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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff-Appellee,

v.

THE GEO GROUP, INC.,
Defendant-Appellant.

BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION

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I. IDENTITY AND INTEREST OF AMICUS

The identity and interest of Amicus are set forth in the Motion for Leave to File, submitted contemporaneously with this brief.

II. INTRODUCTION

> Let America be America again.
> Let it be the dream it used to be.
> Let it be the pioneer on the plain
> Seeking a home where he himself is free.
>
> (America never was America to me.)
>
> Let America be the dream the dreamers dreamed—
> Let it be that great strong land of love
> Where never kings connive nor tyrants scheme
> That any man be crushed by one above.
>
> (It never was America to me.)

Let America Be America Again by Langston Hughes[1]

The American dream is a promised central tenet of our society, but has remained elusive for too many, leading to

[1] The full poem is available here: Langston Hughes, *Let America be America Again*, Poetry Foundation, https://www.poetryfoundation.org/poems/147907/let-america-be-america-again.

disillusionment with the idea. But for immigrants, as Langston Hughes intimated, they still "clutch[] the hope [they] seek." [2] For many immigrants, regardless of whether they know the phrase "American dream," they put everything on the line to achieve what it stands for—a better life with more work opportunities. Lilly Quiroz, *Is the American dream worth the risk? These migrants hope so,* NPR (Sept. 24, 2022), https://www.npr.org/2022/09/24/1123867466/migrants-marthas-vineyard-migration-border-us-american-dream.

As much as the idea of the American dream is central in our lexicon, so is the idea that the American dream is not achievable for everyone, particularly vulnerable groups like the civil detainees incarcerated at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, which is owned and

[2] The American dream is complicated and is viewed as encapsulating different societal ideals. But the main definition used here is "the idea that hard work will lead to increased stability and class position for the next generation." Anne Helen Petersen, *What the American dream looks like for immigrants,* Vox (June 28, 2021), https://www.vox.com/the-goods/22548728/immigrant-american-dream-middle-class.

operated by Defendant-Appellant, The GEO Group (GEO). Civil detainees at NWIPC come from different walks of life—some came to this country without appropriate documentation, for example, while others have had their legal status expire for different reasons. La Resistencia, *#Freethemall: Voices from Inside NWDC,* https://laresistencianw.org/freethemall/. While the final determination of whether they will be allowed to stay here or be sent back to their home countries is pending, these people are stuck in a holding pattern, living and working for little pay, at NWIPC away from their families and loved ones. They are keenly aware that the American dream is stalled for them. The American dream may be elusive for individuals kept at NWIPC, but the protections of the Washington Minimum Wage Act (MWA) are not.

While this case is presently before the Washington Supreme Court on three certified questions from the Ninth Circuit Court of Appeals, the focus of this brief is on the first—whether plaintiffs are, in the circumstances of this case,

"employees" under the MWA. Washington's labor jurisprudence and legislative history, centered in workers' rights, supports this finding. Additionally, the nature of their incarceration and status in this country, as well as GEO's reliance on the work of civil detainees to keep the facility running, supports this finding.

III. FACTUAL BACKGROUND

GEO is a private, for-profit corporation operating detention centers across the country, including NWIPC here in Washington. As outlined by the Ninth Circuit, GEO operates NWIPC pursuant to a contract with Immigration and Customs Enforcement (ICE) to provide detention management services. *Nwauzor v. Geo Group, Inc.,* 62 F.4th 509, 512 (9th Cir. 2023).

Individuals housed at NWIPC have a unique status, in that they are noncitizen civil detainees of the federal government. *Id.* Notably, they are not confined as a penalty for immigration status violations. *Id.* Also, of importance, some of the people detained are lawful permanent residents with work authorizations. *Id.*

GEO's contract with ICE requires it to "perform in

accordance with specific statutory, regulatory, police and operational constraints…as well as all applicable federal, state and local laws." *Id.* Importantly, the contract is clear that "if a conflict exist[s] between [federal, state, and local laws and standards], the most stringent shall apply." *Id.* While GEO amasses millions in profits every year, it pays civil detainees, participating in a work program, usually only $1.00 a day, but no more than $5.00 a day. *Id.* at 512-13. As part of the contract with ICE, GEO must provide meals and the facility must be kept clean. *Id*. And as part of the work program, GEO trains, manages, creates job assignments for, and sets the work schedules for individuals detained at NWIPC. *Id*.

