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**STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**

In the Matter of the Appeal of:

**The GEO Group, Inc.,  
d/b/a Golden State Annex,  
4995 Technology Way, Boca Raton, FL 33431**

Employer.

Inspection No. 1609228

**APPLICATION FOR LEAVE TO FILE  
AMICUS BRIEF, AND AMICUS BRIEF  
OF THE AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION  
(ACLU), ACLU OF NORTHERN  
CALIFORNIA, AND ACLU OF  
SOUTHERN CALIFORNIA**

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## APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to Cal. Code Regs. Tit. 8 § 393(e), *amici curiae* American Civil Liberties Union (“ACLU”), ACLU of Northern California, and ACLU of Southern California (collectively “ACLU *amici*”) respectfully request leave to file the attached brief in support of Third-Party Petitioners California Collaborative for Immigrant Justice (“CCIJ”) and Worksafe. The application for leave to file an amicus brief is timely made, as it is submitted within the time allowed for the filing of supplemental briefing by Third Party Petitioners. Cal. Code Regs. Tit. 8 § 393(e).

### INTEREST OF *AMICI CURIAE*

The **American Civil Liberties Union** is a nationwide, nonprofit, non-partisan organization dedicated to the principles of liberty and equality enshrined in the U.S. Constitution. **The ACLU of Northern California** and **ACLU of Southern California** are state affiliates of the ACLU. These affiliates advance the civil rights and civil liberties of all Californians in state and federal courts, legislative and policy arenas, and the community. The ACLU and its state affiliates are deeply involved in protecting the rights of detained immigrants and detained immigrant workers.

This case raises issues of significant concern to detained immigrant clients represented by the ACLU *amici*. The ACLU *amici* have litigated numerous cases involving immigration detention nationwide, including in California and at Golden State Annex. These cases have addressed issues central to this case, including COVID-19 conditions in Immigration and Customs Enforcement (ICE) detention facilities, the rights of detained immigrant workers, and retaliation against detained immigrants. *See, e.g. Hernandez Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020) (addressing COVID-19 in ICE detention); *Zepeda Rivas v. Jennings*, 504 F. Supp. 3d 1060 (N.D. Cal. 2020) (same); *Alcantara v. Archambeault*, 613 F. Supp. 3d 1337 (S.D. Cal. 2020) (same); *Nwauzor v. the GEO Group, Inc.*, 62 F. 4th 509 (9th Cir. 2023) (challenging wage and hour violations of detained immigrant workers) (amicus brief); *Mendez v. U.S. Imm. Customs Enf’t*, No. 3:23-cv-829 (N.D. Cal.) (retaliation against detained immigrant workers on hunger strike at Golden State

Annex). *Amici* have participated in litigation related to wage and hour protections for incarcerated workers in California. See *Ruelas v. Cnty of Alameda*, No. S277120 (Cal. 2023) (amicus brief).

The ACLU has also published several reports regarding the treatment of detained immigrants and incarcerated people relevant to the issues raised in this case, including *Captive Labor: Exploitation of Incarcerated Workers*;<sup>1</sup> *The Survivors: Stories of People Released from ICE Detention During the COVID-19 Pandemic*;<sup>2</sup> and *Behind Closed Doors: Abuse and Retaliation of Hunger Strikers in U.S. Immigration Detention*.<sup>3</sup>

### NEED FOR AMICUS BRIEFING

This case concerns detained immigrant workers at the Golden State Annex ICE detention facility in McFarland, California, who allege workplace health and safety violations against the GEO Group, Inc. (“GEO”). GEO employs the detained immigrant workers at the rate of \$1/day to perform work at the facility.

The amicus brief will specifically aid the Appeals Board in consideration of questions raised in its Order Requesting Further Briefing, including “whether detainees at the McFarland facility . . . are prisoners within the meaning of Labor Code section 6304.4;” and “[w]hether, and under what standard, may the Board grant a motion for party status without identifying the ‘affected employees’ underlying such a motion.” Order for Further Briefing, Oct. 13, 2023. The amicus brief offers insights not available from the Parties or Third-Party Petitioners. The brief examines whether a detained immigrant worker is a prisoner under California Labor Code Section 6304.4, which provides that “a prisoner engaged in correctional industry” “shall not be considered an employee for purposes” of appeal proceedings by the California State Occupational Safety and

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<sup>1</sup> ACLU and University of Chicago Global Human Rights Clinic, CAPTIVE LABOR: EXPLOITATION OF INCARCERATED WORKERS (2022), <https://www.aclu.org/report/captive-labor-exploitation-incarcerated-workers>.

