

SPOKANE COUNTY COURT HOUSE

Superior Court of the State of Washington  
For the County of Spokane

Department No.7

**Maryann C. Moreno**  
Judge

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March 16, 2021

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RE: State of Washington v. Greyhound Lines, Inc.  
**Cause No. 20-2-01236-32**  
Greyhound Lines, Inc. Motion to Dismiss or Join CR 12(B)(6) and CR 12(B)(7)

Dear Counsel:

I heard argument on the matters referenced above on December 18, 2020 and took the matter under advisement. Defendant, Greyhound Lines, Inc. (Greyhound) seeks dismissal of the complaint filed by the State of Washington (State) pursuant to CR 12(b)(6) and CR 12(b)(7). In

the alternative, it seeks joinder of the United States Customs and Border Protection (CBP) as a party pursuant to CR 19.

The argument in favor of dismissal put forth by Greyhound is based primarily on the doctrine of preemption. Greyhound argues that the claims for violation of the Washington State Consumer Protection Act (CPA) and the Washington Law Against Discrimination (WLAD) are both preempted by 8 U.S.C. § 1357, and thus, pursuant to CR 12(b)(6), must be dismissed.

The claims brought by the State allege that Greyhound is in violation of Washington law by allowing CBP agents permission to board its buses at the Intermodal Center in Spokane to effectuate immigration searches and that its failure to warn ticketed passengers of these consensual immigration sweeps also constitutes unlawful conduct. RCW 49.60.030(1)(b) prohibits discrimination and includes the “right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement.” RCW 19.86.020 renders unlawful “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...”

Greyhound asserts in its motion that it is impossible to comply with both the federal directive contained in 8 U.S.C. § 1357, which empowers the CBP to board their buses and search for illegal immigrants without a warrant, as well as the state prohibitions contained in WLAD and CPA and thus state law is preempted.<sup>1</sup>

Federal preemption is a defense which may be asserted to state court actions and may occur if:

(1) Congress passes a statute that expressly preempts state law, (2) Congress occupies the entire field of regulation, or (3) state law conflicts with federal law, making compliance with both laws an impossibility or state law presents an obstacle to the accomplishment of the federal purpose.<sup>2</sup>

There is a strong presumption against preemption, and federal law will not supersede state law without a clear manifestation of purpose by Congress.<sup>3</sup> Conflict preemption based upon obstruction focuses on both the “objective of the federal law and the method chosen by Congress to effectuate that objective, taking into account the law’s text, application, history, and interpretation.”<sup>4</sup> Courts should also consider how the federal law is applied and interpreted in addition to plain text.<sup>5</sup> The issue here is whether it is impossible for Greyhound to comply with both federal authority under 8 USC § 1357 and the WDLA and CPA and/or whether compliance with state regulations frustrates Congress’s purpose in enacting 8 USC § 1357.

The text of 8 USC § 1357 allows the CBP to board any vehicle within a reasonable distance from

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<sup>1</sup> Greyhound’s argument addresses only the search of their buses and does not address the claims of failure to warn and unfair practices.

<sup>2</sup> *Stevedoring Services of America, Inc. v. Eggert*, 129 Wash. 2d 17, 23.

<sup>3</sup> *Stevedoring*, supra, at 24.

<sup>4</sup> *McKee v. AT&T Corp.*, 164 Wash. 2d 372, 387-88.

<sup>5</sup> *Id.*

any external boundary of the United States to search for aliens. Greyhound relies on this plain reading of § 1357 in support of its argument that CBP is empowered to “board and search buses without a warrant or warrant substitute” and that Greyhound is powerless to stop them. However, no act of Congress can authorize a violation of the Constitution.<sup>6</sup> Courts construe § 1357 consistent with the Fourth Amendment and have held that warrantless seizures that do not occur at the border or its functional equivalent can only be conducted based upon reasonable suspicion, probable cause, or consent.<sup>7</sup> This is in contrast with routine immigration stops at the border or its functional equivalent where Fourth Amendment considerations give way to bright-line rules that allow the federal government to briefly detain travelers and question them in the interest of protecting U.S. borders.

In considering a CR 12(b)(6) motion, the court accepts the facts and allegations of the complaint as true and may consider hypothetical facts supporting the plaintiff’s claims.<sup>8</sup> Motions to dismiss are granted sparingly and with care and only in the unusual case in which plaintiff includes “allegations that show on the face of the complaint that there is some insuperable bar to relief.”<sup>9</sup>

The complaint here alleges that the Intermodal Center is not a border or its functional equivalent and that therefore CBP does not possess the same right to conduct immigration inspections as it enjoys at the border. The State contends that instead of obtaining a warrant and without reasonable suspicion, CBP agents regularly board Greyhound buses and conduct immigration sweeps. Having no warrant or reasonable suspicion, CBP obtains consent, explicitly or implicitly, from a Greyhound employee; that upon boarding, CBP targets Latino passengers and passengers of color, inquiring about immigration status. Greyhound has been vocal about their cooperation with the federal government’s mission.<sup>10</sup> It is alleged that Greyhound does not warn customers of their ongoing cooperation with CBP agents or of CBP’s ongoing activities at the Intermodal. Viewing the State’s allegations as true, this is not the rare case where there is some insuperable bar to relief. Greyhound puts forth no legal basis for its contention that it is required to allow CBP intrusions; nor has it suggested a legal basis for the argument that it has a duty to grant consent to CBP. In fact, § 1357 does not convey unfettered power to CBP agents and further commands no compliance by third parties such as Greyhound. Therefore, the allegations of the complaint are not preempted by federal law; neither impossibility or interference with the federal purpose precludes this matter from moving forward.

