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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COWLITZ COUNTY, et al.,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON, et al.,

Defendants.

CASE NO. _____

NOTICE OF REMOVAL OF CIVIL
ACTION

The United States hereby gives notice pursuant to 28 U.S.C. § 1446(a) of the removal of this action to this Court from the Superior Court of the State of Washington, in and for Cowlitz County, Washington (Cowlitz County Superior Court). Plaintiffs Cowlitz County and Cowlitz County Youth Services Center (Cowlitz County) seek a declaratory judgment authorizing the release of federal records pertaining to juvenile detainees in federal custody pursuant to a state records request by Defendants University of Washington and Angelina Snodgrass Godoy. The United States has intervened as a party to prevent the disclosure of these documents, as disclosure is prohibited under federal law.

NOTICE OF REMOVAL OF CIVIL ACTION
CASE No. _____
PAGE - 1

DEPARTMENT OF JUSTICE
Civil Division
Federal Programs Branch
1100 L Street N.W.
Washington, D.C. 20005
(202) 305-8613

FACTUAL BACKGROUND

1
2 In 2001, pursuant to its statutory authority under the Immigration and Naturalization Act
3 (INA), 8 U.S.C. §§ 1231(g)(1)-(2) and 1103(a)(11), the Immigration and Naturalization Service
4 entered into an “Intergovernmental Service Agreement for Housing Federal detainees” with
5 Cowlitz County to provide detention and care of U.S. Immigration and Customs Enforcement
6 (ICE) juveniles detained under the INA. In July 2018, Defendants submitted a public records
7 request to Cowlitz County pursuant to Washington’s Public Records Act (PRA), RCW §
8 42.56.080, *et seq.*, seeking the “jail files” of immigrant minors detained on behalf of ICE. Upon
9 receipt and review of Defendants’ PRA request, ICE advised Cowlitz County that they were not
10 authorized to release the requested “jail files” because they are federal records belonging to ICE,
11 and the County was prohibited by law from disclosing them. *See* 8 C.F.R. § 236.6.

12
13 On February 1, 2019, Cowlitz County filed this lawsuit in Cowlitz County Superior
14 Court, Case No. 19-2-00099-08, seeking a declaratory judgment sanctioning the release of the
15 requested documents under state law. Compl. (Dkt. No. 1) (attached hereto as Ex. A). On May
16 30, 2019, the United States filed an unopposed motion to intervene as a matter of right pursuant
17 to Washington Superior Court Civil Rule 24(a), which mirrors Federal Rule of Civil Procedure
18 24(a), as a party defendant in this action. Although the motion was initially unopposed, several
19 months after its filing, Defendants filed an objection to the United States’ motion to the extent
20 the United States sought intervention as a party defendant, rather than as a party plaintiff. Both
21 Cowlitz County and the United States challenged Defendants’ position, asserting that Plaintiffs’
22 claim presents a question of federal statutory interpretation, in which the United States’ interests
23 are directly adverse to those of Plaintiffs.
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1 Notwithstanding Cowlitz County’s and the United States’ agreement on that issue, the
2 court sided with Defendants. By order of December 10, 2019, and without issuing an opinion
3 setting forth any analysis, the court granted the United States’ motion to intervene, but as a
4 plaintiff, not defendant.

5 **GROUND FOR REMOVAL**

6 In light of the United States’ substantive position relative to the issue in dispute, removal
7 is appropriate. “A civil action . . . that is commenced in a State court and that is against or
8 directed to [the United States or any agency thereof] may be removed by them to the district
9 court of the United States for the district and division embracing the place wherein it is pending.”
10 28 U.S.C. § 1442(a)(1). In applying the general standards for removal, the substantive
11 underpinnings of the original claim for relief controls, particularly when the existence of a
12 federal question provides a basis for removal. See 14C Charles Alan Wright & Arthur R. Miller,
13 FEDERAL PRACTICE AND PROCEDURE § 3734 (Rev. 4th ed.). Section 1442’s purpose and history
14 confirm that the statute was meant to ensure as a matter of right that federal defenses raised by
15 federal actors are evaluated in a federal forum and “should not be frustrated by a narrow,
16 grudging interpretation” of the provision. *Willingham v. Morgan*, 395 U.S. 402, 407 (1969) (“In
17 cases like this one, Congress has decided that federal officers, and indeed the Federal
18 Government itself, require the protection of a federal forum.”).