<sup>2</sup> ACLU, THE SURVIVORS: STORIES OF PEOPLE RELEASED FROM ICE DETENTION DURING THE COVID-19 PANDEMIC (2021), <https://www.aclu.org/wp-content/uploads/legal-documents/20210512-ice-detention-report.pdf>.

<sup>3</sup> ACLU, Physicians for Human Rights, BEHIND CLOSED DOORS: ABUSE AND RETALIATION OF HUNGER STRIKERS IN U.S. IMMIGRATION DETENTION (2021), <https://www.aclu.org/report/report-behind-closed-doors-abuse-retaliation-against-hunger-strikers-us-immigration-detention>.



Health Appeals Board. Specifically, the amicus brief examines the legislative history of Chapter 1215 of the California Statutes of 1977, which added Section 6304.4 to the California Labor Code, and related regulations. The brief also examines how detained immigrants, particularly those who challenge their treatment in custody, are uniquely vulnerable to retaliation, and why the Third-Party Petitioners should be permitted to proceed without identifying the affected employees by name.

For these reasons, *amici* respectfully request that the Appeals Board grant them leave to file the attached *amici curiae* brief.

Respectfully submitted on this 14<sup>th</sup> day of December, 2023.

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## I. INTRODUCTION

At issue in this case is whether representatives of detained immigrant workers exposed to hazardous chemicals and unsafe working conditions at the Golden State Annex immigration detention facility may participate as Third-Party Petitioners before the California Occupational Safety and Health Appeals Board (“OSHAB”). The Administrative Law Judge (“ALJ”) held they could not, finding that the detained immigrants are “inmates in custody at Employer’s detention facility,” and that they are therefore precluded from participation in the appeals process under Labor Code Section 6304.4. But detained immigrant workers are, by definition, not “prisoners” or “inmates” in criminal custody of the state. Rather, they are civil detainees held pursuant to federal immigration laws. Both the plain language of Section 6304.4 and its legislative history demonstrate that the Third-Party Petitioners are not subject to its terms, which exclude state prisoners from the appeals process. The ALJ also erred in denying the detained immigrant workers the opportunity to participate in these proceedings without identifying themselves. As courts, government oversight reports, the media, and advocates have widely documented, detained immigrants face unique and heightened vulnerability to retaliation when bringing complaints because of the power that facility operators wield over almost every aspect of their lives. The risk is not hyperbolic: documented instances of retaliation against detained immigrants (including by GEO staff) have included threats and use of solitary confinement, excessive use of force and pepper spray, confiscation of medical equipment, denial of access to legal representatives, and egregious verbal abuse and intimidation. For these reasons, the Appeals Board should grant the motion for Third Party status, and allow the detained immigrant workers to participate without individual identification.

## II. ARGUMENT

### **A. The Plain Language and Legislative History of Labor Code Section 6304.4 Demonstrate That an Immigrant Detainee Is Not a “Prisoner Engaged in Correctional Industry,” and Is Not Precluded from Appeal Proceedings.**

The ALJ clearly erred in concluding that the workers in this case are “inmates in custody at Employer’s detention facility,” and that “Labor Code section 6304.4 precludes their participation in the appeals process.” ALJ Order on Mot., 4, Aug. 30, 2023. Section 6304.4 excludes “prisoner[s]

engaged in correctional industry” from appeal proceedings with OSHAB. The detained workers at Golden State Annex, however, are federal immigrant detainees, and are not prisoners within the meaning of Section 6304.4. Both a plain reading of the statute and the legislative history of Section 6304.4 establish that the detained immigrant workers at Golden State Annex are not subject to this exclusion, and are not precluded from participation in the appeals process.

Section 6304.4 plainly shows that the detained immigrant workers in this case should not be excluded from proceedings before the Appeals Board. Section 6304.4 provides that “[a] prisoner engaged in correctional industry, as defined by the [California] Department of Corrections, shall not be considered an employee for purposes of the provisions relating to appeal proceedings set forth in Chapter 7 (commencing with Section 6600).”

