

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE  
& DEMOCRACY  
\*\*NEWS\*\*

Dear Friends,

Let's celebrate! As a friend of the Center for Justice & Democracy, you are a key part of the nationwide consumer movement to fight attacks on victims' rights.

And it's been a busy year. We've produced research and analysis for federal and state lawmakers; educational and advocacy materials, including reports, fact sheets, FAQ's, newsletters, social media images, and position letters; testimony and comments to Congress and governmental agencies; an award-winning blog (The Pop Tort); contributed to media outlets like the *Huffington Post*, the *New York Times*, and other new and traditional media publications – and so much more!

With the generous support of our friends, we have helped hold back a massive effort by corporate special interests to take full control of the U.S. civil justice system. On to 2016!

Sincerely,

Joanne Doroshov  
Executive Director

## IMMIGRANTS AND CIVIL JUSTICE

### HOW CIVIL LAWSUITS CAN HELP

Every person in the United States, regardless of immigration status, is entitled to the constitutional guarantees of equal protection and due process. Yet time and again, these fundamental protections are denied to immigrants, who are often exploited by employers, subjected to prison-like conditions while awaiting immigration hearings, discriminated against when obtaining healthcare and injured by a host of other civil rights abuses. Given that there are an estimated 45 million immigrants in the U.S. – 11 million of whom are said to be undocumented – the potential number of victims is alarming.

For many immigrants, the civil justice system is the only tool for holding companies and other bad actors accountable for unfair, dangerous or deadly practices that cause harm. Recent court victories include a 2015 settlement between Signal International and more than 200 guest workers, who, after arriving from India to rebuild



oil rigs damaged by Hurricane Katrina, were denied promised green cards or permanent U.S. residency and were each forced to pay \$1,050 per month to live in guarded labor camps where as many as 24 men were crammed into spaces no bigger than a double-wide trailer. In addition, security guards had detained workers who complained about such abuses. After a jury awarded \$14 million in the first of a series of lawsuits, Signal agreed to pay \$20 million to settle allegations of human trafficking, forced labor, racketeering and other violations. "They persevered and won justice," Southern Poverty Law

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### THE BUSINESS OF INCARCERATING IMMIGRANT DETAINEES

On September 17, 2015, the U.S. Commission on Civil Rights issued a 130-page report detailing widespread abuse of immigrants held in federal detention centers. Among those condemned by the Commission: GEO Group (GEO), one of the largest corporations running private, for-profit, contracted detention facilities (CDFs) in the United States. Dangerous medical care at GEO-operated centers was a major concern. GEO was also cited as a detention center operator that subjects immigrants to prison-like conditions and for long periods of time as they await federal immigration hearings. For example, at the company's Adelanto Detention Facility,

there's a segregation block, with "[m]ost detainees in segregation cells [being] sent there for fighting with other immigrants, according to guards."

To the surprise of many, on the same day the Commission's findings were released, U.S. Immigration and Customs Enforcement (ICE) announced an \$11 million-per-year contract with GEO to spearhead a non-detention alternative. According to the September 22, 2015 *Houston Press*, "Advocates and immigration attorneys say they fear the new contract, for a pilot

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Center Board Chair and lead counsel Alan Howard said in a July 13 statement. “This agreement sends a powerful message that guest workers have rights and cannot be exploited.”

Class action suits have also brought about fair treatment for large numbers of immigrants and their families. For example, a historic 1997 class action agreement, known as the Flores Settlement, established the first guidelines governing the treatment of immigrant children in the U.S. immigration detention system. As explained in a 2015 U.S. Commission on Civil Rights report, the agreement “required that detained immigrant children are to be given food and drinking water, medical assistance, access to toilets and sinks, adequate temperature controls and ventilation, proper security, and protections to insure that all unrelated children are separated from unrelated adults whenever possible. [The settlement] also required INS to release detained immigrant children as soon as possible, place children in the least restrictive settings, and implement standards of care and treatment for all children who are in the U.S. immigration detention system.”

