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Judge Certifies Detainee Class Paid \$1 Daily Work Rate

By **Nicole Narea**

Law360 (August 6, 2018, 9:01 PM EDT) -- A Washington federal judge on Monday certified a class of current and former immigrant detainees working at a facility owned by GEO Group Inc., refusing to toss their suit claiming that the private prison giant violated a state labor law by paying them a \$1 daily rate for working at the center.

U.S. District Judge Robert Bryan held off on reaching the GEO Group's argument that the named plaintiffs in the suit, Ugochukwu Goodluck Nwauzor and Fernando Aguirre-Urbina, could not represent a class of detainees at Northwest Detention Center in Tacoma, Washington, petitioning for lost wages because they do not have work authorization and are therefore unemployable. He acknowledged that the argument was not frivolous, but declined to reject class certification on that basis.

He also found that the class members shared common issues, that the named plaintiffs' claims were typical of the class, and that a class action was an ideal vehicle for resolving the litigation.

"Plaintiffs' claims are typical of the claims of the class ... because the claims arise from evidence pointing to a common course of conduct, that is, participation in the [work program] at the Northwest Detention Center, and the same alleged injury, that is, compensation at \$1 per day of work, an amount not commensurate with the [state minimum wage]," the order granting class certification states.

Judge Bryan was unpersuaded by the company's arguments that state minimum wage law was inapplicable and preempted by federal law as a basis for dismissal.

Furthermore, he refused to dismiss the suit on grounds that the company had sovereign immunity as a federal government contractor, saying that it had not yet reached the issue on its merits. The judge's order pointed out that the GEO Group would have to prove that the government explicitly authorized it to pay \$1 a day to detainees in order to claim sovereign immunity.

"Resolving these issues, at least at this stage, appears to be intertwined with the merits of the case," the order rejecting the company's motion to dismiss states. "The record on these issues may not yet be fully developed. The court should refrain from reaching their merits at present."

In June, Aguirre-Urbina and Goodluck Nwauzor had **urged the court** to certify the then-putative class, rather than allow the claims to proceed individually, because current and former detainees at the center were all similarly harmed by GEO's policy, regardless of each of their "unique and varied backgrounds," according to court filings.

Other than providing security, detainees engage in virtually all service roles at the detention center, performing roles such as cutting hair, cooking meals, mopping floors and washing clothes, all for the \$1 daily rate, according to the filings.

But GEO did not even need to pay the workers from its own bottom line — U.S. Immigration and Customs Enforcement paid the company \$564,396 for more than half a million shifts at the site from 2010 to 2014. The reimbursement increased to \$157,913 in fiscal year 2016, for a daily average of

432 detainee shifts, according to the filings.

Counsel for the parties did not immediately respond to requests for comment Monday evening.

The detainees are represented by Adam J. Berger, Lindsay L. Halm and Jamal N. Whitehead of Schroeter Goldmark & Bender, Andrew Free of the Law Office of R. Andrew Free, Devin T. Theriot-Orr of Sunbird Law PLLC and Meena Menter of Menter Immigration Law PLLC.

GEO is represented by Joan K. Mell of III Branches Law PLLC.

The case is Nwauzor et al. v. The GEO Group Inc., case number 3:17-cv-05769, in the U.S. District Court for the Western District of Washington.

-- Additional reporting by Kevin Penton. Editing by John Campbell.

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