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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 **THE GEO GROUP, INC.,**

12 Plaintiff,

13 v.

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

20 Defendants.

Case No. 3:19-cv-2491-JLS-WVG

**BRIEF OF *AMICI CURIAE***  
**IMMIGRANT LEGAL DEFENSE**  
**AND IMMIGRANT DEFENSE**  
**ADVOCATES IN**  
**SUPPORT OF DEFENDANT'S**  
**MOTION TO DISMISS**

Date: April 23, 2020  
Time: 1:30 p.m.  
Dept: 4D  
Judge: Hon. Janis L. Sammartino  
Trial Date: None set  
Action Filed: 12/30/2019

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7 [https://www.bakersfield.com/news/mcfarland-mayor-manuel-cantu-resigns-following-planning-commission-vote/article\\_cab0fbd2-5349-11ea-bbbc-a3769069039d.html](https://www.bakersfield.com/news/mcfarland-mayor-manuel-cantu-resigns-following-planning-commission-vote/article_cab0fbd2-5349-11ea-bbbc-a3769069039d.html) ..... 21,22

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1 **STATEMENT OF INTEREST OF AMICI CURIAE**

2 Immigrant Legal Defense and Immigrant Defense Advocates (collectively  
3 hereinafter referred to as “*Amici*”) respectfully submit this brief in support of  
4 Defendants.<sup>1</sup>

5 Immigrant Legal Defense is a nonprofit agency based in Oakland,  
6 California, dedicated to providing immigration legal services. Immigrant Defense  
7 Advocates is a project of the nonprofit Social Good Fund, with a focus on  
8 immigrants’ rights policy and advocacy in the state of California. *Amici* are part of  
9 a broader coalition of immigrants’ rights organizations involved in providing  
10 services to detained immigrants. *Amici* advocates for the interests of non-profit  
11 and pro bono attorneys providing legal services in detention facilities in California,  
12 as well as those presently detained in federal institutions while awaiting  
13 deportation decisions.

14 *Amici* are familiar with the issues presented in this case and have interest in  
15 the matter on behalf of the group of immigrants whom it serves in the state of  
16 California. *Amici* respectfully submit the proposed amicus curiae brief in order to  
17 provide the court with information and analysis with respect to issues presented.

18 **INTRODUCTION**

19 The Plaintiff in this case, The GEO Group, Inc. (hereinafter, “GEO”)  
20 appears before this Court seeking equitable and declaratory relief with respect to  
21 contracts it signed with the United States Federal Government (hereinafter,  
22 “federal government”) for the operation of detention facilities in California. This  
23

24 \_\_\_\_\_

25  
26  
27 <sup>1</sup> Counsel for all parties have consented to the filing of this brief. No counsel for a party authored this brief in whole  
28 or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or  
submission of this brief. No persons other than the amici or their counsel made a monetary contribution to this  
brief’s preparation or submission.

1 includes preliminary and permanent injunctions against Defendant the State of  
2 California (hereinafter, “California”), as well as their successors, agents,  
3 employees, and all those under their supervision, from enforcing California  
4 Assembly Bill 32 (hereinafter, “AB 32”) against GEO to cease its operation of  
5 immigration detention facilities for United States Marshals Service (USMS) and  
6 Immigration and Customs Enforcement (hereinafter, “ICE”).

7 *Amici* write to urge the Court to find that Plaintiff is not entitled to  
8 declaratory relief with respect to the contracts it seeks to validate with this suit for  
9 two primary reasons. First, the government contracting process was flawed and  
10 executed in violation of longstanding federal procurement regulations requiring  
11 full and open competition with contracts. Second, Plaintiff’s bad faith conduct in  
12 the state of California in relation to the contracts it seeks to validate should  
13 preclude it from stating a claim for relief. Plaintiff’s actions are part of a pattern of  
14 bad faith conduct on the part of Plaintiff, including unduly influencing financially  
15 struggling city governments to become its agent for purposes of federal contacts,  
16 all in pursuant of its financial interests.

## 17 **ARGUMENT**

18 *Amici* write to address concerns regarding the contracts Plaintiff seeks to  
19 validate through this suit, including a) the contracts for operation of the Mesa  
20 Verde ICE Processing Facility, Central Valley Modified Community Correctional  
21 facility, and Golden State Modified Community Correctional Facility, all in the  
22 City of McFarland and b) the contracts for operation of the Adelanto ICE  
23 Processing Center and the Desert View Modified Community Correctional  
24 Facility, both in the City of Adelanto, California. *Amici* urge the Court to consider  
25 the following regarding the validity of the contracts under federal regulations  
26 governing such contracts as well as Plaintiff’s inequitable conduct in securing  
27 these contracts. *Amici* offer arguments that the contracts are invalid due to faulty  
28

1 solicitation process on behalf of the federal government, and that Plaintiff should  
2 be barred from declaratory relief in this suit under the doctrine of unclean hands.

