The Honorable Robert J. Bryan

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 OPPOSITION TO PLAINTIFF STATE OF WASHINGTON'S MOTIONS IN LIMINE

NOTE ON MOTION CALENDAR:
March 27, 2020

ORAL ARGUMENT REQUESTED

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Defendant The GEO Group, Inc. ("Defendant" or "GEO"), by and through its undersigned counsel, hereby submits its Opposition to Plaintiff State of Washington's Motions in Limine. Dkt. No. 357.

I. The State's Motion is Procedurally Barred.

As an initial matter, GEO notes that the State's Motion in Limine ("Motion") was filed in violation of this Court's Local Rules and should be stricken in its entirety. Indeed, while the State now argues that the Motion is their first motion in limine, the record indicates that the State already filed its single motion in limine under the Rules. *See* Dkt No. 343; LCR 16(b)(4).

As background, the State's *Daubert* motions were due July 2, 2019. Dkt. No 171; LCR 16(b)(4). Four months after this deadline, the State filed a motion to exclude the expert testimony of Gregory Bingham. Dkt. No. 331. GEO alerted the Court that, unless the motion was intended to be filed under LCR 7(d)(4), governing motions in limine, the motion was untimely. Dkt No. 337. In its ruling on the State's motion to exclude, the Court concluded that the motion was timely because "[m]otions *in limine* are due by February 5, 2020." Dkt. No. 343 at 1. The Court explicitly stated that LCR 7(d)(4), the Rule governing motions in limine, had not yet been violated. *Id.* The Court went on to exclude significant portions of Mr. Bingham's testimony. *Id.* Because LCR 7(d)(4) requires all motions in limine to be filed as a single motion (absent good cause) and because the State has not shown good cause,[1] its instant Motion should be denied in its entirety. The State has already filed its single motion in limine, for which it was afforded significant relief. When the State filed that prior motion and did not raise any other issues for trial, it made a conscious decision regarding litigation strategy. It should not be permitted to now flaunt the Rules and change that strategy. This is particularly true where, as here, the State has not shown good cause. Furthermore, because of the unique posture of this case, if the State's current Motion is

[1] The State's only effort to establish good cause appears in a footnote, where it argues that its prior motion to exclude expert testimony, filed four months after the LCR16(b)(4) deadline, was a "separate" motion. The State cites to *Bancroft v. Minnesota Life Ins. Co.*, 783 F. App'x 763 (9th Cir. 2019), in support of its position. *Bancoft* affirmed a summary judgment ruling on grounds unrelated to this lawsuit and has no bearing on whether a party may bring multiple motions in limine in violation of the Local Rules. *Id.*

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considered, the State will effectively have not two, but three, bites at the apple, as it will also reap the benefits of any motions in limine advanced by the Private Plaintiffs which will apply with equal force during the joint liability trial.[2]

II. The Northwest ICE Processing Center ("NWIPC").

The State moves to prohibit GEO from using the name of its facility, the Northwest ICE Processing Center, in this proceeding in favor of a prior name of the facility. The State claims that if GEO is allowed to use the name of the facility, as it appears on GEO's building, it will be confusing and prejudicial to jurors. The State's position is wholly without merit and the Motion should be denied. The facility at issue is currently named the "Northwest ICE Processing Center." There is simply no justification for restricting the use of the facility's name. Indeed, the facility's name – Northwest Ice Processing Center – is widely recognized, such that the City of Tacoma has dedicated an entire page of its website to the NWIPC—by name.[3] The webpage includes answers to frequently asked questions about the NWIPC and refers to the center by its name. Included in those questions is information about this lawsuit. Certainly, the City of Tacoma has no concerns about confusing the general public by using the actual name of the facility. Nor should this Court. Further, there is absolutely no prejudice to the State if GEO is permitted to use the facility's current name. Accordingly, the State's eighth Motion in Limine should be denied.[4]

III. Evidence of State Work Programs.

In support of its opposition to summary judgment, the State submitted no less than six declarations describing work programs at civil and criminal detention facilities across the State of Washington. *See* Dkt. Nos. 308-315. Thereafter, this Court ruled that the issue of whether GEO is

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[2] GEO notes that the State and Private Plaintiffs (collectively, the "Plaintiffs") have the same interest in the joint liability trial and as a result have acted in a unified manner in the pretrial conferences. Despite this, the State and Private Plaintiffs have filed separate motions in limine, totaling 35 pages, the majority of which address the joint liability trial. It is clear that the Plaintiffs' combined 22 motions in limine, spanning 35 pages, do not comply with the goals or spirit of LCR7(d)(4).

[3] *See* https://www.cityoftacoma.org/whats_going_on/northwest_ice_processing_center_information__faqs (last visited March 19, 2020).

[4] During conferral with the State, GEO stated that it was amenable to a jury instruction that the NWIPC and the Northwest Detention Center ("NWDC") are one in the same, to eliminate any potential confusion. GEO remains open to this agreement, but simply cannot agree to exclude the use of the correct name of the facility.

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entitled to intergovernmental immunity for its operation of the Voluntary Work Program ("VWP") at the NWIPC could not be resolved as a matter of law because issues of fact remain about work programs in the State of Washington. SOW Dkt. No. 322. Incredulously, the State now seeks to preclude the *same* evidence it relied upon at summary judgment from consideration at trial on the basis that it is now somehow irrelevant. To the contrary, this evidence is at the heart of GEO's intergovernmental immunity defense and thus inherently relevant for trial.

The State's argument for exclusion rests on their continued flawed construction of intergovernmental immunity. The State argues that because GEO is a private contractor of the federal government, it is not entitled to intergovernmental immunity. Dkt. No. 357 at 14. As part of this argument, the State *once again* provides an inaccurate chart that concedes that the federal government (and its detainees) are not subject to the Washington Minimum Wage Act ("WMWA" or the "Act"), but inexplicably separates GEO into a separate category under "Private Contract Facility." The State cites absolutely no legal support for its definition of the favored class (and accompanying chart).[5] This is likely because the State's argument is inconsistent with WMWA as well as contrary to controlling Ninth Circuit and Supreme Court law.

Binding Ninth Circuit precedent makes clear that in the context of federal immigration detention centers, federal government contractors are treated the same as the federal government itself for purposes of intergovernmental immunity.[6] *United States v. California*, 921 F.3d 865, 879 (9th Cir. 2019); *see also Boeing v. Movassaghi*, 768 F.3d 832, 842-43 (9th Cir. 2014) ("The federal government's decision to hire Boeing to perform the cleanup rather than using federal employees does not affect our immunity analysis . . . When the state law is discriminatory, a private entity with which the federal government deals can assert immunity."). Thus, GEO steps into the shoes of

[5] In its briefing, the State did not identify an exemption from the definition of "employee," or any other definition in the WMWA, that differentiates between public and private entities.

[6] It is worth noting that ICE "neither constructs nor operates its own detention facilities." *See* Dec. of Barnacle, Ex. A, ¶ 52. And, even if this Court were to adopt the State's interpretation of the law, direct regulation of ICE by precluding it from operating in Washington in the same manner in which it is authorized by the federal government to operate in other states, would violate the Supremacy Clause as a matter of law—even without discriminatory treatment. *Blackburn v. United States*, 100 F.3d 1426, 1435 (9th Cir. 1996) ("[U]nder the intergovernmental immunity component of the Supremacy Clause . . . states may not directly regulate the Federal Government's operations . . .").

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the federal government for purposes of intergovernmental immunity.[7] *California*, 921 F.3d at 879; *see also Boeing*, 768 F.3d at 842-43. This clear principle has been recognized by both the United States in its Statement of Interest filed in this matter (Dkt. No. 290 at 5-6) and this Court, (Proposed Order, Dkt. No. 306-1 at 7). Yet, the State remarkably continues to advance its flawed analysis, failing to even mention the controlling precedent herein. As this Court previously explained, the State's "argument overlooks the law that federal governmental contractors are treated the same as the federal government for purposes of immunity analysis." Dkt. No. 306-1 at 7. If the State's chart is revised to be consistent with controlling precedent, so that GEO and the federal government are properly considered the same, under the State's own rationale, federal detainees within the NWIPC are exempt from the WMWA:

	Government Institution **or** Private Contract Facility
Federal Detainees[8]	Yes
State Detainees	Yes

Were the State to nevertheless argue that federal detainees are treated differently than those in state custody for purposes of the WMWA, the principles of intergovernmental immunity would govern whether the disparate treatment is a violation of the Supremacy Clause.

The Supreme Court recently clarified that "[w]hether a State treats similarly situated state and federal employees differently depends on how the State has defined the favored class." *Dawson v. Steager*, 139 S. Ct. 698, 705 (2019) (emphasis added). Under the WMWA the definition of employer is the same for all entities, public or private. RCW 49.46.010(4).[9] Thus, it is not the

[7] It is worth noting here too that ICE "neither constructs nor operates its own detention facilities." See Exhibit A, ¶ 52. Thus, this principle is of paramount importance in the context of immigration detention. And, even if this Court were to adopt the State's interpretation of the law, it would amount to direct regulation of ICE by precluding it from exercising its congressionally-authorized discretion to collaborate with private contractors. This construction would violate the Supremacy Clause as a matter of law—even without discriminatory treatment. *Blackburn v. United States*, 100 F.3d 1426, 1435 (9th Cir. 1996) ("[U]nder the intergovernmental immunity component of the Supremacy Clause to the United States Constitution, states may not directly regulate the Federal Government's operations or property.").

[8] The State's chart is silent about which portion of the WMWA exempts federal detainees from coverage.

[9] For the avoidance of doubt, the WMWA's definition of "employer" does not distinguish between public and private employers. Nor does the detainee exception distinguish between facilities where the state engages a contractor and those where it does not. Certainly, the detainee exception would be superfluous if both the state and federal governments were exempt from the WMWA's definition of employer. The legislative history of the WMWA solidifies this point. While the definition of "employer" has not changed since 1961, the exceptions to the definition of

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"employer" or operator of the detention facility that defines the "favored class" for purposes of intergovernmental immunity analysis. Instead, it is the definition of "employee" that controls. The Washington legislature has defined the class of individuals exempted from the WMWA as "[a]ny resident, inmate, or patient of a state . . . correctional, detention, treatment or rehabilitative institution[.]" RWC § 49.46.010(3)(k) (the "detainee exception"). Accordingly, the "favored class" as defined in the WMWA consists of state detainees who are exempted from the coverage of the Act. Thus, here, the proper comparison to the federal government's detainees, held at the NWIPC, is any resident, inmate, or patient of a state detention, treatment, correctional, or rehabilitative institution.[10] If the federal government (and by extension GEO) is not afforded the same exemptions as the state, the WMWA violates the principle of intergovernmental immunity. Accordingly, GEO will introduce evidence that there are individuals in Washington who: (i) are in State custody (both criminal and civil); (ii) participate in work programs; and (iii) are not paid minimum wage under the WMWA. Through evidence of sub-minimum wage work performed by those in State custody, GEO will establish its defense of intergovernmental immunity. Thus, this evidence is not only relevant to GEO's intergovernmental immunity defense, but it rests at its core.

Additionally, evidence of what the State pays its detainees—and the benefits it derives from the operation of those programs—is also relevant to GEO's defense to the State's unjust enrichment claim. To establish its case for unjust enrichment, the State must show:

1. That the State of Washington conferred a benefit upon GEO through the VWP operated at the Northwest ICE Processing Center;

2. That GEO obtained and appreciated that benefit at the State of Washington's expense; and

3. That the circumstances would make it unjust or inequitable for GEO to retain the benefit without paying its value to the State of Washington.

"employee" have. Previously, there was a specific exception for those individuals employed by the United States (i.e. the federal government), that was later removed. *See* Exs. B and C.

[10] The WMWA is silent as to the potential "employer" of these detainees, in that it does not draw a distinction between private and governmental entities. Likewise, the WMWA is silent as to who owns or operates the facility in which the individuals are housed.

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See Young v. Young, 164 Wash. 2d 477, 484, 191 P.3d 1258, 1262 (2008); *Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc.*, 61 Wash.App. 151, 160, 810 P.2d 12 (1991). The State's practice of paying detainees in its own facilities sub-minimum wages is relevant to whether the circumstances make it unjust for GEO to do the same. Indeed, if it is not unjust for the State to offer work programs for detainees at sub-minimum wages, it certainly is not unjust for federal detainees to participate in similar programs. Further, this evidence is relevant to whether GEO obtained detainee labor at the State's expense. If the State had provided services to ICE, in GEO's place, undoubtedly it would have paid the federal ICE detainees consistent (at sub-minimum wages) with other detainees within the State. Thus, evidence of other work programs is probative of whether GEO appreciated a benefit at the State's expense. For these reasons, the State's sixth Motion in Limine regarding evidence of State work programs should be denied in its entirety.

IV. Prior Statements by the State About the Applicability of the WMWA.

The State's position in this lawsuit is that detainees at the NWIPC fit within the statutory definition of "employee" under the WMWA. Unsurprisingly, it now seeks to exclude statements made by individuals who worked for the Washington Department of Labor and Industries ("L&I") that undermine its position. But, there is no rule of evidence that justifies excluding statements merely because they conflict with a party's trial strategy. To the contrary, a party's credibility is an issue that is always before the jury. *See e.g., Conan v. City of Fontana*, 2017 WL 7795953, at *2 (C.D. Cal. Oct. 16, 2017). Among others, the State seeks to exclude the following statements made by L&I:

- "[I]nmates [at the NWIPC] are not covered by the minimum wage act; they are not defined as employees." See Ex. D (WA00009253).
- "As for jobs that are given to the inmates or residents [of the NWIPC] at these low rates, it is outside of L&I's jurisdiction to investigate because they are working for the facility, regardless that it is operated by a corporation. It is still under the jurisdiction of the prison system. . ."
- "For wage and hour purposes, L&I des not have any jurisdiction over the federal government or its instrumentalities. This would include the detainees and work performed by Geo Group [sic] and its employees under contract with the federal government."

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These statements by L&I, the State of Washington division tasked with enforcing the WMWA, are directly relevant to whether NWIPC detainees are employees. Indeed, if the State itself has previously concluded these individuals are not employees, that conclusion and the supporting reasoning bear directly on the issue of whether detainees should be classified as employees.

Additionally, as part of its unjust enrichment claim, the State must establish that the circumstances surrounding GEO's payment of less than minimum wage to detainees participating in the VWP at the NWIPC were unjust. Certainly, the fact that no detainees ever filed wage complaints, and the fact that to-date, L&I *still* has not made a determination that the WMWA applies to detainees at the NWIPC are relevant to that consideration. *See* Ex. E, Grice Dep. 42:14-16 (L&I has never received a complaint from a detainee at the NWIPC); 18:1-7 (L&I has never made a determination about whether detainees at the NWIPC fall within the detainee exception to the WMWA); Ex. F, Grice Dep. 43:21-22 (same). Thus, the State's fifth Motion in Limine should be denied.

V. Colleen Melody's Testimony.

In her 30(b)(6) deposition, Colleen Melody testified that "detainees sleep and live [at the NWIPC] while they are detained by the immigration statutes" Exhibit G, Melody, 30(b)(6) Washington Attorney General, 150:7-9. There is simply no reason to exclude this testimony from Ms. Melody, the State's 30(b)(6) representative. This testimony goes to the heart of whether detainees are "employees" under the WMWA. RWC § 49.46.010(3)(j) (the "resident exception"). GEO intends to introduce Ms. Melody's concession at trial. Certainly, there is nothing prejudicial about the State's concession. Additionally, in her deposition, Ms. Melody testified about the limits on the damages the State seeks for its unjust enrichment claim, clarifying that they do not intend to argue that other Washington residents should have been given the opportunity to apply for and perform the VWP positions—as articulated in more detail in GEO's Motion in Limine. This too is relevant testimony. The testimony is not, in any way, prejudicial or confusing under Federal Rule of Evidence 403. Finally, Ms. Melody provided testimony about the State's operation of detainee sub-minimum wage work programs, which is relevant to GEO's intergovernmental immunity

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defense—discussed *supra* in Section III. Accordingly, the State's request (made in footnote 3 of its Motion) to exclude the testimony of Ms. Melody should be denied.