This past August, California Governor Jerry Brown signed a bill that bars consideration of a child’s immigration status in civil actions involving liability. The law came about after the L.A. Unified School District claimed immigration status was relevant to calculating the potential future earnings of over 80 elementary school children who alleged they’d been sexually abused by a former teacher employed by the District. “An undocumented child deserves the same protections as any other child in our state,” said bill sponsor Assemblyman Jimmy Gomez, adding that the law will “ensure fairness for all minors and the prevention of devaluing any child, when they are the victims of crime, regardless of their immigration status.”

Civil lawsuits not only help uncover information about injustices, they can

also result in widespread publicity through mass media, alerting the public to hidden wrongs while shining a bright spotlight on entities and individuals that condone or perpetuate such abuses. Today’s news is populated with stories about mistreated immigrants, stories that wouldn’t be in the public eye but for the filing of civil actions – “Private Prison Company Forced Immigrants To Work For Free, Lawsuit Says,” “Immigrant women allege mistreatment at US detention centers,” “Blueberry farm workers file lawsuit for unpaid wages,” “Border Patrol destroys tapes of detention center conditions, group says,” “Immigrants Sue Texas For Denying Birth Certificates To U.S.-Born Children,” “Class-action suit claims Border Patrol violates immigrants’ civil rights,” “Judge blasts ICE, says immigrant children, parents in detention centers should be released,” the list of headlines goes on and on. Moreover, lawsuits and the public exposure that surrounds them can also prompt government agencies to act.



### **Workers’ Compensation**

When undocumented workers are hurt on the job, they can file a workers comp claim provided they’re allowed to under state law. However, this is a theoretical right, at best. As one government report put it, “Guestworkers who are injured on the job face significant obstacles in accessing the benefits to which they are entitled. First, employers routinely discourage workers from filing workers’ compensation claims. Because those employers control whether the workers can remain in or return to the U.S., workers feel enormous pressure not to file such claims. Second, workers’ com-

pensation is an ad hoc, state-by-state system.... As a practical matter, then, many guestworkers suffer serious injuries without any effective recourse.” Indeed, a 2015 OSHA report notes, “OSHA staff members have encountered many injured immigrant workers who have not filed for workers’ compensation out of fear of losing their jobs. These barriers are documented in numerous surveys of low-wage and immigrant workers who report being injured on the job and not filing workers’ compensation claims.”

Even though workers comp claims are rare, third party actions can be brought. However, sometimes defendants – in an attempt to disrupt civil courts’ level playing field and avoid financial accountability – have seized on anti-immigration rhetoric to try to prejudice juries against victims. Fortunately several courts and lawmakers have stepped in to stop it. For example, in 2010, the Washington Supreme Court reversed a defense jury verdict against Alex Salas, an undocumented immigrant who had slipped from an unsafe ladder and fallen more than 30 feet to the ground while working on a construction site, crushing his pelvis, breaking his leg and wrist and suffering traumatic brain injury. The court ruled that immigration status evidence in the case was irrelevant, highly prejudicial and therefore inadmissible. Upon retrial, a jury awarded Salas \$2.59 million. More recently, in 2015, a California appeals court reversed a defense verdict after the trial court disclosed former factory worker Wilfredo Velasquez’s undocumented immigrant status to prospective jurors during jury selection. Velasquez alleged that workplace chemical exposure caused him to develop “popcorn lung,” a lethal disease that required a lung transplant. In its decision, the appeals court ruled that his status was irrelevant and “recognized the strong danger of prejudice attendant with the disclosure of a party’s status as an undocumented immigrant.”

program to test a probation-like system for immigrant families released from lockup, only further expands the private prison industry's reach in the U.S. immigration system."

And what a reach it is. As revealed in an April 2015 Grassroots Leadership investigative report, private prison corporations operate 62 percent of all ICE immigration detention beds in the U.S. and nine of the 10 largest ICE immigrant detention centers in the U.S. Two private companies – GEO and Corrections Corporation of America (CCA) – "dominate the immigration detention industry," which together operate eight of the 10 largest immigrant detention centers, 45 percent of total ICE detention beds and 72 percent of privately contracted ICE detention beds.

