

The Honorable Robert J. Bryan

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CIVIL ACTION NO. 3:17-cv-05806-RJB

STATE OF WASHINGTON,
Plaintiff,

v.

THE GEO GROUP, INC.,
Defendant.

DECLARATION OF ANDREA
BRENNEKE IN SUPPORT OF STATE
OF WASHINGTON’S MOTION TO
COMPEL PARTIALLY
UNREDACTED LETTER AND
UNDERLYING FINANCIAL
CALCULATIONS

NOTE ON MOTION CALENDAR:
September 4, 2020

Pursuant to 28 U.S.C. § 1746(2), I, Andrea Brenneke, state and declare as follows:

1. I am over eighteen years of age, have personal knowledge of and competent to testify about the matters contained herein.

2. I am an Assistant Attorney General for the Attorney General of Washington and I represent the State of Washington in this matter.

3. The State of Washington has pursued discovery, motions to compel, and defense of a Ninth Circuit Writ of Mandamus to obtain financial information related to GEO’s Voluntary

1 Work Program at the NWDC, the amount and value of detainee labor there, and GEO's benefit
2 from that labor.

3 4. As described below, Washington also has made repeated requests for the financial
4 documents at issue in this motion and engaged in discovery conferences with GEO's counsel in
5 an effort to resolve the dispute. Washington's attempts to resolve this dispute without judicial
6 intervention have been unsuccessful.

7 5. Separate from GEO's own discovery responses, and as a result of another group's
8 Freedom of Information Act (FOIA) request, Washington obtained a letter from GEO to ICE
9 dated May 30, 2018. *See* ECF No. 362-1 (GEO's Letter to ICE). Washington produced GEO's
10 Letter to ICE, and the entire set of FOIA documents in which this letter was included, in
11 discovery to GEO on June 19, 2019 (corrected June 21, 2019) as part of Washington's
12 Production No. 14.

13 6. The version of GEO's Letter to ICE that we have is redacted in relevant part. In
14 it, GEO states that "[w]e have conducted an estimation of the costs necessary to achieve
15 compliance with the Plaintiffs" in this and the other two other Minimum Wage/Unjust
16 Enrichment lawsuits. The paragraph that immediately follows presumably includes the
17 substance of those calculations, but is redacted. *Id.*

18 7. On June 5, 2019, Washington, through its counsel Marsha Chien, wrote to former
19 GEO Counsel, Shannon Armstrong, regarding GEO's Letter to ICE with the "request that GEO
20 provide the complete, un-redacted document as well as any related communications with ICE"
21 as responsive to Washington's discovery requests, including RFP No. 12. If any privileges apply,
22 please specify them." A true and correct copy of Washington's June 5, 2019 email is attached as
23 Exhibit A.

24 8. On June 10, 2019, GEO responded by email that "GEO has complied with its
25 discovery obligations" by objecting to RFP No. 12 "as overly broad, unduly burdensome, and
26 not proportional to the needs of the case," by promising GEO "would produce non-privileged

1 communications with ICE concerning the Voluntary Work Program ‘as they relate to detainee
2 participation and compensation at the Northwest Detention Center within the relevant time
3 period,’” and by notifying the State “that it was withholding documents based on that objection
4 in February 2018.” GEO never produced a privilege log, identified with particularity any
5 responsive documents that existed, nor asserted any privileges. A true and correct copy of GEO’s
6 June 10, 2019 email is attached as Exhibit B.

7 9. GEO’s Writ of Mandamus was pending with the Ninth Circuit Court of Appeals
8 from January 1, 2019 to September 3, 2019, during most of the discovery period.

9 10. After Washington prevailed, we again requested that GEO produce the
10 responsive financial documents GEO withheld during the Mandamus proceedings. GEO agreed
11 to produce the documents on or before November 21, 2019, and the parties filed a stipulation to
12 that effect, ECF No. 336.

13 11. In November of 2019, Defendant GEO produced additional, responsive financial
14 documents. Washington reviewed those documents and again initiated LCR 37 discovery
15 conferences with GEO to address deficiencies in the production.

16 12. On December 13, 2019, Washington sent a letter regarding the deficiencies and
17 specifically followed up on its effort to obtain an unredacted version of GEO’s Letter to ICE and
18 its underlying calculations. A true and correct copy of Washington’s letter is attached as
19 Exhibit C.

20 13. New GEO counsel, Adrienne Scheffey, was unaware of GEO’s Letter to ICE and
21 requested the bates number. A true and correct copy of GEO’s December 31, 2019 letter is
22 attached as Exhibit D.

23 14. Also on December 31, 2019, I sent an email with the bates number and a second
24 email in which I forwarded the pre-Writ of Mandamus email exchange about GEO’s Letter to
25 ICE to current GEO Counsel with a renewed request for the document. True and correct copies
26 of my December 31, 2019 emails are attached as Exhibit E.

1 15. Washington received a response to its request for post-Mandamus production of
2 financial information by letter dated January 8, 2020. A true and correct copy of GEO's January
3 8, 2020 letter is attached as Exhibit F. In it, GEO states "the letter estimates legal costs for
4 defending various lawsuits" and that the redacted portion of the letter at issue here "provides a
5 summary of the relief requested by Plaintiffs (in the aggregate)."

6 16. Washington listed GEO's Letter to ICE as Plaintiffs' Trial Exhibit 365, it is
7 included in the Joint Exhibit List, ECF No. 377-1, as incorporated in the Pretrial Order. ECF No.
8 388 at 30.

9 17. At the pretrial conference held on January 10, 2020, Washington requested the
10 Court's intervention with regard to GEO's Letter to ICE. A true and correct copy of excerpts of
11 the transcript are attached at Exhibit G. After limited presentation of the discovery dispute by
12 Counsel, the Court requested the parties to try again to resolve the dispute and to "make a
13 motion" if they could not agree. *See* Ex. G at 53:3-56:4.

14 18. On Wednesday, January 15, 2020, Washington again wrote "to follow up
15 regarding GEO's letter request to ICE for an equitable adjustment, labeled 2018-ICLI-000052,"
16 noted that the document is not privileged in any way, and requested that it be produced. A true
17 and correct copy of the email is attached at Exhibit H.

18 19. On Friday, January 17, 2020, GEO again refused to produce the document,
19 claiming "the document is not relevant to the State's case and is not broken down or limited to
20 the Northwest ICE Processing Center. Furthermore, the document is not relevant to the State's
21 claims that GEO was unjustly enriched, as it simply states the status of the costs of litigation and
22 the costs that ICE *could* incur nationwide if litigation were to change its operating practices." A
23 true and correct copy of GEO's email of January 17, 2020 is attached as Exhibit I.

24 20. Because of GEO's representations about the content of the letter, Washington set
25 aside its pursuit of a motion to compel additional documents at that time and both parties engaged
26 in pretrial preparations and briefing.

1 21. The Court’s Motion in Limine Order incorporates by reference rulings made
2 during the April 13, 2020 pretrial hearing. ECF No. 374. A true and correct excerpts of the April
3 13, 2020 Pretrial Hearing transcript are attached as Exhibit J.

4 22. On April 13, 2020, the Court denied Washington’s MIL to exclude the testimony
5 of a late-noted witness, GEO’s CFO Brian Evans, with the proviso that Washington be permitted
6 to depose him. *See* Ex. J at 9:25-10:7.

7 23. On June 11, 2020, Washington deposed Mr. Evans. True and correct excerpts of
8 the Brian Evans deposition transcript are attached at Exhibit K. Exhibit K has been filed under
9 seal pursuant to the Protective Order, ECF No. 70.

10 24. During the deposition, Mr. Evans revealed new information related to the
11 calculations he had conducted related to the NWDC that were rolled into GEO’s Letter to ICE.
12 After obtaining and reviewing the deposition transcript, I sent an email to GEO and again
13 renewed efforts to obtain a partially unredacted copy of GEO’s Letter to ICE and the underlying
14 calculations and spreadsheets related to the calculation of compliance with plaintiffs’ demands.
15 GEO responded with an agreement to meet and confer. A true and correct copy of this email
16 thread dated August 3, 2020 is attached as Exhibit L.

