MOTION SHOULD BE DENIED.

9 THE COURT: OKAY. THE PLAINTIFFS ARE SEEKING
10 CERTIFICATION OF THE CALIFORNIA LABOR LAW CLASS FOR BOTH
11 FORMER AND CURRENT PARTICIPANTS IN THE VOLUNTEER WORK PROGRAM,
12 BUT THE NINTH CAUSE OF ACTION FOR FAILURE TO PAY COMPENSATION
13 UPON TERMINATION APPLIES ONLY TO FORMER PARTICIPANTS. WHAT IS
14 THE IMPACT OF THAT ON THE CALIFORNIA LABOR LAW CLASS, SIR?

15 MR. ACEDO: I THINK IT'S AN EASY ANSWER. THEY DON'T
16 MENTION THAT CAUSE OF ACTION IN THEIR MOTION AT ALL. THEY
17 DON'T MENTION LABOR CODE SECTIONS 201 TO 203. THEY DON'T MOVE
18 TO CERTIFY THAT CLASS. IT'S AS EASY AS THAT.

19 THE COURT: OKAY. WHAT ABOUT THE STATUTE OF
20 LIMITATIONS? WE'VE GOT A THREE-YEAR PERIOD FOR CLAIMS FOR
21 ACTUAL DAMAGES, A ONE-YEAR PERIOD FOR PENALTIES. GIVEN THE
22 DATE WHEN THIS ACTION STARTED AND THE DATE ON WHICH MR. OWINO
23 AND MR. GOMEZ CEASED PARTICIPATION IN THE VOLUNTEER WORK
24 PROGRAM, IT APPEARS TO THE COURT THAT NEITHER MR. OWINO NOR
25 MR. GOMEZ IS WITHIN THE LIMITATION PERIOD FOR PENALTIES AND

1 THAT MR. GOMEZ IS OUTSIDE THE LIMITATION PERIOD FOR ACTUAL
2 DAMAGES. WHAT DOES THAT DO, COUNSEL, IN YOUR VIEW, FOR
3 CERTIFYING THE CALIFORNIA LABOR LAW CLASS?

4 MR. ACEDO: TO BE TYPICAL OF THE CLASS, YOU HAVE TO
5 HAVE A VALID CLAIM. IF YOU DON'T HAVE A VALID CLAIM,
6 OBVIOUSLY, IT'S TIME-BARRED. AS YOU POINTED OUT, BOTH OWINO'S
7 AND GOMEZ'S CLAIMS ARE TIME-BARRED. BECAUSE THEY DO NOT HAVE
8 AN INDIVIDUAL CLAIM, THEY CANNOT REPRESENT THE CLASS FOR LACK
9 OF TYPICALITY.

10 AND WE DISAGREE WITH THE PLAINTIFFS' POSITION THAT
11 THE UCL, BECAUSE IT HAS A LONGER STATUTE OF LIMITATIONS,
12 SOMEHOW STRETCHES THAT OUT FROM THREE YEARS TO FOUR YEARS.
13 THERE'S NO AUTHORITY FOR THAT. THEY CITED NONE. I BELIEVE
14 THEY CITED ONE CASE THAT DOESN'T STAND FOR THAT PROPOSITION,
15 BUT THEY DON'T GET TO PICK AND CHOOSE WHICH STATUTE OF
16 LIMITATIONS APPLIES TO THEIR CLAIMS. IF THEY'RE BRINGING A
17 CLAIM FOR NEGLIGENCE, THAT'S TWO YEARS. THAT'S IT. IF
18 THEY'RE BRINGING A CLAIM FOR LABOR CODE PENALTY PROVISIONS,
19 THAT'S ONE YEAR. THAT'S IT. THEY DON'T GET TO BOOTSTRAP A
20 CLAIM WITH A LONGER STATUTE OF LIMITATIONS, WHICH IS
21 DERIVATIVE, BY THE WAY. THEY'VE ADMITTED THAT THIS UCL CLAIM
22 IS A DERIVATIVE CLAIM. IT'S DERIVATIVE TO EVERYTHING ELSE.
23 IT'S NOT THE DRIVING CLAIM. IT'S DERIVATIVE. SO, IF IT'S
24 DERIVATIVE, YOU HAVE TO GO WITH WHAT THE STATUTE OF
25 LIMITATIONS IS FOR THE PREDICATE CLAIM.

1 THE COURT: YOU HEARD THE COURT'S CONCERNS OUTLINED
2 IN MY TENTATIVE. IS THERE A WAY TO NARROW THE CALIFORNIA
3 LABOR LAW CLASS SUCH THAT THE COURT COULD GRANT CERTIFICATION
4 TO SOME CLAIMS OR TO SOME OF THE POSITIONS HELD BY DETAINEES
5 PARTICIPATING IN THE VOLUNTEER WORK PROGRAM? WOULD THERE BE A
6 NEED FOR SUBCLASSES, OR HOW DO YOU FEEL ABOUT THAT?

7 MR. ACEDO: WELL, OBVIOUSLY, OUR POSITION IS THAT
8 NONE OF THEM SHOULD BE CERTIFIED FOR VARIOUS REASONS. BUT IF
9 YOU WOULD ALLOW ME, I'D LIKE TO GO THROUGH SOME OF THESE,
10 BECAUSE I THINK WE CAN EASILY WIPE THEM OUT, AND THEN WHAT'S
11 LEFT MAY BE DEBATABLE. BUT, AS I POINT OUT, THE NINTH CAUSE
12 OF ACTION, THEY DON'T MENTION THAT IN THEIR BRIEFING. THAT
13 SHOULD BE OUT.

14 NONE OF THE LABOR CODE CLAIMS CAN BE CERTIFIED TO THE
15 EXTENT THAT THEY'RE BASED ON THE WAGE HOUR, THE WAGE ORDER
16 5-2001, OR TO THE EXTENT THEY SEEK PENALTIES, OR TO THE EXTENT
17 THAT THERE'S A DERIVATIVE NEGLIGENCE CLAIM FOR ALL THE REASONS
18 WE JUST STATED, THAT THOSE ARE THREE-, TWO-, AND ONE-YEAR
19 STATUTES OF LIMITATIONS. THEY'RE TIME-BARRED. SO THOSE ALL
20 GO OUT THE WINDOW.

21 THE WAGE STATEMENT CLAIM -- THAT'S THE EIGHTH CAUSE
22 OF ACTION -- THAT ONLY SEEKS PENALTIES. IF YOU LOOK AT
23 PARAGRAPH 92 OF THEIR AMENDED COMPLAINT, IT LOOKS TO US LIKE
24 THAT THE ONLY REMEDY FOR THAT CLAIM, THE WAGE STATE CLAIM, IS
25 PENALTIES, AND BECAUSE EITHER OWINO OR GOMEZ CAN'T BRING A

1 CLAIM FOR PENALTIES BECAUSE IT'S TIME-BARRED, THAT CAN'T BE
2 CERTIFIED.

3 YOU'VE GOT THE REST BREAK, MEAL BREAK, AND OVERTIME
4 WAGE CLAIMS. I BELIEVE OUR STRONGEST ARGUMENT ON THOSE CLAIMS
5 IS THAT INDIVIDUAL ISSUES PREDOMINATE. FOR ALL, EACH ONE OF
6 THOSE CLAIMS, YOU HAVE TO DECIDE FOR EACH DETAINEE, HOW LONG
7 DID YOU WORK? DID YOU GET A BREAK? HOW MANY DAYS IN THE WEEK
8 DID YOU WORK? ALL OF THOSE CLAIMS, YOU HAVE TO LOOK AT, YOU
9 ACTUALLY HAVE TO LOOK AT HOW MANY HOURS OF EACH DAY AND EACH
10 WEEK THEY WORKED. THOSE ARE INDIVIDUAL QUESTIONS FOR EACH
11 DETAINEE. IT'S NOT LIKE THE MINIMUM WAGE CLAIM WHERE, IF YOU
12 WORKED ONE HOUR AND YOU GOT \$1 AND YOU DIDN'T GET MINIMUM
13 WAGE, THERE'S A VIOLATION. THOSE THREE CLAIMS -- REST BREAK,
14 MEAL BREAK, AND OVERTIME -- YOU HAVE TO DELVE INTO THE FACTS
15 OF EACH CASE. THAT'S NOT A ONE-STROKE ANSWER, AND FOR THAT
16 REASON THOSE THREE CLAIMS SHOULD NOT BE CERTIFIED.

17 NOW, WHEN YOU LOOK AT THE MINIMUM WAGE CLAIM --
18 THAT'S THE FOURTH CAUSE OF ACTION -- I'D FIRST POINT OUT THAT
19 THE TENTH CAUSE OF ACTION, WHICH IS THE UNLAWFUL TERM CLAIM,
20 IT LOOKS LIKE THAT UNLAWFUL TERM CLAIM, WHICH IS THAT WE
21 ALLEGEDLY REQUIRED DETAINEES TO SIGN OFF ON TERMS OF
22 EMPLOYMENT THAT VIOLATED THE LAW, THAT CAN ONLY ATTACH TO THE
23 MINIMUM WAGE CLAIM, BECAUSE THEY CITE TO THE HANDBOOK THAT
24 SAYS COMPENSATION WILL BE \$1. SO, IF THAT UNLAWFUL TERM CLAIM
25 IS SOLELY BASED ON THAT MINIMUM WAGE CLAIM, IT CAN ONLY BE

1 CERTIFIED TO THE EXTENT THAT THE MINIMUM WAGE CLAIM CAN BE
2 CERTIFIED.

3 AND SO THAT'S REALLY WHAT I BELIEVE, IS, YOU KNOW, IF
4 THERE'S ANY DEBATE HERE, IT'S THIS MINIMUM WAGE. AS THEY
5 POINT OUT, THERE'S A COMMON ISSUE, WHETHER THEY'RE EMPLOYEES
6 OR NOT. THAT WOULD CUT ACROSS ALL THE CLAIMS. BUT WHEN YOU
7 LOOK AT JUST THE MINIMUM WAGE CLAIMS, YES, THAT WOULD BE A
8 COMMON QUESTION. ARE THEY EMPLOYEES UNDER CALIFORNIA LAW?
9 BUT ONCE YOU'VE ANSWERED THAT QUESTION, IT BECOMES A
10 SMORGASBORD OF ISSUES.