And it's the detainees who suffer from privatization. Abysmal medical care, physical abuse and other inhumane treatment are the product of a deeply flawed system where there's no federally-mandated minimal level of oversight for CDFs or any requirement that they comply with open records laws, which in turn allows the cycle of harm to continue without consequence. To make matters worse, private detention centers are only bound by the detention stan-

dards stated in their contract with ICE, regardless of whether the standards have been strengthened. In addition, "because these standards do not have enforcement mechanisms, facilities are not held accountable when they fail to maintain or meet these standards – at times with tragic results," the U.S. Commission on Civil Rights found.

Widespread abuse of women and children housed in for-profit family detention centers is also a major concern. This was the finding of multiple U.S. House Representatives who visited GEO and CCA's Texas facilities, where "hundreds of mothers grabbed my hands – telling me they were not criminals – and begging for their release while their children broke into tears" and "told me about insufficient medical care, spoiled food, dirty water and abusive treatment by prison guards," U.S. Rep. Zoe Lofgren (D-Cal.) said in a July 28, 2015 press release." Fellow California Congresswoman Judy Chu echoed these concerns: "What I saw on my visits to Dilley and Karnes was shocking. ... The bleak, barracks-like conditions these women and children were held in reminded me of the Japanese Internment camps. And like those camps, the damage of detention is long lasting. Prolonged detention re-traumatizes families, breaks apart the

parent-child relationship, and has serious cognitive effects on children."

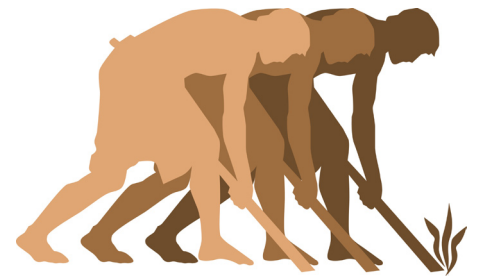
Scarred by horrific, inescapable conditions, victims and their advocates have recognized civil lawsuits as an important avenue to CDF accountability, transparency, oversight and/or reform. Take the 2007 groundbreaking class action settlement between the ACLU and ICE. The case was filed on behalf of immigrant children detained with their parents in Texas's T. Don Hutto detention center, a medium security adult prison managed by CCA. As reported by the ACLU, among many improved conditions reached in the settlement were, "Children are no longer required to wear prison uniforms and are allowed much more time outdoors. Educational programming has expanded and guards have been instructed not to discipline children by threatening to separate them from their parents." Other significant cases include the 2015 class action suit *Flores v. Johnson*, where plaintiffs successfully showed that immigrant children were being detained in prison-like conditions in violation of the 1997 Flores class action settlement, which governed the treatment of unaccompanied minors apprehended at the border.

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## THE EXPLOITATION OF IMMIGRANT WORKERS

"I slept in a room with about 16 other workers.... There was no air conditioning in the house, and it got really hot and buggy in the summer months. The tap water smelled so foul that we couldn't drink it. We had to spend some of the little money we made each day on bottled water." "I often worked in the packing shed from 6 a.m. to 11 p.m. without a single day of rest.... Our schedule was exhausting but we never received any additional compensation for the long hours we worked." "Our pay would come out to approximately \$25 for a 12-hour workday. At the end of the season, I had only saved \$500 to send home to my family." "When the supervisor would see that a person was

ready to leave the job because the pay was so bad, he would take our papers from us. He would rip up our visa and say, 'You don't want to work? Get out of here then. You don't want to work? Right now I will call immigration to take your papers and deport you.'" "The employer had too many workers. ... We just sat around the house day after day. We were desperate for work, but the grower warned us that if we tried to work for anyone else, he would call Immigration and have us deported. We could hardly afford to buy food. On a few occasions, we went out into the woods to look for herbs to eat." "I fell backwards down about five meters and my leg ended up bent underneath me.... The supervisor



told me, 'Get up, get up,' so that I would continue working. When he saw I did not want to get up, he said, 'Don't be a stupid wimp,' so I had to keep spraying. My leg was swollen and I asked the crew leader to take me to the doctor. He told me ... he didn't have time to be taking me to the doctor. Finally I went to the doctor on my own. I have thousands of dollars in medical bills and

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I have never received any money for the time I lost from work. This was more than a year ago and my leg still swells, hurts and I almost can't work." "I didn't have my documents or any money. And we were so far away from the town. I didn't know where to go for help or how to get away. And the crew leader kept a close watch over us at all times. He often warned us that if we left, he would tell the employer and have us reported to Immigration right away."