As the Court is aware, this case has had a long procedural history. For the sake of brevity, Amicus adopts the State of Washington's procedural history. Additionally, Amicus adopts the State of Washington's statement of the case.

IV. ARGUMENT

A. The History of the Washington Minimum Wage Act is Centered in the Rights of Workers

Washington's "long and proud history of being a pioneer in the protection of employee rights" is not through happenstance; rather, Washington gained, and since retained, this reputation through the concerted effort of the Legislature and individual workers to demand these rights (supported by legal precedence), particularly for the most vulnerable and disenfranchised groups of people in Washington. *Hill v. Xerox Bus. Servs., LLC*, 191 Wn.2d 751, 760, 426 P.3d 703 (2018) (citing *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 35, 42 P.3d 1265 (2002); quoting *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000)). Washington's labor and work-related laws have their genesis in individual workers' rights, putting workers at the center of protective laws designed to stave off unfair employers and practices even from the beginning of Washington's history as a state.

For example, in 1899 (just ten years after becoming the forty-second state) Washington implemented a law barring workdays lasting longer than eight hours. *Drinkwitz*, 140 Wn.2d at 300.[3] This was part of the nationwide push for the 8-hour workday (through May Day demonstrations) that had varying successes throughout the country. *See* Gillian Brockwell, *That time America almost had a 30-hour workweek*, The Washington Post (Sept. 6, 2021), https://www.washingtonpost.com/history/2021/09/06/40-hour-work-week-fdr/; *See also* Marina Manoukian, *How Did U.S. Workers Get the 8-Hour Workday*, Grunge (Sept. 27, 2021), https://www.grunge.com/616032/how-did-u-s-workers-get-the-8-hour-workday/#:~:text=But%20the%20eight-hour%20workday%2F40-hour%20workweek%20wouldn%27t,the%20eight-hour%20workday%20into%20American%20life.&text=But%2

[3] *See also* Kit Oldham, *Washington is admitted as the 42nd state*, HistoryLink.org (March 1, 2022), https://www.historylink.org/File/5210.

0the%20eight-hour%20workday%2F40-hour,workday%20into%20American%20life.&text=eight-hour%20workday%2F40-hour%20workweek%20wouldn%27t,the%20eight-hour%20workday%20into.

In 1913, 25 years before Congress passed a federal minimum wage law in 1938, Washington enacted the following precursor to what would become the MWA we know today:

> It shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health; and it shall be unlawful to employ workers in any industry within the state of Washington at wages which are not adequate for their maintenance.

Drinkwitz, 140 Wn.2d at 300.

The Washington Legislature recognized the harmful effects of work with little pay well before it was recognized federally. Also in 1913, Washington became one of the first states to enact a statewide minimum wage for women and minors, again well before other states followed suit. *Hill*, 191

Wn.2d. at 760.

The Washington Legislature and courts have always demonstrated a protective viewpoint to the ever-changing landscape of the workplace, focusing on the rights of workers and what those workers, in particular, need as society develops. While we can trace minimum wage laws targeting women to gendered views and "paternalistic interpretation of the Fifth and Fourteenth Amendments in the early 1910s," the laws also recognized that "women were competent workers and deserved to be paid a livable wage." Margaret Murphy, *The Constitutionality of Minimum Wage: The Legal Battles of Elsie Parrish and Frances Perkins for a Fair Day's Pay*, https://history.princeton.edu/undergraduate/princeton-historical-review/constitutionality-minimum-wage#f3.

But this change was not easy. The minimum wage law for women and minors was twice challenged and twice upheld by the Washington Supreme Court. In *Larsen v. Rice*, this Court held that a minimum wage for women and minors is "not wholly

of private concern…The state, having declared that a minimum wage of a certain amount is necessary to a decent maintenance of an [employee] …, has an interest in seeing that the fixed compensation is actually paid." *Larsen v. Rice*, 100 Wash. 642, 648, 171 P. 1037 (1918). Furthermore, this Court emphasized a theme repeated throughout this State's early legal precedence—that minimum wage laws impact not only individuals, but are also for the betterment of society as a whole. *Id.* at 650 ("The statute was not therefore intended solely for the benefit of the individual wage-earner. It was believed that the welfare of the public requires that wage-earners receive a wage sufficient for their decent maintenance."); *Spokane Hotel Co. v. Younger*, 113 Wash. 359, 194 P. 595 (1920) (upholding Washington's minimum wage law in 1920 based on the reasoning in *Larsen*).

