

1 THE HONORABLE ROBERT J. BRYAN

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5 UNITED STATES DISTRICT  
6 FOR THE WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 STATE OF WASHINGTON,  
9 PLAINTIFF,

10 VS.

11 THE GEO GROUP, INC.,  
12 DEFENDANT.

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

**MOTION FOR LEAVE TO FILE BRIEF  
OF LA RESISTENCIA AS *AMICI  
CURIAE* IN SUPPORT OF PLAINTIFF**

**NOTE ON MOTION CALENDAR:  
JULY 12, 2019**

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15 La Resistencia hereby submits this Motion for Leave to File a Brief as *Amicus*  
16 *Curiae* in support of Plaintiff's Motion for Summary Judgment.

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19 **MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*.**

20 **I. INTRODUCTION**

21  
22 La Resistencia respectfully moves for leave to file an *amicus curiae* brief in  
23 support of the State of Washington. A copy of the proposed brief is attached as Exhibit  
24 A to this motion. The Plaintiffs do not oppose the filing of this *amicus curiae* brief.  
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4 **II. IDENTITY AND INTERESTS OF *AMICUS CURIAE***

5           La Resistencia (formerly known as NWDC Resistance / Resistencia al NWDC)  
6 has supported the organizing efforts of people detained at the Northwest Detention  
7 Center in Tacoma, Washington since 2014. La Resistencia members include people who  
8 are undocumented and/or have family members who have been detained in the  
9 Northwest Detention Center, community organizers, lawyers, professors, and  
10 volunteers. Over the last five years, La Resistencia has become a key resource for  
11 people who want to share information about their experiences at the NWDC. Our  
12 collective of 15-20 core organizers maintain constant contact with people detained and  
13 has been able to obtain detailed information about detention conditions through in-  
14 person visits to the detention center (including attorney visits), as well as letters, emails,  
15 and phone calls. Since April 2014, La Resistencia has had a bilingual (English/Spanish)  
16 dedicated volunteer team that staffs our toll-free number 24 hours a day, seven days a  
17 week. Organizers receive an average of 50 calls a day as well as messages via the  
18 NWDC's email system. After people have been released or deported, they continue to  
19 share information and ideas with us over Facebook, WhatsApp, and phone calls.  
20 Through these modes of contact, La Resistencia has amassed a great deal of information  
21 about the inner workings of the detention center as experienced by the people held there.  
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1 La Resistencia has engaged in advocacy on behalf of those detained, sharing their  
2 stories with all levels of government, including the Tacoma City Council, the  
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4 Washington Governor’s Council on Health Disparities, and state and federal legislators.  
5 La Resistencia members have met with the United Nations’ Working Group Against  
6  
7 Arbitrary Detention and testified at two hearings with the Inter-American Commission  
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9 for Human Rights on behalf of people detained at the NWDC. La Resistencia holds  
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11 interest in the questions of minimum wage and broader living conditions for people  
12  
13 detained.

### 13 **III. ARGUMENT**

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15 District courts have “broad discretion” to appoint amicus curiae. Skokomish  
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17 *Indian Tribe v. Goldmark*, No. C13-5071JLR, 2013 WL 5720053, at \*1 (W.D. Wash.  
18  
19 Oct. 21, 2013) *quoting Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)). “District  
20  
21 courts frequently welcome amicus briefs from non-parties concerning legal issues that  
22  
23 have potential ramifications beyond the parties directly involved or if the amicus has  
24  
25 ‘unique information or perspective that can help the court beyond the help that the  
26  
27 lawyers for the parties are able to provide.’” *NGV Gaming, Ltd. v. Upstream Point*  
28  
*Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (*quoting Cobell v. Norton*,  
246 F.Supp.2d 59, 62 (D.D.C. 2003)). The “classic role” of amicus curiae is to “assist[]

1 in a case of general public interest, supplement[] the efforts of counsel, and draw[] the  
2 court's attention to law that escaped consideration.”

3  
4 *Miller-Wohl Co. v. Comm'r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th  
5 Cir. 1982).

6           This Court should exercise its discretion to permit La Resistencia to file the  
7 attached amicus brief. La Resistencia is familiar with the scope of the arguments  
8 presented by the parties and will not unduly repeat those arguments. Instead, La  
9 Resistencia will bring to the Court the perspectives of those most impacted by GEO  
10 Group’s practices and who have the highest stake in the outcome of this litigation. The  
11 voices and experiences of those who have been forced to work for inadequate or no  
12 wages will illustrate the profound consequences that will result if GEO’s illegal  
13 practices continue.  
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18 **IV. CONCLUSION**

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20           For these reasons, La Resistencia respectfully requests that the Court grant it  
21 leave to file the amicus brief attached as Exhibit A.  
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1  
2 Dated: July 2, 2019

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6  
7 Angélica Cházaro (La Resistencia)  
8 Maria Mora Villalpando (La Resistencia)  
9 Megan Ybarra (La Resistencia)

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11  
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on July 1, 2019, the foregoing document was electronically  
14 filed with the United States District Court's CM/ECF system, which will send  
15 notification of such filing to all attorneys of record.  
16

17  
18 s/ Amy J. Kratz  
19 Amy J. Kratz WSBA 26768

# **EXHIBIT A**

1 THE HONORABLE ROBERT J. BRYAN

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6 UNITED STATES DISTRICT  
7 FOR THE WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

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10 STATE OF WASHINGTON,  
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13 THE GEO GROUP, INC.,  
14 DEFENDANT.