3 **I. DECLARATORY RELIEF IS NOT APPROPRIATE BECAUSE**  
4 **THE CONTRACTS ARE INVALID.**

5 **A. The Contracts at Issue are Invalid because they were**  
6 **Awarded in Violation of Federal Procurement**  
7 **Requirements.**

8 Declaratory relief with respect to the contracts at issue is improper because  
9 they were awarded pursuant to an invalid process which violated federal  
10 procurement requirements. The Federal Acquisition Regulation (“FAR”),  
11 incorporated at 10 U.S.C. § 2304 (2018) and 41 U.S.C. §3301 (2011), requires,  
12 with certain limited exceptions, that contracting officers shall promote and provide  
13 for full and open competition in soliciting offers and awarding Government  
14 contracts. In this case, the solicitation which resulted in the contracts secured by  
15 Plaintiff do not meet the standards for full and open competition.

16 The solicitation from ICE which resulted in the contract awards at issue was  
17 Solicitation No. 70CDCR20R00000002, issued on October 16, 2019. Although  
18 the Solicitation indicates that the procurement process would be conducted in a  
19 manner consistent with “full and open competition,” its terms appeared to have  
20 been designed in a manner to eliminate meaningful competition in favor of three  
21 private corporations which were already operating four existing immigration  
22 detention facilities within California, including Plaintiff.

23 The solicitation was simply a formality that ICE was obliged to comply with  
24 in order to renew contracts for all facilities and operators that were already in  
25 operation in the state of California in a coordinated attempt to circumvent AB 32,  
26 which was set to go into effect on January 1, 2020.

27 The solicitation sought four contractor-owned-and-operated facilities, with  
28 the requirement that each be “turnkey ready,” and that contractors be prepared to

1 enter into fifteen-year contracts with the agency. These requirements were posted  
2 with a 15-day response time for bids. The initial bid posted by ICE was revised on  
3 October 23rd. Far from creating a competitive process in the interest of public  
4 savings and economic efficiency, the solicitation also included a term of 5 years,  
5 with additional options that could ultimately result in a 15-year contract. Such a  
6 lengthy contract term is in contravention of full and open competition in the  
7 marketplace. Laws enumerated at 10 U.S.C. § 2304 and 41 U.S.C. § 3301 require,  
8 with certain limited exceptions that contracting officers shall promote and provide  
9 for full and open competition in soliciting offers and awarding Government  
10 contracts. See 10 U.S.C. § 2304; 41 U.S.C. § 3301. Federal procurement law  
11 includes requirements for solicitations to provide lengthy bidding windows in  
12 order to attract competitive offers and open competition. The Competition in  
13 Contracting Act (“CICA”) of 1984, 41 U.S.C. § 253, specifies that agencies may  
14 not issue solicitations earlier than 15 days after the notice is published, or establish  
15 a deadline for submission of bids or offers earlier than 30 days after the solicitation  
16 is issued. See 41 U.S.C. § 253 (1999). Federal contracts are typically set for a  
17 period of one year, in order to ensure flexibility and financial prudence by the  
18 government. See Id.

19 The fact that the solicitation in question was publicized for only fifteen days,  
20 in pursuit of fifteen-year contracts in excess of five billion dollars provides a *prima*  
21 *facie* case that the solicitation process was neither competitive nor open, but  
22 instead designed to expedite contract awards to facilities that were already in  
23 operation.

24 A Congressional delegation expressed their concern that the solicitation was  
25 designed to prioritize the existing contractors over a truly open competitive  
26 environment. Letter from Congresswoman Zoe Lofgren *et al.* to Chad F. Wolf,  
27 Acting Secretary U.S. Department of Homeland Security (November 14, 2019),  
28 <https://www.harris.senate.gov/news/press-releases/harris-lofgren-nadler-lead->



1 letter-questioning-ices-move-to-circumvent-ca-law-banning-private-detention-  
2 facilities. Lofgren *et al.* stated, “We write to express our serious concern with the  
3 process by which Immigration and Customs Enforcement (ICE) has solicited  
4 contracts for federal detention facilities.” *Id.* They continued, “Given the timing  
5 and terms of this Solicitation—particularly in light of ICE’s history of suspect  
6 contract activities and insufficient oversight—we are understandably concerned  
7 that the Solicitation is intended to favor incumbent contractors. If so, these efforts  
8 would be in direct contradiction with the spirit of full and open competition  
9 required by federal procurement law.” *Id.*

10 To date ICE has not responded to inquiries from the Congressional  
11 delegation with respect to the procurement process.