11 DAMAGES, AND I UNDERSTAND THAT NORMALLY DAMAGES
12 CANNOT MEET CLASS CERTIFICATION. THAT'S THE GENERAL
13 PRINCIPLE, BUT I THINK THERE'S ALSO AN IMPLIED LIMITING
14 PRINCIPLE THAT WHEN YOU'VE GOT SEVERAL THOUSANDS OF INMATES,
15 OR DETAINEES -- EXCUSE ME -- AND WE DON'T HAVE THE RECORDS TO
16 KNOW HOW MANY HOURS THAT EACH OF THEM WORKED, TO BE ABLE TO
17 FIGURE THAT OUT, AND THEN ON TOP OF THAT YOU'VE GOT CORE
18 CIVIC'S COUNTERCLAIM FOR UNJUST ENRICHMENT, WHEN YOU HAVE TO
19 LOOK AT EACH INDIVIDUAL, AND I THINK THIS IS A VERY IMPORTANT
20 DISTINCTION FROM OTHER CASES, YOU'VE GOT CORE CIVIC'S UNJUST
21 ENRICHMENT CLAIM. SO, IF YOU'VE GOT DETAINEE OWINO WHO WORKED
22 EIGHT HOURS IN A DAY AND HE DIDN'T GET MINIMUM WAGE, WHAT YOU
23 WOULD THEN NEED TO DO IS DEDUCT FROM THAT THE COST OF HIS
24 LIVING, THE COST OF HIS DETENTION, EVERYTHING THAT HE'S
25 GETTING FOR FREE AT CORE CIVIC'S EXPENSE. THAT IS OUR

1 COUNTERCLAIM FOR UNJUST ENRICHMENT, AND YOU WOULD HAVE TO DO
2 THAT FOR EACH DETAINEE.

3 THE COURT: OKAY. THIS CASE PRESENTS SO MANY ISSUES.

4 MR. ACEDO: IT DOES.

5 THE COURT: IT PRESENTS A LOT OF ISSUES. OKAY.

6 MR. ACEDO: AND FOR THAT REASON, I DON'T THINK THAT
7 THE REACTION SHOULD BE, LET'S JUST CERTIFY IT AND FIGURE IT
8 OUT, BECAUSE IT'S JUST GOING TO BE MORE AND MORE ISSUES, AND I
9 THINK THAT GOES TO THE SUPERIORITY PROBLEM.

10 THE COURT: NO, NO. BECAUSE IT'S DIFFICULT, WE
11 SHOULDN'T WALK AWAY FROM IT, EITHER, AND SAY, I DON'T THINK
12 THESE PEOPLE HAVE ANY RECOURSE. OR DETAINEES. I MEAN, WE
13 REALLY NEED TO TAKE A LOOK AT THIS AND FIGURE SOMETHING OUT,
14 YOU KNOW, WITH THE LAW THAT WE HAVE HERE. SO, OKAY. I THINK
15 I UNDERSTAND THAT ANSWER.

16 SO HERE, COUNSEL, A QUESTION JUST FOR DEFENSE. HOW
17 COULD THE COURT POSSIBLY CONCLUDE AFTER TWO-AND-A-HALF YEARS
18 INTO THIS CASE THAT YOU HAVEN'T WAIVED AN OBJECTION TO
19 PERSONAL JURISDICTION, SIR?

20 MR. ACEDO: IT'S OUR POSITION, YOUR HONOR, THAT YOU
21 CAN ONLY RAISE THAT DEFENSE ONCE IT BECOMES AVAILABLE, AND
22 THAT DEFENSE IS NOT EVEN YET AVAILABLE UNTIL AND UNLESS THE
23 COURT CERTIFIES THE CLASS. AS PLAINTIFFS POINT OUT, NONE OF
24 THE PUTATIVE CLASS MEMBERS ARE NAMED PLAINTIFFS. THEY'RE NOT
25 CLASS REPRESENTATIVES. THEY DON'T EVEN EXIST IN THIS LAWSUIT.

1 WE'VE CITED CASES WHERE COURTS HAVE ALLOWED THESE TYPES OF
2 MOTIONS TO BE FILED CONTEMPORANEOUSLY WITH OR IN OPPOSITION TO
3 A MOTION FOR CLASS CERTIFICATION. THEY'VE CITED CASES THAT
4 HAVE RULED THAT YOU'VE GOT TO FILE IT IN THAT INITIAL RULE 12
5 MOTION. THERE'S CASES ON BOTH SIDES, ADMITTEDLY, BUT WHAT I
6 THINK THAT THAT ALLOWS, WHAT I THINK WHAT THAT GIVES YOU IS
7 THE DISCRETION. IT GIVES YOU DISCRETION. IT'S NOT A
8 HARD-AND-FAST RULE.

9 AND I KNOW THAT THE -- YOU SAID TWO YEARS. I'M NOT
10 SURE IF THAT'S WHEN THE COMPLAINT WAS FILED OR OUR ORIGINAL
11 ANSWER. BUT IF YOU LOOK AT OUR ORIGINAL ANSWER, WE WERE
12 RESPONDING TO THE TWO NAMED PLAINTIFFS THAT THERE IS PERSONAL
13 JURISDICTION OVER THOSE TWO. WE REJECTED ALL OTHER
14 ALLEGATIONS TO THE EXTENT THAT THEY WENT TO CLASS
15 CERTIFICATION. WE DENIED THOSE, WHICH WOULD ARGUABLY INCLUDE
16 ANY FUTURE PERSONAL JURISDICTION OF A NATIONWIDE CLASS CLAIM.
17 THEN WE ACTUALLY AMENDED OUR ANSWER TO MAKE IT MORE CLEAR TO
18 THE COURT SO THAT EVERYBODY WAS ON NOTICE, AND THAT'S WHAT
19 DIFFERENTIATES OUR CASE FROM A LOT OF CASES THEY CITE WHERE
20 THE DEFENDANTS IN THOSE CASES WOULD RAISE FOR THE FIRST TIME
21 IN AN OPPOSITION A MOTION FOR CLASS CERTIFICATION. WE
22 ACTUALLY HAVE IT IN OUR ANSWER TO THE AMENDED COMPLAINT.

23 THE OTHER POINT I WOULD LIKE TO MAKE IS, THEY DIDN'T
24 RAISE ANY ISSUE WITH THIS FOR A YEAR. THE FIRST TIME THAT
25 THEY BROUGHT THIS UP WAS IN THEIR RESPONSE TO OUR MOTION. IF

1 THERE WAS PREJUDICE, IF THERE WAS A CONCERN, THEY SHOULD HAVE
2 RAISED IT AT THAT TIME AND THEY DIDN'T FOR OVER A YEAR, AND WE
3 WEREN'T EVEN SURE IF THEY WERE GOING TO MOVE FORWARD WITH
4 THESE NATIONWIDE CLAIMS. IF THEY NEVER MOVED FOR IT, THIS
5 ISSUE IS MOOT, WHICH I THINK GOES TO WHY IT'S PREMATURE UNTIL
6 AND UNLESS THEY'VE ACTUALLY MOVED FOR CLASS CERTIFICATION OR
7 THAT IT'S CERTIFIED. AND NOT ONLY DID THEY MOVE FOR CLASS
8 CERTIFICATION ON THE NATIONWIDE CLAIM, THEY ADDED TWO -- THEY
9 ADDED ANOTHER NATIONWIDE CLAIM.

10 THE COURT: OKAY. DID YOU OBJECT TO DISCOVERY
11 CONCERNING THE BASIC NECESSITY CLASSES?

12 MR. ACEDO: OBJECT TO DISCOVERY?

13 THE COURT: DID YOU OBJECT TO DISCOVERY IN THAT AREA?

14 MR. ACEDO: YEAH. THAT WASN'T -- THAT WAS -- THERE'S
15 NO MENTION OF THAT IN THE COMPLAINT. THERE'S NO MENTION OF A
16 BASIC NECESSITIES CLAIM.

17 THE COURT: I KNOW. OKAY.

18 MR. ACEDO: SO, NO, THAT WAS NOT AN AREA THAT WE
19 EXPLORED. AND, FRANKLY, IT'S IRONIC THAT, ONCE THEY BRING IT
20 UP FOR THE FIRST TIME IN THE MOTION AND THEN WE'VE GOT TO
21 SCRAMBLE AND TRY TO REBUT IT WITH EVIDENCE, THEY WANT TO MOVE
22 TO EXCLUDE THAT EVIDENCE WHEN WE HAD NO NOTICE THAT THIS WAS
23 EVEN PART OF THE CLAIM.

24 AND I'D LIKE TO TANGENT OFF TO SOMETHING THAT THEY
25 HAD SAID IN RESPONSE TO YOUR QUESTION ABOUT, ABOUT THIS ISSUE.

1 I LOST MY TRAIN OF THOUGHT. GIVE ME A SECOND.

2 THE COURT: SURE.

3 MR. ACEDO: I'LL STOP AT THAT POINT.

4 THE COURT: OKAY. YOU CAN BRING THAT UP WHENEVER YOU
5 RECALL THAT THOUGHT.

6 I'M ASSUMING, SIR, THAT YOU WOULD OBJECT TO
7 PLAINTIFFS AMENDING THE COMPLAINT TO CURE ANY DEFICIENCIES
8 SHOULD THEY REMAIN IN THE COURT'S FINAL RULING.

9 MR. ACEDO: YES, YOUR HONOR.

10 THE COURT: AND IS THERE EVIDENCE IN THE RECORD, AND
11 WHERE IS IT, THAT YOUR POLICIES ARE NOT UNIFORM ACROSS ALL
12 YOUR FACILITIES, OR DO YOU CONCEDE THAT THEY ARE UNIFORM
13 ACROSS ALL YOUR FACILITIES?

14 MR. ACEDO: I BELIEVE THEY SUBMITTED SEVEN, POLICIES
15 FROM SEVEN FACILITIES OF THE 24. IF YOU JUST LOOK AT THOSE
16 POLICIES THEMSELVES, THEY'RE NOT IDENTICAL. THEY GENERALLY
17 SAY THE SAME THING, AND WE DON'T DISPUTE THAT AS A NATIONWIDE
18 CORPORATION, OR I SHOULD SAY A CORPORATION WITH FACILITIES
19 NATIONWIDE, THERE'S GOT TO BE CERTAIN STANDARDS. THE STANDARD
20 IS ICE AND WE'VE GOT TO FOLLOW THOSE STANDARDS, SO WE CREATE
21 STANDARD POLICIES. BUT AT THE FACILITY LEVEL, I CAN'T TELL
22 YOU WHAT THE POLICY IS AT ONE OF THE FACILITIES THAT THEY
23 DIDN'T EVEN BRING UP. I CAN'T TELL YOU WITH CERTAINTY, YEAH,
24 THAT POLICY IS IDENTICAL.

25 THE COURT: WOULD THIS BE A FAIR STATEMENT, THAT THE

1 POLICIES ARE UNIFORM, BUT THERE MAY BE SOME MINOR VARIANCES IN
2 A FACILITY, AND THAT THEY WOULD STILL ALL BE IN COMPLIANCE
3 WITH WHAT ICE REQUIRES AND WHAT YOUR COMPANY REQUIRES IN THE
4 POLICY?

5 MR. ACEDO: THAT WOULD BE ACCURATE.

6 THE COURT: ALL RIGHT. I THINK THOSE ARE THE ONLY
7 QUESTIONS I HAVE AT THIS TIME. WE'VE BEEN IN SESSION FOR A
8 LITTLE BIT OVER AN HOUR. I'M GOING TO SAY WE TAKE TEN MINUTES
9 TO COOL OFF AND COME BACK. THEN WHAT I'D LIKE TO DO IS GIVE
10 PLAINTIFF TEN MINUTES AND YOU TEN MINUTES. I WON'T INTERRUPT.
11 YOU SAW THE AREAS OF THE COURT'S CONCERN. YOU SAW THE AREAS I
12 HAD QUESTIONS ON. I'D LIKE TO HEAR YOUR VIEWS AND YOUR VIEWS
13 ON IT BEFORE WE DEEM IT AS SUBMITTED. OKAY. GET A GLASS OF
14 WATER AND COOL OFF.