VI. Evidence that Detainees Volunteer for the VWP.

The voluntary nature of the VWP goes to the heart of whether detainees are employees under the WMWA and therefore its relevance outweighs any prejudice to the State.[11] FRE 403. As GEO has previously argued, the fact that the VWP is entirely voluntary goes directly to the *Anfinson* factors. *See* Dkt. No. 270 at 11; *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wash. 2d 851, 870 (2012). *Anfinson* instructs that whether an employee-employer relationship exists depends upon the circumstances of the whole activity. *Id.* at 869. While there is no exclusive set of factors to consider, two factors that are commonly considered are permanence and control. Clearly, whether a detainee is a volunteer participant goes directly to those two factors. Because detainees are volunteers, GEO has no control over what tasks they choose to perform or if they choose to participate at all. Nor can GEO control whether detainees continue to volunteer, what positions detainees volunteer for, or if the detainee will consistently show up for each shift. In addition, because the VWP is purely voluntary, GEO has no control over the quality of a detainee's participation or whether more highly skilled detainees volunteer for positions requiring higher levels of skill. Likewise, because the VWP is voluntary, detainees are free to set their own schedule. For these same reasons, the voluntary nature of the program goes to the permanence of the relationship. Because detainees can volunteer one day and change their mind the next they are not "permanent" fixtures in GEO's business, and by extension cannot be considered employees under *Anfinson*.

Additionally, the "fundamental nature" of the activity is relevant to whether an employee-employer relationship exists. *Rocha v. King Cty.*, 435 P.3d 325, 333 (Wash. Ct. App.), *review granted sub nom. Bednarczyk v. King Cty.*, 193 Wash. 2d 1017, 448 P.3d 64 (2019). The *Rocha* court concluded that despite the State's control over jurors, they were not employees for purposes

[11] Indeed, the State's argument that the VWP agreement will be unduly prejudicial is undercut by its own admission that the agreement is "relevant and admissible to establish the background context for the work program."

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of the WMWA because the fundamental nature of jury service was a civic duty—not an employer-employee relationship. *Id*. Here, the "fundamental nature" of the detainee's relationship with GEO is not employment, but rather a custodial relationship. The ability to perform tasks on a voluntary basis exists not for employment (and the ability to purchase the necessities), but rather to avoid idleness, decrease disciplinary issues, and instead provide detainees with an opportunity to feel productive and useful. Indeed, directly analogous case law, addressing civilly detained individuals in the State of Washington's Special Commitment Center on McNeil Island ("SCC"), makes clear that where a detention facility operates a voluntary program for its residents as part of their custodial detention programming, the detainees are not employees. *Calhoun v. State*, 146 Wash. App. 877, 886 (2008), as amended (Oct. 28, 2008). Establishing that the NWIPC's VWP is the same as in *Calhoun* (including that the program is voluntary) is a key issue for trial.

Finally, evidence that detainees volunteered to participate in the VWP with the knowledge that they would be paid $1 per day is directly relevant to GEO's defense to the State's unjust enrichment claims as it demonstrates that participating detainees had no expectation that they would be paid more than $1 per day. This is certainly relevant to whether the circumstances surrounding GEO's payment of less than minimum wage to detainees participating in the VWP at the NWIPC were unjust. Therefore, the relevance of the voluntariness of the VWP outweighs any perceived prejudice identified by the State. Accordingly, the State's second Motion in Limine should be denied.

VII. Testimony from Dan Ragsdale, Brian Evans, Julie Williams, Lynne Buchanan, and David Johnson.

Under Fed. R. Civ. P. 37(c)(1), a court may exclude witnesses that were not disclosed under Rule 26. But, Rule 37 sanctions are expressly limited—the sanction of exclusion may not be imposed where a party's failure to disclose the witness was harmless or substantially justified. Fed. R. Civ. P. 37; *De La O v. Arnold-Williams*, No. CV-04-0192-EFS, 2007 WL 9717728, at *2 (E.D. Wash. June 7, 2007). Where a party knows of the "identities and importance of these witnesses for many months" the failure to disclose the witnesses in formal Rule 26 disclosures is harmless.

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Empire Health Found. v. CHS/Cmty. Health Sys. Inc., No. 2:17-CV-00209-SMJ, 2019 WL 7816836, at *3 (E.D. Wash. July 12, 2019) (declining to exclude witnesses not disclosed in formal Rule 26 disclosures). Likewise, a party is typically not required to supplement its disclosures to include information "otherwise made known to the parties during the discovery process or in writing." Fed. R. CIv. P. 26(e)(1); *De La O,* 2007 WL 9717728, at *2. Here, the individuals that the State seeks to exclude were known to it through the course of discovery. Thus, any failure to formally disclose the witnesses in Rule 26 disclosures was harmless.

1. L&I Employees (Lynne Buchanan and David Johnson).

GEO's failure to supplement its disclosures to include Lynne Buchannan and David Johnson was harmless. During the discovery process, the State disclosed emails that were responsive to GEO's discovery requests. A number of those emails were authored by Ms. Buchanan and Mr. Johnson. Subsequently, the emails authored by Ms. Buchanan and Mr. Johnson were frequently used in depositions. Indeed, Ms. Buchanan's emails were utilized in the 30(b)(6) depositions of Collen Melody (taken August 10, 2018), the 30(b)(6) deposition of Joshua Grice (taken September 5, 2019), and in GEO's briefing to the Court (Dkt. No. 300). Similarly, Mr. Johnson's emails were used in the 30(b)(6) depositions of Collen Melody (taken August 10, 2018), the 30(b)(6) deposition of Joshua Grice (taken September 5, 2019), the 30(b)(6) deposition of Taylor Wonhoff (taken August 22, 2019), and in GEO's briefing to the Court (Dkt. No. 300). Furthermore, in Mr. Grice's deposition as the designee for L&I, he provided testimony about Ms. Buchanan's emails. *See* Ex. F. Thus, Ms. Buchanan and Mr. Johnson were adequately disclosed through other discovery sources. *Johnson v. Albertsons, LLC*, No. 2:18-CV-01678-RAJ, 2020 WL 816015, at *3 (W.D. Wash. Feb. 19, 2020) ("Failure to disclose a witness is harmless where the witness's identity, position, location, and the subject of the information he possesses are made known to the opposing party well ahead of the discovery deadline.").

Furthermore, the failure to place Ms. Buchanan and Mr. Johnson on Rule 26 disclosures was harmless. The State is and has been well aware of what information Ms. Buchanan and Mr. Johnson have as it relates to this case. And, even if given the chance, the State would not have

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conducted depositions of Ms. Buchanan and Mr. Johnson as it represents L&I and can contact either individual at any time. Indeed, the State did not articulate any prejudice or harm in its Motion. Accordingly, there is no basis to exclude either Ms. Buchanan or Mr. Johnson. And, if this Court were to exclude Ms. Buchanan and/or Mr. Johnson, the State should be prohibited from providing any explanation or context for the emails sent by Ms. Buchanan and Mr. Johnson as Mr. Grice, L&I's 30(b)(6) witness, admitted he never spoke to either witness in preparation for his 30(b)(6) deposition. Should the Court exclude these witnesses, their emails should stand on their own for the jury, without further context from the State. If context or explanation is needed, it should come only through the testimony of Ms. Buchanan and Mr. Johnson.

2. GEO Employees (Dan Ragsdale and Brian Evans).

The State also moves to exclude Dan Ragsdale and Brian Evans on the basis that they are "late-breaking witnesses." Dkt. 357 at 17. Yet, the State has long been aware of Mr. Ragsdale and was provided the opportunity to depose him, but never did. *See* Ex. H (letter from Armstrong). Because the State was provided an opportunity to depose Mr. Ragsdale, but did not do so, it cannot now allege that he should be excluded. *Johnson*, 2020 WL 816015, at *3 (failure to disclose is harmless where a party "could have deposed [the witness] but chose not to.") Accordingly, the State has not provided any basis to exclude Mr. Ragsdale.

During the discovery period in this case, the parties disputed the scope of financial documents that were relevant to the State's case. Following appellate proceedings, the Ninth Circuit set forth the appropriate limits on the State's discovery into GEO's financial information. Thereafter, GEO diligently worked to collect these documents and provide the same to the State. At the time of the Ninth Circuit Order, discovery was closed. Because the window to disclose witnesses had already closed at the time Mr. Evans became relevant, GEO's failure to identify him in a Rule 26 disclosure is substantially justified. Mr. Evans, GEO's Chief Financial Officer, was integral to these collection efforts and is the individual who is the most knowledgeable about those documents. He is *the* person within GEO who is qualified to testify about the documents the State intends to use to present its damages case. Without Mr. Evans, any individual who the State seeks

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to have testify about many of the trial exhibits will lack holistic knowledge of what each document signifies. Additionally – and importantly – the State was previously made aware of Mr. Evans' importance to the financial information it sought. During GEO's 30(b)(6) deposition, Chuck Hill made clear that he spoke with Mr. Evans to obtain the relevant information for the deposition. *See* Ex. I, Hill 30(b)(6) Dep. 69:17-25; 70. He also testified that Mr. Evans himself created certain financial documents about which the State was inquiring. *Id.* 69:25. Thus, GEO's failure to disclose Mr. Evans was harmless. Furthermore, if the Court has any lingering questions about the potential prejudice to the State, GEO is willing to make Mr. Evans available for a remote deposition prior to trial. This opportunity would remedy any alleged prejudice the State may face. To that end, Mr. Evans should not be excluded. Accordingly, the State's ninth Motion in Limine should be denied in full.

VIII. Exemptions to the WMWA.

The State now argues, for the first time, that GEO should not be permitted to introduce evidence of the "detainee exception"[12] found in 49.46.10(3)(k) or the "resident exception" found in 49.46.10(3)(j) on the basis that the exceptions were not pled with sufficient specificity. The State's argument that GEO has not adequately pled, and put it on notice, that the exemptions of the WMWA will be at issue in the upcoming trial stretches credulity. In response to the State's Complaint, GEO filed a motion to dismiss for failure to state a claim that argued, in depth, that "Washington has expressly ***excluded*** persons detained in state facilities from the category of 'employees' protected by the MWA," citing exclusions to the definition of employee. Dkt. No. 18 at 10; *see also* Dkt. No. 10 at 24-28. The Court denied GEO's motion to dismiss ruling that "[at] least based on the pleadings, it is plausible that the Plaintiff, arguably, comes within the State definition of 'employee,' and is not subject to any existing statutory exception." Dkt. No. 29 at

[12] The State misleadingly refers to this exception as the "government owned facility" exemption, despite the fact that none of those words, let alone in that order, appear in the text of the statute.

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18.[13] Following the Court's Order, GEO filed its Answer which again alleged the failure to state a claim for which relief may be granted. Dkt. No. 34 at ¶ 8.1. Additionally, GEO pled a counterclaim for affirmative relief in the form a declaratory judgment that "detainees are not GEO's 'employees' and GEO is not their 'employer' with respect to participation in the Voluntary Work Program." *Id.* at ¶¶ 12.13, 12.1. At that point, GEO put the State on notice that, in addition to its defenses, it would be making an *affirmative claim* that detainees are not employees under the entirety of the WMWA.[14] The State and GEO both filed motions to dismiss. In the motion to dismiss briefing, the State sought to dismiss GEO's counterclaim for declaratory relief on the basis that GEO's claim was a "'mirror image' of Washington's minimum wage claim" and that "GEO's counterclaim regarding its employer-employee relationship with detainee-workers is a legal issue that will be resolved during the course of resolving Washington's claims," clearly indicating that the State understood the exceptions to the WMWA to be incorporated in both claims. Dkt. No. 37 at 13-14. The Court denied the State's motion to dismiss GEO's claim for declaratory relief under the WMWA on the basis that the "counterclaims go to the heart of Defendant's view of Plaintiff's claims." Dkt. No. 44 at 7. The pleadings and briefing in this case make clear that the exceptions to the WMWA have been at issue since GEO's initial motion to dismiss. Thus, the record is clear that GEO's pleadings met the requirements of Fed. R. Civ. P. 8(c). The State was adequately provided notice of GEO's contentions and has not been prejudiced.[15] *Wyshak v. City Nat'l Bank*, 607 F.2d

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[13] The State grossly mischaracterizes this holding as conclusively determining that the detainee exception does not apply in this case. To the contrary, the issue has yet to be decided on its merits.

[14] In support of its Motion, the State mentions the parties unfiled pre-trial motion which is in the process of being refined through conferral. At this time, GEO has listed these exceptions as affirmative defenses in its pretrial order in an effort to streamline the trial process. Certainly, GEO is willing to list its claims in the pretrial brief in the affirmative instead. If it is ordered that the exceptions may not be presented as defenses, which it should not be, GEO will seek to present its case on the applicability of the WMWA, including the exemptions under which detainees may fall, prior to or concurrently with the State and Private Plaintiffs' case. In doing so, GEO will also reserve the opportunity to move for a directed verdict prior to the presentation of its defenses.

[15] The State's mention of GEO's requests for admission is of no consequence. In its request for admission, State did not ask for GEO's legal positon in this lawsuit. Rather, it asked GEO to admit, that at the time of the admissions, GEO did not detain any individuals described in 49.46.10(3)(k). At the time GEO responded to the State's request, no court or administrative body had determined as a matter of law that GEO's detainees fall within the detainee exception to the minimum wage. Thus, GEO did not have a fact upon which it could rely to conclusively determine that detainees fit within the WMWA's detainee exception. GEO is seeking such a legal determination here. Unless and until this Court or another administrative or judicial body provides GEO with a determination, GEO rests on its belief that the detainee

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824, 827 (9th Cir. 1979) ("The key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the defense."). On this basis alone the State's Motion should be denied.

In any event, if the record is not a sufficient basis to deny the State's Motion, well-settled Ninth Circuit precedent makes clear that the failure to allege an affirmative defense, without any showing of prejudice to the Plaintiff, is not grounds for waiver. *Lowerison v. Yavno*, 26 F. App'x 720, 722 (9th Cir. 2002) ("Affirmative defenses are not waived even if they are first raised in pretrial dispositive motions, if the plaintiff is not unfairly surprised or prejudiced"); *Rivera v. Anaya*, 726 F.2d 564, 566 (9th Cir. 1984) (finding employer did not waive its defense by failing to plead it until the summary judgment phase); *Healy Tibbitts Const. Co. v. Ins. Co. of N. Am.*, 679 F.2d 803, 804 (9th Cir. 1982) ("The defendant should be permitted to raise its policy exclusions defense in a motion for summary judgment, whether or not it was specifically pleaded as an affirmative defense, at least where no prejudice results to the plaintiff."); *Olson v. Snohomish Cty. Pub. Transp. Ben. Area*, No. C03-3841RSM, 2005 WL 2573328, at *2 (W.D. Wash. Oct. 12, 2005). Indeed, even where an affirmative defense is raised after discovery is closed, at the summary judgment phase, the defense is still not automatically waived. *Healy*, 679 F.2d at 804. The State does not allege any prejudice, nor does any exist. *See e.g. K Networks Co. Ltd. v. Bentley Forbes Holdings, LLC*, No. CV1208997MMMSHX, 2013 WL 12131715, at *13 (C.D. Cal. Nov. 7, 2013) (finding no prejudice where Plaintiff was aware of the arguments not pled in advance of trial). Thus, GEO's defenses cannot be deemed waived.

