

TOWARDS JUSTICE

DEFENDING THE DIGNITY OF WORK

April 2016 Updates

Litigation Updates

VICTORY IN AU PAIR CASE

In April, Judge Arguello in Colorado federal court issued an important decision in a class action lawsuit brought by Towards Justice on behalf of all au pairs (J-1 visa holders) against the 15 US State Department-approved sponsors of au pairs. Judge Arguello agreed with the au pairs that (a) the federal and state minimum wage laws apply to au pairs; (b) au pair employers may not deduct the costs of room and board from their wages; (c) the au pairs adequately alleged that the sponsors unlawfully agreed among themselves to hold au pair wages to the illegal level of \$195.75 per week – far below the federal and state minimum wage; and (d) the au pairs adequately alleged that the sponsors lied to them about their wages. The court allowed Plaintiff's federal and state wage and hour, antitrust, racketeering, fraud, breach of fiduciary duty, quasi-contract, and unjust enrichment claims to go forward.

XCLUSIVE STAFFING

In March, Towards Justice filed a new case, Valverde v. XClive Staffing, in which workers allege that Xclusive Staffing and its President Diane Astley have been stealing hard earned wages through illegal deductions and other wage and hour violations for years. This is so despite five (5) investigations by the United States Department of Labor since 2011, and Ms. Astley's repeated assurances that the company would stop stealing wages.

[CLICK HERE FOR MORE DETAILS](#)

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Education & Events

OUTREACH TRIP TO DURANGO

Executive Director Nina DiSalvo traveled to Durango earlier this month to conduct four outreach and training programs for lawyers, advocates, and workers. In collaboration with La Plata Thrive! and Compañeros Immigrant Resource Center, Nina hosted a Just Wages Navigator Training, a Wage Theft Awareness Discussion with policy makers and community leaders, and a Know Your Worker Rights training for workers interested in workplace rights and pathways to redress. Finally, Nina presented a Continuing Legal Education class to the Southwest Bar Association and engaged with our growing network of Collaborating Private Attorneys in southwest Colorado. If you are interested in having a Towards Justice representative visit your community, click [HERE](#) to send an inquiry.

WAGE JUSTICE DAY

Towards Justice and the Plaintiffs Employment Lawyers Association hosted a day-long continuing legal education program for attorneys interested in expanding their wage and hour practices by joining the Towards Justice Collaborating Attorneys Network. Attorneys in our network agree to be connected to individual workers in need of support as they pursue justice in a wage theft case. To learn more about the collaborating attorney's network, click [HERE](#).

Donors & Volunteers

IMPACT FUND / GEO CASE

In March, Towards Justice received a grant of \$15,000 from the Impact Fund, a grantmaking institution that provides funding for impact litigation to support social justice for marginalized communities, and provides legal support for lawyers through grants, co-counsel, and training events. The Impact Fund grant will directly support the costs Towards Justice incurs while litigating Menocal et al v. The GEO Group, a unique case designed to vindicate the rights of civil immigrant detainees held at The GEO Group, Inc.'s Aurora, Colorado detention center.

LAUNCH OF JUST WAGES NAVIGATOR PROGRAM

In April, Towards Justice, in collaboration with the Wage Theft Task Force, launched the Just Wages Navigator Program as a way to engage nonprofit professionals, union organizers, and individuals involved in immigrant and refugee communities in the fight against wage theft. Just Wages Navigators are non-attorney advocates who receive training on how to support low-wage workers as they navigate the Colorado Department of Labor and Employment wage claim process. As of today, Towards Justice has trained over 30 Just Wages Navigators, each of whom has committed to helping at least one worker within a 12-month period. Read about our first Navigator in the SPOTLIGHT! section below. To learn more or to become a Just Wages Navigator, please contact Navigator@towardsjustice.org



MEET TOM MITCHINER

This month, we are launching a new feature: a spotlight on an outstanding person or company that has made an indelible impact on Towards Justice. Please meet Tom Mitchiner, Towards Justice's first-ever Just Wages Navigator.

Tom is an attorney and recently opened his own law firm, Mitchiner Law, LLC, which practices about 85% wage and hour law and 15% estate planning. Tom participates in the Colorado attorney mentor program which is how he first learned about Towards Justice. In his words, "before learning about Towards Justice I had no idea how widespread [wage theft] was and how difficult it was for victims of wage theft to recover the money they are owed." After understanding more of the issue, he felt that becoming a Just Wages Navigator was the chance to start something new that could impact thousands of lives in a positive way.

Tom is most excited about Towards Justice because of the people. After leaving the traditional, intense law firm world, Tom enjoys being a part of such a collegial workplace and is inspired by the great work that Towards Justice is doing. The encouragement he receives from the staff has helped him learn the ropes and it was Towards Justice's own Nina DiSalvo who first encouraged Tom to open his own firm.

"Tom's passion for helping low-wage workers is contagious," said Towards Justice Executive Director Nina DiSalvo. "Tom has not only assisted multiple workers in presenting wage theft claims to the Colorado Department of Labor, he has also helped Towards Justice to think through the systems and administrative details essential for launching this state-wide initiative. Thank you Tom!"

