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THE HONORABLE ROBERT J. BRYAN

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

STATE OF WASHINGTON,

Plaintiff,

vs.

THE GEO GROUP, INC.,

Defendant.

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

**BRIEF OF AMICI CURIAE THE FAIR
WORK CENTER AND SEATTLE UNIVERSITY
WORKERS' RIGHTS CLINIC**

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1 **I. INTRODUCTION**

2 This case, like any, is about enforcement of the law. However, as this brief will show, low-
3 wage workers are vulnerable and suffer from a system-wide failure to enforce minimum wage
4 laws. The fact of widespread wage theft is well documented in social science studies, and the
5 remedy has been spelled out by experts: Strategic, visible enforcement of minimum wage laws
6 is necessary to bring employers into compliance and provide workers with the minimum wages
7 guaranteed under our laws.

8 Defendant, The GEO Group, Inc. (“GEO”), is one of two largest private prison
9 companies in the industry, with over \$2.3 billion dollars in revenues reported in 2018, according
10 to its 2018 Annual Report. Instead of paying workers in their Tacoma facility Washington’s
11 minimum wage of \$12 per hour, GEO pays immigrant detainees at the Northwest Detention
12 Center one dollar per day *to work*: they collect and distribute laundry, prepare and serve food,
13 clean, paint interior walls, and cut hair. Dkt. 184-1, at 8-9.

14 Amici, Fair Work Center Legal Clinic and the Seattle University Workers’ Rights Clinic
15 (together “The Clinics”) represent low-wage workers who seek to enforce their rights to
16 minimum wage, breaks, overtime, and other minimum standards of employment. We see in the
17 State’s case against GEO a glaring example of wage theft and an urgent need to enforce our
18 State’s minimum wage law.

19 **II. IDENTITY AND INTEREST OF AMICI CURIAE**

20 The Fair Work Center (“Fair Work Center”) is a non-profit, non-partisan community
21 organization based in Seattle, Washington, dedicated to assisting low-wage workers with
22 understanding and enforcing their workplace rights. The Fair Work Center convenes a
23 collaborative of community organizations, each of which serves a

1 marginalized or otherwise vulnerable community and provides access to training and
2 information to its constituents. As such, we are a trusted resource to many communities and
3 non-profit organizations.

4 The Fair Work Center Legal Clinic (“Fair Work Clinic”), part of the Fair Work Center,
5 is a non-profit, community-based law firm that provides legal advocacy for low-income and
6 vulnerable people in workplace matters. Its services include free consultations, individual and
7 group representation, and representation in class action litigation. Its substantive focus is on
8 federal, state, and local minimum employment standards. It is therefore expert in the application
9 of the federal, state, and local minimum wage regulations, especially as that relates to low-wage
10 workers in Washington. The Fair Work Clinic was founded in 2014 to fill a gap in legal
11 services, providing access to high quality legal advice and representation for low-wage workers
12 who were unlikely to find representation elsewhere.

13 The Seattle University School of Law Workers’ Rights Clinic (“Workers’ Rights
14 Clinic”) works in partnership with the Fair Work Clinic and seeks to level the playing field
15 between employers and low-wage workers by providing advice and representation workers who
16 would not otherwise find it. The Workers’ Rights Clinic is part of the Seattle University’s
17 Ronald A. Peterson Law Clinic in which upper level law students provide free legal services to
18 vulnerable workers. It focuses on the enforcement of workplace standards, such as minimum
19 wage. In addition to individual representation, the Workers’ Rights Clinic provides policy
20 advocacy, issue research, and academic scholarship related to workplace standards and their
21 effect on vulnerable workers.

22 The Clinics have a special interest in cases like this where the rights of vulnerable
23 populations, such as low-wage, unemployed, and immigrant workers, are at stake. Drawing on
its experience and expertise, the Clinics seek to ensure that courts understand the critical

1 employment law protections at issue in such cases.

2 **III. BACKGROUND**

3 The Clinics adopt and incorporate by reference the factual and procedural background
4 set forth in the Court’s Order filed on May 13, 2019. Dkt. 202, at 2-3. Understanding the
5 dispositive motion deadline in this case is set for July 2, 2019, the Clinics submit this brief in
6 support of the State’s Motion for Summary Judgment on its claims for (1) declaratory relief that
7 GEO is an “employer” subject to the MWA when managing detainee employees, (2) injunctive
8 relief for GEO to be enjoined from paying detainees less than minimum wage, and (3)
9 disgorgement of GEO’s unjust enrichment.