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

***AMICUS CURIAE BRIEF OF LA  
RESISTENCIA***

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17 **I. INTRODUCTION**

18  
19 The GEO Group, Inc. (GEO), the private, for-profit company that owns and  
20 operates the Northwest Detention Center (NWDC), maintains complete control over  
21 the living and working conditions inside the facility. This control extends beyond  
22 where people are detained, but also what food and clothes they can buy from the  
23 commissary store; what work they can perform for money or snacks; and how people  
24 communicate with their loved ones. GEO cuts corners to maximize its profit, creating  
25 unhealthy living conditions and forcing those detained to work in order to maintain  
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1 their humanity – to buy adequate food and to be able to speak with their families so  
2 they can be reminded why they wait for days, months, or even years to have their cases  
3 heard.  
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5         Moreover, while GEO claims to offer people detained a “voluntary work  
6 program,” its routine use of coercion and retaliation precludes any notion that the work  
7 is truly voluntary. Having been forced into labor to meet their own basic needs, these  
8 coerced workers are subjected to difficult working conditions without adequate  
9 training or protective gear. People detained are either credited \$1 per day in  
10 commissary credit or receive snacks instead of wages. In some cases, they are not  
11 compensated at all. Detained workers who protest their labor conditions are put in  
12 solitary confinement. Despite this retaliation, they have gone on more than 17  
13 organized hunger strikes – that amicus could verify – in the last five years.

14 Accordingly, La Resistencia respectfully requests this Court grant the State of  
15 Washington’s motion for summary judgment.  
16

## 17         **II.     IDENTITY AND INTERESTS OF *AMICUS CURIAE***

18         La Resistencia (formerly known as NWDC Resistance / Resistencia al NWDC)  
19 has supported the organizing efforts of people detained at the Northwest Detention  
20 Center in Tacoma, Washington since 2014. Our volunteer collective of 15-20 core  
21 organizers maintain constant contact with people detained, connecting them to the  
22 outside world through media and advocacy efforts. La Resistencia members include  
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1 people who are undocumented and/or have family members who have been detained in  
2 the Northwest Detention Center; as such, La Resistencia holds interest in the questions  
3 of minimum wage and broader living conditions for people detained.  
4

5 Over the last five years, La Resistencia has become a key resource for people  
6 who want to share information about their experiences at the NWDC. La Resistencia  
7 has been able to obtain detailed information about detention conditions from people  
8 detained through in-person visits to the detention center (both private attorney and  
9 monitored visits), as well as letters, emails, video chats and phone calls. Since April  
10 2014, La Resistencia has had a bilingual (English/Spanish) dedicated volunteer team  
11 that staffs our toll-free number 24 hours a day, seven days a week. Organizers receive  
12 an average of 50 calls a day as well as messages via the NWDC's for-profit email  
13 system. After people have been released or deported, they continue to share  
14 information and ideas with us over Facebook, WhatsApp, and phone calls. Through  
15 these modes of contact, La Resistencia has amassed a great deal of information about  
16 the inner workings of the detention center as experienced by the people held there.  
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21 La Resistencia members who helped author this brief include: Angelica  
22 Cházaro, co-founder of Resistencia and University of Washington law professor who  
23 has conducted legal visits to NWDC since 2014 and provided support to people  
24 detained and their families; Maria Mora Villalpando, undocumented co-founder of  
25 Resistencia in 2014, who has taken primary responsibility for answering our toll-free  
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1 telephone number and email messages in English and Spanish over the last five years;  
2 and Megan Ybarra, University of Washington geography professor who has assisted  
3 with visits, communications and support of people detained, and documenting the  
4 political activism of people detained since 2015. The three named authors bring  
5 together the insights of hundreds of people detained and their loved ones who seek a  
6 remedy for injustices experienced at the hands of GEO Group in the State of  
7 Washington. Amy Kratz is La Resistencia's counsel in this matter, who represents our  
8 interests to the Court.

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12       People detained at the NWDC are the leading experts on their treatment within  
13 the facility. Most of them share information with us knowing that it may not benefit  
14 them personally, and indeed risking significant retaliation (including solitary  
15 confinement and transfers to other facilities). La Resistencia has conveyed information  
16 received from people detained about the conditions created by GEO at the NWDC with  
17 all levels of government, including the Tacoma City Council, the Washington  
18 Governor's Interagency Council on Health Disparities, and state and federal  
19 legislators. La Resistencia members have met with the United Nations' Working  
20 Group Against Arbitrary Detention and testified at two hearings with the Inter-  
21 American Commission for Human Rights on behalf of people detained at the NWDC.

### 22 23 24 25       **III. ARGUMENT**

1           ***A. GEO Group Creates Conditions that Require People Detained to Work to***  
2           ***Ensure their Most Basic Needs are Met.***

3           GEO's blatant disregard for human life has placed people detained at the NWDC  
4 in a constant state of crisis and need in which they must work in order to survive. GEO  
5 fails to meet its contractual requirements to meet the basic needs of the people it  
6 confines for profit at the NWDC. According to US Immigration and Customs  
7 Enforcement (ICE) national standards, detention centers are required to provide  
8 adequate food, clothing that fits, and basic hygiene items including lotion and  
9 shampoo.<sup>1</sup> In a recent inspection of detention centers, however, the U.S. Department of  
10 Homeland Security (DHS) Inspector General found that facilities failed to provide  
11 these items, forcing people to purchase them through commissary, an experience  
12 shared by people detained at the NWDC.<sup>2</sup> Moreover, in order to maintain contact with  
13 the world outside the facility, people detained must purchase access to the phone and e-  
14 mail systems. For some more fortunate people detained, family and friends outside the  
15 facility are able to deposit money into their commissary accounts. However, for many,  
16 including those asylum seekers recently arrived in Washington State, those whose  
17 families are impoverished by the loss of income their detention represents, and those  
18 whose detention drags on for months and years, this is not a reality. Because  
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26 <sup>1</sup> ICE (2011) "Performance-Based National Detention Standards (PBNDS)." *US Immigrations and Customs Enforcement*  
27 (*ICE*), Last updated 2016; Available at <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>

28 <sup>2</sup> OIG (2019) "Concerns about ICE Detainee Treatment and Care at Four Detention Facilities." *Office of the Inspector*  
General (*OIG*), *US Department of Homeland Security (DHS)*, Published June 3, 2019. Available at:  
<https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

