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*COALITION FOR IMMIGRANT JUSTICE*  
8

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11 SACRAMENTO DIVISION

12 THE GEO GROUP, INC.,

13 Plaintiff,

14 vs.

15 GAVIN C. NEWSOM, in his official capacity as  
Governor of the State of California; XAVIER  
16 BECERRA, in his official capacity as Attorney  
General of the State of California,

17 Defendants.  
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Case No. 2:20-cv-00533-TLN-AC

Assigned to: Hon. Troy L. Nunley

**MOTION OF IMMIGRANT LEGAL  
RESOURCE CENTER, FAITH IN THE  
VALLEY, & INLAND COALITION FOR  
IMMIGRANT JUSTICE FOR LEAVE TO  
PARTICIPATE AS *AMICI CURIAE*, AND  
TO FILE MEMORANDUM AS *AMICI  
CURIAE* IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS**

Date:

Time:

Place:

FILE DATE: March 9, 2020

TRIAL DATE: No Date Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that the Immigrant Legal Resource Center (“ILRC”), Faith in the  
3 Valley (“FIV”), and Inland Coalition for Immigrant Justice (“IC4IJ”) respectfully move this Court  
4 for leave to participate in this action as *amici curiae*, and to file a Memorandum in support of  
5 Defendant Governor Gavin Newsom’s and Attorney General Xavier Becerra’s motion to dismiss  
6 Plaintiff the GEO Group’s complaint. Such briefing is appropriate in this case where the complex  
7 legal issues are inextricably linked to individuals, families, and communities. *Amici*’s experience  
8 collaborating with the communities, organization, and policyholders that worked to enact Civil Code  
9 § 1670.9(d) to address the significant lack of transparency in the permitting and contracting related  
10 to immigration detention facilities will aid the Court in this action. And *Amici*’s participation in the  
11 public notice and comment processes provided by § 1670.9(d), relating to Plaintiff’s permit  
12 applications to the cities of Adelanto and McFarland to convert its prison facilities into immigration  
13 detention facilities, will also benefit the Court.

14 This motion is based on the information herein and the concurrently filed proposed brief,  
15 which is attached as an exhibit to this request. Counsel for *amici* contacted the parties in this action.  
16 Defendants have consented to the filing of this motion and the accompanying *amicus* brief, and  
17 Plaintiff has not responded to the request as of the time of filing.<sup>1</sup>

18 **I. STANDARD FOR MOTION FOR LEAVE TO FILE MEMORANDUM OF *AMICI***  
19 ***CURIAE***

20 District courts have broad discretion to permit third parties to participate in an action as *amici*  
21 *curiae*. *Hoptowitz v. Ray*, 682 F. 2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by*  
22 *Sandin v. Conner*, 515 U.S. 472, 487 (1995); *see also NGV Gaming, Ltd. v. Upstream Point Molate,*  
23 *LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005). Such discretion is generally exercised liberally  
24 since “[t]here are no strict prerequisites that must be established prior to qualifying for *amicus*  
25 status.” *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United*  
26 *States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)). “[A]n individual seeking to appear as

27 <sup>1</sup> Counsel certifies that no party’s counsel authored the *amicus* brief in whole or in part, no party or a  
28 party’s counsel contributed money that was intended to fund preparing or submitting the brief, and  
no person—other than the *amici curiae*, their members, or their counsel—contributed money that  
was intended to fund preparing or submitting the brief. *See Fed. R. App. P. 29(a)(4)*.

1 amicus must merely make a showing that [her] participation is useful to or otherwise desirable to the  
2 court.” *Id.* District courts, including those in the Eastern District, “frequently welcome” *amicus*  
3 briefs from non-parties in cases where the legal issues “have potential ramifications beyond the  
4 parties directly involved or if the amicus has unique information or perspective that can help the  
5 court beyond the help that the lawyers for the parties are able to provide.” *California v. United*  
6 *States Dep’t of Labor*, No. 2:13-CV-02069-KJM-DAD, 2014 WL 12691095, at \*1 (E.D. Cal. 2014)  
7 (quoting *NGV Gaming, Ltd.*, 355 F. Supp. 2d at 1067).

8 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE***

9 *Amici* are three organizations that collaborated with the communities, organization, and  
10 policyholders that worked to enact Civil Code § 1670.9(d). Working in partnership with each other,  
11 as well as the residents of Adelanto, McFarland, and others, these organizations advocated to address  
12 the significant lack of transparency in the permitting and contracting related to immigration  
13 detention facilities through § 1670.9(d)’s critical notice and hearing provisions. Since then, *amici*  
14 have continued their work, including through participation in the public notice and comment  
15 processes relating to Plaintiff’s permit applications to the cities of Adelanto and McFarland to  
16 convert its prison facilities into immigration detention facilities.

17 ILRC is a national nonprofit legal support center, the mission of which is to work with and  
18 educate immigrants, community organizations, and the legal sector to continue to build a democratic  
19 society that values diversity and the rights of all people. Founded in San Francisco, California in  
20 1979, ILRC remains headquartered there and has offices in Washington, D.C., as well as in Austin  
21 and San Antonio, Texas. ILRC also serves and supports California through its San Francisco staff, as  
22 well as staff working and based in the San Joaquin Valley. ILRC is widely regarded as one of the  
23 foremost experts in this field.

24 ILRC works to advance its mission by improving immigration law and policy, expanding the  
25 capacity of legal service providers, and advancing immigrant rights through community education  
26 programs, legal training, technical assistance, and policy development and advocacy. ILRC attorneys  
27 are experts in the field of immigration law, including asylum, citizenship and naturalization,  
28 intersections with criminal law, detention, enforcement, post-conviction relief, and U visas and T

1 visas. ILRC attorneys are also experts in issues relating to Deferred Action for Childhood Arrivals,  
2 the Violence Against Women Act, public charge rules, and the immigrant youth and LGBT  
3 populations. Through their work with policy makers at the local, state, and federal levels, ILRC  
4 advocates to ensure that policies and procedures that impact immigrant communities are fair and  
5 just. To support the education of immigration law professionals and advocates, ILRC publishes  
6 expert immigration practice manuals used by legal service providers in California and beyond. It  
7 provides case-specific technical assistance to attorneys, nonprofit organizations, public defenders  
8 and other immigrant advocates. And, ILRC attorneys conduct regular trainings on emerging issues,  
9 policy updates, and effective practices from the field. ILRC helps immigrant communities and  
10 related organizations advocate for better policies, improved access to services, and safer  
11 communities through various education and leadership development programs.

12 FIV is a faith-based, grassroots community organization in California's Central Valley whose  
13 mission is to unlock the power of people to put faith into action to advance racial and economic  
14 justice in local Central Valley communities. As a multi-faith, multi-racial coalition of congregations  
15 and families across the Central Valley, FIV builds power among historically excluded communities  
16 and builds bridges between people across difference to act together for systems and policy change at  
17 the local, regional and state level. The organization is led by volunteer leaders impacted by equity  
18 issues: immigrants, low-wage workers, young people and other impacted community members.

19 FIV's core program focuses on leadership development of volunteer leaders in community  
20 organizing and civic engagement, amplifying the voices of Central Valley residents most impacted  
21 by racial justice issues, equipping them to tell their stories and to change their communities. The  
22 organization has a vision for a future that is free of economic oppression, racism and discrimination,  
23 in which everyone lives in a safe and healthy environment, is respected and included, and has agency  
24 over the decisions that shape their lives.

25 FIV grassroots leaders and clergy are currently advancing campaigns to protect immigrant  
26 rights and dignity, to promote safe, healthy and affordable housing and eviction prevention; to end  
27 racial profiling and the criminalization of black and brown people; to eradicate structural racism  
28 within law enforcement and shift public safety funding to community re-investment; to end the

1 school to prison pipeline; and to promote economic and environmental justice. In the past few years,  
2 FIV won and is shaping implementation of a breakthrough rental housing inspection program that  
3 has already improved housing conditions for over 6,000 families in Fresno. This program is being  
4 replicated in other Central Valley counties. FIV launched the Valley Watch Network which has  
5 trained hundreds of local resident volunteers to protect immigrant communities threatened by  
6 deportation. FIV youth and community leaders were a strong voice for Deferred Action for  
7 Childhood Arrivals program and in helping to make California a sanctuary state through California's  
8 Senate Bill 54.