12 The FAR generally requires that contracts with an estimated value exceeding  
13 \$25,000 be advertised for at least fifteen days before issuance of a solicitation.  
14 41 U.S.C. § 1708 (2011). For the Solicitation in this case, ICE utilized the  
15 combined synopsis and solicitation procedure set forth in FAR § 12.603, which is  
16 designed “to reduce the time required to solicit and award contracts for the  
17 acquisition of commercial items.” FAR 12.603 (2017). As a result, bidders were  
18 required to propose turnkey ready facilities within an extremely short period of  
19 time, underscoring the advantage that existing contractors had in securing these  
20 contracts, and directly contradicting the spirit of “full and open competition”  
21 required by law.

22 The Department of Homeland Security (hereinafter, “DHS”) Office of  
23 Inspector General (hereinafter, “OIG”) has previously identified highly  
24 circumspect behavior by ICE’s procurement practices. The OIG concluded that  
25 “ICE has no assurance that it executed detention center contracts in the best  
26 interest of the Federal Government, taxpayers, or detainees” and further noted that  
27 “[i]t appears that ICE deliberately circumvented [Federal Acquisition Regulation  
28 (FAR)] provisions[.]” *See* Office of Inspector General, Dept. of Homeland

1 Security, IMMIGRATION AND CUSTOMS ENFORCEMENT DID NOT FOLLOW FEDERAL  
2 PROCUREMENT GUIDELINES WHEN CONTRACTING FOR DETENTION SERVICES, at 18-  
3 53 (Feb. 21, 2018), [https://www.oig.dhs.gov/sites/default/files/assets/2018-  
4 02/OIG-18-53-Feb18.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf).

5 Legal experts have joined the Congressional delegation in expressing  
6 concern regarding this solicitation. See Rebecca Plevin, [Homeland Security's](#)  
7 [solicitation for detention facilities could violate law, experts say](#), Palm Springs  
8 Desert Sun, Dec. 20, 2019, [https://www.desertsun.com/story/news/2019/12/20/ice-  
9 signs-long-term-contracts-private-detention-centers-two-weeks-ahead-state-  
10 law/2713910001/](https://www.desertsun.com/story/news/2019/12/20/ice-signs-long-term-contracts-private-detention-centers-two-weeks-ahead-state-law/2713910001/).

11 Plevin’s article quoted Michael Greenberger, a professor at the University of  
12 Maryland Francis King Carey School of Law and founder and director of the  
13 University of Maryland Center for Health and Homeland Security. “It’s improper  
14 to write the solicitation in such a way that is so specific that it would only attract  
15 certain favored bidders.... [The solicitation is] unnecessarily limited in that  
16 regard.” Id. He went on to explain, “[ICE is] in effect trying to grease the skids to  
17 get the contracts to the prison industry officials who they want to run the prisons.”  
18 Id.

19 **B. The Contracts are Invalid Because They Were Executed**  
20 **Under the Tenure of Unconstitutionally-Appointed Acting**  
21 **Secretary of Homeland Security Chad Wolf.**

22 There is a question as to the validity of the contracts for which Plaintiffs  
23 now seek declaratory relief due to the fact that they were entered into during the  
24 tenure of acting Secretary of Homeland Security, Chad Wolf. The validity of these  
25 contracts has come into question based on issues related to succession and  
26 appointments at the highest levels of the Department of Homeland Security.  
27 Congressional representatives have noted that the procedure which resulted in the  
28 appointment of Wolf may have been fatally flawed such that decisions or actions

1 executed under his tenure are in legal jeopardy. As the letter by the Congressional  
2 delegation noted:

3 On April 10th, 2019 prior to her departure, then Secretary Kirstjen M.  
4 Nielsen updated the internal policy for “DHS orders of Succession and  
5 Delegations of Authorities for Named Positions.” In that update,  
6 Secretary Nielsen changed the order of delegation of authority for the  
7 position of Secretary “in the event that I am unable to act during a  
8 disaster or catastrophic emergency.” However, Secretary Nielsen did  
9 not change the order of succession “[i]n case of the Secretary’s death,  
10 resignation, or inability to perform.” Instead, she left in place the line  
11 of succession under that Executive Order. (Cite) In fact, the Department  
12 appears to have skipped over two Senate-confirmed officials, the Under  
13 Secretary for National protection and Programs (since renamed by law  
14 as the Director of Cybersecurity and Infrastructure Agency) and the  
15 Under Secretary for Intelligence and Analysis.

16 This act may have rendered Mr. McAleenan’s appointment unlawful  
17 from the start. That would place many of Mr. McAleenan’s decisions  
18 in legal jeopardy, including the November 8, 2019 Amendment that  
19 was the basis for Mr. Wolf’s appointment.