Finally, GEO's claim for declaratory relief under the WMWA has not yet been assessed on the merits. Surely, a motion in limine is not the proper procedural vehicle for the State to seek a

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exception applies to the WMWA, not an objective fact. Insofar as the request was seeking a legal opinion from GEO, it is an improper admission that should be excluded from trial. Requests for admission can only be used to resolve factual issues and they "cannot be used to compel an admission of a conclusion of law." *Playboy Enterprises, Inc. v. Welles*, 60 F. Supp. 2d 1050, 1057 (S.D. Cal. 1999); *see also Fed. Trade Comm'n v. Amazon.com, Inc.*, No. C14-1038-JCC, 2015 WL 11256313, at *3 (W.D. Wash. Nov. 23, 2015) (requests that plainly call for a legal conclusion are inappropriate); *Chef'n Corp. v. Progressive Int'l Corp.*, No. C14-68 RAJ, 2015 WL 11234157, at *4 (W.D. Wash. July 6, 2015) ("As a preliminary matter, RFAs may not be used to compel an admission of a conclusion of law.").

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ruling on the merits of GEO's declaratory judgment claim. Accordingly, the State's tenth Motion in Limine should be denied.

IX. Work Authorization of Detainees.

The State moves to prevent GEO from introducing evidence of the work authorization status of detainees while simultaneously seeking to introduce testimony of Chris Strawn that detainees are able to obtain work authorization while detained. The State has also listed a number of work authorization forms on its proposed exhibits. Surely, there is no basis for excluding evidence solely based upon the party who will introduce it. For this reason alone, the State's Motion should fail. Additionally, evidence about work authorization is relevant to GEO's derivative sovereign immunity defense. GEO's contract with ICE sets forth specific work authorization requirements for all GEO employees. To the extent the detainees do not fall within those requirements, that is relevant to GEO's defense. Thus, the State's third Motion in Limine should be denied in full.

X. Criminal History of Detainees.

GEO has proposed a limited use of Plaintiff Aguirre Urbina's criminal history at trial. As an initial matter, GEO seeks an opportunity to question Mr. Aguirre Urbina outside of the presence of the jury, prior to his testimony, so that the Court can make a finding as to his competence to testify prior to his testimony. FRE 601 (state law controls competence determinations); *State v. Brousseau*, 172 Wash. 2d 331, 337, 259 P.3d 209, 212 (2011) (trial judge should determine the witnesses competency prior to the witness testifying at trial). GEO seeks this relief because Mr. Aguirre Urbina has previously sworn, under penalty of perjury, that on occasion he has been controlled by voices in his head—which he describes as "the enemy." Ex. J (Exhibit 22). According to Mr. Aguirre Urbina, "the enemy" has been responsible for his actions in prior court proceedings. *Id*. And, he has sought to have his prior admissions in sworn proceedings revoked based upon his mental health. Accordingly, GEO seeks the opportunity to have the Court rule upon his competence to testify at trial to preserve the ruling for the record in the event that Mr. Aguirre Urbina later raises concerns related to his competence.

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Next, GEO proposed that because qualification for certain positions in the VWP vary based upon an individual's criminal history, GEO be permitted to introduce evidence that Mr. Aguirre-Urbina has a criminal record that did not allow him to be classified as a "low" offender for purposes of VWP positions. GEO does not seek to introduce evidence of Mr. Aguirre Urbina's specific bad acts or convictions. Rather, GEO seeks to provide an explanation to the jury about why Mr. Aguirre Urbina was ineligible for certain VWP positions. In the absence of this opportunity, the State will be able to exploit GEO's forced silence to imply that GEO limited the positions for which Mr. Aguirre Urbina could apply based upon a lack of actual voluntariness of the VWP or GEO's preferences, when in reality it is an issue of ICE-mandated facility security. As the elements of voluntariness and control are directly relevant to whether detainees are employees under *Anfinson*, this limitation would be highly prejudicial to GEO. Thus, GEO should be permitted to introduce limited evidence of Mr. Aguirre Urbina's criminal history. Because GEO's proposed compromise strikes a balance between relevance and potential prejudice of criminal convictions, this compromise would not violate FRE 403 or FRE 609.

In this same vein, there are a number of circumstances where the State may open the door to Mr. Aguirre Urbina's criminal history. For example, if the State argues that Mr. Aguirre Urbina meets all qualifications under GEO's contract with ICE to be an employee—GEO should be allowed to introduce evidence that Mr. Aguirre Urbina has a criminal history that would preclude him from employment at GEO. Likewise, if Plaintiffs introduce testimony of Chris Strawn describing the reasons that detainees are held in the NWIPC, GEO should be able to inquire whether a criminal history could be a factor in an individual's detention. Likewise, if Plaintiffs offer testimony of Chris Strawn that detainees could receive work authorization, GEO should be permitted to ask if Mr. Aguirre Urbina would be eligible given his criminal history.

Finally, Mr. Aguirre Urbina also swore, under penalty of perjury, that he is receiving treatment at the NWIPC for his mental health, and that he now "feels much better." GEO should be able to introduce this sworn testimony as impeachment testimony, should Mr. Aguirre Urbina deny that he receives treatment at the NWIPC. Ex. J (Exhibit 22). Accordingly, the State's fourth Motion

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in Limine should be denied in part, subject to the proposal offered herein.

XI. GEO's Payment of $1/day to Detainees.

The State moves to exclude all evidence that GEO's contract with ICE permits it to pay $1 per day to detainees on the basis that such information is irrelevant and prejudicial. To the contrary, the fact that GEO pays $1 per day to detainees, consistent with its contractual requirements, is relevant to both its defense to the State's unjust enrichment claim, to whether GEO has the right to control the rate of pay to detainees under the *Anfinson* test, and to providing the jury with the information it needs to determine whether detainees are employees.

GEO will present evidence to the jury that detainees are not employees under the *Anfinson* test because the fundamental purpose of the VWP is to provide individuals with tasks to stave off boredom and idleness while detained—not to create employment opportunities. As part of its presentation, GEO will explain that the ICE contract permits it to pay detainees $1 per day. And, to avoid confusion that the VWP is meant to create an employment relationship, the ICE contract specifically mandates that GEO not treat detainees as employees.[16] These two contractual provisions combined are highly probative of whether GEO has control over detainees' pay under *Anfinson*. And, GEO will present evidence that it complies with both provisions. In fact, contrary to the State's position, it would be highly prejudicial for the State to be able to present a case where they will explain, repeatedly, that GEO pays $1 per day to detainees without permitting GEO to provide an explanation of its motivations for doing so and explanation that $1 per day is in compliance with the ICE contract. Likewise, this evidence will be used as a defense to the State's unjust enrichment claim, as GEO can demonstrate that there was no expectation that detainees would be paid more than $1 per day, under its contract with ICE and the VWP agreements. Accordingly, the State's seventh Motion in Limine should be denied in full.

XII. The State's Motivations for this Lawsuit.

[16] In its Motion, the State incorrectly asserts that: "There is no legal basis for asserting at this stage that the ICE-GEO Contract overrides the MWA or exempts GEO from complying with its wage payment provisions." Dkt No. 357 at 16. This is simply not true; as laid out in detail in GEO's Motion for Summary Judgment in the *Nwauzor* action, the contract makes clear through numerous provisions that detainees may not be classified as employees.

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As the State explained in its Motion, GEO "is free to attack Washington's evidence as to whether GEO employs detainee-workers or unjustly benefits from its labor practices." Dkt. No. 357 at 4 (emphasis added). However, the State asks this Court to limit the introduction of evidence about the State's motivations for bringing the lawsuit, including what it believes to be unjust about GEO's practices. *Id.* In support of its Motion, the State cites to cases that are not relevant here, each of which addresses the defense of selective prosecution in a criminal case under Fed. R. Crim. P 12. They do not provide any support in a civil case. In contrast, here, GEO is free to introduce evidence of the State's motivation for bringing its lawsuit and potential bias. *Mitchell v. City of Tukwila*, No. C12-238RSL, 2013 WL 6631791, at *1 (W.D. Wash. Dec. 17, 2013) (denying motion exclude evidence of a plaintiff's motivation for filing his lawsuit). In return, the State can provide its own evidence about its motives—leaving the jury to determine the State's credibility.

To be sure, a Plaintiff's motivation for bringing a lawsuit is relevant to bias and credibility. *See e.g.*, *Conan v. City of Fontana*, No. EDCV 16-1261-KK, 2017 WL 7795953, at *2 (C.D. Cal. Oct. 16, 2017). The State is not excluded from this general rule. Indeed, the State's decision to enforce the WMWA as to GEO goes directly to the heart of its unjust enrichment claims, which are allegedly rooted in protecting the people of the State of Washington. The fact that the State previously condoned the payment of less than minimum wage to NWIPC detainees – and never put GEO on notice of any contrary treatment – but has now changed course, bears directly on whether there was an expectation that GEO would act differently than it did—a key element of unjust enrichment. Further, the State's current motivations and the reason and impetus for the "change" are directly relevant to whether the circumstances surrounding GEO's operation of the VWP are unjust. This evidence also goes directly to the State's bias insofar as it establishes that the State's enforcement of the WMWA is inconsistent with its prior choices. Indeed, this information is exactly what jurors should be permitted to consider. *Heath v. Cast*, 813 F.2d 254, 259 (9th Cir. 1987) ("The jurors, as sole triers of fact and credibility, were entitled to hear the evidence and decide the extent of that bias."). Cross-examination is an effective tool for any prejudice the State may face. Accordingly, the State's first Motion in Limine should be denied.

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Respectfully submitted, this 23rd day of March, 2020.

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PROOF OF SERVICE

I hereby certify on the 23rd day of March, 2020, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **DEFENDANT THE GEO GROUP, INC.'S OPPOSITION TO PLAINTIFF STATE OF WASHINGTON'S MOTIONS IN LIMINE** via the Court's CM/ECF system on the following:

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The Honorable Robert J. Bryan

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 COLIN L. BARNACLE IN SUPPORT OF DEFENDANT THE GEO GROUP, INC.'S OPPOSITION TO PLAINTIFF STATE OF WASHINGTON'S MOTIONS IN LIMINE**

I, Colin L. Barnacle, make the following statement under oath subject to the penalty of perjury pursuant to the laws of the United States and the State of Washington:

1. I am the attorney for The GEO Group, Inc. in the above-captioned matter. I am over the age of eighteen (18), and I am competent to testify in this matter.

2. Attached are true and correct copies of the following exhibits:

EXHIBIT A: Attached as Exhibit A is the Complaint for Declaratory Judgment and Injunctive Relief filed in *United States of America v. Gavin Newsom, et al.*, S.D. Cal. Case No. 3:20-cv-00154-MMM-AHG.

EXHIBIT B: Attached as Exhibit B is the enacting legislation of the Washington Minimum Wage Act from 1961, Chapter 18, which was introduced by Senate Bill 30.

EXHIBIT C: Attached as Exhibit C is the enacting legislation of the Washington Minimum Wage Act from 1975, Chapter 289, which was introduced by Substitute House Bill 32.

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EXHIBIT D: Attached as Exhibit D are emails between Sandy Mullins, Tammy Fellin, Suchi Sharma, Lynne Buchannan, Elizabeth Smith and other individuals from Washington's Department of Labor & Industries.

EXHIBIT E: Attached as Exhibit E are excerpts to the 30(b)(6) deposition of Joshua Grice taken December 6, 2019.

EXHIBIT F: Attached as Exhibit F are excerpts to the 30(b)(6) deposition of Joshua Grice taken September 5, 2019.

EXHIBIT G: Attached as Exhibit G are excerpts to the 30(b)(6) deposition of Colleen Melody taken August 10, 2018.

EXHIBIT H: Attached as Exhibit H is a letter from Shannon Armstrong dated April 15, 2019.

EXHIBIT I: Attached as Exhibit I are excerpts from the 30(b)(6) deposition of Chuck Hill taken July 10, 2019.

EXHIBIT J: Attached as Exhibit J is Exhibit 22 to the deposition of Fernando Aguirre-Urbina taken June 11, 2018.

Dated this 23rd day of March, 2020 at Denver, Colorado.

Akerman, LLP

s/ Colin L. Barnacle
Colin L. Barnacle, (Admitted *pro hac vice*)
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PROOF OF SERVICE

I hereby certify on the 23rd day of March 2020, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **DECLARATION OF COLIN L. BARNACLE IN SUPPORT OF DEFENDANT THE GEO GROUP, INC.'S OPPOSITION TO PLAINTIFF STATE OF WASHINGTON'S MOTIONS IN LIMINE** via the Court's CM/ECF system on the following:

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EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GAVIN NEWSOM, in his Official Capacity as Governor of California; XAVIER BECERRA, in his Official Capacity as Attorney General of California; THE STATE OF CALIFORNIA,

Defendants.

Civil Action No. '20CV0154 MMAAHG

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. California recently passed Assembly Bill 32 (A.B. 32), which bans the operation of private detention facilities in California after January 1, 2020. California, of course, is free to decide that it will no longer use private detention facilities for its state prisoners and detainees. But it cannot dictate that choice for the Federal Government, especially in a manner that discriminates against the Federal Government and those with whom it contracts.

2. The Constitution, numerous acts of Congress, and various implementing regulations give the Federal Government both the authority and the prerogative to house individuals in its custody, including in private detention facilities. Exercising that authority, the Federal Government has long contracted with private detention facilities to house federal prisoners and detainees, and it plans to continue that practice in order to address serious needs for detention space in California and elsewhere. The Federal Government must be allowed to make these policy choices without interference from the several States.

3. In this action, the United States seeks a declaration invalidating, and order enjoining, enforcement of A.B. 32 against the Federal Government and those with whom it contracts for private detention facilities. This statute is preempted by federal law, impermissibly discriminates against the Federal Government, and obstructs federal operations. It therefore violates the Supremacy Clause of the Constitution.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 2201(a), 1331, 1345.

5. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(b) because Defendants reside within the District and a substantial part of the acts or omissions giving rise to this action arose from events occurring within this district.

PARTIES

6. Plaintiff, the United States, enforces federal criminal laws under its constitutional and statutory authorities and through its Executive Branch agencies, including the Department of Justice (DOJ) and its sub-agencies, the Bureau of Prisons (BOP) and the U.S. Marshals Service (USMS). The Federal Government also regulates immigration under its constitutional and statutory authorities, and it enforces the immigration laws through its Executive Branch agencies, including the Departments of Justice, State, Labor, and Homeland Security (DHS) including DHS's component agencies, U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

7. Defendant Gavin Newsom is the Governor of the State of California and is being sued in his official capacity.

8. Defendant Xavier Becerra is the Attorney General for the State of California and is being sued in his official capacity.

9. Defendant State of California is a State of the United States.

FEDERAL AUTHORITY

10. The Supremacy Clause of the Constitution mandates that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.

11. The Constitution affords Congress the power to spend money for the "general Welfare of the United States," U.S. Const. art. I, § 8, cl. 1; to "regulate Commerce with foreign Nations, and among the several States," U.S. Const. art. I, § 8, cl. 3; to "establish an uniform Rule of Naturalization," U.S. Const. art. I, § 8, cl. 4; and to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," U.S. Const. art. IV, § 3, cl. 2.

12. The Constitution also affords the President of the United States the authority to "take Care that the Laws be faithfully executed," U.S. Const. art. II, § 3.

13. Based on its constitutional powers, Congress has passed numerous statutes, and the Executive Branch has promulgated numerous implementing regulations, governing the Federal Government's custody of prisoners and other federal detainees.

I. Federal Prisoners

14. By delegation from Congress, the Attorney General—who oversees BOP and USMS—is ultimately responsible for the control and management of federal penal and correctional institutions. 18 U.S.C. § 4001. Expenses for federal confinement are paid out of the U.S. Treasury. 18 U.S.C. §§ 4007–09.

15. BOP has the authority and responsibility to "designate the place of . . . imprisonment" for persons sentenced to imprisonment. 18 U.S.C. §§ 3621, 4042. And BOP "may designate" as a place of confinement "any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau [of Prisons], whether maintained by the Federal Government or otherwise." 18 U.S.C. § 3621(b). This plain language "gives BOP open-ended authority to place federal prisoners in 'any available penal or correctional facility' that meets minimum standards of health and habitability without regard to what entity operates the prison." Statutory Authority to Contract with the Private Sector for Secure Facilities, 16 Op. O.L.C. 65, 67 (1992); *see* 18 U.S.C. §§ 4002, 4003; 28 C.F.R. § 500.1.

