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7	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON	
8	AT TACC	
9	STATE OF WASHINGTON,	CASE NO. 3:17-cv-05806
10	Plaintiff,	ORDER DENYING WITHOUT
11	V.	PREJUDICE PLAINTIFF STATE OF WASHINGTON'S MOTION TO
12	THE GEO GROUP, INC.,	REMAND
13	Defendant.	
14	THIS MATTER comes before the Court on	Plaintiff State of Washington's Motion to
15	Remand. Dkt. 15. The Court has considered Defend	lant The GEO Group, Inc.'s Response, the
16	State's Reply, the Notice of Removal, the Complain	nt, and the remainder of the file herein. Dkts.
17	1, 23, 28.	
18	I. BACKGROUND	
19	This case originates from a complaint first f	ïled in Pierce County. Dkt. 7, State of Wash.
20	v. The GEO Group, Inc., Case No. 17-2-11422-2 (F	Pierce Co. Superior Court, 20 Sept. 2017).
21	GEO removed to the Western District of Washington	on, citing three grounds for removal: (1) the
22	federal officer removal statute, 28 U.S.C. §1442, al	leging a causal nexus between GEO's actions
23	and the directives of a federal officer, and that GEC) has a colorable preemption defense; (2) the
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1	general removal statute, 28 USC §1331, because the case "involves issues of federal law and	
2	federal interests that 'aris[e] under the Constitution, laws, or treaties of the United States'"; and	
3	(3) diversity jurisdiction, 28 U.S.C. §1332(a). Dkt. 1 at 8, 9.	
4	The issue raised by the State's motion to remand is whether this Court has subject matter	
5	jurisdiction. As discussed below, the State's motion should be denied without prejudice. The	
6	Court has subject matter jurisdiction because the case at present implicates the federal officer	
7	removal statute, §1442. Having identified a basis for its subject matter jurisdiction, the Court	
8	declines to address §1331 and §1332(a).	
9	II. DISCUSSION	
10	A. Standard for federal officer removal under 28 U.S.C. §1442.	
11	The federal officer removal statute provides:	
12	(a) A civil action that is commenced in a State court and that is against or directed to [the following] may be removed by them to the district court of the United States	
13	wherein it is pending[:] (1) The United States or any agency thereof or any officer (<i>or any person acting under that officer</i>) of the United States or of any agency thereof, in an	
14	official or individual capacity, for or relating to any act under color of such office	
15	28 U.S.C. §1442 (emphasis added). "The purpose of the federal officer removal statute is to	
16	ensure a federal forum in any case where a federal official is entitled to raise a defense arising	
17	out of his duties." Goncalves By & Through Goncalves v. Rady Children's Hosp. San Diego, 865	
18	F.3d 1237, 1243–44 (9th Cir. 2017), quoting Arizona v. Manypenny, 451 U.S. 232, 241 (1981).	
19	The party seeking removal under §1442(a)(1) bears the burden to show:	
20	(a) it is a 'person' within the meaning of the statute; (b) there is a causal nexus between its actions, taken pursuant to a federal officer's directions, and plaintiff's	
21	claims; and (c) it can assert a colorable federal defense.	
22	Id., quoting Durham v. Lockheed Martin Corp., 445 F.3d 1247, 1251 (9th Cir. 2006) (internal	
23	quotations and citations omitted). Section 1442 should be interpreted "broadly in favor of	
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removal[,]" so that "the policy favoring removal [is] not []frustrated by a narrow, grudging
interpretation[.]" *Id.* at 1244, citing *Arizona*, 451 U.S. at 242 (internal quotations omitted).

In this case, the parties do not dispute GEO's showing as to the first element, that GEO is a "person" as contemplated by the statute. The State challenges GEO's showing as to the second and third elements, arguing that there is no causal nexus and that GEO lacks a colorable federal defense.

B. Causal nexus.

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To show a causal nexus, GEO must show that (1) a challenged act is an "action under" a federal officer, and (2) "the challenged act[] occurred *because of* what they were asked to do by the Government." *Goncalves*, 865 F.3d at 1244-45, citing to *Isaacson v. Dow Chemical Co.*, 517 F.3d 129 (2nd Cir. 2008).

12 The challenged act in this case is payment to detainees at a rate of \$1 per day. The State 13 argues that this alleged act does not occur "because of" what the Government has asked of GEO, 14 because the rate of detainee compensation is left to GEO's discretion. Dkt. 15 at 9-14; Dkt. 28 at 15 6-9. GEO's discretion, the State posits, is apparent from language in the ICE-GEO contract directing GEO to manage a Volunteer Work Program "developed by the contractor," where 16 17 compensation is limited only by the 2011 Performance-Based National Detention Standards 18 (PBNDS), with detainee compensation of "at least \$1.00 (USD) per day." Dkt. 15 at 10-13. GEO is not precluded from compensating detainees at least the State minimum wage, the State avers. 19 20 Id.

GEO takes issue with the State's interpretation of the ICE-GEO Contract and argues that ICE sets the compensation amount. Dkt. 23 at 11-16. GEO argues in the alternative that even if

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1 GEO could compensate detainees at the State minimum wage, this flexibility misses the broader 2 point: ICE, not GEO, controls whether detainees can work competitively in the work force. Id. 3 The Court finds that the causal nexus is satisfied at this stage of the case, under the theory

that GEO pays detainees \$1 per day based on a rate compensated by the Government. Under this 4 5 theory, GEO's compensation rate is an "action under" a federal officer because it is taken 6 pursuant to the ICE-GEO Contract, and GEO compensates detainees at that rate because of 7 GEO's contract with ICE.

GEO has made a sufficient showing of a causal nexus.

C. Colorable federal defense.

"Courts have imposed few limitations on what qualifies as a colorable federal defense." Isaacson, 517 F.3d at 138. "To be 'colorable,' the defense need not be 'clearly sustainable,' [because] the purpose of the statute is to secure that the validity of the defense will be tried in federal court." Id. at 139. 13

14 A reprise of the preemption discussion for purposes of this motion is unnecessary. The 15 parties have briefed—and the Court has at length considered—the merits of GEO's preemption defense. The Court's ruling was based on GEO's Fed. R. Civ. P. 12(b)(6) motion, which 16 17 challenged the sufficiency of the Complaint. See Dkt. 29 at 5-15. Further discussion of 18 preemption may yet be raised in a different procedural context.

GEO has made a sufficient showing that its preemption defense is colorable. The Court has subject matter jurisdiction under §1442. The State's motion to remand should be denied without prejudice.

D. Other grounds for jurisdiction.

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1	Because the Court has subject matter jurisdiction over this matter under §1442, the Court	
2	declines to reach the issue of whether it has jurisdiction under §1331 or §1332(a).	
3	This Order makes no finding as to how the ICE-GEO Contract should be interpreted or	
4	whether the State Minimum Wage Act should apply.	
5	* * *	
6	THEREFORE, The State of Washington's Motion to Remand (Dkt. 15) is DENIED	
7	WITHOUT PREJUDICE.	
8	IT IS SO ORDERED.	
9	The Clerk is directed to send uncertified copies of this Order to all counsel of record and	
10	to any party appearing pro se at said party's last known address.	
11	Dated this 13 th day of December, 2017.	
12	PLATE	
13	Naker 7 Dayan	
14	ROBERT J. BRYAN United States District Judge	
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