17 25. During the LCR 37 conference on August 7, 2020, GEO, through its counsel
18 Adrienne Scheffey, reiterated its position that it would not produce a partially unredacted version
19 of GEO’s Letter to ICE or any of the underlying spreadsheets regarding the amount it would take
20 to comply with Plaintiff’s demands of Minimum Wage Act compliance at the NWDC. GEO
21 referred Plaintiffs to the position it took in its January 17, 2020 email and indicated it was relying
22 on that position. GEO also claimed that the portion of the letter related to the calculation of the
23 amount needed “to achieve compliance with the plaintiffs” includes only two to three “aggregate
24 numbers” with no breakdown related to the NWIPC, and constitutes an aggregate amount of
25 “damages” related to the detainee wage claims in all three states.
26

1 26. For the first time in the August 7, 2020 LCR 37 conference, GEO asserted that
2 that the letter was protected from production by attorney-client, work product, and “common
3 interest” privilege. GEO claimed that a “common interest” and “work product” privilege exists
4 between GEO, ICE and the DOJ in relation to the litigation, but admitted there is no written
5 common interest agreement. GEO also articulated that the letter is protected from disclosure by
6 the “attorney client privilege” because Mr. Evans conducted the underlying damages analysis
7 before May 30, 2018, at the direction of GEO’s inside and possibly outside counsel, for the sole
8 purpose of writing this letter, and the “whole letter was written by counsel” to seek legal
9 intervention from ICE.

10 27. In discovery, GEO did not produce GEO’s Letter to ICE. I have reviewed the
11 privilege logs produced by GEO in the litigation and have found no log on which this letter was
12 disclosed or a privilege asserted regarding it. Nowhere on the privilege log are the underlying
13 calculation documents disclosed as privileged, either.

14 28. On its privilege log, GEO did list a *draft* letter to DHS (ICE), and claimed
15 privilege regarding it, presumably because it was a draft circulated within GEO. However, GEO
16 also produced the *final* version of GEO’s February 14, 2018 letter to ICE, in which GEO
17 requested an equitable adjustment and intervention in this lawsuit and the other detainee wage
18 litigation, and detailed the attorneys’ fees and costs expended in that litigation to date, without
19 any redactions or claims of privilege.

20 I declare, under the penalty of perjury under the laws of the United States and the State
21 of Washington, that the foregoing is true and correct.

22
23 Dated this 20th day of August 2020 in Seattle, Washington.

24
25 *s/ Andrea Brenneke*
26 ANDREA BRENNEKE, WSBA No. 22027

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 20th day of August 2020 Seattle, Washington.



Caitilin Hall
Legal Assistant

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BRENNEKE DECLARATION

EXHIBIT A

From: [Chien, Marsha \(ATG\)](#)
To: shannon.armstrong@hklaw.com
Cc: [Polozola, Lane \(ATG\)](#); [Baker, La Rond \(ATG\)](#); [Brenneke, Andrea \(ATG\)](#); matt.donohue@hklaw.com; [Whitehead, Jamal](#); kristin.asai@hklaw.com; [Devin Theriot-Orr](#); [Andrew Free \(andrew@immigrantcivilrights.com\)](mailto:Andrew.Free@immigrantcivilrights.com)
Subject: Washington v. NWDC - Missing Docs
Date: Wednesday, June 05, 2019 8:58:53 AM
Attachments: [Scan-06042019032108.pdf](#)

Shannon,

I am writing to express concern that GEO's response to the State's discovery requests is not complete. We recently received the attached document, which appears to be part of GEO's request to ICE for an equitable adjustment. It was obtained from ICE in response to a FOIA request.

The document is squarely responsive to RFP No. 12, which requested all communications about the VWP with ICE. As such, we request that GEO provide the complete, unredacted document as well as any related communications with ICE. If any privileges apply, please specify them.

Kind Regards,

Marsha

Marsha Chien

Assistant Attorney General

Washington Attorney General's Office - Civil Rights Division

800 Fifth Avenue, Suite 2000

Seattle, Washington 98104

(206) 389-3886

BRENNEKE DECLARATION

EXHIBIT B

From: Shannon.Armstrong@hkllaw.com
To: [Chien, Marsha \(ATG\)](#)
Cc: [Polozola, Lane \(ATG\)](#); [Baker, La Rond \(ATG\)](#); [Brenneke, Andrea \(ATG\)](#); Matt.Donohue@hkllaw.com; whitehead@sgb-law.com; Kristin.Asai@hkllaw.com; devin@sunbird.law; andrew@immigrantcivilrights.com; anne.rose@ice.dhs.gov; Kristin.B.Johnson@usdoj.gov
Subject: RE: Washington v. NWDC - Missing Docs
Date: Monday, June 10, 2019 7:42:49 AM
Attachments: [2019-06-06 Ltr to DHS re ICE Subpoena.pdf](#)

Marsha— I've attached a courtesy copy of the letter we sent to DHS in relation to Mr. Bostock's deposition.

GEO has complied with its discovery obligations. As set forth in its objections to RFP No. 12, GEO objected to producing all communications with ICE as overly broad, unduly burdensome, and not proportional to the needs of the case, among other things. GEO explained that it would produce non-privileged communications with ICE concerning the Voluntary Work Program "as they relate to detainee participation and compensation at the Northwest Detention Center within the relevant time period." GEO also notified the State that it was withholding documents based on that objection in February 2018. The State did not move to compel a further response prior to the Court's deadline for discovery motions.

In addition, as the State is aware, documents that may be responsive to the State's RFPs are still in ICE's possession. GEO will produce any responsive, non-privileged documents it receives from ICE as soon as ICE notifies GEO that it can produce those documents.

Finally, your emails indicate that the State recently received documents from ICE in response to the State's FOIA request. It is unclear why these documents were not produced to GEO. We expect that the State will produce the remainder of the documents it received from ICE in accordance with its discovery obligations, including GEO's RFPs No. 8 and 81, no later than Friday, June 14.

Please let me know if you have any questions.

Regards,
Shannon

Shannon Armstrong | Holland & Knight

Partner

Holland & Knight LLP

2300 U.S. Bancorp Tower, 111 S.W. Fifth Avenue | Portland, Oregon 97204

Phone 503.517.2924 | Fax 503.241.8014

shannon.armstrong@hkllaw.com | www.hkllaw.com

[Add to address book](#) | [View professional biography](#)

From: Chien, Marsha (ATG)
Sent: Friday, June 07, 2019 3:58 PM
To: Armstrong, Shannon (POR - X52924)
Cc: Polozola, Lane (ATG) ; Baker, La Rond (ATG) ; Brenneke, Andrea (ATG) ; Donohue, J. Matthew (POR - X52913) ; Whitehead, Jamal ; Asai, Kristin (POR - X52948) ; Devin Theriot-Orr ; Andrew Free (andrew@immigrantcivilrights.com) ; anne.rose@ice.dhs.gov; Kristin.B.Johnson@usdoj.gov
Subject: RE: Washington v. NWDC - Missing Docs
[External email]

Shannon,

We received GEO's dep notice for Mr. Drew Bostock.

Presumably, GEO complied with its *Touhy* obligations in noting the deposition of an ICE official.

Given that, we write to request that GEO comply with its discovery obligations, *see* RFP No. 12, and produce all communications between GEO and ICE regarding the VWP in advance of the Bostock

deposition.

At a minimum, we expect GEO to provide the documents identified below and its *Touhy* communications regarding Bostock by Friday, June 14th. If you, or Anne or Kristin, who I've cc'd here, have any concerns regarding this expectation, please let us know.

