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13 CENTER and FREEDOM FOR IMMIGRANTS

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF KERN

16 IMMIGRANT LEGAL RESOURCES  
17 CENTER, FREEDOM FOR IMMIGRANTS,

18 Petitioners,

19 vs.

20 CITY OF MCFARLAND, CITY OF  
21 MCFARLAND PLANNING COMMISSION,

22 Respondents,

23 GEO GROUP, INC.,

24 Real party in interest.

Case No: BCV-20-101507

**VERIFIED PETITION FOR WRIT  
OF MANDATE  
(CODE CIV. PROC. § 1085)**



1 7. The Planning Commission held its second public hearing concerning the Proposed  
2 Modifications on February 18, 2020, at a Planning Commission meeting with improper limits on  
3 public participation. Despite these limitations, members of the public voiced sustained and  
4 substantial opposition to the Proposed Modifications, and the Planning Commission did not  
5 approve them.

6 8. GEO then appealed the Planning Commission's decision to the City Council, which held  
7 a public meeting concerning the Proposed Modifications on April 23, 2020. The City exploited  
8 the ongoing COVID-19 pandemic to significantly curtail the public's participation in this  
9 meeting, at which the City Council approved the Proposed Modifications by adopting  
10 Resolutions Nos. 2020-13 and 2020-14.

11 9. The City Council's approval of the Proposed Modifications at the April 23, 2020 meeting  
12 violated Civil Code section 1670.9. The City Council held only one public meeting before  
13 approving the Proposed Modifications, it approved the Proposed Modifications less than 180  
14 days after the initial public notice, and the Planning Commission meetings did not sufficiently  
15 solicit the public's input.

16 10. Given the City's disregard of Civil Code section 1670.9, Petitioners request that this  
17 Court order the City Council to revoke the Proposed Modifications.

### 18 **PARTIES**

19 11. Petitioner ILRC works in partnership with the immigrant community in California and  
20 nationwide to advocate for policies that prioritize the wellbeing of all people, regardless of  
21 immigration status. To this end, ILRC works through statewide campaigns to ensure that  
22 immigrants have a voice on issues that impact them the most, such as immigration detention. As  
23 part of these efforts, ILRC staff co-drafted and co-sponsored SB 29, the bill creating Civil Code  
24 section 1670.9. ILRC also provides resources and support to communities and organizations  
25 working on immigration enforcement issues, of which immigration detention is a tremendous  
26 component. Were the Proposed Modifications approved, ILRC would necessarily divert  
27 considerable organizational resources to working with individuals detained in McFarland.

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1 12. Petitioner FFI is a national nonprofit organization headquartered in California that  
2 promotes policies to advance the wellbeing of individuals no matter their immigration status. FFI  
3 works to secure the freedom of people in detention and provide them with post-release services  
4 and also monitors conditions in immigration detention facilities nationwide through a national  
5 hotline and network of volunteers who visit people in immigration detention weekly. FFI staff  
6 co-drafted and co-sponsored SB 29, the bill creating Civil Code section 1670.9. Were the  
7 Proposed Modifications approved, FFI would necessarily divert considerable organizational  
8 resources to working with more individuals detained in McFarland.

9 13. Respondent City of McFarland is a general law city in Kern County with a population of  
10 approximately fifteen thousand residents. A significant percentage of McFarland residents are  
11 monolingual Spanish-speaking individuals. McFarland's mayor, also a City Council Member, is  
12 Sally Gonzalez, and its remaining City Council members are Stephen McFarland, Eric  
13 Rodriguez, Rafael Melendez, and Maria Perez. City Council members represent the city at large.

14 14. Respondent City of McFarland Planning Commission is a five-member body currently  
15 comprising Chairman Jose Hernandez, Vice Chairman Randy Nunez, Commissioner Marco  
16 Martinez, and two vacant seats. The Planning Commission reviews building and planning  
17 activities for the City.

18 15. Real Party in Interest GEO is a corporation organized and existing under the laws of  
19 Florida, headquartered in Boca Raton, Florida. GEO applied for the Proposed Modifications to  
20 operate a federal immigration detention facility in McFarland pursuant to contracts with U.S.  
21 Immigrations and Customs Enforcement ("ICE").

## 22 **JURISDICTION & VENUE**

23 16. This Court has jurisdiction to issue a writ of mandate under Code of Civil Procedure  
24 section 1085.

25 17. Venue is proper in this Court under Code of Civil Procedure section 394.