10 **IV. ARGUMENT**

11 **A. Washington State Has a Long and Proud History Establishing Minimum**
12 **Standards Protecting Vulnerable Workers, Preserving Quality Employment**
13 **Opportunities in the State, and Preventing Unfair Competition.**

14 Washington State’s minimum wage law was first enacted in 1913, well before the Fair
15 Labor Standards Act (“FLSA”), as a protection for women. *See generally*, Washington Session
16 Laws, 1913, Ch. 174 (1913) (welfare of Washington demanded that women and children be
17 protected from pernicious labor conditions). The law existed during an era in which the U.S.
18 Supreme Court routinely struck down employment standards legislation as an encroachment on
19 the “right to contract” embodied in the 14th Amendment to the United States Constitution. *See*
20 *Adkins v. Children’s Hospital*, 261 U.S. 525 (1925) (District of Columbia’s minimum wage act
21 held unconstitutional); *Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587 (1936) (New
22 York’s minimum wages for women act held unconstitutional).

23 During that period, Washington held firm to its commitment, and it was ultimately
Washington’s minimum wage law that was the subject of the Supreme

1 Court decision reversing this rule. That case, *West Coast Hotel v. Parrish*, signaled the end of
2 this unfortunate era and held “[t]he guaranty of liberty does not withdraw from legislative
3 supervision that wide department of activity which consists of the making of contracts, or deny
4 to government the power to provide restrictive safeguards.” *West Coast Hotel v. Parrish*, 300
5 U.S. 379, 391 (1936) The court went on to specifically ratify Washington State’s decision to
6 retain its own minimum wage system of employment standards.

7 The minimum wage to be paid under the Washington statute is fixed after full
8 consideration by representatives of employers, employees, and the public. . . .The
9 Legislature was entitled to adopt measures to reduce the *evils of the ‘sweating
10 system,’* the exploiting of workers at wages so low as to be insufficient to meet the
bare cost of living, thus making their very helplessness *the occasion of a most
injurious competition.*

11 *Id.* at 398. The Court’s use of the terms “system” and “injurious competition” highlights that
12 protection of workers though guaranteed individual wages was not the only purpose of
13 Washington’s minimum wage law. Rather, the Court recognized that a check on exploitation of
14 workers *system-wide* was also a goal of the minimum wage law at issue.

15 This system-wide goal targets three primary evils. First, the Washington legislature has
16 consistently focused on preventing the exploitation of vulnerable workers by paying less than
17 that which is required to meet their basic needs. Washington’s Industrial Welfare Act begins
18 with a finding that “The welfare of the state of Washington demands that *all* employees be
19 protected from conditions of labor which have a pernicious effect on their health. The State of
20 Washington, therefore, exercising herein its police and sovereign power declares that inadequate
21 wages and unsanitary conditions of labor exert such pernicious effect.” RCW 49.12.010
22 (emphasis added). In a provision unique to our state, the Industrial Welfare Act transforms this
23 goal into a statutory mandate: “it shall be unlawful to employ workers

1 in any industry within the state of Washington at wages which are not adequate for their
2 maintenance.” RCW 49.12.020; *see also* 49.46.005 (establishing a “fair minimum wage” which
3 is adjusted in accordance with the cost of living.).

4 Second, Washington’s legislature expressed its intent that minimum wage laws serve to
5 increase employment opportunities in this state.

6 [T]he legislature endeavors by this chapter to establish a minimum wage for employees
7 of this state *to encourage employment opportunities within the state.*
8 RCW 49.46.005. This is more than merely precatory. The purpose of establishing a minimum
9 wage along with maximum hours was to create an incentive for employers to hire more,
10 adequately paid employees, rather than working the existing employees for long hours at low
11 pay.

12 Third, the legislature’s intent in enacting minimum wage protection was to remove
13 substandard wages from competition. *See, West Coast Hotel*, at 388 (noting the Washington
14 legislature saw worker exploitation as “the occasion of a most injurious competition.”) In the
15 Washington State Supreme Court decision that was upheld by the U.S. Supreme Court in *West*
16 *Coast Hotel*, the State’s Justices explained that promoting *fair* competition was a legitimate
17 legislative goal of the Washington lawmakers:

18 Where the public interest was deemed to require the fixing of minimum prices,
19 that expedient has been sustained. If the lawmaking body within its sphere of
20 government concludes that the conditions or practices in an industry make
21 unrestricted competition an inadequate safeguard of the consumer’s interests,
22 produce waste harmful to the public, threaten ultimately to cut off the supply of a
23 commodity needed by the public, or portend the destruction of the industry itself,
appropriate statutes passed in an honest effort to correct the threatened
consequences may not be set aside because the regulation adopted fixes prices
reasonably deemed by the Legislature to be fair to those engaged in the industry
and to the consuming public.