20 Letter from Congresswoman Zoe Lofgren *et al.* (Nov. 14, 2019). The Homeland  
21 Security Act is the controlling statutory authority for appointing an Acting  
22 Secretary of Homeland Security, and it was not properly followed in the  
23 appointment of Mr. McAleenan, and as a result, that of Mr. Wolf. The  
24 Amendment issued by Mr. McAleenan to appoint Mr. Wolf was also issued after  
25 the 210-day statutory limit by Acting officials established by the Federal Vacancies  
26 Reform Act (FVRA). Meaning that his own appointment, had it been valid, had  
27 likely already expired before he appointed Mr. Wolf.

28 The questions presented with respect to the appointment of Mr. McAleenan  
and Mr. Wolf may be outside of the jurisdiction of this Court to consider but are  
such that they place Plaintiff’s contracts in legal jeopardy rendering declaratory  
relief for them inappropriate at this time.

## **II. PLAINTIFF COMES TO THIS SUIT WITH UNCLEAN HANDS.**

1       The unclean hands doctrine derives from the equitable maxim that *he who*  
2 *comes into equity must come with clean hands*. This maxim "closes the doors of a  
3 court of equity to one tainted with inequitableness or bad faith relative to the  
4 matter in which he seeks relief, however improper may have been the behavior of  
5 the defendant." Precision Inst. Mfg. Co. v. Automotive Maintenance Mach. Co.,  
6 324 U.S. 806, 814 (1945).

7       In the matter before the Court, the Plaintiffs' pattern of conduct with respect  
8 to the contracts at issue include documented instances of inequitable conduct and  
9 bad faith. This includes exercising undue influence over local cities in California  
10 with respect to Federal contracts, in the pursuit of Plaintiff's financial benefit.  
11 Plaintiff has made promises to make extracontractual payments to local cities in  
12 order to secure the benefit of intergovernmental agreements and other outcomes.  
13 Plaintiff has sought to hide this influence from the public record, cloaking their  
14 intentions and goals under the guise of independent decisions made by local cities.  
15 Plaintiffs' CEO has failed to truthfully testify about these activities while under  
16 oath. At present, Plaintiff remains engaged in a sophisticated effort to influence  
17 the cities of Adelanto and McFarland with respect to local permits and the  
18 contracts at hand. Equity requires that those seeking its protection shall have acted  
19 fairly and without fraud or deceit as to the controversy in issue. Johnson v. Yellow  
20 Cab Transit Co., 321 U.S. 383, 387 (1944); Keystone Driller Co. v. General  
21 Excavator Co., 290 U.S. 240, 245 (1933).

22       Plaintiff's inequitable and deceptive conduct directly relates to its pursuit of  
23 the detention contracts at issue. In applying the unclean hands doctrine, "[w]hat is  
24 material is not that the plaintiff's hands are dirty, but that he dirtied them in  
25 acquiring the right he now asserts, or that the manner of dirtying renders  
26 inequitable the assertion of such rights against the defendants." Republic Molding  
27 Corp. v. B.W. Photo Utilities, 319 F.2d 347, 349 (9th Cir. 1963). Plaintiff's  
28 conduct as it relates to obtaining contracts with ICE for civil detention in the state

1 of California was rife with bad faith and deception from the outset, and culminated  
2 in the contracts for which it now seeks relief.

3 **A. Plaintiff Engaged in Inequitable Conduct by Usurping**  
4 **Local Government Authority and Circumventing Open**  
5 **Competition Rules to Secure Prior Contracts with ICE.**

6 Plaintiff has acted outside its normal function as a private actor, and has  
7 instead sought to control, manipulate or interfere with governmental functions in  
8 order to pursue its financial interests. This pattern of behavior included Plaintiff  
9 approaching local cities in California as partners for intergovernmental services  
10 agreements (“IGSA”) with the federal government, including the City of  
11 McFarland and the City of Adelanto. Typically, a local government actor would  
12 contract directly with the federal government for or to provide services, and then  
13 seek out a private operator in order to execute the contract. With respect to the city  
14 of Adelanto and McFarland it appears that Plaintiff was the initiator of these  
15 agreements. In doing so it appears Plaintiff avoided the requirements to compete  
16 in a fair and open competition process against other contractors. A report by the  
17 State Auditor of California confirmed that Plaintiff has used IGSA’s as a means to  
18 circumvent federal procurement rules.