26 18. Petitioners are beneficially interested in securing a writ of mandate, as the Proposed  
27 Modifications would require Petitioners to redirect its organizational resources. Petitioners  
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1 further have an interest in ensuring that the City follows the procedural requirements of Section  
2 1670.9 before approving the Proposed Modifications.

3 19. Petitioners have no plain, speedy, adequate remedy in the ordinary course of law.

4 20. The City has no clearly defined mechanism through which Petitioners could challenge the  
5 City’s procedural deficiencies described in this Petition.

6 **LEGAL BACKGROUND**

7 21. In 2017, the Legislature passed SB 29, which created Civil Code section 1670.9.

8 22. In passing SB 29, the Legislature announced its intent “that this bill declare that the state  
9 does not tolerate profiting from the incarceration of Californians held in immigration detention  
10 . . . .” Sen. Bill No. 29 (2017–2018 Reg. Sess.) § 1(a).

11 23. To that end, Civil Code section 1670.9 contains a number of restrictions concerning  
12 federal immigration detention facilities. Most relevant to this Petition is subsection (d), which  
13 provides that permits to operate immigration detention facilities may only be issued following  
14 ample notice to the public and opportunity for public comment:

15 A city, county, city and county, or public agency shall not, on and  
16 after January 1, 2018, approve or sign a deed, instrument, or other  
17 document related to a conveyance of land or issue a permit for the  
18 building or reuse of existing buildings by any private corporation,  
contractor, or vendor to house or detain noncitizens for purposes of  
civil immigration proceedings unless the city, county, city and  
county, or public agency has done both of the following:

19 (1) Provided notice to the public of the proposed  
20 conveyance or permitting action at least 180 days before  
execution of the conveyance or permit.

21 (2) Solicited and heard public comments on the proposed  
22 conveyance or permit action in at least two separate  
meetings open to the public.

23 **ALLEGATIONS**

24 **I. The January 21, 2020 Planning Commission Hearing**

25 24. On information and belief, GEO entered into contracts with ICE on or around December  
26 20, 2019 to operate immigration detention facilities at both the Golden State Modified  
27 Community Correctional Facility (“Golden State”) and the Central Valley Modified Community  
28 Correctional Facility (“Central Valley”). See <https://tinyurl.com/GoldenStateMCF>;

1 <https://tinyurl.com/CentralValleyMCF>. Pursuant to these contracts, GEO shortly thereafter  
2 applied to the Planning Commission for the Proposed Modifications.

3 25. On January 16, 2020, the City posted notice of, and the agenda for, a Planning  
4 Commission meeting scheduled for January 21, 2020 in McFarland’s City Council Chambers at  
5 6:00 p.m. *See* <https://tinyurl.com/January2020Agenda>.

6 26. The agenda noted that GEO would make a presentation “to inform the Commission and  
7 the public” of the Proposed Modifications, which would allow GEO to house federal detainees at  
8 the Golden State and Central Valley facilities. *See id.*

9 27. GEO therefore sought the Proposed Modifications to operate immigration detention  
10 facilities. The January 16 notice, however, merely states that the Proposed Modifications will  
11 permit the housing of “federal inmates and detainees, male and/or female.” That is, the January  
12 16 notice did not inform the public of the Proposed Modifications’ true purpose: immigration  
13 detention. *See id.*

14 28. Indeed, the public was not even provided access to GEO’s applications for the Proposed  
15 Modifications.

16 29. The January 16 notice was posted only in English, despite the high numbers of  
17 monolingual Spanish speakers who live in McFarland.

18 30. Although the January 16 notice concealed the purpose underlying the Proposed  
19 Modifications, approximately two hundred members of the public attended the January 21, 2020  
20 Planning Commission meeting to oppose the Proposed Modifications.

21 31. McFarland’s City Council Chambers, which have a maximum occupancy of about fifty,  
22 could not adequately accommodate the assembled crowd. The City, however, did not open City  
23 Hall’s overflow room, instead forcing members of the public outside—on a January evening—to  
24 listen to the hearing over loudspeakers in the parking lot, and to submit comments through an  
25 outdoor microphone.

26 32. The January 21, 2020 Planning Commission was conducted in English, and the City did  
27 not provide a translator despite the substantial number of monolingual Spanish-speaking  
28 McFarland residents.

1 33. After members of the public demanded that the meeting be translated, a member of the  
2 public attempted to provide translation before a GEO-affiliated individual began to provide  
3 Spanish-English and English-Spanish translations for the public.