As an initial matter, people held in Immigration and Customs Enforcement (“ICE”) detention facilities are indisputably civil detainees held pursuant to federal immigration laws, and are not prisoners in criminal custody. Immigration proceedings are “civil, not criminal,” and “are nonpunitive in purpose and effect.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). People in immigration detention are not awaiting criminal trials or serving prison sentences, but rather, are awaiting adjudication of their civil immigration cases or removal from the United States pursuant to federal immigration law.<sup>4</sup> As ICE itself notes in the detention standards that govern the Golden State Annex, “ICE detains people for no purpose other than to secure their presence both for immigration proceedings and their removal.”<sup>5</sup> California law likewise recognizes that ICE detention facilities hold noncitizens “for purposes of civil immigration proceedings.” Cal. Gov’t

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<sup>4</sup> See American Bar Association, CIVIL IMMIGRATION DETENTION STANDARDS 1 (2012), <https://tinyurl.com/2v2hnet2>.

<sup>5</sup> U.S. Immigration and Customs Enforcement, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011, i (2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; ICE, ICE Facilities Data, FY24 (Nov. 13, 2023), [https://www.ice.gov/doclib/detention/FY24\\_detentionStats11222023.xlsx](https://www.ice.gov/doclib/detention/FY24_detentionStats11222023.xlsx) (noting that Golden State Annex is subject to the Performance-Based National Detention Standards [PBNDs] 2011 – 2016 Revised); see also U.S. Immigration and Customs Management, *Detention Management*, <https://www.ice.gov/detain/detention-management> (last updated Nov. 22, 2023) (“Detention is non-punitive . . . ICE uses its limited detention resources to secure their presence for immigration proceedings or removal from the United States – as well as those that are subject to mandatory detention . . . or those that ICE determines are a public safety or flight risk during the custody determination process.”).

Code § 12532(a); Cal. Civ. Code § 1670.9 (same). Indeed, California state law expressly provides that the California Attorney General can inspect conditions in immigration detention facilities, and does not refer to immigration detention centers as correctional facilities, or to the people held in such facilities as “prisoners.” Cal. Gov’t Code § 12532(b); Cal. Civ. Code § 1670.9.

By contrast, California defines the term “prisoner” to “mean[] a person in custody of the Secretary and not paroled.” Cal. Code Regs. Tit. 15 § 3000 (also defining “inmate” as a “synonymous term[]”).<sup>6</sup> “Secretary” is defined as “the secretary of the Department of Corrections and Rehabilitation.” *Id.*; see also Cal. Gov’t Code § 844 (defining “prisoner” as an “inmate of a prison, jail, or penal or correctional facility.”). The workers at issue in this case are civil detainees in the custody of ICE, a federal agency that is part of the U.S. Department of Homeland Security, and are not prisoners under the custody of the California Department of Corrections and Rehabilitation. Under a plain reading of the statute, they are not “prisoner[s] engaged in correctional industry” under Section 6304.4. See also *Ruelas v. Cnty. of Alameda*, 519 F. Supp. 3d 636, 653 (N.D. Cal. 2021) (citing Cal. Lab. Code §§ 3370, 6304.2) (“[I]nsofar as the Labor Code addresses inmates, it only discusses state prison inmates”).

To the extent that there is any doubt as to the plain meaning of the statute, the legislative history of Section 6304.4 also demonstrates that the exclusion of a “prisoner engaged in correctional industry” from Appeals Board proceedings applies only to state prisoners. The title of the enacting legislation itself establishes this point. In 1977, the California State Legislature enacted Chapter 1215, titled “an act to add Sections 6304.2, 6304.3, and 6304.4 to the Labor Code, *relating to state prisoners.*” Ex. A, Cal. Stats. 1977, ch. 1215, p. 4091 (emphasis added).<sup>7</sup>

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<sup>6</sup> The GEO Group cites this same regulation to support the interpretation of “prisoner” as including detained immigrants. GEO Resp. in Opp. to CCIJ’s Pet. for Reconsideration at 4. But in doing so it excludes a key phrase: “in custody of the Secretary.” This phrase is dispositive of GEO’s argument because detained immigrants are not in the custody of “the secretary of the Department of Corrections and Rehabilitation.” Cal. Code Regs. Tit. 15 § 3000.

