

Immigrant detainees not owed minimum wage under FLSA: 4th Circuit

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(Reuters) -

Immigrant detainees at a facility in New Mexico run by CoreCivic Inc were not the private prison operator's employees and were not owed the minimum wage for their participation in a work program, a U.S. appeals court ruled on Friday.

A unanimous three-judge panel of the 4th U.S. Circuit Court of Appeals said the minimum wage set by the federal Fair Labor Standards Act was designed to ensure that workers can maintain a minimal standard of living, but detainees have their basic needs provided for them and do not participate in the "free labor market."

The court affirmed the dismissal of a 2018 proposed class action by detainees at the CoreCivic facility who prepared and served meals, performed janitorial work, and operated a library and barber shop, among other jobs.

Every federal appeals court to consider the issue has said custodial detainees who work are not entitled to the minimum wage, regardless of whether they are detained in jails, private prisons, or civil detention.

But the 4th Circuit is only the second court to extend those rulings to immigrant detention centers, agreeing with a 1990 5th Circuit decision in *Alvarado-Guevara v. INS*.

Joseph Sellers of Cohen Milstein Sellers & Toll, who represents the plaintiffs, in an email said "we're disappointed by the ruling and are considering our options."

Ryan Gustin, a spokesman for Tennessee-based CoreCivic, said in a statement that the company was pleased with the ruling. CoreCivic is represented by Struck Love Bojanowski & Acedo.

"We have worked in close partnership with (U.S. Immigration and Customs Enforcement) for more than 30 years and will continue to provide a safe and humane environment to those entrusted to our care," Gustin said.

In the lawsuit filed in Baltimore federal court, the plaintiffs claimed they were paid as little as one dollar per day to participate in a voluntary work program at the Cibola County Correctional Center in Milan, New Mexico.

The plaintiffs said they were CoreCivic's employees under the FLSA because they were performing work that the company otherwise would have had to hire workers to complete.

U.S. District Judge Richard Bennett in 2019 dismissed the case, citing the 4th Circuit's 1993 decision in *Harker v. State Use Industries* that said prison inmates were not covered by the FLSA.

The plaintiffs in their appeal attempted to distinguish between criminal and immigrant detainees, saying immigrant detention is not punitive or corrective.

But the 4th Circuit on Friday said that distinction was meaningless. Custodial detention in general is "inconsistent with the free labor market envisioned by the FLSA" because detainees are under the complete control and supervision of detention facilities, Circuit Judge J. Harvie Wilkinson wrote.

"Unlike workers in a free labor market who use their wages to maintain their standard of living and general well-being, detainees in a custodial institution are entitled to the provision of food, shelter, medicine, and other necessities," he wrote.

The panel included Circuit Judges Barbara Keenan and Albert Diaz.

Editor's note: This article has been updated to include a statement from CoreCivic.

The case is *Ndambi v. CoreCivic Inc*, 4th U.S. Circuit Court of Appeals, No. 19-2207.

For the plaintiffs: Joseph Sellers of Cohen Milstein Sellers & Toll

For CoreCivic: Nicholas Acedo of Struck Love Bojanowski & Acedo

References

[COHEN MILSTEIN SELLERS AND TOLL PLLC; CORECIVIC INC](#)

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