16. Similarly, "in support of United States prisoners in non-Federal institutions," the Attorney General is authorized to fund USMS custody of individuals "under agreements with State or local units of government or contracts with private entities." 18 U.S.C. § 4013(a). USMS therefore may "designate districts

that need additional support from private detention entities." 18 U.S.C. § 4013(c); 28 C.F.R. §0.111(k); 28 C.F.R. §0.111(o).

17. Congress also expressly has provided that a federal prisoner may serve a limited portion of his or her sentence "under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community," including in a community correctional facility. 18 U.S.C. § 3624(c); *see* 18 U.S.C. § 3563(b)(10)–(11).

18. A pervasive framework of statutes and regulations also contemplates housing individuals in federal custody outside of federally owned-and-operated prisons and governs all aspects of federal confinement, including the transportation and subsistence of prisoners. *See, e.g.*, 18 U.S.C. §§ 3142, 3624, 4006, 4008, 4241–47, 4248, 4081, 5039; 28 C.F.R. §§ 0.111a, 523.13, 550.40 *et seq.*

II. Federal Immigration Detainees

19. The United States also has full authority to house federal detainees when exercising its constitutional power as a sovereign to control and conduct relations with foreign nations. Congress has exercised its authority to make laws governing the admission, entry, presence, status, and removal of aliens within the United States by enacting various provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, and other laws regulating immigration.

20. In furtherance of its constitutional powers, Congress has codified the Executive Branch's broad authority to detain aliens under various circumstances. *See, e.g.*, 8 U.S.C. §§ 1187, 1222, 1225, 1226, 1226a, 1231. And the Executive Branch has implemented that authority. *See, e.g.*, 6 C.F.R. §§ 115.5 *et seq.*; 8 C.F.R. §§ 103.6, 212.5, 212.12, 212.14, 232.3, 235.3, 236.1, 236.2, 236.3, 241.3, 1241.3, 244.18, 253.2.

21. DHS is congressionally authorized to provide appropriate detention facilities for detainees, including by renting "facilities adapted or suitably located for detention" and by entering cooperative agreements with States and localities. 8

U.S.C. §§ 1103(a)(11), 1231(g). DHS also may "acquire, build, remodel, repair, and operate facilities . . . necessary for detention," but must first "consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for such use." *Id.* § 1231(g)(1).

ASSEMBLY BILL 32

22. A.B. 32 prohibits anyone from "operat[ing] a private detention facility within [California]" under a contract made or extended after January 1, 2020, even if extensions are authorized by the contract. Cal. Penal Code §§ 9501, 9505(a). A "detention facility" is defined as "any facility in which persons are incarcerated or otherwise involuntarily confined for purposes of execution of a punitive sentence imposed by a court or detention pending a trial, hearing, or other judicial or administrative proceeding." Cal. Penal Code § 9500(a). And a "private detention facility" is defined as a "detention facility that is operated by a private, nongovernmental, for-profit entity, and operating pursuant to a contract or agreement with a governmental entity." Cal. Penal Code § 9500(b).

23. In addition, A.B. 32 prohibits the California Department of Corrections and Rehabilitation from entering into a new contract, or renewing an existing contract, with a "private, for-profit prison facility located in or outside [California] to provide housing for state prison inmates" after January 1, 2020. Cal. Penal Code § 5003.1(a). Notwithstanding this provision, California has granted itself an exception "to comply with the requirements of any court-ordered population cap." Cal. Penal Code § 5003.1(e).

24. A.B. 32 also enumerates limited exceptions to its blanket prohibition on private detention facilities. Five exceptions apply only to California's contracts and are facially inapplicable to the Federal Government's contracts: facilities "providing rehabilitative, counseling, treatment, mental health, educational, or medical services to a juvenile that is under the jurisdiction of the juvenile court pursuant to [California

law]"; facilities "providing evaluation or treatment services to a person who has been detained, or is subject to an order of commitment by a court, pursuant to [California law]"; "residential care facilit[ies] licensed pursuant to [California law]"; facilities "used for the quarantine or isolation of persons for public health reasons pursuant to [California law]"; and facilities "used for the temporary detention of a person detained or arrested by a merchant, private security guard, or other private person pursuant to [California law]." Cal. Penal Code § 9502(a)–(b), (d), (f)–(g).

25. Only three exceptions potentially apply to contracts of both the Federal Government and California: facilities "providing educational, vocational, medical, or other ancillary services to an inmate in the custody of, and under the direct supervision of, the Department of Corrections and Rehabilitation or a county sheriff or other law enforcement agency"; school facilities "used for the disciplinary detention of a pupil"; and "any privately owned property or facility that is leased and operated by the Department of Corrections and Rehabilitation or a county sheriff or other law enforcement agency." Cal. Penal Code § 9502(c), (e); § 9503.

26. A.B. 32's ban on contracting with private detention facilities purposefully extends to the Federal Government.

EFFECT OF A.B. 32 ON FEDERAL OPERATIONS

27. A.B. 32 has both the purpose and effect of hampering the Federal Government's ability to house individuals in its custody.

I. U.S. Marshals Service

28. Nationwide, USMS houses over 21,000 of its about 62,000 inmates (almost 34%) in private detention facilities. In California, USMS houses about 1,100 of its 5,000 inmates (approximately 22%) in private detention facilities. All of the private detention facilities contracted by USMS in California are located in the Southern District of California, housing about 1,100 of the almost 2,900 USMS

inmates in that district. About another 450 inmates are housed outside the State due to the unavailability of detention space in California.

29. USMS currently houses inmates in California under two contracts with privately owned and privately operated detention facilities—Western Region Detention Facility and Otay Mesa Detention Center (under an ICE contract)—and one contract with a federally owned and privately operated detention facility—El Centro Service Processing Center. USMS currently houses about 1,100 inmates in the Western Region and Otay Mesa facilities, with the recently awarded El Centro contract allowing USMS to house over 1,800 inmates in the coming year. This accounts for almost 50% of USMS's inmates in the Southern District of California and nearly 30% of USMS's inmates in California.

30. The current option period for the Western Region contract will expire in September 2021, with the contract expiring in September 2027 if all options are exercised. The base periods for the El Centro and Otay Mesa contracts will expire in December 2021 and December 2024, with the contracts expiring in September 2028 and December 2034, respectively, if all options are exercised. USMS only pursues private detention facilities when no other available space exists, so all option years are typically exercised.

31. Based upon current prosecutorial trends, the detention population in California is projected to increase by approximately 25% by Fiscal Year 2023. USMS is currently maximizing all available facilities in California, as well as surrounding districts in other States, in order to meet the overwhelming need for detention space in California.

32. A.B. 32 would cripple USMS operations in California, especially in the Southern District of California. USMS would need to relocate nearly 50% of its inmates in the Southern District of California and nearly 30% of its California

inmates when its contracts expire. These relocations pose significant harm to the USMS' prisoner-management mission.

33. Because USMS has maximized all available space in nearby BOP facilities, and is unable to obtain space in state and local facilities in California, its prisoners would likely be housed outside California. Such relocations would cost significant taxpayer dollars, and require USMS to compete for extremely limited detention space with other agencies, including ICE, due to A.B. 32.

34. This relocation would cause a ripple effect into other districts neighboring California, as detention space would be shared to accommodate displaced California inmates. And those detention facilities could potentially experience overcrowding due to USMS' need to house prisoners in proximity to California's districts.

35. Relocation would also cause prisoners to be isolated from their families, who are usually located in California and may lack resources to visit the prisoner.

36. As USMS's prisoner population is generally pretrial, prisoners (some with very serious charges) must be frequently transported back and forth to California to meet the demands of the Judiciary, defense attorneys, and any pretrial or probationary requirements. This increase in transportation not only would require a dramatic increase in coordination with the Justice Prisoner and Alien Transportation System,[1] as well as state and local transportation resources, but would significantly increase USMS's cost per inmate.

37. The drastic increase in transportation for inmates would also heighten security and safety risks for inmates, USMS personnel, and the public. Frequent, scheduled, movements of prisoners increase the amount of time prisoners are

[1] Managed by USMS, the Justice Prisoner and Alien Transportation System is one of the largest transporters of prisoners in the world, handling about 715 requests every day to move prisoners between judicial districts, correctional institutions, and foreign countries.

outside the heightened security of a detention facility. Such transportation also allows the public additional opportunities to gather intelligence on USMS operations and significantly increases adversarial opportunities during transport. And prisoners with medical or mobility concerns may be adversely affected by frequent travel.

38. USMS will also be competing for transportation with, for example, BOP, who would otherwise be using these transportation resources to transport sentenced prisoners to their designated BOP facility. This may delay prisoners from exiting USMS custody, concomitantly increase the number of prisoners in USMS custody and further increase USMS's housing, medical, and funding needs.

39. Due to relocation and transportation from outside the State, A.B. 32 would also cause lengthy delays in judicial proceedings. Housing prisoners outside of their judicial district significantly decreases the ability of courts to properly interact with prisoners as they move through judicial proceedings. USMS estimates that transportation coordination would require approximately three to four weeks advance notice in order to move prisoners in and out of the judicial districts in California.

II. Bureau of Prisons

40. Nationwide, BOP houses almost 25,000 of its over 175,000 inmates (approximately 14%) in private detention facilities. In California, BOP houses about 2,200 of its about 16,00 inmates (approximately 14%) in private detention facilities.

41. BOP currently owns one detention facility in California that is privately operated—Taft CI—the contract for which will expire in March 2020. Although BOP considered not renewing the contract due to infrastructure issues at the facility, it is currently conducting a feasibility study to determine if the institution could remain operational while repairs are made. If the facility can remain operational, then BOP may seek to award a new contract or a contract extension.

42. As applied to Taft CI, A.B. 32 will require the relocation of over 1,300 inmates to other BOP facilities or placement outside California. This relocation would cost significant taxpayer dollars. It would also result in the incarceration of inmates further from their residence, families, and other visitors.

43. Although BOP does not have current plans to contract for the operation of other secure private facilities in California, it is evaluating its needs and may pursue contracting for such facilities in the future.

44. BOP also has contracts with four contractors for the operation of ten Residential Reentry Centers throughout the State, housing and supervising about 900 inmates. They are located as follows: one in Riverside, one in Oakland, one in San Francisco, one in San Diego, one in Garden Grove, one in El Monte, one in Brawley, one in Van Nuys, and two in Los Angeles. These Residential Reentry Centers provide assistance to inmates who are nearing release by providing a safe, structured, supervised environment, as well as employment counseling, job placement, financial management assistance, and other programs and services. They also supervise inmates on home confinement.

45. The current periods for these contracts will expire in: September 2020 for the Riverside facility; February 2021 for the Oakland facility[2]; March 2020 for the San Francisco facility; May 2020 for the San Diego facility; August 2020 for the Garden Grove facility; September 2020 for the El Monte facility; September 2020 for the Brawley facility; September 2020 for the Van Nuys facility; and September 2020 and November 2020 for the Los Angeles facilities. If all options were exercised, the contracts would expire in: September 2029 for the Riverside facility; January 2030 for the Oakland facility; March 2021 for the San Francisco facility; May

[2] Although BOP's current contract with the Oakland Reentry Center expires in January 2020, BOP executed a new contract for this facility in December 2019. The new contract has a base period of operation from February 2020 through February 2021, with the contract expiring in January 2030 if all options are exercised.

2021 for the San Diego facility; August 2024 for the Garden Grove facility; September 2029 for the El Monte facility; September 2029 for the Brawley facility; September 2029 for the Van Nuys facility; and November 2023 and September 2029 for the Los Angeles facilities. Given BOP's need for Residential Reentry Centers, all option years are typically exercised.

46. BOP currently has one open solicitation and one potential solicitation it would like to open for Reentry Centers in California: one in the San Francisco area (open) and one in the San Diego area (potential solicitation in an area of need). Additionally, one solicitation for a Reentry Center in the Eastern District of California recently closed in October 2019. Absent A.B. 32, these solicitations have anticipated performance dates in 2021.

47. The First Step Act of 2018 also expanded BOP's use of Reentry Centers by authorizing extended placement in Reentry Centers for inmates who have earned time credits under the risk-and-needs-assessment system. *See* 18 U.S.C. §§ 3621, 3624(g). BOP therefore anticipates a significant increase in the need for California Reentry Centers within the next few years.

48. BOP also maintains capacity in Reentry Centers for use by federal courts as an intermediate sanction during supervision or probation. This function utilizes generally 15–20% of the total Reentry Center capacity nationally. Although individuals housed under this arrangement are not in BOP custody, BOP maintains available beds to meet the courts' needs.

49. As applied to California Reentry Centers, A.B. 32 will require the relocation of approximately 900 inmates to other BOP facilities or Reentry Centers outside California. This relocation would cost significant taxpayer dollars. It would also result in the placement of inmates further from their residence, families, and the communities to which they will be released.

50. This would hinder BOP's ability to provide community placement for offenders. Specifically, Residential Reentry Centers provide reentry services to inmates by assisting them in obtaining a suitable residence in the community to which they will be released, structured programs, job placement, and counseling. If BOP is forced to relocate inmates to other BOP facilities or Residential Reentry Centers outside California, the inmates will be unable to make the community ties needed in order to support their reentry efforts.

51. This relocation would also be problematic for federal courts because there will be no proximate facilities in which to house individuals as an intermediate sanction during supervision or probation.

III. Immigration and Customs Enforcement

52. ICE neither constructs nor operates its own detention facilities. Due to significant fluctuation in the alien population, it is important for ICE to maintain flexibility; it would not be prudent for ICE to invest heavily in its own facilities only to have them stand idle if a significant decrease in demand for detainee housing occurs.

53. Nationwide, ICE housed an average population of about 50,000 aliens in Fiscal Year 2019. An average of about 9,300 of those aliens were housed in privately owned and privately operated facilities, and an average of about 3,800 detainees were housed in facilities owned by ICE and staffed by a combination of federal and contract employees. In California, ICE currently has housing available for about 5,000 detainees in private detention facilities, which accounts for about 96% of ICE's total detention space in California.

54. ICE currently houses detainees in California under four contracts with the operators of four private detention facilities: Mesa Verde ICE Processing Center (owned and operated by the GEO Group, Inc.), Adelanto ICE Processing Center (owned and operated by The GEO Group, Inc.), Imperial Regional Detention

Facility (owned and operated by the Management and Training Corporation), and Otay Mesa Detention Center (owned and operated by CoreCivic). Two of those contracts provide for ICE to house detainees at three additional private detention facilities operated by The GEO Group. The four facilities currently have capacity to house about 5,000 detainees, and the three additional facilities will provide space for an additional 2,150 detainees beginning in August 2020.

55. The base periods for all four contracts will expire in December 2024, with the contracts expiring in December 2034 if all options are exercised.

56. A.B. 32 would critically undermine ICE's mission to enforce the immigration laws, and in particular, to effectuate the arrests and removals of criminal aliens subject to mandatory custody.

57. Because ICE has no access (or very limited access) to housing capacity in California prisons, detainees—both current detainees at the time of contract expiration and future detainees—would need to be relocated outside California to neighboring States. In Fiscal Year 2019, ICE arrested and detained over 44,000 aliens in California. All such detainees would ultimately need to be relocated to neighboring States.

58. Such relocation would require ICE to schedule and complete transfers on a daily basis, using costly air and ground transportation. Ground transportation would be problematic because ICE would be forced to renegotiate its transportation contracts and/or divert a large percentage of ICE personnel to transportation duties. Air transportation would also be problematic because daily transport to and from California would place an enormous strain on ICE Air Operations (IAO) and require significantly more frequent transport than currently used. Both options are extremely costly and burdensome.