Marsha

Marsha Chien

Assistant Attorney General
Washington Attorney General's Office - Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
(206) 389-3886

From: Chien, Marsha (ATG)

Sent: Wednesday, June 05, 2019 8:59 AM

To: 'shannon.armstrong@hklaw.com' <shannon.armstrong@hklaw.com>

Cc: Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; Baker, La Rond (ATG) <LaRond.Baker@atg.wa.gov>; Brenneke, Andrea (ATG) <Andrea.Brenneke@atg.wa.gov>; 'matt.donohue@hklaw.com' <matt.donohue@hklaw.com>; 'Whitehead, Jamal' <whitehead@sgb-law.com>; 'kristin.asai@hklaw.com' <kristin.asai@hklaw.com>; Devin Theriot-Orr <devin@sunbird.law>; Andrew Free (andrew@immigrantcivilrights.com) <andrew@immigrantcivilrights.com>

Subject: Washington v. NWDC - Missing Docs

Shannon,

I am writing to express concern that GEO's response to the State's discovery requests is not complete. We recently received the attached document, which appears to be part of GEO's request to ICE for an equitable adjustment. It was obtained from ICE in response to a FOIA request.

The document is squarely responsive to RFP No. 12, which requested all communications about the VWP with ICE. As such, we request that GEO provide the complete, unredacted document as well as any related communications with ICE. If any privileges apply, please specify them.

Kind Regards,

Marsha

<< File: Scan-06042019032108.pdf >>

Marsha Chien

Assistant Attorney General
Washington Attorney General's Office - Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
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BRENNEKE DECLARATION

EXHIBIT C



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Civil Rights Division

800 Fifth Avenue • Suite 2000 • MS TB 14 • Seattle WA 98104
(206) 442-4492

December 13, 2019

Sent via E-Mail

Ashley E. Calhoun
Christopher J. Eby
Colin L. Barnacle
Adrienne Scheffey
Akerman LLP
ashley.calhoun@akerman.com
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Joan K. Mell
III Branches Law, PLLC
joan@3brancheslaw.com

RE: *Washington v. The GEO Group, Inc.*, 17-cv-05806-RJB
Post-Mandamus Production of Financial Information

Dear Counsel,

Thank you for the post-Mandamus production of Defendant The GEO Group's Amended Responses to Plaintiff State of Washington's Second Set of Interrogatories and Requests for Production, together with the financial documents and information you provided in GEO's PROD017. We are writing because there remain significant gaps in the production between what you were ordered to produce and what we received.

First, GEO produced a number of responsive documents as difficult to read reports in PDF format, where the underlying data appears to be derived from Excel databases. *See* GEO-State 299184 to GEO-State 299193. Some of these also are summary compilations of many years of data. We request that GEO complete its production and: 1) produce these documents in their

ATTORNEY GENERAL OF WASHINGTON

Counsel for The GEO Group, Inc.
December 13, 2019
Page 2

native format (with designations as to their corresponding PDFs); and 2) produce all documents and native format files used to derive the summary information. This includes, for example, the annual underlying Facility Budget spreadsheets and database files that were used for the summaries on GEO-State 299184 and the annual underlying Facility Financial spreadsheets and database files that were used for the summaries on GEO-State 229185. In addition to our written discovery, we had asked that GEO produce the information (budget spreadsheets, revenue and cost data) used to compile the consolidated financial statement produced in the CR 30(b)(6) deposition on finances. *See* Exhibit 252. We presume these documents are related to that request, but if there are others, we reiterate our need for those, as well. According to the production document standards provided to GEO by Washington as part of the written discovery in this case, “[e]lectronic files must be produced in their native format ... [f]or example, an MS Excel file must be produced in an MS Excel file rather than an image of a spreadsheet.”

Second, the document produced as GEO-State 299194 is missing data from 2005 – September 2009. Please provide it in the appropriate format or explain why GEO is unable to do so. If GEO paid detainee workers from 2005 – September 2009, but did not seek reimbursement from ICE during this period, please produce a separate chart with the totals of detainee worker compensation for each of these months.

Third, GEO has produced a number of native format detainee payroll files from the Keefe database by month, as requested. However, in our review of the production, we appear to be missing substantial periods of native format payroll data. For example, we have every month from February 2016 – September 2019. We are missing the following native format detainee payroll files: all of 2005 – 2012, February 2013, April-September 2013, April and June of 2014, March and August of 2015, January of 2016. We also will need October – December of 2019 when it is available. Please produce complete data from 2005 to present. If you are unable to do so, please explain why data from those periods are missing. Finally, we previously requested that you produce the unredacted letter, as well as the financial documents underlying GEO’s request to ICE for adjustment, in which GEO calculated the amount it would be obligated to pay detainees if it honored Washington’s Minimum Wage Act. GEO’s production fails to include that calculation or the unredacted letter to ICE that has the amount in it. Please produce these.

We request that you confirm, in writing, that you are able to produce the above documents and information as soon as possible, and no later than December 23, 2019. If you are unable to meet this timeline, we request a conference to meet and confer on the afternoon of Tuesday, December 17, 2019 at 2:00 pm so that we can bring these matters to the Court for its intervention.

Thank you for your immediate attention to these matters. Please do not hesitate to contact us with any questions.

ATTORNEY GENERAL OF WASHINGTON

Counsel for The GEO Group, Inc.
December 13, 2019
Page 3

Very truly yours,



ANDREA BRENNEKE
Assistant Attorney General

BRENNEKE DECLARATION

EXHIBIT D



Adrienne Scheffey

Akerman LLP
1900 16th Street
Suite 1700
Denver, CO 80202

T: 303 260 7712
F: 303 260 7714
adrienne.scheffey@akerman.com

December 31, 2019

Andrea Brenneke
Assistant Attorney General
Office of the Attorney General
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104

**RE: *Washington v. The GEO Group, Inc.*, 17-cv-05806-RJB
Post-Mandamus Production of Financial Information**

Counsel,

GEO is in receipt of your letter dated December 13, 2019, which details various perceived deficiencies in GEO's financial document production. This letter serves to alert the State that at this time GEO does not believe the issue is ripe for Court intervention and to suggest that, should this letter not be sufficient, that the Parties identify a time to meet and confer further.

Requested Excel Files:

In your letter, you requested certain documents in excel or native format. The letter specifically asks GEO to identify whether there are any underlying excel files for the following bates numbered documents:

- GEO-State 299184 to GEO-State 299193;
- GEO-State 299184;
- GEO-State 229185;
- Exhibit 252.

GEO has reviewed the documents produced and disagrees that the documents produced are "difficult to read." Nevertheless, GEO is investigating whether any additional data related to these documents exists, and if so, in what format it is stored. Given the holidays, and various vacation schedules, GEO must wait until some individuals return from pre-planned vacations to obtain full and complete answers. To that end, GEO will provide the State with an update about what documents exist (if any) and a proposal for producing those documents by **January 8, 2020**.

Andrea Brenneke
Assistant Attorney General
Page 2

VWP Reimbursement Summary:

In your letter, you also request that information be added to GEO-State 299194 for the dates between 2005 and September 2009. GEO is investigating the feasibility of collecting this data, or if there is a less burdensome alternative. GEO will provide the State with an update about what documents exist (if any) and a proposal for producing those documents by **January 8, 2020**.

Keefe Files:

In addition to the documents already produced, your letter has asked for GEO to locate and produce Keefe records for all of 2005 – 2012, February 2013, April-September 2013, April and June of 2014, March and August of 2015, January of 2016, and October – December of 2019. GEO produced the records for August 2015 at GEO-State 297470. AS for the other documents, GEO is in the process of locating and collecting these documents and will produce them (or identify their bates numbers) on a rolling basis. Should GEO be unable to identify any specific records, it will notify the State by **January 15, 2019**.

Redacted Letter:

Finally, the State asks GEO to produce "an unredacted letter" but does not identify that letter by bates number. It also asks for documents "underlying" that redacted letter. **In order to identify whether this is possible, and whether the redactions were made by ICE or GEO, please provide GEO with the bates numbers of the letter.** Please also provide the portion of the Court's Order that you contend supports your position that you are entitled to the financial data related to the redacted letter.

Should you have any additional questions, I am available for a call after 1:00 P.M. MST Friday, January 3, 2020, or Thursday, January 9, 2020, before noon MST.