19 Federal law allows ICE to enter into these types of agreements with  
20 states, counties, or cities for the provision of detention services without  
21 competitive bidding. However, if ICE contracted directly with the  
22 private operators, ICE would have to comply with federal procurement  
23 rules that generally require full and open competition unless a statutory  
24 exception to the competitive process applies. ICE has asserted that  
25 federal law does not require it or the government entity that has entered  
26 into an intergovernmental service agreement with ICE to competitively  
27 award any related subcontracts. This would include the cities’ detention  
28 subcontracts with private operators. City council documents show how  
the private operators worked with two of the cities to secure or amend  
the intergovernmental service agreements with ICE.

1 Cal. State Auditor, City and County Contracts With U.S. Immigration and Customs  
2 Enforcement, Report 2018-117, 15 (Feb. 2019),  
3 <https://www.auditor.ca.gov/pdfs/reports/2018-117.pdf>.

4 The ability to circumvent competitive bidding law requires the cooperation  
5 of a local city, a process typically initiated by a federal entity looking to contract  
6 with a local city. With the City of McFarland, Plaintiff took on the role of  
7 initiating an IGSA in order to benefit from a contract awarded without competition.  
8 The California audit described a January 2015 memo to the city council in which  
9 McFarland’s city manager explained how Plaintiff sought to enter into the contract  
10 with ICE by approaching city after city to “partner” with them. As quoted by the  
11 state auditor, the memo stated:

12 GEO would like to enter into an Intergovernmental Service Agreement  
13 contract with the Department of Homeland Security, U.S. Immigration  
14 and Customs Enforcement (ICE) for the detention and care of aliens at  
15 its Mesa Verde facility in Bakersfield. GEO cannot enter into an  
16 [intergovernmental service agreement] with a federal government on its  
17 own. An [intergovernmental service agreement] can only be entered  
18 into with another government authority. Mesa Verde is located on  
19 South Union, in the City of Bakersfield. Since the prison is in the City  
20 of Bakersfield, GEO first approached the City of Bakersfield to partner  
21 with them on [the intergovernmental service agreement]. The City of  
22 Bakersfield declined to be a partner. GEO then asked the City of  
23 McFarland to partner with them.

24 Id. at p.15.

25 Plaintiff also flouted open competition requirements within the procurement  
26 process when it initiated an IGSA with the city of Adelanto. In the case of  
27 Adelanto, Plaintiff inappropriately negotiated on behalf of the city directly with  
28 ICE regarding an IGSA that related to its facilities. As noted by the State Auditor,  
“A similar situation occurred in Adelanto. In a May 2014 memo to the city council,  
the Adelanto city manager at the time explained that Plaintiff negotiated with ICE

1 to amend Adelanto’s ICE contract to house additional detainees at the Adelanto  
2 Detention Facility.” Id. at p.15.

3 Plaintiff’s conduct is inequitable because it usurped legitimate governmental  
4 authority for its own benefit, and also with respect to other private contractors who  
5 may have competed against it for these services.

6 Plaintiff seemingly sought out cities that would provide minimal interference  
7 or oversight with respect to their administration of these facilities. As noted by the  
8 State audit, “The cities have only been minimally involved in the ICE contracts.  
9 For example, the Adelanto city manager stated that the only involvement the city  
10 has with ICE or GEO is to sign monthly invoices from GEO and then to transfer to  
11 GEO the federal funds the city receives when ICE pays the invoices.” Id. at p. 17.

12 **B. Plaintiff Engaged in Inequitable Conduct by Exerting**  
13 **Undue Influence Over Local Governments to Terminate**  
14 **IGSAs.**

15 Plaintiff has exercised, and seemingly continues to exercise, undue influence  
16 over the city governments of Adelanto and McFarland, in order to obtain outcomes  
17 that serve its financial interests.

18 Plaintiff convinced the city governments in both Adelanto and McFarland to  
19 terminate the existing IGSA agreements by promising to make extra-contractual  
20 payments to each city if they terminated IGSAs with ICE; used the termination of  
21 the IGSAs to secure one-year bridge contracts with ICE outside of the normal  
22 procurement process; all of which created the circumstances for Plaintiff to secure  
23 the long-term contracts that are at issue in this case.

24 Plaintiff’s goal in terminating the IGSAs with the City of Adelanto and  
25 McFarland appears to have been to facilitate the expansion of its facilities and  
26 increase its profits, while circumventing California law.