1 participation in the work program is required to access or purchase the basic necessities  
2 for survival and psychological health, it cannot be considered voluntary.  
3

4 **1. People detained are forced to work in order to buy sufficient, safe food.**

5 One of the most pressing concerns that people detained communicate with La  
6 Resistencia members is health concerns related to the terrible quality of the food and  
7 the small portions provided by GEO Group. During hunger strikes initiated by people  
8 detained in 2014, 2017, and 2018, complaints about the quality and quantity of food  
9 were a consistent theme. In 2018, one hunger striker said: “I told the captain that if he  
10 fed his dog that food, his dog would be hungry and barking all night. Why? Because  
11 it’s inadequate food.”<sup>3</sup> Even when hunger strikes are not occurring, people regularly  
12 call La Resistencia’s toll-free line to complain about maggots in their food; these  
13 concerns were confirmed when a person detained brought a roach to show when of La  
14 Resistencia’s volunteer attorneys during a 2014; and again through 2019, when a  
15 person detained showed one of La Resistencia’s volunteer attorneys a maggot from his  
16 meal. This experience of being provided rotten food is also consistent with the DHS’s  
17 inspection of detention facilities that revealed expired food, putting people detained at  
18 risk for food-borne illnesses.<sup>4</sup> Not surprisingly, time and again, people detained cite a  
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27 <sup>3</sup> Jesus Chaves, (2018), “Hunger Striker Statement,” *La Resistencia*, <https://vimeo.com/255769053>, February 12, 2018

28 <sup>4</sup> See Office of the Inspector General (2019), *supra* note 2.

1 staple of their diet as instant ramen noodles, something only available through  
2 commissary order forms.<sup>5</sup>  
3

4 People have therefore routinely reported applying to work in GEO's "voluntary"  
5 work program as a way to supplement calories and eat food that is not spoiled.

6 Detained workers report that working in the kitchen is one of the more popular jobs,  
7 simply because it means access to calories, and kitchen workers are better able to feed  
8 themselves. F.A.,<sup>6</sup> who spent over six years detained at the NWDC, stated that he  
9 worked in the kitchen because it was the best option to get enough food to survive his  
10 prolonged imprisonment. F.A. specifically noted that the kitchen is the most popular  
11 job because you can eat a lot of bread.<sup>7</sup> However, even people with the best jobs, such  
12 as cook or food porter, can access only bread, leading workers like F.A. to seek out  
13 fresh, protein-rich foods. Immediately upon his release, F.A. reported buying 36 eggs  
14 at the grocery store, as he was desperate to make up for the lost protein in his diet.<sup>8</sup>  
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19 In line with the DHS Inspector General's report, La Resistencia advocates  
20 believe that GEO operates the NWDC with the expectation that people detained will  
21 supplement their diet with private commissary purchases.<sup>9</sup> For example, the common  
22 terminology for the coffee provided by the kitchen is "indigent coffee," – reflecting the  
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24 <sup>5</sup> Cházaro, A, Madrigal, T, Mitchel, M, et al. (2017) "A Hunger Strikers Handbook." *Northwest Detention Center*  
25 *Resistance (NWDCR)*, [http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/hungerstrikershandbook-  
eng.pdf](http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/hungerstrikershandbook-eng.pdf)

26 <sup>6</sup> In recognition of concerns for retaliation by GEO Group and/or ICE, all interview quotes from people detained at the  
27 NWDC cited below use only first and last initials.

28 <sup>7</sup> F.A., interview with M. Ybarra, 22 June 2019; audio on file with authors.

<sup>8</sup> See interview with F.A., *supra* note 7.

<sup>9</sup> See Office of the Inspector General (2019), *supra* note 2.

1 assumption that people will only rely on the freely provided kitchen food if they cannot  
2 afford better – while the coffee purchased through commissary at more than \$4.00 or  
3 the equivalent of four days of wages (and lasting a few days) is called simply “coffee”  
4 or “Colombian coffee,”<sup>10</sup> inducing people to search out foodstuffs only available  
5 through participation in the so-called voluntary work program. In an even more  
6 extreme example, G.A.U. described guards withholding food and thus forcing  
7 commissary purchases: “They give us very little food, if we get fruit the COs hide  
8 them and they throw our commissary [in the trash] because they want us to go and buy  
9 more.”<sup>11</sup>

13           Alternatively, detained workers have reported that they are paid directly in food,  
14 cutting commissary orders out of the equation altogether. “Sometimes they ask for  
15 workers, you know, anybody who is willing to go work, and everybody says ‘yeah.’  
16 They’ll only take maybe three or four [volunteers] and then they’ll just give them, like,  
17 a chocolate bar, or they give them like chips, but it’s pretty much just food what they  
18 give them. They don’t pay them a dollar.”<sup>12</sup> During the end-of-year holidays, GEO  
19 guards give what they call “gifts” to workers - people do not participate because  
20 working the holiday job is desirable, but instead because they seek to have a small  
21 variation in their otherwise repetitive diet, such as Ranch-flavored chips instead of the

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26 <sup>10</sup> See interview with F.A., *supra* note 7.

27 <sup>11</sup> Phone call with G.A.U., November 25, 2018, notes on file with authors.