<sup>7</sup> Bion M. Gregory, *Statutes of California and Digests of Measures 1977*, v.2 (1978), available at <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1977/77Vol2.PDF#page=3> (see pp. 1785-86 of pdf). The California State Legislature also amended Section 6304.4 in 1983, deleting the words “of this part” after the words “Chapter 7 (commencing with Section 6600).” This amendment, however, does not affect the language at issue here. Cal. Stats. 1983, Ch. 142, p. 368, available at

The substance of this enacting legislation reinforces that Section 6304.4 applies only to state prisoners. In the same 1977 act that added Section 6304.4 to the labor code, the legislature also added Section 6304.3. These two sections are companions. Section 6304.3 establishes a unique complaint procedure for state prisoners to address workplace safety issues under the authority of a “Correctional Industry Safety Committee” “established in accordance with Department of Corrections administrative procedures at each facility maintaining a correctional industry, as defined by the Department of Corrections.” Cal. Lab. Code § 6304.3(a) (emphasis added). As Section 6304.3 provides, “[a]ll complaints alleging unsafe or unhealthy working conditions in a correctional industry shall initially be directed to the Correctional Industry Safety Committee of the facility prison.” Cal. Stats. 1977, ch. 1215, p. 4091; Cal. Lab. Code § 6304.3(b). Section 6304.4, which immediately follows, explains that the health and safety appeals procedures that apply generally to workers do not apply to state prisoners. GEO does not contend that the detained immigrant workers at Golden State Annex benefit from the protections of Cal. Lab. Code § 6304.3 or could raise a complaint with any Correctional Industry Safety Committee. Because detained immigrants do not fall within the special procedure set out in § 6304.3 for those working in a “correctional industry,” it likewise follows that § 6304.4 does not exclude them from the procedure that is generally available to those other than “a prisoner engaged in correctional industry.”

The only two sets of regulations promulgated pursuant to Chapter 1215, the 1977 act that added Section 6304.4 to the Labor Code, also make clear that its statutory provisions apply only to California state prisoners. For example, 8 Cal. Code Regs. Chapter 3.2, Subchapter 2, Article 9, is titled “Correctional Industries,” and defines “complaint” as “any written allegation of unsafe or unhealthful working conditions at the place of employment of a *state* prisoner working in a correctional industry.” Cal. Code Regs. Tit. 8 § 344.40 (emphasis added).

The other set of regulations promulgated under Cal. Lab. Code § 6304.3, Cal. Code Regs. Tit. 15 § 8000 *et seq.*, addresses the treatment of state prisoners working under the California Prison

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[https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1983/83Vol1\\_Chapters.pdf#page=3](https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1983/83Vol1_Chapters.pdf#page=3).

Industry Authority (CALPIA)—an agency that exists “within the Department of Corrections and Rehabilitation.” Cal. Penal Code § 2800. At the time that the 1977 law was enacted, CALPIA was known as the “California Correctional Industries Commission,” which operated work programs at California state prisons.<sup>8</sup> CALPIA regulations apply only to institutions that are “under the jurisdiction of the California Department of Corrections and Rehabilitation,” and define “workplace” as “an office, warehouse, enterprise, or the showroom under the authority of CALPIA, regardless of location.” Cal. Code Regs. Tit. 15 § 8000. CALPIA currently “operates 100 service, manufacturing, and agricultural industries at 34 prisons throughout California.”<sup>9</sup> None of the 34 prisons noted are ICE detention facilities nor do they hold immigrants in civil proceedings.<sup>10</sup> Neither of these regulations apply to civil immigration detainees under the custody of Immigration and Customs Enforcement.

GEO argues that Section 6304.4 encompasses any person detained in one of its facilities because GEO “operate[s] within the correctional industry.” GEO Resp. in Opp. to CCIJ’s Pet. for Reconsideration at 5. But the issue is not whether GEO may generally “operate within the correctional industry,” but whether noncitizens detained for civil immigration purposes at the Golden State Annex are “prisoner[s] engaged in correctional industry, as defined by the Department of Corrections.” Cal. Lab. Code § 6304.4. They are plainly not. Here, “correctional industry” refers to work programs for state prisoners. This understanding also tracks the language that California used to refer to work programs within state prisons in 1977, when Cal. Lab. Code Section 6304.4 was adopted. Ex. A, Cal. Stats. 1977, ch. 1215, p. 4091 (adding Section 6304.4 to the labor code). As noted above, the “California Correctional Industries Commission” operated work programs at California state prisons in 1977.<sup>11</sup> This Commission has since been

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<sup>8</sup> See CALPIA, *CALPIA Celebrates 70 Years* (May 24, 2021), <https://www.calpia.ca.gov/2017/03/07/calpia-celebrates-70-years/>.

