

	§	IN THE DISTRICT COURT OF
GRASSROOTS LEADERSHIP, INC.,	§	
E.G.S., A.E.S.G., F.D.G., and N.R.C.D.	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
TEXAS DEPARTMENT OF FAMILY AND	§	TRAVIS COUNTY, TEXAS
PROTECTIVE SERVICES (DFPS), HENRY	§	
WHITMAN, in his official capacity as DFPS	§	
Commissioner, TEXAS HEALTH AND	§	
HUMAN SERVICES COMMISSION	§	
(HHSC), and CHRIS TRAYLOR, in his	§	
official capacity as HHSC Executive	§	
Commissioner,	§	353RD JUDICIAL DISTRICT
<i>Defendants.</i>	§	(but all proceedings ordered to be conducted
	§	by the 250 th Judicial District Court)

THE GEO GROUP’S ORIGINAL PLEA IN INTERVENTION

Pursuant to TEX. R. CIV. P. 60-61, The GEO Group, Inc. (GEO) files this plea in intervention because Plaintiffs are trying to invalidate a license issued to GEO’s Karnes County Residential Center.

I. Discovery Level

1. GEO intends to conduct discovery pursuant to Tex. R. Civ. P. 190.3 (Level Two).

II. Parties & Service

2. Plaintiff, Grassroots Leadership, Inc., is a non-profit corporation incorporated in New Carolina and licensed to operate in Texas.

3. Plaintiffs, E.G.S., A.E.S.G., F.D.G., and N.R.C.D., are individuals who allege they are detained at GEO’s Karnes County Residential Center. See Plaintiffs’ Second Amended Petition, Exhibit 11 ¶ 1; Exhibit 12 ¶ 1.

4. Defendant, Texas Department of Family and Protective Services (the Department) is the state agency charged with administering the Texas Human Resources Code Chapters 40, 42, and 261. The Department has made an appearance in this matter.

5. Defendant, Henry Whitman is the Department's Commissioner, who is sued in his official capacity only. Mr. Whitman has made an appearance in this matter.

6. Defendant, Texas Health and Human Services Commission (the Commission) is the state agency charged with overseeing the Department. The Commission has made an appearance in this matter.

7. Defendant, Chris Traylor, is the Commissioner's Executive Commissioner, who is sued in his official capacity only. Mr. Traylor has made an appearance in this matter.

8. Intervenor, The GEO Group, Inc. is a corporation incorporated under the laws of Florida, with its principal place of business there. GEO operates the Karnes County Residential Center, which has been licensed by the Department.

III. Jurisdiction & Venue

9. The Court has jurisdiction to enter declaratory relief pursuant to TEX. GOV'T CODE § 2001.038 and Chapter 37 of the Texas Civil Practice and Remedies Code.

10. Venue in Travis County is mandatory pursuant to TEX. GOV'T CODE § 2001.038(b).

IV. Background

A. A federal court in California required ICE facilities to be state licensed.

11. In 1997, a class action was filed in federal court in California regarding the federal government's policies for the detention and release of *unaccompanied* minors in the United States illegally. *See* Order, *Flores v. Johnson*, Case 2:85-cv-04544-DMG-AGR, at 1 (C.D. Cal. July 24, 2015) (Exhibit 6 to Grassroots' Original Petition). The class action was

settled by consent decree in 1997, which, among other things, required unaccompanied minors to be placed in a licensed program. *See id.* The settlement did not address family residential centers because they did not exist at the time.

12. In 2012, long after the class action's settlement, federal authorities began to experience a surge in accompanied children crossing the border, that is, crossing with a parent. The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE) contracted with private companies to operate residential centers to process the families. One facility is located in Karnes County, Texas, and the other in Dilley, Texas.

13. In February 2015, members of the class filed a motion to enforce certain terms of the 1997 consent decree. *Id.* In July 2015, the federal court granted the motion to enforce. Among other things, the federal court acknowledged that ICE's family residential centers did not exist in 1997, at the time of the consent decree. *Id.* at 12. Nonetheless, the decree required those federally-run centers to be state licensed. *Id.*

14. The following month, in *Flores v. Lynch*, Case 2:85-cv-04544-DMG-AGR (C.D. Cal. Aug. 21, 2015), the court denied the federal government's motion for reconsideration. The *Flores* orders are now on appeal in the Ninth Circuit Court of Appeals (to be orally argued this June under Cause No. 15-56434).

