

The Honorable Robert J. Bryan

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

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

Case No. 3:17-cv-05806-RJB

**DECLARATION OF AMBER
MARTIN IN SUPPORT OF THE
GEO GROUP, INC.’S MOTION
FOR SUMMARY JUDGMENT
AGAINST THE STATE OF
WASHINGTON**

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

Plaintiffs/Counter Defendants,

v.

THE GEO GROUP, INC.,

Defendant/Counter Claimant.

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

I, Amber Martin, make the following statement under oath and subject to the penalty of perjury under the laws of the United States and the State of Washington:

1. I am competent to testify in these matters, over the age of majority, and familiar with the subjects I discuss below. The statements contained in this declaration are based upon my personal knowledge or information provided to me in my official capacity. The following statements are true and correct to the best of my information, knowledge, and belief.

1 2. I am GEO's Executive Vice President, Contract Administration. I have worked
2 for The GEO Group, Inc. ("GEO") since 1998, when I joined the company as its Director of
3 Contract Compliance. In 2000, GEO promoted me to Vice President, Contract Compliance. In
4 that role, I was responsible for auditing GEO's contracts for compliance with contract
5 provisions, applicable court orders, and national standards. In 2014, I was promoted to my
6 current role, where I am responsible for administering GEO's contracts. My responsibilities
7 include drafting and negotiating GEO's contracts, as well as managing GEO's contractual
8 relationship with its clients.

9 3. Prior to joining GEO, I worked for the Texas Department of Criminal Justice. In
10 my last position with the Department of Criminal Justice, I served as the Director for the Office
11 of the General Counsel. I previously held other managerial positions within the Department,
12 including Regional Coordinator, Interim Warden, Institutional Parole Officer for Pardons and
13 Parole Division, and Investigator for Internal Affairs.

14 4. I have a Bachelor of Science in Criminology and Corrections from Sam Houston
15 State University, Huntsville, Texas, and I am a member of the American Correctional
16 Association.

17 5. The United States Congress has delegated to DHS, and its agency ICE, the
18 authority to detain aliens that the United States has placed into removal proceedings. 8 U.S.C.
19 §§ 1103, 1226, 1231. To accomplish this mission, ICE operates three kinds of detention
20 facilities. Service Processing Centers ("SPCs") are operated directly by ICE. Contract
21 Detention Facilities ("CDFs") are operated under a direct contract with private services
22 provider. Intergovernmental Service Agreements ("IGSAs") are agreements between ICE and a
23 state or local government. Federal statutes allowing for ICE's use of private contractors include
24 8 U.S.C. §§ 1103(a)(11), 1231(a)(2), and 1231(g).

25 6. The Northwest Detention Center ("NWDC") is a Contract Detention Facility,
26 which is a contractor-owned and operated facility. GEO owns and operates the NWDC

1 pursuant to direct contracts between GEO and ICE. *See, e.g.*, 8 U.S.C. §§ 1103(a)(11),
2 1231(a)(2), (g).

3 7. I am aware that the State of Washington (“State”) has filed a lawsuit entitled
4 *State of Washington v. The GEO Group, Inc.*, U.S. District Court, Western District of
5 Washington, Case No. 3:17-cv-05806-RJB, making certain claims against GEO. I understand
6 that the State claims GEO is violating the Washington Minimum Wage Act by failing to treat
7 detainees who participate in a Voluntary Work Program (“VWP”) at the NWDC as employees,
8 and by paying detainees \$1.00 per day. I also understand that the State alleges that GEO has
9 been unjustly enriched by its operation of the VWP.

10 8. At all relevant times pertinent to the State’s claims against GEO, the NWDC
11 was under contract(s) with ICE or its predecessor agency, INS.

12 9. Beginning in 2005, GEO’s operation of the NWDC was governed by INS
13 contract ACL-2-C-0004 (“2002 ICE Contract”). GEO’s performance under this contract began
14 in 2005 when it acquired the original contract awardee, Correctional Services Corp. For the rest
15 of my declaration, when I refer to ICE it should be understood that I am also referring to INS as
16 to the period where INS, instead of ICE, was the agency in existence. A true and correct copy
17 of the 2002 ICE Contract is attached as Exhibit 1.

18 10. Beginning October 24, 2009, GEO’s operation of the NWDC was governed by
19 ICE contract HSCEDM-10-D-00001 (“2009 ICE Contract”). A true and correct copy of the
20 2009 ICE Contract is attached as Exhibit 2.