<sup>9</sup> CALPIA, CALPIA Enterprise, Career Technical Education (CTE), Joint Venture (JV) and Free Venture (FV) Locations, <https://www.calpia.ca.gov/about/calpia-enterprise-career-technical-education-cte-joint-venture-jv-and-free-venture-fv-locations/> (last updated Jul. 3, 2023).

<sup>10</sup> *Id.*

<sup>11</sup> CALPIA, *CALPIA Celebrates 70 Years* (May 24, 2021), <https://www.calpia.ca.gov/2017/03/07/calpia-celebrates-70-years/>.

“[r]econstituted” as the California Prison Industry Authority, or “CALPIA,” which currently “manages over 100 manufacturing, service, and consumable enterprises in 34 [California Department of Corrections and Rehabilitation] institutions,” not ICE detention facilities.<sup>12</sup>

The California Legislature recently made clear that “the state does not tolerate profiting from the incarceration of Californians held in immigration detention and the state’s desire to ensure the just and humane treatment of our most vulnerable populations.” Legis. Counsel’s Dig., Sen. Bill No. 29 (2017-18 Reg. Sess.) (legislative findings supporting SB 29, codified at Cal. Civ. Code § 1670.9, which inter alia, bars California governmental entities from contracting with ICE for civil immigration detention).<sup>13</sup> GEO’s construction of Section 6304.4 is at odds with the plain language of the statute, its purpose and history, and California’s recognition that companies like GEO should not profit off noncitizens who are housed in its civil immigration facilities. The term “prisoner engaged in correctional industry” as used in Section 6304.4 refers only to state prisoners, and certainly does not extend to civil detainees in the custody of a federal immigration agency. For these reasons, the detained immigrant workers at Golden State Annex are not precluded from appeal proceedings under Section 6304.4.

**B. Detained Immigrants Face Heightened Risks of Retaliation, Supporting the Grant of Party Status to the Workers without Individual Identification.**

Detained immigrants who challenge their treatment in custody are uniquely vulnerable to retaliation due to the heightened power of their employer—in this case the detention facility operator—over virtually every aspect of their daily lives. Such unequal power has resulted in numerous documented instances of retaliation by facility staff against immigrant detainees. In light of this increased risk of retaliation faced by detained immigrants, the Third-Party Petitioners should be permitted to proceed without identifying the affected workers by name.

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<sup>12</sup> *Id.*

<sup>13</sup> Legis. Counsel’s Dig., Sen. Bill No. 29 (2017-18 Reg. Sess.), *available at* <https://legiscan.com/CA/text/SB29/id/1651848>.



Government officials,<sup>14</sup> advocacy organizations,<sup>15</sup> and the media<sup>16</sup> have widely documented retaliation against immigrant detainees who raise complaints regarding their treatment in custody. For example, members of Congress have voiced concern with respect to reported cases of retaliation that include the use of unleashed dogs and pepper spray against detained immigrants, resulting in at least two hospitalizations.<sup>17</sup> A report issued by members of the House Homeland Security Committee in 2020 cited instances where guards threatened to lock detainees in retaliation for making too many complaints or medical requests.<sup>18</sup> An expert report by the Department of Homeland Security's Office for Civil Rights and Civil Liberties regarding the GEO-run Adelanto ICE Processing Center recently concluded that "detainees suffer retaliation, verbal harassment, and [are] treated with disrespect by [Adelanto's] staff."<sup>19</sup> Documented reports of retaliation by detention facility operators against detained immigrants include the threat and use of solitary

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<sup>14</sup> See, e.g. DHS Office for Civil Rights and Civil Liberties, *Overarching Investigation into Retaliation Allegations in ICE Custody*, Dec. 19, 2022, <https://www.dhs.gov/sites/default/files/2023-05/retention-memo-ice-retaliation-12-19-22.pdf>;

<sup>15</sup> See, e.g. Freedom for Immigrants et al., *Complaint, Medical Neglect, Use of Force, Verbal Abuse, and Retaliation, Religious Discrimination, COVID-19 Negligence, of Individuals Detained at Bergen County Jail*, Jul. 13, 2021, <https://shorturl.at/EQV01>.

<sup>16</sup> Kate Morrissey, *ICE Detainees Allege Retaliation After Speaking Out About Medical Conditions at Otay Mesa Detention Center*, San Diego Union-Tribune, Mar. 3, 2023, <https://shorturl.at/xOTW1>.