Such stories, told by victims in a 2013 Southern Poverty Law Center report, are indicative of the labor and human rights violations suffered by many of today's guest workers – immigrants legally authorized to temporarily reside and work in the United States, whose immigration status is entirely dependent on their employer and who, time and again, are preyed upon by employers that force long work hours for substandard wages, recklessly expose them to dangerous work conditions, leave them without a safety net when they're injured on the job, threaten to fire them if they speak up and/or use fear of deportation to force them into silence.

Undocumented workers, *i.e.*, immigrants who don't have legal authorization to work, face similar abuses. This is especially problematic given the number of undocumented workers in the U.S. labor force: over 8.1 million per year since 2007, constituting 5.1 percent of the entire American workforce and representing 26 percent of all farming, fishing and forestry workers, 14 percent of construction and extraction workers, 9 percent of production (*e.g.*, manufacturing, food processing, textiles) workers and 9 percent of service workers (*e.g.*, janitors, cooks, child care workers), according to a March 2015 Pew Research Center study.

Weak government oversight and enforcement have left immigrant workers with the responsibility of taking action to protect themselves from abuses. Most are not aware of their rights, and even if they are, they run the risk

of employer retaliation for filing Equal Employment Opportunity Commission (EEOC), workers' compensation, tort and other claims that seek to remedy workplace or civil rights violations, which in turn stops immigrant workers from filing claims altogether, leaving dangerous or unfair labor conditions intact. As Southern Poverty Law Center (SPLC) Supervising Attorney Daniel Werner testified before the U.S. Equal Employment Opportunity Commission on June 17, 2015, "Fear of retaliation is the single greatest factor that dissuades immigrant victims of discrimination and other labor abuses from seeking justice. ...[A]busive employers fully recognize the impact threats of deportation or repealing a worker's immigration status can have on the worker's willingness to remedy discrimination. Second, both undocumented workers and visa holders without portability between jobs have very limited or even no opportunities for other employment. Therefore, while retaliatory termination can have financial consequences for most workers, these consequences are particularly dire for immigrant workers who are unable to participate in the free market of labor."

This "climate of impunity for employers" also has broader ramifications. As argued in a March 17, 2015 *Nation* article, "When bosses profit from exploiting immigrants, society bears the cost, according to ACLU researcher Sarah Mehta: 'This climate of fear and insecurity not only impacts undocumented individuals but harms all workers by limiting their ability to organize and defend their labor rights and to report and reform hazardous working conditions,'" which in turn drags down wages and workplace standards for everyone.

Documented or not, immigrant workers should not be afraid to assert their rights and blow the whistle on bad employers nor should they have to bear the costs of injury and abuse. At a minimum, Congress should enact legislation to combat U.S. Supreme Court decisions that have created barriers for immigrants to vindicate their rights and allocate more

resources to federal agencies that oversee and enforce worker protections. In addition, the EEOC should continue bringing cases on behalf of all guest and undocumented workers, and over the course of the litigation, "seek protective orders and in limine orders prohibiting inquiries into or disclosure of a claimants' immigration status. The EEOC also should remain vigilant over the course of its litigation and have a plan in place to respond immediately to allegations of intimidation or blacklisting," SPLC's Daniel Warner told the EEOC. Moreover, states should take concrete steps to investigate and eliminate worker exploitation and abuse across industries, as New York recently pledged when announcing the creation of a new state-wide, multiagency task force that would devote particular attention to the plight of undocumented workers.

If concerted action is not taken, guest and undocumented workers will remain victims of unscrupulous businesses who profit off their backs as they toil in the shadows.



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### IMPACT

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