28 <sup>12</sup> K.T., legal visit at NWDC, April 13, 2014; Audio available at *Hunger Strikers Handbook*,  
[http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/tamayo\\_4\\_13.m4a](http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/tamayo_4_13.m4a)

1 chips available in the commissary. K.T. noted that she and others “are always willing  
2 people because this [food] is all they can get.”<sup>13</sup> Together, these reports reveal GEO’s  
3 practices at the NWDC of harnessing people’s hunger as a way to exercise power over  
4 them.  
5

6 Deliberately creating a context of food scarcity and need, GEO uses this context  
7 to its advantage, alternately coercing and inducing workers to “accept” GEO’s unfair  
8 dollar a day wage to purchase needed items, or, by directly paying workers with small  
9 foodstuff otherwise unavailable to them in exchange for hours of sometimes grueling  
10 and dangerous work. Furthermore, as detailed in the next section, GEO also uses the  
11 moral responsibility felt by workers and their basic psychological need to maintain  
12 personal ties with family members to further advantage itself and maintain its supply of  
13 hyper-exploited workers.  
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17 **2. People detained are forced to work to pay for contact with their families**  
18 **and communities.**

19 One of the most immediate consequences of imprisonment for the people  
20 detained at the NWDC is almost total separation from their families and communities.  
21 While some of those detained are asylum seekers sent to the NWDC from the U.S.-  
22 Mexico border, the facility also houses many individuals who have spent months,  
23 years, and even decades in the US, including long-time Lawful Permanent Residents.  
24 For people with long-standing community ties, the work program offers the only way  
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27 <sup>13</sup> See legal visit with K.T., *supra* note 12.

1 to be in contact with their families and friends, given the high prices charged for the  
2 phone and email systems.  
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4 For example, K.L. was an international adoptee from Viet Nam who grew up in  
5 Washington state; he had a family, including young children. When he was arrested by  
6 local police, he discovered for the first time that he was not a US citizen, and he spent  
7 months in the NWDC. He struggled to maintain a relationship with his family through  
8 calls, emails, and letters. One day, K.L.'s son discovered how to use the online  
9 messaging app for contacting people detained, and he sent his father dozens of  
10 messages in less than a day. While K.L. was delighted to hear from his son, he was  
11 simultaneously devastated when the app charged him almost \$30 – equivalent to an  
12 entire month's pay – for the messages his son sent him in a single night.<sup>14</sup> People like  
13 K.L. are faced with choosing between buying ramen from the commissary to sustain  
14 themselves and keeping in touch with their children. In these circumstances, not  
15 working is simply not an option. While some people detained receive deposits into  
16 their commissary accounts and phone and email accounts from family members and  
17 friends, many others have family members who are financially devastated by the lost  
18 wage-earnings of a loved one detained. Likewise, people who are recently detained,  
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26 <sup>14</sup> K.L. in panel presentation, "Beyond the Incarceration State" at the University of Washington, Seattle; March 7, 2017.  
27 Beginning in January 2019, NWDC contracted a different contract telecommunications company that charges by the  
28 minute (not by message).



1 transferred from another facility, or who are about to be deported lose access to their  
2 commissary accounts.

3  
4 Although GEO does not own telecommunications for people detained at the  
5 NWDC, it exercises control through the provision of wages necessary to buy access  
6 and by restricting access. F.A. reports that as of 2019, Telmate’s proprietary “Getting  
7 Out” platform charges \$3.25 per 13-minute video chat, requiring four days of work to  
8 see your loved ones’ faces for a few minutes. Telmate owns the internet tablets, yet  
9 GEO guards play a key role in determining who can (and who cannot) access the  
10 tablets on a daily basis, and in some pods divide the few tablets available on the basis  
11 of perceived race and ethnicity (one tablet for each racial / ethnic group).<sup>15</sup>

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14 GEO’s location additionally makes phone and email contact the only option for  
15 communication for many. GEO was able to save costs by building the NWDC in  
16 Tacoma’s Port-Maritime Industrial (PMI) zone, which is zoned heavy industrial (not  
17 residential) and is surrounded by noxious fumes, Superfund sites, and industrial  
18 trucking. As a consequence, there is no parking lot,<sup>16</sup> nowhere to eat within a mile, and  
19 no accessible public transportation for families. Because of the detention center’s  
20 location far from the residence of most people detained, people detained are forced to  
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<sup>15</sup> See interview with FA, *supra* note 7.

27 <sup>16</sup> There is a guarded parking lot for GEO and ICE employees only. Families who want to visit must walk at least .25  
28 miles, making it inaccessible for some elderly and physically disabled visitors.

1 rely on the for-profit messaging, calling, and video system to retain contact with the  
2 outside world.

3  
4 For those with family members who are able to travel to the isolated NWDC,  
5 GEO's restrictive policies nevertheless discourage in-person visitation. While ICE  
6 standards require that people detained should be able to maintain "moral and personal  
7 ties through visitation with their families,"<sup>17</sup> GEO provides only limited opportunities  
8 for visitation with a complicated schedule of inconsistently-updated dates and times.  
9  
10 When La Resistencia organizers visit people in detention, visiting hours are often  
11 canceled or moved. If loved ones succeed in visiting, it is across thick plastic walls that  
12 are thoroughly scratched and through the use of telephones that often do not work. La  
13 Resistencia members have watched children cry and claw at the plastic, desperate to  
14 reach their loved one, and families frustrated because the phone they use to talk across  
15 the plastic wall is out of order.<sup>18</sup>

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19 Ultimately, GEO's business model is premised on a captive population desperate  
20 to reach out to family and community, and on this population working to earn the  
21 money to do so. One person's call to La Resistencia's toll-free line during a  
22 demonstration outside the facility in April of 2017 captures the desperation of people  
23 detained: "I came from the prison, I was there for three months, and have been  
24 detained for three months and my family, all my kids, eight of them and the rest of my  
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26  
27 <sup>17</sup> See US Immigrations and Customs Enforcement (ICE), *supra* note 1. Section 5.7.I, Visitation (Revised Dec. 2016)

28 <sup>18</sup> As noted by Resistencia volunteers in visits in 2017, 2018, 2019.

1 family is in California. It's too long already. I'm desperate... so many people have  
2 been detained for years, and I wonder why... We are going crazy in here. Nothing is  
3 good in here, the food is terrible [and] they treat us like animals.”<sup>19</sup> In this context,  
4 phone calls, e-mails, and video calls with family members provide the only lifeline to  
5 endure months or years of detention, contact that depends on participation in GEO's  
6 “voluntary” work program.