15 MS. RIDLEY: THANK YOU, YOUR HONOR.

16 THE COURT: THANK YOU.

17 (RECESS)

18 THE COURT: COUNSEL, I WANTED TO GO OVER MY NOTES AND
19 YOUR RESPONSES AND THINGS AND SEE IF THERE'S ANYTHING ELSE I
20 WANTED TO ASK YOU. I DON'T HAVE ANYTHING ELSE AT THIS TIME.

21 SO I'D LIKE TO HEAR FROM PLAINTIFF. YOU'VE GOT TEN
22 MINUTES UNINTERRUPTED, HOPEFULLY, MA'AM.

23 MS. RIDLEY: THANK YOU, YOUR HONOR.

24 YOUR HONOR, IN LIGHT OF YOUR QUESTIONS, I WANT TO
25 FOCUS MY DISCUSSION BASED ON YOUR QUESTIONS. WITH RESPECT TO

1 THE COURT -- I BELIEVE THE COURT ON THE LABOR CLASS IS GOING
2 TOO DEEP INTO QUESTIONS AND IT DOESN'T NEED TO.

3 THE COURT: OKAY.

4 MS. RIDLEY: I BELIEVE THE COURT CAN AND SHOULD FIND
5 A CALIFORNIA LABOR CLASS, AND THIS IS NOT UNIQUE. IN FACT, I
6 WOULD COMMEND AND ASK THE COURT TO TAKE A LOOK AT THE NOVOA
7 CASE. VERY SIMILAR SITUATION. ALSO HAD INDIVIDUALS WITH
8 DIFFERENT POSITIONS. FOUND A LABOR CLASS IN AND OF ITSELF
9 BASED ON THE ISSUE, THE CENTRAL LEGAL ISSUE OF, ARE THEY
10 EMPLOYEES OR ARE THEY NOT? AND BASED ON THAT, WAS THERE
11 COMPLIANCE WITH THE APPLICABLE LAW?

12 THE COURT: SO THIS IS THE CASE THAT YOU'VE PROVIDED
13 ME.

14 MS. RIDLEY: THAT'S EXACTLY RIGHT.

15 THE COURT: WELL, BUT YOU'RE SAYING AT THAT POINT THE
16 JUDGE HAS ALREADY DECIDED THAT THEY'RE EMPLOYEES?

17 MS. RIDLEY: WHAT THE JUDGE IS DECIDING IS THAT THERE
18 IS A PREDOMINANT LEGAL QUESTION, OVERARCHING, AS TO WHETHER OR
19 NOT THE INDIVIDUALS WHO WERE IN THE WORK PROGRAM SHOULD BE
20 CONSIDERED AS A MATTER OF LAW EMPLOYEES, AND IF SO, WERE THEY,
21 WERE THEY TREATED IN COMPLIANCE WITH CALIFORNIA LABOR LAW?

22 THE COURT: AND THAT WAS THE BASIS FOR A
23 CERTIFICATION.

24 MS. RIDLEY: EXACTLY.

25 THE COURT: OKAY.

1 MS. RIDLEY: AND THAT'S EXACTLY WHAT WE'RE TALKING
2 ABOUT HERE.

3 THE COURT: OKAY.

4 MS. RIDLEY: OKAY. AND SO, AGAIN, WE BELIEVE YOU CAN
5 AND SHOULD DO THAT, AND PART OF THE ISSUE WITH REGARD TO THAT
6 IS ALSO DESCRIBED IN THE SPECIFIC, AS I NOTED BEFORE, THE
7 AREAS OF THE LABOR CODE THAT I IDENTIFIED IN OUR BRIEF ON PAGE
8 17. YOU KNOW, FOR EXAMPLE, THE FACT THAT NO MINIMUM --
9 ASSUMING THERE IS A DETERMINATION WITH REGARD TO WHETHER OR
10 NOT THEY'RE EMPLOYEES, THAT'S THE FIRST OVERARCHING,
11 PREDOMINANT QUESTION. THAT QUESTION DOESN'T CHANGE
12 IRRESPECTIVE OF WHAT THE PERSON DID OR DIDN'T DO IN WORK.
13 IT'S JUST A BLANK QUESTION.

14 THE COURT: IT'S OVERARCHING.

15 MS. RIDLEY: IT'S OVERARCHING. YOU COULD BE CLEANING
16 OR YOU COULD BE IN THE KITCHEN; STILL AN OVERARCHING QUESTION.

17 THE COURT: RIGHT.

18 MS. RIDLEY: AND THEN ONCE YOU GET TO THAT QUESTION,
19 THE OTHER QUESTIONS REGARDING, WERE THEY PAID MINIMUM WAGE,
20 DID THEY GET OVERTIME, DID THEY GET MEAL OR REST PERIODS,
21 ETC., THOSE ARE OVERARCHING QUESTIONS, TOO. THE AMOUNT OF
22 DAMAGES, WHICH REALLY GOES TO HOW LONG DID THEY WORK, THINGS
23 OF THAT SORT, THAT IS NOT -- EVEN IF A PLAINTIFF HAS DIFFERENT
24 DAMAGES, THAT DOES NOT SERVE BY LAW TO NEGATE THE
25 CERTIFICATION OF A CLASS.

1 BUT TO ANSWER SOME OF THE QUESTIONS THAT THE COURT
2 HAD, I WILL NOTE THERE IS PLENTY OF EVIDENCE REGARDING
3 SCHEDULING. IF YOU TAKE A LOOK AT THE OMS REPORTS, YOU CAN
4 FIND THEM IN THE RECORD IN TWO PLACES. IT'S UNDER DOCUMENT
5 97, WHICH IS MY DECLARATION, EXHIBITS 12 THROUGH 18. IT'S
6 ALSO ON DOCKET 85, EXHIBITS 45 THROUGH 88. THOSE DOCUMENTS
7 SAY WHO WORKED, WHEN THEY WORKED, DOING WHAT, WHAT THEY WERE
8 PAID.

9 WHAT'S ALSO INTERESTING IS, WE HAVE EVEN TESTIMONY
10 THAT TALKS ABOUT THINGS LIKE SHIFTS. IF YOU TAKE A LOOK AT
11 THE DECLARATION OF MR. TOPASNA, HE TALKS ABOUT TYPICAL SHIFT
12 LENGTHS, AND I WON'T BELABOR THE ISSUE, BUT FOR EXAMPLE, ON
13 PARAGRAPH 39, AND THIS IS IN DOCKET 118, HE SAYS KITCHEN
14 WORKERS TYPICALLY WORK FOUR- TO SIX-HOUR SHIFTS, EITHER
15 BREAKFAST, LUNCH, OR DINNER, FIVE DAYS A WEEK, THEN DESCRIBES
16 THE BREAKFAST SHIFT AS THREE A.M. TO 8:30, THE LUNCH AT NINE
17 A.M. TO THREE, AND HE GOES ON IN PARAGRAPHS 39 THROUGH 42 AND
18 TALKS ABOUT DIFFERENT OTHER POSITIONS AND THE TYPICAL TIME
19 THAT WOULD BE EXPECTED FOR THE PEOPLE TO WORK.

20 ON TOP OF THAT, IF YOU TAKE A LOOK AT THE ACTUAL
21 POLICIES AND MANUALS, FOR EXAMPLE, EXHIBIT, DOCKET 97-3, AT
22 EXHIBIT 5, UNDER (H) -- THIS IS ON -- IT'S PAGE BATES-STAMPED
23 CCOG00076709. IT SAYS, THE DETAINEE WORKDAY WILL APPROXIMATE
24 THE WORKDAY IN THE COMMUNITY, AND WE SEE THAT OVER AND OVER
25 AGAIN. AT EXHIBIT 8, WORK SCHEDULE, THE JOBS COORDINATOR,

1 PROGRAM MANAGER, AND DEPARTMENT HEADS WILL DETERMINE THE HOURS
2 OF WORK SO AS TO ALLOW THE MAXIMUM PARTICIPATION IN THE JOB
3 AND EDUCATION PROGRAM. THE INMATE RESIDENT WORKDAY WILL
4 APPROXIMATE THE WORKDAY OF THE COMMUNITY.

5 AND WHAT'S NOTABLE IS, AND I BELIEVE MY OPPOSING
6 COLLEAGUE SPECIFICALLY NOTED, THESE ARE TYPICAL. IN OTHER
7 WORDS, THERE'S NO PROBLEM WITH TYPICALITY. THESE ARE YOUR
8 TYPICAL WORKDAYS. THE ACTUAL TASK THAT'S BEING DONE MIGHT BE
9 DIFFERENT, BUT THERE ARE TYPICAL WORKDAYS. THEY GET PAID THE
10 SAME WAY, AND IT'S ALL UNDER THE SAME POLICY, THE POLICY OF
11 HAVING THIS WORK PROGRAM.

12 NOW, THE QUESTION WITH REGARD TO HOW MUCH, SHOULD
13 THERE BE MORE RECORDS, SHOULD THERE BE A SHOWING OF MEAL AND
14 ALL THAT, THE ANSWER IS OBVIOUSLY YES IF IT WAS COMPLYING WITH
15 THE LAW, BUT THEY SHOULD NOT BENEFIT FOR FAILURE TO COMPLY
16 WITH THE LAW. AND NOTABLY, EVEN THE ICE REQUIREMENTS SAY, IF
17 YOU'RE GOING TO HAVE THIS VOLUNTARY WORK PROGRAM, YOU HAVE TO
18 PAY THEM AT LEAST A DOLLAR. IT'S NOT A MAXIMUM. AT LEAST A
19 DOLLAR. AND THEN IT ALSO SAYS, BUT YOU HAVE TO COMPLY WITH
20 THE LAW. SO ICE REQUIRES COMPLIANCE WITH THE LAW. SO THE
21 FACT THAT THEY DON'T HAVE RECORDS AND THEY DIDN'T PAY THE
22 MINIMUM WAGE AND THEY DIDN'T GIVE THEM WAGE STATEMENTS, ALL OF
23 THAT THEY CANNOT USE TO THEIR BENEFIT NOW TO SOMEHOW SAY THESE
24 DETAINEES HAVE NO ABILITY TO SEEK REDRESS. SO WE BELIEVE, AS
25 I SAID, YOU CAN ABSOLUTELY AND SHOULD CERTIFY A CALIFORNIA

1 LABOR CLASS.

2 WITH REGARD TO THE ISSUE RELATED TO THE STATUTE OF
3 LIMITATIONS, COUNSEL IS JUST INCORRECT, AND I WOULD ASK THE
4 COURT TO RECONSIDER THE BRANDON CASE, WHICH IS 2013 WESTLAW
5 800265, AS WELL AS THE CORTEZ CASE, WHICH IS 23 CAL.4TH 163.
6 THE ASSERTION OF THE UCL EXTENDS THE STATUTORY TIME PERIOD,
7 AND, FRANKLY, THAT IS TYPICAL OF LABOR CLAIMS IN CALIFORNIA.

