

The Honorable Robert J. Bryan

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**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 RECONSIDERATION OF ORDER  
GRANTING MOTION FOR TRIAL  
SETTING IN PERSON OR ZOOM AND  
SETTING SCHEDULE (DKTS. 444 AND  
323)**

**NOTE ON MOTION CALENDAR:**  
Date: March 29, 2021

1 The GEO Group, Inc. (“GEO”) respectfully moves for reconsideration of the Court’s  
 2 March 17, 2021 Order (*Washington* Dkt. 444, *Nwauzor* ECF 323) (“Order”) granting  
 3 Plaintiff State of Washington’s (the “State” or “Plaintiff”) Motion for Trial Setting In Person  
 4 or by Zoom (*Washington* ECF 432).

5 **A. Motion for Reconsideration.**

6 Local Civil Rule 7(h)(1) authorizes reconsideration upon “a showing of manifest  
 7 error in the prior ruling.” This Court has explained that “‘manifest error’ is ‘an error that is  
 8 plain and indisputable, and that amounts to a complete disregard of the controlling law or the  
 9 credible evidence in the record.’” *Casteel v. Charter Comm’s, Inc.*, No. 3:13-cv-5520, at \*1  
 10 (W.D. Wash. Dec. 1, 2014). GEO respectfully submits this standard is met because, in a  
 11 matter of less than three weeks, this Court issued two divergent rulings, each based on  
 12 rationale that completely opposes the other, and both in favor of the State. Furthermore, the  
 13 Court’s order fails to provide the necessary procedural safeguards to justify a remote trial.

14 **B. Order to Participate in a Remote Trial**

15 On March 17, 2021, this Court ordered that “the jury trial scheduled to commence on  
 16 June 1, 2021, at 9:30 a.m., be conducted using the following procedures and protocols . . .  
 17 The entire trial, including jury deliberations, will take place using the ZoomGov.com  
 18 platform.” *Washington* ECF 444 at 4.<sup>1</sup> In so ordering, the Court did not apply the same  
 19 standard it applied just weeks earlier when faced with the same issue and virtually identical  
 20 objections. As previously briefed in GEO’s Opposition to Plaintiffs’ Motion for Trial Setting  
 21 (*Washington* ECF 434), in *Weger v. Correct Care Solutions LLC, et. al.*, *Case No. 3:19-cv-*  
 22 *05961-DWC*, also pending before this Court, the State raised nearly identical objections to  
 23 those GEO has raised in opposition to a remote trial. *See* ECF 434 at 4-6. In *Weger*, this  
 24 Court declined to order a remote trial on the basis that they are “still experimental” and that it

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 26 <sup>1</sup> The Court left open the possibility of a “hybrid” trial with some portions in-person, but  
 27 ultimately did order that the trial should be held in-person. Since that time, General Order 04-  
 21 was issued and postpones in-person trials to July 2021.

1 “would be a tragedy to conduct this trial remotely only to have the result overturned on  
2 appeal on procedural grounds.” *Weger v. Correct Care Solutions LLC, et. al., Case No. 3:19-*  
3 *cv-05961-DWC*, ECF 105 (Bryan, J.). Accordingly, this Court set a three week in person jury  
4 trial for July 26, 2021 and a in person pretrial conference for July 16, 2021. *Id.* at ECF Nos.  
5 114, 115. In contrast, here, the Court did not set the instant case for an in-person trial in July,  
6 despite stating that the above-captioned case has the highest priority on the civil docket, nor  
7 did it address the experimental nature of remote trials. *See Washington* ECF 444 (noting the  
8 instant case is set to be called as the first civil jury trial).

9 In the instant case, the Court ordered a remote trial over GEO’s objection and did not  
10 consider the likely appeal or novelty of remote trials to be a barrier to justice—let alone the  
11 potential “tragedy” it feared may befall precisely the same type of remote trial in *Weger*. Nor  
12 did the Court address why this case is distinguishable from *Weger* for purposes of conducting  
13 a remote trial, or why the trial should not have been set one month later—in the month of  
14 July (when this Court believes in-person trials will be possible). Indeed, the State in the  
15 instant case *consented* to a trial date in July and, moreover, expressed a preference for an in-  
16 person trial—therefore, there is no harm to the State (or the interests of justice) in trying this  
17 case in July as opposed to June. *Washington* ECF 436 (“Thus, Washington respectfully  
18 requests that the Court accept the parties’ joint proposal to set a three week trial in June or  
19 July 2021 (or as soon thereafter as possible). The Court should order that the trial proceed in  
20 person, if the circumstances permit . . .”).