19 This case turns on a fundamental federal question—whether applicable state law is
20 preempted by federal law prohibiting the disclosure of the records at issue. Cowlitz County has
21 brought a claim “directed to” the United States by seeking a declaratory judgment authorizing
22 the disclosure of federal documents, which ICE asserts are prohibited from disclosure under
23 federal law. Compl. at 7-8 (prayer for relief). Substantively, Cowlitz County’s desired outcome
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1 in this case is directly adverse to the United States' interests. Accordingly, the United States
2 removes this case to the United States District Court.

3 Pursuant to 28 U.S.C. § 1446(b), the filing of this notice is timely. Notice of removal
4 may be filed within 30 days of receipt of an order or other paper from which it may first be
5 ascertained the case is one which is or has become removable. *See* 28 U.S.C. § 1446(b). This
6 action first became removable on December 10, 2019, when the Cowlitz County Superior Court
7 entered the order granting the motion of the United States to intervene as a party. This filing is
8 within 30 days of that order, and therefore this removal is timely.
9

10 Pursuant to Local Rule CR 101(b)(2), a certificate of service which lists all counsel who
11 have appeared in this action is herewith included. This Notice of Removal will be promptly filed
12 with the clerk of the Cowlitz County Superior Court. *See* 28 U.S.C. § 1446(d). Pursuant to
13 Local Rule CR 101(b)(1), a copy of the complaint is attached as Attachment A. No Jury
14 Demand was filed in the state court; therefore, there is no such document to be filed
15 contemporaneously with this notice of removal. *See* LCR (b)(3).
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1 Dated: December 30, 2019

Respectfully submitted,

2 JOSEPH H. HUNT
Assistant Attorney General

3 JACQUELINE COLEMAN SNEAD
Assistant Branch Director

4
5 s/ Alexis J. Echols
6 ALEXIS J. ECHOLS
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7 Civil Division, Federal Programs Branch
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10 *Attorneys for the United States*

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27 NOTICE OF REMOVAL OF CIVIL ACTION
CASE No. _____
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DEPARTMENT OF JUSTICE
Civil Division
Federal Programs Branch
1100 L Street N.W.
Washington, D.C. 20005
(202) 305-8613

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 30th day of December 2019, I electronically filed the foregoing "NOTICE OF REMOVAL OF CIVIL ACTION" with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants identified below.

I further certify under penalty of perjury that on this 30th day of December 2019, I caused to be e-mailed and placed in the United States mail (first-class, postage prepaid), a copy of the foregoing "NOTICE OF REMOVAL OF CIVIL ACTION" addressed as follows:

Douglas E. Jensen
Hall of Justice – Civil Division
312 S.W. First Avenue
Kelso, Washington 98626
jensend@co.cowlitz.wa.us

Eric M. Stahl
Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300
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Nancy S. Garland
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University of Washington Division
4333 Brooklyn Avenue NE, 18th Floor
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nancysg@uw.edu

s/ Alexis J. Echols
ALEXIS J. ECHOLS

EXHIBIT A

19-2-00099-08
CMP 1
Complaint
4812956



FILED *MT*
SUPERIOR COURT

'19 FEB -1 A10 :39

COWLITZ CO. CLERK
STACIL MCKLEBUST

BY *TW*

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF COWLITZ**

COWLITZ COUNTY, a political subdivision
of Washington, and COWLITZ COUNTY
YOUTH SERVICES CENTER, a department of
Cowlitz Superior Court,

Plaintiffs,

vs.

UNIVERSITY OF WASHINGTON, an agency
of the State of Washington, and ANGELINA
SNODGRASS GODOY, an employee of the
University of Washington,

Defendants.

No. **19 2 00099 08**

**COMPLAINT FOR
DECLARATORY RELIEF**

I. INTRODUCTION

This is a declaratory judgment action to obtain a judicial determination in response to a request for records from Defendants and sent to Plaintiffs, as set forth below.

By way of complaint against the defendants University of Washington and employee, Angelina Snodgrass Godoy, Center for Human Rights of the University of Washington, (hereinafter collectively 'University'), the plaintiffs Cowlitz County and the Youth Services Center, Cowlitz County Superior Court (hereinafter collectively 'County'), allege as follows:

II. JURISDICTION AND PARTIES

1. Jurisdiction of this Court is invoked pursuant to RCW 7.24.010. This action presents a justiciable controversy between the County and University regarding the County's statutory obligations on a University public records request to County, as set forth below.

