

The Honorable James L. Robart
The Honorable Michelle L. Peterson

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

WILFREDO FAVELA AVENDAÑO,
J.A.M, and NAEEM KHAN,

Petitioners-Plaintiffs,

v.

NATHALIE ASHER, Director of the
Seattle Field Office of U.S. Immigration
and Customs Enforcement; TAE D.
JOHNSON, Acting Director of the U.S.
Immigrations and Customs Enforcement;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; STEPHEN
LANGFORD, Warden, Tacoma
Northwest Detention Center,

Respondents-Defendants.

Case No.: 2:20-cv-700-JLR-MLP

STEPHEN LANGFORD’S MOTION
FOR SUMMARY JUDGMENT
DISMISSAL WITH PREJUDICE

Noted: March 26, 2021

I. INTRODUCTION

Stephen Langford Northwest ICE Processing Center’s former Facility Administrator
moves through his attorney of record, Joan K. Mell of III Branches Law, PLLC, for summary

1 judgment dismissal of all claims against him with prejudice. Mr. Langford should not be a
2 party defendant because he is no longer employed at Northwest ICE Processing Center
3 (“NWIPC”) and is not a proper party to this litigation. The present Facility Administrator
4 should not be substituted as the proper party because plaintiffs have no legitimate claims to
5 assert against him or any other GEO employee. GEO and its employees do not control the
6 detention of plaintiffs. Operationally, NWIPC continues to address COVID-19 concerns in a
7 manner far superior to its detention and other correctional counterparts at the state level where
8 the COVID-19 rates are extraordinarily high. NWIPC has kept transmission levels extremely
9 low, and has addressed COVID-19 risks by implementing protocols, keeping its population
10 low, and by adapting quickly to ever changing recommendations.
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14 Stephen Langford joins ICE in moving to dismiss all claims with prejudice, and defers
15 to its motion and briefing under Fed. R. Civ. P. 56. By way of further legal argument and
16 supporting documentation, Mr. Langford relies upon the following briefing and Declarations of
17 Facility Administrator Bruce Scott and Mr. Langford’s declarations previously filed in this
18 matter.
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21 II. FACTS

22 Plaintiffs filed an amended complaint for habeas corpus relief alleging solely a Fifth
23 Amendment due process violation.¹ The Amended Complaint fails to allege anything former
24 Facility Administrator Stephen Langford did not do that correlates in any manner to
25 plaintiffs’ continued detention. NWIPC’s Facility Administrator has no control or final
26 decision making authority over the decision to detain or release anyone.² Plaintiffs’
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29 ¹ Dkt 167 - Amended Petition

30 ² Scott 03/04/21 Dec.

1 constitutional cause of action set forth at paragraph 97 asserts that “the only action that can
 2 respond to Plaintiffs’ medical needs” is to release plaintiffs.³ Plaintiffs have failed to assert or
 3 provide grounds in discovery for liability against Stephen Langford. He did not control
 4 plaintiffs release, nor can any GEO Facility Administrator and as a private employee of a non-
 5 governmental entity the Facility Administrator has no individual or official capacity liabilities
 6 to plaintiffs under the Fifth Amendment.
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9 III. LEGAL ARGUMENT

10 A. NWIPC Facility Administrator Not A Proper Party Defendant

11 Habeas corpus petitions shall name the person who has custody over the detainee and
 12 by virtue of what claim or authority.⁴ The custodian is “the person” with the ability to produce
 13 the prisoner’s body before the habeas court.⁵ Where a person is held in a correctional facility,
 14 the default party is typically the warden because the warden controls a prisoner’s custody.⁶
 15 But, NWIPC houses detainees whose custody is wholly controlled by Immigration and
 16 Customs Enforcement (“ICE”) and ICE is actually on site at the facility.⁷ The proper party
 17 defendant in a habeas case at NWIPC is not the Facility Administrator. The Facility
 18 Administrator does not have the “legal reality of control” over petitioners. The Facility
 19 Administrator does not hold NWIPC detainees in custody, ICE does.⁸ For purposes of COVID
 20 -19 habeas petitions involving immigration detainees the federal official most directly
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 27 ³ Dkt. 167 at 35.

28 ⁴ 28 U.S.C. A. § 2242.

29 ⁵ *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711 (2004).

30 ⁶ *Id.*

31 ⁷ Dkt. 63 (Bostock Dec.); Dkt. 67 (Langford Dec.)

⁸ Dkt. 236 at 4.

1 responsible for overseeing the contract facility is the proper party.⁹ The ICE Field Officer
2 Director is the federal official with the most immediate control over NWIPC, and as such is the
3 proper party, not Stephen Langford.¹⁰
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5 Plaintiffs' petition for release from NWIPC on the grounds that their continued
6 confinement violates their Fifth Amendment due process rights. Plaintiffs allege that Stephen
7 Langford is the legal custodian of plaintiffs, a broad stroke allegation that has no legitimate
8 grounding in fact or law.¹¹ The GEO Facility Administrators at NWIPC have zero authority to
9 release or continue to detain plaintiffs.¹² As a result, Stephen Langford cannot afford plaintiffs
10 the relief they are seeking. He should be dismissed with prejudice from this lawsuit. There is
11 simply no factual nor legal basis to substitute his successor either.
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14 B. Court Has No Jurisdiction To Compel Testing Or Immunization of GEO Employees

15 Plaintiffs prayer for relief requests entry of a court order "requiring periodic testing" of
16 NWIPC staff who interact with detainees. GEO employees and GEO are not parties to this
17 litigation. This Court has no jurisdiction to compel GEO employees to be tested or immunized
18 without their consent.
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21 C. NWIPC's COVID - 19 Statistics Remarkably Low

22 Plaintiffs' 5th Amendment due process argument presuppose NWIPC has COVID-19
23 transmission rates that exceed the outside population or that compare to other detention
24 facilities. Factually, plaintiffs have been unable to establish any legitimate theory for relief
25 because NWIPC has remarkably low transmission rates. Infection rates a facility where
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28 ⁹ *Ferreya v. Decker*, 456 F.Supp. 3d 538 (S.D. New York April 27, 2020).