Parrish v. W. Coast Hotel Co., 185 Wash. 581, 594, 55 P.2d 1083,

1 1089 (1936), aff'd, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937), (*quoting Nebbia v. New*
2 *York*, 291 U.S. 502, 54 S.Ct. 505, 516, 78 L.Ed. 940, 89 A.L.R. 1469.) Relying on this analysis
3 of restraints on complete free-market competition in the anti-trust realm, the State’s Justices
4 explained the purpose in restraining competition in the realm of substandard wages:

5 The legal duty placed upon the employer by our minimum wage law is that he
6 must pay women in his employ in wages a sum found to be necessary for the
7 maintenance of the health as well as the morals of the employee. If the wages paid
8 equal or are in excess of the cost of the maintenance of a normal health standard,
9 the state's concern in the matter ceases. If the employer pays less than the amount
10 found to be the minimum cost of the maintenance of the normal health standard
11 by virtue of his more secure and powerful economic position, the transaction
12 savors of exploitation.

13 *Parrish v. W. Coast Hotel Co.*, 185 Wash. 581, 594–95, 55 P.2d 1083, 1089 (1936), aff'd,
14 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937); *see also* 29 U.S.C. § 202 (“Congress finds
15 that the existence... of labor conditions detrimental to the maintenance of the minimum
16 standard of living necessary for health. Efficiency and general well-being of workers...
17 constitutes an unfair method of competition in commerce...”); *Brooklyn Sav. Bank v. O’Neill*,
18 324 U.S. 697 (1945) (Warning that allowing any group of workers to make private contracts to
19 work below minimum wage tends to depress or threaten the standard of living of other workers
20 in competing industries.)

21 **B. Lack of Compliance with Minimum Wage Laws Harms Individual Low-Wage
22 Workers and the Economy as a Whole.**

23 1. *Failure to Pay Minimum Wage is Wage Theft and It is Pervasive in the United
 States.*

 Wage theft refers to the circumstance in which an employer violates wage and hour law,
thereby benefiting from unpaid or underpaid labor. *See* David Cooper and Teresa Kroeger,
Employers Steal Billions from Workers’ Paychecks Each Year (Economic Policy Institute
2017), *available at* <https://www.epi.org/files/pdf/125116.pdf> (hereafter

1 “2017 EPI”). “[I]n essence, it involves employers taking money that belongs to their employees
 2 and keeping it for themselves. Amounts that seem small, such as not paying for time spent
 3 preparing a work station at the start of a shift, or cleaning up at the end of a shift, can add up.”
 4 Brady Meixell and Ross Eisenbrey, *An Epidemic of Wage Theft Is Costing Workers Hundreds of*
 5 *Millions of Dollars a Year* (Economic Policy Institute Issue Brief No. 385, 2014) at 1, *available*
 6 *at* <https://www.epi.org/files/2014/wage-theft.pdf>. Wage theft can include the failure to pay
 7 statutory minimum wage, nonpayment of overtime, misclassification of employees as
 8 independent contractors, withholding of tips, requiring employees to work off-the-clock, and the
 9 like. *See* 2017 EPI at 4.

10 Wage theft is pervasive in the United States. In 2017, The Economic Policy Institute
 11 looked at data from the ten most populous states¹ and concluded that in those states, 2.4 million
 12 workers—or approximately 17 percent of the eligible low-wage workforce—lose \$8 billion
 13 each year in unpaid minimum wages. *Id.* at 10-13. Based on these findings, EPI estimates that
 14 “the total wages stolen from workers due to minimum wage violations exceeds \$15 billion each
 15 year.” *Id.* at 2. In Washington State between 2009 and 2013, The Department of Labor and
 16 Industries investigated nearly 15,000 claims of wage theft. The average amount claimed was
 17 approximately \$3,000, for a total recovery of over \$46 million. Isaac M. Sederbaum, *Wage*
 18 *Theft in Washington, an Examination of Labor and Industries Claims, 2009-2013* (unpublished
 19 M.P.A. degree project, University of Washington 2014), *available at*
 20 https://labor.washington.edu/sites/labor/files/Sederbaum_Wage.pdf.²

21
 22 ¹ Florida, Ohio, Illinois, New York, California, Michigan, North Carolina, Texas, Pennsylvania, and Georgia