Best,

s/Adrienne Scheffey

BRENNEKE DECLARATION

EXHIBIT E

From: [Brenneke, Andrea \(ATG\)](#)
To: ["adrienne.scheffey@akerman.com"](#); [ashley.calhoun@akerman.com](#); [christopher.eby@akerman.com](#); [colin.barnacle@akerman.com](#); [joan@3brancheslaw.com](#)
Cc: [Chien, Marsha \(ATG\)](#); [Polozola, Lane \(ATG\)](#); [whitehead@sgb-law.com](#); [roe@sgb-law.com](#); [berger@sgb-law.com](#); [Hall, Caiti \(ATG\)](#); [joe@3brancheslaw.com](#)
Subject: RE: Washington v. The GEO Group, Inc. - post Mandamus financial document production
Date: Tuesday, December 31, 2019 2:57:58 PM

Dear Adrienne,

Thank you for getting back to us.

The redacted document that we are seeking to have produced, together with all underlying and related documents, was at the center of previous communications with GEO's prior counsel (I will forward a related email shortly). It was produced by Washington as **WA00027027**.

Andrea Brenneke
Assistant Attorney General
Civil Rights Unit
Washington State Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
Direct: (206) 233-3384
Fax: (206) 464-6451
Andrea.Brenneke@atg.wa.gov

From: adrienne.scheffey@akerman.com <adrienne.scheffey@akerman.com>
Sent: Tuesday, December 31, 2019 1:50 PM
To: [Brenneke, Andrea \(ATG\) <andrea.brenneke@atg.wa.gov>](#); [ashley.calhoun@akerman.com](#); [christopher.eby@akerman.com](#); [colin.barnacle@akerman.com](#); [joan@3brancheslaw.com](#)
Cc: [Chien, Marsha \(ATG\) <marsha.chien@atg.wa.gov>](#); [Polozola, Lane \(ATG\) <Lane.Polozola@ATG.WA.GOV>](#); [whitehead@sgb-law.com](#); [roe@sgb-law.com](#); [berger@sgb-law.com](#); [Hall, Caiti \(ATG\) <Caiti.Hall@atg.wa.gov>](#); [joe@3brancheslaw.com](#)
Subject: RE: Washington v. The GEO Group, Inc. - post Mandamus financial document production

Andrea,

Thank you for following-up. Please see the attached correspondence and let us know if you believe an additional call is necessary.

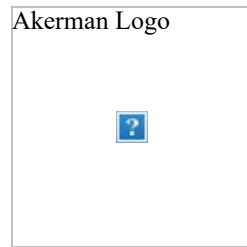
Happy New Year!

Adrienne Scheffey

Akerman LLP | 1900 Sixteenth Street, Suite 1700 | Denver, CO 80202
D: 303 640 2512 | T: 303 260 7712

adrienne.scheffey@akerman.com

Profile



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From: Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>
Sent: Tuesday, December 31, 2019 2:15 PM
To: Calhoun, Ashley (Assoc-Den) <ashley.calhoun@akerman.com>; Eby, Christopher (Ptnr-Den) <christopher.eby@akerman.com>; Barnacle, Colin (Ptnr-Den) <colin.barnacle@akerman.com>; Scheffey, Adrienne (Assoc-Den) <adrienne.scheffey@akerman.com>; III Branches Law <joan@3brancheslaw.com>
Cc: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>; Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; Whitehead, Jamal (whitehead@sgb-law.com) <whitehead@sgb-law.com>; Roe, Becky <roe@sgb-law.com>; Berger, Adam <berger@sgb-law.com>; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; Joe Fonseca <joe@3brancheslaw.com>
Subject: RE: Washington v. The GEO Group, Inc. - post Mandamus financial document production

Dear Counsel,

We have not had a response to our December 13, 2019 letter regarding the post Mandamus financial document production. Nor have we received the additional documents. What is the status?

We are available for a meet and confer on the afternoon of Monday January 6 or on Tuesday January 7th (morning or afternoon).

We will need to raise any unresolved issues with the Court on Friday, January 10th at our pretrial conference and hope to work things out before then.

Very truly yours,

Andrea Brenneke
Assistant Attorney General
Civil Rights Unit
Washington State Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104

Direct: (206) 233-3384

Fax: (206) 464-6451

Andrea.Brenneke@atg.wa.gov

From: Brenneke, Andrea (ATG)

Sent: Friday, December 13, 2019 5:28 PM

To: 'ashley.calhoun@akerman.com' <ashley.calhoun@akerman.com>; 'christopher.eby@akerman.com' <christopher.eby@akerman.com>; 'colin.barnacle@akerman.com' <colin.barnacle@akerman.com>; 'adrienne.scheffey@akerman.com' <adrienne.scheffey@akerman.com>; III Branches Law <joan@3brancheslaw.com>

Cc: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>; Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; Whitehead, Jamal (whitehead@sgb-law.com) <whitehead@sgb-law.com>; Roe, Becky <roe@sgb-law.com>; Berger, Adam <berger@sgb-law.com>; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; Joe Fonseca <joe@3brancheslaw.com>

Subject: Washington v. The GEO Group, Inc. - post Mandamus financial document production

Dear Counsel,

Attached is a letter regarding GEO's post-Mandamus financial document production that requires attention and response.

<< File: 2019-12-13 Letter re GEO's Production 17.pdf >>

Thank you!

Andrea Brenneke

Assistant Attorney General

Civil Rights Unit

Washington State Attorney General

800 Fifth Avenue, Suite 2000

Seattle, Washington 98104

Direct: (206) 233-3384

Fax: (206) 464-6451

Andrea.Brenneke@atg.wa.gov

From: [Brenneke, Andrea \(ATG\)](#)
To: ["adrienne.scheffey@akerman.com"](#); [ashley.calhoun@akerman.com](#); [christopher.eby@akerman.com](#); [colin.barnacle@akerman.com](#); [joan@3brancheslaw.com](#)
Cc: [Chien, Marsha \(ATG\)](#); [Polozola, Lane \(ATG\)](#); [whitehead@sgb-law.com](#); [roe@sgb-law.com](#); [berger@sgb-law.com](#); [Hall, Caiti \(ATG\)](#); [joe@3brancheslaw.com](#)
Subject: FW: Washington v. NWDC - Missing Docs
Date: Tuesday, December 31, 2019 3:16:28 PM
Attachments: [Scan-06042019032108.pdf](#)

Dear Adrienne,

Here is the prior communication I was referencing.

This particular exchange occurred prior to Washington's win in the 9th Circuit and the denial of the Writ of Mandamus, which resulted in the requirement that GEO produce all financial records related to the VWP at the NWDC pursuant to ECF 133. In addition to what Marsha cited, the document we are requesting includes calculations and requests for equitable adjustment/reimbursement/renegotiation of the terms of the contract that make it responsive to at least all of the following RFPs:

REQUEST FOR PRODUCTION NO. 40: To the extent not previously produced, and to the extent they exist, please produce the NWDC's financial statements, Profit and Loss statements, and budget,

and budget to actual analysis on a quarterly or annual basis from 2005 to present, including all *documents that set forth the detailed operating costs of the facility, Voluntary Work Program costs,*

labor costs, and payroll expenses as well as all details of revenue, contract payments and reimbursements for the NWDC.

REQUEST FOR PRODUCTION NO. 43: To the extent not previously produced, and to the extent they exist, please produce all documents that contain *financial analysis, financial models, analysis of*

profits earned, valuation of the work performed, or other assessments of the Voluntary Work Program at the NWDC from 2005 to present.

REQUEST FOR PRODUCTION NO. 51: Please produce all documents, to the extent they exist, containing financial performance analyses, financial models, or other financial evaluations prepared

in connection with or for the purpose of GEO Group's offer(s) and bid(s), *and negotiations related to*

amendment(s) and renewal(s), of contracts related to the NWDC from 2005 - present.

