

The Honorable Robert J. Bryan

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**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

**DEFENDANT THE GEO GROUP,
INC.'S RESPONSE TO ORDER RE:
PROPOSED ORDER (DKT. 306)**

This Court's September 24, 2019 order invited the parties "to point out errors, if any," in the Court's Proposed Order granting summary judgment to The GEO Group, Inc. Doc. 306. This Court's Proposed Order was based on a simple syllogism: (1) under *United States v. California*, 921 F.3d 865, 882 n.7 (9th Cir. 2019), "federal government contractors are treated the same as the federal government for purposes of immunity analysis," Doc. 306-1 at 7; (2) "[t]he State now urges that GEO be required to pay the state minimum wage to GEO detainees, but does not propose to pay the state minimum wage to its own detainees," *id.* at 8; therefore, (3) "[t]he State's request, if granted, would discriminate against GEO (and through GEO, against the United States) by creating an economic burden on GEO, a government contractor, that is not placed on the State," *id.*

In twenty-four pages of briefing relying on nine declarations, the State disputes neither premise of this Court's holding: it concedes, as it must, that *United States v. California* instructed that "federal contractors are treated the same as the federal government

1 itself' for purposes of intergovernmental immunity," *see* Doc. 308 at 10–11 (quoting *United*
2 *States v. California*, 921 F.3d at 882 n.7),¹ and it concedes that the "MWA does not apply" to
3 the State's detainees in its own institutions, *see id.* at 6. Once those two premises are
4 conceded, this Court's conclusion that the State's minimum-wage law discriminates against
5 the Federal Government necessarily follows.

6 The State has failed to point to any error in this Court's straightforward
7 intergovernmental-immunity analysis, and there is no basis for revisiting this Court's holding
8 in its Proposed Order. This Court should therefore enter its Proposed Order and dismiss this
9 case.

10 Respectfully submitted, this 4th day of October, 2019.

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1 The State's description of note 7 in *U.S. v. California* is misleading. The footnote makes clear that "federal contractors are treated the same as the federal government itself" for purposes of intergovernmental immunity," in the immigration context and cites specifically to the INS statutory language allowing for detention in both federal and privately contracted facilities. *Id.* at 882 n.7.

PROOF OF SERVICE

I hereby certify on the 4th day of October, 2019, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **DEFENDANT THE GEO GROUP, INC.'S RESPONSE TO ORDER RE: PROPOSED ORDER (DKT. 306)** via the Court's CM/ECF system on the following:

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