



## **U.S. Commission on Civil Rights Concerned with Alleged Abusive Labor Practices at Immigration Detention Centers**

**December 21, 2017**

The U.S. Commission on Civil Rights, by majority vote, calls on the Department of Homeland Security (DHS) and Congress to investigate alleged abusive labor practices at government- and privately-operated immigration detention centers and require fair wages for all detainees. Immigration detention center providers currently are required to pay only a minimum of one dollar per day to detainees who participate in a “Voluntary Work Program.”<sup>1</sup>

The Commission calls for heightened oversight and transparency of the program and fair compensation for detainees to mitigate the risk of abuse. More detainees are set to enter the detention system. U.S. Immigration and Customs Enforcement (ICE) recently published notices seeking information on new detention facilities that would house approximately 4,000 detainees.<sup>2</sup>

ICE’s “Voluntary Work Program” is intended to provide immigration detainees “opportunities to work and earn money.”<sup>3</sup> ICE’s standards set detainee compensation to at least one dollar per day.<sup>4</sup> The program is based on a 1950 law that allows the U.S. government to pay non-citizens detained under immigration laws for work performed.<sup>5</sup> Congress originally set the compensation rate to one dollar per day after modeling the law after the Geneva Convention’s requirement that prisoners of war be paid “a fair

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<sup>1</sup> See ICE, Performance-Based National Detention Standards 2011, Part 5.8 (rev. Dec. 2016) [hereinafter 2011 PBNDS], available at <https://www.ice.gov/doclib/detention-standards/2011/5-8.pdf>.

<sup>2</sup> Alan Gomez, *Trump Plans Massive Increase in Federal Immigration Jails*, USA Today (Oct. 17, 2017), <https://www.usatoday.com/story/news/world/2017/10/17/trump-plans-massive-increase-federal-immigration-jails/771414001/>; FedBizOpps.Gov, Immigration Detention Service – South Texas Detention Capability, (Sept. 27, 2017), [https://www.fbo.gov/index?s=opportunity&mode=form&id=a4f6c1d1a72becc29d334e5bf4ac2942&tab=core&\\_cvi\\_ew=0](https://www.fbo.gov/index?s=opportunity&mode=form&id=a4f6c1d1a72becc29d334e5bf4ac2942&tab=core&_cvi_ew=0) (1,000-detainee capacity in South Texas); FedBizOpps.Gov, Immigration Detention Service – Multiple Areas of Responsibility, (Oct. 12, 2017), [https://www.fbo.gov/index?s=opportunity&mode=form&id=40a164d0787d7df00cebc917439d5e86&tab=core&\\_cvi\\_ew=0](https://www.fbo.gov/index?s=opportunity&mode=form&id=40a164d0787d7df00cebc917439d5e86&tab=core&_cvi_ew=0) (3,000-detainee total capacity near Chicago, Detroit, St. Paul, and Salt Lake City).

<sup>3</sup> 2011 PBNDS, *supra* note 1, at 405.

<sup>4</sup> *Id.* at 407.

<sup>5</sup> 8 U.S.C. § 1555(d); see also *Guevara v. I.N.S.*, 902 F.2d 394 (5th Cir. 1990) (allowing detainee work program’s \$1 per day compensation rate and ruling immigration detainees were not employees within meaning of Fair Labor Standards Act).

working rate of pay.”<sup>6</sup> For almost seventy years the compensation rate has not been increased.<sup>7</sup>

Some detention center providers have relied on detainees to perform work required to maintain and operate detention centers such as:

- general cleaning, including scrubbing bathrooms, toilets, showers, and windows;
- washing laundry;
- preparing and serving meals; and
- maintenance, operational, barber, and library services.<sup>8</sup>

Government- and privately-run detention centers have financial incentives to use detainee labor to cut costs.<sup>9</sup> In the case of privately-run detention centers, the Commission is concerned with the added pressure to coerce detainees to perform necessary labor in order to maximize profits, which is absent from government-operated facilities. In a deposition, one provider testified that if there were no voluntary workers, the provider would have to hire additional workers who would have to be paid an hourly wage to comply with its contract with ICE.<sup>10</sup> One estimate of the cost savings predicted the company could have spent \$125,000 in a one-month period on wages and benefits, but instead spent \$1,680 through the use of detainee labor.<sup>11</sup> These incentives could lead to detainee abuse in both government-run and private facilities.