21 11. From September 28, 2015 through the present, GEO’s operation of the NWDC
22 is governed by ICE contract HSCEDM-15-D-00015 (“2015 ICE Contract”). A true and correct
23 copy of the 2015 ICE Contract is attached as Exhibit 3.

24 12. I refer to the 2002 ICE Contract, the 2009 ICE Contract, and the 2015 ICE
25 Contract collectively as the “ICE Contracts.” I am familiar with each of the ICE Contracts.

26 ///

1 13. ICE ensures its custodial supervision obligations are met by adopting standards
2 and then requiring its contractors (like GEO) to adhere to those standards. ICE regularly audits
3 and inspects its contractors' facilities (including the NWDC) to ensure compliance with the
4 applicable contracts and standards. ICE is authorized to adopt these standards, secure their
5 implementation, and inspect to ensure compliance. ICE requires its contractors to meet all
6 applicable detention standards, including ICE's Performance Based National Detention
7 Standards ("PBNDS").

8 14. In 2000, INS adopted the original Detention Standards. A copy of the 2000
9 Detention Standards can be accessed at <https://www.ice.gov/detention-standards/2000>.

10 15. ICE promulgated subsequent versions of the PBNDS in 2008 and 2011 (with
11 revisions in 2016). A copy of the 2008 PBNDS can be found at [https://www.ice.gov/detention-](https://www.ice.gov/detention-standards/2008)
12 [standards/2008](https://www.ice.gov/detention-standards/2008). A copy of the 2011 PBNDS and the 2016 revisions can be found at
13 <https://www.ice.gov/detention-standards/2011>.

14 16. ICE also issues a National Detainee Handbook, which is updated on a regular
15 basis and given to each detainee in an appropriate language. Contractors operating detention
16 facilities (like GEO) are required to comply with these handbooks. The National Detainee
17 Handbook published with the 2000 Detention Standards can be found at
18 <https://www.ice.gov/doclib/dro/detention-standards/pdf/handbk.pdf>. A copy of the 2008
19 National Detainee Handbook and a copy of the 2016 National Detainee Handbook are attached
20 as Exhibits 4 and 5.

21 17. Additionally, ICE requires contractors operating detention facilities (like GEO)
22 to issue a detainee handbook that is specific to each facility. GEO has issued detainee
23 handbooks for the NWDC, and updated these handbooks on a regular basis. ICE has reviewed
24 and approved each detainee handbook for the NWDC. A true and correct copy of the 2016
25 NWDC Detainee Handbook is attached as Exhibit 6.

26 ///

1 18. ICE employs a full-time Contracting Officer Representative (“COR”) at the
2 NWDC whose primary responsibility is to ensure the facility is in conformance with the
3 PBNDS and the contract terms and conditions.

4 19. ICE mandates that GEO provide a VWP to detainees at the NWDC. The ICE
5 Contracts, and the applicable ICE standards, require GEO to provide detainees opportunities to
6 work and earn money while confined at the NWDC, subject to the number of work
7 opportunities available and any prevailing safety, security, or other operational concerns.

8 20. GEO has no discretion to decline or refuse to provide a VWP at the NWDC. The
9 terms of the VWP are established by the ICE Contracts. GEO has no discretion to alter or
10 modify the terms of the ICE Contracts, including the terms relating to GEO’s administration of
11 the VWP at the NWDC. ICE’s standards govern, among other things, the terms and conditions
12 of the VWP, including which detainees are eligible to participate in the VWP, and the
13 maximum hours detainees are permitted to work.

14 21. Specifically, Section IX of the 2015 ICE Contract mandates, among other
15 things, that “[d]etainee labor shall be used in accordance with the detainee work plan developed
16 by [GEO], and will adhere to the ICE PBNDS on Voluntary Work Program. The detainee work
17 plan must be voluntary, and may include work or program assignments for industrial,
18 maintenance, custodial, service or other jobs.” *See* Ex. 3, 2015 ICE Contract at p. GEO-State
19 036906.

20 22. In accordance with Section IX of the 2015 ICE Contract, GEO developed a
21 Detainee Work Plan – reviewed and approved by ICE – setting forth the policy and procedures
22 governing the VWP at the NWDC that has been in effect since April 13, 2015. A true and
23 correct copy of the Detainee Work Plan governing the VWP at the NWDC is attached as
24 Exhibit 7.

25 23. Section IX of the 2009 ICE Contract contains the same language as the 2015
26 ICE Contract mandating that GEO create a detainee work plan for a VWP at the NWDC.

1 Accordingly, pursuant to the 2009 ICE Contract, GEO developed – and ICE reviewed and
2 approved – a detainee work plan governing the VWP at the NWDC. True and correct copies of
3 Detainee Work Plans governing the VWP at the NWDC during the term of the 2009 ICE
4 Contract are attached as Exhibit 8 and Exhibit 9.