9 **3. People detained are forced to work to buy clean clothing and soap.**

10 GEO's practice of maximizing profit extends beyond the failure to provide  
11 adequate food and exploiting people's need to use expensive telecommunication  
12 services to imposing unhygienic conditions, including the common practice of giving  
13 people soiled clothes, and washing clothes without soap and water. Many people report  
14 receiving unclean clothes at intake, as well having clothes they sent to be laundered  
15 return to them in the same or worse state. People working in the laundry room report  
16 that they do not always use soap and water while washing clothes and that the rags  
17 used to clean bathrooms and floors, are washed together with clothes – sometimes  
18 staining clothes in the laundry process.

19 People can only have properly fitting and relatively clean undergarments if they  
20 are purchased through commissary funds -- using money they earned in the work  
21 program. For example, L.V. was held in solitary confinement for two years with socks

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<sup>19</sup> Call from NWDC during April 12, 2017 encampment demo; audio on file with authors.

1 that were too big. The socks eventually developed large holes, which La Resistencia's  
2 legal visitors photographed on a visit.<sup>20</sup> Most people detained buy socks through the  
3 commissary store, where a three pack of "Timberland Cushion Crew Socks" were  
4 listed as \$9.89 in 2015.<sup>21</sup> L.V.'s clothing reached this state because he was unable to  
5 participate in the work program or buy clothes while placed in solitary confinement.  
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8       Instead of use GEO's laundry services, people detained report that they must  
9 wash their clothes in the shower to maintain minimum standards of cleanliness. If they  
10 do not wash the clothes by hand, their clothes give them rashes or hives, which go  
11 either untreated or are given a dose of Benadryl that does not address the root cause of  
12 the problem.<sup>22</sup> According to one person, the only people who send undergarments to  
13 laundry rather than washing the clothes themselves "don't know any better" - they  
14 learn of the difficulties because they "itch all over," often requiring a visit to the  
15 medical unit where they are prescribed an antifungal cream.<sup>23</sup> Because they cannot  
16 count on remaining healthy if they use the facility's laundry, those detained must buy  
17 extra soap or shampoo through their commissary accounts to wash their clothing. Most  
18 people report that they wash their clothes using a bottle of Pantene shampoo, which  
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23 \_\_\_\_\_  
24 <sup>20</sup> LV displays inadequate clothing provided by GEO Group in 2017; Available at  
[http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/08-11-17-nwdc-conditions\\_orig.jpg](http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/08-11-17-nwdc-conditions_orig.jpg)

25 <sup>21</sup> Keefe Commissary list, updated August 13, 2015; Available at  
[http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/published/commissary-list-2015-socks\\_1.jpg?1562091162](http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/published/commissary-list-2015-socks_1.jpg?1562091162)

26 <sup>22</sup> For image example, see H.R.'s rash due to unsanitary laundry practices, taken by Resistencia volunteer on July 22,  
2018; Available at <http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/published/07-22-18-skin-rash.jpg?1562043924>

27 <sup>23</sup> See interview with F.A., *supra* note 7.  
28

1 costs \$8 for a 12 ounce bottle, equivalent to more than one week’s work at the \$1 a day  
2 pay rate.<sup>24</sup> In 2019, people detained have repeatedly called the toll-free number to  
3 complain that GEO guards rip down the clothing they hang to dry in their living  
4 quarters and threaten disciplinary action.  
5

6 As with food, the DHS Inspector General’s report reveals that operators of  
7 detention facilities expect that people will purchase basic hygiene products at the  
8 commissary and buy their own clothes.<sup>25</sup> In line with the report’s findings, people  
9 detained at the NWDC report being unable to buy or otherwise obtain clothes,  
10 including undergarments, from outside the facility. This forces them to participate in  
11 GEO’s “voluntary” work program and pay high prices for ill-fitting garments and  
12 ensure sanitary clothing.  
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16 ***B. GEO Group creates a climate of coercion that renders the work program***  
17 ***involuntary.***

18 Workers do not experience GEO Group’s work program as “voluntary.” GEO’s  
19 voluntary program is better understood as a finely calibrated division of labor within  
20 GEO’s facility in which the most dangerous and least desirable work for the facility is  
21 filled by the most recent, isolated, and vulnerable detainees. First, GEO wields access  
22 to “good” jobs that allow people to leave their pod for more than one hour a day and/or  
23 to eat more food than other people detained as a way to exercise power over people  
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27 <sup>24</sup> See Northwest Detention Center Resistance (NWDCR), *supra* note 5.

28 <sup>25</sup> See Office of the Inspector General (2019), *supra* note 2.

1 detained. GEO's complete control and people's necessary reliance on GEO's goodwill  
2 to obtain these jobs serves to disincentivize people who know their rights as outlined in  
3 the handbook they are given when they arrive at the NWDC from protesting for fair  
4 living conditions and rewards those who comply.<sup>26</sup> Second, even those people who  
5 technically do not participate in the voluntary work program still do unpaid labor,  
6 receiving food "prizes" and "gifts" in lieu of wages. If people decide not to work, or  
7 talk with others about seeking fair labor conditions, the overall climate of coercion  
8 becomes explicit: GEO, will write people up as "dangerous" and "inciting" trouble,  
9 institute a disciplinary action in collaboration with ICE officials, and place them in  
10 solitary confinement. On release from solitary confinement, people then have to  
11 reapply for jobs they may have waited weeks or months to get.