4 34. Members of the public could only comment by writing their names on a comment card.  
5 On information and belief, members of the public were not informed that they were not required  
6 to write their real names on the comment cards. Moreover, the City did not provide pens or  
7 pencils for members of the public to use to fill out the comment cards.

8 35. The Planning Commission took no action as to the Proposed Modifications at the January  
9 21, 2020 hearing.

10 **II. The February 18, 2020 Planning Commission Hearing**

11 36. On February 14, 2020, the City posted the agenda for a second Planning Commission  
12 hearing concerning the Proposed Modifications, to be held on February 18, 2020 in McFarland’s  
13 City Council Chambers at 6:00 p.m. *See* <https://tinyurl.com/February2020Agenda>.

14 37. Again, the City’s agenda only stated that the Proposed Modifications would allow GEO  
15 “to house federal inmates and detainees, adult male and or female.” The notice did not  
16 forthrightly state the true purpose of the Proposed Modifications: to allow GEO to operate a  
17 federal immigration detention facility on behalf of ICE. *See id.*

18 38. Further, the City’s agenda was again posted only in English.

19 39. The agenda suggests that, before hearing from the public again, the Planning Commission  
20 had intended to approve the Proposed Modifications: the agenda stated that the Planning  
21 Commission would “Take public testimony and adopt” the Proposed Modifications. *See id.*

22 40. Approximately three hundred members of the public attended the February 18, 2020  
23 meeting to oppose the Proposed Modifications.

24 41. Despite knowing of the public’s substantial interest in the Proposed Modifications from  
25 the January 21, 2020 Planning Commission meeting, the City again refused to make City Hall’s  
26 overflow room available to meeting attendees.

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1 42. Instead, members of the public were again forced to assemble on a winter evening in the  
2 City Hall parking lot, where the Planning Commission hearing was broadcast over loudspeakers  
3 and public comment taken by microphone.

4 43. The City substantially limited public participation in the February 18, 2020 meeting.  
5 Members of the public who wished to comment on the Proposed Modifications were required to  
6 fill out a comment card before the Planning Commission meeting began at 6:00 p.m.

7 44. On information and belief, members of the public were not informed that they were not  
8 required to write their real names on the comment cards.

9 45. City staff did not allow members of the public to offer comment if they were not already  
10 in line when the Planning Commission meeting began at 6:00 p.m.

11 46. Because of the City's restrictions, many members of the public who wished to offer  
12 public comment were not permitted to. For example, Jan Meslin, a Freedom for Immigrants  
13 leadership member, arrived at approximately 6:05 p.m. to provide public comment, but was  
14 unable to. Ms. Meslin likewise saw many other individuals who had been denied the opportunity  
15 to provide public comment.

16 47. Although the City limited members of the public to approximately two-minute  
17 comments, a GEO representative was afforded substantial time to make a presentation.

18 48. Despite the restrictions on public participation, the Planning Commission abided by the  
19 overwhelming public sentiment, and voted not to approve the Proposed Modifications.

20 49. To date, this was the last public meeting concerning the Proposed Modifications to occur  
21 before Governor Gavin Newsom issued Executive Order N-29-20 on March 17, 2020, which  
22 suspended physical presence requirements for public meetings.

23 **III. The Mayor Resigns, GEO Appeals, and City Council Appoints a New Mayor and a**  
24 **New Member**

25 50. On February 19, 2020—the day after the Planning Commission voted to deny the  
26 Proposed Modifications—the City's then-Mayor Manuel Cantu resigned, citing disappointment  
27 with the Planning Commission's vote. Because McFarland's mayor is also a member of its City  
28 Council, Cantu's resignation also created a City Council vacancy.

1 51. Following Cantu’s resignation, City Council member Stephen McFarland, a GEO  
2 employee, was appointed Mayor Pro Tem.

3 52. On February 26, 2020, GEO appealed the Planning Commission’s decision concerning  
4 the Proposed Modifications to City Council pursuant to the McFarland Municipal Code. Despite  
5 Cantu’s recent resignation of the mayoralty and his City Council seat, GEO requested that its  
6 appeal hearing “be scheduled for a time where all five members of the City Council will be  
7 present and have the opportunity to vote.”

8 53. GEO’s appeal stated only that the Proposed Modifications would permit Golden State  
9 and Central Valley “to house federal inmates and detainees, adult male and/or female.” Like the  
10 Planning Commission meeting notices, GEO’s appeal does not state that the purpose of the  
11 Proposed Modifications is to permit the operation of an immigration detention facility.