All the best,

Andrea Brenneke

Assistant Attorney General

Civil Rights Unit

Washington State Attorney General

800 Fifth Avenue, Suite 2000

Seattle, Washington 98104

Direct: (206) 233-3384

Fax: (206) 464-6451

Andrea.Brenneke@atg.wa.gov

From: Chien, Marsha (ATG)

Sent: Wednesday, June 05, 2019 8:59 AM

To: shannon.armstrong@hklaw.com

Cc: Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; Baker, La Rond (ATG) <larond.baker@atg.wa.gov>; Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>; matt.donohue@hklaw.com; Whitehead, Jamal <whitehead@sgb-law.com>; kristin.asai@hklaw.com; Devin Theriot-Orr <devin@sunbird.law>; Andrew Free (andrew@immigrantcivilrights.com) <andrew@immigrantcivilrights.com>

Subject: Washington v. NWDC - Missing Docs

Shannon,

I am writing to express concern that GEO's response to the State's discovery requests is not complete. We recently received the attached document, which appears to be part of GEO's request to ICE for an equitable adjustment. It was obtained from ICE in response to a FOIA request.

The document is squarely responsive to RFP No. 12, which requested all communications about the VWP with ICE. As such, we request that GEO provide the complete, unredacted

document as well as any related communications with ICE. If any privileges apply, please specify them.

Kind Regards,

Marsha

Marsha Chien

Assistant Attorney General

Washington Attorney General's Office - Civil Rights Division

800 Fifth Avenue, Suite 2000

Seattle, Washington 98104

(206) 389-3886

BRENNEKE DECLARATION

EXHIBIT F



Adrienne Scheffey

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1900 16th Street
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adrienne.scheffey@akerman.com

January 8, 2020

Andrea Brenneke
Assistant Attorney General
Office of the Attorney General
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104

**RE: *Washington v. The GEO Group, Inc.*, 17-cv-05806-RJB
Post-Mandamus Production of Financial Information**

Counsel,

This letter serves as an updated response to the State's letter of December 13, 2019.

Requested Excel Files:

In your letter, you requested certain documents in excel or native format. The letter specifically asks GEO to identify whether there are any underlying excel files for the following bates numbered documents:

- GEO-State 299184 to GEO-State 299193;
- GEO-State 299184;
- GEO-State 229185;
- Exhibit 252.

GEO has reviewed these documents and does not believe that any underlying information needs to be produced under the Court's Order at Docket Number 133. It appears that all categories of information the Court ordered GEO to produce are included in those documents. Should you believe a specific category of required information is missing, please let us know and we can further confer about this issue.

Additionally, a production containing native excel files for the information in GEO-State 299184 and 299185 is forthcoming. This should alleviate any concerns about those documents being difficult to read.

Andrea Brenneke
Assistant Attorney General
Page 2

VWP Reimbursement Summary:

In your letter, you also request that information be added to GEO-State 299194 for the dates between 2005 and September 2009. Any information not contained in that spreadsheet would be in GEO's paper files or archives—to the extent such documents exist. GEO has begun the process of retrieving potentially responsive documents from storage and is reviewing the documents individually. GEO will update the State once it has reviewed the documents if there are any others that exist.

Keefe Files:

In addition to the documents already produced, your letter also asks GEO to locate and produce Keefe records for all of 2005 – 2012, February 2013, April-September 2013, April and June of 2014, March and August of 2015, January of 2016, and October – December of 2019. GEO produced the records for August 2015 at GEO-State 297470. As with the VWP reimbursement summary, GEO is reviewing its hard copy records and archives to identify whether these documents exist. GEO will update the State once it has reviewed the documents if there are any others that exist.

Redacted Letter:

Finally, the State requests that GEO produce an unredacted version of a letter that was produced *by the State* as 2018-ICLI-000052. This letter provides an update to ICE regarding the cost of ongoing litigation around the country, including the present litigation. The State has represented, in a December 31, 2019 email, that the redacted information is discoverable under the Court's Order at Docket Number 133, specifically with respect to the following requests:

REQUEST FOR PRODUCTION NO. 40: To the extent not previously produced, and to the extent they exist, please produce the NWDC's financial statements, Profit and Loss statements, and budget, ~~and budget to actual analysis on a quarterly or annual basis from 2005 to present~~, including all documents that set forth the detailed operating costs of the facility, Voluntary Work Program costs, labor costs, and payroll expenses as well as all details of revenue, contract payments and reimbursements for the NWDC.

REQUEST FOR PRODUCTION NO. 43: To the extent not previously produced, and to the extent they exist, please produce all documents that contain financial analysis, financial models, analysis of profits earned, valuation of the work performed, or other assessments of the Voluntary Work Program at the NWDC from 2005 to present.

REQUEST FOR PRODUCTION NO. 51: Please produce all documents, to the extent they exist, containing financial performance analyses, financial models, or other financial evaluations prepared ~~in connection with~~ or for the purpose of GEO Group's offer(s) and

Andrea Brenneke
Assistant Attorney General
Page 3

bid(s), and negotiations related to amendment(s) and renewal(s), of contracts related to the NWDC from 2005 - present.

The strikethroughs and underlines in the Requests above represent the Court's modifications to those Requests at page 9 of Docket Number 133. GEO addresses each Request in turn.

The redacted letter to ICE is not responsive to RFP 40 because it does not set forth the "detailed operating costs of the facility, Voluntary Work Program costs, labor costs, [or] payroll expenses." Nor is it limited to the Northwest ICE Processing Center ("NWIPC"). Instead, as is clear from the redacted version of the letter, it lays out the costs of litigation across the country and seeks intervention from the Department of Justice.

Likewise, the redacted letter to ICE is not responsive to RFP 43 because it is not an analysis or model of "profits earned, valuation of the work performed, or other assessment[] of the Voluntary Work Program" at the NWIPC. Again, the letter estimates legal costs for defending various lawsuits. The letter also provides a summary of the relief requested by Plaintiffs (in the aggregate). This information does not amount to a "financial model" of the profits earned by GEO from the VWP at the NWIPC.

RFP 51 seeks financial analyses and models created for the purpose of amendments or renewals of contracts related to the NWIPC from 2005 to present. Again, the letter does not contain any information about an amendment or renewal of the contract. Instead, the letter contains information about the cost of legal fees related to defending this lawsuit and others around the country. GEO's NWIPC contract was not amended or renegotiated as a result of this letter. And, RFP 51 does not seek information about "potential" or "rejected" amendments to the contract. Indeed, this letter does not seek any relief exclusively related to the NWIPC contract. Thus, the redacted information is not responsive to RFP 51.

Finally, the unredacted information in the letter makes clear that that it does not address any financial information related exclusively to the NWIPC or its operation. Thus, any information contained therein goes beyond the scope of the Ninth Circuit's Mandamus Order and of this litigation.

Best,

s/Adrienne Scheffey

BRENNEKE DECLARATION

EXHIBIT G

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APPEARANCES

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Nwauzor, et al.:

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The GEO Group:

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JOAN K. MELL
III Branches Law PLLC
1019 Refents Boulevard
Suite 204
Fircrest, Washington

1 MS. SCHEFFY: We'll plan on it. Thank you,
2 Your Honor.

3 THE COURT: Any other matters for discussion,
4 recognizing that it is almost noon?

5 MS. BRENNEKE: Your Honor, this may not be a
6 substantive matter to address in this moment. We did want to
7 raise some issues having to do with the post mandamus
8 financial document production. The parties are still
9 working -- GEO had a date certain by which it was to produce
10 those documents. They did produce some of those documents.
11 We are in dialogue right now about supplementing those.

12 There is one document, however, that we have met and
13 conferred about where we have a disagreement as to whether
14 they are going to produce an unredacted version of a one-page
15 letter in which GEO has estimated the cost necessary to
16 achieve compliance with minimum wage for the plaintiffs in
17 this case and others.

18 Whether or not we want to talk about that now and have a
19 ruling or make time somehow for us to do that next week, we
20 feel like that issue is ripe for the Court's involvement.

