

The Honorable Robert J. Bryan

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

Case No.: 3:17-cv-05806-RJB

UGOCHUKWU GOODLUCK
NWAUZOR, FERNANDO AGUIRRE-
URBINA, individually and on behalf of all
those similarly situated,

Plaintiff,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant.

Case No.: 3:17-cv-05769-RJB

**THE GEO GROUP, INC.'S MOTION
FOR CLARIFICATION REGARDING
REMOTE TRIAL CONCERNS**

NOTE ON MOTION CALENDAR:

Date: May 7, 2021

1 The GEO Group, Inc. (“GEO”) respectfully requests that the Court clarify the nature
2 of the anticipated “hybrid” trial, ordered in this Court’s March 17, 2021 Order granting
3 Plaintiff State of Washington’s (the “State” or “Plaintiff”) Motion for Trial Setting In Person
4 or by Zoom (*Washington* Dkt. 444, *Nwauzor* ECF 323) (“Order”) and April 9, 2021 Order
5 Denying GEO’s Motion for Reconsideration (*Washington* ECF 449, *Nwauzor* ECF 329)
6 (“Reconsideration Denial”).¹ In the Order, this Court set a hearing on exhibit admissibility
7 on April 28, 2021, and a Supplemental Final Pretrial Conference and “technology check” for
8 May 21, 2021. In addition, in the Reconsideration Denial, the Court stated:

9 3. More details regarding the procedure at a Zoom trial can be dealt with as
10 trial nears. Counsel should be listing procedural questions and issues, so that
11 such matters may be dealt with not later than the Supplemental Pretrial
12 Conference set for May 21, 2021.

12 4. It is the Court’s hope that, at least, we can have a “hybrid” trial, with some
13 parts being conducted in person and traditionally, with COVID-19
14 precautions. Cooperation, good humor, and flexibility can help to produce a
15 fair trial for all concerned.

15 Pursuant to the Court’s Order in the Reconsideration Denial, GEO requests the
16 opportunity to be heard on pressing issues related to the procedures for remote trial during
17 the April 28, 2021 hearing or during a separate hearing set at the Court’s convenience, but in
18 any event, no later than May 3, 2021. GEO anticipates that additional concerns will be
19 handled closer to trial, but the issues (and proposed solutions) listed herein must be resolved
20 as soon as possible so that the parties understand the logistics and parameters of the novel
21 trial format.

22 **Issue 1: The “hybrid” trial format.** The parties have met and conferred in an attempt to
23 reach agreement as to a joint proposal regarding the “hybrid” nature of the trial, but have
24 diverging understandings of what a “hybrid” trial may entail. GEO believes that the great
25 majority of the proceedings may safely be conducted in the courtroom, with the appropriate

26 ¹ GEO reasserts and preserves its prior arguments objecting to a remote trial and reasserts
27 that this case is not appropriate for a remote trial.

1 plexiglass dividers for the jury and the participants, and the appropriate facemask safeguards.
2 The recent Derek Chauvin trial in Minneapolis was widely publicized, and has set public
3 expectations regarding the feasibility of an in-person jury trial with the appropriate safety
4 precautions. To the extent that the jury can sit in the jury box with plexiglass dividers in
5 place, and witnesses can sit in the witness box with the same structural protections, a full and
6 fair trial can be held. To the extent that witnesses have objections to in person proceedings,
7 those can be resolved on a case-by-case basis. However, Plaintiffs do not agree to conducting
8 any proceedings “in-person” or the presence of any persons (witnesses, jury or counsel) in
9 the courtroom and are anticipating an entirely remote Zoom trial with no “hybrid” aspects.

10 **Proposed Solution:** GEO seeks a ruling from this Court as to which portions of trial
11 will proceed in-person. GEO again requests that the trial occur live, in Tacoma, to the
12 maximum degree permissible under local COVID-19 rules and guidance. To the
13 extent this Court is ordering GEO to create a remote courthouse which doubles as a
14 “production studio” in order to present its defense, the “production studio” cannot be
15 set up the week before trial and the process must begin now such that a “technology
16 check” is possible at the May 21, 2021 hearing. In order to obtain the necessary
17 equipment and technology, the expenditures will need to be made well before trial.
18 Accordingly, GEO seeks a ruling as to which portions of trial will occur in-person at
19 the courthouse as part of the remote trial.

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21 **Issue 2: Presence of Witnesses at Trial.** As noted in Issue 1, the Court has ordered the
22 parties to participate in a “hybrid trial” but has not elaborated on what portions of trial could
23 be in-person. This leaves the issue open of where to subpoena witnesses and how to ensure
24 they are within the jurisdiction of the Court (or have a sufficient internet connection) should
25 issues arise. Additionally, there are a number of legal questions regarding where witnesses
26 will be seated during the proceedings and if applicable state or country laws prohibit or
27 restrict administering an oath remotely.