The challenges continued, though, until the minimum wage law for women and minors was upheld by the United States Supreme Court. *See West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 391-395, 57 S. Ct. 578, 581-583 (1937) (noting that any

minimum wage laws enacted may limit, to a certain extent, some contractual powers, but these were "not imposed solely for [women's] benefit, but also largely for the benefit of all.").

In *West Coast Hotel*, the Supreme Court recognized what this Court had already found—that the "freedom of contract is a qualified, and not an absolute, right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not…deny the government the power to provide restrictive safeguards." *West Coast Hotel,* 300 U.S. at 392. Furthermore, "[i]n dealing with the relation of employer and employed, the [Washington] Legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression." *Id.* at 393 (citations omitted). Ultimately, the Supreme Court held that "[t]he [Washington] Legislature was entitled to adopt measures to reduce…the exploiting of workers at wages so low as to be

insufficient to meet the bare cost of living thus making their very helplessness the occasion of a most injurious competition." *Id.* at 398-99. Even in this early case in Washington's history as a state, the United States Supreme Court and the Washington Supreme Court drew a clear line acknowledging that the Legislature has the power to create protective laws in the employment context.

Washington expanded its minimum wage protections in 1959 to include men, and, ultimately, expanded into the version known as the MWA. *Hill*, 191 Wn.2d at 760. The MWA became effective on June 11, 1959 and set the minimum wage at $1 an hour. Alan J. Stein, *Washington Minimum Wage and Hour Act goes into Effect on June 11, 1959,* HistoryLink.org (Nov. 26, 2023), https://www.historylink.org/file/10657.

Since then, with regular frequency, Washington has raised the minimum wage to respond to our society's growth and to protect against "the evils and dangers resulting from wages too low to buy the bare necessities of life and from long hours of work injurious to health…[and] to insure that every person

whose employment contemplated compensation should not be compelled to sell his services for less than the prescribed minimum wage." [4] *Anfinson v. FedEx Ground Package Sys., Inc*., 174 Wn.2d 851, 870, 281 P.3d 289 (2012) (internal quotation omitted).

With this said, there were, and still are, groups of workers not included in the MWA. For example, when the Washington Legislature enacted the MWA in 1959, it followed the Fair Labor Standards Act (FLSA) and "imported wholesale the exclusion of farmworkers from minimum wage and overtime protections." *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.,* 196 Wn.2d 506, 530, 475 P.3d 164 (2020). Thirty years later, through the initiative process, Washingtonians decided that farmworkers

[4] *See* Washington State Dep't of Labor & Industries, *History of Washington State's Minimum Wage,* available at https://www.lni.wa.gov/workers-rights/wages/minimum-wage/history-of-washington-states-minimum-wage#:~:text=History%20of%20Washington%20State%27s%20Minimum%20Wage.%20Initiative%20688%2C,2018%2C%20%2412.00%20in%202019%2C%20and%20%2413.50%20in%202020 (outlining the minimum wage increases since 1961).

must be covered under the minimum wage provision of the MWA in 1989. Although Washingtonians sought to protect farmworkers from being exploited economically, they did not extend overtime coverage. *Id.* Thirty-one years later, the Court found that subjecting farmworkers to economic exploitation by not applying Washington's overtime protections to farmworkers violated Article I, Section 12 of Washington's Constitution, and this Court acknowledged the unique nature of farmworkers' work and their status as a vulnerable class.[5] This Court noted, "[p]overty, fear of deportation, and barriers to health care and education persist in farmworker communities…Farmworkers remain some of the most impoverished and socially excluded members of our society. It is no coincidence the law continues to disfavor them." *Martinez-Cuevas*, 196 Wn.2d at 530-531. Finally, this Court acknowledged that "[e]xcluding farmworkers

[5] Amicus acknowledge that constitutional claims present in *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.* are not at issue in this case; however, the reasoning in this case is persuasive for the present matter.

from health and safety protections cannot be justified by an assertion that…society's general welfare[] depends on a caste system that is repugnant to our nation's best self." *Martinez-Cuevas*, 196 Wn.2d at 533.

From this State's inception through to today, the Legislature, with support from the courts, has repeatedly made clear that workers, particularly those likely to be victimized or oppressed by employers, are at the center of the MWA and are protected. The plight of civil detainees held at NWIPC is not dissimilar to the lived experiences of farmworkers outlined by this Court, in that civil detainees also fear deportation, exist in poverty, and are some of the most socially-excluded members of our society. Civil detainees are equally as vulnerable as farmworkers, and legal precedence holds that Washington treats vulnerable groups of people protectively, particularly in the employment context.