COMPLAINT FOR DECLARATORY RELIEF - 1

①

COWLITZ COUNTY PROSECUTING ATTORNEY
Hall of Justice - Civil Division
312 S.W. First Avenue
Kelso, Washington 98626
(360) 577-3080 FAX (360) 414-9121

SCANNED

1 9. By June 20, 2108, the County provided third-party notice (mimicking the notice
2 provisions of RCW 42.56.520(2) (“Additional time required to respond to a request may be
3 based upon the need ...to notify third persons or agencies affected by the request...”)) to the
4 United States Immigration and Customs Enforcement, Department of Homeland Security
5 (ICE/DHS), regarding juvenile ICE/DHS detainees, as set forth in Exhibit E. County is a
6 contract services provider to ICE/DHS for use of County’s Youth Services Center, juvenile
7 detention facility for ICE/DHS juvenile detainees.

8 10. On June 28, 2018, ICE/DHS responded to County’s proposed initial release of
9 public information with “It looks good”, as set forth in attached Exhibit F.

10 11. On July 9, 2018, County responded by email to University with records and
11 information, as set forth in attached Exhibit G.

12 12. Upon receiving County’s response, on July 10, 2018, the University made a
13 **second** request to County for “copies of records showing the number of minors housed in
14 Cowlitz County juvenile facility for ICE/ORR between June 1, 2013, and June 1, 2018; the
15 book-in or arrival date; and the length of detention of each minor”, and County provided the
16 documentation by July 16, 2018, set forth in attached Exhibits **H & I**.

17 13. Upon receiving County’s response and documents on this second request on
18 July 18, 2018, the University made a **third** request to County for documentation, as set forth
19 below and in attached Exhibit J:

20 Thank you for this very helpful response to my public records request.
21 I would like to file an additional request, which involves the same underlying data about
22 ICE detainees at the Cowlitz juvenile facility.
23 Specifically, I would like to review:
24 1) A copy of IGSA, MOU, or underlying agreement between Cowlitz County and ICE that
25 allows the detention of minors for ICE in Cowlitz County facilities.
26 2) The complete jail file (redacted to conceal personally-identifying information) of all
 minors housed in Cowlitz County facilities for ICE from 1/1/2015-7/15/2018. (Please note
 that under RCW 70.48.100, access to otherwise confidential portions of inmates' jail
 records is allowed to "higher education institutions of Washington state for the purpose of
 research in the public interest.")

1 14. On July 19, 2018, County responded by email to University that “[g]iven the
2 scope of your request ... research [on] responsive records ... [was] anticipated to take 60 days
3 from the date of this letter”, as set forth in attached Exhibits **K & L**.

4 15. On August 3, 2018, the University made a **fourth** request to County for
5 documentation, to which the County responded by email on that same date that this request
6 appeared duplicative of the University’s third request. University agreed and withdrew its
7 request on that date, as set forth in attached Exhibit **M**.

8 16. On September 6 and 14, 2018, County requested and received clarifications
9 from the University on pending document requests, including verification the information was
10 requested by the public institution, itself, and distinguishing between exemptions of RCW
11 70.48.100 for adults and RCW 13.50.280 for juveniles, as set forth in attached Exhibit **N**.

12 17. On September 17, 2018, County sent a ‘First Installment’ of records to the
13 University under GR 31.1, as set forth in attached Exhibits **O & P**.

14 18. On September 18, 2018, County was notified by a legal representative of
15 ICE/DHS that federal code, 8 CFR § 236.6, prohibited County from releasing any ICE/DHS-
16 related documents, other than the First Installment, as set forth in attached Exhibit **Q**. 8 CFR §
17 236.6 reads in relevant part that “[n]o person, including any state or local government entity or
18 any privately operated detention facility,” that houses, as in the present matter, juvenile
19 immigration detainees “and no other person who by virtue of any official or contractual
20 relationship with such person obtains information relating to any detainee, shall disclose or
21 otherwise permit to be made public” information about such detainees.

22 19. On October 11, 2018, County was notified by U.S. Attorney’s Office (USDOJ)
23 representatives for ICE/DHS, reaffirming the federal position that under federal code, 8 CFR §
24 236.6, County was directed by ICE/DHS to not release any ICE/DHS-related documents or
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1 information regarding ICE/DHS juvenile detainees under GR 31.1 or any other state law, other
2 than the First Installment of records already released, as set forth in attached Exhibit R.

3 20. On November 6, 2018, County's legal counsel notified the University that the
4 public records coordinator for Superior Court was out on unanticipated, extended personal
5 leave, and that the next installment would be delayed, as set forth in attached Exhibit S.

6 21. On November 7, 2018, the University acknowledged this request for additional
7 time by County, as set forth in attached Exhibit T.