In his spare time, Tom is an avid telemark skier. He recently broke his collarbone while pursuing this passion, but is not deterred. He still aims to ski every month of the year, and will mountain bike, rock climb, run, and do just about anything else outdoors over the summer. Tom's passion for helping others started at an early age: in high school, he was a volunteer soccer coach for children with Autism. When he isn't fighting wage theft, battling the elements, or helping others, Tom can be found spending time with his nephews and niece.

Thank you so much, Tom, for your incredible effort!

TOWARDS JUSTICE

DEFENDING THE DIGNITY OF WORK

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Executive Director, Nina DiSalvo: Nina comes to Towards Justice from Governor Cuomo's administration in New York State, where she served as Special Counsel to the Secretary of State. In that capacity, Nina worked to create the New York State Office for New Americans, the Empire State Fellows Program, and the Regional Economic Development. Prior to joining New York State government, Nina was a lawyer associated with Willkie Farr & Gallagher LLP, where she dedicated substantial time to employment law litigation. Nina has also served on the Junior Advisory Board to Her Justice in New York City, worked as a research fellow with human rights organizations in Argentina, and taught high school in rural Puerto Rico. Nina is fluent in Spanish and English, and grew up between upstate New York, Puerto Rico, and the Turks and Caicos islands. Nina received her law degree from the University of Virginia School of Law, and her Bachelor of Arts in government and Latin American studies from Wesleyan University. Nina is admitted to practice law in New York and Colorado.

Towards Justice Staff

Director of Litigation, Alexander Hood: Alex co-founded Towards Justice with Andrew Schmidt (see below) and has worked litigating employment rights and other cases on behalf of low-income clients in the Denver metro area for over four years. Alex has been the attorney of record in over 30 cases in the Colorado state courts and over 10 cases in the federal courts, which include both class action and Fair Labor Standards Act collective action litigations. Through his work as a litigator, Alex has developed extensive knowledge of state and federal wage and hour law, including the Colorado Wage Claim Act, the Colorado Mechanic's Lien Statute, the Fair Labor Standards Act, and the Agricultural Workers Protection Act. Alex received his bachelor's degree from Williams College and his law degree cum laude from Boston College Law School.

Of Counsel, Andrew Schmidt: Andy co-founded Towards Justice with Alex Hood (see above) and served as the Towards Justice managing attorney until fortunes moved him to Maine. Andy is now as a private litigator with Andrew Schmidt Law PLLC in Portland, but he continues to serve Towards Justice as a litigator and strategist on many of the groundbreaking cases. Along with his detailed grasp of federal and state wage and hour laws, he is pioneering the use of antitrust and fraud claims to vindicate the rights of low-wage and immigrant workers both in his private firm and with his Towards Justice colleagues. Andy graduated Phi Beta Kappa from Dartmouth College, where he received the prize for the best paper in Latin American history. He earned his JD from the University of Virginia School of Law, where he served as co-president of the school's Migrant Farmworker Project.

Attorney, David Seligman: David comes to Towards Justice from the National Consumer Law Center where he was a staff attorney working on forced arbitration and predatory auto lending. While at NCLC, he authored the Model State Consumer and Employee Justice Enforcement Act, which provides states with tools to mitigate some of the harms that forced arbitration causes low-income consumers and workers. Before joining NCLC, David clerked for Chief Judge Patti B. Saris of the District of Massachusetts and Judges Robert D. Sack and Susan L. Carney of the United States Court of Appeals for the Second Circuit. He has been passionate about issues affecting low-wage workers since law school, during which he worked for Make the Road New York and Altshuler Berzon, LLP, a labor law firm in San Francisco. David is a graduate of Williams College and Harvard Law School. He is also a Denver native who is thrilled to return home so that his Rockies can continue breaking his heart, but now in person.

Skadden Fellow, Dermot Lynch: Dermot came to Towards Justice as a Skadden Fellow. After completing clerkships at the U.S. Court of Appeals for the Tenth Circuit and the U.S. District Court for the District of Colorado, Dermot obtained a Skadden fellowship to work on increasing access to legal services for migrant sheep and cattle herders laboring on Colorado's rangelands. Dermot is particularly interested in this vulnerable worker population because of the two years he spent working as a Jesuit Volunteer in Peru, the country of origin for most of Colorado's migrant herders. Dermot speaks Spanish and English, and holds a B.A. from Loyola University-Chicago and a J.D. from Yale Law School. A native of Dublin, Ireland, Dermot has called Colorado home ever since his family immigrated to the state in the late 1980s.

Access to Justice Coordinator, Justin Grant: Justin came to Towards Justice from a role supporting the office of International Donor Relations at Habitat for Humanity in San Salvador, El Salvador. Justin's interest in social justice in Latin America and the Latino community was sparked while working as a Water & Sanitation Volunteer during Peace Corps service in Honduras. In that capacity, Justin facilitated the organization and education of community water committees, improving knowledge of basic sanitation practices and small-scale rural potable water systems. Justin earned his Bachelor of Arts from Grand Valley State University with an emphasis on social history and the Spanish language, and is pursuing a degree in Education at Metropolitan State University of Denver. Justin is originally from Grand Rapids, Michigan and has spent time living and studying in Argentina and Spain.