8 THE QUESTION OF WHETHER OR NOT IT'S APPROPRIATE OR
9 PERMISSIBLE TO SUBSTITUTE ANOTHER POTENTIAL CLASS MEMBER AS A
10 REPRESENTATIVE MEMBER, I WOULD ASK THE COURT TO TAKE A LOOK AT
11 NATIONAL FEDERATION OF THE BLIND VS. TARGET AS AUTHORITY THAT
12 THAT, IN FACT, CAN BE DONE.

13 AND I WANT TO BE CLEAR THAT, TO THE EXTENT WE TALKED
14 ABOUT AMENDMENT, AGAIN, WE BELIEVE WE'VE ASSERTED APPROPRIATE
15 GROUNDS FOR THE CLASSES WE'VE ASKED FOR. THE AMENDMENT WOULD
16 BE TO ADD GEH, IF REQUIRED BY THE COURT, AND, IF NECESSARY, TO
17 TALK ABOUT THE ISSUES REGARDING NECESSITIES, AND I WANT TO
18 ADDRESS THAT FOR RIGHT NOW.

19 THE ISSUE WITH REGARD TO NECESSITIES, AS WE SAID, IS,
20 IN FACT, A NARROW DISCUSSION OF THE TWO FORCED LABOR CLAIMS.
21 IT'S NOT A NEW THEORY, AND, IN FACT, THERE WAS A GREAT DEAL OF
22 DISCOVERY IN THIS CASE REGARDING IT. WE GOT THE COMMISSARY
23 INFORMATION. WE WERE GETTING INFORMATION ABOUT THE ACTUAL
24 PURCHASES, FRANKLY, BY THE DETAINEES, AND THOSE RECORDS
25 ESTABLISH THAT THEY WERE DOING THINGS LIKE BUYING SOAP AND

1 TOOTHPASTE AND BASIC NECESSITIES.

2 I THINK IT'S REALLY IMPORTANT TO REMIND OURSELVES
3 WHERE THESE PEOPLE ARE. THEY ARE IN A FACILITY THEY DON'T
4 WISH TO BE. THE IDEA THAT SOMEHOW DEFENDANT THINKS THAT THEY
5 SOMEHOW HAVE THE RIGHT TO HAVE A CROSS-CLAIM TO NEGATE THE
6 COST OF HAVING THEM PRESENT THERE, THIS IS NOT A RESORT WHERE
7 THEY'RE CHOOSING TO STAY. THEY ARE BEING COMPELLED TO STAY
8 AGAINST THEIR WILL. THE FACT THAT THEY'RE NOT EVEN GIVEN THE
9 BASIC NECESSITIES FOR HYGIENE FOR THE PERIOD OF STAYS WE'RE
10 TALKING ABOUT, MR. GOMEZ WAS INCARCERATED FOR OVER A YEAR
11 WHILE HE HAD A GREEN CARD.

12 THE COURT: THAT'S VERY TROUBLING.

13 MS. RIDLEY: IT'S VERY TROUBLING. MR. OWINO WAS
14 INCARCERATED FOR NINE-AND-A-HALF YEARS. THE OIG ITSELF HAD
15 QUESTIONS WITH REGARD TO WHETHER OR NOT THESE FACILITIES WERE
16 PROVIDING THE BASIC NECESSITIES. IT IS A FORM OF DISCIPLINE.
17 IT IS PART OF THE FORCED LABOR ASPECT OF OUR CLAIMS. IF YOU
18 THINK YOU CAN GET YOUR BASIC NECESSITIES FOR HYGIENE EXCEPT
19 FOR COMPLYING WITH THE REQUIREMENT OF WORK OR HAVING THAT AS
20 THE ONLY MEANS FOR WHICH, THAT YOU CAN PURCHASE THOSE ITEMS,
21 YOU ARE BEING FORCED TO WORK. IT IS A THREAT OF DISCIPLINE.
22 IT FALLS SQUARELY WITHIN THOSE TWO CLASSES.

23 AND SO IT IS NOT A DIFFERENT CLAIM. IT IS PART AND
24 PARCEL OF THE GENERAL CIRCUMSTANCE, WHICH IS EXACTLY WHAT
25 NEEDS TO BE LOOKED AT. A REASONABLE PERSON UNDER THE TVPA,

1 BOTH THE CALIFORNIA AND THE NATIONAL ONE, YOU'RE SUPPOSED TO
2 LOOK AT IT WITH A REASONABLE PERSON STANDARD. A REASONABLE
3 PERSON IN THIS SITUATION WILL FEEL COMPELLED TO WORK IN ORDER
4 TO GET THE BASIC INFORMATION, OR BASIC PRODUCTS.

5 THE COURT: PRODUCTS.

6 MS. RIDLEY: WHAT WE HAVE HERE IS A MODERN-DAY
7 COMPANY TOWN, ONLY HERE THE PEOPLE DON'T GET TO GO IN AND OUT.
8 THERE, THEY'RE THERE AGAINST THEIR WILL.

9 THE COURT: BECAUSE ICE IS RULING IT.

10 MS. RIDLEY: THAT'S EXACTLY RIGHT.

11 THE COURT: LET ME ASK YOU THIS. THESE PEOPLE ARE
12 THERE. IT'S UNUSUAL FOR SOMEBODY WHO HAD A GREEN CARD TO BE
13 TURNED IN TO THIS FACILITY, BUT HE HAD NO CRIMINAL CHARGES.

14 MS. RIDLEY: NO CRIMINAL CHARGES.

15 THE COURT: THEY ARE WAITING FOR SOME DETERMINATION
16 ABOUT ENTRY INTO THIS COUNTRY UNDER (PAUSE) --

17 MS. RIDLEY: IMMIGRATION ISSUES. YES. IMMIGRATION
18 STATUS. THAT'S EXACTLY RIGHT.

19 THE COURT: IMMIGRATION STATUS, AND THAT'S SOLELY IT.

20 MS. RIDLEY: THAT'S SOLELY IT. BUT WHAT'S REALLY
21 REMARKABLE, NONE OF THESE DETAINEES, NONE OF THE PUTATIVE
22 CLASS, NONE OF THE REPRESENTATIVE PLAINTIFFS HAVE ANY --
23 THEY'RE NOT, THEY'RE NOT BEING DETAINED BECAUSE OF CRIMINAL
24 ISSUES. IT'S ALWAYS THE CIVIL ISSUE ABOUT THEIR STATUS AS TO
25 IMMIGRATION.

1 THE COURT: AS TO IMMIGRATION.

2 MS. RIDLEY: NO ONE IS DISPUTING THAT.

3 THE COURT: OKAY.

4 MS. RIDLEY: BUT WHAT'S REALLY INTERESTING IS, THEY
5 ARE BEING HOUSED IN FACILITIES WHERE THERE ARE INMATES. NOW,
6 THE INMATES ARE NOT PART OF THE CLASS, BUT THEY ARE INMATES,
7 AND THEY'RE BEING TREATED EXACTLY THE SAME. THERE'S NO
8 DISTINCTION.

9 THE COURT: BECAUSE THESE FACILITIES DO HOUSE OUR
10 CRIMINAL DETAINEES.

11 MS. RIDLEY: SOME OF THEM DO.

12 THE COURT: YES.

13 MS. RIDLEY: THAT'S EXACTLY RIGHT, AND SO IT IS
14 IMPORTANT TO ALWAYS KEEP IN MIND THE CIRCUMSTANCES OF WHERE
15 THESE PEOPLE ARE STAYING.

16 WITH REGARD TO THE ISSUE, AS TO THE JURISDICTIONAL
17 ISSUE, WE BELIEVE IT WAS, IN FACT, WAIVED. I DON'T WANT TO
18 SPEND A WHOLE LOT OF TIME. I WILL MAKE A NOTE, THOUGH. WE
19 TRAVELED ACROSS STATE LINES NATIONALLY TO DEPOSE THEIR
20 WITNESSES. THERE WAS A LOT OF COMMITMENT WITH REGARD TO
21 PREPARING FOR THESE MOTIONS, AND THE IDEA THAT, SUDDENLY, THEY
22 FOUND OUT THERE MIGHT BE POTENTIAL CLASS MEMBERS THAT SUGGEST
23 THE REASON FOR THE CLAIM OF WAIVER NOW, THAT GOES BEYOND. THE
24 REALITY IS, THEY DIDN'T RAISE IT. THEY HAVE WAIVED IT.

25 AND IT'S ABSOLUTELY DIFFERENT THAN THE IDEA THAT IF

1 THE COURT NEEDS OR WISHES OR BELIEVES THAT MR. GEH BE PART OF
2 THIS AS A REPRESENTATIVE PLAINTIFF, THAT'S NOT CHANGING A
3 CLAIM. THAT'S NOT WAIVING ANYTHING, PARTICULARLY IN LIGHT OF
4 THE, FRANKLY, SOMEWHAT STRANGLEHOLD THEY HAVE WITH REGARD TO
5 THE PRESENT DETAINEES AND WHO CAN SPEAK TO THEM AND IN WHAT
6 CONDITION THEY CAN BE SPOKEN TO.

7 FINALLY, I WOULD NOTE THAT, WHILE WE AGREE WITH THE
8 COURT'S DISCUSSED TENTATIVE *VIS-A-VIS* THE FORCED LABOR, OR
9 FORCED LABOR CLAIMS, WE AGAIN BELIEVE THAT THE ISSUE OF
10 NECESSITIES FALLS RIGHT WITHIN THAT AND THAT THE COURT SHOULD
11 ABSOLUTELY CERTIFY A CLASS REGARDING THE LABOR CLAIMS AS
12 DESCRIBED AND PARTICULARLY HIGHLIGHTED IN OUR OPENING BRIEF AT
13 PAGE 17.

14 THE COURT: COUNSEL, THE CASE THAT YOU PROVIDED FROM
15 THE CENTRAL DISTRICT, IS THERE ANYTHING ELSE OUT THERE THAT'S
16 CLOSE TO THIS, OR IS IT THESE TWO CASES?

17 MS. RIDLEY: IT'S REALLY THESE TWO CASES, QUITE
18 FRANKLY, YOUR HONOR, AT LEAST PARTICULARLY REGARDING THE
19 COMBINATION OF THE LABOR CODE AND THE CALIFORNIA AND NATIONAL
20 TVPA CLAIMS.

21 THE COURT: OKAY. THE OTHER QUESTION I HAD IS, HOW
22 DO YOU GET ACCESS TO THE DETAINEES?

23 MS. RIDLEY: YOU HAVE TO -- WE HAVE TO ASK TO DO SO,
24 AND WE HAVE TO GET PERMISSION FROM THE DEFENDANTS.
25 DEFENDANT'S POSITION, AS WE PRESENTED TO THE COURT WITH REGARD

1 TO THE SUPPLEMENTAL MATERIALS, IS THAT THEY THINK THAT THE
2 DETAINEES SHOULD ASK TO SEE US.

3 THE COURT: WELL, THAT DOESN'T MAKE ANY SENSE. THAT
4 MAKES NO SENSE. SO, I MEAN, SHORT OF THAT, HOW ARE YOU
5 GETTING -- SO YOU HAVE NO ACCESS.