5 24. Chapter 6 of the 2002 ICE Contract requires GEO to have a VWP at the NWDC,
6 but does not explicitly require GEO to create a detainee work plan. The section states that GEO
7 “shall provide work opportunities for detainee volunteers subject to the approval of the INS.”

8 25. Detainees have never been required to participate in the VWP at the NWDC.
9 Their participation is, and always has been, entirely voluntary.

10 26. The ICE Contracts prohibit GEO from employing any detainees. Detainees who
11 participate in the VWP cannot be employees of GEO.

12 27. For example, the 2015 ICE Contract defines a “Contractor Employee” as an
13 employee of GEO hired to perform a variety of detailed services under this contract; and
14 defines a “Detainee” as “[a]ny person confined under the auspices and authority of any Federal
15 agency. Many of those being detained may have substantial and varied criminal histories.” *See*
16 Section I(F) at p. GEO-State 036871.

17 28. Additionally, Section III(B) of the 2015 ICE Contract states that all persons
18 employed by GEO must have a social security card and “shall be a United States citizen or
19 person lawfully admitted into the United States for permanent residence, have resided in the
20 U.S. for the last five years . . . , possess a high school diploma or equivalent (GED), and obtain
21 a favorable Suitability for Employment determination.” And Section IV(F) of the 2015 ICE
22 Contract requires that GEO agree that each employee “will successfully pass the DHS
23 Employment Eligibility Verification (E-Verify) program operated by USCIS to establish work
24 authorization[,]” and that GEO will not employ “illegal or undocumented aliens.” It is against
25 federal law to employ detainees who are residing in a contract detention facility.

26 ///

1 29. The 2009 ICE Contract contains the same definitions relating to GEO
2 employees and detainees, and similar language relating to employment standards and eligibility
3 for employees of GEO in Section III(B) and Section IV(E).

4 30. The 2002 ICE Contract has different language for employment standards and
5 eligibility than the 2015 ICE Contract and the 2009 ICE Contract. Chapter 4 of the 2002 ICE
6 Contract provides that the INS shall have and exercise full and complete control over
7 employment suitability checks for all GEO employees or prospective employees. Chapter 4(D)
8 also provides that GEO shall ensure that each employee and prospective employee undergo
9 extensive steps, including: a pre-employment interview, background information survey, local
10 law enforcement agency check, employment vouchering, urinalysis, and credit check, among
11 other things.

12 31. The ICE Contracts also determine the amount of compensation detainees receive
13 for participating in the VWP at the NWDC. For each and every ICE Contract, the
14 compensation for detainees has been a \$1.00 per day. There was and is no contractual
15 requirement or expectation by ICE that GEO would pay more than \$1.00 per day to detainees
16 in a VWP.

17 32. For example, the 2002 ICE Contract does not expressly state the amount of
18 compensation for detainees participating in the VWP at the NWDC. However, compensation of
19 \$1.00 per day is mandated by the INS Detention Standards incorporated into the 2002 ICE
20 Contract. Specifically, Section III of INS Detention Standard sets forth the standards and
21 procedures of the Voluntary Work Program. Section III (K) states that the payment to detainees
22 “is 1.00 per day, to be paid daily.” INS Detention Standard, Voluntary Work Program, Section
23 III (K) (Compensation) (<https://www.ice.gov/doclib/dro/detention-standards/pdf/work.pdf>.)

24 33. Similarly, the INS Detainee Handbook governing the VWP at the NWDC during
25 the term of the 2002 ICE Contract states that wages for detainees participating in the VWP are
26 ///

1 “\$1.00 per day, this does not mean per work assignment.”

2 (<https://www.ice.gov/doclib/dro/detention-standards/pdf/handbk.pdf>.)

3 34. Additionally, the NWDC Detainee Handbooks governing the VWP at the
4 NWDC during the term of the 2002 ICE Contract state that “[e]very effort will be made to
5 provide you an opportunity to participate in the voluntary work program. Wages are \$1.00 per
6 day.” *See, e.g.*, NWDC Detainee Handbook, Revised January 17, 2007, at GEO-State 253733
7 attached as Exhibit 10.