B. The Department issued a rule to allow licensure of ICE facilities.

15. In September 2015, the Department published an emergency rule to license family residential centers operated by ICE or under contract with ICE. *See* 40 Tex. Reg. 6229 (adopting 40 TEX. ADMIN. CODE § 748.7). The emergency rule implemented TEX. HUM. RES. CODE § 42.042(a), which authorizes the Department to regulate and license a variety of facilities, homes, and agencies that provide services to minors.

16. Grassroots filed this lawsuit to enjoin the emergency rule and force the Department to follow the non-emergency rule making process. Thereafter, the Department sought and received public input following statutory procedures for non-emergency rules. *See* TEX. GOV'T CODE § 2001.029(a). The Department also held a public hearing. *See id.* § 2001.029(b). Through the Commission, the Department responded to the various public comments with a reasoned justification. 41 Tex. Reg. 1493 (Feb. 26, 2016) (Exhibit 8 to Grassroots' Second Amended Petition). The final rule appears at 40 TEX. ADMIN. CODE § 748.7 (Exhibit A).

C. The Department licensed GEO's family residential center in Karnes County.

17. ICE requirements for a family residential center are significantly different from the standards applicable to federal prisons. *Compare* Family Residential Standards¹ with 28 C.F.R. Ch. V. Additionally, the federal standards that govern family residential centers are significantly different from the license requirements of Rule 748.7. Accordingly, to obtain a state license of its ICE family residential center in Karnes County, GEO invested significant resources. After an intensive review process, the Department issued GEO's facility a license. *See* Exhibit B (Letter dated April 29, 2016) and Exhibit C (certificate with permit number 1622782).

V. Request For Declaratory Judgment

18. The facts stated above are not subject to any genuine dispute and are incorporated herein by reference.

19. Plaintiffs' second amended petition mentions the Karnes County Residential Center three times by name; the facility is repeatedly mentioned in the documentation attached to that petition. *See, e.g.*, Second Amended Petition at 1, 6, 7. The petition does not, however,

¹ Family Residential Standards are published on ICE's website: <https://www.ice.gov/detention-standards/family-residential>.

expressly recognize that the Department has already licensed the Karnes County Residential Center pursuant to Rule 748.7. *See also* Plaintiffs' Application for Temporary Restraining Order and Temporary Injunction at 3 (noting that GEO and another corporation "have applied for child-care licenses under § 748.7").

20. GEO seeks a declaration from this Court that the rule Defendants published at 40 TEX. ADMIN. CODE § 748.7 is valid and enforceable and that any licenses issued pursuant to Rule 748.7 are also valid.

VI. Prayer

21. The GEO Group respectfully requests that the Court:
- a. grant a declaratory judgment as outlined above;
 - b. award costs of suit and attorney's fees as provided by TEX. CIV. PRAC. & REM. CODE § 37.009; and
 - c. grant any other relief to which GEO may be entitled.

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: /s/ Charles A. Deacon

Charles A. Deacon

State Bar No. 05673300

Bertina B. York

State Bar No. 03354500

300 Convent Street, Suite 2100

San Antonio, Texas 78205

Telephone: 210/224-5575

Telecopier: 210/270-7205

Counsel for Intervenor, The GEO Group

CERTIFICATE OF SERVICE

This pleading was served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on the 12th day of May, 2016.

Jerome Wesevich
Robert Doggett
Texas RioGrande Legal Aid, Inc.
4920 North IH 35
Austin, Texas 78751
Telephone: 512.374.2725
Fax: 512.447.3940
Counsel for Plaintiffs

Jay W. Brown
Andrew L. Edelman
1100 JP Morgan Chase Tower
600 Travis Street
Houston, Texas 77002
Telephone: 713.650.8400
Fax: 713.650.2400
*Counsel for Intervenor, Corrections
Corporation of America*

Ken Paxton
Jeffrey C. Mateer
James E. Davis
Todd Lawrence Disher
Office of the Attorney General of Texas
P. O. Box 12548 (MC 001)
Austin, Texas 78711-2548
Telephone: 512.936.2266
Fax: 512.936.0545

Nichole Bunker-Henderson
Office of the Attorney General of Texas
Administrative Law Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: 512.936.0804
Fax: 512.320.0167
Counsel for Defendants

/s/ Charles A. Deacon
Charles A. Deacon

EXHIBIT LIST AND CERTIFICATION

I, Charles A. Deacon, counsel for Intervenor, The GEO Group, whose contact information appears above, declare under penalty of perjury that the exhibits that are referenced below and attached hereto are true and correct copies of the originals.

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| Exhibit A | 40 TEX. ADMIN. CODE § 748.7 |
| Exhibit B | Letter dated April 29, 2016 |
| Exhibit C | Certificate with permit number 1622782 |

/s/ Charles A. Deacon
Charles A. Deacon