B. The Remedial Nature of Washington's Work-Related Laws Values Workers over Employers

Washington's MWA is not the only source of worker

support in Washington statutes, as other labor-related laws support this expansive view, providing layers of protection for workers.[6] Take the employment protections when an employee is discharged or ceases to work for an employer. RCW 49.52.010 outlines that an employee is entitled to wages due to them, on account of their employment, at the end of the established pay period. An "employer or officer, vice principal or agent of any employer" is guilty of a misdemeanor if he or she "[w]illfully and with intent to deprive the employee of any part of [their] wages" pays the employee less than the wage to which the employee is entitled. *Ellerman v. Centerpoint Prepress, Inc.,* 143 Wn.2d 514, 519, 22 P.3d 795 (2001) (citing RCW 49.52.050(2)). Should an employer not pay the employee their wages due, this agent "shall be liable to the unpaid employee 'for twice the amount of wages unlawfully…withheld' and attorney fees." *Id.*

[6] For example, in 1989, in "response to social realities such as dual-career couples and single working parents," the Washington Legislature passed a family leave law. *Drinkwitz*, 140 Wn.2d at 300 (citing RCW 49.78).

(citing RCW 49.52.070).

This Court recognized that Washington's "Legislature has evidenced a strong policy in favor of payment of wages due employees by enacting a comprehensive scheme to ensure payment of wages, including the statutes…which provide both criminal and civil penalties for the willful failure of an employer to pay wages." *Schilling v. Radio Holdings, Inc*., 136 Wn.2d 152, 157, 961 P.2d 371 (1998) (citations omitted). The Washington Legislature supports workers so much that it put in place protections to criminally charge employers for not paying their workers what they deserve, and a repayment scheme that ensures the worker receives double the amount they were owed. This is truly a unique approach among states.

These robust protections were first enacted by the Washington legislature in 1939 as "Anti-Kickback" statutes to prevent employer abuses in the work setting:

> [T]he fundamental purpose of the legislation, as expressed in both the title and body of the act, is to protect the *wages* of an employee against any

> diminution or deduction therefrom by rebating, underpayment, or false showing of overpayment of any part of such wages. The act is thus primarily a protective measure, rather than a strictly corrupt practices statute. In other words, the aim or purpose of the act is to see that the employee shall realize the full amount of the wages which by statute, ordinance, or contract he is entitled to receive from his employer, and which the employer is obligated to pay, and, further, to see that the employee is not deprived of such right, nor the employer permitted to evade his obligation, by a withholding of a part of the wages.

Ellerman v. Centerpoint Prepress, Inc., 143 Wn.2d 514, 520, 22 P.3d 795 (2001).[7]

Importantly, because the majority of worker-related laws in Washington have a remedial purpose, this Court has repeatedly held that "[r]emedial statutes, as well as the

[7] Although not the focus on this brief, Amicus would be remiss to not mention that worker protections also came about through hard, consistent work of collective action and unions. Since the genesis of this State and with the founding of Seattle as a lumber village, workers have been able to collectively come together to demand better wages and conditions through unions and striking as a collective. *See, generally,* James Gregory, *Seattle Labor History Highlights,* The Seattle Civil Rights & Labor History Project, https://depts.washington.edu/civilr/labor_history.htm.

regulations promulgated thereunder, must be liberally construed in favor of the worker" because "[a] liberal construction should carry into effect the purpose of the statute." *Port of Tacoma v. Sacks*, 19 Wn. App. 2d 295, 303, 495 P.3d 86 (2021) (citing *Silverstreak, Inc. v. Dep't of Labor & Indus*., 159 Wn.2d 868, 882, 154 P.3d 891 (2007) (plurality opinion); *Everett Concrete Prods., Inc. v. Dep't of Labor & Indus.*, 109 Wn.2d 819, 823, 748 P.2d 1112 (1988)).[8] Washington's courts and Legislature have a clear directive—the Washington worker is protected and all statutory interpretation should be viewed with the lens that the worker is protected from employers.

