

Dollar-a-Day: Immigrant Detention and Forced Labor

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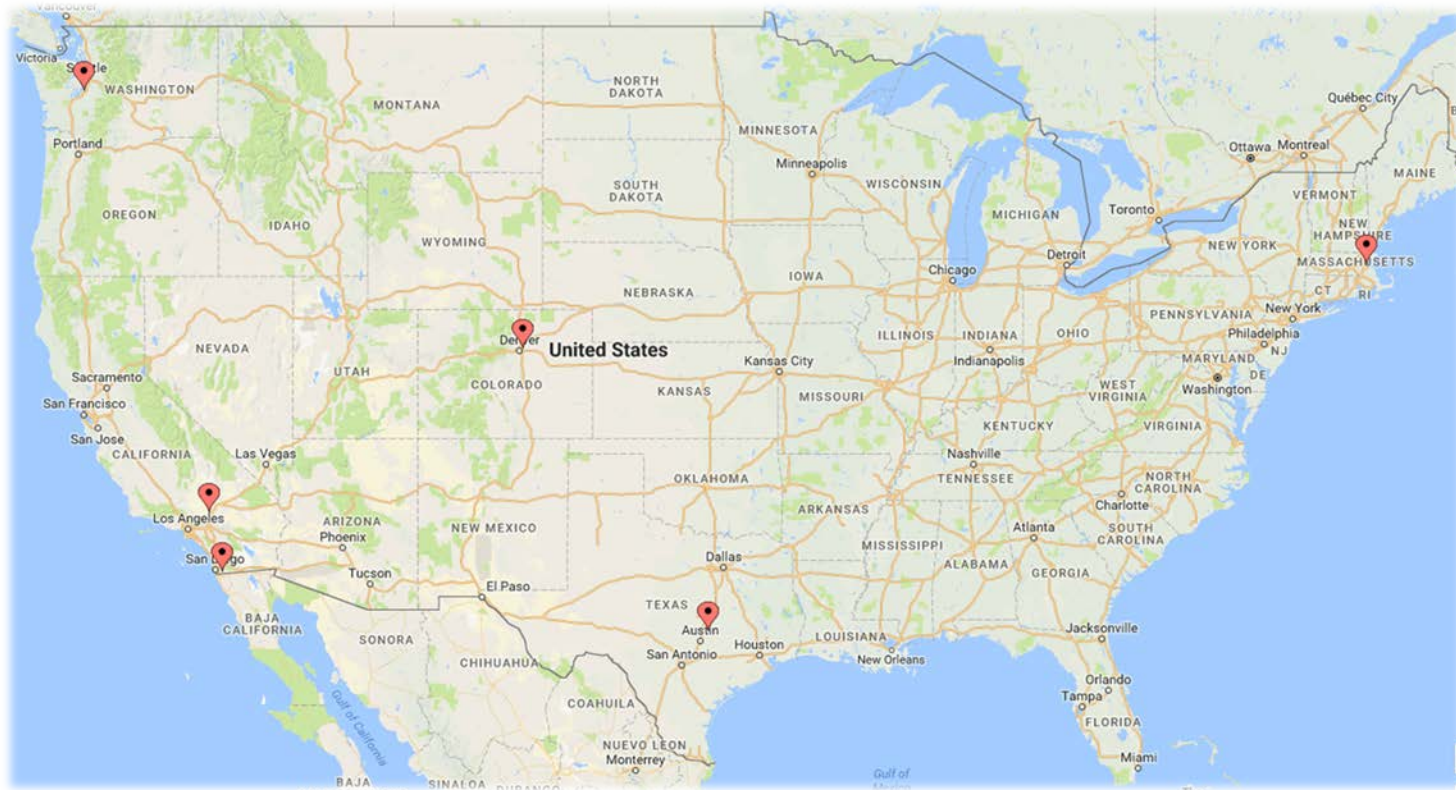
Megan Hope, *RMIAN*

Panel Overview

- I. Forced Labor in Immigrant Detention Centers
- II. Case Study: *Menocal v. The Geo Group*
- III. Other Intersections of Detention & Trafficking
- IV. Q&A



Immigration Prison Labor Litigation in the U.S.