<sup>17</sup> Letter from Rep. Ilhan Omar and Members of Congress to Domestic Policy Council Director Susan Rice, DHS Secretary Alejandro Mayorkas (Mar. 15, 2021), available at [https://omar.house.gov/sites/evo-subsites/omar-evo.house.gov/files/Rice\\_Mayorkas\\_detention\\_letter.pdf](https://omar.house.gov/sites/evo-subsites/omar-evo.house.gov/files/Rice_Mayorkas_detention_letter.pdf) (noting retaliation against detained immigrants, including unleashed dogs and pepper spray resulting in two hospitalizations).

<sup>18</sup> Nick Miroff, *Immigrant Detainees Get Poor Medical Care, Face Retaliation for Speaking Out, According to Democrat-Led Report*, Washington Post, Sept. 21, 2020, [https://www.washingtonpost.com/immigration/ice-detainees-health-care-report/2020/09/21/270a64f4-fc1e-11ea-830c-a160b331ca62\\_story.html](https://www.washingtonpost.com/immigration/ice-detainees-health-care-report/2020/09/21/270a64f4-fc1e-11ea-830c-a160b331ca62_story.html); Joe Walsh, *ICE Jails Retaliated Against Immigrants and Denied Adequate Healthcare, Report Finds*, Forbes, Sept. 21, 2020, <https://shorturl.at/kmJLS>.

<sup>19</sup> DHS Office for Civil Rights and Civil Liberties, *Corrections Expert Report on Adelanto Correctional Facility*, Nov. 16, 2017, <https://tinyurl.com/55ruc2ar> at 10; see also Tom Dreisbach, *Despite Findings of 'Negligent' Care, ICE to Expand Troubled Calif. Detention Center*, NPR, Jan. 15, 2020, <https://www.npr.org/2020/01/15/794660949/despite-findings-of-negligent-care-ice-to-expand-troubled-calif-detention-center>;

confinement,<sup>20</sup> use of force and pepper spray,<sup>21</sup> confiscation of medical equipment,<sup>22</sup> denial of access to legal representatives,<sup>23</sup> sexually abusive pat-downs,<sup>24</sup> and extreme verbal abuse and intimidation.<sup>25</sup>

At Golden State Annex, the facility in question in this case, GEO staff members have reportedly retaliated against detainees' attempts to file grievances by limiting communication with attorneys, withholding medical attention, bringing unfounded disciplinary charges resulting in solitary confinement, and restricting telephone calls to family.<sup>26</sup> Similar acts of retaliation occur repeatedly in detention facilities across the country. An immigrant detained at the Central Louisiana ICE Processing Center in Jena, Louisiana, also operated by GEO, recently reported significant retaliation after filing grievances alleging medical neglect and abuse with the facility and oversight bodies.<sup>27</sup> Facility staff placed him in solitary confinement, and after releasing him, threatened to place him back in solitary confinement if he "continues to complain."<sup>28</sup> At the Folkston ICE Processing Center in Georgia, also run by GEO, detained immigrants reported that guards retaliated against their complaints by denying access to medication, placing them in solitary confinement, and denying access to communication with legal counsel.<sup>29</sup> At the Torrance County

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<sup>20</sup> See, e.g., Freedom for Immigrants et al., Complaint, *Excessive Force and Retaliatory Use of Solitary Confinement*, Mar. 3, 2021, <https://shorturl.at/gqxX7>.

<sup>21</sup> Monique Madan, *ICE 'Retaliated' Against Detainees for Speaking to Media*, *Federal Complaint Says*, Miami Herald, Jun. 17, 2020, <https://www.miamiherald.com/news/local/immigration/article243603327.html>.

<sup>22</sup> See, e.g. CCIJ et al., Complaint, *First Amendment Retaliation Against Individuals in Immigration Detention in California*, Aug. 26, 2021, <https://shorturl.at/lrE56>.

<sup>23</sup> Morgan Lee, *Groups: Retaliation After Migrants Report Detention Center*, Associated Press, Sept. 29, 2022, <https://apnews.com/article/new-mexico-immigration-treatment-of-prisoners-b9d7b049f1d842220c8a89156d7fc978>.

<sup>24</sup> See, e.g. Centro Legal de la Raza et al., Complaint, *Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde*, Jan. 17, 2023, <http://tinyurl.com/yxdzk3n6>.

<sup>25</sup> Lee, *Groups: Retaliation After Migrants Report Detention Center*, *supra* n.20.

<sup>26</sup> See CCIJ, Complaint, *supra* n.22; Centro Legal de la Raza et al., *Retaliation Against Individuals in Immigration Detention at Mesa Verde Detention Center and Golden State Annex* 6-8, Sept. 13, 2022, <http://tinyurl.com/9sce4uvz>.