21 THE COURT: What has been cut out of the letter?

22 MS. BRENNEKE: I have a copy of the letter here. I
23 have copies for everyone. There are large sections redacted.
24 What is pertinent is that this is a letter from GEO to ICE
25 seeking a request for equitable adjustment in a certain

1 amount. The amount has been blacked out. The total amounts
2 for request for equitable adjustment have been blacked out.
3 The legal expenses have been blacked out. Frankly, we don't
4 care about those. We are looking at the underlying issues.
5 There is a large block that says that -- that follows the
6 sentence, "We have conducted an estimation of the costs
7 necessary to achieve compliance with the plaintiffs."

8 In that block, we are imagining that for each state, there
9 was probably that assessment of what it would cost them.

10 This is very clearly a measure of the value of the work of
11 the detainees in those places. That would go both to our
12 liability and damages. We request it be produced in an
13 unredacted form.

14 THE COURT: What is the secret? This is a letter
15 from the government contractor to the government? What is
16 the secret?

17 MR. BARNACLE: Your Honor, what is redacted, in fact,
18 is not responsive in any way to what was ordered on the Ninth
19 Circuit's mandamus. It required the disclosure of specific
20 information to the Northwest Detention Center.

21 Counsel just represented that she thinks it is broken down
22 by state. It is not. It is an aggregate of a number that
23 applies to every facility across the country, which is not
24 ordered by the mandamus order. It is being withheld on those
25 grounds. It is not ordered by mandamus. It is not relevant

1 to this case. It is not broken down for the Northwest
2 Detention Center.

3 MS. BRENNEKE: Your Honor, if it would assist the
4 Court, we have a copy of that letter here.

5 I guess I have two points in response. One is that if
6 there is only an aggregate analysis, then we should have that
7 aggregate analysis. We know from other financial records,
8 discovery, that there is probably some underlying backup that
9 the facility -- or that the corporation has conducted that
10 would have, you know, the spreadsheets or whatever it is that
11 they use to determine that. We would also ask that be
12 produced.

13 May I approach the Court?

14 THE COURT: No. I hate to say this, if you can't
15 agree, you should make a motion.

16 I find it hard to believe that after all this, you can't
17 agree on these things. I would have to go back and look at
18 my order that was affirmed and apply it to this document.
19 You know, I have other things going on around here, too. I
20 am starting what looks like a month-long case on Monday. If
21 you can't agree, make a motion and we will deal with it.

22 It is hard for me to -- you know, I am not a government
23 contractor. I am a government employee, I guess, not a
24 contractor. It is always hard for me to understand what the
25 big deal is. Why can't we have open government? What is the

1 big deal? There may be some big deal. It gives you a right
2 to keep things back, but I don't know. Because I don't know
3 the answer to this, I don't want to rule on it without full
4 briefing.

5 Okay. Anything else? You have burned into my lunch hour.

6 MS. SCHEFFY: This may be something for briefing. We
7 have been contacted about ICE about the photographs taken of
8 the site inspection. You may recall your order had advised
9 counsel for both sides to be cautious not to photograph the
10 faces of detainees.

11 THE COURT: Photograph what?

12 MS. SCHEFFY: Faces of detainees, their likeness.

13 About 557 photos have photographs of detainees' faces.
14 ICE has asked to make the redactions and needs additional
15 time to make those. We have reached an agreement that it
16 could be just to those the State intends to produce at trial,
17 but we don't have an agreement that ICE can make the
18 redactions.

19 In the interest of time, it is worth getting those to ICE
20 as soon as possible and the redactions can be disputed later.
21 It doesn't seem there would be any reason the faces of
22 detainees would be relevant to this claim.

23 MS. CHIEN: We have proposed that there are, as you
24 heard, 557 photos -- possibly 557. I actually don't know.
25 It is just really not efficient for ICE to sit there and

BRENNEKE DECLARATION

EXHIBIT H

From: [Chien, Marsha \(ATG\)](#)
To: adrienne.scheffey@akerman.com; [Brenneke, Andrea \(ATG\)](#); ashley.calhoun@akerman.com; christopher.eby@akerman.com; colin.barnacle@akerman.com; joan@3brancheslaw.com
Cc: [Polozola, Lane \(ATG\)](#); whitehead@sgb-law.com; roe@sgb-law.com; berger@sgb-law.com; [Hall, Caiti \(ATG\)](#); joe@3brancheslaw.com
Subject: RE: Washington v. NWDC - Missing Docs
Date: Wednesday, January 15, 2020 10:56:56 AM

Adrienne,

I'm writing to follow up regarding GEO's letter request to ICE for an equitable adjustment, labeled 2018-ICLI-000052. Again, the State believes the document to be directly responsive to the State's requests and no privilege or work product justifies GEO's redactions. The Court suggested GEO provide the letter unredacted at the pre-trial conference.

Please either provide the letter unredacted by Monday at 8am or let us know if you will require the State to file a motion.

Thanks,
Marsha

From: adrienne.scheffey@akerman.com <adrienne.scheffey@akerman.com>
Sent: Wednesday, January 08, 2020 5:31 PM
To: [Brenneke, Andrea \(ATG\)](#) <andrea.brenneke@atg.wa.gov>; ashley.calhoun@akerman.com; christopher.eby@akerman.com; colin.barnacle@akerman.com; joan@3brancheslaw.com
Cc: [Chien, Marsha \(ATG\)](#) <marsha.chien@atg.wa.gov>; [Polozola, Lane \(ATG\)](#) <Lane.Polozola@ATG.WA.GOV>; whitehead@sgb-law.com; roe@sgb-law.com; berger@sgb-law.com; [Hall, Caiti \(ATG\)](#) <Caiti.Hall@atg.wa.gov>; joe@3brancheslaw.com
Subject: RE: Washington v. NWDC - Missing Docs

Andrea,

Please find attached additional correspondence related to the State's December 13th letter.

Best,

Adrienne Scheffey

Akerman LLP | 1900 Sixteenth Street, Suite 1700 | Denver, CO 80202
D: 303 640 2512 | T: 303 260 7712
adrienne.scheffey@akerman.com

[Profile](#)

Akerman Logo



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

From: Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>
Sent: Tuesday, December 31, 2019 4:17 PM
To: Scheffey, Adrienne (Assoc-Den) <adrienne.scheffey@akerman.com>; Calhoun, Ashley (Assoc-Den) <ashley.calhoun@akerman.com>; Eby, Christopher (Ptnr-Den) <christopher.eby@akerman.com>; Barnacle, Colin (Ptnr-Den) <colin.barnacle@akerman.com>; joan@3brancheslaw.com
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Subject: FW: Washington v. NWDC - Missing Docs

Dear Adrienne,

Here is the prior communication I was referencing.

This particular exchange occurred prior to Washington's win in the 9th Circuit and the denial of the Writ of Mandamus, which resulted in the requirement that GEO produce all financial records related to the VWP at the NWDC pursuant to ECF 133. In addition to what Marsha cited, the document we are requesting includes calculations and requests for equitable adjustment/reimbursement/renegotiation of the terms of the contract that make it responsive to at least all of the following RFPs:

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containing financial performance analyses, financial models, or other financial evaluations prepared in connection with or for the purpose of GEO Group's offer(s) and bid(s), *and negotiations related to amendment(s) and renewal(s)*, of contracts related to the NWDC from 2005 - present.

All the best,

Andrea Brenneke
Assistant Attorney General
Civil Rights Unit
Washington State Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
Direct: (206) 233-3384
Fax: (206) 464-6451
Andrea.Brenneke@atg.wa.gov

From: Chien, Marsha (ATG)
Sent: Wednesday, June 05, 2019 8:59 AM
To: shannon.armstrong@hklaw.com
Cc: Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; Baker, La Rond (ATG) <larond.baker@atg.wa.gov>; Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>; matt.donohue@hklaw.com; Whitehead, Jamal <whitehead@sgb-law.com>; kristin.asai@hklaw.com; Devin Theriot-Orr <devin@sunbird.law>; Andrew Free (andrew@immigrantcivilrights.com) <andrew@immigrantcivilrights.com>
Subject: Washington v. NWDC - Missing Docs

Shannon,

I am writing to express concern that GEO's response to the State's discovery requests is not complete. We recently received the attached document, which appears to be part of GEO's request to ICE for an equitable adjustment. It was obtained from ICE in response to a FOIA request.