1 **Proposed Solution:** GEO asks that in the event the proceedings will transpire
2 remotely, that this Court order witnesses to testify at the courthouse (via a video
3 stream set up by the Court) absent good cause for remote testimony.² Regardless of
4 whether counsel or the jury are allowed in the courthouse, this will resolve three
5 major issues, including (1) ensuring witnesses are not influenced by outside issues;
6 (2) ensuring witnesses do not draft a script to have in front of them on their computer;
7 and (3) providing a consistent location for all witness testimony so that witnesses are
8 not judged by their surroundings (i.e. kids, pets, home décor, internet connectivity,
9 etc). The Court will be able to monitor the technology and backgrounds provided to
10 the witnesses and will also be able to observe the witnesses while they testify to
11 ensure no outside influences are present. Likewise, this proposed solution ensures that
12 witnesses are subpoenaed to the Courthouse and in the event in-person proceedings
13 are possible the witnesses can easily be made available for in-person testimony
14 without the need for last minute travel arrangements. Finally, this safeguard would
15 help ensure that the majority of witnesses are in the same jurisdiction and subject to
16 the same rules for being sworn in.

17 **Issue 3: Supervision of Jurors.** GEO has also raised the issue of how jurors will be
18 supervised during the three-week trial. Specifically, GEO has concerns that safeguards are
19 needed to ensure jurors are not conducting independent research or otherwise distracted
20 during trial. In addition, GEO has raised the issue that it is impossible to see all jurors, the
21 witness, and opposing counsel all at once on the screen. Further, if jurors are remote,
22 safeguards must be put in place to ensure all jurors are receiving the same information during
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25 ² In making this request, GEO does not abandon its position that witnesses should be seated
26 in the same room as the jurors and the Court with appropriate COVID-19 safeguards. Instead,
27 GEO seeks to find an appropriate compromise, as Ordered by this Court in the
Reconsideration Denial whereby some facets of trial are able to take place at the courthouse.

1 trial and have not had their feeds interrupted. To that end, the Court must also ensure that all
2 witnesses have robust internet connection.

3 **Proposed Solution:** GEO does not abandon its position that jurors should be seated
4 in the same room as the Court and witnesses with appropriate COVID-19 safeguards
5 so that constitutional requirements are satisfied and so that there is no question as to
6 what jurors see and hear (and that what they see and hear is the same as the Court).
7 Nevertheless, should this Court order that all jurors may participate remotely, GEO
8 proposes that all jurors who participate in trial should be sent laptops from the Court
9 which restrict web browsing to only the websites needed for trial. Any jurors who do
10 not have access to a robust internet connection should also be sent wireless hotspots.
11 By controlling the technology that jurors use, the Court can reduce concerns that
12 jurors are conducting independent research or distracted by notifications on their own
13 devices. Indeed, most laptops integrate text messaging and email notifications even
14 when Zoom is running and there is no reliable way to know (from a remote vantage
15 point) whether those notifications are blocking key portions of the screen or otherwise
16 distracting jurors from the case. Likewise, it avoids jurors blocking the testifying
17 witness with personal documents or other applications. This issue must be addressed
18 now, rather than later, because implementing this solution may involve additional
19 logistical concerns, such as having each juror selected be prepared to appear at the
20 Courthouse to collect their laptop for trial. This planning cannot be left until a week
21 before trial.

22 In addition, in *Liu v Allstate*, C18-1862BJR, the Court acknowledged that
23 jurors are likely to be distracted during a Zoom trial. To address the likely
24 distractions, the *Liu* court assigned “at least two courtroom deputies” to observe the
25 jurors at all times to ensure no one was distracted. It further ordered that trial days
26 would be shortened and would include several breaks to address fatigue among the
27 jurors. These considerations are likewise appropriate here to ensure all jurors are

1 paying attention and that none have lost connection to the feed. The deputies should
2 be ordered to conduct periodic technological check-ins to ensure that jurors are not
3 missing key testimony or exhibits.

4 In sum, to the extent that portions of the trial (or the entire trial) will be conducted
5 entirely via remote video proceedings, the parties will need to know well in advance what
6 portions of trial will be remote so that robust remote “production facilities” can be designed,
7 constructed and implemented. As it stands, this will be a significant cost to GEO which
8 would not otherwise be necessary were the proceedings to be in-person at the courthouse.
9 Additional delay in understanding the scope of the technological issues will only further
10 increase those costs. Likewise, GEO should not be asked to bear the costs of setting up a
11 remote production facility and tailoring its case to video presentation only to have the
12 location of the case changed on the eve of trial.

13 **CONCLUSION**

14 For the foregoing reasons, GEO respectfully asks the Court to clarify its March 17,
15 2021, Order (*Washington* ECF 444, *Nwauzor* ECF 323) and April 21, 2021 Order Denying
16 Motion for Reconsideration (*Washington* ECF 449, *Nwauzor* ECF 329) (“Reconsideration
17 Denial”).

18 Respectfully submitted, this 22nd day of April, 2021.

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PROOF OF SERVICE

I hereby certify on the 23rd day of April, 2021, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **THE GEO GROUP, INC.’S MOTION FOR CLARIFICATION REGARDING REMOTE TRIAL CONCERNS** via the Court’s CM/ECF system on the following:

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