Outreach and Development Coordinator, Lindsay Fallon: Lindsay joins Towards Justice after earning her Master Degree from the University of Denver's Graduate School of Social Work, where she focused on policy and organizational leadership. Prior to graduate school, Lindsay developed and directed an alumni support network at D.C. Prep, the top performing charter school in Washington, D.C. In this role, Lindsay worked with families and community organizations to help improve students' access higher education. Prior to that Lindsay was Program Director at City Kids Wilderness Project, an organization that facilitates Washington, D.C. area youths' outdoor learning experiences both in the Mid-Atlantic, and the mountains of Wyoming. Lindsay graduated with a BA degree from Colorado College. Having grown up in Japan, Lindsay brings a unique perspective to our work at Towards Justice.

TOWARDS JUSTICE

DEFENDING THE DIGNITY OF WORK

2016 New Year Updates

Defending Shepherds Across the Western United States



Towards Justice represents current and former shepherds alleging that the Federal Government has failed in its duty to protect workers and prevent wage stagnation in the sheep ranching industry. Our clients allege that the United States Departments of Labor and Homeland Security - charged by Congress with preventing the influx of cheap foreign labor and the creation of a permanent, underpaid foreign workforce - have failed in these duties in violation of federal law.

Meanwhile, Towards Justice represents two former shepherds in a class action lawsuit alleging that ranchers across the Western United States colluded to depress shepherd wages, illegally deducted expenses from their meager paychecks, and misled state and federal governments in a pattern of racketeering activity. The shepherds' complaint describes an industry that has manipulated temporary worker visas to push American workers out of the business and replace them with workers who are less likely to complain about egregious working conditions. [CLICK HERE](#) to learn more about Defending Shepherds

Winning Wage Justice for Aurora Workers

The U.S. District Court for the District of Colorado approved a settlement agreement recovering \$305,000 vulnerable immigrant workers. With Towards Justice as counsel, Mr. Mancia sought the wages that were wrongfully withheld from him and from a class of 40 to 50 fellow grocery store workers. His employer acknowledged its mistake and agreed to pay its workers wages. [CLICK HERE](#) to learn more about Wage Justice for Aurora Workers



Au Pair Litigation: Beltran v. Noonan et al



Towards Justice represents a nationwide class of tens of thousands of au pairs who are bringing claims of price fixing, racketeering and wage theft against fifteen U.S. Department of State-designated “cultural exchange” sponsor organizations. These defendants bring approximately 13,000 foreign, mostly female, workers between the ages of 18 and 26 to the United States each year through the J-1 visa program to provide live-in child care to American families. The plaintiffs charge that these sponsors acted as a cartel to illegally set au pair wages far below the market rate, and that some sponsors fraudulently misled potential au pairs in violation of racketeering and consumer protection laws. Each of the fifteen sponsors offers au pair labor at the rate of \$195.75 per week, or only \$4.35 per hour far below the federal minimum wage of \$7.25 per hour, not to mention many states’ more generous minimum wages. Towards Justice represents

the plaintiff au pairs with co-counsel Boies, Schiller & Flexner LLP.

Update: Menocal et al v. GEO Group, Inc.

In an historic ruling, the Federal Court allowed Towards Justice's clients, current and former immigrant detainees held in Aurora, Colorado, to proceed with claims that The GEO Group, Inc. (the country's second largest private prison provider) violated the Trafficking Victims Protection Act (TVPA) and unjustly collected millions of dollars through abusive work programs. Towards Justice represents the plaintiff current and former detainees with co-counsel Milstein Law Office, Buescher, Kelman, Perera & Turner, P.C., The Meyer Law Office, and The Law Office of R. Andrew Free.

Victory in the 10th Circuit

On December 11th, the 10th Circuit ruled that a truck driver and Towards Justice client whose employer was guilty of wage theft could simultaneously obtain liquidated damages under the Fair Labor Standards Act and a penalty under the Colorado Wage Law. This ruling clarified the entitlements of wage theft victims, and will allow the Plaintiff to recover his hard earned wages.

You're helping Towards Justice Grow!

Just Wages

In October, Towards Justice hosted its first annual fundraising event. Over 200 people attended Just Wages!, celebrated our work and joined us in combating Wage Theft in Colorado and beyond. See pictures from the event below. [CLICK HERE](#) to support Towards Justice!



Three New Amazing Staff join the Team

Dermot Lynch, David Seligman, and Lindsay Fallon joined the Towards Justice team in 2015. Dermot and David, both litigate cutting edge wage theft cases, while Lindsay is supporting Towards Justice with development and outreach. [CLICK HERE](#) to learn more about our new Team Members!



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December 29, 2014

Dear Friends,

It has been an incredible year here at Towards Justice! When we opened our doors in January, we were determined to fight wage theft, defend economic stability for working families, and give voice to the voiceless.

Looking at the story of Alvino Villareal, one of Towards Justice's clients, it's working. A construction worker whose employer cheated him out of his wages, Alvino struggled to support his family. Without his overtime wages, Alvino could not pay his telephone bills and auto insurance. When Towards Justice helped Alvino recover his stolen wages, he explained that, "the amount that was owed to me was not large but money is important. You need it in order to survive and little by little you can pay for important expenses that help you and your family to survive."