21 Instead, as it currently stands, the early June trial setting (despite agreement of the  
22 parties to July) ensures that concerns of procedural unfairness will hang heavy over the trial.  
23 This provides the State and private Plaintiffs with the opportunity to wait and see how the  
24 trial turns out and then have the opportunity to later appeal on the basis that the Zoom trial  
25 did not afford due process—particularly if, between now and the end of trial, an appellate  
26 court finds that a Zoom trial violates a civil litigant’s right to a jury trial. Indeed, ordering the  
27 parties to a Zoom trial does not expedite justice, but instead ensures that this case will persist

1 even longer through an appellate process and the possibility of a new trial as a result of the  
2 format of the proceedings.<sup>2</sup>

3 In reaching the opposite conclusion from the *Weger* case, this Court cited a single  
4 order from *Liu v Allstate*, C18-1862BJR in support of the proposition that it could order that  
5 GEO defend against a *class action* trial (that has been combined with an enforcement action  
6 by the Washington Attorney General) over GEO's objections. *Washington* ECF 444 at n. 1.  
7 A review of the Order in *Liu* makes plain that it is not applicable to the instant scenario and,  
8 therefore, does not provide the Court authority to order a remote trial here. Indeed, *Liu*  
9 involves a seven day damages-only trial. See **Exhibit A** (*Liu v Allstate*, C18-1862BJR, ECF  
10 83). The defendant in *Liu* has conceded liability. *Id.* The case is not a class action and has  
11 limited issues in dispute. The instant case stands in stark contrast, as it involves *three*  
12 separate parties, one of whom represents a class of thousands of individuals while the other  
13 represents the entire state. The Plaintiffs alone have proposed over thirty-one (31) witnesses  
14 in the pretrial order and over 500 exhibits. *Washington* ECF 377, 377-1. In addition, the  
15 Court has ruled upon the deposition designations of fourteen (14) different witnesses, all of  
16 which the parties intend to introduce at trial. *Washington* ECF 390. And, despite other courts  
17 making clear that the issue of whether ICE detainees are "employees" is a legal issue,<sup>3</sup> here,  
18 the legal definition of an "employee" is still unknown, with both sides holding differing  
19 views that will not be resolved by this Court before trial. As a result, the issues are  
20 multiplied, with each side preparing parallel cases for these differing definitions. Further, *Liu*

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22 <sup>2</sup> The inconsistency in the two opinions, based upon nearly identical arguments, results in a  
23 lack of guidance for future litigants who are addressing this issue. At a minimum, future  
24 litigants should be able to understand why, given the same arguments by different litigants,  
25 this Court reached wholly separate conclusions. For this reason alone this Court should  
26 reconsider its Order.

27 <sup>3</sup> *Ndambi v. CoreCivic, Inc.*, No. 19-2207, 2021 WL 833277, at \*5 (4th Cir. Mar. 5, 2021)  
("What appellants propose is a fundamental alteration of what it means to be an 'employee.'  
Appellants are not employees in the free labor market contemplation of the Act, and we are  
powerless to make them so. If Congress wishes to apply the FLSA to custodial detentions, it  
is certainly free to do so. But the corollary is that courts are not.").

1 is particularly unpersuasive when compared with the situation in this case, where the Court  
2 had availability on its docket to hold an in-person three week trial just one month later than  
3 the scheduled time.

4 Furthermore, unlike in *Liu*, this case raises legitimate concerns about whether there  
5 exist appropriate safeguards to allow the trier of fact to observe the demeanor of witnesses. In  
6 *Liu*, the Court acknowledged that jurors are likely to be distracted during a Zoom trial. To  
7 address the likely distractions, the *Liu* court assigned “at least two courtroom deputies” to  
8 observe the jurors at all times to ensure no one was distracted. **Exhibit A** (*Liu v Allstate*,  
9 C18-1862BJR ECF 83 at 6). It further ordered that trial days would be shortened and would  
10 include several breaks to address fatigue among the jurors. No such safeguards have been  
11 imposed in this case. Further, there is no evidence that safeguards exist to maintain the jury’s  
12 attention remotely, particularly where the trial is scheduled to consume three full weeks,  
13 without reduced trial time.

14 Further, unlike in *Liu*, where the Court ordered that counsel and witnesses could **not**  
15 be in the same room, here, the Court’s order states witnesses may be in the same room as  
16 counsel while testimony takes place. *Compare Washington* ECF 444 at 6 with **Exhibit B** (*Liu*  
17 *v Allstate*, C18-1862BJR ECF 102 at 3). The Order does not provide for any alternative  
18 safeguards that would ensure a witness does not receive cues from other individuals in the  
19 room who are not prominently displayed on the screen or how GEO is to monitor individuals  
20 who may be in the same room with a witness. Indeed, even at the pretrial hearing held on  
21 March 16, 2021, with no jurors present, GEO was unable to observe all counsel and the  
22 Court at once on the same screen. The Court’s Order also does not explain why this case  
23 justifies the presence of fewer restrictions than were ordered in *Liu*. To be sure, with the  
24 addition of jurors, there are no procedural safeguards to ensure the testimony is not  
25 influenced by the reactions of individuals that the jury cannot see—an issue that would not  
26 be present in an in-person trial.

27 ///

1 **CONCLUSION**

2 For the foregoing reasons, GEO respectfully asks the Court to reconsider its March 17,  
3 2021, Order (*Washington* ECF 444, *Nwauzor* ECF 323) granting Plaintiff State of  
4 Washington’s Motion for Trial Setting In Person or by Zoom (*Washington* ECF 432).

5 Respectfully submitted, this 29th day of March, 2021.

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**PROOF OF SERVICE**

I hereby certify on the 29th day of March, 2021, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **THE GEO GROUP, INC.'S MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION FOR TRIAL SETTING IN PERSON OR ZOOM AND SETTING SCHEDULE (DKTS. 444 AND 323)** via the Court's CM/ECF system on the following:

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