9 IC4IJ is comprised of 35 organizations that serve the immigrant community in the Inland  
10 Empire. IC4IJ's mission is to convene organizations to collectively advocate and work to improve  
11 the lives of immigrants. Through its work to build organizational capacity through leadership  
12 development, cooperation, support networks and shared regional strategies, IC4IJ is collectively  
13 changing the narrative of the one million immigrants that live in, and are a foundational part of the  
14 Inland Empire communities. Beyond that, IC4IJ provides training, technical support, grants, and  
15 other resources to coalition partners to further support their efforts and missions in the region.

16 Through its advocacy on behalf of immigrants at the local, state, and national level, IC4IJ has  
17 been influential in securing the passage of the California Trust Act (AB 4), which limits cooperation  
18 between Immigration and Customs Enforcement and local law enforcement. IC4IJ has supported  
19 immigrant youth in their fight to preserve and advance Deferred Action for Childhood Arrivals, and  
20 secured key protections for immigrants via a series of laws, including the California Values Act  
21 (SB 54).

22 **III. *AMICI CURIAE'S* EXPERTISE WILL BENEFIT THE COURT**

23 ILRC, FIV, and IC4IJ were active in the development, support, and passage of SB 29. Their  
24 work with and among the community, organizations, and policy makers—which continues today—  
25 provides these organizations with important information and perspective that will aid the Court in  
26 evaluating Defendants' motion to dismiss.

27 Defendants' motion to dismiss raises, among other issues, principles of intergovernmental  
28 immunity. The parties dispute the extent to which there are differences between state, federal, and

1 private immigration detention facilities, and thus, the propriety of the State’s regulation through  
2 SB 29 of municipalities’ zoning requirements related to such facilities. As co-authors and/or original  
3 co-sponsors of this legislation, *amici* have communicated, organized, and supported the  
4 communities, organizations, legal professionals, local law enforcement, and policymakers that  
5 advocated for this bill. That collaboration continues as those same individuals and entities work to  
6 ensure that municipalities fully comply with the legislation. This work provides *amici* with “unique  
7 information [and] perspective that can help the court” gain a complete understanding of the  
8 significant “ramifications” of the legal issues, in a way “beyond the parties directly involved” in  
9 the case can. *California*, 2014 WL 12691095, at \*1 (quoting *NGV Gaming, Ltd.*, 355 F. Supp. 2d at  
10 1067). Specifically, *amici* can impart critical information regarding the differences between state,  
11 federal, and private immigration detention facilities that prompted and continue to justify the State’s  
12 regulation of municipalities’ zoning procedures for immigration detention facilities. *Amici* can also  
13 provide perspective on the concerns of the local communities, shared by citizens across California,  
14 relating to the lack of transparency and accountability for local governments in their dealings with  
15 these institutions, which Civil Code § 1670.9(d) directly—and correctly—addresses.

16 **IV. CONCLUSION**

17 Accordingly, ILRC, FIV, and IC4IJ respectfully request that the Court grant their motion for  
18 leave to participate as *amici curiae*, and to file the accompanying Memorandum in support of  
19 Defendants’ motion to dismiss.

20  
21 Date: June 25, 2020

SIDLEY AUSTIN LLP

22  
23 By: /s/ Collin P. Wedel  
Collin P. Wedel

24 Attorneys for *Amici Curiae*  
25 IMMIGRANT LEGAL RESOURCE  
26 CENTER, FAITH IN THE VALLEY, &  
27 INLAND COALITION FOR IMMIGRANT  
28 JUSTICE

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Case No. 2:20-cv-00533-TLN-AC

Assigned to: Hon. Troy L. Nunley

**[PROPOSED] MEMORANDUM OF THE  
IMMIGRANT LEGAL RESOURCE  
CENTER AS AMICI CURIAE IN SUPPORT  
OF DEFENDANTS' MOTION TO DISMISS**

Date:

Time:

Place:

FILE DATE: March 9, 2020

TRIAL DATE: No Date Set

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1 **INTRODUCTION AND SUMMARY OF ARGUMENT**

2 For years, Californians had uniquely limited oversight of their local governments’ dealings  
3 with for-profit immigration detention facilities. Unlike virtually every other sort of state or federal  
4 facility—which would be subject to a host of permitting, public comment, and public records  
5 requirements—for-profit immigration detention facilities existed in an accountability-free loophole,  
6 skirting government procurement requirements and state sunshine laws, all while raking in billions  
7 of dollars in profits paid from taxpayer funds.

8 Recognizing the community demand for public participation in local government dealings  
9 with these for-profit immigration detention facilities, the California Legislature enacted Civil Code  
10 § 1670.9(d) to create an informed process for municipalities to follow when making these zoning  
11 decisions. Through this litigation, Plaintiff, an operator of multiple for-profit detention institutions in  
12 this state, would have this Court declare as unconstitutional the simple notice and hearing  
13 requirements that ensure Californians have some voice in the placement and operation of these  
14 carceral complexes. But Plaintiff ignores the key distinction between state, federal, and for-profit  
15 immigration facilities: namely, for-profit facilities have a perverse financial incentive to minimize  
16 oversight while maximizing profits. That drive for profits leads private facilities to inflict unique  
17 harms on local communities, including impaired oversight, corrupting effects on local governments,  
18 public fear and distrust, stunted economic development, and negative environmental impacts.

19 As set forth in Defendants’ motion to dismiss, Section 1670.9(d)’s notice and hearing  
20 requirements do not violate intergovernmental immunity principles. ECF No. 23 at 8-12. These  
21 narrow provisions neither regulate nor discriminate against the federal government, and they do not  
22 treat any agent of the federal government worse than similarly situated entities. Rather, Section  
23 1670.9(d) regulates the issuance of zoning permits by local governments, which are units of the state  
24 government, Cal. Gov. Code § 23002. Because Section 1670.9(d) does not violate intergovernmental  
25 immunity, Plaintiff fails to state a claim for which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6).  
26 Accordingly, the Court should grant Defendants’ motion and dismiss Plaintiff’s complaint.

**BACKGROUND**

**I. Section 1670.9(d) Provides Local Communities With Input Via Notice and Hearing Requirements on Zoning Decisions that Affect Them.**

Some local governments have facilitated the operation of immigration detention facilities in their communities for years. Such decisions, “for example, conveyance of real property or issuance of building permits,” were generally made and executed “with little public awareness” or input. Defendants’ Request for Judicial Notice (“Def. RJN”), ECF No. 23-1, Ex. 1 at 3-4. In response to California communities’ calls for transparency and accountability in the permitting processes related to these facilities, Section 1670.9(d) added notice and hearing requirements applicable to local governments prior to the issuance of new zoning permits for existing facilities. *See* Sen. Bill 29, 2017-2018 Reg. Sess. (Cal 2017) (SB 29) § 2. As enacted, § 1670.9(d) provides:

A city, county, city and county, or public agency shall not . . . issue a permit for the building or reuse of existing buildings by any private corporation . . . to house or detain noncitizens for . . . civil immigration proceedings unless the city, county, city and county, or public agency has done both of the following:

- (1) Provided notice to the public of the proposed . . . permitting action at least 180 days before execution of the . . . permit.
- (2) Solicited and heard public comments on the proposed . . . permit action in at least two separate meetings open to the public.

Cal. Civ. Code. § 1670.9(d). These notice and hearing requirements were enacted to provide communities with a formal public opinion process. In fact, hundreds of residents in Adelanto and McFarland have participated in the public forums Section 1670.9(d) required with respect to Plaintiff’s facilities, demonstrating both the legitimate need for these processes, as well as the overwhelming local demand for input in local government decision-making.