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16 **1. Unjust working conditions create a climate of coercion.**

17 GEO clearly marks the most vulnerable detainees for the worst, most dangerous,  
18 and most exploitative work. People are most vulnerable when they first arrive at the  
19 NWDC and do not yet have commissary funds or other means of support. For these  
20 new arrivals, GEO guards regularly ask them to do jobs that long-term residents have  
21 refused to do, including overnight cleaning jobs of pods, as well as stripping and  
22 waxing floors, painting walls, and washing windows, jobs that require handling  
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27 <sup>26</sup> US ICE Enforcement and Removal Operations (2016) "National Detainee Handbook. Custody management." *US*  
28 *Immigrations & Customs Enforcement*; Available at  
<https://www.ice.gov/sites/default/files/documents/Document/2017/detainee-handbook.PDF>.

1 machinery and dangerous chemicals. Rather than ask people to apply for these jobs,  
2 however, GEO guards ask them to “volunteer” for snacks. As characterized by long-  
3 term detainee, F.A., recently detained people accept this work because “they do not  
4 know any better” yet.<sup>27</sup>

6 Like the newly-detained individuals working for snacks, many of those who do  
7 the least-desirable and most-dangerous jobs do not receive their \$1 in daily wages.  
8 During a legal visit, hunger-striker P.R. reported that guards advertised that people  
9 would be “well-rewarded” for stripping and waxing the floors, a job that took three  
10 days ending the third day at 2:00 AM. P.R. accepted, hoping for cash for doing a job  
11 that would normally be compensated at \$1,500-\$2,000, but was given only a single  
12 soda and candy bar in payment. P.R. asserted, “We’re doing their work for them, it  
13 would cost them a fortune.”<sup>28</sup> Likewise, people are sometimes forced to work knowing  
14 that they may not get credit for the days they are paid. N.B. notes that “the guard in  
15 charge of the jobs said I didn’t write my name and my A-number [alien number]  
16 correctly. They just blame us to avoid paying us. It’s been 10 days without pay! I’ve  
17 sent 10 or 11 kites [grievances], and they always say the same thing: that you didn’t  
18 write your name correctly, or that you didn’t work at all!”<sup>29</sup> Even though N.B. and  
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<sup>27</sup> See interview with F.A., *supra* note 7.

<sup>28</sup> P.R., legal visit while in solitary confinement at NWDC, April 21, 2014; notes on file with authors.

<sup>29</sup> N.B., June 22, 2019 call to Resistencia toll-free line; notes on file with authors.

1 other workers know that they may not get paid for the work they do, they do not quit  
2 because they do not have other options to survive detention.  
3

4         Sadly, workers are forced to perform these jobs - which include washing  
5 windows, painting the walls and staircases, water pressure washing the showers -  
6 without training, much less access to a doctor for workplace injuries. People detained  
7 have expressed greatest concerns about overnight work with heavy machinery and  
8 chemical use. Taking advantage of its virtually free labor pool, NWDC repaints the  
9 walls and waxes the floors of living spaces approximately once per month. In calls to  
10 Resistencia's toll-free line, detained workers have reported feeling dizzy due to fumes  
11 and lack of sleep, as well as concerned about their ability to operate large machines to  
12 wax the floors.  
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16         If GEO Group compensated workers according to the difficulty of the job due to  
17 shift time, potential danger, or skills to operate machinery, jobs like painting walls and  
18 waxing floors at night would come with higher wages. As one person noted in a  
19 comment that a Resistencia volunteer read into the record to the Tacoma City's  
20 Community Vitality and Safety Commission on May 9, 2019:  
21

22                 They are forcing us to do unpaid labor on basic maintenance, such as  
23 painting the walls, bunks, and sport areas in the yard; as well as buffing  
24 the concrete floors. These are costly jobs, but they force us to do them by  
25 taking away our privileges to watch movies with popcorn. When one's life  
26 is so dull, those privileges are very important. They threaten to take them  
27 away unless we do heavy, valuable work for free.  
28



1 As this detained person notes, when the jobs are so bad that people do not apply for  
2 them, GEO threatens to take away “privileges” and forgoes payment altogether. This  
3 highlights the non-voluntary nature of the work, particularly given the lack of a  
4 pretense of wages paid, and points to the spectrum of tactics that GEO uses to ensure  
5 that there is always an adequate and tractable labor supply for the work that is needed  
6 to maintain its facility.  
7

8  
9 For labor that does not require people to leave their pods, such as cleaning  
10 shared spaces beyond one’s cell, GEO does not offer jobs that pay \$1.00. Instead, GEO  
11 organizes “contests” between pods to see which people can do the most work cleaning  
12 overnight. Instead of compensating people via commissary, GEO offers “prizes” most  
13 of the year, except before Christmas when it calls these “gifts.” These prizes may  
14 include chips, chocolates, or a piece of chicken. A repeated complaint that people  
15 detained have is that they cannot opt in or out depending on what the “prize” is – non-  
16 participation is not an option. This aspect of GEO’s management scheme means that  
17 this labor is neither voluntary nor compensated with any semblance of a wage. Geo  
18 uses the language of prizes and friendly rivalry to mask this unremunerated cleaning  
19 labor and its coercive character since people cannot opt out of these so-called  
20 competitions.  
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25 Meanwhile, some work positions are highly desirable, especially if they help  
26 people to meet basic needs, such as having access to additional food. From numerous  
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1 conversations with detained workers over the years, La Resistencia has concluded that  
2 in a context in which work is necessary and coerced, people detained are most likely to  
3 sign up for jobs that have three characteristics: workers can leave their pods, the jobs  
4 are during the day, and there is no major exposure to chemicals. For jobs that are in  
5 high demand, such as cooking or being a porter, the waitlist is one to three months. The  
6 jobs are thus difficult to access and dependent upon the guards' preferences. GEO's  
7 complete control over the allocation of jobs is a highly-powerful behavioral  
8 management tool to assert control over workers. It ensures compliance and cooperation  
9 in even hazardous working conditions in the hopes of obtaining a less dangerous job  
10 and, once achieved, detained workers are unlikely to do anything to risk losing a  
11 desirable post.  
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16 **2. Disciplinary action, including use of solitary confinement, is GEO's**  
17 **response to protests for improved conditions.**

18 Despite the use of a division of labor to incentivize people to be compliant in the  
19 hopes of receiving "good jobs," the involuntary nature of the work program is clearly  
20 reflected in GEO's punishment of people who stop working and/or those who  
21 encourage others to do so. In these instances GEO coercively ensures compliance with  
22 its work program by using threats of limiting contact visits, disciplinary action, and  
23 solitary confinement – where individuals have no access to phone calls or internet  
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1 messaging, reduced access to bathing, and even sometimes lose the ability to wear  
2 clothes.

