

The Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

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

DECLARATION OF TRACEY VALERIO

1 I, TRACEY VALERIO, state the following under oath subject to the penalty of perjury
2 under the laws of the United States and the State of Washington:

3 1.0 I am over the age of eighteen and am competent to testify in this case. My testimony is
4 based upon my personal knowledge and my education, training, and experience. I am
5 presently working as an attorney for Frontier Solutions, LLC in Mexico City, Mexico.
6 My most immediate past position was with the United States Department of Homeland
7 Security (“DHS”) Immigration and Customs Enforcement (“ICE”), where I was
8 employed from 2009 until 2018. I was the Executive Associate Director of Management
9 and Administration from April 2015 to April 2018. From October 2009 to October
10 2011, I was a Special Advisor to the Director. From October 2008 to October 2009, I
11 was a Resident Legal Advisor at the U.S. Department of Justice. And from November of
12 2005 to October of 2008, I was an Assistant United States Attorney for the United States
13 Department of Justice.
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17 2.0 In my role with ICE, I was responsible for integration and coordination of ICE support
18 functions and customer service. I ensured alignment of the management functions to the
19 Director’s leadership strategic vision and ongoing dynamic operational requirements. I
20 managed, coordinated, and oversaw over 2,000 employees stationed nationwide arrayed
21 across eight departments, including: Human Resources, Chief Financial Officer, Chief
22 Information Officer, Office of Acquisitions and Office Policy. As relevant to this action,
23 the development and implementation of ICE’s budget and all agency contracting was
24 under my purview and supervisory responsibility.
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1 3.0 In preparing my declaration, I have reviewed the relevant ICE-GEO contract, ICE
2 PBNDS standards applicable to the Voluntary Work Program (“VWP”), the President’s
3 Budget request for fiscal year 2018, the DHS Budget in Brief for Fiscal Year 2018, and
4 the Court’s Order Dkt. No. 29, specifically the following portion that I have been asked
5 by GEO to comment on:
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7 “Section 1555(d) authorizes congressional appropriations for “payment of allowances [to
8 detainees]...for work performed,” but payment is limited to “such rate as may be
9 specified from time to time in the appropriation Act involved.” § 1555(d) (emphasis
10 added). Under this section, Congress arguably speaks to detainee wages when Congress
11 appropriates payment of allowances to detainees for work performed, but although §
12 1555(d) is still in effect, Congress has not specified any rate for detainee work since
13 fiscal year 1979. At that time, Congress appropriated funds for “payment of allowances
14 (at a rate not in excess of \$1 per day)...for work performed.” PL 95–431 (HR 12934), PL
15 95–431, Oct. 10, 1978, 92 Stat 1021 (emphasis added). At least since fiscal year 1979,
16 Congress has abandoned direct appropriations payment of allowances, despite its
17 awareness of how to do so. See, e.g., Consolidated Appropriations Act, 2016, PL 114–
18 113, December 18, 2015, 129 Stat 2242, 2497.”

16 4.0 During my tenure at ICE, ICE authorized a \$1.00 per day allowance that ICE paid for
17 detainee participation in a VWP at its Service Processing Centers (“SPC”) and at its
18 Contract Detention Facilities (“CDF”), which includes the Northwest Detention Center.

19
20 5.0 In its contracting and budget execution, ICE followed the \$1 per day rate established by
21 Congress in 1979.

22 6.0 ICE used this rate in each subsequent budget cycle to set the amount ICE could expend in
23 direct costs for detainee pay. ICE paid detainees \$1.00 per day as an allowance for VWP
24 participation. ICE did not enroll detainees in the federal competitive civil service nor
25 otherwise consider detainees ICE employees or SPC contractor employees. Pursuant to
26 Executive Order 11935 and DHS Management Directive 3120.2, ICE could not employ
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1 persons unlawfully present in the United States. And with regard to the relationship
2 between GEO and detainees, if ICE had considered detainees GEO employees then ICE
3 would have conducted suitability background checks for VWP detainee participants. ICE
4 did not conduct these suitability background checks on VWP detainee participants nor
5 did ICE include in its budget the additional costs for extending such background checks
6 to VWP detainee participants because it never intended to conduct them. The costs for
7 these checks to ICE are at least \$5,000.00 in administrative overhead. As a practical
8 matter, in many cases it would be impossible to even conduct these checks within the
9 average length of a detainee's stay.
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12 7.0 In my capacity wherein I was responsible for advising and developing the budget for the
13 Director who then advised the DHS Secretary and, in turn, the President on
14 appropriations requests, I relied upon the Congressional rate and did not consider the
15 \$1.00 per day rate "abandoned." In fact, ICE consistently formulated its budget using
16 this rate throughout the budget cycles dating back to 1979 and reflected this rate in its
17 detention contracts.
18

19 8.0 Detainee pay was a direct cost to ICE, meaning it was treated as a fixed unit expenditure
20 linked to a congressional appropriation based upon the President's Budget.
21

22 9.0 I did not make budget recommendations or projections with the expectation that this
23 \$1.00 per day rate was merely a reimbursement rate to GEO. It was not just a
24 reimbursement rate because ICE could not expend more than \$1.00 a day for detainee
25 wages in a SPC or CDF without Congress setting a higher rate and appropriating the
26 funds needed to pay the higher rate. I made my budget recommendations and Congress
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1 appropriated monies to ICE based upon my budget recommendations at \$1.00 per day for
2 detainee pay. I understood that this was the set rate for detainee pay authorized by
3 Congress unless and until Congress set a new rate.
4

5 10.0 Congress approved continuing the rate at \$1.00 per day when it appropriated monies for
6 detainee pay at ICE's projected expenditures for detainee pay calculated at the \$1.00 per
7 day rate.
8

9 Dated this 20th day of July, 2018 at Huixquilucan, Mexico.

10 

11 TRACEY VALERIO

CERTIFICATE OF SERVICE

I, Joseph Fonseca, hereby certify as follows:

I am over the age of 18, a resident of Pierce County, and not a party to the above action.

On July 20, 2018, I electronically filed the above Declaration of Tracey Valerio, with the Clerk of the Court using the CM/ECF system and served via Email to the following:

Schroeter, Goldmark & Bender
Adam J. Berger, WSBA No. 20714
Lindsay L. Halm, wSBA No. 37141
Jamal N. Whitehead, WSBA No. 39818
810 Third Avenue, Suite 500
Seattle, WA 98104
berger@sgb-law.com
halm@sgb-law.com
whitehead@sgb-law.com

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

Norton Rose Fulbright US LLP
Charles A. Deacon (Pro Hac Vice)
300 Convent St.
San Antonio, TX 78205
charlie.deacon@nortonrosefulbright.com

Sunbird Law, PLLC
Devin Theriot-Orr
1001 Fourth Avenue, Suite 3200
Seattle, WA 98154
devin@sunbird.law

Norton Rose Fulbright US LLP
Andrea D'Ambra (Pro Hac Vice)
1301 Avenue of the Americas
New York, NY 10019
andrea.dambra@nortonrosefulbright.com

Norton Rose Fulbright US LLP
Mark Emery (Pro Hac Vice)
799 9th St. NW, Suite 1000
Washington, DC 20001-4501
(202)-662-0210
mark.emery@nortonrosefulbright.com

Meena Pallipamu Menter
8201 164th Ave. N.E., Suite200
Seattle, WA 98052
(206)-419-7332
meena@meenamenter.com

I certify under penalty of perjury under the laws of the State of Washington that the above information is true and correct.

DATED this 20th day of July, 2018 at Fircrest, Washington.



Joseph Fonseca, Paralegal