- **Northwest Detention Center, Tacoma, WA (GeoGroup)**
 - State of Washington v. The GEO Group, Inc., No. 3:17-cv-05806 (W.D. Wash.)
 - Chen v. The GEO Group, No. 3:17-cv-05769-RJB (W.D. Wash.)
- **Adelanto ICE Processing Center, Adelanto, CA (GeoGroup)**
 - Novoa v. The GEO Group, Inc., No. 5:17-cv-02514 (E.D. Cal.)
- **Otay Mesa Detention Center, San Diego, CA (CoreCivic)**
 - Owino v. CoreCivic, Inc., Case No. 3:17-cv-01112-JLS-NLS (S.D. Cal.)
 - Gonzalez v. CoreCivic, Inc., No. 3:17-cv-02573 (S.D. Cal.)
- **Aurora ICE Processing Center, Aurora, CO (GeoGroup)**
 - Menocal v. The GEO Group, Inc., Case No. 14-cv-02887-JLK (D. Colo.)
- **T. Don Hutto Residential Center, Taylor, TX (CoreCivic)**
 - Gonzalez v. CoreCivic, Inc., No. 1:18-cv-169 (W.D. Tex.)
- **Suffolk County House of Correction (Suffolk County Sheriff)**
 - Whyte v. Suffolk County Sheriff's Department, No. 16-P-751 (Mass. Superior 2016) (dismissed)

ALLEGATIONS

Case/Prison	Plaintiff(s)	TVPA claim?	Threats of discipline	"Company store"/deprivation of basic necessities	State tort/contract/quasi-contract	Wage claims	Other claims	Notes
<u>Menocal v. The GEO Group, Inc. (2014)</u> , / Aurora ICE Processing Center (CO)	Certified class (Aurora)	Yes	Threat of solitary confinement for not cleaning "pods"/required to participate in "sanitation program"	Not alleged	Unjust enrichment	CO Minimum Wage Order (dismissed)	None	Geo's motion to dismiss denied; class certified; aff'd at 10 th Cir.
<u>Whyte v. Suffolk County Sheriff's Department (2016)</u> / Suffolk House of Correction (MA)	Plaintiff putative class	No	Not alleged	Not alleged	Breach of contract, quantum meruit, unjust enrichment	MA Minimum Fair Wage Law	None	Case dismissed. Plaintiffs were not employees under MA law, and there was no contract for or expectation of higher wages. 91 Mass. App. Ct. 1124 (May 24, 2017)
<u>State of Washington v. The GEO Group, Inc. (2017)</u> / Northwest Detention Center (WA)	State of Washington	No	Not alleged	Immigration prisoners sometimes "paid" with snack food instead of \$1/day	Unjust enrichment	WA Minimum Wage Law		Removed to federal court, where GEO filed MTD claiming IRCA preempted WA MW law & state did not please sufficient facts to support unjust enrichment. Court denied MTD
<u>Chen v. The GEO Group, Inc. (2017)</u> / Northwest Detention Center (WA)	Plaintiff putative class (Tacoma)	No	Same as <i>Washington v. The Geo Group, Inc.</i>					On 3/29/2018, GEO filed motion claiming ICE is an indispensable party that can't be joined; that case should be dismissed.
<u>Owino v. CoreCivic, Inc. (2017)</u> / Otay Mesa Detention Center (CA)	Nation-wide & state plaintiff putative classes	Yes	Threat of solitary confinement for not cleaning/maintaining living/interior/exterior areas for no pay.	Plaintiffs paid \$1/day for various jobs; could only spend the money at the prison commissary.	Negligence; unjust enrichment	CA Labor Code	CA Unfair Competition Law, CA TVPA	<u>CoreCivic</u> filed motion to dismiss. Case stayed while court considers motion to consolidate with <i>Gonzalez v. CoreCivic</i> .
<u>Gonzalez v. CoreCivic, Inc. (2017)</u> / Otay Mesa Detention Center (CA)	4 plaintiff putative classes (Otay Mesa only)	Yes	Threat of solitary confinement, cutting off communication and visitation with family, reporting to ICE, or referral for criminal prosecution for refusing to work.	Work in pods performed in exchange for basic necessities (and under threat of discipline)	Unjust enrichment	Ca Labor code	CA Unfair Competition Law, CA TVPA	Plaintiffs' counsel filed motion to consolidate with <i>Gonzalez</i> . <u>CoreCivic</u> opposed. Motion pending.
<u>Gonzalez v. CoreCivic, Inc. (2018)</u> / T. Don Hutto Residential Center (TX)	Nation-wide plaintiff putative class	Yes	Threats of solitary confinement/ making "frequent examples of" prisoners who complained or refused to work. Climate of fear.	Plaintiffs paid \$1-\$2/day for various jobs; could only spend the money at the prison commissary. If not working, had to wait hours for feminine/personal hygiene products.	Negligence; unjust enrichment; quantum meruit	None alleged	None alleged	Pending