23 ² The dissenting Supreme Court Justices in *Epic Systems v. Lewis* recently relied on EPI and National Employment
 Law Project studies to conclude that “violations of the minimum-wage and overtime laws are widespread.” *Epic*
Systems Corp. v. Lewis, ___ U.S. ___, 138 S.Ct. 1612, 1647, 200 L.Ed.2d 889 (2018) (Ginsberg, J., with whom

1 Wage theft does not only happen in fly-by-night businesses. A 2018 report by Good
2 Jobs First analyzed more than 4,000 wage and hour cases and found more than half of the cases
3 involved Fortune 500 companies or Fortune Global 500 companies. Philip Mattera, *Grand Theft*
4 *Paycheck: The Large Corporations Shortchanging Their Workers' Wages*, at 8 (Good Jobs First
5 and Jobs With Justice Education Fund, June 2018), *available at*
6 https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft_report_revised.pdf.

7 2. *Wage Theft is a Systemic Problem that Disproportionately Impacts Vulnerable*
8 *Low-Wage Workers.*

9 The burden of wage theft is borne disproportionately by those who can least afford it:
10 immigrants, low-wage workers, women, and people of color. In its groundbreaking 2009 study,
11 the National Employment Law Project, the Center for Urban Economic Development of the
12 University of Illinois at Chicago, and the UCLA Institute for Research on Labor and
13 Employment surveyed over 4,000 low-wage workers. They found that 26 percent were paid less
14 than the required minimum wage in the previous workweek alone, and more than 75%
15 experienced some form a wage theft during their work experience. Annette Bernhardt et al.,
16 *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's*
17 *Cities* (Center for Urban Economic Development, UCLA Institute for Research on Labor and
18 Employment, and the National Employment Law Project 2009), [https://s27147.pcdn.co/wp-](https://s27147.pcdn.co/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf)
19 [content/uploads/2015/03/BrokenLawsReport2009.pdf](https://s27147.pcdn.co/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf) (hereafter “2009 NELP”).

20 “These minimum wage violations were not trivial in magnitude. . . 60 percent of
21 workers in our sample were underpaid by more than \$1 per hour. The median underpayment

22
23 Justices Breyer, Sotomayor and Kagan join, *dissenting*) (Citing National Employment Law Project and Economic Policy Institute studies referenced within this Brief)

1 was \$1.43 less than the minimum wage.” *Id.* at 21. Indeed, the report estimates that workers
 2 surveyed lost an average of 15 percent of their annual wages due to workplace violations. *Id.*

3 *a. Wage Theft Increases Poverty.*

4 Fewer low-wage workers would be in poverty but for wage theft. A follow up to the
 5 2009 NELP study found a direct correlation between wage theft and poverty rates. The Eastern
 6 Research Group analyzed wage theft in California and New York, finding that workers in those
 7 states were losing a total of \$32 million dollars per week to wage theft. Eastern Research Group,
 8 *The Social and Economic Effects of Wage Violations: Estimates for California and New York,*
 9 *Final Report prepared for U.S. Department of Labor* (December 2014), at ES-3, available at
 10 [https://www.dol.gov/asp/evaluation/completed-](https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf)
 11 [studies/WageViolationsReportDecember2014.pdf](https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf) (hereafter “Eastern Research Study”). The
 12 report estimates that 41,000 families in California and 26,000 families in New York fell below
 13 the poverty line as the result of minimum wage violations.³ *Id.* at ES-4. Put another way, this
 14 study found that minimum wage violations increased poverty rates among workers who
 15 experienced wage theft by 125.1% percent in California and 37.4% percent in New York. *Id.* at
 16 49, Table 14.⁴

17 In its 2017 study, the Economic Policy Institute came to a similar conclusion. Among all
 18 workers in EPI’s ten survey states, the average rate of wage theft was 4.1%, with an average
 19 weekly underpayment of \$64, or 24% of their earned wages. 2017 EPI, *supra*, at 10, Table 1. Of
 20 the workers experiencing wage theft, the study found, 21.4% had total family incomes below
 21 the poverty line compared with an average poverty rate across the 10 states of 6.9%. *Id.* at 13-14

22 ³ These estimates are based on the Survey of Income and Program Participation data set, which the study’s authors
 conclude is preferable to the Current Population Survey for this purpose. *Id.* at 46.

23 ⁴ Again, these numbers are based on the Survey of Income and Program Participation, not the Current Population
 Survey. CPS data would support a 40.6% and 37.5% increase in poverty in California and New York respectively.
Id.