8 35. Unlike the 2002 ICE Contract, the 2009 ICE Contract includes specific Contract
9 Line Item Numbers (“CLINs”) for the VWP and sets forth the compensation to be paid
10 detainees for participating in the VWP at the NWDC. These CLINs state: “Detainee Volunteer
11 Wages for the Detainee Work Program. Reimbursement for this line item will be at actual cost
12 of \$1.00 per day per detainee. Contractor shall not exceed the quantity shown without prior
13 approval by the Contracting Officer.” The amount shown is \$114,975.00. The term
14 “reimbursement” in these CLINs refers to ICE’s obligation to make payment to GEO, and the
15 term “actual cost” in these CLINs refers to the amount GEO paid detainees for participation in
16 the VWP.

17 36. As stated above, the 2009 ICE Contract incorporated the 2008 PBNDS. With
18 respect to compensation for detainees participating in the VWP, the 2008 PBNDS states that
19 “the compensation is \$1.00 per day.” ICE/DRO Detention Standard, Voluntary Work Program,
20 Section V (K) (Compensation) ([https://www.ice.gov/doclib/dro/detention-](https://www.ice.gov/doclib/dro/detention-standards/pdf/voluntary_work_program.pdf)
21 [standards/pdf/voluntary_work_program.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/voluntary_work_program.pdf).)

22 37. Additionally, the NWDC Detainee Handbooks governing the VWP at the
23 NWDC during the term of the 2009 ICE Contract – all approved by ICE – state that “every
24 effort will be made to provide you an opportunity to participate in the voluntary work program.
25 Wages are \$1.00 per day.” *See, e.g.*, NWDC Detainee Handbook, April 9, 2015, at GEO-State
26 006067 attached as Exhibit 11.

1 38. Similarly, Detainee Work Plans governing the VWP at the NWDC during the
2 term of the 2009 ICE Contract – that were all approved by ICE – state that “[d]etainees receive
3 monetary compensation for work performed. The stipend is \$1.00 per day to be paid the
4 following business day.” *See, e.g.*, GEO Policy and Procedure Manual, Voluntary Work
5 Program, Supersedes April 13, 2009, at GEO-State 005801, attached as Exhibit 8.

6 39. During the term of the 2009 ICE Contract, ICE revised its detention standards.
7 Among other things, the 2011 PBNDS changed the language regarding compensation for
8 detainees participating in the VWP to state that “the compensation is at least \$1.00 per day.”
9 The change from the 2008 PBNDS to the 2011 PBNDS was not accompanied by any change in
10 Title 8 U.S.C. § 1555(d), which limits ICE’s authority to pay allowances for participation in the
11 VWP to \$1.00 per day per detainee.

12 40. On May 23, 2013, GEO and ICE executed a modification to the 2009 ICE
13 Contract to incorporate the 2011 PBNDS. This modification required GEO to comply with the
14 2011 PBNDS within 30 days of the execution of the modification. The modification, however,
15 did not alter the contract CLINs in the 2009 ICE Contract which established GEO’s actual cost
16 of \$1.00 per day per detainee, nor did it direct, require, or permit GEO to make payments in
17 excess of \$1.00 per day to detainees participating in the VWP.

18 41. Throughout the term of the 2009 ICE Contract, GEO was obligated to pay
19 detainees \$1.00 per day for their participation in the VWP. GEO had no discretion to pay
20 detainees more than \$1.00 per day for their participation in the VWP. Even after the adoption
21 of the 2011 PBNDS and the 2013 modification, GEO was still obligated to pay detainees \$1.00
22 per day.

23 42. The 2015 ICE Contract mandates that GEO’s payments to detainees
24 participating in the VWP is \$1.00 per day. The 2015 ICE Contract includes the same specific
25 CLINs for the VWP as set forth in the 2009 ICE Contract. These CLINs state: “Detainee
26 Volunteer Wages for the Detainee Work Program. Reimbursement for this line item will be at

1 actual cost of \$1.00 per day per detainee. Contractor shall not exceed the quantity shown
2 without prior approval by the Contracting Officer.” The amount show is \$114,975.00. Again,
3 the term “reimbursement” in these CLINs refers to ICE’s obligation to make payment to GEO,
4 and the term “actual cost” in these CLINs refers to the amount GEO would pay detainees for
5 participation in the VWP.

6 43. The NWDC Detainee Handbooks governing the VWP at the NWDC during the
7 term of the 2015 ICE Contract – all approved by ICE – state that “[e]very effort will be made to
8 provide you an opportunity to participate in the voluntary work program. Wages are \$1.00 per
9 day.” *See, e.g.*, NWDC Detainee Handbook, August 1, 2016, at GEO-State 011342, attached as
10 Exhibit 6.