**II. Plaintiff Seeks to Convert Three of Its Criminal Detention Facilities to Immigration Detention Centers to Preserve Billions in Profits.**

Plaintiff, according to its website, “is the world’s leading provider of diversified correctional, detention, and community reentry, and electronic monitoring services to government agencies

1 worldwide.”<sup>1</sup> With approximately three-fourths of the immigration detainee population nationwide  
2 held in a for-profit detention facility,<sup>2</sup> Plaintiff profits from policies that have led to a record-high  
3 number of immigration detainees across the country.<sup>3</sup> Indeed, for every 100 U.S. immigrant  
4 detainees, 32 are held in one of Plaintiff’s facilities.<sup>4</sup> As a result, in 2019, Plaintiff’s total revenues  
5 were \$2.48 billion, up from \$2.33 billion in 2018.<sup>5</sup>

6 As relevant here, Plaintiff owns and operates two immigration detention facilities in  
7 California: (1) the Mesa Verde ICE Processing Center, located in Bakersfield, near the city of  
8 McFarland; and (2) the Adelanto ICE Processing Center, in the city of Adelanto. Compl. ¶ 32.  
9 Plaintiff also owns three additional facilities it previously operated as private prisons through a  
10 contract with the California Department of Corrections and Rehabilitation: (1) the Desert View  
11 Modified Community Correctional Facility (“MCCF”) in Adelanto; (2) the Central Valley MCCF in  
12 McFarland; and (3) the Golden State MCCF also in McFarland. *Id.* ¶¶ 35-36. Plaintiff now intends to  
13 operate the Desert View MCCF as an “annex” to the Adelanto ICE Processing Center, and the  
14 Central Valley and Golden State MCCFs as “annexes” to the Mesa Verde ICE Processing Center—  
15 all thanks to hastily awarded 15-year contracts<sup>6</sup> with ICE that “incorporate[]” the “annex” facilities

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17 <sup>1</sup> *The GEO Group Comments on Bank of America Decision and Expects No Impact on Recently*  
18 *Extended Senior Revolving Credit Facility*, BUSINESSWIRE (June 26, 2019), <https://tinyurl.com/y9j3gsg5>.

19 <sup>2</sup> Detention Watch Network and Center for Constitutional Rights, *New Information from ICE ERO’s*  
20 *July Facility List*, <https://tinyurl.com/yb6xb5fg> (last visited June 24, 2020).

21 <sup>3</sup> Isabela Dias, *ICE Is Detaining More People Than Ever—And For Longer*, PACIFIC STANDARD,  
22 (Aug. 1, 2019), <https://tinyurl.com/ybhthyot>; Hamed Aleaziz, *More Than 52,000 People Are Now*  
*Being Detained By ICE, An Apparent All-Time High*, BUZZFEED NEWS (May 20, 2019),  
<https://tinyurl.com/y5ldhrtp>.

23 <sup>4</sup> Hauwa Ahmed, *How Private Prisons Are Profiting Under the Trump Administration*, CENTER FOR  
24 AMERICAN PROGRESS (Aug. 30, 2019), <https://tinyurl.com/y75edurx>.

25 <sup>5</sup> GEO Group, Inc., *2019 Annual Report*, at 3, <https://tinyurl.com/y8jymlpw>.

26 <sup>6</sup> State lawmakers have accused ICE of evading the federal procurement process. California  
27 Assemblyman Rob Bonta stated that ICE “should’ve complied with federal law. And if it did, [the  
28 procurement process] would’ve been longer and more competitive and moved past Jan. 1, 2020. But  
they deliberately manipulated the process, gamed it and rigged it.” Elly Yu, *California Banned*  
*Private Immigrant Detention Centers. So How Could Some Exist for Another 15 Years?*, LAIST  
(Dec. 27, 2019), <https://tinyurl.com/y94bjbkm>.

1 into Plaintiff’s existing immigration detention facilities. *Id.* ¶¶ 33-36, 38, 42, 46; Decl. of  
 2 Richard Long ¶¶ 6-7. Plaintiff’s existing conditional use permits (“CUPs”) for the three MCCFs,  
 3 however, do not permit Plaintiff to hold immigration detainees in any of those facilities. Compl.  
 4 ¶¶ 55-56. As a result, Plaintiff had to apply for approval from both cities to modify the existing  
 5 CUPs for the facilities. *Id.* ¶¶ 60-69. Pursuant to Section 1670.9(d), the public was guaranteed a  
 6 voice in that process.

7 Both the cities of Adelanto and McFarland held nominally “public” forums addressing  
 8 Plaintiff’s applications, in satisfaction of their obligations under Section 1670.9(d).<sup>7</sup> The city of  
 9 McFarland held two hearings regarding Plaintiff’s proposed CUP modifications for the Central  
 10 Valley and Golden State MCCFs in January and February 2020.<sup>8</sup> After the McFarland Planning  
 11 Commission did not approve the requested CUP modifications, though, Plaintiff appealed to the  
 12 McFarland City Council,<sup>9</sup> which unanimously approved the proposal on April 23, 2020, during a  
 13 virtual meeting.<sup>10</sup> The city of Adelanto also held two public hearings regarding the proposed CUP  
 14 modification for the Desert View MCCF in January and February 2020.<sup>11</sup> The Adelanto Planning  
 15 Commission approved Plaintiff’s application at the second hearing, which residents immediately

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17 <sup>7</sup> ILRC disputes that the cities fully complied with the requirements of SB 29, or even the  
 18 requirements of Brown Act or the California Environmental Quality Act (“CEQA”), both of which  
 19 require complete public disclosure, review, and participation in qualifying zoning projects such as  
 20 this. *See, e.g., Letter to Mayor Gabriel Reyes, et al. from Grisel Ruiz of Immigrant Legal Resource*  
 21 *Center, et al. re: SB 29 Compliance: Appeal of Planning Commission Request to Modify Conditional*  
 22 *Use Permit No. 96-11* (April 22, 2020), <https://tinyurl.com/ya6ktp6x>.

21 <sup>8</sup> Lizette Chavez and Marco Rodriguez, *Hundreds Protest, Counter-Protest Expansion of*  
 22 *Immigration Detention at McFarland Planning Commission Meeting*, KERN SOL NEWS (Jan. 27,  
 2020), <https://tinyurl.com/y8ohgjmm>; Miriam Jordan, *An ICE Detention Center? You Picked the*  
 23 *Wrong Town, Residents Say*, N.Y. TIMES (Feb. 20, 2020), <https://tinyurl.com/wev2snc>.

23 <sup>9</sup> Rebecca Plevin, *Adelanto, McFarland to vote on GEO’s Proposal to Convert Prisons into ICE*  
 24 *detention centers*, DESERT SUN (Apr. 21, 2020, updated Apr. 22, 2020),  
 25 <https://tinyurl.com/ycwfk6cv>.

25 <sup>10</sup> Yesenia Amaro, *New ICE detention facility moves forward in rural San Joaquin Valley town*  
 26 *despite outcry*, FRESNO BEE (Apr. 24, 2020), <https://tinyurl.com/y97kbejg>.

26 <sup>11</sup> Martin Estacio, *GEO Group request to increase beds for detainees draws packed crowd in*  
 27 *Adelanto*, DESERT DISPATCH (Jan. 25, 2020), <https://tinyurl.com/ybbmuvf8>; Rebecca Plevin,  
 28 *Adelanto approves GEO plan to expand capacity at California immigration detention center*,  
 DESERT SUN (Feb. 20, 2020), <https://tinyurl.com/y9mmn5ey>.



1 appealed to the Adelanto City Council.<sup>12</sup> As of the date of filing, the Adelanto City Council has not  
2 yet voted on the appeal.

3 **III. Communities Wield Their Participation Rights and Speak Out Against For-Profit**  
4 **Immigration Detention Facilities.**

5 **A. Public Participation in the City of McFarland**

6 The residents of the city of McFarland first learned of Plaintiff’s plan to convert the Central  
7 Valley and Golden State MCCFs into immigration detention centers with 1,400 new beds less than a  
8 week before the January 21, 2020, hearing during which the City Planning Commission would hear  
9 public comment. They immediately jumped into action. McFarland residents opposed to the CUP  
10 modification volunteered and organized with Faith in the Valley after mass in their community  
11 churches, and 11 additional organizations, including the United Farm Workers Foundation, the  
12 Dolores Huerta Foundation, Kern Welcoming and Extending Solidarity to Immigrants, California  
13 Immigrant Youth Justice Alliance, the Democratic Socialists of America Kern County, Rapid  
14 Response Network of Kern, Visión y Compromiso, Women’s March Kern County, the Immigrant  
15 Legal Resource Center (“ILRC”), and the American Civil Liberties Union of Southern California  
16 (“ACLU”), formed a coalition to do the same. These individuals and organizations submitted written  
17 comments to the City Clerk prior to the hearing.