1 (“In other words, workers suffering minimum wage violations are more than three times as
 2 likely to be in poverty as someone chosen at random in the eligible workforce.”) If workers had
 3 been paid at the correct rate, the poverty rate among workers experiencing wage theft would be
 4 reduced from 21.4% to 14.8%. *Id.* at 14. Not surprisingly, the study also finds that a
 5 disproportionate share of workers experiencing wage theft receive public assistance and
 6 concludes that number would be reduced if those workers were paid appropriately.⁵

7 *b. Wage Theft Disproportionately Impacts Workers who are Immigrants,*
 8 *Women and People of Color.*

9 The 2009 NELP survey of low-wage workers found that “[w]omen were significantly
 10 more likely than men to experience minimum wage violations, and foreign-born workers were
 11 nearly twice as likely as their U.S.-born counterparts to have a minimum wage violation.” 2009
 12 NELP at 5; *see also* 2017 EPI at 15-16. Among U.S.-born workers, there exist significant racial
 13 differences: the rate of minimum wage violations for African-American workers was three
 14 times higher than that of white workers. 2009 NELP at 48.

15 Nativity and citizenship play a major role in vulnerability to wage theft. The wage theft
 16 rate among non-citizens is more than twice that of native-born citizens. 2017 EPI at 20.
 17 (Whereas the overall wage theft rate is 3.1% for native born citizens and 4.6% for naturalized
 18 citizens, among noncitizens 6.5 percent report being paid below the minimum wage.) Within
 19 foreign-born low-wage workers, Latina workers experienced minimum wage violations at a
 20 higher than their male counterparts. 2009 NELP at 43. (Wage theft rate for low wage Latina
 21 workers was 40 percent, while the minimum wage violation rate for male Latino counterparts
 22 was 24 percent.)

23 ⁵ *See also, id.* at Table ES-2 at ES-6 (breaking down estimated increased enrollment in school breakfast, school lunch, and supplemental nutrition assistance programs, as well as impacts on payroll and income taxes).

1 3. *Wage Theft Weakens the Economy by Incentivizing Noncompliance by Other*
2 *Employers and Depressing Wages Overall.*

3 Employers in an industry – especially highly visible ones – can “play an outsized role by
4 sending signals regarding the potential to flout standards to other employers that are similarly
5 situated.” David Weil, *The Fissured Workplace: Why Work Became So Bad For So Many and*
6 *What Can Be Done About It*, 237 (Harvard University Press 2014). In other words, if employers
7 who are not meeting the minimum standards do not face consequences, more employers will
8 violate the law, and vulnerable workers who work these minimum wage jobs will be harmed.
9 Therefore, minimum standards enforcement “efforts should ... aim to alter the larger, system-
10 wide incentives for compliance, thereby encouraging all employers to follow the law.” See
11 David Weil, *Improving Workplace Conditions Through Strategic Enforcement; A Report to the*
12 *Wage and Hour Division*, at 16 (Boston University May 2010); see also Janice Fine, *Co-*
13 *Production: Bringing Together the Unique Capabilities of Government and Society for Stronger*
14 *Labor Standards Enforcement*, at 5 (Rutgers University Center for Innovation in Worker
15 Organizations 2014) (“In reaction to tight competition and thinner profit margins,
16 subcontractors are strongly incented to cut costs wherever they can, and low road practices have
17 become normalized across many labor markets.”).

18 Conversely, when standards are visibly enforced, workers can benefit simply from
19 seeing that all employers are subject to the law. Worker willingness to bring forward claims of
20 wage theft is essential to enforcement. However, “[i]f individuals believe that the current regime
21 is invincible, that there is no prospect for change, then they are unlikely to participate in a
22 collective effort to make such change, assuming that participation will entail costs – as it always
23 will.” Benjamin Sachs, *Law, Organizing and Status Quo Vulnerability*, 96 *Texas Law Review*

1 351, 358 (2017). In the context of union organizing, Professor Sachs argues that some
2 demonstration of employers’ “vulnerability” to the rule of law is essential to allow workers to
3 step forward: “[w]hat workers here (or anywhere) will fight for is largely a function of what
4 they can reasonably expect to win.” *Id.* at 353, quoting Rick Fantasia, *Cultures of Solidarity:
5 Consciousness, Action and Contemporary American Workers*, at 170 (University of California
6 Press 1988). The same is true for the already vulnerable low-wage workers likely to be the
7 victims of wage theft. If they see a large, visible employer flouting the existing regime, they
8 will be less likely to bring forward their own claims of wage theft. Thus, enforcement agencies
9 will not even know of – let alone have the chance to remedy – these violations.