8 22. On December 5, 2018, counsel for County notified a representative of the
9 Washington Office of Attorney General (WA-AGO) assigned to the University regarding
10 USDOJ's and ICE/DHS's directives that federal code, 8 CFR § 236.6, prohibited County from
11 releasing any more ICE/DHS-related records, other than the First Installment, and counsel for
12 County requested assistance in interpreting applicability of the state law, as set forth in
13 attached Exhibit U. Other state Attorneys General have advised that 8 CFR § 236.6 is an
14 absolute prohibition on release of such 'confidential' information by state entities, as with the
15 Attorney General of Texas in attached Exhibit V.

16 23 As a consequence of USDOJ's and ICE/DHS's application of 8 CFR § 236.6 as
17 an absolute prohibition on release of any information, and because the County was willing to
18 release and University was will to accept redacted versions of records, use and exhaustion of
19 any internal or external reviews under state GR 31.1(d) and Cowlitz GR 31.1, § 8.0 regarding
20 this request are deemed futile.

21 24. Also within its notification and inquiry to the WA-AGO, County observed that
22 although the federal code, 8 CFR § 236.6, has been applied in other states in the past to
23 prohibit local venues from releasing ICE/DHS-related records, a recent U.S. District Court
24 case from California, *United States v. State of California, et al.*, No. 2:18-cv-00490-JAM-
25 KLN, could support conditional release of information to the University, as the California
26

1 court ruled in preliminary injunction that this federal code, as worded, prohibited disclosure of
2 ICE/DHS-related records to the general public and not necessarily to public entities for public
3 purposes. See *California* rulings, attached as Exhibits **W** (pp. 16-19) & **X** (p. 3).

4 25. The *United States v. State of California, et al.*, has been appealed by plaintiff
5 United States to the Ninth Circuit Court of Appeals as No. 18-16496, with other states filing
6 *Amicus Curiae* in support of California (including Attorney General of Washington), and
7 parties filing *Amicus Curiae* in support of United States (including Attorney General of Texas).

8 26. The University contacted County, and advised County that the WA-AGO would
9 not be providing guidance or assistance in this particular matter, and that County must proceed
10 on its own volition as to whether and by what measure to release ICE/DHS-related records
11 under 8 CFR § 236.6 to the University, as set forth in Exhibit **Y**.

12 27. On December 21, 2018, having been notified by the University that the Office
13 of Attorney General would not be providing a legal advice or assistance in this matter but
14 would instead react to County's actions, County advised ICE/DHS and a USDOJ
15 representative inquired about participation in any state litigation filed in the matter, as set forth
16 in attached Exhibit **Z**.

17 **IV. CLAIM FOR DECLARATORY JUDGMENT**

18 28. Plaintiff incorporates by reference paragraphs 1 through 27, above.

19 29. County's Youth Services Center, or any office or department of Cowlitz
20 County, in possession of emails of the judiciary are deemed to be bailees of the Cowlitz
21 Superior Court, holding the judicial records governed by GR 31.1 on behalf of said Court, and
22 as such, have no independent authority to release judicial records without clear statutory
23 exemption or without express written authority from said Court as set forth in GR 31.1(k)(5)
24 and Cowlitz GR 31.1 § 6.0, Public Records Officer.

1 RCW 13.50.280 and a GR 31.1 waiver of exemptions, regarding juvenile detainees of
2 ICE/DHS, but subject to such restrictions and protections on further release of such records to
3 the general public as may be deemed necessary and reasonable by the Court for purposes of
4 compliance with 8 CFR § 236.6.

5 D. An award to County of its expenses and costs to the full extent allowed by law.

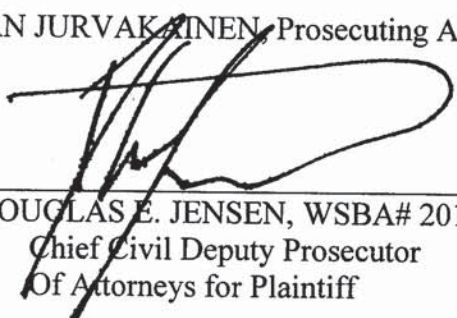
6 E. Permission to amend the pleadings to add additional claims or parties to
7 conform to the proof offered at the time of the hearing or trial.

8 F. Such other relief as appears to the Court to be just and equitable.

9
10 Dated this 31st day of January, 2019.

11 Respectfully submitted,

12 RYAN JURVAKAINEN, Prosecuting Attorney

13
14 
15 By _____
16 DOUGLAS E. JENSEN, WSBA# 20127
17 Chief Civil Deputy Prosecutor
18 Of Attorneys for Plaintiff

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