18 Despite the short notice, on January 21, 2020, hundreds of McFarland residents attended the  
19 public hearing and voiced their opposition, via public comment and physical presence, to the  
20 proposed CUP modification that would convert the criminal detention centers into immigration  
21 detention centers.<sup>13</sup> Due to the overwhelming attendance, which dwarfed ordinary attendance  
22 numbers,<sup>14</sup> advocates demanded that the hearing be translated into Spanish, which the Commission  
23 ultimately arranged.<sup>15</sup> Because only 50 people were permitted inside the hearing room, many

24 <sup>12</sup> Inland Coalition for Immigrant Justice, *Adelanto Residents file an appeal to GEO’s attempt to*  
25 *expand Detention Facility* (Mar. 2, 2020), <https://tinyurl.com/yckoeqez>.

26 <sup>13</sup> Chavez and Rodriguez, *supra* note 8.

27 <sup>14</sup> Sam Morgen, *McFarland to hold second meeting on expanding immigrant detention capabilities*,  
28 *BAKERSFIELD.COM* (Feb. 11, 2020), <https://tinyurl.com/y837s279> (noting that City Planning  
Commission meetings “rarely see[] more than two public speakers per meeting”).

<sup>15</sup> Chavez and Rodriguez, *supra* note 8.

1 residents were forced to voice their opposition from outside. Their chants to “Shut Down GEO”  
2 were easily heard through the thin walls inside the hearing room.<sup>16</sup>

3 The second public hearing before the City Planning Commission was held on February 18,  
4 2020. In the lead-up to the hearing, long-time McFarland resident and farmworker turned  
5 community organizer, Maribel Ramirez, ran a door-to-door campaign with her sons, asking residents  
6 to sign their names, addresses, and phone numbers to cards that read in Spanish, “No to Immigration  
7 Detention Centers in McFarland.”<sup>17</sup> Despite fears of sharing their personal information, Ms. Ramirez  
8 gathered cards from 1,000 McFarland residents opposed to converting state prisons to immigration  
9 detention facilities.<sup>18</sup> The campaign inspired Joseph V. Brennan, bishop of the Roman Catholic  
10 Diocese of Fresno, which serves the area’s one million Catholics, to write an op-ed in the Fresno  
11 Bee supporting McFarland residents’ opposition to the CUP request.<sup>19</sup> Hundreds of residents  
12 marched through the streets of McFarland to protest the immigration detention centers in the days  
13 immediately before the hearing.<sup>20</sup> And, during the hearing, hundreds of residents voiced their  
14 opposition by chanting together outside of the hearing building.<sup>21</sup> Ultimately, the McFarland  
15 Planning Commission did not pass the plan to convert the former state prisons into immigration  
16 detention centers, voting 2-2. One Commissioner who voted against the plan said, “The community  
17 made a big difference.”<sup>22</sup> Another Commissioner said, “We are a tight community.”<sup>23</sup>

18 **B. Public Participation in the City of Adelanto**

19 Plaintiff’s plan to convert the Desert View MCCF, in Adelanto, into an immigration  
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21 <sup>16</sup> Chavez and Rodriguez, *supra* note 8.

22 <sup>17</sup> Jordan, *An ICE Detention Center?*, *supra* note 8.

23 <sup>18</sup> *Id.*

24 <sup>19</sup> Bishop Joseph V. Brennan, *It took McFarland residents to stand up against a plan for a private  
detention center*, FRESNO BEE (Mar. 5, 2020), <https://tinyurl.com/y8cgp4g>.

25 <sup>20</sup> Plevin, *Adelanto, McFarland to vote on GEO’s proposal to convert prisons into ICE detention  
centers*, *supra* note 9.

26 <sup>21</sup> Jordan, *An ICE Detention Center?*, *supra* note 8.

27 <sup>22</sup> *Id.*

28 <sup>23</sup> *Id.*

1 detention facility with 750 new beds was first considered at a standing-room only hearing before the  
2 Adelanto Planning Commission on January 22, 2020.<sup>24</sup> Community members, led by the Inland  
3 Coalition for Immigrant Justice (“IC4IJ”) and joined by (among others) High Desert Southern  
4 Christian Leadership Conference, certain Adelanto High School teachers, High Desert Progressive  
5 Democrats, Christ the Good Shepherd Church, and El Sol, voiced their opposition to the  
6 immigration detention facility inside and outside of Adelanto’s City Hall. Jose Villafuerte, a local  
7 biology teacher, said Adelanto’s reliance on the prison industry contributes to his students’ negative  
8 outlook of their city: “The fact that their city has a jail and a[n immigration] detention center and  
9 that’s all it has, to them it’s a negative thing.”<sup>25</sup> Lizbeth Abeln, an immigration detention coordinator  
10 with the IC4IJ, expressed her desire for Adelanto to “choose people over profit” and invest in the  
11 community, “not cages.”<sup>26</sup> Others who spoke at the Commission meeting sought to highlight  
12 Plaintiff’s notoriously abysmal record of violations of federal detention standards at the existing  
13 Adelanto facility; they also pointed to the multiple lawsuits filed against Plaintiff, as well as ICE.<sup>27</sup>

14 At a second hearing regarding the proposed plan held on February 19, 2020, the Adelanto  
15 Planning Commission heard more than three hours of public testimony before voting 4-1 to approve  
16 the CUP modification and permit Plaintiff to convert the Desert View MCCF into an annex of the  
17 Adelanto ICE Processing Center.<sup>28</sup> Local residents appealed the Commission’s decision to the  
18 Adelanto City Council.<sup>29</sup> The final hearing on the appeal was scheduled for April 22, 2020, but the  
19 vote was postponed. The Adelanto City Council has not yet held another hearing or vote.

20 As the overwhelming public participation in Adelanto and McFarland shows, California had  
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22 <sup>24</sup> Estacio, *supra* note 11.

23 <sup>25</sup> Rebecca Plevin, *How a private prison giant has continued to thrive in a state that wants it out*,  
24 DESERT SUN (Jan. 25, 2020), <https://tinyurl.com/tpgmodd>.

25 <sup>26</sup> Estacio, *supra* note 11.

26 <sup>27</sup> *Id.*

27 <sup>28</sup> Plevin, *Adelanto approves GEO plan to expand capacity at California immigration detention*  
28 *center*, *supra* note 11.

<sup>29</sup> Inland Coalition for Immigrant Justice, *Adelanto Residents file an appeal to GEO’s attempt to*  
*expand Detention Facility*, *supra* note 12.

1 a legitimate interest in requiring public notice and comment via Section 1670.9(d).

2 **ARGUMENT**

3 **FOR-PROFIT IMMIGRATION DETENTION FACILITIES IMPOSE UNIQUE HARMS**  
4 **ON LOCAL COMMUNITIES, UNDERSCORING THE NEED FOR LOCAL INPUT**

5 There are five immigration detention centers in California, four of which are privately run by  
6 for-profit corporations. The four for-profit immigration detention facilities are far larger—and  
7 impose far greater negative externalities—than their government-run counterparts. California’s four  
8 private facilities hold on average, 3,700 people on a given day—or approximately 85% of the State’s  
9 total immigration detainee population. *See* Def. RJN, Ex. 1 at 3. As compared to detainees in  
10 government-run facilities, detainees in for-profit facilities face more inhumane conditions, ranging  
11 from lack of basic food and personal hygiene safety,<sup>30</sup> inadequate medical and mental health care,<sup>31</sup>  
12 and sexual abuse and assault,<sup>32</sup> to deficient physical-plant conditions<sup>33</sup> and labor exploitation.<sup>34</sup> Such

13 <sup>30</sup> Office of Inspector General, Dep’t Homeland Security *Concerns about ICE Detainee Treatment*  
14 *and Care at Four Detention Facilities*, at 4 (June 3, 2019) (“OIG-19-47”), <https://tinyurl.com/y5lp2d6h> (finding “egregious” violations of basic food safety practices at Adelanto, including “lunch  
15 meat and cheese were mixed and stored uncovered in large walk-in refrigerators; lunch meat was  
16 also unwrapped and unlabeled; chicken smelled foul and appeared to be spoiled; and food in the  
freezer was expired”).