6 MS. RIDLEY: WE HAVE NO ACCESS. THEY HAVE COMPLETE
7 CONTROL.

8 THE COURT: OKAY. ANY SUGGESTIONS THERE?

9 MS. RIDLEY: YOUR HONOR, WE WOULD LIKE THE ABILITY TO
10 GO TO FACILITIES AND MEET, MEET WITH THEM IN THE FACILITIES,
11 NOT TO GO OUT OF THE FACILITIES. WE CAN DO IT IN THE
12 FACILITIES. I'M HAPPY TO DO IT AND GO FROM THERE.

13 THE COURT: OKAY. AND DEFENDANTS ARE NOT WILLING TO
14 MEET YOU ON THAT.

15 MS. RIDLEY: THEIR POSITION IN WRITING HAS BEEN THAT
16 THE DETAINEES HAVE TO REQUEST TO MEET US.

17 THE COURT: OKAY. THANK YOU, COUNSEL. YOUR COMMENTS
18 HAVE BEEN HELPFUL.

19 MS. RIDLEY: THANK YOU VERY MUCH, YOUR HONOR.

20 THE COURT: OKAY, COUNSEL, I'LL TRY NOT TO INTERRUPT
21 YOU. YOU'VE GOT YOUR TEN MINUTES, SIR. GO AHEAD.

22 MR. ACEDO: OKAY. ON THEIR LAST POINT, YOUR HONOR,
23 THE ISSUE ABOUT WHETHER THEY CAN SPEAK WITH DETAINEES CAME UP
24 A YEAR AGO IN PREPARATION OF THEIR TOUR, AND WHAT THEY WANTED
25 TO DO WAS, AS THEY'RE WALKING AROUND, TALK TO DETAINEES. THAT

1 PRESENTS OBVIOUS SAFETY AND SECURITY RISKS. WE WERE
2 UNWILLING TO DO IT AT THAT TIME.

3 THE COURT: SAFETY AND SECURITY RISKS. THESE ARE
4 PEOPLE THAT ARE BEING CIVILLY DETAINED. THEY ARE NOT
5 CRIMINALS. THEY HAVEN'T VIOLATED ANY LAWS. THEY'RE JUST
6 BEING HELD BECAUSE THEY DON'T HAVE STATUS YET TO BE IN THIS
7 COUNTRY. WHAT IS THE CONCERN, SIR?

8 MR. ACEDO: WELL, THE CONCERN IS THE DISRUPTION OF
9 OPERATIONS. I MEAN, WHEN WE HAD TO DO THESE, THE TOURS, THE
10 OPERATION OF THE FACILITIES HAD TO BE CHANGED, AND WHETHER OR
11 NOT THEY HAD ANY PENDING CHARGES AGAINST THEM AT THAT TIME IS
12 ONE THING. WE KNOW OWINO, I BELIEVE, HAD BEEN CONVICTED OF A
13 CRIME AND GOT DONE SERVING HIS SENTENCE AND THEN WAS SENT
14 THERE BECAUSE HE WAS GOING TO BE DEPORTED BECAUSE HIS LICENSE
15 TO BE IN THE COUNTRY HAD BEEN REVOKED. THAT'S WHY HE WAS IN
16 THERE. I MEAN, WE'RE NOT SAYING -- I MEAN, THERE'S NO
17 EVIDENCE, RIGHT?

18 THE COURT: YOU MAY BE RIGHT ON ALL OF THAT, BUT YOU
19 HOLD CAPTIVE, SIR, THE EVIDENCE THAT THEY NEED TO PROCEED, AND
20 YOU CAN'T USE THAT AS THE BASIS FOR THWARTING THE LITIGATION,
21 I WOULDN'T THINK. I MEAN, I'M JUST THROWING THESE COMMENTS
22 OUT. IT'S SOMETHING THAT STRIKES ME, YOU KNOW, IF THE
23 DETAINEES NEED TO ASK TO SPEAK WITH COUNSEL, THEN MAYBE EVERY
24 SINGLE ONE OF THEM SHOULD BE TOLD IN AN APPROPRIATE WAY WHAT'S
25 GOING ON, WHAT'S BEING DONE ON THEIR BEHALF, AND WHAT IS

1 NEEDED, AND THAT ON A PARTICULAR DATE AND TIME THESE PEOPLE
2 ARE GOING TO BE THERE AND THAT THEY, IF THEY ARE WILLING TO,
3 THEY COULD SIGN UP TO SEE THEM. I DON'T KNOW, BUT IT CAN'T BE
4 THAT WE WALL PLAINTIFFS OFF FROM THEIR PROSPECTIVE CLASS.

5 MR. ACEDO: AND THAT'S NOT WHAT'S HAPPENING.

6 THE COURT: NO, NO, I'M NOT SAYING THAT IT IS, BUT
7 THE END RESULT OF WHAT YOU'RE SUGGESTING COULD BE THAT SINCE
8 FOR A YEAR YOU ALL HAVEN'T WORKED ANYTHING OUT.

9 MR. ACEDO: AND THE REASON WHY NOTHING HAS BEEN
10 WORKED OUT, AND THIS IS MY POINT, YOUR HONOR, IS, THEY NEVER
11 CAME BACK TO US AND SAID, HEY, WE NEED TO DO THIS; LET'S SET
12 SOMETHING UP. THIS EXCHANGE WAS WITH RESPECT TO A SCHEDULED
13 FACILITY VISIT THAT HAD TO GO FORWARD AND WE AGREED TO THAT,
14 AND WHEN THEY ASKED US THAT THEY WANTED TO DO THAT, AND THE
15 RECORD WILL REFLECT THIS, YOU NEED TO GO THROUGH THE NORMAL
16 CHANNELS, WHICH WAS SEND A LETTER, EXPLAIN WHY YOU NEED THIS,
17 ETC., ETC. SINCE THAT TIME, THEY'VE NEVER COME BACK AND SAID,
18 HEY, WE MAY NEED TO AMEND OUR COMPLAINT AND ADD, OR, HEY, WE
19 NEED TO TALK TO SOME PEOPLE. THEY'VE NEVER DONE THAT. AND I
20 AGREE THERE CAN'T BE A WALL, BECAUSE IT'S CIRCULAR.

21 THE COURT: WELL, MAYBE THIS DISCUSSION WILL MAKE
22 THINGS WORK A LITTLE MORE SMOOTHLY FOR BOTH SIDES. I HOPE SO.

23 MR. ACEDO: SURE.

24 THE COURT: BUT WE DIGRESS. I WANT TO HEAR YOUR
25 COMMENTS UNINTERRUPTED, SIR. GO AHEAD, SIR.

1 MR. ACEDO: SURE. AND I JUST WANTED TO ADDRESS THAT,
2 BECAUSE I THINK IT'S UNFAIR THAT WE'RE BEING ACCUSED OF
3 OBSTRUCTING WHEN THAT'S SIMPLY NOT THE CASE. THEY SAT ON
4 THEIR HANDS, AND WE'RE MORE THAN WILLING TO WORK WITH THEM TO
5 TRY TO FIGURE SOMETHING OUT. IT WAS ONE INCIDENT. IT WAS IN
6 CONJUNCTION WITH THE FACILITY TOURS, AND THAT WAS IT. NOT ONE
7 TIME IN THE LAST YEAR HAVE THEY SAID, HEY, WE NEED TO WORK
8 SOMETHING OUT. WE'RE HAPPY TO WORK WITH THEM.

9 THE COURT: WELL, YOU KNOW NOW AND THEY KNOW NOW THAT
10 THE COURT IS CONCERNED ABOUT THAT. BUT GO AHEAD. TELL ME
11 WHAT YOU WANT TO TELL ME. I APPRECIATE YOUR COMMENTS. THAT'S
12 HELPFUL, SIR.

13 MR. ACEDO: THE NOVOA CASE THAT THEY SUBMITTED TO THE
14 COURT YESTERDAY, I BRIEFLY GLANCED AT IT. IT LOOKS LIKE THAT
15 ONLY INVOLVED THE MINIMUM WAGE CLAIM. I DON'T THINK, BUT I
16 NEED TO CONFIRM THIS, THAT IT INVOLVED THE OTHER TYPES OF
17 CLAIMS.

18 THE COURT: I HAVEN'T SPENT ANY TIME WITH IT, EITHER,
19 EXCEPT TO FLIP THROUGH IT AND SKIM IT IN THE QUICKEST WAY. SO
20 I'LL READ IT CAREFULLY, SIR.

21 MR. ACEDO: AND I WOULD LIKE TO -- WE'D ACTUALLY LIKE
22 AN OPPORTUNITY TO PRESENT SOME BRIEFING ON IT. WHAT THEY
23 SUBMITTED YESTERDAY WAS, THIS IS JUST RELEVANT TO OUR
24 ARGUMENTS. NOW, WE'RE HEARING FOR THE FIRST TIME THAT, OKAY,
25 IT'S RELEVANT TO THE MINIMUM WAGE CLAIM BECAUSE THERE'S THIS

1 COMMON ISSUE. WE'D LIKE TO DELVE INTO THAT. AND LIKE YOU
2 POINTED OUT, THERE'S THIS CASE AND THAT CASE SO FAR, AND IF
3 THERE'S ANY BEARING ON IT, WE WOULD LIKE AN OPPORTUNITY TO
4 BRIEF IT.

5 THE COURT: THAT'S FINE. WE'LL DISCUSS THAT AT THE
6 END. I THINK THAT'S A FAIR SUGGESTION. IF YOU WOULD LIKE TO,
7 I WILL CERTAINLY PERMIT THAT IN ALL LIKELIHOOD. OKAY. GO
8 AHEAD.

9 MR. ACEDO: I WOULD LIKE TO TALK ABOUT THE TWO
10 CLASSES THAT YOU WERE INCLINED TO GRANT CERTIFICATION. THAT
11 WAS THE NATIONAL FORCED LABOR CLASS AND THE CALIFORNIA FORCED
12 LABOR CLASS. THEIR CLAIM ON -- THEIR ALLEGATION FOR BOTH OF
13 THOSE CLAIMS IS THAT WE HAVE A POLICY OF FORCING DETAINEES TO
14 CLEAN COMMON LIVING AREAS, AND THAT ALLEGATION IS BASED ON,
15 FOR EXAMPLE, IN OTAY MESA, POLICY 12-100, WHICH SAYS, ALL
16 DETAINEES/INMATES ASSIGNED TO A UNIT ARE RESPONSIBLE FOR
17 MAINTAINING THE COMMON LIVING AREA IN A CLEAN AND SANITARY
18 MANNER.