27 With the City of Adelanto, Plaintiff wielded undue influence by offering  
28 inappropriate financial payments outside of direct contracts in order to exert its

1 influence. As reported by the Palm Springs Desert Sun newspaper, “City Manager  
2 Jessie Flores asked GEO for donations to local causes, including \$7,500 for the  
3 city’s annual Christmas parade. In one email, Flores called a Jan. 16, 2019,  
4 meeting with Zoley and his executive team “very productive and informative” and  
5 asked for a \$3,500 contribution to the baseball league.” Rebecaa Plevin, How a  
6 private prison giant has continued to thrive in a state that wants it out, Palm  
7 Springs Desert Sun, Jan. 25, 2020, [https://www.desertsun.com/in-  
10 depth/news/2020/01/24/private-prison-giant-geo-thrives-california-state-wants-  
11 out/2589589001/](https://www.desertsun.com/in-<br/>8 depth/news/2020/01/24/private-prison-giant-geo-thrives-california-state-wants-<br/>9 out/2589589001/). Plaintiff also exerted undue influence over the City of Adelanto  
12 to protect its financial interests and to expand its facilities in 2019 in response to  
13 the passage of AB 103. See Cal. Gov. Code §§ 7310-11 (2017). This California  
14 law regulated IGSA agreements by limiting the expansion of any facility that  
15 operated pursuant to a contract with a local city or county in California. Plaintiff  
16 pursued a plan to convince the Adelanto city government to terminate its IGSA in  
17 order for Plaintiff to expand its facilities, seemingly using off the books financial  
18 promises outside of any contractual arrangement to do so. On April 8th, 2019, the  
19 Los Angeles Times ran a story which uncovered the role which Plaintiff played in  
20 the sudden termination of the IGSA between ICE and Adelanto. Andrea Castillo,  
21 Adelanto cuts ties to troubled ICE detention center — and removes a layer of  
22 oversight, Los Angeles Times, April 8th 2019,  
23 [https://www.latimes.com/local/lanow/la-me-adelanto-immigrant-detention-  
25 20190408-story.html](https://www.latimes.com/local/lanow/la-me-adelanto-immigrant-detention-<br/>24 20190408-story.html). The article included an interview with then Mayor Pro Tem  
26 Stevevonna Evans, in which she recounted her own first-hand knowledge of  
27 Plaintiff’s attempts to lobby the Adelanto City Manager Jesse Flores to end the  
28 IGSA in order to expand the facility:

“Evans said Flores’ idea to cancel the contract goes back to late February, when she walked in on a meeting between him and GEO Group Chief Executive George Zoley over the possibility of ending the



1 contract. She said they explained that ending the contract would  
2 alleviate the city of potential future litigation.

3 At that February meeting, Evans said, Zoley also explained that  
4 state law prohibited the company from expanding operations — unless  
5 the city backed out of the contract.

6 In fiscal year 2017, Adelanto transferred more than \$71 million  
7 in payments from ICE to GEO Group. In return, GEO has paid the city  
8 a yearly fee of about \$1 million to oversee the distributions. Evans said  
9 that Zoley assured city leaders that they would continue receiving  
10 payment even after they ended the contract.”

11 Id.

12 Plaintiff promised the continuation of monetary payments *only if* city  
13 officials agreed to terminate the existing IGSA. A collection of emails obtained by  
14 the Desert Sun through the California Public Records Act (hereinafter, “CPRA”)  
15 document how Plaintiff systematically lobbied the city of Adelanto to terminate the  
16 IGSA agreement and set the stage for the Adelanto facility to expand.

17 According to the Desert Sun, later emails confirm the offer for extra-  
18 contractual payments from Plaintiff to the City of Adelanto:

19 On March 13, a GEO employee sent Flores a memo from Zoley. “We  
20 are respectfully requesting that the City of Adelanto give its notice of  
21 discontinuation to ICE,” Zoley said in the memo. In addition to the bed  
22 taxes, GEO would continue paying the city \$50,000 a year, even though  
23 Adelanto would no longer be contractually involved in the detention  
24 center and the city would have no oversight role of the facility, he said.  
25 Terminating the contract, he said, would “reduce the city’s legal and  
26 financial exposure to ICE critics advancing claims for detainee records,  
27 or other facility documents.”

28 “The annual financial compensation to the City of \$50,000 for  
facilitating the IGSA will be continued by GEO,” he wrote. GEO would  
also keep paying the bed tax — nearly \$1 million — outlined in the  
2016 development agreement between the company and the city, he  
said. Critics see GEO’s pledge to continue paying Adelanto \$50,000,  
with no strings attached, as an incentive to get the struggling city to  
comply with its request. “

1 Plevin, Prison Giant, supra.

2 The City ultimately copied the letters Zoley provided Flores onto its  
3 letterhead, changed the date, and sent notices of termination as requested to ICE  
4 and Plaintiff on March 27, 2019.

5 These emails show indisputable evidence of Plaintiff's undue influence on  
6 the City of Adelanto. Despite these facts, Plaintiff's CEO George Zoley stated  
7 under oath that other than one single meeting with officials from the City of  
8 Adelanto to discuss the possible termination of the IGSA for the Adelanto Facility,  
9 he was aware of no other communications between himself and officials from the  
10 City of Adelanto related to the termination of the IGSA. See Pl.'s Mem. of Law  
11 and Points of Auth. in Opp'n to GEO's Mot. for a Protective Order, Novoa v. The  
12 GEO Group, Inc. at \*5 (C.D. Cal., Dec. 16, 2019) (No. 5:17-cv-02514-JGB-  
13 SHKx).