17 <sup>31</sup> *Top Complaints in CA Immigration Detention Facilities*, COMMUNITY INITIATIVES FOR VISITING  
18 IMMIGRANTS IN CONFINEMENT (“CIVIC”) (Aug. 28, 2017), <https://tinyurl.com/ybkqy6s4>; *There Is*  
19 *No Safety Here: The Dangers for People with Mental Illness and Other Disabilities in Immigration*  
*Detention at GEO Group’s Adelanto ICE Processing Center*, DISABILITY RIGHTS CALIFORNIA (Mar.  
20 5, 2019), <https://tinyurl.com/yd5odw42>.

21 <sup>32</sup> *Letter to Thomas D. Homan, Director, U.S. Immigration and Customs Enforcement, et al.*, CIVIC  
22 (April 11, 2017), <https://tinyurl.com/y8y5nqt7> (citing data from the Office of the Inspector General  
showing more than 1,000 reports of physical and sexual abuse filed by people in detention  
23 nationwide between May 2014 and July 2016, with two of the GEO Group’s facilities receiving the  
highest number of complaints); *A Call for Change: Protecting the Rights of LGBTQ Detainees*, Just  
24 Detention International (Feb. 2009), <https://tinyurl.com/ybtbbus8> (showing that LGBTQ detained  
persons are 15 times more likely than the general population of detained persons to be sexually  
assaulted in detention centers).

25 <sup>33</sup> OIG-19-47, *supra* note 30, at 8 (identifying the “poor condition” of physical plant at Adelanto and  
26 three other facilities “including mold and peeling paint on walls, floors, and showers, and unusable  
toilets” in the bathrooms, which creates “health issues for detainees, including allergic reactions and  
27 persistent illnesses”).

28 <sup>34</sup> Madison Pauly, *A Judge Says Thousands of Detainees May Sue a Prison company for Using Them*  
*as a “Captive Labor Force,”* MOTHER JONES (Dec. 5, 2019), <https://tinyurl.com/y8nxtt52>.

1 conditions are suffered by immigration detainees, with often serious and sometimes deadly  
2 consequences,<sup>35</sup> and with limited accountability or means for redress.

3 The harms inflicted by for-profit immigration detention facilities are not borne solely by  
4 those detained within their walls. These private facilities inflict at least five unique harms on the  
5 residents of the communities where they are located, justifying California's requirements for  
6 increased community input on how local governments interact with for-profit immigration detention  
7 facility operators.<sup>36</sup> For-profit immigration detention centers: (A) operate with limited transparency,  
8 accountability to, or oversight from the local community in their dealings with local government;  
9 (B) have a corrupting effect on local governments; (C) contribute to public fear distrust of law  
10 enforcement; (D) stunt the development of local communities; and (E) impose negative  
11 environmental and health impacts.

12 **I. Local Government Dealings with For-Profit Immigration Detention Facilities Lack  
13 Transparency, Resulting in Limited Accountability to the Local Community.**

14 Some local governments have facilitated the operation of for-profit immigration detention  
15 facilities in their communities behind closed doors. Facing no obligations to seek public input and no  
16 consequences for failing to exercise appropriate oversight, these local governments have essentially  
17 served as pass-through entities between ICE and for-profit immigration detention facility operators,  
18 permitting the generation of billions in profits outside the public-eye.

19 Until § 1670.9(d), in contrast to virtually every other commercial or industrial facility that is

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20 <sup>35</sup> Raul Ernesto Morales-Ramos died while detained at Plaintiff's Adelanto Detention Facility, from  
21 organ failure after receiving inadequate, if not outright negligent, medical care for cancer over two  
22 years. Clara Long & Grace Meng, *Systemic Indifference: Dangerous & Substandard Medical Care  
23 in US Immigration Detention*, HUMAN RIGHTS WATCH (May 8, 2017), <https://tinyurl.com/y7co7uuh>;  
24 Monserrat Ruiz Cuevas suffered a miscarriage while detained at Plaintiff's Mesa Verde Detention  
25 Center after receiving inadequate care before, during, and after suffering a fall onto her stomach  
26 while fully shackled in arm and leg restraints. *Letter to Timothy S. Aitken, Field Office Director, U.S.  
27 Immigration and Customs Enforcement re: Violations of Policy Regarding Detention, Shackling,  
28 and Care of Pregnant Women at Mesa Verde Detention Facility*, AM. CIVIL LIBERTIES UNION OF S.  
CAL. (June 18, 2015), <https://tinyurl.com/ycc867lu>.

<sup>36</sup> Though the description of these harms that follow are certainly generalizable to each of the  
communities where an immigration detention center is located, *amicus* focuses on these harms as  
experienced in the cities of Adelanto and McFarland, which are threatened by Plaintiff's planned  
conversion of three state prisons into annexes to two existing immigration detention facilities.

1 slated to be opened, residents of local communities lacked meaningful forums to comment on zoning  
2 decisions relating to the operation of for-profit immigration detention facilities. California local  
3 governments and law enforcement entities, while not required to detain immigrants on behalf of  
4 federal immigration authorities, could, until recently, choose to do so. Def. RJN, Ex. 1 at 5. Local  
5 entities that opted to detain immigrants could only do so by entering into Intergovernmental Service  
6 Agreements (“IGSAs”) with ICE. *Id.* These entities would then hold immigrant detainees in local  
7 municipal facilities or in private immigration detention facilities via subcontracts with for-profit  
8 prison companies.<sup>37</sup> Rather than seek public input, conduct oversight or practice effective contract  
9 management, cities—including Adelanto and McFarland—simply signed the IGSAs, approved  
10 permits, and passed payments from ICE on to the operators.<sup>38</sup>

11         The utter lack of public input is unique to for-profit immigration detention facilities  
12 contracting with municipalities and demonstrates why local preapproval input is critical in avoiding  
13 substantial harm to local communities. For example, if a local government sought to open a new  
14 public jail, or expand an existing public jail, residents in that community are afforded an opportunity  
15 to participate in their government’s decision-making process. Likewise, if the federal government  
16 intended to directly build an immigration detention facility, that process, too, would be subject to a  
17 host of federal procurement regulations, which require full and open competition, and provide  
18 opportunities for public input and oversight. *See, e.g.,* 41 C.F.R. § 102-73, *et seq.* However, by using  
19 IGSAs to encourage local governments to subcontract with private prison companies, the companies  
20 evaded not only rigorous federal procurement processes, but also any public accountability and  
21 oversight at the local level. Unlike government owned and operated facilities, for-profit immigration  
22 detention facilities like Plaintiff’s are not subject to the Freedom of Information Act or the California  
23 Public Records Act. This prevents local communities from obtaining information about the nature of  
24 the contractual relationship, the origins and continuance of which are often shrouded by allegations

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26 <sup>37</sup> Auditor of the State of California, *City and County Contracts with U.S. Immigration and Customs*  
27 *Enforcement: Local Governments Must Improve Oversight to Address Health and Safety Concerns*  
*and Cost Overruns*, Report No. 2018-117, <https://tinyurl.com/y77f8kgn>.

28 <sup>38</sup> *Id.*

1 of corruption.

2 **II. Local Governments Face Substantial Risks of Corruption Through Their Dealings**  
3 **With For-Profit Immigration Detention Facilities.**

4 When the State enacted Section 1670.9(d), it recognized that private prison companies—like  
5 Plaintiff—often utilize corrupt practices to obtain necessary approvals and permits from cash-  
6 strapped local governments. Such practices underscore the need for transparency and public input.