11 44. Similarly, Detainee Work Plans governing the VWP at the NWDC during the
12 term of the 2015 ICE Contract – and that were all approved by ICE – state that “[d]etainees
13 receive monetary compensation for work performed. The stipend is \$1.00 per day to be paid the
14 following business day.” *See, e.g.*, GEO Policy and Procedure Manual, Voluntary Work
15 Program, April 13, 2015, at GEO-State 05812, attached as Exhibit 7.

16 45. Under the terms of the ICE Contracts, ICE is the only party with the authority to
17 change the requirements of the contracts. *See, e.g.*, 2015 ICE Contract, Section G.1.1 at GEO-
18 State 036921. In other words, GEO does not have the authority to change the requirements
19 under the ICE Contracts, including the authority to pay a different amount to detainees
20 participating in the VWP at the NWDC.

21 46. For the entire term of the ICE Contracts, GEO has paid volunteers participating
22 in the VWP at the NWDC \$1.00 per day. Pursuant to the ICE Contracts, GEO has submitted
23 monthly invoices for reimbursement to ICE for the \$1.00 per day payments to detainees
24 participating in the VWP at the NWDC. These monthly invoices include itemized information
25 regarding detainees’ participation in the VWP, including: detainee number, name, date of
26 participation, work performed, and the \$1.00 a day paid by GEO to the participating detainee.

1 The COR reviews this itemization and GEO's corresponding payments to detainee participants.
2 After the COR verifies the itemized information, ICE reimburses GEO the \$1.00 per day
3 payments made by GEO to detainees for the participation in the VWP.

4 47. GEO has complied with the terms of the 2002 ICE Contract, 2009 ICE Contract,
5 2015 ICE Contract, as well as the applicable INS Detention Standards, PBNDS, National
6 Detainee Handbooks, NWDC Detainee Handbooks and NWDC Detainee Work Plans in
7 connection with its administration of the VWP, including payment of \$1.00 per day to
8 detainees, for work performed at the NWDC.

9 48. ICE regularly audits the NWDC for compliance with GEO's contracts and the
10 PBNDS, including compliance with the VWP's objectives, protocols, and payments. All of
11 ICE's audits of GEO have determined that GEO has complied with the ICE Contracts and
12 applicable standards governing the VWP at the NWDC.

13 49. For example, ICE has specifically inspected whether GEO's administration of
14 the VWP at the NWDC, including payment of \$1.00 per day to detainees, is compliant with the
15 ICE Contracts and applicable standards. In each instance, ICE has found GEO compliant. *See,*
16 *e.g.,* excerpts of ICE Inspection Results from 2008 to 2017, attached as Exhibit 12.

17 Dated: July 2, 2019



18
19 _____
Amber Martin
Executive Vice President, Contract Administration
The GEO Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing DECLARATION OF AMBER MARTIN IN SUPPORT OF THE GEO GROUP, INC.'S MOTION FOR SUMMARY JUDGMENT to be served on the following person[s]:

La Rond Baker
Marsha Chien
Andrea Brenneke
Lane Polozola
Patricio Marquez
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
larondb@atg.wa.gov
marshac@atg.wa.gov
andreab3@atg.wa.gov
lane.polozola@atg.wa.gov
patricio.marquez@atg.wa.gov

Devin T. Theriot-Orr
Open Sky Law PLLC
20415 72nd Avenue S, Suite 110
Kent, WA 98032
devin@opensky.law

Attorneys for Plaintiffs/Counter Defendants

R. Andrew Free
Law Office of R. Andrew Free
P.O. Box 90568
Nashville, TN 37209
andrew@immigrantcivilrights.com

Attorneys for State of Washington

Attorneys for Plaintiffs/Counter Defendants

Jamal N. Whitehead
Adam J. Berger
Lindsay L. Halm
Schroeter Goldmark & Bender
810 Third Avenue, Suite 500
Seattle, WA 98104
whitehead@sbg-law.com
berger@sbg-law.com
halm@sbg-law.com

Meena Pallipamu Menter
Menter Immigration Law PLLC
8201 164th Avenue NE, Suite 200
Seattle, WA 98052
meena@meenamenter.com

Attorneys for Plaintiffs/Counter Defendants

Attorneys for Plaintiffs/Counter Defendants

by causing the document to be delivered by the following indicated method or methods:

- by CM/ECF electronically mailed notice from the Court on the date set forth below.
- by mailing full, true and correct copies thereof in sealed, first class postage prepaid envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of the parties and/or attorneys, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- by causing full, true, and correct copies thereof to be hand-delivered to the parties and/or their attorneys at their last-known office addresses listed above on the date set forth below.

DATED July 2, 2019

s/Kristin Asai
Kristin M. Asai