59. Frequent movements of detainees increase the amount of time detainees are outside the heightened security of a detention facility. Such transportation also

allows the public additional opportunities to gather intelligence on ICE operations and significantly increases adversarial opportunities during transport.

60. Relocation to neighboring States would also cause substantial harm to ICE, its detainees, and the public. ICE facilities in neighboring States could become overcrowded due to the influx of detainees from California. And the relocation outside California would also greatly reduce the ability of detainees with families in California to access their families and other visitors.

61. This out-of-state relocation and lack of family access for detainees with families in California would also slow immigration proceedings. Generally, an alien often uses his or her family members or friends to gather information needed in a removal proceeding. Because A.B. 32 would force aliens to be housed outside California—and possibly at great distances from their families and friends—A.B. 32 may adversely impact detainees' ability to timely collect evidence if they have family or friends in California.[3]

COUNT ONE

Preemption

62. The United States realleges and incorporates by reference the allegations contained in paragraphs 1 through 61 of this Complaint.

63. The United States has occupied the field of contracting for federal prisoner and detainee housing, leaving no room for concurrent state regulation.

64. A.B. 32 also substantially obstructs the Federal Government's housing of federal prisoners and detainees, and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

[3] A.B. 32 may also cause tension with ICE's other obligations under existing court orders and settlements. *See, e.g.*, *Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. Jun. 5, 2018); *Franco-Gonzalez v. Holder*, 2013 WL 8115423 (C.D. Cal. 2013); *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488 (C.D. Cal. 1988).

65. A.B. 32 therefore violates the Supremacy Clause because it is preempted by federal law. *See* U.S. Const. art. VI.

COUNT TWO

Violation of Intergovernmental Immunity

66. The United States realleges and incorporates by reference the allegations contained in paragraphs 1 through 65 of this Complaint.

67. A.B. 32 directly regulates federal operations by restricting the United States' ability to enter agreements with its chosen contractors for the operation of detention facilities.

68. A.B. 32 also discriminates against the United States by granting exceptions for California (and its localities) that do not apply to the Federal Government and those with whom it contracts for private detention facilities.

69. A.B. 32 therefore violates the Federal Government's intergovernmental immunity. *See* U.S. Const. art. VI.

PRAYER FOR RELIEF

The United States respectfully requests that this Court:

70. Enter a judgment declaring that California's A.B. 32 violates the Supremacy Clause and is therefore invalid as applied to the Federal Government's contracts and its contractors;

71. Preliminarily and permanently enjoin Defendants, as well as their successors, agents, and employees, from enforcing California's A.B. 32 against the Federal Government and its contractors;

72. Award the United States its costs in this action; and

73. Award any other relief this Court deems just and proper.

DATED: January 24, 2020

Respectfully submitted,

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EXHIBIT B

CHAPTER 18.

[S. B. 30.]

WASHINGTON MINIMUM WAGE AND HOUR ACT.

AN ACT Relating to wages and employment; adding two new sections to chapter 294, Laws of 1959 and to chapter 49.46 RCW; and amending sections 1, 2, 12 and 14, chapter 294, Laws of 1959 and RCW 49.46.010, 49.46.020, 49.46.120 and 49.46.910; and repealing sections 3 and 5, chapter 294, Laws of 1959 and RCW 49.46.030 and 49.46.050.

Be it enacted by the Legislature of the State of Washington:

New section.

SECTION 1. There is added to chapter 294, Laws of 1959 and to chapter 49.46 RCW a new section to read as follows:

Legislative declaration.

Whereas the establishment of a minimum wage for employees is a subject of vital and imminent concern to the people of this state and requires appropriate action by the legislature to establish minimum standards of employment within the state of Washington, therefore the legislature declares that in its considered judgment the health, safety and the general welfare of the citizens of this state require the enactment of this measure, and exercising its police power, the legislature endeavors by this act to establish a minimum wage for employees of this state to encourage employment opportunities within the state. The provisions of this act are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health, safety and welfare of the people of this state.

RCW 49.46.010 amended.

SEC. 2. Section 1, chapter 294, Laws of 1959 and RCW 49.46.010 are each amended to read as follows:

Minimum wage act. Definitions.

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on

banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by regulations of the director under RCW 49.46.050.

(3) "Employ" includes to suffer or to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; and the exclusions from the term "employee" provided in this item shall not be deemed applicable with respect to commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(b) any individual employed in domestic service in or about a private home;

(c) any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the director);

(d) any individual employed by the United States;

(e) any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously;

(f) any newspaper vendor or carrier;

(g) any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) any individual engaged in forest protection and fire prevention activities;

(i) any individual employed by the state, any county, city or town, municipal corporation or quasi-municipal corporation, political subdivision, or any instrumentality thereof;

(j) any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(k) any individual engaged in performing services in a hospital licensed pursuant to chapter 70.41 RCW or chapter 71.12 RCW;

(l) any individual engaged in performing services in a nursing home licensed pursuant to chapter 18.51 RCW;

(m) any individual whose duties require that he reside or sleep at the place of his employment or who otherwise spends a substantial portion of his work time subject to call, and not engaged in the performance of active duties.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

RCW 49.46.020 amended.

SEC. 3. Section 2, chapter 294, Laws of 1959 and RCW 49.46.020 are each amended to read as follows:

Minimum hourly wage.

Every employer shall pay to each of his employees who have reached the age of eighteen years wages at a rate of not less than one dollar and fifteen cents per hour except as may be otherwise provided under this chapter: *Provided,* That beginning the calendar year 1962, the applicable rate under this section shall be one dollar and twenty-five cents per hour.

RCW 49.46.120 amended.

SEC. 4. Section 12, chapter 294, Laws of 1959 and RCW 49.46.120 are each amended to read as follows:

Chapter establishes minimum standards and is supplementary.

This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

New section.

SEC. 5. There is added to chapter 294, Laws of 1959 and to chapter 49.46 RCW a new section to read as follows:

Student exclusion.

The provisions of RCW 49.46.020, as amended by section 2 of this act, shall not apply to any student enrolled in an institution of higher education who is employed by such institution.

RCW 49.46.910 amended.

SEC. 6. Section 14, chapter 294, Laws of 1959 and RCW 49.46.910 are each amended to read as follows:

Short title.

This chapter may be known and cited as the "Washington Minimum Wage Act."

Repeal.

SEC. 7. Sections 3 and 5, chapter 294, Laws of 1959, and RCW 49.46.030 and 49.46.050 are each repealed.

Passed the Senate March 28, 1961.

Passed the House March 27, 1961.

Approved by the Governor March 31, 1961.

CHAPTER 19.

[Sub. S. B. 17.]

APPROPRIATIONS—HIGHWAYS, BRIDGES AND FERRIES.

AN ACT Relating to highways; making appropriations, reappropriations, and supplemental appropriations for the operation of the state highway commission and the Washington toll bridge authority and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Reappropriation.

SECTION 1. There is hereby reappropriated from the motor vehicle fund to the Washington state highway commission, for the biennium ending June 30, 1963, and for obligations incurred and not yet paid, the sum of one million four hundred twenty-eight thousand fifty-eight dollars, the same being the December 31, 1960 unexpended balance of the appropriation contained in section 4, chapter 326, Laws of 1959, for construction of roads in Adams, Grant and Franklin counties: *Provided,* That no expenditure authorized by this section shall exceed the unexpended balance of this appropriation as shown on the records of the central budget agency as of June 30, 1961.

EXHIBIT C

proviso in effect allows the Senate to reject an appointment to the commission by inaction. I believe this is bad policy and cannot accept such a procedure. A governor goes on record in making an appointment; if the law requires confirmation by the Senate, that body should go on record as confirming or rejecting the appointment. To allow rejection by inaction would be to deprive the governor, the appointee, and the public the right to know who opposed the appointment and the reasons for such opposition.

I am aware that the commission created by this act would be superseded by the new commission on public employment relations designated by Substitute Senate Bill No. 2408, which is also before me for approval. The same proviso appears in that bill, and for the reasons stated herein and for other reasons too, I intend to veto the pertinent portions of that act.

Recognizing that the substantive portions of this bill are unworkable without the existence of the commission created in section 4, and considering that the effective date of those elements of the bill is January 1, 1976, I would urge the Legislature to redraft this section at the next opportune moment.

With the exception of section 4 which I have vetoed, the remainder of the bill is approved."

CHAPTER 289

[Substitute House Bill No. 32]
WAGES AND HOURS——
MINIMUM WAGE——OVERTIME

AN ACT Relating to minimum wages; amending section 1, chapter 294, Laws of 1959 as last amended by section 1, chapter 107, Laws of 1974 ex. sess. and RCW 49.46.010; amending section 2, chapter 294, Laws of 1959 as last amended by section 1, chapter 9, Laws of 1973 2nd ex. sess. and RCW 49.46.020; adding a new section to chapter 49.46 RCW; declaring an emergency and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 294, Laws of 1959 as last amended by section 1, chapter 107, Laws of 1974 ex. sess. and RCW 49.46.010 are each amended to read as follows:

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by regulations of the director under *RCW 49.46.050;

(3) "Employ" includes to suffer or to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, or in the employ of the owner or tenant or other

operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; and the exclusions from the term "employee" provided in this item shall not be deemed applicable with respect to commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(b) Any individual employed in domestic service in or about a private home;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the director: PROVIDED HOWEVER, That such terms shall be defined and delimited by the state personnel board pursuant to chapter 41.06 RCW and the higher education personnel board pursuant to chapter 28B.16 RCW for employees employed under their respective jurisdictions);

(d) ((~~Any individual employed by the United States;~~

~~(e)~~)) Any individual engaged in the activities of an educational, charitable, religious, governmental agency or nonprofit organization where the employer–employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously;

(((~~(f)~~)))(e) Any newspaper vendor or carrier;

(((~~(g)~~)))(f) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(((~~(h)~~)))(g) Any individual engaged in forest protection and fire prevention activities;

(((~~(i) Any individual employed by the state, any county, city, or town, municipal corporation or quasi-municipal corporation, political subdivision, or any instrumentality thereof;~~

~~(j)~~))) (h) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(((~~(k)~~)))(i) Any individual whose duties require that he reside or sleep at the place of his employment or who otherwise spends a substantial portion of his work time subject to call, and not engaged in the performance of active duties;

(j) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution.

(k) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature.

(l) All vessel operating crews of the Washington state ferries operated by the state highway commission.

(m) Any individual employed as a seaman on a vessel other than an American vessel.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

Sec. 2. Section 2, chapter 294, Laws of 1959 as last amended by section 1, chapter 9, Laws of 1973 2nd ex. sess. and RCW 49.46.020 are each amended to read as follows:

(1) Every employer shall pay to each of his employees who have reached the age of eighteen years wages at a rate of not less than one dollar and sixty cents per hour except as may be otherwise provided under subsections (2) through (7) of this section or as otherwise provided under this chapter: PROVIDED, That beginning the calendar year 1974, the applicable rate under this section shall be one dollar and eighty cents per hour, and beginning ((~~the calendar year 1975~~)) with the effective date of this act the applicable rate under this section shall be two dollars and ten cents an hour, and beginning the calendar year 1976 the applicable rate under this section shall be two dollars and thirty cents an hour.

(2) Any individual eighteen years of age or older, unless exempt under the provisions of section 1(5)(k)(8) of this 1975 amendatory act, employed by the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof shall be paid wages beginning with the effective date of this act, at a rate of not less than two dollars an hour, and beginning the calendar year 1976 at a rate of not less than two dollars and twenty cents an hour, and beginning the calendar year 1977 at a rate of not less than two dollars and thirty cents an hour.

(3) Any individual eighteen years of age or older engaged in performing services in a nursing home licensed pursuant to chapter 18.51 RCW, shall be paid wages beginning with the effective date of this act, at a rate of not less than two dollars and ten cents an hour, and beginning the calendar year 1976, at a rate of not less than two dollars and twenty cents an hour, and beginning the calendar year 1977, at a rate of not less than two dollars and thirty cents an hour.

(4) Any individual eighteen years of age or older engaged in performing services in a hospital licensed pursuant to chapter 70.41 RCW, or chapter 71.12 RCW, shall be paid wages beginning with the effective date of this act, at a rate of not less than two dollars and ten cents an hour, and beginning the calendar year 1976, at a rate of not less than two dollars and twenty cents an hour, and beginning the calendar year 1977 at a rate of not less than two dollars and thirty cents an hour.

(5) Any individual eighteen years of age or older employed in a retail or service establishment and who is so employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs shall be paid wages beginning with the effective date of this act, at a rate of not less than two dollars an hour, and beginning the calendar year 1976, at a rate of not less than two dollars and twenty cents an hour, and beginning the calendar year 1977, at a rate of not less than two dollars and thirty cents an hour.

NEW SECTION. Sec. 3. There is added to chapter 49.46 RCW a new section to read as follows:

(1) No employer shall employ any of his employees for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one–half times the regular rate at which he is employed, except that the provisions of this subsection (1) shall not apply to any person exempted pursuant to RCW 49.46.010(5) as now or hereafter amended and the provision of this subsection shall not apply to employees who request compensating time off in lieu of overtime pay nor to any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel.

(2) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty–eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred and forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty–eight days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as two hundred forty hours bears to twenty–eight days; compensation at a rate not less than one and one–half times the regular rate at which he is employed: PROVIDED, That this section shall not apply to any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption: PROVIDED FURTHER, That in any industry in which federal law provides for an overtime payment based on a work week other than forty hours then provisions of this section shall not apply; however the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state: PROVIDED FURTHER, That "industry" as that term is used in this section shall mean a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (Section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93–259).

NEW SECTION. Sec. 4. The director of the department of labor and industries and the commissioner of employment security shall each notify employers of the requirements of this act through their regular quarterly notices to employers.

NEW SECTION. Sec. 5. This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect September 1, 1975.

Passed the House June 6, 1975.
Passed the Senate June 5, 1975.
Approved by the Governor July 2, 1975.
Filed in Office of Secretary of State July 2, 1975.

CHAPTER 290

[Substitute House Bill No. 40]
THE WASHINGTON HEALTH
MAINTENANCE ORGANIZATION ACT OF 1975

AN ACT Relating to licensing of health maintenance organizations; creating a new chapter in Title 48 RCW; adding a new section to chapter 41.04 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to Title 48 RCW a new chapter to read as set forth in sections 2 through 19, 21 through 25 of this 1975 amendatory act.

NEW SECTION. Sec. 2. In affirmation of the declared principle that health care is a right of every citizen of the state, the legislature expresses its concern that the present high costs of health care in Washington may be preventing or inhibiting a large segment of the people from obtaining access to quality health care services.

The legislature declares that the establishment of qualified prepaid group and individual practice health care delivery systems should be encouraged in order to provide all citizens of the state with the freedom of choice between competitive, alternative health care delivery systems necessary to realize their right to health. It is the purpose and policy of this chapter to provide for the development and registration of prepaid group and individual practice health care plans as health maintenance organizations, which the legislature declares to be in the interest of the health, safety and welfare of the people.

NEW SECTION. Sec. 3. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context indicates otherwise.

(1) "Health maintenance organization" means any organization receiving a certificate of authority by the commissioner under this chapter which provides comprehensive health care services to enrolled participants of such organization on a group practice per capita prepayment basis or on a prepaid individual practice plan, either directly or through contractual or other arrangements with other institutions, entities, or persons, and which qualifies as a health maintenance organization pursuant to sections 4 and 5 of this 1975 amendatory act.

EXHIBIT D

To: Mullins, Sandy (GOV)[sandy.mullins@gov.wa.gov]
From: Fellin, Tammy (LNI)
Sent: Tue 3/11/2014 11:52:59 AM
Subject: Fwd: TIME SENSITIVE: Need assistance on ending detention center hunger strike

Sent from my iPhone

Begin forwarded message:

From: "Sharma, Suchi (LNI)" <shav235@LNI.WA.GOV>
Date: March 11, 2014 at 10:57:17 AM PDT
To: "Fellin, Tammy (LNI)" <felu235@LNI.WA.GOV>
Subject: RE: TIME SENSITIVE: Need assistance on ending detention center hunger strike

I agree though that we don't have juris in a federal facility.