7 Plaintiff's actions with respect to converting the MCCFs into immigration detention centers  
8 in Adelanto—thereby expanding what is already one of the country's largest immigration detention  
9 centers—are illustrative. *See generally* Ex. A. As reported in the Desert Sun, Plaintiff's CEO  
10 contacted the City Manager in February 2019 to secure the city's immediate termination of its  
11 contracts for the MCCFs—a necessary first step toward facilitating the continued expansion of  
12 immigration detention in the region.<sup>39</sup> Plaintiff provided the City Manager with pre-drafted  
13 termination letters, as well as assurances that “there would be no financial impact to the City,”<sup>40</sup>  
14 meaning that Plaintiff would continue to annually compensate the city \$50,000 for facilitating the  
15 IGSA and approximately \$1 million in bed taxes despite the termination of the contract that required  
16 such payments. In other words, the city would continue receiving these payments despite there being  
17 no contractual basis for them. A month later, the City Manager unilaterally terminated the contracts,  
18 using the same pre-drafted letters provided by Plaintiff. The day after Adelanto's contracts with  
19 Plaintiff were officially terminated, ICE entered into a nine-month contract with Plaintiff to operate  
20 the primary Adelanto facility. A few months after that, Plaintiff entered into a 15-*year* contract that  
21 covers the Adelanto ICE Detention facility, and provides for the annexing of the MCCFs.<sup>41</sup>

22 During the Adelanto Planning Commission hearing on February 19, 2020, Commissioner  
23 JayShawn Johnson alleged that Plaintiff had improperly influenced the City Manager's decision to  
24 unilaterally terminate Adelanto's contracts, and suggested that Plaintiff may have been assured

25 \_\_\_\_\_  
26 <sup>39</sup> Plevin, *How a private prison giant has continued to thrive in a state that wants it out*, *supra* note  
27 25.

28 <sup>40</sup> *Id.*

<sup>41</sup> *Id.*

1 improperly that the MCCF expansion would pass.<sup>42</sup> After the rest of the commissioners voted to  
2 approve to permit the new immigration detention centers, Commissioner Johnson expressed his  
3 disappointment on the record: “With all the respect I have for this body tonight, I admonish you. . . .  
4 procedurally, we can’t keep being complicit with what’s going on that’s not right in upper  
5 management.”<sup>43</sup> A week later, the City Council retaliated and voted to remove Commissioner  
6 Johnson, effectively silencing the dissent in its ranks.

7         Since then, the Adelanto City Council has attempted to move forward with consideration of  
8 the community’s appeal of the Planning Commission’s vote to approve the expansion. In an effort to  
9 preserve a fair and unbiased process, the ACLU and ILRC have urged Councilmember Ed Camargo  
10 to recuse himself from the proceedings based on a conflict of interest arising from his partner’s  
11 employment by Plaintiff.<sup>44</sup> The same entities have fought to ensure that any meetings remain  
12 accessible to the public while the city’s practices change in response to the COVID-19 health crisis.

13         A similar story has played out in McFarland. There, Plaintiff and its allies exploited the  
14 health crisis to thwart public input on its appeal of the McFarland Planning Commission’s decision  
15 to block the immigration detention facility expansion. And, when McFarland Mayor Cantu resigned,  
16 Plaintiff and its allies succeeded in filling the resulting City Council vacancy with a former  
17 employee of Plaintiff.<sup>45</sup>

18         On April 9, 2020, the McFarland City Council conducted a virtual teleconference hearing  
19 that was plagued with technical issues and lacked interpretation. Unable to access or understand the  
20 meeting (due to connection and lack of translation problems), many McFarland residents were  
21 unable to voice their opposition to the appointment of Eric Rodriguez, Plaintiff’s former employee,

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23 <sup>42</sup> Plevin, *Adelanto approves GEO plan to expand capacity at California immigration detention center*, *supra* note 11.

24 <sup>43</sup> Rebecca Plevin, *Adelanto planner who voted against detention center expansion ousted from commission*, *DESERT SUN* (Feb. 27, 2020), <https://tinyurl.com/ychr9eop>.

25  
26 <sup>44</sup> *Letter to Adelanto Mayor Gabriel Reyes, et al. from Grisel Ruiz of Immigrant Legal Resource Center, et al re: Recusal of Councilmember Ed Camargo during the May 13, 2020 hearing on the appeal of CUP 96-11* (May 12, 2020), <https://tinyurl.com/ycpyotdo>.

27  
28 <sup>45</sup> Sam Morgen, *McFarland Mayor Manuel Cantu resigns following Planning Commission vote*, *BAKERSFIELD.COM* (Feb. 20, 2020), <https://tinyurl.com/ybhqhbgu>.



1 to the City Council.<sup>46</sup>

2 The City Council’s virtual hearing on Plaintiff’s appeal was then scheduled, over the protests  
 3 of the community, on April 23, 2020. Prior to the meeting, the ACLU and ILRC requested that  
 4 Mayor Pro Tem Stephen McFarland and Councilmember Eric Rodriguez recuse themselves due to  
 5 their conflicts of interest stemming from past employment with Plaintiff.<sup>47</sup> McFarland residents,  
 6 unable to march in the streets, took to their cars and drove through the city with signs reading (in  
 7 Spanish), “ICE, GEO out of McFarland.”<sup>48</sup> Opposition comments were made via email, and orally  
 8 during the Zoom meeting by those able to access the meeting, including by renowned labor leader  
 9 and civil rights activist Dolores Huerta, who spoke against the permits and requested that the hearing  
 10 be postponed until after the COVID-19 pandemic.<sup>49</sup> Because virtual attendance for the hearing was  
 11 capped, many in opposition were dropped from the Zoom call and unable to call back in. Finally, to  
 12 push the vote over the edge, Plaintiff dangled one-time \$1,000 scholarships to graduating seniors  
 13 that were contingent on “receiv[ing] a unanimous vote in support of [its] request.”<sup>50</sup> The McFarland  
 14 City Council acquiesced, and traded a few thousand dollars in scholarships for a coerced 4-0 vote.  
 15 These irregular procedures demonstrate the unique risk of corruption that accompanies the operation  
 16 of for-profit immigration detention facilities. And the State’s recognition of that risk supports its  
 17 interest in providing a statutory opportunity for public notice and comment via Section 1670.9(d).

18  
 19  
 20  
 21 <sup>46</sup> *McFarland City Council Appoints Eric Rodriguez to Fill Vacant Seat*. KERN SOL NEWS (April 10, 2020), <https://tinyurl.com/y7fhsha2>.

22 <sup>47</sup> *Letter to Mayor Pro Tem, Stephen McFarland, et al. from Grisel Ruiz of Immigrant Legal*  
 23 *Resource Center re: Recusal of Mayor Pro Tem Stephen McFarland and Councilmember Eric*  
 24 *Rodriguez during the April 23, 2020 public hearing for the appeal of the Central Valley Modified*  
*Community Correctional Facility Conditional Use Permit Nos. 01-96 and 02-96* (April 23, 2020), <https://tinyurl.com/yd9x7z6b>.

25 <sup>48</sup> Miriam Jordan, *In Reversal, California Farm Town Approves ICE Detention Centers*, N.Y. TIMES  
 26 (Apr. 24, 2020), <https://tinyurl.com/y7fxszwp>.

27 <sup>49</sup> Rebecca Plevin, *McFarland City Council approves GEO’s plan to expand immigration detention*  
 in Kern County, DESERT SUN (Apr. 24, 2020), <https://tinyurl.com/ybdnfcly>.

28 <sup>50</sup> *Id.*

1 **III. Local Government Entanglement with For-Profit Immigration Detention Centers**  
2 **Engenders Public Fear and Distrust of Law Enforcement.**

3 The entanglement of large for-profit immigration detention facilities with local governments  
4 instills widespread fear and distrust. Residents of the Cities of Adelanto and McFarland, many of  
5 whom are low-income people of color that are part of mixed-status families, are alarmed by the  
6 potential impact an increased presence of federal law enforcement will have on their daily lives, and  
7 by the role their local governments play in bringing that reality to fruition. Their concerns are well-  
8 founded and further demonstrate why a formal public opinion process is needed in municipalities  
9 considering whether to permit or expand the operation of for-profit immigration detention facilities.