Supporting workers is a value deeply embedded in Washington's legislation and jurisprudence that expands as

[8] *See also Champagne v. Thurston Cnty.*, 163 Wn.2d 69, 76, 178 P.3d 936 (2008) (quoting *Ellerman*, 143 Wn.2d at 520) ("Three wage statutes penalize an employer who willfully withholds wages (WRA), fails to pay the statutory minimum wage (MWA), or fails to pay wages due upon termination of employment (WPA). The court is tasked with construing these laws 'liberally' in light of the strong public policy to protect workers' rights.").

society shifts and changes to be more inclusive of people, particularly vulnerable groups of people. This Court should continue this long tradition of inclusivity and support, and apply the MWA to civil detainees at NWIPC.

C. Based on Legal Precedence and Legislative History, Civil Detainees at NWIPC Are Employees under MWA

Individuals detained at NWIPC have a unique status as civil detainees in that they are incarcerated not because they have been convicted of any crimes, but because they are awaiting a determination on their immigration status. *Zfldvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L.Ed.2d 653 (2001) (reiterating that immigration proceedings are "civil, not criminal" and detention must therefore be "nonpunitive"). [9] It

[9] It bears noting that federal courts of appeals across the country have held that immigration detainees are entitled to broader constitutional protections than individuals who have been convicted of crimes. *See, e.g., Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2nd Cir. 2020); *E. D. v. Sharkey*, 928 F.3d 299, 306–07 (3d Cir. 2019); *Chavero-Linares v. Smith*, 782 F.3d 1038, 1041 (8th Cir. 2015); *Belbachir v. County of McHenry*, 726 F.3d 975, 979 (7th Cir. 2013); *Porro v. Barnes*, 624 F.3d 1322, 1326 (10th Cir. 2010); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th

follows that as civil detainees, any statutes or constitutional principles that exempt incarcerated individuals from minimum wage requirements do not apply here.

Looking to the MWA itself, the language is clear that only certain types of individuals held in government-run institutions are exempt and, notably, civil detainees held in private, for-profit detention centers are absent from the statute *See* RCW 49.46.010. RCW 49.46.010(3)(k) outlines that "any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution" is not covered by the MWA. But, as outlined by the State, the civil detainees held at NWIPC are not being held at a state, county, or municipal correctional facility; rather, they are being held at a private, for-profit detention center contracting with the federal government. Therefore, through the Legislature's clear choice of words, RCW 49.46.010(3)(k) cannot apply to civil detainees. Determining

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Cir. 2000); and *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017).

whether an individual is an "employee" under the MWA is a question of statutory interpretation with the court's "fundamental objective when interpreting a statute is 'to discern and implement the intent of the legislature.'" *Anfinson*, 174 Wn.2d at 866 (citations omitted). And the Washington Legislature has made clear, time and time again, that the definition of an employee under the MWA is broad. *Id.*, citing *Stahl v. Delicor of Puget Sound, Inc.,* 148 Wn.2d 876, 884, 64 P.3d 10 (2003) ("[T]he legislature broadly defined employee in RCW 49.46.010(3)."). *See also Becerra v. Expert Janitorial*, *LLC,* 181 Wn.2d 186, 194, 332 P.3d 415 (2014) ("[U]nder the MWA, an employee includes any individual permitted to work by an employer. This is a broad definition.").

This Court held in *Anfinson* that legislative history "decisively favors" the "economic-dependence test" to determine employee status when determining whether a worker is an independent contractor or an employee of a company, which means the key inquiry is whether the alleged employee is,

as a matter of economic reality, dependent upon the business to which they render services. *Id.* at 868-69. This Court noted that this test has a more inclusive definition of "employee" than other tests, which is consistent with Washington's legislative history and the remedial nature of the MWA. *Id.* at 870-71.

The nature of the work performed by civil detainees at NWIPC proves they are employees under the MWA. Civil detainees are not providing auxiliary services through the work program; rather, they complete the core functions necessary to keep NWIPC running. They prepare and serve food; wash dishes and clean the kitchen; wash and fold bed linens and clothes for the entire detainee population; and complete all janitorial tasks (including cleaning and painting interior walls) for nearly the entire facility. *State v. The GEO Grp.*, No. 17-cv-5806, ECF 288, at 5-6 (W.D. Aug. 6, 2019). They are dependent on GEO staff to train them, set their schedules, assign their work, supervise them, and everything else related to the day-to-day management of this work program that is so integral to NWIPC functioning.

Nwauzor, 62 F.4th at 513. For these tasks, GEO pays detainees only $1.00 per day. If GEO were to hire outside workers to do these necessary tasks, undoubtedly, they would pay them at least the minimum wage as required by the MWA.