12 54. In a March 12, 2020 City Council meeting, City Council member Sally Gonzalez was  
13 appointed Mayor of McFarland. *See* <https://tinyurl.com/March2020Meeting>. Although more than  
14 fifty members of the public sought to attend the meeting at which Mayor Gonzalez was  
15 appointed, a number of individuals were forced to wait outside. The City did not provide  
16 loudspeakers for these individuals or permit them to submit public comments concerning the  
17 mayoral appointment.

18 55. On April 9, 2020, the City Council met to appoint a new City Council member. In light of  
19 the COVID-19 pandemic and Executive Order N-29-20, this meeting was held remotely via a  
20 dial-in teleconference. *See* <https://tinyurl.com/April92020Agenda>.

21 56. No translation was provided of this meeting, which was held in English. When asked to  
22 provide translation services, a councilmember stated that public comments would be read in the  
23 language in which they were submitted.

24 57. As a result of this, members of the public who are monolingual Spanish speakers were  
25 unable to understand or participate in the April 9, 2020 City Council meeting, and unable to  
26 meaningfully comment on the selection of a new City Council member.

27 58. The April 9, 2020 meeting likewise suffered from connectivity issues that prevented  
28 members of the public who dialed in from addressing City Council. Teresa Figueroa’s

1 connection was lost mid-meeting, and she was unable to offer comment to City Council as she  
2 intended.

3 59. The City Council appointed Eric Rodriguez to the vacant City Council seat. *See*  
4 <https://tinyurl.com/April92020Minutes>. On information and belief, Council Member Rodriguez  
5 is a former GEO employee.

#### 6 **IV. The April 23, 2020 City Council Hearing**

7 60. On April 20, 2020, the City posted notice of, and the agenda for, a City Council hearing  
8 concerning the Proposed Modifications following GEO’s appeal, to be held on April 23, 2020 at  
9 6:00 p.m. In light of the COVID-19 pandemic and Executive Order N-29-20, this meeting was  
10 held remotely. *See* <https://tinyurl.com/April232020Agenda>.

11 61. The notice directed the public to a URL at which they could participate via  
12 videoconference using Zoom, a remote-conferencing communications platform, and telephone  
13 numbers to participate via audio. The notice further directed the public to submit written  
14 comments by Thursday, April 23, at 12:00 p.m. *See id.*

15 62. As with the Planning Commission notices, the April 20 notice and agenda stated that the  
16 Proposed Modifications would simply allow Golden State and Central Valley to “house federal  
17 inmates and detainees, adult male and or female.” *See id.* The notice did not describe the true  
18 purpose of the Proposed Modifications, which was to convert Golden State and Central Valley  
19 into immigration detention facilities.

20 63. The April 20 notice and agenda suggested that City Council had already decided to allow  
21 the Proposed Modifications pursuant to GEO’s appeal: the agenda stated that City Council would  
22 “Take public testimony and adopt” two resolutions allowing the Proposed Modifications. *See id.*

23 64. The notice and agenda also stated that City Council would limit public comment to a total  
24 of one hour per Proposed Modification, and two minutes per commenter, while permitting a  
25 GEO representative an unspecified amount of time to make a presentation on each Proposed  
26 Modification. *See id.*

27 65. Remote access to the April 23 hearing was plagued by technical difficulties. One member  
28 of the public, Alex Gonzalez, participated in the opening of the hearing by videoconference

1 before his connection was dropped, and was unable to reconnect by video conference for  
2 approximately half an hour. On information and belief, at least dozens of other members of the  
3 public were unable to connect at all by videoconference or telephone, and at least dozens more  
4 were only able to connect intermittently by either medium.

5 66. As a result of these connectivity issues, at least dozens of members who wished to  
6 directly address the council concerning the Proposed Modifications were unable to. For example,  
7 McFarland resident Ivan Sandoval connected to the hearing and wished to give public comment,  
8 but was unable to. C. Navarro, G. Santiago, and J. Hernandez also intended to make public  
9 comments, but were unable to connect to the meeting.

10 67. During the public comment period before City Council began to discuss the Proposed  
11 Modifications, Alex Gonzalez, a member of the public, informed City Council of these  
12 connectivity issues and requested that City Council postpone the meeting until the public could  
13 participate fully.

14 68. In response, Mayor Gonzalez replied that the video was limited to one hundred  
15 participants, which she suggested was more than City Council chambers could accommodate.  
16 Mayor Gonzalez then stated, incorrectly, that the videoconference thus allowed for more public  
17 participation than in-person meetings. See <https://tinyurl.com/April232020Minutes>. In fact, the  
18 January and February Planning Commission meetings concerning the Proposed Modifications  
19 respectively drew approximately one hundred and fifty and approximately three hundred in-  
20 person members of the public.