In addition to cases like Alvino's, Towards Justice also handles class action litigation that promises to impact the treatment of immigrant workers nationwide. Towards Justice is now litigating six federal class action cases on behalf of large groups of workers who have all been exploited by the same employer. These cases raise unique legal issues and reflect the egregious employer conduct that Towards Justice combats, including the failure to provide employees with water or bathrooms and instead forcing them to drink from irrigation pipes or relieve themselves in a field.

I am so proud of all that we've accomplished this year, but I know that we are only just getting started. Your support this holiday season will help Towards Justice continue to defend the dignity of work for Alvino and the thousands of other workers in Colorado who are victims of wage theft every day.

Thank you in advance for your support - and here's to a successful 2015!

Sincerely,
Nina DiSalvo
Executive Director

www.TowardsJustice.org

TOWARDS JUSTICE

DEFENDING THE DIGNITY OF WORK

February Newsletter 2015

Creating New Avenues for Redress

Towards Justice advocated for passage of the Colorado Wage Protection Act, provided feedback about the rules that implement the Act, is now building a cadre of pro bono attorneys dedicated to representing low-wage workers seeking redress through the administrative process created by the Act. The Wage Protection Act went into effect on January 1, 2015.



Welcoming New Talent

Pro bono attorney Jill Rennert brings years of experience litigating at Skadden, Arps, Slate, Meagher & Flom, L.L.P and the Staff Attorney's Office at the United States Court of Appeals for the Second Circuit, to the Towards Justice team.



Collaborating to End Wage Theft

On Dec 12, 2014, Towards Justice and other wage justice advocates met with David Weil, the President Obama-appointed U.S. Wage and Hour Administrator, to discuss wage theft in Colorado.

Identifying Systemic Injustice

Through its first class action case filed in 2015, Towards Justice addresses the complex employment arrangements resulting from the increased use of staffing agencies in our labor market. This case, in which we represent a national class of workers against a large staffing company and a luxury hotel, reflects the concern expressed by the National Employment Law Project that employers subcontract-out workers to temp agencies or other labor brokers “to confuse workers about who the responsible employer is, and evade responsibility for basic wage and hour standards by hiding behind the intermediary, claiming that it is the sole responsible employer.” Winning Wage Justice, National Employment Law Project, Jan. 2011.

Raising Awareness of Wage Theft on PBS I-News

Executive Director Nina DiSalvo and Director of Litigation Alex Hood appeared on PBS I-News Colorado State of Mind show discussing the extent of wage theft in Colorado. Click [HERE](#) to watch!

Expanding Access to Justice

Towards Justice convinces the United States Court Administrator to remove an unnecessary bureaucratic requirement that created the perception that a social security number was required for an indigent person to file a claim in federal court.

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Client Testimonials

Marcelino

In early 2015, Marcelino contacted Towards Justice per the recommendation of El Centro Humanitario para Los Trabajadores. Marcelino was working as an interior painter and his employer paid him by check, which bounced when Marcelino deposited it. Marcelino was depending on his earned income and had to shift his finances and bill payments around to accommodate this unexpected void. Towards Justice represented Marcelino and was able to recover \$213.74. He said "I am grateful for the services that I received from Towards Justice. I entrusted Towards Justice to carry out the services that they offered and I am happy to have recuperated the money that was owed to me for my work."

Eduardo

Eduardo was hired to complete an exterior stucco job. He warned his employer that the job would not pass city inspection without a certain material. His employer ignored the requests for the additional material and when the job did not pass inspection the employer refused to pay Eduardo. Eduardo offered to re-do the job with the required material and paid for the materials himself. In the end, his employer owed him \$500 for the initial work and \$1000 for the new materials and redo. Eduardo said "When I realized that I had been a victim of wage theft I felt a little disgusted with the employer. I tried to speak with him about my unpaid wages and nothing happened. It affected me greatly thinking about how much time I spent working on this construction project. Because of these unpaid wages I had overdraft fees in my bank account because I did not expect to not be paid by my employer. I was going on as normal as though I would be paid for my work. It affected my wife and kids because we couldn't afford to pay some utilities like internet and power." Eduardo was directed to Towards Justice by El Centro Humanitario. Towards Justice helped Eduardo recuperate \$1000 in earned wages.

German

German was hired to paint a new urgent care facility in Westminster and worked 112 hours for which he was never paid. When German approached his employer about not being paid, his employer insisted that his wages were directly deposited into his account, but German had never given his employer any account information. When German became a victim of wage theft he said "it affected me greatly because I work hard and I drive many miles per day to perform work. I was spending money in order to drive and arrive to work each day, which was basically my investing my own money in order to work. After I performed weeks of labor and was not paid for it I had to figure out what I was going to do to pay my expenses. I lost all of that money driving to these jobs for this employer and didn't have much money left to pay my weekly expenses. I had to reach out to some nearby friends and my sister in order to pay a few expenses off and to mostly purchase more gas to continue working in other jobs." German learned about Towards Justice on the radio and reached out for assistance. Towards Justice recuperated \$918.05 for German.

Amin & Israel

Are both fathers of three and were hired as part of a team to complete an exterior paint job at a large apartment complex. Their employer refused to pay them for their work and our partner, El Comite de Longmont recommended that Amin and Israel reach out to Towards Justice. Amin said he was "counting on his earned wages to pay for his electricity and gas bill". Towards Justice represented both men and recuperated \$400.18 in earned wages.