3  
4 During the first hunger strike that La Resistencia supported in 2014, H.M. gave  
5 the following statement:

6 More detainees here at the NWDC facility have partaken in a second  
7 hunger strike since Monday March 24<sup>th</sup>, 2014. Unfortunately, as ICE  
8 supervisors have been slowly punishing members of the hunger strike who  
9 partake in the hunger strike by separating us from our general population  
10 and placing us in solitary confinement or segregation as disciplinary  
11 action.... We are the backbone of this detention center. I feel like this is  
12 modern day slavery and that we are working for a dollar a day. Let us  
13 refuse to work for 72 hours three days in a no working strike... No  
14 working in this facility, no working in the kitchen, that means no working  
15 breakfast, lunch, or dinner shifts. The purpose of this no working strike is  
16 to bring forth and make aware of our living conditions and the broken  
17 immigration system. We want lower commissary prices, increase in pay,  
better quality meals, regular conduct visits with our families, and for the  
immigration court to put into effect granting everyone a possible release  
under own personal reconnaissance, conditional parole, or humanitarian  
parole so that we could be reunited with our families.”<sup>30</sup>

18 H.M. gave this statement after GEO guards found him with written materials  
19 encouraging other workers to join him in a 72-hour work stoppage. In the resulting  
20 disciplinary action, H.M. was placed in solitary confinement for “inciting a work  
21 stoppage” and subsequently deported by ICE.<sup>31</sup> GEO’s use of formal disciplinary  
22 action procedures to retaliate against people participating in work stoppages and its  
23 collaboration with ICE to deport those who speak up for their rights as workers has a  
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26  
27 <sup>30</sup> Statement of H.M., March 26, 2017, to Resistencia organizer; on file with authors.

<sup>31</sup> Copy of disciplinary action on file with authors.

1 clear chilling effect on others who might not want to participate in the “voluntary”  
2 work program. Indeed, GEO and ICE’s immediate and coordinated retaliation against  
3 H.M. for encouraging a labor strike may explain why, since 2014, detained workers  
4 have been unable to organize labor strikes.  
5

6         Similarly, those whose protest takes the form of hunger strikes are subject to  
7 GEO retaliation. On March 27, 2014, GEO Guards invited people to speak to detention  
8 center officials about their hunger strike demands, including higher wages and better  
9 food. The twenty or so men who agreed to participate, thereby identifying themselves  
10 as engaged in constitutionally-protected protest, were immediately surrounded by  
11 officers in riot gear, handcuffed, and taken into solitary confinement; the men were  
12 only released after intervention by the ACLU of Washington and Columbia Legal  
13 Services in federal court.<sup>32</sup>  
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17         Retaliation for the protest against poor living and working conditions can  
18 sometimes be as brutal as physical beatings. In 2018, J.A.M.G. reported to La  
19 Resistencia that he went on hunger strike because the food GEO provides was not  
20 worth eating: “We just didn’t want to eat the food, because the food is not okay here.  
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25 <sup>32</sup> “At least twenty men placed in solitary confinement following participation in hunger strike. Despite retaliation,  
26 peaceful protest continues” (2014) *Not One More Deportation*. <http://www.notonemoredeportation.com/2014/03/31/at-least-twenty-men-placed-in-solitary-confinement-following-participation-in-hunger-strike-despite-retaliation-peaceful-protest-continues/>, Published March 31, 2014; “Hunger Strikers Released from Solitary Confinement at Northwest  
27 Detention Center” (2014) *ACLU of Washington*.  
28 <https://www.aclu-wa.org/news/hunger-strikers-released-solitary-confinement-nw-detention-center>.

1 We think they give better food to animals than what they give us here.”<sup>33</sup> In response  
2 to his protest, J.A.M.G. reported GEO guards grabbed him by the neck; he later  
3 witnessed them beat another person who refused to eat. As well as separate reports of  
4 people beaten by guards to prevent reporting abuses, La Resistencia receives countless  
5 phone calls from people who have concerns and complaints but are too afraid of ICE  
6 and GEO Group’s retaliation to publicly pursue their grievances. For those that do  
7 pursue grievances, the relief is lacking. In 2015, after his first few years in detention,  
8 F.A. reported that he no longer participated in the official grievance system because  
9 there was no point.  
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13           Retaliation for speaking out against coercion and unfair labor practices is not  
14 limited to the behavior of individual guards. Through the use of disciplinary hearing  
15 boards on which both GEO and ICE participate, people who speak up against coerced  
16 work or participate in collective actions, such as striking, are put through disciplinary  
17 hearings that are documented, approved by ICE, and signed off by the warden to force  
18 docility inside the facility and intimidate those inside. In 2014, P.R.H. a hunger striker,  
19 received a disciplinary panel report signed by GEO’s warden that he was found guilty  
20 of violating codes 213, 214, and 221, including “engaging in group demonstration,”  
21 “encouraging others to engage in group demonstration,” and “signing, preparing,  
22 circulating, or soliciting a petition.” P.R.H denied that he incited others or distributed  
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27 <sup>33</sup> J.A.M.G., (2018) “Hunger Striker Statement,” *La Resistencia*, Available at <https://vimeo.com/279542097>, February 12,  
28 2018