The document is squarely responsive to RFP No. 12, which requested all communications about the VWP with ICE. As such, we request that GEO provide the complete, unredacted document as well as any related communications with ICE. If any privileges apply, please specify them.

Kind Regards,
Marsha

Marsha Chien

Assistant Attorney General
Washington Attorney General's Office - Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
(206) 389-3886

BRENNEKE DECLARATION

EXHIBIT I

From: adrienne.scheffey@akerman.com
To: [Chien, Marsha \(ATG\)](#); [Brenneke, Andrea \(ATG\)](#); ashley.calhoun@akerman.com; christopher.eby@akerman.com; colin.barnacle@akerman.com; joan@3brancheslaw.com
Cc: [Polozola, Lane \(ATG\)](#); whitehead@sqb-law.com; roe@sqb-law.com; berger@sqb-law.com; [Hall, Caiti \(ATG\)](#); joe@3brancheslaw.com
Subject: RE: Washington v. NWDC - Missing Docs
Date: Friday, January 17, 2020 11:17:32 AM
Attachments: [Wonhoff Exhibit 263 - 082219.pdf](#)

Marsha,

Upon reviewing the transcript, we do not agree that Judge Bryan agreed the letter should be provided unredacted at the pre-trial conference. Further, we have provided a detailed description as to why the letter is not responsive to any of the criteria GEO was ordered to produce following the mandamus proceedings. Indeed, the document is not relevant to the State's case and is not broken down or limited to the Northwest ICE Processing Center. Furthermore, the document is not relevant to the State's claims that GEO was unjustly enriched, as it simply states the status of the costs of litigation and the costs that ICE *could* incur nationwide if litigation were to change its operating practices. Indeed, to the extent that the State argues that information about the costs of litigation are relevant to its claims—GEO should be able to rely upon those costs as an offset to any disgorgement analysis. GEO further notes that this document was provided by ICE and ICE made redactions. Thus, ICE would likely need to be afforded an opportunity to weigh in on the document.

Please know that should the State file a motion seeking to unredact the letter to ICE, GEO will likewise move to unredact the attached document. As the State has previously argued, this case was not brought on behalf of the department of L&I. ECF 118 at 5. Thus, the attached document cannot be considered to have been created in preparation for this litigation. Because the document does not constitute work-product, the document should be unredacted as there is no question that the nature of this suit "puts the legal advice [L&I] received directly in issue." *Hearn v. Rhay*, 68 F.R.D. 574, 583 (E.D. Wash. 1975); *McCarthy v. Barrett*, No. C09-5120RBL, 2013 WL 12416487, at *1 (W.D. Wash. Jan. 2, 2013) ("Permitting the City to both rely on the advice it obtained and to shield the substance of that advice from further inquiry would be manifestly unfair."). Here, the State has specifically put at issue whether it was "unjust" for GEO to not apply the WMWA to detainees. Thus, the *Hearn* test applies.

Best,

Adrienne Scheffey

Akerman LLP | 1900 Sixteenth Street, Suite 1700 | Denver, CO 80202
D: 303 640 2512 | T: 303 260 7712
adrienne.scheffey@akerman.com

From: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>

Sent: Wednesday, January 15, 2020 11:57 AM

To: Scheffey, Adrienne (Assoc-Den) <adrienne.scheffey@akerman.com>; Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>; Calhoun, Ashley (Assoc-Den) <ashley.calhoun@akerman.com>; Eby, Christopher (Ptnr-Den) <christopher.eby@akerman.com>; Barnacle, Colin (Ptnr-Den)

<colin.barnacle@akerman.com>; joan@3brancheslaw.com

Cc: Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; whitehead@sgb-law.com; roe@sgb-law.com; berger@sgb-law.com; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; joe@3brancheslaw.com

Subject: RE: Washington v. NWDC - Missing Docs

Adrienne,

I'm writing to follow up regarding GEO's letter request to ICE for an equitable adjustment, labeled 2018-ICLI-000052. Again, the State believes the document to be directly responsive to the State's requests and no privilege or work product justifies GEO's redactions. The Court suggested GEO provide the letter unredacted at the pre-trial conference.

Please either provide the letter unredacted by Monday at 8am or let us know if you will require the State to file a motion.

Thanks,
Marsha

From: adrienne.scheffey@akerman.com <adrienne.scheffey@akerman.com>

Sent: Wednesday, January 08, 2020 5:31 PM

To: Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>; ashley.calhoun@akerman.com; christopher.eby@akerman.com; colin.barnacle@akerman.com; joan@3brancheslaw.com

Cc: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>; Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; whitehead@sgb-law.com; roe@sgb-law.com; berger@sgb-law.com; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; joe@3brancheslaw.com

Subject: RE: Washington v. NWDC - Missing Docs

Andrea,

Please find attached additional correspondence related to the State's December 13th letter.

Best,

Adrienne Scheffey

Akerman LLP | 1900 Sixteenth Street, Suite 1700 | Denver, CO 80202

D: 303 640 2512 | T: 303 260 7712

adrienne.scheffey@akerman.com

[Profile](#)

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From: Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>
Sent: Tuesday, December 31, 2019 4:17 PM
To: Scheffey, Adrienne (Assoc-Den) <adrienne.scheffey@akerman.com>; Calhoun, Ashley (Assoc-Den) <ashley.calhoun@akerman.com>; Eby, Christopher (Ptrn-Den) <christopher.eby@akerman.com>; Barnacle, Colin (Ptrn-Den) <colin.barnacle@akerman.com>; joan@3brancheslaw.com
Cc: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>; Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; whitehead@sgb-law.com; roe@sgb-law.com; berger@sgb-law.com; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; joe@3brancheslaw.com
Subject: FW: Washington v. NWDC - Missing Docs

Dear Adrienne,

Here is the prior communication I was referencing.

This particular exchange occurred prior to Washington's win in the 9th Circuit and the denial of the Writ of Mandamus, which resulted in the requirement that GEO produce all financial records related to the VWP at the NWDC pursuant to ECF 133. In addition to what Marsha cited, the document we are requesting includes calculations and requests for equitable adjustment/reimbursement/renegotiation of the terms of the contract that make it responsive to at least all of the following RFPs:

REQUEST FOR PRODUCTION NO. 40: To the extent not previously produced, and to the extent they exist, please produce the NWDC's financial statements, Profit and Loss statements, and budget, and budget to actual analysis on a quarterly or annual basis from 2005 to present, including all *documents that set forth the detailed operating costs of the facility, Voluntary Work Program costs, labor costs, and payroll expenses as well as all details of revenue, contract payments and reimbursements for the NWDC.*

REQUEST FOR PRODUCTION NO. 43: To the extent not previously produced, and to the extent they exist, please produce all documents that contain *financial analysis, financial models, analysis of profits earned, valuation of the work performed, or other assessments of the Voluntary Work Program at the NWDC from 2005 to present.*

REQUEST FOR PRODUCTION NO. 51: Please produce all documents, to the extent they exist,

containing financial performance analyses, financial models, or other financial evaluations prepared in connection with or for the purpose of GEO Group's offer(s) and bid(s), and negotiations related to amendment(s) and renewal(s), of contracts related to the NWDC from 2005 - present.

All the best,

Andrea Brenneke
Assistant Attorney General
Civil Rights Unit
Washington State Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
Direct: (206) 233-3384
Fax: (206) 464-6451
Andrea.Brenneke@atg.wa.gov

From: Chien, Marsha (ATG)
Sent: Wednesday, June 05, 2019 8:59 AM
To: shannon.armstrong@hklaw.com
Cc: Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; Baker, La Rond (ATG) <larond.baker@atg.wa.gov>; Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>; matt.donohue@hklaw.com; Whitehead, Jamal <whitehead@sgb-law.com>; kristin.asai@hklaw.com; Devin Theriot-Orr <devin@sunbird.law>; Andrew Free (andrew@immigrantcivilrights.com) <andrew@immigrantcivilrights.com>
Subject: Washington v. NWDC - Missing Docs

Shannon,

I am writing to express concern that GEO's response to the State's discovery requests is not complete. We recently received the attached document, which appears to be part of GEO's request to ICE for an equitable adjustment. It was obtained from ICE in response to a FOIA request.