Recently, detainees at numerous facilities have alleged being forced to work under threat of solitary confinement and restraint.<sup>12</sup> In one case a detainee was allegedly

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<sup>6</sup> Jacqueline Stevens, *One Dollar per Day: The Slaving Wage of Immigration Jail, From 1943 to Present*, 29 *Geo. Immigr. L.J.* 391, 463-64 (2015) (“[T]he genesis of today’s ICE resident work program is an international treaty for the treatment of foreign nationals in the custody of an enemy power. This treaty mandates not only a ‘fair working rate of pay,’ but many other provisions for enemy prisoners not presently available to civilian U.S. resident-immigrants or even citizens awaiting immigration court hearings.”) (citing Geneva Convention Relative to the Treatment of Prisoners of War, art. 62, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135).

<sup>7</sup> *Id.* at 463-469 (discussing history of § 1555 (d)). Congress last set the rate in 1978. Department of Justice Appropriation Act, 1978, Pub.L. No. 95-86, 91 Stat. 426 (1978) (setting “rate not in excess of \$1 per day”).

<sup>8</sup> GEO Group Policy & Procedure Manual 8.1.8-AUR, *Menocal v. GEO Group*, No. 1:14-cv-02887-JLK (May 6, 2016) (Doc. 50-4), <http://deportationresearchclinic.org/03916371701.pdf> (sample work assignments under Voluntary Work Program); GEO Group Policy & Procedure Manual 12.1.4-AUR, *Menocal v. GEO Group*, No. 1:14-cv-02887-JLK (May 6, 2016) (Doc. 50-2), <http://deportationresearchclinic.org/03916371699.pdf> (sanitation guidelines); Varick Federal Detention Facility Detainee Handbook Page 10 (Jan. 11., 2010), in Letter from U.S. Immigration and Customs Enforcement to Jacqueline Stevens, Northwestern University, ICE FOIA Case No. 2011FOIA13921, at 3 (Sept. 11, 2011) (description of federal detention center voluntary work program), <http://deportationresearchclinic.org/EICentro-FOIA-2011-113921.pdf>.

<sup>9</sup> Ian Urbina, *Using Jailed Migrants as a Pool of Cheap Labor*, *New York Times* (May 24, 2014), <https://www.nytimes.com/2014/05/25/us/using-jailed-migrants-as-a-pool-of-cheap-labor.html>.

<sup>10</sup> Rule 30(b)(6) Deposition of Melody Jean Furst, *GEO Group, Menocal v. GEO Group*, No. 1:14-cv-02887-JLK (Mar. 29, 2016) (Doc. 50-5), <http://deportationresearchclinic.org/03916371702.pdf>.

<sup>11</sup> Madison Pauly, *How a Private Prison Company Used Detained Immigrants for Free Labor*, *Mother Jones* (Apr. 3, 2017), <http://www.motherjones.com/politics/2017/04/geo-forced-labor-lawsuit/>.

<sup>12</sup> See Alexandra Cole, ACLU of Georgia, *Prisoners for Profit: Immigrants and Detention in Georgia* 57-58 (2012), [https://www.acluga.org/sites/default/files/field\\_documents/prisoners\\_of\\_profit.pdf](https://www.acluga.org/sites/default/files/field_documents/prisoners_of_profit.pdf) (the private contractor acknowledged the abuse and took corrective action); *Menocal v. GEO Group*, 113 F.Supp.3d 1125, 1131-33 (D. Colorado 2015) (allowing detainees’ Trafficking Victims Protection Act claim after alleging forced labor by threats

punished for complaining about unsafe work conditions.<sup>13</sup> In February 2017, a Colorado federal district court judge certified a first-of-its-kind class action lawsuit against one provider for alleged violations of the Trafficking Victims Protection Act and unjust enrichment.<sup>14</sup> Similarly, in September 2017 the State of Washington sued a provider, claiming violations of state minimum wage laws and unjust enrichment with allegations that the provider sometimes paid detainees with candy and snacks instead of money.<sup>15</sup>

In our 2015 statutory enforcement report, *With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities*, the Commission investigated immigration detention centers, both government-operated centers and those operated by private, for-profit companies that have contracts with the federal government.<sup>16</sup> The Commission found numerous detention centers failed to comply with Performance-Based National Detention Standards (PBNDS), laws, and court orders meant to protect the constitutional and civil rights of detainees.<sup>17</sup> Moreover, private detention centers do not have the same level of transparency as government run centers.<sup>18</sup> Nor do private detention centers necessarily adopt the same standards as federally run ones.<sup>19</sup>

For decades, the Commission and its state advisory committees have investigated and reported on the often negative civil rights implications of our nation's immigration laws and policies.<sup>20</sup> The Commission strongly urges Congress to hold a hearing to investigate labor practices at immigration detention centers, pass legislation requiring all detention centers to pay a fair wage for detainees, and conduct greater oversight to protect the rights of working detainees.