29 ¹⁰ *Saravia v. Sessions*, 280 F.Supp. 3d 1168 (N.D. Cal. 2017).

30 ¹¹ Dkt. 167 at 7 (Amended Complaint).

31 ¹² Scott 03/04/21 Dec.

1 continued confinement potentially equated to unconstitutional punishment was fifty percent.¹³
2 NWIPC has never even come close to a fifty percent infection rate, but rather NWIPC's
3 infection rate has been below 2 percent.¹⁴ At present, NWIPC has no staff out due to
4 COVID-19, there are no positive staff, no hospitalized staff, no detainees in isolation, and a
5 mere 25 detainees in new intake monitoring.¹⁵ NWIPC has had zero COVID 19 deaths. Since
6 March 13, 2020 NWIPC had 2,523 negative test results. NWIPC's transmission rates are
7 remarkably good when compared with Washington's Department of Corrections that reports
8 6,176 confirmed cases, 38 active cases, and 14 deaths.¹⁶ NWIPC transmission rates are
9 remarkably good when compared with the Federal Bureau of Prisons: "The BOP has **124,743**
10 federal inmates in BOP-managed institutions and **13,639** in community-based facilities. The
11 BOP staff complement is approximately **36,000**. There are **818 federal inmates** and **1,620**
12 **BOP staff** who have confirmed positive test results for COVID-19 nationwide. Currently,
13 **46,933** inmates and **4,897** staff have recovered. There have been **224** federal inmate deaths and
14 **4** BOP staff member deaths attributed to COVID-19 disease. Of the inmate deaths, **4** occurred
15 while on home confinement.¹⁷ BOP statistics for Washington state of 2 inmates and 8 staff
16 affected were worse than NWIPC.¹⁸

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¹³ *Alcantara v. Archambeault*, ___ F. Supp. 3d ___ 106 Fed. R. Serv. 3d 931 (2020).

¹⁴ Scott 3/4/21 Dec.

¹⁵ Scott 3/4/21 Dec.

¹⁶ <https://www.doc.wa.gov/corrections/covid-19/data.htm>

¹⁷ <https://www.bop.gov/coronavirus/>

¹⁸ *Id.*

1 With regard to immunizations, Pierce County Health Department has notified GEO
2 that it intends to prioritize GEO detention staff for early stage priority for available
3 immunizations within the coming month.¹⁹
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5 Stephen Langford should not be a party to this litigation because he never did nor
6 failed to do anything that put plaintiffs at unreasonable risk of exposure to COVID -19 as
7 proven by the extremely low transmission rate of COVID-19 at NWIPC.
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9 D. Plaintiffs Failed To Plead A Viable Cause of Action Against Langford.

10 Plaintiffs complaint fails to allege any recognized cause of action against
11 Stephen Langford. He was a private employee working for a private company. He was not a
12 state actor for purposes of Section 1983 liability and plaintiff did not plead a Section 1983
13 complaint against him. Stephen Langford has no *Bivens* liabilities because the theory does not
14 apply to private actors.²⁰ Plaintiffs' complaint alleges solely a direct constitutional claim under
15 the Fifth Amendment, which is not a valid legal theory against Stephen Langford.²¹ That
16 theory as pled provides for release from unreasonable punishment, an outcome that
17 Stephen Langford could not and did not control.
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21 IV. CONCLUSION

22 For the reasons stated above, the Court should dismiss plaintiffs' complaint with
23 prejudice against Stephen Langford.
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28 ¹⁹ Scott 03/04/21 Dec.

29 ²⁰ *CSC v. Malesko*, 534 U.S. 61, 122 S.Ct. 515 (2001); *Minneeci v. Pollard*, 565 U.S. 118, 132 S. Ct. 617 (2012).

30 ²¹ *Martinez v. The GEO Group, Inc.*, Case No. ED CV 18-1125-SP 2020 WL 2496063 (C.D. Cal. January 7, 2020).

1 Respectfully submitted this 4th day of March, 2021 at Hamilton, MT.

2 III Branches Law, PLLC

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4 _____
5 Joan K. Mell, WSBA #21319
6 Attorney for The GEO Group Inc. - NWIPC

7 **CERTIFICATE OF SERVICE**

8 I, Francis Muniz-Nava, certify as follows:

9 I am over the age of 18, a resident of Pierce County, and not a party to the above action.

10 On March 4, 2021, I electronically filed the above Stephen Langford's Motion for Summary
11 Judgment Dismissal with the Clerk of the Court using the CM/ECF system which will send
12 notification of such filing to all counsel of record who receives CM/ECF notification.
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15 I certify under penalty of perjury under the laws of the State of Washington that the
16 above information is true and correct.

17 DATED this 4th day of March, 2021 at Fircrest, Washington.

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21 Francis Muniz-Nava, Legal Assistant
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