From: Sharma, Suchi (LNI)
Sent: Tuesday, March 11, 2014 10:49 AM
To: Fellin, Tammy (LNI)
Subject: RE: TIME SENSITIVE: Need assistance on ending detention center hunger strike

Probably not.

I doubt whether USDOL will assert jurisdiction over wage and hour complaints here. This is because the FLSA is silent on prison labor, and courts have taken different approaches to whether an inmate is owed federal minimum wage. My understanding is that typically, courts end up looking at the employer-employee relationship between the inmate and the defendant.

Here, the complicating factor is that the inmates are in various stages of deportation proceedings. This facility comes under Homeland Security. The work is called "voluntary work" to be paid at $1 a day. The work policy is here. Their ability to claim FLSA coverage is in itself a question mark.

I can contact Donna Hart at USDOL and confirm if they will accept jurisdiction (likely not). Let me know.

From: Fellin, Tammy (LNI)
Sent: Tuesday, March 11, 2014 10:18 AM
To: Sharma, Suchi (LNI)
Subject: Fwd: TIME SENSITIVE: Need assistance on ending detention center hunger strike

Would you agree?

Sent from my iPhone
Begin forwarded message:

From: "Buchanan, Lynne M (LNI)" <bucm235@LNI.WA.GOV>
Date: March 11, 2014 at 9:03:44 AM PDT

To: "Smith, Elizabeth (LNI)" <SMEL235@LNI.WA.GOV>
Cc: "Sacks, Joel (LNI)" <sacj235@LNI.WA.GOV>, "Fellin, Tammy (LNI)" <felu235@LNI.WA.GOV>, "Sams, Stephanie (LNI)" <samm235@LNI.WA.GOV>, "Kaech, Allison (LNI)" <KAEA235@LNI.WA.GOV>, "Walck, Chastity (LNI)" <wach235@LNI.WA.GOV>, "Sharma, Suchi (LNI)" <shav235@LNI.WA.GOV>, "Richardson, Kristi (LNI)" <YEAR235@LNI.WA.GOV>
Subject: FW: TIME SENSITIVE: Need assistance on ending detention center hunger strike

Hi Liz,

In response to the question posed by Angelica Chazaro below:

The fact that this is a federal facility, the issue is with the USDOL. Also, inmates are not covered by the minimum wage act; they are not defined as employees. Our law only covers state, county, or municipal correctional institutions employees. Because these are inmates and are in a federal institution, we would have no jurisdiction.

RCW 49.46.010 (3) "Employee" includes any individual employed by an employer but shall not include:

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution

Thanks,

Lynne

From: Fellin, Tammy (LNI)
Sent: Tuesday, March 11, 2014 8:33 AM
To: Smith, Elizabeth (LNI); Buchanan, Lynne M (LNI)
Cc: Sacks, Joel (LNI); Sams, Stephanie (LNI); Kaech, Allison (LNI); Walck, Chastity (LNI); Sharma, Suchi (LNI); Richardson, Kristi (LNI)
Subject: Fwd: TIME SENSITIVE: Need assistance on ending detention center hunger strike

Liz and Lynne -

Is this an issue that we have jurisdiction over? If you need more info about the facility, we can reach out to Sandy. Please note the sense of urgency.

Tammy
Sent from my iPhone
Begin forwarded message:

From: "Mullins, Sandy (GOV)" <sandy.mullins@gov.wa.gov>
Date: March 11, 2014 at 8:02:17 AM PDT
To: "Fellin, Tammy (LNI)" <felu235@LNI.WA.GOV>
Subject: Fwd: TIME SENSITIVE: Need assistance on ending detention center

hunger strike

Hi Tammy- can you check and see if this is possible? Not sure if L&I has jurisdiction in a federal contract facility.

Thanks

Sandy
Begin forwarded message:

From: "Uy, Stephen (GOV)" <Stephen.Uy@gov.wa.gov>
Date: March 11, 2014 at 7:10:28 AM PDT
To: "Kerins, Aisling (GOV)" <aisling.kerins@gov.wa.gov>, "Mullins, Sandy (GOV)" <sandy.mullins@gov.wa.gov>
Subject: Fwd: TIME SENSITIVE: Need assistance on ending detention center hunger strike

FYI
Begin forwarded message:

From: Angelica Chazaro <achazaro@gmail.com>
Date: March 11, 2014 at 12:11:04 AM PDT
To: <Stephen.Uy@gov.wa.gov>
Subject: TIME SENSITIVE: Need assistance on ending detention center hunger strike

Dear Stephen,

I'm a law professor at UW who is supporting the on-going hunger strike at the Northwest Detention Center in Tacoma, a federal immigration detention facility run by the Geo Group, a private prison company. I got your contact info from my former colleague, Jorge Baron from the Northwest Immigrant Rights Project.

As the strike enters its fifth day tomorrow, we're trying to achieve a swift resolution for the hunger strikers. One of their demands is increased pay for the work they perform in the facility - they currently get paid $1 a day. We believe the conditions of their work may violate Washington wage and hour laws, and we are asking that Governor Inslee intervene by having L&I begin an investigation into the labor conditions at the privately-run facility. Could Governor Inslee make a commitment to having L&I investigate?

You can reach me by e-mail at achazaro@gmail.com or by phone at 646-496-5724. Thanks for any help you can provide.

Best, Angelica Chazaro

EXHIBIT E

In the Matter of:

NWAUZOR et. al

vs

GEO GROUP

JOSHUA GRICE

December 06, 2019

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

NWAUZOR et. al,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.
	)	3:17-cv-05769-RJB
THE GEO GROUP, INC.,	)	
	)	
Defendant.	)	

30(b)(6) DEPOSITION OF THE DEPARTMENT OF LABOR & INDUSTRIES

THROUGH JOSHUA GRICE

December 6, 2019

Tumwater, Washington

APPEARANCES

For the Defendant:

Joan Mell
Sophia Spurlock
III Branches Law, PLLC
1019 Regents Boulevard
Suite 204
Fircrest, Washington 98466
253.566.2510
joan@3brancheslaw.com

For the Department of Labor & Industries:

James Mills
Office of the Attorney General
1250 Pacific Avenue
Suite 105
Tacoma, Washington 98401
253.597.3896
james.mills@atg.wa.gov

For the State of Washington:

Marsh Chien
Office of the Attorney General
800 Fifth Avenue
Suite 2000
Seattle, Washington 98104
206.389.3886
marsha.chien@atg.wa.gov

EXAMINATION INDEX

EXHIBIT INDEX

BE IT REMEMBERED that on Friday, December 6, 2019, at 7273 Linderson Way Southwest, Conference Room 117, Tumwater, Washington, at 12:09 p.m., before APRIL COOK, CCR, appeared JOSHUA GRICE, the witness herein;

WHEREUPON, the following proceedings were had, to wit:

<<<<<< >>>>>>

JOSHUA GRICE, having been first duly sworn by the Certified Court Reporter, testified as follows:

EXAMINATION

BY MS. MELL:

Q State your name.

A Josh Grice.

Q What's your title?

A Employment standards program manager at the Department of Labor and Industries.

Q Do you understand what your role is here?

A Yes.

Q What is it?

A I implement the labor protection laws that relate to

Q (By Ms. Mell) All right. Has there ever been a determination by L&I that the detainees at the Northwest Detention Center are subject to K?

MR. MILLS: Objection as to scope.

THE WITNESS: I'm not aware of a determination with regard to detainees at the Northwest Detention Center, no.

Q (By Ms. Mell) Okay. It is correct that individuals held at the federal detention facility at SeaTac are not subject to any kind of state oversight, right?

MR. MILLS: Objection as to form. Lack of foundation. Outside the scope.

THE WITNESS: Sorry, could you repeat your question?

Q (By Ms. Mell) So -- so -- I'm trying to -- let me think. How am I going to ask this?

Do you -- do you know whether or not the same applicable Exemption K is the authority for not investigating Wage Act claims by detainees held by the federal government?

MR. MILLS: Objection as to form. Speculation. Legal conclusion. Go ahead.

THE WITNESS: I'm not aware of Department determinations on detainees held by the federal government.

locations where private contractors are using detainee labor to fulfill their state contracts?

MR. MILLS: Objection as to form. Foundation. Calls for speculation.

THE WITNESS: The Department's enforcement is generally complaint based. The Department would analyze the circumstances if a individual submitted a complaint from work related to work performed in one of those facilities.

Q (By Ms. Mell) And is it still correct that the Department has not received any complaints from any detainees at the Northwest Detention Center?

MR. MILLS: Objection as to scope.

THE WITNESS: Yes, I'm not aware of any complaints that the Department has received from detainees at the Northwest Detention Center.

Q (By Ms. Mell) And the Department's position with regard to the application of the Minimum Wage Act to detainees at the Northwest Detention Center has not changed from the last time I deposed you?

MR. MILLS: Objection as to form. Scope.

THE WITNESS: No.

MS. MELL: Okay. I think we're there. Thank you.

STATE OF WASHINGTON)
) ss
County of Pierce)

I, April Cook, CCR #3245, a certified court reporter in the State of Washington, do hereby certify:

That the foregoing deposition of JOSHUA GRICE was taken before me and completed on December 6, 2019, and thereafter was transcribed under my direction; that the deposition is a full, true and complete transcript of the testimony of said witness, including all questions, answers, objections, motions and exceptions;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved the right of signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said deposition and promptly delivering the same to Joan Mell.

IN WITNESS WHEREOF, I have hereunto set my signature on the 12th day of December, 2019.

April Cook, CCR
Certified Court Reporter No. 3245
(Certification expires 10/11/20.)

EXHIBIT F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. 3:17-CV-05806-RJB
	)	
THE GEO GROUP, Inc.,	)	
	)	
Defendant.	)	

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF JOSHUA GRICE

APPEARANCES:

FOR THE PLAINTIFF:	MR. JAMES S. MILLS MR. LANE POLOZOLA ASSISTANT ATTORNEYS GENERAL 800 Fifth Avenue, Ste. 2000 Olympia, WA 98104-3188
FOR THE DEFENDANT:	MS. JOAN MELL III Branches Law 1019 Regents Blvd., Suite 204 Fircrest, WA 98466 MS. ASHLEY E. CALHOUN AKERMAN, LLP 1900 Sixteenth Stret Suite 1700 Denver, CO 80202
ALSO PRESENT:	MELODY SORENSEN, VIDEOGRAPHER

Thursday, September 5, 2019
Olympia, Washington

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE OF WASHINGTON, Plaintiff,	)	
vs.	)	NO. 3:17-CV-05806-RJB
THE GEO GROUP, Inc., Defendant.	)	

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF JOSHUA GRICE

APPEARANCES:

FOR THE PLAINTIFF:	MR. JAMES S. MILLS MR. LANE POLOZOLA ASSISTANT ATTORNEYS GENERAL 800 Fifth Avenue, Ste. 2000 Olympia, WA 98104-3188
FOR THE DEFENDANT:	MS. JOAN MELL III Branches Law 1019 Regents Blvd., Suite 204 Fircrest, WA 98466
	MS. ASHLEY E. CALHOUN AKERMAN, LLP 1900 Sixteenth Stret Suite 1700 Denver, CO 80202
ALSO PRESENT:	MELODY SORENSEN, VIDEOGRAPHER

Thursday, September 5, 2019
Olympia, Washington

I N D E X

E X H I B I T I N D E X

BE IT REMEMBERED that on Thursday, September 5, 2019, at 9:39 a.m. at 7273 Linderson Way, Tumwater, Washington, before DIXIE J. CATTELL, Certified Court Reporter, appeared JOSHUA GRICE, the witness herein;

WHEREUPON, the following proceedings were had, to wit:

THE VIDEOGRAPHER: We are now on the record. This is the video-recorded 30(b)(6) deposition of Josh Grice. Today's date is September 5, 2019, and the time is now 9:39 a.m. My name is Melody Sorensen. I'm subcontracted by Sound Vision Video Production, 4821 North 14th Street, Tacoma, Washington. This deposition is being held at 7273 Linderson Way Southwest, Tumwater, Washington.

The case is the State of Washington versus The GEO Group, Inc. Present for the plaintiff is James Mills and Lane Polozola. Present for the defendants and giving notice to this deposition is Joan Mell and Ashley Calhoun.

The court reporter is Dixie Cattell, who will now swear in the witness.

JOSHUA GRICE, having been first duly sworn, testified as follows:

EXAMINATION

BY MS. MELL:

Q State your name for the record.

A Joshua Grice.

Q Mr. Grice, what's your position?
A I'm the Employment Standards Program Manager at the Department of Labor and Industries.
Q Employment Standards Program Manager?
A Correct.
Q Okay. Tell me where that is in the hierarchy at Labor and Industries.
A The Employment Standards Program Manager reports to the Assistant Director for Fraud Prevention and Labor Standards.
Q And who is that?
A Christopher Bowe.
Q Is that B-O-W-E?
A B-O-W-E, yes.
Q Okay. And his title is what, Assistant Director of. . . ?
A Assistant Director for Fraud Prevention and Labor Standards.
Q Fraud Prevention and Labor. . .
Is the Minimum Wage Act considered a labor standard?
A Yes.
Q Okay. So who does the Assistant Director report to?
A The Assistant Director for Fraud Prevention and Labor Standards reports to the Deputy Director of Labor and Industries, Elizabeth Smith.
Q Who does the Deputy Director report to?

at issue.

Q (By Ms. Mell) You still get to answer.

MR. MILLS: You can answer.

A Would you repeat the question.

Q (By Ms. Mell) Yeah.

MS. MELL: Can you read that one back?

THE COURT REPORTER: Question: "But you do know that the Department only applied those laws to the GEO staff at the time and not to detainees?"

A To my knowledge, the Department's enforcement would have been primarily related to staff at the Northwest Detention Center.

Q (By Ms. Mell) So is it fair to say that the Department considered staff employees and detainees in a different category and has consistently over time?

MR. MILLS: Objection as to form.

A I'm not aware that the Department drew affirmative conclusions about the status of detainees.

Q (By Ms. Mell) Well, has it engaged in any conduct that would suggest it has authority over detainees?

A I'm not aware that the Department has drawn a conclusion about its authority over detainees.

Q So what would you call -- I don't understand your answer relative to L&I inspectors being on-site and investigating a complaint that may involve the activities of detainees as

A Yes, it appears that Dave did provide some analysis in response to the original inquiry.

Q And Liz Smith is involved?

A Liz did receive information about the inquiry, yes.

Q But she was asked to respond to the question, correct?

MR. MILLS: Objection. Mischaracterizes the document. The document speaks for itself.

You can answer.

A Which exchange are you referring to?

Q (By Ms. Mell) "Liz and Lynne, is this an issue that we have jurisdiction over?" From Tammy.

A Yes.

Q Okay. So Lynne's asked to give Tammy the information --

A Yes.

Q -- do we have jurisdiction?

A Yes, Tammy directed that request at Liz and Lynne.

Q And then presumably Liz got Dave involved, or Lynne did, right?

A Yes. At the time Lynne Buchanan was the Employment Standards Program Manager, David Johnson was the wage and hour technical specialist, who would have been relied upon to provide technical guidance related to questions such as these.

Q And he says no jurisdiction?

A That was his conclusion at the time, yes.

