

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

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

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

Plaintiff,

v.

THE GEO GROUP, INC., a Florida  
corporation,

Defendant.

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

**THE GEO GROUP, INC.'S MOTION  
FOR A MISTRIAL**

**NOTE ON MOTION CALENDAR:**  
Date: June 17, 2021

The GEO Group, Inc. ("GEO"), hereby moves for a mistrial in the trial proceedings brought by Plaintiffs State of Washington ("State") and Nwauzor et al. ("Private Plaintiffs") (collectively "Plaintiffs").

A mistrial in a civil case is appropriate where a jury is unable to reach a unanimous verdict. The Ninth Circuit's binding precedent makes plain that "a jury split over an affirmative defense necessarily results in a hung jury" *Jazzabi v. Allstate Ins. Co.*, 278 F.3d 979, 984 (9th Cir. 2002);

1 *see also United States v. Southwell*, 432 F.3d 1050, 1055 (9th Cir. 2005) (“Since a jury verdict must  
 2 be unanimous, a jury united as to guilt but divided as to an affirmative defense (such as insanity) is  
 3 necessarily a hung jury). To be sure, “[l]iability cannot be established until after the jurors  
 4 unanimously agree that the elements are satisfied and they unanimously reject the affirmative  
 5 defenses. This approach comports well with the constitutional and statutory mandates that federal  
 6 juries return unanimous verdicts in civil trials.” *Jazzabi*, 278 F.3d at 984–85.

7 Here, the jury has collectively agreed that they cannot unanimously reject GEO’s  
 8 affirmative defense of intergovernmental immunity. There can be no question as to this finding,  
 9 based upon the jury’s written communications to the Court:

10  
 11 “At this time, based on evidence provided, we are uncertain if we can reach a  
 12 conclusion on question 1, and we **are certain that we cannot agree on question**  
 13 **number 2**” (emphasis added).

14  
 15 After being sent back to the jury room for further deliberation, the jury *again* concluded  
 16 they were “**deadlocked** on one question.” (emphasis added). The Court polled the jury and it was  
 17 clear that at least two jurors remained steadfast that they could not agree on Question 1, in addition  
 18 to being deadlocked on Question 2. Based upon this clear and unambiguous finding, this Court  
 19 should declare a mistrial, consistent with the Ninth Circuit’s decision in *Jazzabi*. For the above  
 20 stated reasons, GEO respectfully asks the Court to enter a mistrial.

21 Respectfully submitted, this 17th day of June, 2021.

22 By: s/ Adrienne Scheffey  
 23 **AKERMAN LLP**  
 24 Adrienne Scheffey (Admitted *pro hac vice*)  
 25 1900 Sixteenth Street, Suite 1700  
 26 Denver, Colorado 80202  
 Telephone: (303) 260-7712  
 Facsimile: (303) 260-7714  
 Email: adrienne.scheffey@akerman.com

1 By: s/ Lawrence D. Silverman

2 **AKERMAN LLP**

3 Lawrence D. Silverman (Admitted *pro hac vice*)

4 98 Southeast Seventh Street, Suite 1100

5 Miami, Florida 33161

6 Telephone: (305) 982-5666

7 Facsimile: (305) 374-5905

8 Email: lawrence.silverman@akerman.com

9 By: s/ Joan K. Mell

10 **III BRANCHES LAW, PLLC**

11 Joan K. Mell, WSBA #21319

12 1019 Regents Boulevard, Suite 204

13 Fircrest, Washington 98466

14 Telephone: (253) 566-2510

15 Facsimile: (281) 664-4643

16 Email: joan@3brancheslaw.com

17 *Attorneys for Defendant The GEO Group, Inc.*

**PROOF OF SERVICE**

I hereby certify on the 10th day of June 2021, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **THE GEO GROUP, INC.'S MOTION FOR JUDGMENT AS A MATTER OF LAW** via the Court's CM/ECF system on the following:

**OFFICE OF THE ATTORNEY GENERAL**

Marsha J. Chien  
Andrea Brenneke  
Lane Polozola  
Patricio A. Marquez  
800 Fifth Avenue, Suite 2000  
Seattle, Washington 98104

*Attorneys for Plaintiff State of Washington*

**SCHROETER GOLDMARK & BENDER**

Adam J. Berger, WSBA #20714  
Lindsay L. Halm, WSBA #37141  
Jamal N. Whitehead, WSBA #39818  
Rebecca J. Roe, WSBA #7560  
810 Third Avenue, Suite 500  
Seattle, Washington 98104  
Telephone: (206) 622-8000  
Facsimile: (206) 682-2305  
Email: hberger@sgb-law.com  
Email: halm@sgb-law.com  
Email: whitehead@sgb-law.com  
Email: roe@sgb-law.com

**THE LAW OFFICE OF R. ANDREW FREE**

Andrew Free (Admitted *Pro Hac Vice*)  
P.O. Box 90568  
Nashville, Tennessee 37209  
Telephone: (844) 321-3221  
Facsimile: (615) 829-8959  
Email: andrew@immigrantcivilrights.com

**OPEN SKY LAW PLLC**

Devin T. Theriot-Orr, WSBA #33995  
20415 72nd Avenue S, Suite 100  
Kent, Washington 98032  
Telephone: (206) 962-5052  
Facsimile: (206) 681-9663  
Email: devin@openskylaw.com

1 **MENTER IMMIGRATION LAW, PLLC**

2 Meena Menter, WSBA #31870  
3 8201 164th Avenue NE, Suite 200  
4 Redmond, Washington 98052  
Telephone: (206) 419-7332  
Email: meena@meenamenter.com

5 *Attorneys for Plaintiffs*

6  
7 s/ Nick Mangels  
8 Nick Mangels