Lawsuit: Western sheep operators colluded against workers

By BEN NEARY Sep. 3, 2015 12:50 AM EDT

CHEYENNE, Wyo. (AP) — Two former shepherds from Peru are accusing key players in the sheep industry in the western U.S. of conspiring to keep wages low for foreign workers.

Rodolfo Llacua and Esliper Huaman, represented by a Denver law firm called Towards Justice, are seeking to have their lawsuit treated as a class-action case seeking damages for current and former shepherds across the West.

The lawsuit, filed this week in U.S. District court in Denver, targets the Salt Lake City-based Western Range Association and Casper, Wyoming-based Mountain Plains Agricultural Service. The companies place foreign workers with sheep operations. The lawsuit also names eight sheep-ranching operations around the West as defendants.

For decades, the federal government has endorsed ranchers bringing in foreign shepherds to oversee vast herds in western states on the grounds that U.S. citizens wouldn't take the jobs. They are called "H2-A" workers after the federal labor program.

Between 2,000 and 2,500 H2-A workers are in the country, handling nearly all of the shepherd work that sustains the roughly \$275 million annual sheep industry in the West, the lawsuit states.

The herders, many from South American countries such as Peru, work for wages as low as \$750 a month. They commonly work seven days a week and up to 12 hours a day for months on end. They live in trailers or tents without plumbing or electricity, the lawsuit states.

"The amount they paid us never seemed right," Huaman said in a statement released by his lawyers. "Many fellow shepherds are still suffering under these low wages, and I hope that I can help benefit them through this complaint."

Llacua and Huaman say in their lawsuit that the Western Range Association and Mountain Plains Agricultural Service, as well as ranchers who hire foreign workers through them, violated anti-trust laws by colluding to keep wages at the minimum levels required by the federal government.

"We think that people working as shepherds should be fairly compensated, pursuant to regular market forces," said Nina DiSalvo, executive director of Towards Justice. Huaman is now working in Utah, while Llacua is in Colorado, she said.

Stung into action recently by an earlier lawsuit brought by U.S. sheepherders who claimed the foreign worker program was keeping wages artificially low, the U.S. Department of Labor early this year proposed a new rule that would ramp up pay for the herders up to \$2,400 a month by 2020.

In that earlier lawsuit, the U.S. herders argued that the Labor Department for years had operated essentially in a closed-loop system. They said the agency surveyed sheep ranchers to find out how much they paid their herders, and then — without seeking comment from anybody else — certified that it was appropriate for ranchers to continue to pay foreign herders at those low rates because no American workers were willing to take the jobs.

The federal agency's wage-hike proposal brought stiff criticism from the grazing industry and politicians in the West, with many asking to delay any change. Egan Reich, spokesman for the Labor Department in Washington D.C., said Wednesday that the agency intends to publish its final rule Nov. 1.

Kelli Griffith, executive director of Mountain Plains Agricultural Service, said Wednesday her company and its member ranchers have participated in the H2-A program for more than 25 years.

"They're experienced and diligent about complying with all their legal obligations," Griffith said of the ranchers who hire herders through Mountain Plains. "They really appreciate the hard work and all of the dedication of their employees. And these allegations — they are just allegations — they won't be taken lightly by the association."

Ellen Winograd, a lawyer in Reno, Nevada, represents the Western Range Association. She said Wednesday the company also will investigate the allegations of Llacua and Huaman.

"But because the Dept. of Labor and the H2-A visa program are so highly regulated at both the state and federal levels, it's difficult to imagine a scenario in which there can be any anti-trust violations because prevailing wages within the H2-a visa program are set by regulation and by statute," Winograd said.

Private Prison Company Forced Immigrants To Work For Free, Lawsuit Says

07/10/2015 12:44 pm ET | Updated Jul 10, 2015



Roque Planas

National Reporter for The Huffington Post.

When Alejandro Menocal got locked up in an immigrant detention center in Aurora, Colorado, last year, he volunteered to work in the recreation yard. A Mexican-born migrant who has lived in the United States since 1973, Menocal said he enjoyed the exercise. He later took a job at the detention center serving breakfast, lunch and dinner to some 60 detainees and helping to clean the dining room, he says.

The GEO Group, the private prison contractor that runs the detention center as a for-profit enterprise, paid Menocal \$1 per day for his work — a common practice across the United States, where many detainees toil for days in order to earn enough money to buy a phone card.