TVPA Elements Matching (audience participation)

"Company store"	Knowingly provides/obtains labor...
Limiting access to basic necessities	[Threats of] Force
Reporting to ICE/criminal prosecutors	[Threats of] Physical restraint
"Voluntary work program"	[Threats of] serious harm
\$1-\$3 wage per day	<ul style="list-style-type: none"> Financial harm
Solitary confinement	<ul style="list-style-type: none"> Psychological harm
Cutting communication/visitation with family	Scheme/pattern/plan intended to cause person to believe will suffer PR/SH
[Exorbitant phone charges]	[Threatened] abuse of legal process
General climate of fear at detention center	Knowingly benefitting financially/ receiving anything of value from participation in a venture...

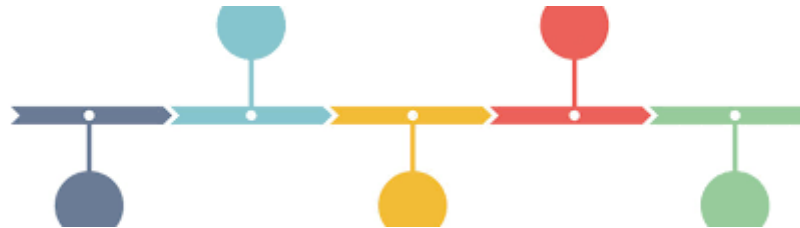


Case Study: *Menocal v. The GEO Group, Inc.*

TOWARDS JUSTICE
DEFENDING THE DIGNITY OF WORK



Case Study: *Menocal v. The GEO Group, Inc.*



Case Timeline	
October 2014	Case Filed
July 2015	Plaintiffs Proceed with Forced Labor & Unjust Enrichment Claims; Wage Claims Dismissed
February 2017	District Court Certifies Class
February 2018	Tenth Circuit Upholds Class Certification
Present	Discovery; Ongoing

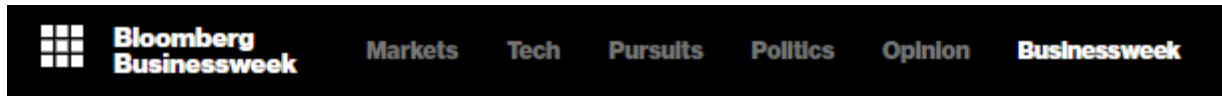
Case Study: *Menocal v. The GEO Group, Inc.*

Case Overview

- Case Attacks two Policies
 - Housing Unit Sanitation Policy
 - “Voluntary” Work Policy
- Clients Allege
 - Forced Labor
 - Unjust Enrichment



Case Study: *Menocal v. The GEO Group, Inc.*



■ November 8, 2017, 4:00 AM MST

Are Private Prison Companies Using Forced Labor?

● Geo Group is being sued by detainees who claim they're forced to work for free.

Case Study: *Menocal v. The GEO Group, Inc.*

Forced labor provisions of TVPA makes it unlawful for anyone to:

Knowingly provide[] or obtain[] the labor or services of a person. . .