10 First, residents fear that a for-profit immigration detention facility will bring a massive  
11 increase of federal immigration agents into the community, leading to increased deportations of  
12 family and friends. The federal government cannot force states to enforce federal laws, including  
13 federal immigration laws.<sup>51</sup> Thus, under basic federalism principles, California residents typically  
14 have a say through the democratic process in how much their state chooses to enforce (or not)  
15 federal immigration policies.<sup>52</sup> The for-profit immigration detention facilities, though, almost  
16 entirely circumvent that process of public input, allowing decisions by (usually coerced or captured)  
17 city councils to turn a community into a hive of ICE activity overnight. As Antero Sanchez, the  
18 priest at St. Elizabeth’s Catholic Church in McFarland, explained, an immigration detention center in  
19 an immigrant community like McFarland ““would mean constant fear of ICE presence in the  
20 area.””<sup>53</sup> Maribel Ramirez, a farmworker turned community organizer and a McFarland resident of  
21 20 years, explained, “An ICE detention center, that would bring fear to our community. We might  
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24 <sup>51</sup> Cf. *Murphy v. NCAA*, 138 S. Ct. 1461, 1477 (2018); *Printz v. United States*, 521 U.S. 898, 925  
25 (1997) (“[T]he Federal Government may not compel the States to implement, by legislation or  
26 executive action, federal regulatory programs.”); *United States v. California*, 921 F.3d 865, 890-91  
27 (9th Cir. 2019) (“California has the right, pursuant to the anticommandeering rule,” to “frustrate the  
28 federal government’s immigration enforcement efforts”).

<sup>52</sup> *California*, 921 F.3d at 887 n.11 (“A state’s ability to regulate its internal law enforcement  
activities is a quintessential police power.”).

<sup>53</sup> Jordan, *An ICE Detention Center?*, *supra* note 8.

1 have to leave.”<sup>54</sup> Indeed, several McFarland residents predict that so many McFarland residents  
2 would leave—driven by fear of deportation and harassment—that the city would turn into a “ghost  
3 town.”<sup>55</sup>

4 Residents’ fears are legitimate. Evidence suggests that ICE’s ability and incentive to conduct  
5 mass deportations is tied to the number of immigration detention center beds available in the area of  
6 operation. For example, in Northern California, ICE’s ability to conduct mass deportations was  
7 limited by the closure of local immigration detention facilities. Senior ICE officials admitted as  
8 much, pointing to the loss of bed space in California as a “challenge” to their operations.<sup>56</sup>

9 These operational “challenges” are inherently tied to the contractual relationships for-profit  
10 immigration detention facilities have with local governments. Typically, for-profit immigration  
11 detention facilities operate pursuant to contracts with “guaranteed minimums.” These minimums are  
12 effectively quotas, which require ICE to pay for a minimum number of detention beds regardless of  
13 how many people are detained and fill them.<sup>57</sup> These quotas fuel a perverse fiscal incentive for ICE,  
14 through which ICE agents increase enforcement and detain more individuals in order to maximize  
15 taxpayer dollars that, pursuant to the contract minimums, were already spent on detaining people.<sup>58</sup>  
16 Those same incentives do not exist vis-à-vis government-run facilities.

17 Second, in addition to their desire for a voice in the extent of their community’s legitimate  
18 immigration enforcement, residents fear that the presence of for-profit immigration detention centers  
19 will lead to abuses of federal immigration enforcement authority owing to increased enforcement  
20 activity more generally. An appalling track record of racial profiling and wrongful detention  
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23 <sup>54</sup> *Id.*

24 <sup>55</sup> *Id.*

25 <sup>56</sup> Hamid Yazdan Panah, *Open Forum: Stopping ICE raids begins with ending immigration  
detention*, SAN FRANCISCO CHRONICLE (July 16, 2019), <https://tinyurl.com/yb47tdma>.

26 <sup>57</sup> Detention Watch Network, *Detention Quotas*, <https://tinyurl.com/yd8udrdo> (last visited June 23,  
27 2020); see also Florida Immigrant Coalition, *Banking On Detention: Local Lockup Quotas and The  
Immigrant Dagnet*, <https://tinyurl.com/ya9ccgs9> (last visited June 23, 2020).

28 <sup>58</sup> *Id.*

1 substantiates community members' fears.<sup>59</sup> Between fiscal years 2008 and 2012, for instance, 834  
 2 U.S. citizens and nearly 30,000 legal permanent residents were wrongfully detained by ICE.<sup>60</sup> An  
 3 analysis of 2016 alone showed that 693 U.S. citizens were detained at the request of immigration  
 4 authorities, while an additional 818 were held in immigration detention facilities from 2007 through  
 5 2015.<sup>61</sup> On average 150 Americans are mistakenly detained for deportation each year.<sup>62</sup> Given that  
 6 for-profit facilities increase the likelihood of encounters with federal immigration enforcement  
 7 officers—and, necessarily, increase the likelihood of abusive encounters—Section 1670.9(d) helps  
 8 to ensure that communities have a say in whether such increased presence of immigration  
 9 authorities, and the resulting increased risk of unjustified and discriminatory enforcement actions, is  
 10 desirable in the community.

#### 11 **IV. Local Government Entanglement With For-Profit Immigration Detention Centers** 12 **Stunts Community Development.**

13 The primary argument operators of for-profit immigration detention facilities make in favor  
 14 of expanding into local communities is money. But the financial incentives are short lived, and,  
 15 through the sorts of dead-end, low-paying jobs these centers create, often perversely result in  
 16 stunting the development and enrichment of the local communities in ways that federal, state or local  
 17 facilities—which offer civil service and law enforcement jobs—do not.

18 In cash-strapped towns with struggling economies, for-profit immigration detention facilities

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 20 <sup>59</sup> See, e.g., *Plascencia v. United States*, No. 5:17-cv-02515-JGB-SP (C.D. Cal. 2017) (U.S. citizen  
 21 detained and threatened with deportation wins settlement from federal and state law enforcement  
 22 authorities); *Morales v. Chadbourne*, No. 12-301-M-DLM (D.R.I. 2012) (naturalized U.S. citizen  
 23 wrongly imprisoned pursuant to an immigration detainer); *Lyttle v. United States*, No. 4:11-cv-152  
 24 (CDL) (M.D. Ga. 2011) (U.S. citizen with diminished mental capacity detained for 51 days before  
 25 being deported to Mexico, thereafter suffering imprisonment and abuse in Mexico, Honduras, and  
 26 Nicaragua for 125 days); *Mendia v. Garcia*, No. 10-cv-03910-MEJ (N.D. Cal. 2010) (naturalized  
 27 U.S. citizen held after authorities erroneously lodged an immigration detainer against him while in  
 28 county jail).

<sup>60</sup> Roxana Kopetman, *American citizen from San Bernardino detained by ICE, threatened with  
 deportation wins settlement*, THE SUN (Oct. 26, 2018, updated Oct. 29, 2018), <https://tinyurl.com/yc4brg8d>.

<sup>61</sup> *Id.*

<sup>62</sup> Steve Coll, *When ICE Tries To Deport Americans, Who Defends Them?*, THE NEW YORKER  
 (Mar. 21, 2018), <https://tinyurl.com/yafs2gru>.

1 promise “good jobs” for “local people,” as well as a stream of revenue for local coffers. However,  
2 operators of such facilities, like Plaintiff, simply leverage the local communities’ financial need to  
3 maximize their own profits, leaving communities continuing to financially flail. These circumstances  
4 have only been compounded by the COVID-19 crisis, which has devastated the finances of  
5 communities throughout the State.<sup>63</sup>

6 In the Adelanto, for example, the city’s finances are closely tied to Plaintiff. Not only is  
7 Plaintiff the city’s largest property taxpayer, each year, Plaintiff pays the city the costs of two sheriff  
8 deputies as well as more than \$1 million in fiscal mitigation costs and administrative fees.<sup>64</sup>  
9 Plaintiff’s payment accounts for almost 10% of the city’s total revenue.<sup>65</sup> As of July 2019, Adelanto  
10 faced a \$6.3 million budget deficit, and is currently anticipating a 20% reduction in revenues for this  
11 fiscal year.<sup>66</sup> Though the Adelanto facilities employ hundreds of workers, prosperity eludes many  
12 more, as approximately 35% of Adelanto residents live below the poverty level, and the city’s  
13 median household income is just above \$40,000.<sup>67</sup> In other words, GEO provides just enough jobs at  
14 just enough pay to make the city dependent on GEO, but not enough to thrive.