The document is squarely responsive to RFP No. 12, which requested all communications about the VWP with ICE. As such, we request that GEO provide the complete, unredacted document as well as any related communications with ICE. If any privileges apply, please specify them.

Kind Regards,
Marsha

Marsha Chien

Assistant Attorney General
Washington Attorney General's Office - Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
(206) 389-3886

BRENNEKE DECLARATION

EXHIBIT J

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APPEARANCES

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The GEO Group:
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III Branches Law PLLC
1019 Refents Boulevard
Suite 204
Fircrest, Washington

1 prior history of L&I enforcement at the Northwest Detention
2 Center or other institutions. That motion should be granted
3 for the first phase of the trial, but denied if we get to the
4 unjust enrichment argument. And also I think it should be
5 denied regarding statements made by Labor & Industries
6 employees for both phases of the trial. Those statements may
7 be relevant and admissible. Generally, prior history of law
8 enforcement -- of L&I enforcement at this and other similar
9 institutions should be granted.

10 No. 6 is to exclude all evidence of work programs at state
11 and local government facilities. I assume that the
12 governmental immunity defenses will be part of this trial
13 and, if so, that motion must be denied.

14 No. 7 is to exclude all evidence or argument suggesting
15 that the ICE-GEO contract requires that GEO pay only \$1 per
16 day. That motion is granted. That does not necessarily
17 limit testimony as to why GEO pays a dollar a day, but I
18 think it is clear that you cannot argue that the contract
19 requires that they only pay a dollar a day.

20 No. 8 is to exclude any reference to the Northwest Center
21 as the Northwest ICE Processing Center. That motion is
22 denied. That is not something that could be confusing to the
23 jury, and it can be explained to the jury and we can try to
24 use the proper name of the center during the trial.

25 The next motion is No. 9, to exclude all witnesses not

1 previously disclosed. There are five witnesses named as part
2 of that motion. The motion should be denied as to the
3 Labor & Industries employees. That is Buchanan and Johnson.
4 It should be denied as to GEO employees Ragsdale and Evans,
5 provided that if the plaintiff wants to depose them, they
6 should be allowed to do that before trial. As to Williams,
7 the motion is granted.

8 Defense motion is to exclude argument and evidence related
9 to the government-owned facility and residential exemptions
10 to the Minimum Wage Act. This basically -- these issues have
11 been, to some extent, resolved by prior rulings, and those
12 rulings will stand. The motion is otherwise denied, and we
13 will deal with those issues at trial. I guess that's all I
14 want to say about No. 10.

15 Now we will turn to GEO's motions in limine at Docket
16 No. 355. These are GEO's motions in limine in regard to the
17 State's claim.

18 Excuse me. I need to oil my voice with cold coffee.

19 Motions in limine in Docket No. 355, No. 1 is argument
20 that voluntary work program positions should have or could
21 have been filled by non-detainee Washington residents or
22 citizens. That motion is denied.

23 Motion in limine 2 is argument or evidence that the
24 voluntary work program is a forced work situation that should
25 be excluded. That motion should be granted, but the reasons

1 that employees -- that detainees' work is not excluded by
2 this ruling. It is directed at the program, not individuals.

3 Motion in limine No. 3 is for exclusion of evidence
4 related to GEO's legal fees, including any request for
5 compensation for legal fees sent to ICE. That motion is
6 granted. I don't know what kind of a side issue that might
7 be, but it is not something that we need to get into. That
8 motion is granted.

9 Motion in limine No. 4 is to exclude evidence or argument
10 related to GEO's size, profitability, financial status or
11 overall wealth. That motion is granted generally, but may be
12 denied or the issue reopened when we get into the economic
13 reality test evidence in the first phase of the trial. It
14 may be relevant and admissible as to the damage and non-jury
15 phases of the trial. Granting the motion should not exclude
16 evidence that GEO permits detainees to work alongside its
17 regular employees as a core part of its business model, and
18 that GEO enjoys substantial financial benefits and profits as
19 a result. That type of evidence may be relevant, although
20 general evidence or testimony about the -- about GEO's size,
21 profitability, financial status or overall wealth should be
22 excluded.

23 Motion in limine No. 5, exclusion of evidence or argument
24 that GEO is involved in other lawsuits. That motion is
25 granted. I made a note that such evidence should be subject

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/ Angela Nicolavo

ANGELA NICOLAVO
COURT REPORTER

BRENNEKE DECLARATION

EXHIBIT K

FILED UNDER SEAL

BRENNEKE DECLARATION

EXHIBIT L

From: adrienne.scheffey@akerman.com
To: [Brenneke, Andrea \(ATG\); colin.barnacle@akerman.com; joan@3brancheslaw.com; whitehead@sgb-law.com](mailto:Brenneke, Andrea (ATG); colin.barnacle@akerman.com; joan@3brancheslaw.com; whitehead@sgb-law.com)
Cc: [Chien, Marsha \(ATG\); Polozola, Lane \(ATG\); Hall, Caiti \(ATG\); joe@3brancheslaw.com](mailto:Chien, Marsha (ATG); Polozola, Lane (ATG); Hall, Caiti (ATG); joe@3brancheslaw.com)
Subject: RE: Washington v. The GEO Group, Inc. - Renewed Request for Partially Unredacted Exhibit 365 and Underlying Spreadsheets/Calculations Related to NWDC
Date: Monday, August 03, 2020 11:43:04 AM

All,

Our team is tied up with other matters in the coming days. Please let us know the State's availability to confer about this issue and the confidentiality issue this Friday between 1:00 and 3:00 MST. If the State is not available at that time, please let us know your availability on Monday, August 10th. For the confidentiality issue, please provide us with your proposed solution for the documents marked confidential, including how the State proposes handling those exhibits if the trial is streamed live online.

Best,

Adrienne Scheffey

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D: 303 640 2512 | T: 303 260 7712
adrienne.scheffey@akerman.com

Profile



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From: Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>
Sent: Monday, August 3, 2020 12:38 PM
To: Scheffey, Adrienne (Assoc-Den) <adrienne.scheffey@akerman.com>; Barnacle, Colin (Ptnr-Den) <colin.barnacle@akerman.com>; Joan Mell <joan@3brancheslaw.com>; Whitehead, Jamal (whitehead@sgb-law.com) <whitehead@sgb-law.com>
Cc: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>; Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; 'Joe Fonseca' <joe@3brancheslaw.com>
Subject: Washington v. The GEO Group, Inc. - Renewed Request for Partially Unredacted Exhibit 365

and Underlying Spreadsheets/Calculations Related to NWDC

Dear Counsel,

We hope you are safe and well.

We previously met and conferred about the production of Trial Exhibit 365 without redaction of the portion regarding GEO's calculations of the amount it would take to comply with detainee Minimum Wage demands and the underlying spreadsheets/calculations related to the NWDC. GEO refused to produce those.

We renew our request for those documents now that we have the benefit of Brian Evan's testimony on the subject that demonstrate their relevance and responsiveness to Washington's discovery requests. Please produce these documents by close of business Wednesday, August 5, 2020 or we will seek the Court's intervention.

Also, just to confirm, as we made clear in our response to GEO's MIL, we do NOT seek information or redactions regarding GEO's attorneys fees and costs that also were contained in that letter.

We are attaching Trial Exhibit 365, filed at ECF 362-1_Ex. A, for your convenience.

Very truly yours,

Andrea Brenneke
Assistant Attorney General
Civil Rights Unit
Washington State Attorney General
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Direct: (206) 233-3384
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