10 This failure to enforce minimum standards contributes to the overall stagnation or
11 depression of wages. A 2014 EPI study directly connected income inequality with wage
12 stagnation: “Inequality fueled by broad wage stagnation is by far the most important
13 determinant of the slowdown in living standards growth over the past generation, and it has
14 been enormously costly for the broad middle class.” Josh Bivens, Elise Gould, Lawrence Mishel
15 & Heidi Shierholz, *Raising America’s Pay: Why It’s Our Central Economic Policy Challenge*,
16 at 6 (Economic Policy Institute 2014). The authors identify a series of reasons for this wage
17 stagnation, including “labor market policy and business practices.” Among those practices, “[a]
18 particularly dispiriting example is the difficulty some workers (particularly immigrants) have in
19 simply guaranteeing that they will actually be paid for the work they do (i.e. the problem of
20 ‘wage theft’).” *Id.* at 55; see also 2017 EPI at 17 (“[w]henver any group of workers can be
21 exploited and paid artificially low wages, it lowers the wages of similarly skilled workers and
22 other workers in the same industry—regardless of those workers’ nativity.”). Finally, among
23 other recommendations the authors recommend “a boost to the

1 dramatically eroded enforcement of existing employment law to counter ‘wage theft’...” *Id.* at
2 65.

3 **C. GEO Group’s Failure to Pay Detainee Workers Minimum Wage Constitutes**
4 **Wage Theft, Undermines the Core Purpose of Minimum Standards Laws, and**
5 **Weakens the Washington Economy.**

6 *1. Geo Group's One Dollar Per Day Wage Flouts Minimum Wage Standards and*
7 *Constitutes Wage Theft.*

8 As summarized in Section B(1), *supra*, failure to pay minimum wage constitutes wage
9 theft. Current Washington minimum wage is \$12 per hour worked. RCW 49.46.020 (2017).
10 GEO does not dispute that it “generally pays detainees the \$1 daily allowance ... for
11 participating in the Voluntary Work Program.” GEO’s Answer and Counterclaim, Dkt. 28, at 5,

12 4.4. Under Washington minimum wage, one dollar is adequate compensation for six minutes
13 of work. That means that even if a detainee works just one hour, they suffer \$11 of wage theft –
14 91% of the wages owed to them.

15 While failing to pay detainees the wages owed to them under state law, GEO has thrived.
16 As of 2015, it was estimated that GEO saved at least \$10 million a year in labor costs by relying
17 on detainee labor at the Northwest Detention Center alone. Bob Ortega, *Migrants describe*
18 *hunger and solitary confinement at for-profit detention center*, July 11, 2018, available at:
19 <https://www.cnn.com/2018/07/11/us/northwest-immigrant-detention-center-geo-group-invs/index.html> (last
20 visited 6/28/19). In 2018, GEO reported annual revenues of \$2.26 billion, up from \$1.6 billion
21 in 2011. The GEO Group, *2018 Annual Report* at 5, available at
22 <http://www.snl.com/interactive/newlookandfeel/4144107/GEOGroup2018AR.pdf>. GEO has continued to
23 expand its share of the private prison industry, now owning 37% of all facilities - second only to
CoreCivic, which has 42%. The Week Staff, *The Private Prison Industry, Explained*, August 6,

1 2018, available at: <https://theweek.com/articles/788226/private-prison-industry-explained> (last
 2 visited 6/28/19). To permit GEO to retain profit generated through willful minimum wage
 3 violations is both unfair and inconsistent with the fundamental policy goal of Washington law:
 4 encouraging employer compliance.

5 *2. GEO's Business Model Harms Other Low-Wage, Vulnerable, or Unemployed*
 6 *Workers in Tacoma.*

7 The enormous profits GEO has made contracting with ICE have come at great expense
 8 to detainee workers, as well as workers living in the Tacoma area who might otherwise be
 9 employed by GEO. GEO's staffing model is premised on failing to pay minimum wage to all
 10 workers, and on not being required to meet staffing needs by offering positions compliant with
 11 minimum standards to non-detainee workers.