Q I don't know if I already asked it. Who's Lynne Buchanan?
A At this time Lynne Buchanan was the Program Manager for Employment Standards.
Q So she would have been in Liz Smith's -- I'm thinking aloud. I'm sorry.
So who has that position now?
A I currently hold that position.
Q So in 2014 what was Dave's job then?
A I believe at this time Dave was the wage and hour technical specialist.
Q So then he bumped -- well, do you know when he bumped up to Lynne Buchanan's position, or what is now your position?
A I'm not certain of the exact date, but it would have been most likely after this date in this e-mail exchange.
Q Okay. And is Lynne still here?
A Lynne still works for the Department but has a different role.
Q What's her job now?
A She works for the office of Human Resources at L&I.
Q Okay. And it says: "Hi, Holly, here's another e-mail. Tisa has a lot of information on Lanier Brugh." Do you know why that is?
A I do not know what specific information Lynne was transmitting to Holly Scott.
Q But based upon this e-mail, it's apparent that at the time

C E R T I F I C A T E

I, DIXIE J. CATTELL, the undersigned Registered Professional Reporter and Washington Certified Court Reporter, do hereby certify:

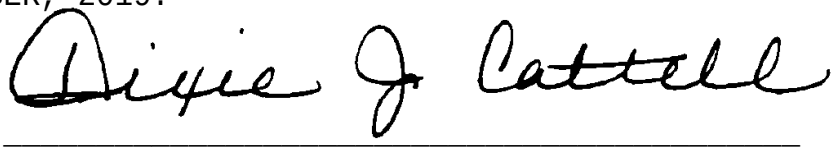
That the foregoing deposition of JOSHUA GRICE was taken before me and completed on the 5th day of September, 2019, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination, was, by me, duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the deposition of JOSHUA GRICE and promptly serving the same upon MS. JOAN MELL.

IN WITNESS HEREOF, I have hereunto set my hand this 9TH day of SEPTEMBER, 2019.



Dixie J. Cattell, RPR, CCR
NCRA Registered Professional Reporter
Washington Certified Court Reporter CSR#2346

EXHIBIT G

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, vs. THE GEO GROUP, INC., Defendant.	No. 17-cv-05806-RJB

30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF
COLLEEN MELODY
August 10, 2018
Fircrest, Washington

Taken Before:

Laura A. Gjuka, CCR #2057
Certified Shorthand Reporter

A P P E A R A N C E S

For the Plaintiff:

MARSHA CHIEN
LA ROND BAKER
Assistant Attorney General
Office of the Attorney General
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Seattle, WA 98104
206-464-7744
larondb@atg.wa.gov
marshac@atg.wa.gov

For the Defendant:

JOAN K. MELL
III Branches Law, PLLC
1019 Regents Boulevard
Suite 204
Fircrest, WA 98466
253-566-2510
joan@3brancheslaw.com

Also Present:

ANYA PERRET

EXAMINATION INDEX

EXHIBIT INDEX

BE IT REMEMBERED that on the 10th of August, 2018, 9:06 a.m., at 1019 Regents Boulevard, Fircrest, Washington, before LAURA A. GJUKA, CCR# 2057, Washington State Certified Court Reporter residing at University Place, authorized to administer oaths and affirmations pursuant to RCW 5.28.010.

WHEREUPON the following proceedings were had, to wit:

* * * * * *

COLLEEN MELODY, having been first duly sworn by the Court Reporter, was examined and testified as follows:

EXAMINATION

BY MS. MELL:

Q State your name for the record.

A Colleen Melody.

Q What's your address?

A My business address is 800 Fifth Avenue, suite 2000, Seattle, Washington 98104.

Q Okay. What's your personal address?

MS. CHIEN: Objection. Is there a reason you need her personal address?

MS. MELL: Not if you're going to accept

service if I need to --

THE WITNESS: Yes, we accept service through our --

MS. CHIEN: Through the business address.

BY MS. MELL:

Q When you say "we accept service," if you're not there and I need to subpoena you, the Attorney General's Office will accept service for you?

A Yeah.

MS. CHIEN: Yes.

BY MS. MELL:

Q Okay. And your phone number?

A (206) 464-5342.

Q And that's work?

A That's my direct line at work.

Q What is your position?

A I'm a unit chief for the civil rights unit at the Washington State Attorney General's Office.

Q How many people are in the civil rights unit?

A Thirteen.

Q And who are those people comprised of? I don't need to know their names, I just need to know what they do.

A They're attorneys and support staff that include investigator, paralegal, legal assistant, staff members.

Q Who is the investigator?

A Because it's owned and -- the building, the land, everything about it is owned by a private entity that has entered in a contract with ICE so that it can make money off the contract.
Q Who occupies it?
A Occupies it? I think -- I think some ICE staff work there, GEO staff work there, detainee workers work there, and detainees sleep and live there while they are detained by the immigration statutes.
Q Do you know what the relationship is between the Department of Corrections and the detention center, Northwest Detention Center?
MS. CHIEN: Objection, beyond the scope.
THE WITNESS: Did you say Department of Corrections?
BY MS. MELL:
Q Uh-huh.
A No.
Q Do you know that the state of Washington passed legislation to use the Northwest Detention Center to reduce its detention obligations?
MS. CHIEN: Objection, beyond the scope of this deposition.
THE WITNESS: I don't know whether that's true or not.

C E R T I F I C A T E

I, Laura Gjuka, a Certified Court Reporter in and for the State of Washington, residing at University Place, Washington, authorized to administer oaths and affirmations pursuant to RCW 5.28.010, do hereby certify;

That the foregoing Verbatim Report of Proceedings was taken stenographically before me and transcribed under my direction; that the transcript is a full, true and complete transcript of the proceedings, including all questions, objections, motions and exceptions;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS HEREOF, I have hereunto set my hand this 20th day of August, 2018.

_____

Laura Gjuka, CCR No. 2057

EXHIBIT H

Holland & Knight

111 S.W. Fifth Avenue, 2300 U.S. Bancorp Tower | Portland, OR 97204 | T 503.243.2300 | F 503.241.8014
Holland & Knight LLP | www.hklaw.com

Shannon Armstrong
+1 503-517-2924
Shannon.Armstrong@hklaw.com

April 15, 2019

Via Email (Andrew@ImmigrantCivilRights.com)

Andrew Free
Law Office of R. Andrew Free
P.O. Box 90568
Nashville, TN 37209

Re: *Menocal, et al. v. The GEO Group, Inc.*, Case No. 1:14-cv-02887-JLK-MEH (D. Colo.); *Nwauzor, et al. v. The GEO Group, Inc.*, Case No. 3:17-cv-05769-RJB (W.D. Wash.); *State of Washington v. The GEO Group, Inc.*, Case No. 3:17-cv-05806-RJB (W.D. Wash.); and *Novoa, et al. v. The GEO Group, Inc.*, Case No. 5:17-cv-02514-JGB-SHK (C.D. Cal.)

Dear Andrew:

As you know, we represent The GEO Group, Inc. ("GEO") in each of the four related cases challenging the Voluntary Work Program ("VWP") at GEO's facilities housing federal immigration detainees (*Menocal, et al. v. The GEO Group, Inc.*; *Nwauzor, et al. v. The GEO Group, Inc.*; *State of Washington v. The GEO Group, Inc.*; and *Novoa, et al. v. The GEO Group, Inc.*). I understand that you have a coordinating role in each of the private lawsuits and that you are also coordinating with the Washington Attorney General's office in the *State of Washington* action. I am writing in response to your April 9, 2019 email declining to coordinate depositions of GEO corporate personnel amongst the cases. I respectfully ask you to reconsider.

Under Rule 26, the permissible scope of discovery is guided by relevance and proportionality to avoid undue burden or expense. Indeed, the federal rules *require* a court to limit discovery that is unreasonably cumulative, or that can be obtained from a more convenient, less burdensome, or less expensive source. *See* Fed. R. Civ. P. 26(c). That is precisely what GEO seeks in these cases.

After taking over as counsel for GEO in these cases, we immediately contacted you to discuss ways the parties could coordinate discovery, including depositions of GEO's corporate witnesses. As you are aware, each of the cases involve many common factual and legal issues, such as GEO's relationship with the U.S. Immigration and Customs Enforcement ("ICE"), the requirements of the VWP as outlined by ICE, whether GEO can be deemed an employer of the

detainees, and whether the VWP violates minimum wage laws in the forum states. Plaintiff's discovery requests to date demonstrate that they share this view, as plaintiffs have requested documents and information regarding the policies and procedures for the VWP, GEO's contract and compensation with ICE, alleged disciplinary action if detainees decline to participate in the VWP, and other related issues. Indeed, Judge Bryan in the Western District of Washington has referred to the *State of Washington* and *Nwauzor* matters as companion cases, and permitted the plaintiffs in *Nwauzor* to share information with the State of Washington.

To the extent plaintiffs in the various cases may seek to depose the same witnesses, we request that those depositions be coordinated so that the witnesses only have to be deposed once. Allowing common witnesses to be questioned on the common and case-specific issues during one deposition provides the most efficient means to obtain discovery from those witnesses, serves judicial economy, and avoids the unnecessary burden and expense to all parties caused by those witnesses appearing for multiple depositions (even more so in light of the burden and expense of multiple trips to Florida for the same GEO corporate witnesses). And for the *Nwauzor* and *State of Washington* actions, coordination is appropriate for the facility-specific witnesses as well, since those cases challenge practices at the same facility. We again ask that plaintiffs reconsider our proposal to coordinate depositions of common witnesses so they only need to appear for deposition once.

To be clear, we remain flexible to discuss the length, logistics, and scheduling of depositions for common witnesses. For example, plaintiff unilaterally noticed the depositions of James Janecka, Dan Ragsdale, and David Venturella in the *Novoa* matter for May 3, May 21, and May 22. As Mr. Venturella and Mr. Ragsdale are GEO corporate, rather than facility-specific, employees, those depositions should be coordinated to the extent plaintiffs in the *Nwauzor*, *Menocal*, and *State of Washington* actions intend to depose those witnesses. We are happy to work with counsel to identify dates that are convenient for counsel and witnesses, as well as discuss a format that allows plaintiffs to obtain relevant discovery without unduly burdening the witnesses.

If plaintiffs maintain their refusal to reasonably coordinate depositions in these matters, GEO will cross-notice the depositions of any common witness and seek to enforce those cross-notices with the relevant courts. Please confirm by April 19 whether plaintiffs will agree to coordinate the depositions of common witnesses.

Sincerely,

HOLLAND & KNIGHT LLP

Shannon Armstrong

SA:kma

cc: Lydia Wright, Korey A. Nelson, C. Jacob Gower, Robert Ahdoot, Tina Wolfson, Theodore Maya, Alex Straus, Nicole Ramos, Will Thompson, Warren Burns, Daniel Charest, Adam Berger, Jamal Whitehead, Devin Theriot-Orr, Lindsay Halm, Meena Menter, La Rond Baker, Andrea Brenneke, Marsha Chien, Adam Levin Koshkin, Alexander Hood, Andrew Turner, Ashley Boothby, Brandt Powers Milstein, Dana L. Eismeier, David Seligman, Hans Meyer, Juno E. Turner, Michael Ley, Ossai Miazad, P. David Lopez, Rachel Williams Dempsey.

EXHIBIT I

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,)
)
PLAINTIFF,)
vs.)CASE NO. 3:17-CV-
)05806-RJB
THE GEO GROUP, INC.,)
)
DEFENDANTS.)
_____)

DEPOSITION OF JAMES CHARLES HILL,

30(b)(6) WITNESS FOR THE GEO GROUP, INC.

WEDNESDAY, JULY 10, 2019

REPORTER:

JESSICA N. NAVARRO,

C.S.R. NO. 13512

JOB NO: 3441242

PAGES 1 - 256

DEPOSITION OF JAMES CHARLES HILL, TAKEN ON BEHALF OF PLAINTIFF AT 10:00 A.M., ON WEDNESDAY, JULY 10, 2019, AT 400 SOUTH HOPE STREET, 8TH FLOOR, LOS ANGELES, CALIFORNIA, BEFORE JESSICA N. NAVARRO, C.S.R. NO. 13512, PURSUANT TO NOTICE.

APPEARANCES OF COUNSEL

FOR PLAINTIFF:

OFFICE OF THE ATTORNEY GENERAL
BY: ANDREA BRENNEKE,
ASSISTANT ATTORNEY GENERAL
BY: LA ROND BAKER, ASSISTANT ATTORNEY GENERAL
800 FIFTH AVENUE, SUITE 2000
SEATTLE, WASHINGTON, 98104
206.464.7744
ANDREA.BRENNEKE@ATG.WA.GOV
LAROND.BAKER@ATG.WA.GOV

FOR DEFENDANTS:

HOLLAND & KNIGHT
BY: SHANNON ARMSTRONG, ATTORNEY AT LAW
BY: J. MATTHEW DONOHUE, ATTORNEY AT LAW
111 S.W. FIFTH AVENUE
2300 U.S. BANCORP TOWER
PORTLAND, OREGON 97204
503.517.2913
SHANNON.ARMSTRONG@HKLAW.COM
MATT.DONOHUE@HKLAW.COM

I N D E X

E X H I B I T S

EXHIBITS (CONTINUED):

NO.	PAGE	DESCRIPTION
EX. 258	188	EMAIL FROM ERIC SMITH TO GEORGE WIGEN WITH ATTACHMENTS
EX. 259	211	EMAIL CHAIN
EX. 260	233	EMAIL FROM RYAN KIMBLE TO CHUCK HILL

QUESTIONS INSTRUCTED NOT TO BE ANSWERED

(NONE)

LOS ANGELES, CALIFORNIA

WEDNESDAY, JULY 10, 2019, 10:00 A.M.

-0-

JAMES CHARLES HILLS,

having been duly administered an oath by the reporter, was examined and testified as follows:

EXAMINATION

BY MS. BRENNEKE:

Q Will you please state your name?

A James Charles Hill.

Q And what is your work address?

A 6100 Center Drive, Suite 825, Los Angeles, California 90045.

Q Will you please state your employer and your title?

A The GEO Group and I'm the Director of Business Management of the Western Region.

Q You've been designated by the GEO Group as the 30(b)(6) or corporate representative for this deposition today; is that true?

A Yes.

Q So I'm Andrea Brenneke and this is La Rond Baker and we're here representing the State of

outside the scope?

THE WITNESS: Where did we leave off?

BY MS. BRENNEKE:

Q You left off at -- you said operations division, senior VP of operations. We don't have a name?

A John Hurley, H-U-R-L-E-Y. VP of Administration, Kyle Schiller, S-C-H-I-L-L-E-R. And from the Finance Division, Chief Financial Officer, Brian Evans, E-V-A-N-S. And I believe that would conclude the list.

Q Okay. And you were involved in the 2015 bid process with the Northwest Detention Center as to the pricing --

MS. ARMSTRONG: Object to the form.

BY MS. BRENNEKE:

Q -- component?

MS. ARMSTRONG: Outside the scope.

THE WITNESS: Yes, I reviewed the pricing component.

BY MS. BRENNEKE:

Q Okay. Did you have any involvement in any of the other bids for Northwest Detention Center services in prior contracts?

MS. ARMSTRONG: Objection; outside the

goes back from 2005 to the present. Are you aware of that?

A Yes.

Q Okay. So I'm curious what you did to prepare for this deposition, because obviously your personal knowledge is a chunk of that. So, what did you do to prepare?

A Specific to this deposition?

Q Yes.

A I spoke to different members of our corporate office.

Q Okay.

A To get specific details that I might have been lacking.

Q With whom did you speak?

A I spoke to Executive Vice President, Matt Denadel, Chief Financial Officer, Brian Evans, and Director of Finance, John Tyrrell.

Q Anyone else?

A Specific to this deposition, no.

Q Okay. Did you review any documents in preparation for your deposition today?

A Yes.

Q And what documents did you review?

A Documents provided by counsel that had

for the years 2005 through 2018.

Q For what?

MS. ARMSTRONG: Object to the form.

THE WITNESS: Northwest Detention Center.

BY MS. BRENNEKE:

Q Okay. And if I'm understanding this correctly, it's full years 2006 through 2018 and three months of 2005; is that correct?

A Yes, these are annual amounts from 2006 to 2018 and three months for 2005.

Q Okay. There's no reporting for 2019 because it's in progress; is that correct?

A I believe that would be the reason.

Q Did you generate this report?

A I did not.