<sup>27</sup> Freedom for Immigrants et al., *Sexual Abuse, Medical Abuse Amounting to Torture, Use of Force, Life-Threatening Medical Neglect, Retaliation, and Violation of First Amendment Rights against Daniel Alfredo Cortes de la Valle, Central Louisiana ICE Processing Center in Jena, Louisiana*, 12-15, Mar. 29, 2023, <https://tinyurl.com/yc6axj5e>.

<sup>28</sup> *Id.* at 13.

<sup>29</sup> Innovation Law Lab et al., *Immediate Redress of Abusive and Retaliatory Tactics at Folkston ICE Processing Center*, Jun. 16, 2022, <https://tinyurl.com/wwfwd53f>.

Detention Center in Estancia, New Mexico, which is operated for ICE by the private prison company CoreCivic, Inc., detained immigrants reported that, after they raised issues of unsanitary conditions, facility staff restricted their access to legal counsel and falsified reports of misconduct under the Prison Rape Elimination Act.<sup>30</sup>

Federal courts have likewise noted the extreme power that detention facility operators wield in their employment of detained immigrants, particularly with respect to their power to place detained immigrants in solitary confinement. “[S]olitary confinement, or the threat of solitary confinement, sufficiently alleges the means to achieve forced labor.” *Novoa v. GEO Grp., Inc.*, No. EDCV172514JGBSHKX, 2022 WL 2189626, at \*19 (C.D. Cal. Jan. 25, 2022) (quoting *Gonzalez v. CoreCivic, Inc.*, No. 1:18-CV-169-LY, 2019 WL 2572540, at \*2 (W.D. Tex. Mar. 1, 2019), and citing to *Owino v. CoreCivic, Inc.*, No.: 17-CV-1112, 2018 WL 2193644, at \*11 (D. Colo. Mar. 6, 2019). As the court in *Novoa* concluded, evidence showing that GEO placed “at least some detainees in administrative segregation . . . for refusing to clean,” “would sufficiently compel a reasonable detainee to perform uncompensated work.” *Novoa*, at \*19.

In light of the heightened risk of retaliation faced by the detained immigrant workers, good cause exists to allow the Third-Party Petitioners to be permitted to proceed without identifying the affected workers by name.

### III. CONCLUSION

For the reasons above, the Appeals Board should GRANT CCIJ and Worksafe’s Motion for Party Status and allow the Third-Party Petitioners to proceed without identifying the affected workers by name.

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<sup>30</sup> Lee, *Groups: Retaliation After Migrants Report Detention Center*, Associated Press, Sept. 29, 2022.

Dated: December 14, 2023

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**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**

**In the Matter of the Appeal of:  
Golden State Annex d/b/a The Geo Group v.  
California Department of Occupational Safety & Health  
Inspection/Citation No. 1609228**

**DECLARATION OF SERVICE**

I, Samantha Weaver, certify as follows:

I am at least 18 years of age, not a party to this action, and am employed by the ACLU. My business address is 915 15<sup>th</sup> Ave. NW, Washington, D.C. 20005. My electronic mail address is [sweaver@aclu.org](mailto:sweaver@aclu.org).

On December 14, 2023, I caused the foregoing document(s) described as:  
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AMERICAN CIVIL LIBERTIES UNION FOUNDATION (ACLU), ACLU OF NORTHERN  
CALIFORNIA, AND ACLU OF SOUTHERN CALIFORNIA to be served upon the person(s)  
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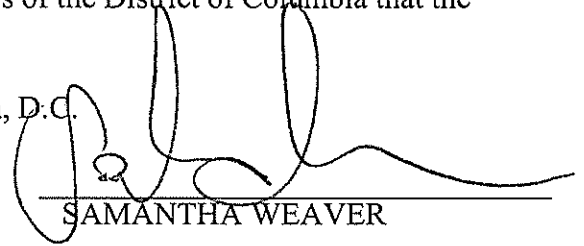
**X BY PLACING FOR COLLECTION AND MAILING:** By placing the document for collection and mailing on that same date following the ordinary business practices of the ACLU, at its place of business located at 915 15<sup>th</sup> Ave. NW, Washington, D.C. 20005. I am readily

familiar with the business practices of the ACLU for collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to said practices the envelope(s) would be deposited with the United States Postal Service that same day, with postage thereon fully prepaid, at Washington, D.C. in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing the affidavit.