12 GEO admits that the Voluntary Work Program involves detainees performing jobs such
 13 as "meal service, cleaning, and laundry tasks." GEO's Answer and Counterclaim, Dkt. 28, p. 6,
 14 5.3. These types of positions are typically found in low-wage industries. These industries,
 15 therefore, have disproportionately high rates of wage theft and other minimum standards
 16 violations both nationally and in Washington. *See*, 2017 EPI; 2009 NELP; Sederbaum, *supra*
 17 (low wage jobs where wage theft is most rampant in Washington include food service, janitorial
 18 work and other "service" type jobs). Increasing access to minimum standards compliant
 19 positions in these industries would advance one of the MWA's central goals: providing quality
 20 employment opportunities to Tacoma's low-wage, unemployed, and otherwise vulnerable
 21 workers.

22 Doing so would also bolster the Tacoma economy. If GEO were not able to rely on
 23 nearly free detainee labor, the company would need to recruit from the local Tacoma labor

1 market and offer those positions at a wage compliant with Washington law. As a federal
2 contractor, that would likely mean setting salaries that meet the prevailing wage required by the
3 Service Contracts Act.⁶ GEO itself highlights the positive impact this would have on the local
4 economy on its website's facility profile for the Northwest Detention Center, noting that its
5 current non-detainee employees "were recruited from the local community and local vendors
6 are used as much as possible. As a result, the center contributes significantly to the local
7 economy through salaries and purchase of goods and services." The GEO Group, *Our*
8 *Locations: Tacoma ICE Processing Center, available at:*
9 <https://www.geogroup.com/FacilityDetail/FacilityID/71> (last visited 6/28/19).

10 Relying on the detainees to do the food service and janitorial work at the Northwest
11 Detention Center, GEO weakens the Tacoma labor market by denying these jobs to the
12 vulnerable workers who could be working for at least minimum, if not prevailing wage.

13 *3. GEO's Practices Create a Competitive Incentive for Other Employers to Break*
14 *the Law.*

15 As a large employer in Tacoma, and a dominant player in the private prison industry,
16 GEO has tremendous ability to impact business norms, including rates of compensation. Paying
17 some workers far less than minimum wage essentially allows GEO unfairly to compete with
18 other Tacoma companies who do pay minimum wage. When a large employer in a region
19 violates minimum wage law, it creates an incentive for other businesses in the area to do the
20 same in order to remain competitive. This results in undermining one of the key goals of
21 minimum standards – removing unconscionably low wages from competition.
22
23

⁶ 41. U.S.C. §6701 et seq.

1 GEO has more contracts with ICE to hold immigration detainees than any other
 2 company. Immigration detention is highly privatized, with an estimated 75% of detainees held
 3 in private prisons. The Week Staff, *The Private Prison Industry, Explained*, August 6, 2018,
 4 available at: <https://theweek.com/articles/788226/private-prison-industry-explained>. From 2015
 5 to 2017, GEO's contracts with ICE increased from 18% to 23.9% of GEO's overall revenue.
 6 *American Friends Service Committee*, The GEO Group Inc., August 16, 2018, available at
 7 <https://investigate.afsc.org/company/geo-group> (last visited 6/28/19). Over the past several years, the
 8 private prison industry has consolidated significantly which further weakens the pressure of fair
 9 competition on GEO. Megan Mumford, et. al, The Hamilton Project, *The Economics of Private*
 10 *Prisons*, available at [https://www.brookings.edu/wp-](https://www.brookings.edu/wp-content/uploads/2016/10/es_20161021_private_prisons_economics.pdf)
 11 [content/uploads/2016/10/es_20161021_private_prisons_economics.pdf](https://www.brookings.edu/wp-content/uploads/2016/10/es_20161021_private_prisons_economics.pdf). (“Competition between firms may
 12 have previously played a larger role, as in 1999 there were 12 for-profit prison firms managing
 13 adult correctional facilities. Since then, however, eight of the firms competitors have been
 14 absorbed by other companies and only two new firms have opened”).

15 In such a climate, GEO is precisely the type of highly visible employer that signals
 16 norms to others. GEO's practices convey to other employers that violating the law is not just
 17 possible, but necessary in order to compete.

18 *4. In Order to Uphold Minimum Standards for All Washington Workers, Detainees*
 19 *Must be Paid Minimum Wage for the Work They Have Performed.*

20 Washington's minimum standards statutes' remedial purpose is to ensure that all
 21 workers are paid for work at wages which are adequate for their maintenance. RCW 49.12.020.
 22 As explained in Section A above, the plain language of the Act establishes that it applies to “all
 23 employees” who have performed work in the State. It is undisputed that individual detainees

1 have worked while at the Northwest Detention Center, that they have been paid one dollar a day
 2 for that work. As such, the only outcome consistent with the Act is to require that work be
 3 compensated at the Washington minimum wage. To conclude otherwise would frustrate the
 4 purpose of the Act and undermine the intent of the Legislature, which recognized the pernicious
 5 effect of sub-minimum standard wages on both the individual worker and industry more
 6 generally. See *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 712, 153 P.3d 846, 852 (2007)
 7 (“[s]tatutes should be interpreted to further, not frustrate, their intended purpose.”) (*citing*
 8 *Burnside v. Simpson Paper Co.*, 23 Wn.2d 93 (1994)).