Greyhound claims that failure to join CBP as a party warrants dismissal pursuant to CR 12(b)(7) and CR 19. CR 19 requires a party to be joined if:

- (1) in the person’s absence complete relief cannot be accorded among those already parties, or
- (2) the person claims an interest relating to the subject of

<sup>6</sup> *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 877 (1975).

<sup>7</sup> *Almeida-Sanchez v. U.S.*, 413 U.S. 266, 273-74, (1973).

<sup>8</sup> *Kinney v. Cook*, 159 Wash. 2d 837, 842, 154 P.3d 206 (2007).

<sup>9</sup> *Id.*

<sup>10</sup> Greyhound has also indicated that CBP agents do not ask for permission to board their buses. To the extent that contradicts the State’s assertions that Greyhound consents to searches, it is a material issue of fact and not relevant to this CR 12(b)(6).

the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect their interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.

Dismissal under CR 12(b)(7) is a drastic remedy and should be employed sparingly when there is no other ability to obtain relief.<sup>11</sup> The primary question is whether joinder of CBP is needed for just adjudication.<sup>12</sup> The complaint here does not seek relief from CBP for any of its actions; the only relief sought is against Greyhound for its alleged conduct toward its passengers. Complete relief can be accomplished among the current parties, and CBP has not claimed any formal interest in this action. That is likely because the CBP has no interest in a suit against a private party for violations of state laws. While CBP may enjoy the ability to conduct consent searches as alleged by the State, that interest is not a legally protected one. CBP is neither necessary or indispensable as a party. CBP's absence from this action does not hinder the relief sought by the State, and neither dismissal or joinder is warranted.

Based on the foregoing, the motions brought by Greyhound are denied.

I have signed an order reflecting my ruling above. Both the order and this letter have been filed today.

Yours truly,



Maryann Moreno  
Judge

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<sup>11</sup> *Gildon v. Simon Property Group, Inc.*, 158 Wash. 2d 483, 494, 145 P.3d 1196 (2006).

<sup>12</sup> *Id.*

The Honorable Maryann C. Moreno

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MAR 16 2021

SUPERIOR COURT  
SPOKANE COUNTY, WA

**STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
GREYHOUND LINES, INC.,  
  
Defendant.

CASE NO. 20-2-01236-32  
  
] ORDER DENYING  
GREYHOUND LINES, INC.'S  
MOTION TO DISMISS OR JOIN  
UNDER CR 12(B)(6) AND 12(B)(7)  
  
Noted for Hearing:  
December 18, 2020, 10:30 AM

THIS MATTER comes before the Court on Defendant Greyhound Lines, Inc.'s Motion to Dismiss or Join Under CR 12(b)(6) and 12(b)(7). The Court is fully advised and has reviewed the following:

1. Defendant's Motion to Dismiss or Join Under CR 12(b)(6) and 12(b)(7);
2. Declaration of Jesse L. Miller in Support of Motion to Dismiss or Join Under CR 12(b)(6) and 12(b)(7) and exhibits attached thereto;
3. Plaintiff State of Washington's Opposition to Greyhound Lines, Inc.'s Motion to Dismiss or Join Under CR 12(b)(6) and 12(b)(7); and
4. \_\_\_\_\_
5. \_\_\_\_\_


1 Having considered the foregoing submissions and the arguments of counsel, the Court  
2 hereby finds:

3 1. With respect to Greyhound's request for dismissal under CR 12(b)(6), each claim  
4 in the State's Complaint sets forth a claim upon which relief can be granted. Greyhound has not  
5 demonstrated that any of the State's claims under the Consumer Protection Act (CPA) or  
6 Washington Law Against Discrimination (WLAD) are preempted.

7 2. With respect to Greyhound's request for compulsory joinder or dismissal under  
8 CR 12(b)(7), United States Customs and Border Protection (CBP) is not a necessary party. Nor  
9 is CBP an indispensable party. Even if CBP were "necessary" under CR 19(a), equity and good  
10 conscience require proceeding without it because CBP is not an indispensable party under  
11 CR 19(b).


12 Accordingly, the Court hereby ORDERS, ADJUDGES and DECREES as follows:  
13 Defendant's Motion to Dismiss or Join Under CR 12(b)(6) and 12(b)(7) is DENIED.

14  
15 Dated this 16 day of Mar, 2020.

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19 Hon. Maryann C. Moreno  
20 Superior Court Judge  
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1 Presented by:

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