- (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- (2) by means of serious harm or threats of serious harm to that person or another person;
- (3) by means of the abuse or threatened abuse of law or legal process; or
- (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

18 U.S.C. § 1589

Case Study: *Menocal v. The GEO Group, Inc.*



Plaintiffs allege that forcing detainees to clean under threat of solitary confinement violates the Trafficking Victims Protection Act's ("TVPA") prohibition on forced labor

Work performed without any compensation AT ALL

Case Study: *Menocal v. The GEO Group, Inc.*

Each day, pursuant to the Housing Unit Sanitation Policy, six randomly selected detainees are required to clean the facility's "pods" **without compensation**

- Pods include common eating areas, toilets, and showers
- Written and oral policies threaten solitary for refusal to clean:
 - GEO Detainee Handbook Local Supplement states that failure to perform duties under the Sanitation Policy is a high-moderate offense punishable by up to 72 hours in disciplinary segregation, among other sanctions
 - Guards threatened detainees with "the hole"



Case Study: *Menocal v. The GEO Group, Inc.*

HUFFPOST



LATINO VOICES 10/31/2014 03:40 pm ET | Updated Oct 31, 2014

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Detention Center Forced Immigrants To Work For \$1 Per Day Or Face Solitary Confinement, Lawsuit Says

 By Roque Planas



KARL GERING VIA GETTY IMAGES

A group of former immigrant detainees is suing the owner of a Colorado detention center, alleging that it forced them to work for \$1 per day and coerced them using the threat of solitary confinement if they refused to comply.



TRENDING

 Jim Carrey's Submission For Donald Trump's Official Portrait Cannot Be Unseen

 Pulse Nightclub Shooter's

Case Study: *Menocal v. The GEO Group, Inc.*

Plaintiffs claim that GEO was unjustly enriched by paying detainees who participated in its Voluntary Work Program (VWP) only \$1 per day



Case Study: *Menocal v. The GEO Group, Inc.*

- As part of the VWP, detainees perform various tasks, such as maintaining the on-site medical facility, doing laundry, preparing meals, and cleaning
- ICE requires VWP participants to be compensated “at least \$1.00 (USD) per day”, but sets no maximum
- Wages for workers in Aurora, CO are substantially more than \$1/day
- GEO employs a single janitor to maintain entire multi-block facility



Case Study: *Menocal v. The GEO Group, Inc.*



IMMIGRATION

A Colorado judge just granted 62,000 former immigrant detainees the right to sue GEO Group over forced labor, enrichment

David Boddiger 3/5/17 4:02 PM

Case Study: *Menocal v. The GEO Group, Inc.*



Clients Pursuing Justice for Large Groups of Civil Immigrant Detainees

- Forced Labor Class: 50,000-60,000 people – all detained at GEO's Aurora Detention Facility since 2004
- Unjust Enrichment Class: 2,000-3,000 – all who participated in VWP

Case Study: *Menocal v. The GEO Group, Inc.*



Questions?