Q Do you know who did?

A I'd have to speculate from who the corporate office generated this report.

Q So based upon your understanding of the corporate structure and who's responsible for such things, who -- what's your understanding of who generated this report?

MS. ARMSTRONG: Object to the form.

THE WITNESS: This most likely would have been generated by CFO Brian Evans and most likely be

John Tyrrell, Director of Finance.
BY MS. BRENNEKE:
Q Is this something that you asked John Tyrrell to generate for you as part of the preparation for your deposition today?
A I did not ask John Tyrrell for this.
Q Did you understand that he would be generating this for you?
A No.
Q Have you seen this document before today?
A No.
Q Okay. So is this as much a surprise to you as it is to me?
MS. ARMSTRONG: Object to the form.
THE WITNESS: I -- having reviewed this, I would have expected it to be generated.
BY MS. BRENNEKE:
Q Okay. Great. So it's part of your -- part of your capacity to testify to the finances over a long period of time; is that right?
MS. ARMSTRONG: Object to the form; outside the scope.
THE WITNESS: Yes.
BY MS. BRENNEKE:
Q Okay. So, will you describe whether the

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I, JESSICA N. NAVARRO, C.S.R. NO. 13512, in and for the State of California, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in the shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and the same is a true, correct, and complete transcript of said proceedings;

That if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [ ] was [ ] was not required.

I further certify I am not interested in the event of the action.

Witness my hand this 16th day of July, 2019.

<%18541,Signature%>

JESSICA N. NAVARRO, C.S.R. NO. 13512

EXHIBIT J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

)	
)	
)	**NO. 316866**
)	
)	**PERSONAL RESTRAINT PETITION**
FERNANDO F. AGUIRRE URBINA)	

A. STATUS OF PETITIONER

I, Fernando Francisco Aguirre Urbina
c/o Northwest Immigration Detention Center
1623 E. J Street, #5
Tacoma, WA 98421

Apply for relief from confinement. I am now in custody because of the following type of court order: I am under Immigration and Customs Enforcement hold pending removal proceedings.

1. The court in which I was sentenced is: Yakima County Superior Court.

2. I was convicted of the crimes of: Count 1- Delivery of a Controlled Substance, Methamphetamine
Count 2- Possession of a Controlled Substance, Methamphetamine, With Intent To Deliver
Count 3- Possession of a Controlled Substance, Marijuana, With Intent To Deliver.

3. I was sentenced after (check one) Trial ____ Plea of Guilty _X_ on 05/31/2012 (Date of Sentence).

4. The Judge who imposed sentence was Hon. Michael G. McCarthy.

5. My lawyer at trial court was Mickey L. Krom (Name and Address if known)
6 S. 2nd St., Ste. 317, Yakima, WA 98901-2629.

6. I did ___ did not _X_ appeal from the decision of the trial court. (If the answer is that I did), I appealed to: _____.
Name of court or courts to which appeal took place

7. My lawyer for my appeal was: N/A.
Name and address if known or write "none"

The decision of the appellate court was _____was not _____ published. (If the answer is that it was published, and I have this information) the decision is published in _____

_____.

8. Since my conviction I have _X_ have not _____asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked, the court I asked was Yakima County Superior Court. Relief was denied on
Name of court
05/24/2013.
Date of Decision or, if more than one, all dates)

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was Brent A. De Young, WSBA #27935.
Name and address if known
P.O. Box 1668, Moses Lake, WA 98837.

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: _____

I asked the Yakima Superior Court to vacate my guilty plea and judgment and sentence

B. GROUNDS FOR RELIEF:

(If I claim more than one reason for relief from confinement, I will attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc). I claim that I have _2_ reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

Name of creditor you owe money to | Address | Amount

D. REQUEST FOR RELIEF

I want this court to:

X vacate my conviction and give me a new trial

___ vacate my conviction and dismiss the criminal charges against me without a new trial

___ other (specify) _____

E. OATH OF PETITIONER

THE STATE OF WASHINGTON)
) ss.
County of PIERCE)

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

X FERNANDO AGUIRRE
[sign here]

SUBSCRIBED AND SWORN to before me this 24 day of JUNE.

Notary Public in and for the State of Washington, residing at KENT, WA

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a notary: N/A

Then sign below:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

6/24/13 [date].

FERNANDO AGUIRRE
[sign here]

SALVADOR LOPEZ NOTARY PUBLIC STATE OF WASHINGTON JESUS MY COMMISSION EXPIRES 09-30-16

No. 316866

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

FERNANDO F. AGUIRRE URBINA,

Defendant/Petitioner.

APPENDIX A

(SEALED MEDICAL AND HEALTH RECORDS)

No. 316866

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

FERNANDO F. AGUIRRE URBINA,

Defendant/Petitioner.

DECLARATION OF TRIAL COUNSEL
MICKEY L. KROM

1. I am Attorney Mickey L. Krom
2. My Washington State Bar number is 7064.
3. I have been in practice in Washington State since October 27, 1976. I am not subject to any disciplinary orders.
4. I was Mr. Auguirre Urbina's appointed counsel in the above-noted matter in the Yakima County Superior Court. I have reviewed my case file for this matter in making this declaration. I have also been provided a copy of the Defendant's declaration dated August 3, 2013 and also a copy of the superior court's case file.
5. I was aware that Mr. Aguirre Urbina was not a U.S. citizen and was deportable if he accepted the State's plea offer, and, I so advised him. I further advised that I expected he would be deported if he accepted the State's plea offer.

APPENDIX B

MICKEY KROM
ATTORNEY AT LAW
6 South 2nd Street, Suite 317
Yakima, Washington 98901
Office: (509) 457-6909
Fax: (509) 575-3932

6. I went over both the guilty plea and the judgment and sentence with Mr. Aguirre Urbina.

7. I was aware that Mr. Aguirre Urbina had some mental health issues at the time of his plea and sentencing. He appeared competent to me at that time. Neither insanity nor diminished capacity defenses seemed to apply to the facts of his case. At no time did Mr. Aguirre Urbina tell me the version of events contained in his declaration.

Signed under penalty of perjury under the laws of the State of Washington at Yakima, Washington this 9th day of August, 2013.

Mickey L. Krom, Attorney at Law, WSBA #7064

MICKEY KROM
ATTORNEY AT LAW
6 South 2nd Street, Suite 317
Yakima, Washington 98901
Office: (509) 457-6902
Fax: (509) 575-3932

No. 316866

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff/Respondent, vs. FERNANDO F. AGUIRRE URBINA, Defendant/Petitioner.	DECLARATION OF ATTORNEY TAMERTON GRANADOS

1. I am Attorney Tamerton Granados

2. My Washington State Bar number is 40103.

3. I have been in practice in Washington State since 2008. I am not subject to any disciplinary orders.

4. I currently represent Mr. Aguirre Urbina in the matter of his removal proceedings.

5. I met with Brent De Young on August 15, 2013 regarding some of our mutual clients. At that time, I asked him about the status of Mr. Aguirre Urbina's post-conviction relief case. He advised me that he was not aware that I was still representing Mr. Aguirre Urbina because another attorney had been helping him at the Northwest Detention Center. I informed Mr. De Young that I was still representing Mr. Aguirre Urbina and am still the attorney of record in his removal proceedings.

6. Before Mr. Aguirre Urbina was arrested, I met with him a number of times at my office. On these occcasions, Mr. Aguirre Urbina exhibited some very strange behavior. At one of our

APPENDIX C

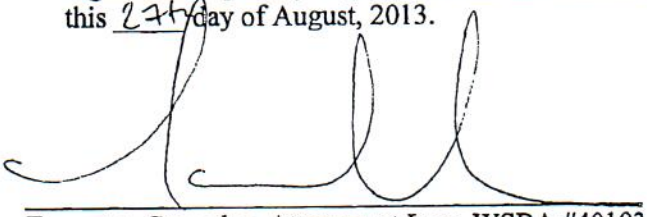
appointments, he came dressed in a batman costume. It was not Halloween, and there was no other reason for him to be dressed in a costume. Our conversations during our appointments, his strange behavior, and his attire led me to believe that he may have some kind of mental health issue. I was not aware of the extent of his mental health issues, however, until I read Dr. Valdez's psychological evaluation.

7. Mr. Aguirre Urbina also indicated to me that he might have been diagnosed with a learning disability or developmental delay. He was sure that he did receive some special help or accomodations at school, but he was unsure of exactly what level of assistance was provided.

8. After Mr. Aguirre Urbina was arrested, he contacted me to advise me of his arrest. Once I found out that Mickey Krom had been appointed as his defense counsel, I contacted Mr. Krom. I tried calling Mr. Krom twice, but was not able to reach him. Since I could not reach him by phone, I asked to speak with him outside of court. During my first conversation with Mr. Krom, I advised him that Mr. Aguirre Urbina thought he had a diagnosed learning disability or developmental delay and that I thought he may have some mental health issues. I suggested that he consider having Mr. Aguirre Urbina evaluated by Eastern State Hospital due to these concerns.

9. Approximately one month later, I followed up with Mr. Krom about the mental competency evaluation. He advised me that, in his opinion, Mr. Aguirre Urbina was mentally competent and could assist in his own defense. For that reason, he opted not to have him evaluated.

Signed under penalty of perjury under the laws of the State of Washington at Yakima, Washington this 27th day of August, 2013.



Tamerton Granados, Attorney at Law, WSBA #40103

YAKIMA COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, v. FERNANDO AGUIRRE URBINA, Defendant.	)	No. 12-1-00065-0 DECLARATION OF THE DEFENDANT – FERNANDO AGUIRRE URBINA

1. I am Fernando Aguirre Urbina, the Defendant in the above-noted case.
2. I remember back in high school that he (the enemy) would talk to me in my head, and that if I didn't do something right I had to do it again and again until I did it right. If I walked or dressed in the wrong way that I had to go back and re-dress myself all over again or I had to go back and to walk back again but correctly. It happened more at home during the time that I was in high school.
3. My last year in high school the enemy told to stare at the sun. I couldn't refuse to do it. I think now that this damaged my eyesight. When I tried to refuse to do it then I got an intense anxiety attack and I would feel very helpless. I had to do something then to let him know that I understood he was in control.

Brent A. De Young
Attorney at Law
P.O. Box 1668
Moses Lake, WA 98837
TEL: (509) 764-4333 FAX: (1-888) 867-1784

4. During my last year in high school, I would lock myself in the rest room at home. The enemy made me pick up different things over and over again until he was satisfied. I got mad when someone like my mom or my sister yelled at me to get out of there. I went there to hide so nobody would see that I was being controlled by the enemy.
5. After high school the enemy was very strong. I couldn't even open my car door correctly without thinking and worrying that I was doing it correctly.
6. I started smoking marijuana during high school to block out the enemy. I couldn't hear his voice when I was high.
7. In 2010 I was sent to the immigration court. I was caught driving without my license. I got out after three or four days in Tacoma. After I was out, the enemy told me that I needed money to hire a lawyer to help me with my immigration.
8. The enemy said that he would protect me if I sold drugs to get money for the lawyer. When I scared to do this, he would put negative thoughts in my head that my son wasn't really mine or that my daughter was in torment and suffering. Every time I wouldn't want to do what the enemy said he would put these vague imaginations into my mind to control me.
9. I remember that everything became worse when I ordered some holy water from TV. That was in December of 2011. After this either I made God angry because of the way that I was living under the enemy, or it was the enemy attacking me because he thought I wasn't paying attention to him at all times as I should. I started feeling then always depressed.
10. When I got arrested at my house, it all seemed like a dream to me. I started feeling then that I was watching it on TV and that it wasn't really happening.

Brent A. De Young
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P.O. Box 1668
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TEL: (509) 764-4333 FAX: (1-888) 867-1784

11. The day before they raided my house I was driving in the country. It was during the daytime, but I couldn't stop myself from falling asleep. I tried to park my car. I put my radio on the Christian station very loud. The enemy loudly told me that I wasn't going anywhere. I finally barely got my car parked and I fell right asleep. I was not under the influence of any alcohol or drugs at the time that this happened. I felt during this time period that I was in the middle of the battle between God and the enemy. I would talk to God and would pray a lot. But because of what I had to do for the enemy I wasn't sure that God was listening to me at that time.
12. The voice that I found out was called "the enemy" was with me for several years before I connected his name to the enemy.
13. The enemy is not Satan. I understand that Satan is the fallen angel. The enemy is something much different.
14. During my court, my attorney Mr. Krom seemed like he was in a big hurry. There was never enough time to ask him about my case. One time he offered me to go to drug court because I told him that I was smoking marijuana all the time. I didn't quite understand about drug court and told Mr. Krom that I didn't really understand about it. Mr. Krom said that I wouldn't make it in drug court and told me just to forget about it. We never talked about it again after that.
15. I was feeling very upset and confused at the time I was in jail and court. I didn't understand that what was really happening. The enemy was present with me in the court and in the jail. He told me that everything would be okay. He said that he had a plan.
16. When I was going to court for the last time in Yakima, one of the guards started whistling in front of me. This was the enemy making fun of me. The enemy was also the angel of music.

Brent A. De Young
Attorney at Law
P.O. Box 1668
Moses Lake, WA 98837
TEL: (509) 764-4333 FAX: (1-888) 867-1784

17. Mr. Krom told me that he didn't care what I did that it was not his life but mine. I knew this meant that I needed to get this over with. I then pleaded guilty. The enemy was playing with me all through this. The judge was then saying that he wasn't going to let me plead guilty. Just before this the enemy had told me that he would take care of me if I just got this done.

18. I feel much better now that I'm getting some treatment here at the detention center in Tacoma. The enemy isn't gone yet. I do understand now how he controls me.

19. I have been here in this country since I was three years old. I am afraid that if I return to Mexico I won't be able to continue my treatment and that I will go back to all of the problems that I had before with the enemy. I really want to get well and stay well now.

I swear under penalty of perjury under the laws of the State of Washington that the foregoing in true and correct to the best of my knowledge.

DATED: This 3rd day of August, 2013.

FERNANDO AGUIRRE

Fernando Francisco Aguirre Urbina

Brent A. De Young
Attorney at Law
P.O. Box 1668
Moses Lake, WA 98837
TEL: (509) 764-4333 FAX: (1-888) 867-1784

COURT OF APPEALS, DIVISION III,

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff/Respondent, vs. FERNANDO F. AGUIRRE URBINA, Defendant/Petitioner.	NO. 316866 PETITIONER'S PERSONAL RESTRAINT PETITION CERTIFICATE OF MAILING

I certify that on this 5th day of September, 2013, I caused to be sent by U.S. Mail, first-class postage prepaid, a copy of Petitioner's Personal Restraint Petition to:

Yakima County Prosecuting Attorney
128 N. 2nd St., Room 329
Yakima, WA 98901

Fernando Francisco Aguirre Urbina
c/o Northwest Detention Center
1623 E. J Street, Suite 5
Tacoma, WA 98421

/s/
Brent A. De Young, WSBA #27935
Attorney for Petitioner

DE YOUNG LAW OFFICE

September 05, 2013 - 12:29 PM

Transmittal Letter

Document Uploaded:	prp-090513 Aguirre Urbina, Fernando Francisco - Separate Personal Restraint Petition with Appendices.pdf
Case Name:	State of Washington v Fernando Francisco Aguirre Urbina
Court of Appeals Case Number:	
Party Respresented:	Petitioner
Is This a Personal Restraint Petition?	☑ Yes ☐ No

Trial Court County: Yakima - Superior Court # 12-1-00065-0

Type of Document being Filed:

- ☐ Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☐ Motion: ____
- ☐ Response/Reply to Motion: ____
- ☐ Brief
- ☐ Statement of Additional Authorities
- ☐ Affidavit of Attorney Fees
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ____ Hearing Date(s): _____
- ☑ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☐ Other: _____

Comments:

No Comments were entered.

Proof of service is attached

Sender Name: Shirley Diamond - Email: **deyounglaw1@gmail.com**