14 Plaintiff undertook a similar effort to exercise undue influence over the  
15 City of McFarland. As reported by the Desert Sun, "On Nov. 30, 2018, John  
16 Wooner, the McFarland City Manager at the time, notified GEO that the city  
17 would be ending its agreements with the company and ICE. In a letter, he  
18 said the city's agreements with the company and ICE had been a "satisfactory  
19 arrangement for the City" until the state started adopting laws focused on  
20 detention facilities. When he sent two more letters to GEO and ICE on Dec.  
21 19, 2018, informing them that the city would be ending its agreements in three  
22 months, he used nearly identical language as that provided by GEO to  
23 Adelanto." Plevin, Prison Giant, supra.

24 Plaintiff's conduct with local government authorities underscores a pattern  
25 of bad faith and impropriety. The terminations of IGSA's with the cities of  
26 Adelanto and McFarland appear to not only have been part of a scheme by Plaintiff  
27 to circumvent California state law, but provide circumstantial evidence that  
28 Plaintiff's actions were coordinated with ICE. Plaintiff's actions strongly indicate

1 that they had some level of assurance that if IGSA's terminated, they would receive  
2 a direct contract with ICE. Taken into the broader context of the procurement  
3 process for the contracts in dispute, serious questions arise of collusion to  
4 circumvent state and federal law.

5 In fact, following the termination of the IGSA for the Mesa Verde Detention  
6 Facility by the City of McFarland, Plaintiff received a one-year, nineteen-million-  
7 dollar contract from ICE to continue operating the detention facility. The contract  
8 was awarded outside of the "full and open competition" requirements of federal  
9 law, with ICE citing FAR § 6.302-2, Unusual and Compelling Urgency. This  
10 exception is normally invoked in urgent situations in which the procurement of  
11 specific services is needed to avert serious circumstances or injury. However, in  
12 this case the specific circumstance and sudden termination of the IGSA was the  
13 direct result of Plaintiff's conduct.

14 Plaintiff also received a direct one-year contract from ICE for the Adelanto  
15 detention facility, for sixty-three million dollars. The legal rationale cited by ICE  
16 to secure those one-year bridge contracts – that is the "unusual and compelling  
17 urgency" clause – failed to acknowledge the role that Plaintiff played in the  
18 termination of prior IGSA's and seemingly points to collusion and coordination  
19 from the outset.

20 **C. Plaintiff Continues to Exercise Undue Influence Over Both**  
21 **the City of Adelanto and City of McFarland in Obtaining**  
22 **Permits related to the Contracts in dispute.**

23 Plaintiff has sought to exercise undue influence with respect to the Cities of  
24 Adelanto and McFarland in obtaining permits for the use of three facilities which  
25 had previously been operated by the California Department of Corrections and  
26 Rehabilitation. The facilities include the Central Valley Modified Community  
27 Correctional Facility in the City of McFarland; the Golden State Modified  
28 Community Correctional Facility, also in McFarland; and the Desert View

1 Modified Community Correctional Facility in Adelanto. Each of these facilities  
2 requires a local permit to operate. Despite not having these permits secured,  
3 Plaintiff included these facilities in the December 2019 contracts it signed with  
4 ICE. Plaintiff offered these facilities as “turnkey-ready” when it bid to secure the  
5 contracts at issue when in fact it did not have permits from local authorities. Such  
6 behavior suggests that Plaintiff was not concerned about its ability to secure these  
7 permits from the respective cities, or perhaps that doing so would be a mere  
8 formality given its previous ability to exact certain results.