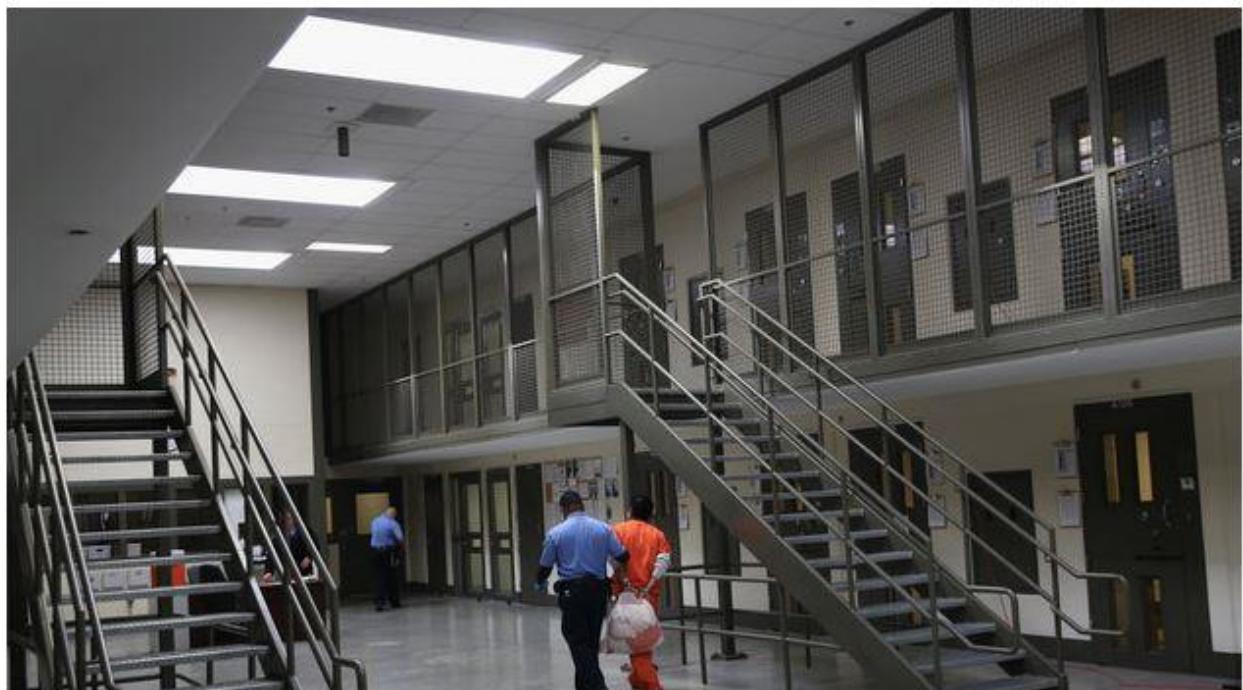
But Menocal's job at the cafeteria wasn't the only job he was expected to do. Each day, guards selected six detainees to clean each "pod" — a cell containing roughly 60 migrants — for no pay at all. One day, the six people chosen for pod cleaning duty refused to work. The guards swapped their orange jumpsuits for red ones, Menocal says, and punished them with solitary confinement, a chilling example for others who might follow their lead.

"They put them in isolation — we call it 'the hole,'" Menocal told The Huffington Post. "You don't get to see anybody all day, not even the guards who bring you food."



Roque Planas 

National Reporter for The Huffington Post.



Now Menocal is a plaintiff in a lawsuit accusing the country's second-largest private prison contractor of unjustly enriching itself with the labor of immigrant detainees and forcing them to do custodial work for free under the threat of solitary confinement. On Monday, U.S. District Judge John Kane denied the GEO Group's motion to dismiss the suit.

The lawsuit, filed last year on behalf of current and former immigrant detainees at the Aurora Detention Center, said that GEO violated Colorado's minimum wage law, as well as the Trafficking Victim's Protection Act, a federal law that bars forced labor. A third claim under common law accused GEO of illegally enriching itself at the detainees' expense.

While Kane denied GEO's motion to dismiss the suit, he also said that Colorado's minimum wage law wasn't intended to apply to immigrant detainees. But the lawsuit will move forward based on the other two claims.

A favorable decision for the former inmates could have broad implications for the largely privatized immigrant detention system, in which private companies routinely pay well below the minimum wage for custodial duties and other work.

"GEO is making millions and millions of dollars a year, in part because they're not paying the people who work at the facilities," Nina DiSalvo, the executive director of Towards Justice, a nonprofit organization working with the attorneys handling the lawsuit, told the HuffPost. "It's a pretty big deal that the regular practices that they've codified in policy handbooks would be forced labor."

GEO denied any wrongdoing in an email to HuffPost. "GEO's facilities, including the Aurora, Colo. Facility, provide high quality services in safe, secure, and humane residential environments, and our company strongly refutes allegations to the contrary," the statement says. "The volunteer work program at immigration facilities as well as the wage rates and standards associated with the program are set by the Federal government."

GEO has faced a series of allegations of misconduct at another immigrant detention center it runs in Karnes City, Texas, which houses immigrant mothers and their children. A group of women — many of whom had passed the first stages of establishing an asylum claim — launched a hunger strike before the Easter holiday to protest their continued detention. Some of the women said that guards at the GEO-run facility threatened to separate the mothers from their children if they continued to protest.

The private prison contractor denied allegations of wrongdoing in that instance as well.



The COLORADO INDEPENDENT

Big win for immigrant workers in Aurora wage theft case

Bree Davies

August 05, 2015 Civil Rights No Comments



Take the story of Walter Mancia. After years of working long hours at Carniceria y Verduleria Guadalajara, a grocery store in Aurora, his salary wasn't adding up. Money he was owed was missing. So, two years ago, he and more than 40 other employees of the store who had worked there since 2009 took their complaints to court.

Last Friday, Colorado's U.S. District Court approved a total settlement for the recovery of \$305,000 in back wages and penalties for Mancia and his colleagues.