Most recently, the DHS Office of Inspector General (OIG) released a report raising “concerns about the treatment and care of ICE detainees at four facilities” out of the five

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of solitary confinement); Complaint at ¶ 16, *Owino v. CoreCivic*, No. 3-17-CV-01112-JLS-NLS (S.D.Cal. May 31, 2017), <https://www.courthousenews.com/wp-content/uploads/2017/06/CoreCivic.pdf> (class action lawsuit filed against private detention company).

<sup>13</sup> See Stevens, *supra* note 6, at 397-98 (interview of detainee at a private facility who was punished after asking for gloves to handle concentrated bleach and filing a grievance); *id.* at 423 (“grievances about working conditions are more likely to yield retaliation than redress.”).

<sup>14</sup> *Menocal v. GEO Group*, 320 F.R.D. 258 (D. Colorado 2017) (appeals filed); Kristine Phillips, *Thousands of ICE Detainees Claim They Were Forced into Labor; a Violation of Anti-Slavery Laws*, Washington Post (Mar. 5, 2017), [https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/thousands-of-ice-detainees-claim-they-were-forced-into-labor-a-violation-of-anti-slavery-laws/?utm\\_term=.62a6eecd3b74](https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/thousands-of-ice-detainees-claim-they-were-forced-into-labor-a-violation-of-anti-slavery-laws/?utm_term=.62a6eecd3b74).

<sup>15</sup> Complaint at ¶ 4.5, *State v. GEO Group*, No. 17-2-11422-2 (Wash. Super. Sept. 20, 2017), [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/State%20v%20GEO%20Complaint.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/State%20v%20GEO%20Complaint.pdf).

<sup>16</sup> USCCR, *With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities* (2015), available at [http://www.usccr.gov/pubs/Statutory\\_Enforcement\\_Report2015.pdf](http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf).

<sup>17</sup> *Id.* at 124-25 (Findings).

<sup>18</sup> *Id.* at Finding 11 (There is a lack of transparency regarding private detention facilities because the facilities' records are not subject to FOIA.)

<sup>19</sup> See *id.* at 27-29 (discussing different detention standards depending on when contract was entered).

<sup>20</sup> See USCCR, U.S. Commission on Civil Rights Commends President Obama on Issuance of Immigration Accountability Executive Action (Nov. 21, 2014), [http://www.usccr.gov/press/2014/Immigration\\_letter.pdf](http://www.usccr.gov/press/2014/Immigration_letter.pdf) (summarizing history of USCCR immigration investigations).

it inspected.<sup>21</sup> Although OIG did not investigate the Voluntary Work Program, it did find that (1) language services were not always used to facilitate communications with detainees, (2) some facility staff deterred detainees from filing grievances and did not thoroughly document resolution of grievances, and (3) staff did not always treat detainees with respect and professionalism and may have misused segregation.<sup>22</sup> All of these findings can exacerbate conditions that lead to possible detainee abuse under the program. OIG should investigate alleged abusive labor practices at immigration detention centers and ICE should immediately revise its 2011 PBNDS to require a fair wage for detainees participating in the work program to eliminate the incentive for labor abuses.

Chair Catherine E. Lhamon stated: “DHS and Congress must act swiftly to investigate and correct any abuses in both private and government-run detention centers. All detention center providers should be held to the same standard of accountability, whether they are privately- or government-run.”

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The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights matters. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: entering our 7th decade, a continuing legacy of influence in civil rights. For more information, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).

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<sup>21</sup> U.S. Department of Homeland Security, Office of the Inspector General, *Concerns About ICE Detainee Treatment and Care at Detention Facilities* (OIG-18-32) 1 (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

<sup>22</sup> *Id.* at 3.