If civil detainees at NWIPC are not covered by the MWA, then they exist in a dangerous and vulnerable area of the law. *See, e.g., Wong Wing v. United States*, 163 U.S. 228, 238, 16 S. Ct. 977, 981, 41 L. Ed 140 (1896) (holding the imposition of hard labor on immigrants without criminal conviction is unconstitutional); *Hale v. State of Ariz.,* 993 F.2d 1387, 1395 (9th Cir. 1993) (statutory "hard-time" labor "obligation" is what causes work to "belong[ ] to the institution" when considering whether the work of incarcerated individuals is covered by FLSA).[10]

[10] The Ninth Circuit outlined that "[b]ecause Congress has specifically exempted nine broad categories of workers from the minimum wage provisions of the FLSA…but not prisoners, we are hard pressed to conclude that it nevertheless intended for all inmates to be excluded." *Hale,* 993 F.2d at 1392. The Ninth Circuit further outlined other contexts in which FLSA applies to incarcerated individuals. Although the MWA was based off the

Put simply, individuals detained at NWIPC and in the work program are tasked with performing the necessary work to keep the facility running. Since they have not been convicted of any crimes and are not fully incarcerated in a state prison, they do not have any state statutes that govern their wages and garnishments, like RCW 72.09.111 (outlining the parameters of wages for incarcerated individuals).[11] And because they are paid so little for their work (usually just $1.00 a day), their work program is not one that is free from oppression or designed with "wholesome conditions…and freedom from oppression;" rather, their work more closely mirrors the type of work the Washington Legislature sought to eliminate in 1913 when it enacted the first

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FLSA, as outlined herein, there are more protective aspects of the MWA and subsequent jurisprudence interpreting the statute that support finding civil detainees at NWIPC are employees under the MWA.

[11] The Western District of Washington recognized this exact distinction in 2017. "At least based on the pleadings, it is plausible that the Plaintiff, arguably, comes within the State definition of "employee," and is not subject to any existing statutory exception." *Washington v. Geo Grp., Inc.*, 283 F. Supp.3d 967, 982 (W.D. Wash. 2017).

version of the Minimum Wage Act and made it illegal to employ workers "in any industry within the state of Washington at wages which are not adequate for their maintenance." *West Coast Hotel,* 300 U.S. at 393; *Drinkwitz,* 140 Wn.2d at 300. The deplorable situation for detainees at NWIPC is reminiscent of systems of the past that our country and state have been called on to transform—by compelling civil detainees at NWIPC to "sell [their] services for less than the prescribed minimum wage," GEO is exploiting a class of workers in an unequal position and with unequal bargaining power, something the Washington Legislature and courts have repeatedly said will not be allowed. *See, generally, West Coast Hotel,* 300 U.S. at 399.

V. CONCLUSION

> Yet I'm the one who dreamt our basic dream
> In the Old World while still a serf of kings,
> Who dreamt a dream so strong, so brave, so true,
> That even yet its mighty daring sings
> In every brick and stone, in every furrow turned
> That's made America the land it has become.
> O, I'm the man who sailed those early seas
> In search of what I meant to be my home—
> For I'm the one who left dark Ireland's shore,
> And Poland's plain, and England's grassy lea,

> And torn from Black Africa's strand I came
> To build a "homeland of the free."
>
> The free?
>
> Who said the free? Not me?
> Surely not me? The millions on relief today?
> The millions shot down when we strike?
> The millions who have nothing for our pay?
> For all the dreams we've dreamed
> And all the songs we've sung
> And all the hopes we've held
> And all the flags we've hung,
> The millions who have nothing for our pay—
> Except the dream that's almost dead today.

Let America Be America Again, by Langston Hughes

This Court should find that civil detainees housed at NWIPC are employees, as outlined by the Washington Minimum Wage Act, and are entitled to backed pay for their years of work while detained. Any other decision would only reinforce the idea that the American dream is only for the lucky and privileged, which stands in direct contrast to Washington's history of workers' rights. Any other decision would be to hold that our "society's general welfare[] depends on a caste system that is

repugnant to our nation's best self." *Martinez-Cuevas*, 196 Wn.2d at 533.

RAP 18.17 Certification

Undersigned counsel certifies that, pursuant to RAP 18.17(b), this brief contains 4,623 words, including footnotes, but not including those portions exempted from the word count by RAP 18.17(c), as counted by word processing software in compliance with RAP 18.17(c)(10).

DATED this 25th day of August, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 25th day of August, 2023, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 25th day of August, 2023 at Seattle, WA.

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