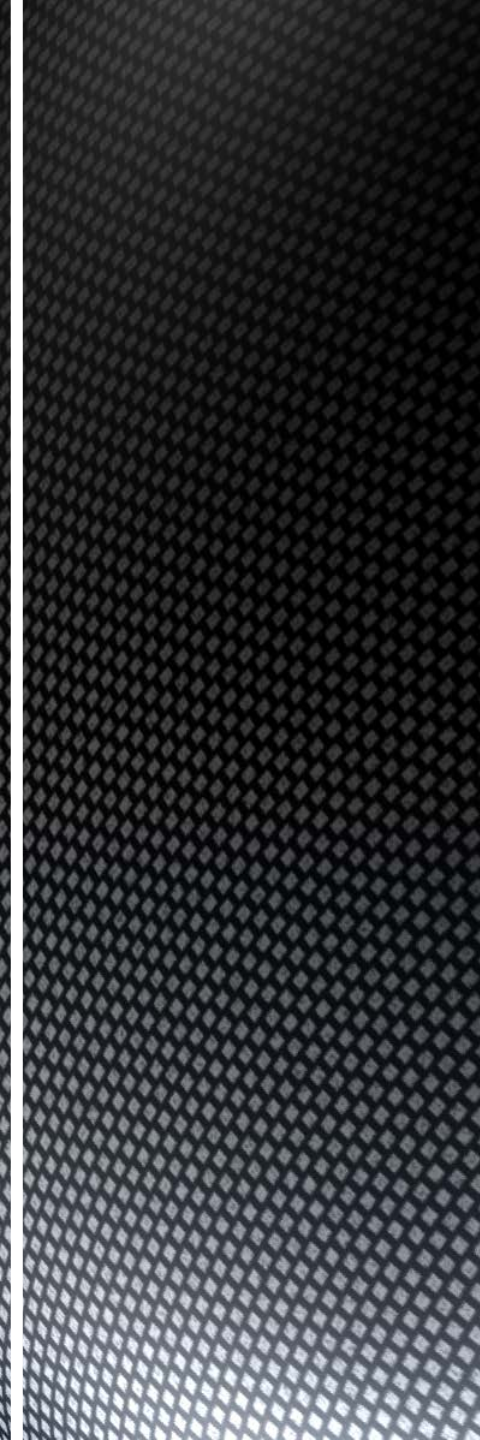
nina@towardsjustice.org

More about Towards
Justice?

www.TowardsJustice.org

Other Intersections of Detention and Trafficking

*Beyond trafficking IN
detention*



- Daily Know-Your-Rights presentations at GEO/ICE facility in Aurora
 - Include education about trafficking and forms of relief from removal
- Optional individual orientations/intakes
- Possible referral to staff or volunteer attorney for free representation
- *Pro se* support for unrepresented respondents



RMIAN's Efforts to Screen for Trafficking- Related Immigration Relief

Before detention

- Reporting to police/ICE and deportation = frequent threats of traffickers
- With current enforcement priorities, interaction with law enforcement (related or not to trafficking situation) is likely to lead to arrest by ICE and detention

In detention

- Detention conditions may be reminiscent of trafficking conditions
- Trafficked persons may be housed alongside traffickers
- Being trafficked does not guarantee eligibility for release from detention, nor relief
- Trafficking or other risks might continue after release from detention, whether in U.S. or home country

Interplay of Trafficking and Detention



Images on this and next two slides from <https://riniart.com/index.html>

- Prepare yourself and clients for the great unpredictability of visitation and communication in detention
- Practice self-awareness, especially of your inevitable, relative power and privilege
- Clearly explain your role
- Offer choices whenever possible, including about where to meet
- Be aware of mixed company (guards, ICE officials, other detainees clients may perceive as threatening)
- Be extra mindful of challenges to confidential communication—in person, on phone, with family and loved ones who may not know about person's past or detention

Talking Sensitively and Effectively with Immigrants in Detention about Trafficking (and Other Sensitive Topics)



- Ask broadly about possible trafficking experiences, including during migration and long ago
- Learn some basics about resources available to people in detention and their families (submitting kites for medical and mental health detention, filing grievances)
- Acknowledge limitations, pressures, and uncertainties related to potential relief processes
- Honor self-determination; respect clients as experts on themselves and their needs and desires
- Remember that clients' potential trafficking experiences, difficulties in detention, and eligibility for relief may not be the things that are most upsetting or important to them

Talking Sensitively and Effectively with Immigrants in Detention about Trafficking (and Other Sensitive Topics)



- 1. First consult with existing local visitation programs, post-detention hospitality providers, advocacy organizations, and legal service providers
 - In Colorado, these include:
 - Casa de Paz, casadepazcolorado.org
 - American Friends Service Committee, afsc.org/office/denver-co
 - Rocky Mountain Immigrant Advocacy Network, rmian.org/
 - Towards Justice, towardsjustice.org/
- 2. Consider requesting a tour
- 3. Consider becoming a volunteer visitor
- 4. Consult Freedom for Immigrants (formerly Community Initiatives for Visiting Immigrants in Confinement—CIVIC) freedomforimmigrants.org/visitor-volunteer-resources/
 - Many resources on beginning volunteer visitation programs, conducting inspection tours, doing community organizing, etc.
- 5. Consult Detention Watch Network (national conference in Denver, May 17-19) detentionwatchnetwork.org/

Learning about Your Local Immigration Detention Center

GEO Aurora (Colorado) ICE Processing Center

Source: The GEO Group, Inc., <https://www.geogroup.com/FacilityDetail/FacilityID/31>



Q&A