Employees involved in the suit worked for Carniceria y Verduleria Guadalajara starting in 2009, and were eligible for a portion of the money based on their hours worked.

"Workers are entitled to minimum wage and overtime regardless of their immigration status. I think that often, both employers and employees think that they don't have any protections because they may be undocumented, but that's not the case," said Nina DiSalvo, lawyer and executive director of Towards Justice, the organization that served as Mancia's counsel.

"Even if you are making a salary, it still has to add up to minimum wage. You still are entitled to overtime. And if it doesn't add up enough to compensating you, it's illegal."

Towards Justice believes that wage theft at Carniceria y Verduleria Guadalajara wasn't due to malicious intent. The grocery store's owners were confused by laws pertaining to minimum wage and overtime pay for salaried employees.

Whenever a salary doesn't match up to at least minimum wage for hours worked and employees aren't entitled to overtime pay, it is illegal, said DiSalvo, something the store's owners did not understand.

While wage theft can affect anyone in the workforce, low-wage workers are often disproportionately harmed.

DiSalvo said Mancia's \$305,000 case brings attention to an even more vulnerable population of employees – immigrants and undocumented workers.

"It's an important message to the community: If an employer hires a person and that person does work for them, that person – regardless of immigration status — is protected by the wage and hour laws, both state and federal."

Au pairs provide cheap childcare. Maybe illegally cheap.

A class action lawsuit alleges that au pair agencies failed to obey state minimum wage laws, keeping their pay at \$4.35 an hour.

By Lydia DePillis March 20, 2015

When Johana Paola Beltran graduated from high school in Bogota, Colombia, she learned about a program that would send her to the United States to become an au pair — a live-in nanny. An au pair sponsor agency, InterExchange, sold her on the idea that she would be learning about a new culture and matched her with a family in Highlands Ranch, a posh suburb of Denver. She was excited: The host family's house had a gym; she would have access to a car; and she planned to take classes and improve her English. It even seemed worth paying out of pocket for the whole process: a \$2,500 fee.

But the experience was not what she expected. When she flew to New York City for orientation, Beltran wasn't paid for the days she spent in training. And after arriving in Colorado, Beltran says, she cooked dinner for the family every night (but was not permitted to eat with them), cleaned, did laundry, gardened and cared for the family's eight chickens. Sometimes, she didn't have enough food to eat herself.

For all that, she was given room and board and paid exactly \$195.75 per week — or \$4.35 per hour — compensation that met federal standards but fell short of Colorado's minimum wage.

"When I was in Colombia, InterExchange told me that being an au pair would be wonderful and that I would explore another life, language, family, culture and that if anything bad happened to me they would be there to help," Beltran said. "Instead, my host family treated me like a maid."

Now, Beltran has joined four other au pairs in a lawsuit alleging InterExchange and other sponsor agencies are keeping wages artificially low -- and are failing to comply with state laws that require employers to pay higher minimum wages.

The attorneys who filed the lawsuit say the sponsor agencies have turned the au pair program into a source for the cheapest child care in America, a far cry from its roots as a cultural exchange program. Pay for au pairs has remained extraordinarily low, even as salaries for traditional nannies and the cost of day care have soared in recent years. The suit, which was filed in Colorado District Court in November and substantially amended last week, demands punitive damages and back pay for as many as 30,000 current and former au pairs.

The 15 sponsor agencies that place au pairs in the United States deny they have been holding pay down. They say that the pay rate is set by the State Department, which oversees the program, and that the federal government has never explicitly told them they needed to follow state and local minimum wage laws.

"There's always been one nationwide stipend," says Michael McCarry, director of the Alliance for International Cultural and Educational Exchange, an industry group that represents many of the sponsors. "State has never raised the issue with us about state minimum wage laws."

State Department officials disagree. In a statement to The Washington Post, the agency says that sponsors "must also comply with all other applicable federal, state, and local laws, including any state minimum wage requirements."

When asked how federal officials have been communicating this requirement to au pair sponsor agencies, State Department spokesman Nathan Arnold replied: "The Department has been communicating with au pair sponsors to confirm that they are aware of their obligations under the regulations – including with respect to host family requirements – and will continue to do so."

So far, that has not translated into higher pay for au pairs. And for Beltran, it was untenable. InterExchange called once to check on her, but her host family didn't want to take her to the required monthly meetings with the sponsor and other au pairs. So in November 2012, she left. InterExchange declined to comment on the pending litigation.

"When I asked InterExchange for help, they did nothing," Beltran says. "It was all a lie."

The au pair system — which means "on par with" in French — was created to solve a problem. After World War II in Europe, many young women were traveling abroad for work. Concerned for their moral development, church groups encouraged the girls to live with and serve families, which would teach them the domestic arts and keep them out of trouble. The practice was entrenched by the 1960s, and international agreements were put in place to regulate it.

The United States got into the game in 1986, with a pilot program of 3,000 young people from Western Europe under the auspices of a 1961 law that governs cultural and educational exchange visitors, who receive J-1 visas. As more and more American women entered the workforce, leaving nobody at home to care for the children, the au pairs proved popular.

Perhaps too popular — a 1990 Government Accountability Office report [found](#) that the program was essentially work-centered, without enough cultural and educational content to satisfy the law's intent, and ought to be transferred to the Department of Labor.