21 69. On information and belief, Zoom—the videoconferencing platform used by the City—  
22 permits up to 1000 individuals to participate in meetings. See <https://tinyurl.com/largemeetings>.

23 70. Regardless, the City gave no notice of any restriction on public participation in advance  
24 of the April 23, 2020 City Council hearing.

25 71. Before City Council began to deliberate on the Proposed Modifications, City Council  
26 member McFarland recused himself, citing his employment with GEO. City Council member  
27 Rodriguez, who was formerly employed by GEO and appointed to City Council approximately  
28 two weeks before the April 23 hearing, did not recuse himself.

1 72. The City further continued to restrict public participation by limiting public comment on  
2 the Proposed Modifications. When Alex Gonzalez was recognized to speak concerning the  
3 Proposed Modifications, he was told that he had already used his allotted time. Alex Gonzalez,  
4 however, had only spoken during hearing's initial public comment period, and had offered no  
5 comments during the portion of the hearing concerning the Proposed Modifications.

6 73. As reflected in the hearing minutes, nearly every member of the public to offer comment  
7 opposed the Proposed Modifications, with many urging City Council either to postpone its vote  
8 until the public could fully participate or to simply reject the Proposed Modifications. *See*  
9 <https://tinyurl.com/April232020Minutes>.

10 74. Despite the overwhelming public opposition, Mayor Gonzalez and City Council members  
11 Melendez, Rodriguez, and Perez voted unanimously to allow the Proposed Modifications by  
12 approving Resolution Nos. 2020-13 and 2020-14. *See id.*

13 75. The City approved the Proposed Modifications less than 180 days from the initial public  
14 notice of the Proposed Modifications on January 15, 2020.

15 76. The April 23, 2020 hearing was the only hearing at which the McFarland City Council  
16 solicited and heard public comment concerning the Proposed Modifications.

17 77. On information and belief, GEO plans to begin housing immigration detainees at Golden  
18 State and Central Valley pursuant to the Proposed Modifications on July 15, 2020.

19 **FIRST CAUSE OF ACTION (WRIT OF MANDATE)**

20 78. Petitioners incorporate and re-allege the allegations contained in paragraphs 1 through 77.

21 79. Respondents City of McFarland and the City of McFarland Planning Commission both  
22 have a ministerial duty to comply with Civil Code section 1670.9(d).

23 80. Respondents violated this duty by: (i) failing to appropriately solicit and hear public  
24 comments concerning the Proposed Modifications; (ii) failing to appropriately open their  
25 hearings on the Proposed Modifications to the public; (iii) failing to hold the required number of  
26 hearings on the Proposed Modifications; and (iv) failing to provide the proper notice before  
27 approving the Proposed Modifications.

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1 81. Petitioners are therefore entitled to a peremptory writ of mandate ordering Respondents  
2 to revoke their approval of the Proposed Modifications for failure to comply with Civil Code  
3 section 1670.9(d).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioners pray for judgment as follows:

- 6 1. For a peremptory writ of mandate ordering Respondents to revoke their approval of the  
7 Proposed Modifications;
- 8 2. For an award of costs incurred herein;
- 9 3. For an award of attorneys' fees incurred herein pursuant to Code of Civil Procedure  
10 section 1021.5; and
- 11 4. For such other and further relief as this Court deems just and proper.

12  
13 Dated: June 30, 2020

NOSSAMAN LLP

14  
15  
16 By: 

Alexander Westerfield  
David C. Lee  
Elizabeth Key

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18 Attorneys for Petitioners IMMIGRANT LEGAL  
19 RESOURCES CENTER and FREEDOM FOR  
20 IMMIGRANTS  
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**VERIFICATION**

(Code Civ. Proc. § 446)

I am a Supervising Attorney with Petitioner Immigrant Legal Resources Center. I have read the foregoing Petition for Writ of Mandate and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters stated upon my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed this 30th day of June, 2020 at San Francisco, California.



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GRISEL RUIZ

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**VERIFICATION**

(Code Civ. Proc. § 446)

I am a Co-Executive Director with Petitioner Freedom for Immigrants. I have read the foregoing Petition for Writ of Mandate and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters stated upon my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed this 29 day of June, 2020 at Santa Monica, California.



CHRISTINA FIALHO