9 As previously discussed, the public policy underlying minimum standards recognizes
 10 that certain workers are more vulnerable to exploitation by unscrupulous employers, and that
 11 minimum standards must apply to all workers to avoid incentivizing that exploitation.
 12 Immigrant workers, including those who are not proficient in English or who may lack
 13 employment authorization, are at disproportionate risk of experiencing wage theft and other
 14 minimum standards violations. In addition to being overly represented in high violation
 15 industries, undocumented immigrant workers are especially vulnerable to employer retaliation
 16 because of their immigration status. This is a particularly potent example of the power
 17 imbalance between workers and employers that minimum wage laws seek to remedy.

18 GEO’s position – that detainees cannot be entitled to minimum wage by virtue of not
 19 having employment authorization – will result in lower employer compliance, higher rates of
 20 standards violations, and depressed industry conditions for all workers. The Eighth Circuit
 21 Court of Appeals summarized this principle in *Lucas v. Jerusalem Café*, explaining that:

22 applying the FLSA to unauthorized [immigrants] is essential to achieving the purposes
 23 of the FLSA to protect workers from substandard working conditions, to reduce unfair
 competition for law-abiding employers, and to spread work...[e]xempting unauthorized
 [immigrants] from the FLSA would frustrate the purposes of

1 the IRCA, for unauthorized workers' acceptance ... of jobs on substandard terms as to
2 wages and working conditions can seriously depress wage scales and working
conditions of citizens and legally admitted [immigrants].

3 *Lucas v. Jerusalem Cafe, LLC*, 721 F.3d 927, 936-37 (8th Cir. 2013) (internal quotations
4 omitted).

5 Nor is the analysis changed by the fact that detainees may sign an agreement prior to
6 participating in GEO's work program that establishes a \$1 daily rate of pay. Washington law is
7 clear that such agreements are not enforceable. RCW 49.46.090(1) (“[a]ny agreement between
8 such employee and the employer allowing the employee to receive less than what is due under
9 [the Minimum Wage Act] shall be no defense to such action.”); *see also Brooklyn Sav. Bank v.*
10 *O’Neill*, 324 U.S. at 707 (holding that FLSA’s purpose would be undermined by waivers of
11 minimum wage: “No one can doubt but that to allow waiver of statutory wages by agreement
12 would nullify the purposes of the Act.”). To permit such agreements would directly undermine
13 the MWA’s core purpose of establishing universal minimum workplace standards.

14 Prohibitions on waivers of statutory rights to minimum wage recognize that significant
15 power imbalances often exist between employers and employees. Those imbalances are even
16 more pronounced for certain segments of vulnerable workers, who are the workers most reliant
17 on legislative protections. *Id.* at 706. (“[FLSA] was a recognition of the fact that due to the
18 unequal bargaining power as between employer and employee, certain segments of the
19 population required federal compulsory legislation to prevent private contracts on their part
20 which endangered national health and efficiency and as a result the free movement of goods in
21 inter-state commerce...”). Immigration detainees, unable to leave their place of employment and
22 vulnerable because of their immigration status, are undoubtedly one such group of workers.

23 GEO Group’s business model grossly violates Washington minimum wage law and

1 encourages other industry actors to do the same in order to compete. In order to remedy the
2 harm caused to detainees and other vulnerable Tacoma area workers, GEO must be required to
3 pay at least minimum wage.

4 **V. CONCLUSION**

5 For more than a century, Washington's minimum wage laws have protected the state's
6 most vulnerable workers. GEO's policy of paying detainees one dollar a day for their labor
7 violates these basic protections. Robust enforcement of minimum wage laws by the courts is
8 essential to prevent employers from unfairly competing, harming workers, and depressing the
9 Washington economy. The Court should grant Plaintiff's Motion for Summary Judgment.

10 Dated this 1st day of July, 2019.

11 /s/ Elizabeth Ford

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2019, the foregoing document was electronically filed with the United States District Court's CM/ECF system, which will send notification of such filing to:

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