But that never happened, partly because the sponsors rallied to protect the program's cultural exchange status. Department of Labor oversight would require a determination that no American worker was available to do the job, which might make it more difficult to justify bringing young people over from abroad.

"This is a genuine cultural exchange. It's not just a labor program," says McCarry. "The whole vision was to get large numbers of young people to have an experience, without taxpayer money, and allow them to work to defray the cost. Over time, it's worked exceptionally well."

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In fact, the sponsor agencies [helped fend off](#) provisions in the comprehensive immigration reform bill in 2013 that would have prevented them from charging fees to au pairs and made the companies liable for violations committed by foreign contractors who recruit au pairs. In 2012, the [State Department's inspector general said](#) it "questions the appropriateness of allowing what are essentially work programs to masquerade as cultural exchange activities," and recommended that the agency look into relinquishing control over the approximately 13,000 au pairs who enter the program each year. Again, State wasn't interested.

"We continue to believe that the Au Pair program is best served within Educational and Cultural Affairs, given it is a cultural exchange," the agency said, in response to questions from The Post.

Over the years, the au pair program has been sharply criticized by think tanks and academics — even by some previous defenders, such as Edina Stone, who used to work for a sponsor agency and now runs a site for parents called Au Pair Clearinghouse. Concerned about reports of au pair abuse by host family members, she also started an advocacy group for au pairs, who she says sometimes have nowhere to turn if something happens. Every year, she says she calls the sponsor agencies to ask them to endorse the effort, and almost none have done so.

"It makes you a little suspicious of the agencies, in terms of how they feel about it," Stone says. Instead of protecting au pairs, she says the sponsors try to sweep problems under the rug. "They pretend to be sympathetic. But then they send you home, because they know it's very difficult for an au pair to initiate a legal action in their own country."

The State Department says it "closely monitors these sponsor organizations regarding their compliance with regulations," which include making sure that au pairs work only 45 hours a week, with at least 1.5 days off a week and two paid weeks off per year. But inspections come in response to complaints, and frustrated au pairs often feel they can't ask for help, without running the risk of being sent home.

Perhaps for that reason, whatever exploitation that might go on hasn't received the same attention as other parts of the J-1 visa program. The Summer Work Travel program, which places 79,000 young people on job sites per year, earned national headlines in 2011 for a walkout by exchange students who had been assigned to a Hershey plant in Pennsylvania and forced to work long hours for low pay. The GAO released a report a couple weeks ago that found progress with that program, after substantial examination and reforms.

Take Beaudette Deetlefs, another plaintiff in the au pair lawsuit, who was placed with a family in Salt Lake City. Traveling around was difficult on the \$195.75 stipend; she spent much of it on public transportation and toiletries, and has tried to send a little money home to her single mother in the suburb of Cape Town, South Africa, where she grew up. Even on her two weeks of vacation, she hasn't been able to afford to leave her host family's house.

"I spend a lot of time in my room," Deetlefs says. "It's not a very pleasant feeling in the home, because I feel like I'm in the way all of the time when I'm not working."

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While many have criticized the au pair program since it was established, few have tried to change it through the courts. The lawsuit was launched after Beltran, the au pair from Bogota, contacted attorneys from Towards Justice, which provides legal aid to low-wage workers in Colorado.

As the staff from Towards Justice learned more, they discovered something strange about how the sponsor agencies operated. The State Department has told them that the minimum stipend is \$195.75 per week, even though other J-1 visa holders -- the Summer Work Travel participants -- receive higher pay in states with higher minimum wages.

Au pair sponsor agencies, though, treat the \$195.75 number as a flat rate. In their literature, some call it "pocket money," as if it were a bonus to receive \$10,000 a year on top of room and board. To host families, they advertise the

au pair program as a cheaper alternative to nannies — who can charge between \$15 and \$25 an hour — and one that wouldn't charge more for additional children. The lawsuit recounts conversations with agency officials in which they allegedly said that the industry had decided keep it that way, making sure that “the stipend is identical across all companies.”

That's why the suit also includes charges of antitrust violations along with noncompliance with state minimum wage laws: If sponsors hadn't colluded with each other to stick to one rate, it might have naturally risen, just as many low-wage employers offer slightly more than the minimum in order to attract better workers.

The sponsors have vehemently disputed those allegations, and ultimately, the case may be decided on very technical grounds. In a motion to dismiss, several of the sponsor agencies argue that the program is inherently federal, and therefore shouldn't be subject to minimum wage laws. Additionally, they say that the sponsor agency isn't the employer anyway — if anyone is at fault for not paying proper minimum wages, it's the host family.

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— **Nina DiSalvo**

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But Nina DiSalvo, executive director of Towards Justice, says there's a larger point here: The whole idea that au pairs are getting a cultural experience that should substitute for proper payment is a sham.

“There is no question that American families need affordable child care,” says DiSalvo. “But if that is the au pair

program's purpose, then we as a country should be honest about it and regulate it like other migrant domestic worker programs: Through the U.S. Department of Labor."

According to Arnold, the State Department spokesman, the program is undergoing a review, which will be complete in early summer. They're taking comments from au pairs and may expand the range of educational experiences they're allowed to undertake.

Relinquishing control of the program altogether, however, is not on the table.

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