1 materials and reminded the board that all the hunger strikers were acting voluntarily.  
2 Nonetheless, the warden signed off on the disciplinary panel’s conclusion to retaliate  
3 against P.R.H. to put him in disciplinary segregation for 20 days on the pretense that  
4 the “detainee poses a threat to facility operations.”<sup>34</sup> These extreme, and yet not  
5 uncommon cases, demonstrate that the climate of coercion is pervasive and the forms  
6 of retaliation are severe. It is in this context that the “voluntary” nature of GEO’s work  
7 program is revealed as a façade.  
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#### 10 **IV. CONCLUSION**

11  
12 GEO Group knowingly and intentionally creates sub-standard detention  
13 conditions such that people must participate in “voluntary” work programs to obtain  
14 basic food, hygiene supplies and access telecommunications needed to contact their  
15 families. As J.C. protested, “How is it that you can work [in the Detention Center] for  
16 \$1, and they don’t ask for social security numbers? We are still in the United States. I  
17 think working for one dollar is an exploitation... Why can’t they bring in US citizens  
18 to work, to make food? I think that these institutions are only here to profit. They  
19 exploit us as cooks, janitors, painters. All that for one dollar. Can you imagine? It’s just  
20 a business, that’s why they have us here.”<sup>35</sup> While workers regularly protest that they  
21 are not receiving fair wages, particularly in comparison to the minimum wage that  
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26 <sup>34</sup> NWDC Institution Disciplinary Panel Report giving PRH 20 days in solitary confinement because “detainee poses a  
27 threat to facility operations,” signed by GEO warden, March 27, 2014; Available at  
[http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/2014\\_disciplinary\\_action\\_prh.pdf](http://www.hungerstrikershandbook.org/uploads/2/6/3/3/26332078/2014_disciplinary_action_prh.pdf)

28 <sup>35</sup> Jesus Chaves, (2018), “Hunger Striker Statement,” *La Resistencia*, <https://vimeo.com/255769053>, February 12, 2018

1 people are paid outside of immigrant detention (including undocumented people), they  
2 nonetheless participate in these programs.

3  
4 The lack of clean clothes, lack of access to medical care, and inadequate food  
5 with semi-starvation conditions has led to tremendous national and international  
6 attention placed on the NWDC. Among others, the ACLU of Washington has filed  
7 multiple lawsuits in the last five years, Human Rights Watch has written multiple  
8 letters to ICE, and university law clinics have documented persistent and substandard  
9 detention conditions.<sup>36, 37, 38</sup> In recent years, even public officials with the City of  
10 Tacoma have noted detention conditions with dismay, expressing concern for liability  
11 for work-place injuries, for the failure to investigate guards' physical assault of people  
12 detained, and for the deaths of people held in detention.<sup>39, 40</sup> GEO's substandard  
13 conditions have nevertheless persisted throughout fifteen years of operation. Indeed,  
14 GEO is currently seeking to expand the Northwest Detention Center in 2019, despite  
15 court rulings that it is not legal to do so.<sup>41</sup>

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21 <sup>36</sup> See, ACLU of Washington (2014), *supra* note 32.

22 <sup>37</sup> See, for example, Human Rights Watch (2018), "Hunger Strikers In ICE Detention at Risk," Available at  
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23 <sup>38</sup> See, for example, International Human Rights Clinic (2008) "Voices from Detention: A report on human rights  
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24 <sup>39</sup> For example, see Strickland, Marilyn (2017) "Re: Business Activity Review / Certificate of Compliance," *City of  
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25 <sup>40</sup> Driscoll, M (2018) "Tacoma mayor wants to 'get rid of ICE' but says city's 'hands are tied' on the NWDC." *Tacoma  
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driscoll/article214972480.html.

26 <sup>41</sup> GEO Group correspondence to Tacoma City Community Vitality and Safety Committee, May 2019. *See also* GEO  
27 Group (2017). Petition for Review No. 17-3-0004 before the Central Puget Sound Growth Management Hearings Board.  
Olympia, WA: Environmental and Land Use Hearings Office.

1 After five years of directly supporting people held at the NWDC, La Resistencia  
2 knows that GEO will continue to act in bad faith towards people detained unless forced  
3 to do otherwise. GEO needs detainee labor to run the NWDC. For that reason, GEO  
4 relies on a steady stream of new people detained who do not know the history of  
5 worker struggles and participate in the “voluntary” work program, including cleaning  
6 overnight in exchange for only snacks. From 2014 through 2019, GEO has responded  
7 to people detained pushing for better conditions with disciplinary actions, placing them  
8 in solitary confinement, and seeking to transfer them to other facilities. Even as he  
9 knew that his deportation was sped up as retaliation, C.R. wrote: “No human being  
10 deserves to be treated in such a vile manner, like a label that makes dollars and cents.  
11 Despite being subjected to an environment of harassment, persecution, and unjust  
12 punishments, they do not intimidate us.”<sup>42</sup>

17 The Court has an opportunity to put an end to the charade of “voluntary” work  
18 program and send a clear message to predatory companies that they can no longer  
19 illegally profit from exploiting Washington residents. We respectfully urge the Court  
20 to grant the State of Washington’s motion for summary judgment.  
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27 <sup>42</sup> Letter from CRA to La Resistencia, written in NWDC in 2014; translation by M. Ybarra, letter on file with authors.



1 DATED the 2<sup>nd</sup> day of July, 2019  
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4

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## APPENDIX

The following is a list of sources cited in this document where available online, collected by the authors at <http://www.hungerstrikershandbook.org/voices.html>. In all other cases, they are on file with La Resistencia.

### **Audio Sources**

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10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on July 2, 2019, I electronically filed the foregoing document  
12 with the Clerk of the Court using the CM/ECF system, which will send notification of  
13 such filing to the attorneys of record registered on the CM/ECF system. All other  
14 parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.  
15

16 DATED this 2<sup>nd</sup> day of July, 2019.

17  
18 *s/Amy J. Kratz*  
19 Amy J. Kratz, WSBA 26768