19 THEY'RE USING THAT POLICY TO SUGGEST THAT WE'RE
20 FORCING THEM TO CLEAN, THE WORDS THAT I JUST READ. WE'VE GOT
21 DECLARATIONS THAT WE'VE SUBMITTED THAT EXPLAIN THAT MAINTAIN
22 DOESN'T MEAN CLEAN UP AFTER OTHERS. MAINTAIN MEANS CLEAN UP
23 AFTER YOURSELF. IF YOU READ THE REST OF THE POLICY DIRECTLY
24 UNDERNEATH WHAT I JUST READ, IT ELABORATES ON THAT: TRASH
25 WILL NOT BE THROWN ANYWHERE EXCEPT IN CONTAINERS. TOWELS,

1 BLANKETS, CLOTHING, AND ANY PERSONAL BELONGING WILL NOT BE
2 LEFT IN THE COMMON AREA. THE WALLS IN THE COMMON AREA WILL BE
3 KEPT FREE OF WRITING.

4 THOSE ALL SUGGEST AND SUPPORT AND PROVE, IN
5 CONJUNCTION WITH OUR DECLARATIONS, THAT THIS POLICY SIMPLY
6 MEANS THAT YOU CAN'T MAKE A MESS IN THE COMMON AREAS, AND IF
7 YOU DO, PICK IT UP, JUST LIKE IN ANY HOUSEHOLD, IN MOST
8 HOUSEHOLDS. THEY TRY TO TURN THAT POLICY INTO SOMETHING ELSE
9 WITH FOUR DECLARATIONS THAT SAY THAT THERE'S ACTUALLY A
10 PRACTICE OF APPLYING IT DIFFERENTLY, THAT THEY ACTUALLY DO
11 FORCE THEM UNDER THREAT OF SOLITARY CONFINEMENT.

12 AND ON THAT POINT I WANT TO POINT BACK TO WAL-MART
13 VS. DUKES, WHICH SAYS THAT, IF A CLASS WANTS TO BE CERTIFIED
14 BASED ON A POLICY OR PRACTICE, THERE HAS TO BE SIGNIFICANT
15 PROOF OF THAT. FOUR DECLARATIONS OUT OF 8,000 DETAINEES IN
16 CALIFORNIA, 120,000 DETAINEES NATIONWIDE, HARDLY SUPPORTS EVEN
17 AN INFERENCE THAT THERE'S A PRACTICE OF THIS GOING ON
18 ANYWHERE. FOUR DECLARATIONS, YOUR HONOR. THEY'VE GOT THE
19 POLICY I JUST READ AND FOUR DECLARATIONS TO TELL YOU THAT WE
20 HAVE GOT THIS POLICY OF FORCING DETAINEES TO CLEAN UNDER
21 THREAT OF SOLITARY CONFINEMENT. THAT REASON ALONE IS ENOUGH
22 TO DENY CERTIFICATION ON BOTH THE FORCED LABOR CLAIMS.

23 THEY SUBMITTED -- WELL, THEY ALSO POINT TO THE
24 DISCIPLINARY POLICY THAT SAYS YOU CAN BE DISCIPLINED FOR
25 REFUSING TO CLEAN YOUR PERSONAL LIVING SPACE, WHICH IS

1 REQUIRED BY ICE, AND WHICH THEY AGREE IS NOT THEIR CLAIM.
2 THEY'RE FOCUSED ON THE COMMON LIVING AREAS. SO THAT HAS NO
3 APPLICATION.

4 THEY POINT TO THE POLICY THAT SAYS YOU MUST OBEY
5 STAFF ORDERS. THAT'S AN IMPORTANT ORDER. THEY TRY TO MAKE
6 THE CONNECTION THAT WE'VE GOT POLICY A, THE SANITATION POLICY,
7 AND POLICY B, WHICH SAYS YOU MUST FALL IN ORDER. THEY COMBINE
8 THEM TOGETHER TO SAY THERE'S THIS PRACTICE OF FORCING THESE
9 DETAINEES TO WORK. WHAT DO THEY HAVE, WHAT HAVE THEY
10 SUBMITTED AS PROOF OF THAT CONNECTION TO THAT INFERENCE?
11 NOTHING. THEY'VE SUBMITTED DISCIPLINARY GRIEVANCES OR ORDERS
12 THAT THEY SAY SHOW THIS, BUT IF YOU LOOK AT THOSE DISCIPLINES,
13 NOT A SINGLE DETAINEE WAS DISCIPLINED FOR REFUSING TO CLEAN A
14 COMMON AREA. NOT A SINGLE ONE.

15 THERE'S SIMPLY NO EVIDENCE TO SUPPORT THESE POLICIES
16 AND PRACTICES THAT THEY WANT TO BASE THIS CLASS ACTION ON, AND
17 THAT'S A CERTIFICATION REQUIREMENT UNDER WAL-MART VS. DUKES.
18 EVEN IF THEY WERE TO SATISFY THAT PRONG, THE SIGNIFICANT PROOF
19 PRONG, WHICH THEY HAVE NOT, THEY ALSO HAVE TO SHOW
20 COMMONALITY. THEY CAN'T DO THAT, EITHER. IF YOU LOOK AT WHAT
21 SECTION 1589 OF THE TVPA REQUIRES AND ALSO THE CALIFORNIA
22 HUMAN TRAFFICKING STATUTE, BOTH OF THEM REQUIRE SUBJECTIVE
23 INQUIRIES. THE TVPA REQUIRES THEM TO SHOW THAT WE OBTAINED
24 LABOR SERVICES BY MEANS OF SERIOUS HARM OR THREAT OF SERIOUS
25 HARM, BY MEANS OF, AND THAT'S CAUSATION. THEY HAVE TO SHOW

1 THAT THIS DETAINEE PERFORMED THAT WORK BECAUSE THEY FELT
2 THREATENED, OR WERE THREATENED, OR WERE HARMED. SAME WITH THE
3 CALIFORNIA TVPA. THEY MUST SHOW THAT IT WAS ACCOMPLISHED
4 THROUGH COERCION OR THROUGH FORCE. THEY SAY THAT THOSE ARE
5 OBJECTIVE INQUIRIES, AND THEY CITE TO THE DEFINITIONS OF
6 SERIOUS HARM IN BOTH OF THOSE STATUTES, AND I AGREE. THOSE
7 DEFINITIONS OF WHAT CONSTITUTES A SERIOUS HARM IS A REASONABLE
8 STANDARD. IT'S AN OBJECTIVE STANDARD.

9 BUT THAT'S NOT THE INQUIRY I'M TALKING ABOUT. WE'RE
10 TALKING ABOUT THE *BY MEANS OF*, THE *ACCOMPLISHED THROUGH*, THE
11 CAUSATION ELEMENT. THAT IS A CASE-BY-CASE INQUIRY WHERE
12 YOU'RE GOING TO HAVE TO ASK EVERY DETAINEE, DID YOU WORK, OR
13 DID YOU CLEAN A COMMON AREA? YES. WHY DID YOU CLEAN THE
14 COMMON AREA? IF THEY SAY, BECAUSE I FELT THREATENED, OKAY,
15 THE ALLEGATION STATED A CLAIM. IF THEY SAY, I WANTED
16 SOMETHING TO DO, I WAS BORED, I LIKE KEEPING A CLEAN COMMON
17 AREA, NO CLAIM. YOU CAN'T FIND LIABILITY ACROSS THE BOARD FOR
18 120,000 DETAINEES, OR EVEN 18,000 DETAINEES, ON A YES-OR-NO
19 ANSWER TO THAT QUESTION, BECAUSE YOU HAVE TO ASK THAT
20 INDIVIDUAL QUESTION EACH TIME.

21 JUMPING TO THE STANDING ISSUE, YOUR HONOR, THIS IS
22 SOMETHING THAT WE DIDN'T TALK ABOUT, BUT I JUST WANT TO
23 REITERATE OUR POSITION THAT THE MOTION FOR CLASS CERTIFICATION
24 DID NOT MOVE UNDER 23(B)(2), WHICH IS NECESSARY TO CERTIFY A
25 CLAIM FOR INJUNCTIVE OR DECLARATORY RELIEF. THEIR MOTION ONLY

1 SOUGHT CERTIFICATION UNDER (B) (3). THEY SAY IN THEIR REPLY
2 THAT YOU CAN MOVE UNDER (B) (3) AND YOU GET BOTH. IT'S NOT
3 TRUE. THE CASES THEY CITE DON'T SAY THAT. ACTUALLY, THE
4 CASES THAT THEY CITE -- WOULD YOU LIKE ME TO PAUSE?

5 THE COURT: I THINK WE HAVE TO CLOSE THAT DOOR.
6 WHAT'S GOING ON OUT THERE.

7 (OFF-THE-RECORD DISCUSSION)

8 THE COURT: GO AHEAD, COUNSEL.

9 MR. ACEDO: I WOULD ENCOURAGE YOU TO GO BACK AND READ
10 THE CASES THAT THEY CITED. IF YOU WANT TO CERTIFY A CLAIM,
11 CLASS CLAIM FOR INJUNCTIVE OR DECLARATORY RELIEF, YOU HAVE TO
12 SATISFY SECTION (B) (2). THEY DIDN'T EVEN MOVE ON THAT. ANY
13 AMENDMENT WOULD BE FUTILE BECAUSE YOU'D HAVE TO GO BACK AND
14 LET THEM RE-FILE THE MOTION FOR CLASS CERTIFICATION, AND THAT
15 DEADLINE HAS PASSED. SO IT'S NOT JUST AS EASY, EVEN IF YOU'RE
16 INCLINED TO LET THEM AMEND, TO DO THAT. I MEAN, THEY WOULD
17 HAVE TO RE-MOVE UNDER (B) (2) TO GET BACK INJUNCTIVE CLASS-WIDE
18 RELIEF.

19 ON THEIR BASIC NECESSITIES CLAIM, YOUR HONOR, I KNOW
20 YOU'RE INCLINED TO DENY CERTIFICATION, BUT AGAIN I'D LIKE TO
21 POINT OUT THE LACK OF ANY PROOF THAT WE INTENTIONALLY WITHHELD
22 ANY BASIC NECESSITY AS A WAY TO COERCE THEM INTO
23 PARTICIPATING. THEY JUST ASSUME IT'S SO. THEY ASSUME THAT
24 DETAINEE WORKED. DETAINEE BOUGHT SHAMPOO OR SOAP. THEREFORE,
25 DETAINEE HAD TO WORK TO BUY THE SHAMPOO OR SOAP BECAUSE IT WAS

1 DEPRIVED. THEY DON'T MAKE THE CONNECTION.

2 GO BACK AND LOOK AT THE DECLARATIONS OF OWINO AND
3 GOMEZ. THEY JUST SAID THAT THEY BOUGHT IT, AND WHEN YOU LOOK
4 AT OWINO'S AND GOMEZ'S ACCOUNTS, THEY HAD THOUSANDS OF DOLLARS
5 IN THERE. THEY DIDN'T NEED TO WORK. THEY HAD THE MONEY. AND
6 LOOK AT WHAT THEY'RE BUYING. WHAT THEY'RE BUYING ARE THE
7 BASIC LIVING NECESSITIES. WE PROVIDE WHAT ICE REQUIRES, AND
8 IF THEY WANT TWO BOTTLES OF SHAMPOO INSTEAD OF ONE, THEY CAN
9 GO BUY THAT SECOND BOTTLE OF SHAMPOO. IF THEY HAVE OCD AND
10 THEY NEED TO TAKE THREE SHOWERS A DAY AND THEY RUN OUT OF
11 THEIR SOAP, THEY CAN BUY MORE SOAP. BUT THERE'S NO PROOF THAT
12 WE'VE INTENTIONALLY WITHHELD ANYTHING AS A MEANS TO COERCE
13 THEIR PARTICIPATION IN THE VOLUNTARY WORK PROGRAM. IT'S ALL
14 BASED ON SPECULATION AND ASSUMPTION, AND IT'S SIMPLY NOT TRUE.