15 The same goes for the McFarland, which claims to be in “desperate financial condition,”<sup>68</sup>  
16 and facing a \$500,000 budget deficit.<sup>69</sup> Many of McFarland’s residents, 95% of whom are Latino,  
17 work in nearby fields and dairies and earn a median household income of less than \$34,000.<sup>70</sup> There,  
18 Plaintiff will be paying the city \$511,000 in annual fiscal mitigation payments, as well as awarding  
19 one-time \$1,000 scholarships to all McFarland High School graduating seniors attending college,

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21 <sup>63</sup> Ben Christopher, “*Everything happened all at once*”: *Can California Cities Weather the COVID*  
*Recession?*, CALMATTERS (May 8, 2020). <https://tinyurl.com/yb9xujah>.

22 <sup>64</sup> Plevin, *Adelanto, McFarland to vote on GEO’s proposal to convert prisons into ICE detention*  
*centers*, *supra* note 9.

23 <sup>65</sup> *Id.*

24 <sup>66</sup> *Id.*

25 <sup>67</sup> *Id.*

26 <sup>68</sup> *Id.*

27 <sup>69</sup> Jordan, *An ICE Detention Center?*, *supra* note 8.

28 <sup>70</sup> Plevin, *McFarland City Council approves GEO’s plan to expand immigration detention in Kern*  
*County*, *supra* note 49.

1 university, or vocational school.<sup>71</sup> Plaintiff also promised a combined 420 jobs in the expansion.<sup>72</sup>

2       However, many residents in both cities do not want Plaintiff's jobs because they are  
3 relatively lower paying, provide less protections like unionization, offer less or lower-quality  
4 benefits like healthcare and pensions, and have limited job security (all compared to their federal,  
5 state, or local counterparts), while coming at significant costs to their communities. In public  
6 comment at both hearings, residents shared that for-profit immigration detention facility jobs fail to  
7 bring prosperity to their communities. Beyond inflicting the substantial harms described above, most  
8 jobs are unavailable to local residents who do not meet eligibility requirements. Residents instead  
9 voiced their desire for jobs in industries that are sustainable and contribute to the health of the  
10 community, like jobs in hospitals, food service, grocery, and the like. Moreover, McFarland  
11 residents predicted that many residents will leave rather than stay and live in fear of ICE and its  
12 record of unjust and discriminatory deportation, turning the city into a "ghost town."<sup>73</sup> Section  
13 1670.9(d) ensures residents have an opportunity to provide input on these critical decisions with  
14 long-lasting impact on their communities.

15 **V. Local Government Entanglement with For-Profit Immigration Detention Centers**  
16 **Ignore Negative Environmental and Health Impacts in the Community.**

17       The conversion of the state prisons into immigration detention centers will also impact the  
18 local environment and public health. Immigration facilities are subject to much greater detainee  
19 turnover as compared to prisons, resulting to increasing traffic to and from the area. Such facilities  
20 also affect air quality related to construction, and water quality from the increased pressure on the  
21 existing water and wastewater infrastructure.<sup>74</sup> All of these potential impacts are sustained directly  
22 by residents in the local communities via, for example, increased air pollution and poor water  
23 quality, which contributes to diminished health outcomes via asthma and heart disease, as well as

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24 <sup>71</sup> *Id.*

25 <sup>72</sup> *Id.*

26 <sup>73</sup> *Jordan, An ICE Detention Center?, supra* note 8.

27 <sup>74</sup> *Letter to Mayor Gabriel Reyes, et al. from Grisel Ruiz of Immigrant Legal Resource Center, et al.*  
28 *re: SB 29 Compliance: Appeal of Planning Commission Request to Modify Conditional Use Permit*  
*No. 96-11, supra* note 7.

1 through stress induced from living with such conditions.<sup>75</sup> Although Plaintiff pays the cities of  
2 Adelanto and McFarland mitigation payments, residents deserve input on whether these payments  
3 are appropriate, or even sufficient relative to the burden they and their families bear by having a for-  
4 profit immigration detention center operating in their community. Section 1670.9(d) ensures that  
5 residents are part of that process.

6 **CONCLUSION**

7 For the foregoing reasons, Defendants' motion to dismiss should be granted.

8  
9 Date: June 25, 2020

SIDLEY AUSTIN LLP

10  
11 By: /s/Collin P. Wedel

12 Attorneys for *Amici Curiae*  
13 IMMIGRANT LEGAL RESOURCE  
14 CENTER, FAITH IN THE VALLEY, AND  
15 INLAND COALITION FOR  
16 IMMIGRANT JUSTICE  
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28 <sup>75</sup> *Id.*

EXHIBIT A





# ADELANTO IMMIGRATION DETENTION CONTRACT TIMELINE

*Timeline based off of documents secured through the Public Records Act by the ACLU*

## **MAY 27, 2011**

ICE and The City of Adelanto enter into an Intergovernmental Service Agreement (IGSA) regarding Adelanto East and West facility

## **MAY 31, 2011**

ICE modifies its contract with the city of Adelanto increasing the bed day rate paid by ICE to the city for detainees kept at Adelanto East and West processing center

## **JULY 15, 2015**

ICE modifies its contract with the city of Adelanto decreasing the amount paid to the city by \$82,052.81

## **NOVEMBER 2017**

Cal DOJ sends first letter requesting tour Adelanto Detention Center pursuant to California Assembly Bill 103

## **JULY 24, 2018**

Cal DOJ sends second letter requesting tour Adelanto Detention Center pursuant to California Assembly Bill 103

## **AUGUST 16, 2018**

GEO Group served an Investigative Subpoena

## **AUGUST 29, 2018**

ICE sends a letter to the City of Adelanto instructing the city how to respond to a public records request and reminding the city under the IGSA only ICE, not the city, may grant

## **OCTOBER 20, 2018**

The City of Adelanto issues business license to Adelanto East Facility

## **EARLY JANUARY 2019**

Adelanto East seeks a permit from the City of Adelanto to expand a parking lot

## **JANUARY 31, 2019**

GEO Group sends a letter to ICE "on behalf of the city of Adelanto" requesting funding to hire two Mental Health Professionals in lieu of a Psychologist for Adelanto Facility

## **MARCH 13, 2019**

CEO of GEO sends a letter to the Adelanto City Council and Jessie Flores "respectfully requesting that the City of Adelanto give its notice of discontinuation" of the IGSA to ICE. "The annual financial compensation to the City of \$50,000 for facilitating the IGSA will be continued by GEO."

## **MARCH 27, 2019**

City of Adelanto sends a letter to GEO stating that "the City has notified ICE that the IGSA will terminate" in 90 days

## **MARCH 28, 2019**

City of Adelanto confirms termination of IGSA with journalists

## **APRIL 16, 2019**

ICE sends an email to City of Adelanto confirming the "acknowledge and accept the Termination" of the IGSA

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

THE GEO GROUP, INC.,  
  
Plaintiff,  
  
vs.  
  
GAVIN C. NEWSOM, in his official capacity as  
Governor of the State of California; XAVIER  
BECERRA, in his official capacity as Attorney  
General of the State of California,  
  
Defendants.

Case No. 2:20-cv-00533-TLN-AC  
  
Assigned to: Hon. Troy L. Nunley  
  
**[PROPOSED] ORDER GRANTING  
MOTION OF IMMIGRANT LEGAL  
RESOURCE CENTER, FAITH IN THE  
VALLEY, & INLAND COALITION FOR  
IMMIGRANT JUSTICE TO  
PARTICIPATE AS AMICI CURIAE, AND  
TO FILE MEMORANDUM AS AMICI  
CURIAE IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS**  
  
Date:  
Time:  
Place:  
  
FILE DATE: March 9, 2020  
TRIAL DATE: No Date Set

Good cause appearing, the Motion of Immigrant Legal Resource Center (“ILRC”), Faith in the Valley (“FIV”), & Inland Coalition for Immigrant Justice (“IC4IJ”) for leave to participate as *amici curiae* and to file a Memorandum in support of Defendants’ Motion to Dismiss is hereby  
**GRANTED.**

///

1 The Court deems the concurrently lodged Memorandum of ILRC, FIV, and IC4IJ FILED as  
2 of June \_\_\_\_\_, 2020.

3 **IT IS SO ORDERED.**

4  
5 Dated: \_\_\_\_\_

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The Honorable Troy L. Nunley  
United States District Court

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