On the same date, I also sent the document listed above as a .pdf file to the email addresses listed above.

I declare under penalty of perjury under the laws of the District of Columbia that the foregoing is true and corrected.

Executed on December 14, 2023 at Washington, D.C.



SAMANTHA WEAVER

# **EXHIBIT A**

a school of medicine from requiring that a podiatrist have a faculty teaching appointment as a condition for eligibility for staff privileges for that facility

(b) The rules of a health facility which include provisions for use of the facility by, and staff privileges for, medical staff shall not discriminate on the basis of whether the staff member holds a M.D., D.O., or D.P.M. degree, within the scope of their respective licensure. The health facility staff processing, reviewing, evaluating, and determining qualifications for staff privileges for medical staff shall include, if possible, staff members that hold M.D., D.O., and D.P.M. degrees.

(c) Any violation by a health facility of the provisions of this section may be enjoined in an action brought in the name of the people of the State of California by the district attorney of the county in which the health facility is located, upon receipt of a complaint by an aggrieved physician and surgeon or podiatrist.

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## CHAPTER 1215

An act to amend Section 6413 of, and to add Sections 6304.2, 6304.3, and 6304.4 to, the Labor Code, relating to state prisoners.

[Approved by Governor September 30, 1977. Filed with  
Secretary of State October 1, 1977.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 6304.2 is added to the Labor Code, to read:  
6304.2. Notwithstanding Section 6413, and except as provided in Sections 6304.3 and 6304.4, any state prisoner engaged in correctional industry, as defined by the Department of Corrections, shall be deemed to be an "employee," and the Department of Corrections shall be deemed to be an "employer," with regard to such prisoners for the purposes of this part.

SEC. 2. Section 6304.3 is added to the Labor Code, to read:

6304.3. (a) A Correctional Industry Safety Committee shall be established in accordance with Department of Corrections administrative procedures at each facility maintaining a correctional industry, as defined by the Department of Corrections. The Division of Industrial Safety shall promulgate, and the Department of Corrections shall implement, regulations concerning the duties and functions which shall govern the operation of each such committee.

(b) All complaints alleging unsafe or unhealthy working conditions in a correctional industry shall initially be directed to the Correctional Industry Safety Committee of the facility prison. The committee shall attempt to resolve all complaints.

If a complaint is not resolved by the committee within 15 calendar days, the complaint shall be referred by the committee to the



division where it shall be reviewed. When the division receives a complaint which, in its determination, constitutes a bona fide allegation of a safety or health violation, the division shall summarily investigate the same as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, as defined in Section 6309, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation.

(c) Except as provided in subdivision (b) and in Section 6313, the inspection or investigation of a facility maintaining a correctional industry, as defined by the Department of Corrections, shall be discretionary with the division.

(d) Notwithstanding Section 6321, the division may give advance notice of an inspection or investigation and may postpone the same if such action is necessary for the maintenance of security at the facility where the inspection or investigation is to be held, or for insuring the safety and health of the division's representative who will be conducting such inspection or investigation.

SEC. 3. Section 6304.4 is added to the Labor Code, to read:

6304.4. A prisoner engaged in correctional industry, as defined by the Department of Corrections, shall not be considered an employee for purposes of the provisions relating to appeal proceedings set forth in Chapter 7 (commencing with Section 6600) of this part.

SEC. 4. Section 6413 of the Labor Code is amended to read:

6413. (a) The Department of Corrections, and every physician or surgeon who attends any injured state prisoner, shall file with the Division of Labor Statistics and Research a complete report of every injury to each state prisoner, not reported pursuant to Section 6409, resulting from any labor performed by the prisoner unless disability resulting from such injury does not last through the day or does not require medical service other than ordinary first aid treatment. The Division of Labor Statistics and Research may, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, adopt reasonable rules and regulations prescribing the detail and time limits of such report.

(b) Where the injury results in death a report, in addition to the report required by subdivision (a), shall forthwith be made by the Department of Corrections to the Division of Labor Statistics and Research by telephone or telegraph.

(c) Except as provided in Section 6304.2, nothing in this section or in this code shall be deemed to make a prisoner an employee, for any purpose, of the Department of Corrections.

(d) Notwithstanding the provisions of subdivision (a), no physician or surgeon who attends any injured state prisoner outside of a Department of Corrections institution shall be required to file the report required by subdivision (a), but the Department of Corrections shall file such report.