15 THE LAST POINT, YOUR HONOR, I'D LIKE TO MAKE IS WHAT
16 WE LEFT OFF TALKING ABOUT AND YOUR CONCERN THAT IF WE DON'T
17 SET CERTIFIED CLASSES, HOW ARE THESE DETAINEES GOING TO BE
18 ABLE TO PURSUE RELIEF? I UNDERSTAND THESE ARE DIFFICULT
19 QUESTIONS, BUT WHETHER OR NOT THEY CAN ULTIMATELY BRING A
20 CLAIM SHOULD NOT, OR WHETHER THEY'RE MOTIVATED OR WOULD LIKE
21 TO BRING A CLAIM SHOULD NOT INFLUENCE THAT ULTIMATE
22 DETERMINATION. WE NEED TO APPLY THE LAW. WE NEED TO FOLLOW
23 THE LAW. COURTS DISMISS CLAIMS ALL THE TIME, ALL OF THE TIME,
24 FOR VARIOUS REASONS. THAT SHOULDN'T BE A CONTROLLING FACTOR.
25 I MEAN, IF YOU LOOK AT THESE OTHER LAWSUITS AGAINST CORE CIVIC

1 IN TEXAS AND GEORGIA, THERE ARE MOTIVATED DETAINEES.

2 THE COURT: ARE THEY ON THE SAME BASIS?

3 MR. ACEDO: YES.

4 THE COURT: SO, HOW FAR ARE THOSE CASES?

5 MR. ACEDO: BOTH OF THOSE CASES ARE STAYED.

6 THE COURT: PENDING WHAT?

7 MR. ACEDO: PENDING AN APPEAL. THOSE TWO CASES --

8 THE COURT: SO, HOW FAR -- APPEAL OF WHAT? WHAT

9 ORDER?

10 MR. ACEDO: IN BOTH OF THOSE CASES, YOUR HONOR, WE
11 MOVED TO DISMISS, ARGUING THAT THE TVPA DID NOT APPLY IN THIS
12 CONTEXT. WE MADE THAT SIMILAR MOTION HERE, AND YOU DENIED
13 THAT.

14 THE COURT: OKAY.

15 MR. ACEDO: THEY DENIED IT AS WELL, BUT THEY
16 CERTIFIED IT FOR IMMEDIATE APPEAL.

17 THE COURT: SO, WHAT CIRCUITS HAVE THOSE CASES?
18 THAT'S INTERESTING. AND HOW LONG HAVE THEY HAD THEM, AND WHEN
19 ARE THEY GOING TO HAVE ORAL ARGUMENT?

20 MR. ACEDO: I KNOW. IT'S EXCITING. THE FIFTH
21 CIRCUIT IS THE MARTHA GONZALEZ CASE --

22 THE COURT: OKAY.

23 MR. ACEDO: -- AND THE ELEVENTH CIRCUIT IS THE
24 BARRIENTOS CASE.

25 THE COURT: BOTH (PAUSE) --

1 MR. ACEDO: BRIEFING IN GONZALEZ JUST ENDED TUESDAY,
2 SO THERE HASN'T BEEN ORAL ARGUMENT SET. ORAL ARGUMENT HAS
3 BEEN SET IN THE ELEVENTH CIRCUIT FOR THE END OF JANUARY. I
4 BELIEVE JANUARY 31ST.

5 THE COURT: OKAY. SO THERE ARE CASES. THEY'RE A
6 LITTLE BIT FURTHER ALONG, BUT THEY'RE OUT OF OUR CIRCUIT AND,
7 YOU KNOW, IN A LITTLE BIT DIFFERENT POSTURE.

8 MR. ACEDO: DISCOVERY HASN'T EVEN STARTED --

9 THE COURT: I UNDERSTAND THAT.

10 MR. ACEDO: -- BUT DIFFERENT POSTURES, AND THOSE
11 COURTS CAN ULTIMATELY SAY THE TVPA DOESN'T APPLY AND THESE
12 CLAIMS DON'T EVEN EXIST; THAT, AS A MATTER OF LAW, THEY CANNOT
13 BRING THESE CLAIMS.

14 THE COURT: WERE YOU INVOLVED IN ANY OF THESE?

15 MR. ACEDO: YES, YOUR HONOR.

16 THE COURT: SO YOU HANDLED THEM.

17 MR. ACEDO: YES, YOUR HONOR.

18 THE COURT: OKAY.

19 MR. ACEDO: AGAIN, THIS IS A RULING THAT -- YOU MADE
20 A SIMILAR RULING --

21 THE COURT: RIGHT.

22 MR. ACEDO: -- JUST AS THOSE TWO DISTRICT COURTS, AND
23 YOU DENIED IT, JUST AS THOSE TWO DISTRICT COURTS DID.

24 THE COURT: OKAY.

25 MR. ACEDO: AND I DO NOT BELIEVE WE MOVED TO CERTIFY

1 AN INTERLOCUTORY APPEAL.

2 THE COURT: I DON'T BELIEVE YOU DID, EITHER. I
3 USUALLY REMEMBER WHEN SOMEBODY ASKS FOR THAT, AND I DON'T
4 RECALL YOUR ASKING FOR THAT, SIR.

5 MR. ACEDO: WELL, WHAT WE DID MOVE TO CERTIFY WAS THE
6 PREEMPTION ISSUE, WHICH YOU SAID WAS A CLOSE CALL, BUT YOU
7 DIDN'T GRANT IT. BUT WE DIDN'T MOVE ON THE TVPA ISSUE. THE
8 NORTHERN DISTRICT OF GEORGIA, OR THE MIDDLE DISTRICT OF
9 GEORGIA *SUA SPONTE* CERTIFIED THAT QUESTION BECAUSE THE
10 DISTRICT COURT BELIEVED THAT THERE WERE SUBSTANTIAL GROUNDS
11 FOR A DIFFERENCE OF OPINION AND IT WAS IMPORTANT TO THE CASE.
12 THOSE CASES COULD -- YOU KNOW, WHATEVER THEIR -- YOU KNOW,
13 THOSE RULINGS AREN'T BINDING ON THE COURT, OBVIOUSLY --

14 THE COURT: NO, NO.

15 MR. ACEDO: -- BUT THEY WILL AT LEAST DECIDE IN THOSE
16 JURISDICTIONS WHETHER THOSE DETAINEES EVEN HAVE A TVPA CLAIM.
17 AND THEN IF THEY SAY THAT THERE IS NO TVPA CLAIM IN THIS
18 CONTEXT, THE DETAINEES IN GEORGIA AND TEXAS CANNOT BRING A
19 CLAIM. AND IF YOU WERE NOT TO CERTIFY HERE, THEY'RE IN THE
20 SAME POSITION. AND MY POINT IS, WE SHOULDN'T LET THAT
21 INFLUENCE THIS, THE FACT THAT THEY MAY NOT --

22 THE COURT: YOU SAY THEY CAN'T BRING THEIR CLAIM.
23 THEY CAN BRING A CLAIM.

24 MR. ACEDO: NOT A TVPA CLAIM.

25 THE COURT: NOT A TVPA CLAIM, BUT THEY COULD DO

1 SOMETHING ELSE IN THE COURTS OF THIS COUNTRY.

2 MR. ACEDO: SURE.

3 THE COURT: GO TO SMALL CLAIMS COURT. LET'S JUST
4 TAKE AN EASY ONE. YOU CAN GO TO SMALL CLAIMS COURT.

5 MR. ACEDO: SURE. THERE'S OTHER REMEDIES. AND TO BE
6 CLEAR, YOUR HONOR, WE'RE NOT SAYING -- ASSUMING THESE
7 ALLEGATIONS WERE TRUE, WE'RE NOT TAKING THE POSITION THAT WE
8 CAN STILL DO IT. ABSOLUTELY NOT. IT'S REPREHENSIBLE WHAT
9 THEY'RE ALLEGING. WE'RE JUST SAYING, UNDER THE TVPA, THAT IS
10 NOT AN APPROPRIATE REMEDY. THEY HAVE TO LOOK ELSEWHERE FOR
11 THE REMEDIES. IF THEY WANT TO GO TO STATE LAW, BRING
12 STATE-LAW CLAIMS, LABOR-LAW CLAIMS, LIKE THE PLAINTIFFS IN
13 THIS CASE, THEY CAN. NOTABLY, THE PLAINTIFFS IN MEDI-CAL
14 TRIED TO BRING STATE-LAW CLAIMS, AND THE DISTRICT COURT IN
15 MEDI-CAL DENIED IT, SAID THAT YOU CANNOT BRING LABOR-LAW
16 CLAIMS.

17 SO DETAINEES AND PLAINTIFFS OF VARIOUS SORTS ARE
18 DENIED CLAIMS FOR VARIOUS REASONS, FOR LEGAL REASONS, AND
19 THESE ARE HARD LEGAL ISSUES. BUT, YOU KNOW, IF YOU DENY
20 CERTIFICATION AND THE PUTATIVE CLASS MEMBERS WANT TO PURSUE
21 RELIEF, HOWEVER THEY MAY DO THAT, THEY'RE MORE THAN WELCOME
22 TO.

23 THE COURT: LET ME ASK YOU THIS. OTHER THAN THE
24 FIFTH AND THE ELEVENTH CIRCUITS, ANYTHING ELSE OUT THERE?

25 MR. ACEDO: THE CARLOS GONZALEZ CASE THAT'S IN FRONT

1 OF YOU THAT YOU STAYED, BUT THOSE ARE THE ONLY FOUR CASES
2 THAT, AS I'M STANDING HERE RIGHT NOW, I'M AWARE OF AGAINST
3 CORE CIVIC, AGAINST CORE CIVIC, AND THERE'S THE NOVOA CASE AND
4 THE MEDI-CAL CASE. THOSE ARE BOTH CASES AGAINST GEO. AND AS
5 YOU LOOK AT THIS NOVOA DECISION, AND I WILL WHEN I'M DONE WITH
6 THIS ARGUMENT, KEEP IN MIND THAT, AND I BELIEVE THIS IS TRUE,
7 THEY CERTIFIED FORCED LABOR CLAIMS BECAUSE THE TENTH CIRCUIT
8 IN MEDI-CAL SAID YOU CAN CERTIFY THESE TYPES OF CLAIMS.