9 Plaintiff’s deep influence and intent was specifically raised during a  
10 February 19, 2020 public hearing held by the Adelanto City Planning Commission  
11 to discuss, among other things, Plaintiff’s request for a permit to convert its  
12 property (Desert View) into an annex for the Adelanto detention facility pursuant  
13 to the December 2019 contracts with ICE. During the hearing, Commission Vice  
14 Chairman Jay Shawn Johnson, who opposed the proposal, went on record stating  
15 his concerns that Plaintiff had exercised undue influence on the commission and  
16 city officials at large. “How do you enter into a contract for beds that, at that point,  
17 you technically didn’t have?” he said before the expansion’s approval. Martin  
18 Estacio, Adelanto planning commissioner removed a week after opposing GEO  
19 expansion, The Daily Press, Feb. 27, 2020,  
20 [https://www.vvdailynews.com/news/20200227/adelanto-planning-commissioner-](https://www.vvdailynews.com/news/20200227/adelanto-planning-commissioner-removed-week-after-opposing-geo-expansion)  
21 [removed-week-after-opposing-geo-expansion](https://www.vvdailynews.com/news/20200227/adelanto-planning-commissioner-removed-week-after-opposing-geo-expansion). “What made the GEO Group so  
22 sure that this modification would be approved?” Id. He underscored that the city  
23 was the target of a plot by Plaintiff, detailing Plaintiff’s lobbying of city officials to  
24 terminate the prior IGSA contract in order that it may expand its facilities, and  
25 allegations of Plaintiff receiving preferential treatment in submitting a proposal for  
26 the annexation of the Desert View facility. Id. Significantly, Vice Chairman  
27 Johnson noted that Plaintiff had already issued a press release which announced  
28 the expansion of the Adelanto detention facility, even though the city had yet to

1 vote on the proposal. Id. Based on his allegations of Plaintiff’s misconduct,  
2 Johnson voted against the proposal - and was subsequently removed from the  
3 planning commission by the Adelanto city council. Id.

4 On January 28th, 2020 the ACLU Of Southern California (hereinafter,  
5 “ACLU-SC”) sent a letter to Chairperson of the McFarland Planning Commission  
6 raising concerns about the committee hearings’ compliance with state laws in its  
7 approval of the permits to Plaintiff. Letter from Jordan Wells, Attorney at the  
8 ACLU-SC], to Dave Borcky, Jr., Chairperson of the McFarland Planning  
9 Commission (Jan. 28, 2020) (on file with the ACLU-SC). Wells stated:

10 The Commission plainly has not yet met the notice requirement of the  
11 Dignity Not Detention Act, SB 29, codified at Cal. Civil Code § 1670.9.  
12 The law promises transparency by prohibiting a city from issuing a  
13 permit for a corporation to detain immigrants unless the city has met  
14 both of two requirements: “[p]rovided notice to the public of the  
15 proposed . . . permitting action at least 180 days before [issuing the  
16 permit] and “[s]olicited and heard public comments on the proposed . . .  
17 permit action in at least two separate meetings.” Cal. Civil Code §  
18 1670.9(d) (2019).

17 Id. (emphasis added).

18 The letter alleged that the McFarland Planning Commission did not  
19 adequately provide notice to the public with regard to Plaintiff’s permit  
20 application. “GEO representatives appear to have been the lone members of the  
21 public with access to the applications before last week’s hearing and thus were the  
22 only attendees in a position to offer fully informed input.” Id.

23 Despite Plaintiff’s attempts to influence the process, the planning  
24 commission failed to pass the resolution approving the expansion, ending in a 2-2  
25 vote on Feb. 19, 2020. Following the vote, the Mayor of McFarland, Manuel  
26 Cantu Jr. resigned the next day. Sam Morgen, McFarland Mayor Manuel Cantu  
27 resigns following Planning Commission vote, The Bakersfield Californian, Feb.  
28 20, 2020, <https://www.bakersfield.com/news/mcfarland-mayor-manuel-cantu->

1 resigns-following-planning-commission-vote/article\_cab0fbd2-5349-11ea-bbbc-  
2 a3769069039d.html.

3 **III. THIS COURT DOES NOT HAVE JURISDICTION OVER**  
4 **PLAINTIFF’S CLAIM FOR DECLARATORY RELIEF.**

5 Plaintiff in this case seeks declaratory relief for Federal contracts signed in  
6 December of 2019. The validity of the contracts in dispute is subject to the  
7 Contract Disputes Act of 1978, and thus any relief with respect to these contracts  
8 must be obtained through that statute, or alternatively through the United States  
9 Court of Federal Claims. See 41 U.S.C. §§ 7101-09. The intention of the act  
10 includes “To provide for the resolution of claims and disputes relating to the  
11 Government contracts awarded by executive agencies. See Id. As such, this court  
12 should decline to exercise jurisdiction over the issue of declaratory relief.

13 **CONCLUSION**

14 Plaintiff’s record of bad faith conduct in the State of California with respect  
15 to contract procurement presents compelling evidence that this court must consider  
16 in granting relief. This conduct includes exercising undue influence in order to  
17 obtain financial gain, while skirting laws designed to ensure fairness,  
18 accountability and transparency in government contracts. The federal contracts at  
19 issue in this case violate the spirit and letter of federal procurement law, and thus  
20 Plaintiff should not be granted declaratory relief. *Amici* respectfully urge the court  
21 to weigh Plaintiff’s conduct and the circumstances alleged as it considers the  
22 parties’ motions.

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25 Respectfully submitted,

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27 DATED: \_\_\_\_\_

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