9 BUT THIS IS WHAT'S IMPORTANT TO REMEMBER. IN THE
10 MEDI-CAL CASE, WHICH THE NOVOA COURT ADOPTED, THEY HAD THE GEO
11 POLICIES IN FRONT OF THEM. THAT'S WHAT THEY WERE LOOKING AT,
12 GEO'S POLICIES, AND GEO'S POLICIES EXPRESSLY -- THE HANDBOOKS
13 ACTUALLY SAY YOU ARE REQUIRED TO CLEAN THE COMMON LIVING
14 AREAS, AND IF YOU DON'T, YOU WILL BE DISCIPLINED, AND THEY
15 GAVE ALL OF THE DETAINEES/INMATES THAT POLICY. IT WAS A
16 PROGRAM.

17 THAT'S FAR DIFFERENT FROM WHAT WE'VE GOT HERE, BUT --
18 AND I'M TELLING YOU THAT SO WHEN YOU GO BACK TO LOOK AT NOVOA
19 AND TRY TO FOLLOW THE TRAIL TO MEDI-CAL, THAT'S WHY THOSE
20 COURTS CERTIFIED THOSE CLAIMS, BECAUSE THEY SAID THERE WAS A
21 CLASS-WIDE INFERENCE OF CAUSATION, WHICH IT'S OUR POSITION THE
22 NINTH CIRCUIT DOESN'T HAVE THAT PROPOSITION. IT'S A TENTH
23 CIRCUIT THING. BUT THE POLICIES ARE COMPLETELY DIFFERENT, AND
24 I THINK THE PROOF OF THAT IS THAT THE PLAINTIFFS HAVEN'T EVEN
25 TRIED TO RELY ON MEDI-CAL IN CONJUNCTION WITH THE COMMONALITY

1 AND PREDOMINANCE ARGUMENTS.

2 THE COURT: LET ME ASK YOU THIS, COUNSEL. WHEN WE
3 STARTED THIS, YOU STARTED BY TALKING ABOUT JUDGE BERNAL'S
4 DECISION. HOW MUCH TIME DO YOU NEED, HOW MANY PAGES DO YOU
5 NEED, AND CAN WE LIMIT OURSELVES? BECAUSE I HAVE A LOT OF
6 MATERIAL IN THIS, AND I'M GOING TO GO BACK THROUGH EVERYTHING,
7 AND IT WILL TAKE A WHILE TO SEE WHERE I COME OUT ON THIS. BUT
8 I AM WILLING TO LET YOU BRIEF THAT AND LET OPPOSING COUNSEL
9 BRIEF IT. I MEAN, I'M CURIOUS. SHOULD IT BE SIMULTANEOUS
10 BRIEFING WITH A REPLY, ONE REPLY? WHAT WOULD YOU PROPOSE?

11 AND THEN I'LL ASK YOU, COUNSEL, WHAT YOU THINK AND
12 HOW MUCH TIME.

13 I KNOW WE'RE COMING TO A TIME OF YEAR WHERE I HOPE
14 YOU AND EVERYBODY IS TAKING A LITTLE BIT OF TIME OFF. SO TELL
15 ME WHAT WOULD WORK FOR YOU.

16 MR. ACEDO: IF I COULD ASK MY WIFE, AND THIS IS WHAT
17 I'LL PROPOSE. PLAINTIFFS FILE SOMETHING, FIVE PAGES, TO TELL
18 YOU WHY THEY THINK IT'S RELEVANT, AND I THINK IT'S IMPORTANT
19 THAT THEY FILE SOMETHING FIRST, BECAUSE WE'RE NOT ENTIRELY
20 CLEAR WHAT THEY'RE RELYING ON IT FOR. THEY FILE SOMETHING
21 FIRST, FIVE PAGES. WE GET THE RESPONSE, FIVE PAGES. IT WOULD
22 BE NICE IF THAT FIRST DEADLINE WAS ON THE OTHER SIDE OF THE
23 NEW YEAR.

24 THE COURT: I THINK IT COULD BE, COUNSEL. OF COURSE.
25 SO YOU THINK THAT WOULD BE SUFFICIENT?

1 MR. ACEDO: I THINK SO.

2 THE COURT: THEN I COULD DEEM THIS MATTER SUBMITTED
3 AND TAKE THAT INTO ACCOUNT IN MY FURTHER WORK ON THIS CASE.
4 OKAY.

5 MR. ACEDO: AND I HAVE NOTHING ELSE.

6 THE COURT: OKAY. THANK YOU.

7 SO YOU BROUGHT THIS CASE TO THE COURT'S ATTENTION,
8 AND I WASN'T SURE IF PEOPLE WANTED TO DO ADDITIONAL BRIEFING.
9 IS FIVE PAGES SUFFICIENT, COUNSEL?

10 MS. RIDLEY: I THINK IT IS --

11 THE COURT: OKAY.

12 MS. RIDLEY: -- WITH THE REQUEST AND THE PLEA THAT
13 THE FIVE PAGES BE AFTER THE HOLIDAYS.

14 THE COURT: NO, NO, NO. ABSOLUTELY. ABSOLUTELY,
15 COUNSEL. YOU TELL ME WHEN YOU WOULD WANT TO FILE.
16 MID-JANUARY, LATER JANUARY. WHATEVER YOU LIKE, MA'AM.

17 MS. RIDLEY: I THINK MID-JANUARY IS FINE, FRANKLY,
18 YOUR HONOR.

19 THE COURT: SO I CAN'T SEE THE CALENDAR, JESSICA.
20 GIVE ME A FRIDAY IN MID-JANUARY.

21 THE DEPUTY CLERK: JANUARY 17TH.

22 THE COURT: CAN YOU FILE BY JANUARY 17TH?

23 MS. RIDLEY: YES, YOUR HONOR.

24 THE COURT: AND TWO WEEKS TO FILE A RESPONSE,
25 COUNSEL?

1 MR. ACEDO: SURE.

2 THE COURT: OKAY.

3 THE DEPUTY CLERK: JANUARY 31ST.

4 THE COURT: JANUARY 31ST, DEFENSE WILL FILE, AND THEN
5 I'LL DEEM THE MATTER SUBMITTED, AND I'LL BE GOING BACK THROUGH
6 EVERYTHING IN ADVANCE OF THAT, LOOKING AT THINGS.

7 DID YOU NEED TO ADD ANYTHING?

8 MS. RIDLEY: JUST BRIEFLY.

9 THE COURT: SURE.

10 MS. RIDLEY: COUNSEL IS WRONG WITH REGARD TO THE
11 TVPA. THERE'S MORE THAN SUBSTANTIAL EVIDENCE WITH REGARD TO
12 IT. IT CERTAINLY INCLUDES MR. OWINO AND GOMEZ'S DECLARATIONS,
13 BUT IT SPECIFICALLY INCLUDES TESTIMONY BY WARDENS THAT WE
14 SUBMITTED, THE ACTUAL POLICIES, AND I'LL READ IT. THE WRITTEN
15 SANITATION PROVIDES, QUOTE, ALL DETAINEES/INMATES ASSIGNED TO
16 A UNIT ARE RESPONSIBLE FOR MAINTAINING THE COMMON LIVING AREA
17 IN A CLEAN AND SANITARY MANNER. UNDER THIS POLICY, DETAINEES
18 WILL BE ASSIGNED TO EACH AREA ON A PERMANENT BASIS TO PERFORM
19 THE DAILY CLEANING ROUTINE OF THE COMMON AREA. SO IT WASN'T
20 JUST THEIR OWN AREA. IT WAS AN OVERALL REQUIREMENT, AND IT
21 WAS UNDER PENALTY OF DISCIPLINE IF THEY DIDN'T DO IT, AND WE
22 HAVE DISCIPLINARY RECORDS OF PEOPLE ACTUALLY BEING DISCIPLINED
23 FOR NOT FOLLOWING EITHER ORDERS OR KEEPING AREAS CLEAN. SO
24 THERE'S MORE THAN SUBSTANTIAL EVIDENCE.

25 AND THAT'S ALL I HAVE. I KNOW WE'VE BEEN SPENDING

1 QUITE A BIT OF TIME ON THIS.

2 THE COURT: THAT'S OKAY.

3 AND DO YOU NEED 30 SECONDS? I KNOW YOU DISAGREE WITH
4 THAT. YOU TAKE EXCEPTION. BUT GO AHEAD, JUST TO BE FAIR.

5 MR. ACEDO: WHERE WERE YOU READING FROM?

6 MS. RIDLEY: I WAS READING FROM MY OWN BRIEF, BUT IT
7 WAS FROM THE SANITATION POLICIES.

8 MR. ACEDO: I BELIEVE WHAT SHE WAS REFERRING TO IS
9 EXHIBIT 11, WHICH IS THE VOLUNTARY RELEASE THAT INMATES SIGN,
10 AND IT DOES SAY SOMETHING TO THE EFFECT OF THEY WERE
11 RESPONSIBLE FOR COMMON AREAS. AGAIN, THE DECLARATIONS THAT WE
12 SUBMITTED SAY THAT THAT IS TO SIMPLY MAINTAIN, PICKING UP
13 AFTER YOURSELF, NOT TO CLEAN UP AFTER OTHERS, AND THE SECOND
14 SENTENCE SHE READ, THE DECLARATIONS SHOW THAT THAT IS FOR THE
15 INMATE OR THE DETAINEE WORKERS. THAT'S THEIR JOBS TO DO THE
16 WEEKLY OR THE DAILY CLEANING.

17 THE COURT: OKAY. WELL, COUNSEL, I APPRECIATE YOUR
18 COMMENTS THIS AFTERNOON. I APPRECIATE YOUR PRECISE ANSWERS TO
19 MY QUESTIONS. I'M GOING TO LOOK FORWARD TO THE BRIEFING, AND
20 I'M GOING TO SPEND SOME TIME WITH THIS DECISION MYSELF AND GO
21 BACK THROUGH THINGS AND EXHIBITS THAT I'VE ASKED ABOUT THIS
22 AFTERNOON. IT'S A FASCINATING ISSUE AND AREA. IF ANYBODY
23 SEES ANY ADDITIONAL AUTHORITY OTHER THAN WHAT WE'VE LEARNED
24 ABOUT IN THE CENTRAL DISTRICT AND NOW THE FIFTH AND THE
25 ELEVENTH CIRCUITS, AND WE KNEW ABOUT THE MEDI-CAL DECISION IN

1 THE TENTH CIRCUIT, BUT ANYTHING ELSE, PLEASE LET US KNOW, LET
2 THE COURT KNOW, AND THANK YOU. I APPRECIATE IT.

3 MS. RIDLEY: THANK YOU FOR ALL YOUR WORK, YOUR HONOR.

4 MR. ACEDO: THANK YOU.

5 (PROCEEDINGS ADJOURNED AT 3:38 P.M.)

6 -----

7 (END OF TRANSCRIPT)

8

9 I, FRANK J. RANGUS, OFFICIAL COURT REPORTER, DO
10 HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND
11 ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES.

12

13 S/FRANK J. RANGUS

14 FRANK J. RANGUS, OCR

15

16

17

18

19

20

21

22

23

24

25